



Administrators who use premises must pay the rent as an expense

Summary and implications

The court has clarified that administrators must pay rent as an expense of the administration when they use property.

The High Court has recently held* that:

- If the administrator causes the company to **use the leasehold property for the benefit of the administration**, the administrator must pay the rent that falls due under the lease as an expense of the administration, if and when there are sufficient funds available.
- There is no element of discretion for the administrator or the court and the full rent is payable even if the administrator only uses **part** of the premises for part of a quarter.
- The test of balancing the interests of creditors against the interests of the landlord as set out in *Atlantic Computers*** and followed in *Innovate****, is **not** the right approach when deciding whether the administrator should pay the rent. This test applies to an application for permission to forfeit.

What is "using" the property?

The concept of "use" for the benefit of the administration appears to be wide and is likely to include retaining the property, and/or allowing a purchaser of the business and assets of the insolvent company into occupation under a licence. Use of a minor part of the property is also sufficient to trigger full rental liability, even where there are sub tenants occupying the remaining parts.

Further comment:

Rent was held to be a "*necessary disbursement by the administrator in the course of the administration*". Service charge, insurance, utilities bills, interest and any other sums properly due under a lease will be necessary disbursements if the administrator uses the property. If the administrator is not using or retaining the property all sums due remain unsecured as has always been the case.

Ask a question

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**Goldacre (Offices) Limited v Nortel Networks UK Limited (in administration)* [2009] EWHC 3389(Ch)

** *AIB Capital Markets Plc & Anor v Atlantic Computer Systems Plc & Ors* [1990] EWCA Civ 20

*** *Innovate Logistics Limited (in administration) v Sunberry Properties Limited* [2008] EWCA Civ 1261

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