



Ruling by the High Court on how administrators must deal with rent

Goldacre (Offices) Limited V Nortel Networks UK Limited (in administration) [2009] EWHC 3389(Ch) has decided that if an administrator uses leasehold property for the benefit of the administration, rent will rank as a mandatory expense of the administration. Landlords whose tenants are placed into administration may enjoy a stronger position, as a result of which, administrators will need to carefully consider how they trade on and whether they can meet rent liabilities if they use the company's premises.

Careful thought also needs to be given to the strategy employed in allowing any purchaser of the company's business to occupy the company's premises under licence. It would be prudent to protect the administrator's position in relation to rent liabilities in such circumstances. Unfortunately, the judgment does not provide any clarity on this point.

Summary

1. Where the company in administration uses leasehold premises for the benefit of the administration, rent should be paid as a matter of course as an automatic expense of the administration, regardless of whether the landlord has demanded it or not;
2. In these circumstances, decisions in relation to whether rent is an expense should be made with reference to the Insolvency Rules and should not be left to the discretion of the administrator or the court. The reasoning set out in *Re Atlantic Computer Systems Limited* is not applicable in these instances;
3. In accordance with rule 2.67(f) of the Insolvency Rules, the use of leasehold premises for the benefit of the administration means that rent should be classed as a "necessary disbursement"; and
4. Rent should be payable in full and not reduced according to how much of the property is being used.

Facts of the case

Nortel Networks UK Limited ("Nortel") was in administration. Nortel occupied leasehold premises pursuant to a long lease with the landlord, Goldacre (Offices) Limited ("Goldacre"). The administrator, for the benefit of Nortel's creditors, continued to occupy the premises. The administrator occupied only a small part of the premises, other parts being occupied by sub-tenants. An application was made by Goldacre for rent to be paid as an expense of the administration.

The administrator contended that whether rent is an expense or not is at the discretion of the administrator or the court. Further, that if rent is payable as an expense, it should be calculated only in relation to the proportion of the property utilised by the company in administration.

In rejecting the administrator's arguments, the Judge considered that the matter should be decided by exclusive reference to the rules and not as a matter of discretion by the court or the administrator. The Judge also held that even though the administrators were occupying only a small part of the premises, the landlord had no realistic prospect of maximising the return for the whole premises while the administrators were using part of the premises and they should therefore pay the rent for the entire premises.

For further information, please contact the Restructuring and Insolvency Team.



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