

Rent as an administration expense - sorted once and for all?

The High Court has provided clarification on the issue of payment of rent during a tenant company's administration.

Judge Pelling QC ruled that rent that fell due to a landlord prior to the appointment of administrators should not be treated as an expense of the administration having priority over the claims of unsecured creditors.

The landlord in the case¹ took legal action earlier this year against the administrators of its tenant in an attempt to challenge the controversial decision of the High Court in the 2009 case of *Goldacre v Nortel Networks UK*. The landlord was seeking to recover the rent arrears in priority to the tenant's other unsecured debts when rent is not paid on the quarter day and administrators are subsequently appointed who continue to trade the tenant's business.

The High Court affirmed *Goldacre* and ruled that rent due from a tenant prior to the commencement of administration is not an administration expense, but a provable debt.

As a result of this decision, insolvency practitioners are likely to continue to think strategically regarding the timing of company's entry into administration. Landlords may find themselves without any claim for rent as an administration expense if administrators are appointed after a rental payment date and vacate the premises before the next payment is due. The move towards monthly rather than quarterly rents, particularly in the retail sector, may prove beneficial to landlords in those circumstances.

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¹ *Leisure (Norwich) II Ltd v Luminar Lava Ignite Ltd (in administration)* (2012)

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