

GAMES STATION: COURT OF APPEAL OVERRULES GOLDACRE AND LUMINAR

The Court of Appeal today handed down judgment in *Jervis v Pillar Denton; re Games Station*, in an important ruling for administrators and landlords as to the true scope of the “salvage” or “Lundy Granite” principle as it applies to rent falling due during the period of administration.

The key points arising from the decision are as follows:

- *Goldacre (Offices) Ltd v Nortel Networks UK Ltd* [2011] Ch 455 and *Leisure (Norwich) II Ltd v Luminar Lava Ignite Ltd* [2013] 3 WLR 1132 are both overruled.
- Where an administrator or liquidator makes use of leasehold property for the purposes of the administration or winding up, then the reserved rent is payable as an expense for the period during which the property is so used, and will be treated as accruing from day to day for that purpose.
- This is true whether the rent is payable in arrears or in advance.
- The date upon which a quarter’s rent becomes payable, and whether that is before, during or after the period during which the property is used for the purposes of the administration or liquidation, is irrelevant.
- The Apportionment Act 1870 has no part to play in determining the amount of rent payable as an expense under the salvage principle.

The Game group went into administration on 26 March 2012, the day after the March quarter day. Various companies in the group owned leasehold interests in a large number of stores. Rent was payable in advance under all of the relevant leases. The rent falling due in advance on the March quarter day was not paid. The administrators refrained from paying any part of it, notwithstanding that the stores were used for the benefit of the administration throughout the remainder of the quarter, in reliance on the decisions in *Goldacre* and *Luminar*. Those decisions held that since rent payable in advance (unlike rent payable in arrears) cannot be apportioned under the Apportionment Act 1870, then if a quarter’s rent fell due for payment before the commencement of the administration, then no part of it was payable as an expense and, conversely, if a quarter’s rent fell due for payment during the period in which the property was used for the purposes of the administration, then the whole of that quarter’s rent was payable in full, whether or not the administrators continued to make use of the property thereafter.

It was common ground between the parties that the court should apply the salvage principle in the same way in an administration as it was applied in liquidation, in light of the similarity in the respective rules relating to expenses.

Lewison LJ, giving the only reasoned judgment in the Court of Appeal, concluded that the salvage principle is a principle of equity, which deems such part of the rent payable under a lease that relates to the period of use for the purposes of the administration as if it were a debt incurred by the administrator and thus payable as an expense. Accordingly, the inability to apportion rent payable in advance at common law was irrelevant:

“The true extent of the principle, in my judgment, is that the office holder must make payments at the rate of the rent for the duration of any period during which he retains possession of the demised property for the benefit of the winding up or administration (as the case may be). The rent will be treated as accruing from day to day. Those payments are payable as expenses of the winding up or administration. The duration of the period is a question of fact and is not determined merely by reference to which rent days occur before, during or after that period”.

The Court of Appeal decision will no doubt have an impact on many existing and future administrations. It removes what many felt to be an arbitrariness in the state of the law following *Goldacre* and *Luminar*.

Three South Square barristers were involved in the appeal. The Landlords were represented by Antony Zaccaroli QC and Hannah Thornley (instructed by Berwin Leighton Paisner LLP), while the administrators of the Game group were represented by Daniel Bayfield (instructed by Linklaters LLP).