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A&R Legal Briefing

Landlords can now recover rent from administrators and liquidators

The recent case of *Pillar Denton Ltd and others v Jervis and others (2014)* has clarified the position that a portion of rent can be an expense of the administration rather than a provable debt even if it is payable before the tenant goes into administration.

This case is important for commercial landlords that are expecting rent payable in advance and the tenant company goes into liquidation or administration. This case concerned administration although it applies equally to companies which enter liquidation.

Game Stores Group Limited was the tenant of hundreds of leasehold retail properties. On 25 March 2012 rent became due on many of these properties, some of the leases were payable quarterly in advance on this day and the total was approximately £10 million. The subsequent day the group went into administration. The administrators sold the business and many of the assets to Game Retail Limited. The administrators gave Game Retail Limited a licence to occupy many of the properties.

The case in question, tested the "Salvage principle" and has confirmed that rent (payable in advance) which falls due before the company goes into administration is an expense of the administration and thus can be recovered. The effect of this portion of rent becoming an expense is that it is entitled to priority, otherwise it would be a provable debt which would fall into a class with other unsecured creditors.

The rent should then be calculated from the date when the administrators took beneficial possession of the property for the administration procedure. The rent will be treated as accruing from day to day. The administrators may not be certain of how long they will need to use the premises therefore the approach adopted should be one of "wait and see" and should ultimately be a question of fact.

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