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When rent should be paid by the Administrator

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Landlords received some good news in the recent High Court case of *Goldacre (Offices) Ltd v Nortel Networks UK Ltd* (in administration) [2009]. That case has significantly increased a landlord's prospects of obtaining rent from a tenant in administration if the premises are being used in any way for the benefit of the administration.

The background

In *Goldacre* the tenant of premises in Harlow entered into administration. Parts of the premises were being used by the administrator for the purposes of the administration. The Landlord sought a declaration from the Court that the administrators were required to pay the full rent for the premises as it fell due as an expense of the administration, pursuant to the Insolvency Rules 1986. The administrators argued that they should only be required to pay rent apportioned in respect of the area it occupied and only for the period of its actual occupation.

The result

The Judge accepted the landlord's case and found that, where the lease is being enjoyed or retained for the benefit of the administration, the rent is payable as an expense or necessary disbursement of the administration pursuant to the Insolvency Rules in full in accordance with the terms of the lease, whether or not the whole premises is being used/occupied.

Although *Goldacre* itself does not cast much light on the precise circumstances in which rent must be paid, it appears from the case law relating to liquidation, on which the Judge based his decision, that rent should rank as an administration expense from the point that the administrators cause the premises to be used for the benefit of creditors. **The concept of "use" is wide and is likely to include allowing a purchaser of the tenant's business into occupation under a licence, as frequently happens in pre pack and other administrations.**

Implications

The law in this area had been confused and administrators have frequently sought to avoid or limit the payment of rent, particularly when the tenant company has sold its business and is no longer in occupation of the premises itself, but has allowed the purchaser into possession (as with pre packs). This case is encouraging for landlords and should put them in a stronger negotiating position to secure payment of rent where the premises are being used in any way for the benefit of the administration. Conversely however, this decision might lead to administrators being more careful not to make any use of the premises to avoid any potential liability to pay rent, although, where a phoenix company wishes to continue with the business and trade from the premises, it is likely to be difficult for the administrators to avoid a potential liability to pay rent.

