CARSON McDOWELL

Insolvency & Restructuring Update

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Cash for Gold?

If there is a case that keeps cropping up in the world of administration, it is that of Goldacre (Offices) Limited v Nortel Networks UK Limited ("Goldacre") which fought the corner of landlords everywhere, confirming that administrators who retained leasehold premises for the purposes of the administration could not avoid paying rents and other lease payments. If the premises were retained by the administrators, the rents were a cost in the administration.

This seemed a fair position all round, but there was a loophole – under the standard terms of most commercial leases, rents fall due **quarterly in advance** – as such, rent due on the standard lease quarter days would be due **on that date**, and if an administrator took his appointment (often strategically) one or two days after a quarter date, they would have the benefit of three months' rent free to figure out the profitability of each store, and could close the same before the next quarter day without cost.

Where the insolvent company had one, or even a couple, of properties, this was an irritation for the landlord(s) in question, however where a major retailer adopts this tack (as was the case in the Game Station administration last year) it becomes something of a bigger issue.

The Game Station case has followed through, and the anticipated interpretative decision in this matter has now been issued in Pillar Denton Limited v Jervis on 24th February. As anticipated, it acknowledges that the payment terms for rents in a commercial lease are quarterly in advance, however rents were deemed to accrue on a day-to-day basis throughout the relevant quarter.

Therefore, on the same basis as the general law on apportionments should a tenant vacate a property, an administrator has a daily accruing liability to rents and other lease payments from the date of appointment, irrespective of the "on advance" payment mechanism that the lease may employ.

The court held that this day-to-day calculation would apply equally to administration and liquidation, therefore insolvency practitioners will need to factor in full rental liabilities from the date of appointment in the calculation of their anticipated expenses. As for landlords, the case gives a welcome further string to the bow in dealings with insolvent tenant companies.

For further advice on this case or any other matter relating to insolvent companies, please contact the Carson McDowell Insolvency Team.

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