

**Whether rent
falling due
pre-administration
should be paid by
the Administrator**

In *Goldacre (Offices) Ltd v Nortel Networks UK Ltd (in administration)* [2009] EWHC 3389 (Ch) the court held that where a company in administration continued to occupy leasehold property in order to further the interests of creditors as a whole, then any rent that fell due in the course of the administration ranked as an administration expense.

Following the decision in *Goldacre*, insolvent companies began adopting the practice of appointing administrators shortly after the quarter day, in the hope of enabling the administrators to enjoy a rent-free period of occupation of the premises. As a result landlords have sought to challenge this practice and the recent case of *Leisure Norwich (II) Ltd and others v Luminar Lava Ignite Ltd (in administration) and others* [2012] EWHC 951 (Ch) has decided the issue.

The background

In *Leisure Norwich*, the tenant of the premises went into administration after the September quarter day without paying any rent for that quarter. The tenant continued to occupy and trade from the leasehold premises after entering administration, while the administrators marketed its business and assets for sale.

The landlord sought a declaration from the Court that the administrators were required to pay the full rent due for the premises, as it fell due as an expense of the administration pursuant to the Insolvency Rules 1986. The landlord argued that the fact that the rent for the September quarter had fallen due before the tenant went into administration was irrelevant. The administrators argued that they were only liable to pay rent as an expense of administration falling due after administration had commenced.



The result

The High Court rejected the landlord's case and held that rent which fell due for payment before an insolvent company went into administration, could not rank as an expense of the administration. The landlord was therefore not entitled to payment of the rent that fell due prior to the commencement of the administration.

The court did however expressly endorse the decision in *Goldacre*, that where an administrator causes a company to retain possession of leased property to further the purpose of the administration, all rent that falls due under the lease during the insolvency process will rank as an expense of the administration.

Implications

This case is positive for landlords as it endorses the view in *Goldacre* that where the premises are being used for the benefit of administration, any rent falling due in the course of the insolvency process will be ranked as an administration expense. However, this decision may well encourage the practice of appointing administrators just after a quarter day, to allow the administrator to enjoy the remainder of the quarter in effect rent-free.

If you would like more
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