

“Pay-as-you-go” for Administrators as *Goldacre* and *Luminar* are overruled

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The Court of Appeal has recently determined that companies in administration who retain possession of leased properties must pay rent for the period they occupy and not by reference to quarter days.

This long anticipated ruling in *Pillar Denton v Jervis* (2014) arose out of the administration of the Game Group which occurred on 26 March 2012. The day after the March quarter day was chosen as the day to put Game into administration because of two recent first instance decisions.

Goldacre (Offices) v Nortel Networks (2009) decided that, if a quarter's rent (payable in advance) fell due during a period in which administrators were retaining the property for the purposes of the administration, the whole of the quarter's rent was payable as an administration expense even if the administrators were to give up occupation later in the same quarter. *Leisure (Norwich) v Luminar* (2012) decided that, where a quarter's rent payable in advance fell due before entry into administration, none of it was payable as an administration expense even if the administrators retained possession for the purposes of the administration. As a consequence, given the administration date, some £3m of rent due from Game for the March quarter was no more than a provable debt. Game's landlords contended that the position was manifestly unfair and unjust. Hence this appeal.

The Court of Appeal, in analysing the position, said that it was common ground that, at common law, rent was not apportionable in respect of time and that rent payable in advance was not apportionable under the Apportionment Act 1870. It was also common ground that, when a company went into administration, whether rent was payable as an administration expense depended upon the principle known as the “salvage principle,” or “the *Lundy Granite* principle”. One formulation of that principle was said to be as follows:

"If [a] company for its own purposes, and with a view to the realisation of ... property to better advantage, remains in possession of the estate, which the lessor is therefore not able to obtain possession of, common sense and ordinary justice require the court to see that the landlord receives the full value of the property."



The Court pointed out that the rationale for the principle was a judge-made deeming provision under which the administrator was deemed to have incurred the liability in the course of the administration and that the foundation of the principle was the application of equity.

It was agreed by the parties that the salvage principle and the right to prove for a debt were not mutually exclusive and so the mere fact that a debt was a provable debt did not mean that the salvage principle could not apply, but the Court was of the further view that the fact that rent payable in advance was not apportionable under the Apportionment Act 1870 did not lead inevitably to the conclusion that the salvage principle did not apply.

It said that common sense and ordinary justice required it to see that the landlord was paid. What he was to be paid was not to be described by reference to the days on which rent fell due for payment. What he was to receive was the "full value" of the property. Where the property was held under the terms of a lease, the full value was to be taken to be the rate of rent reserved by the lease.

The Court could not see why common sense or ordinary justice should be defeated by the happenstance that a rent day occurred immediately before the date of entry into administration if the rent falling due on that day covered a period during which the administrator retained possession of the property or the benefit of the administration. All that was necessary, it said, was to treat the rent as accruing from day to day.

The Court concluded that an administrator had to make payment at the rate of the rent for the duration of any period during which he retained possession of demised property for the benefit of the administration, that the rent was to be treated as accruing from day to day, that the payments were payable as expenses of the administration and that the duration of the period was a question of fact and was not to be determined merely by reference to which rent days occurred before, during or after that period.

The Court was of the view that the wrong approach to the question had been adopted in *Goldacre* and in *Luminar*, and it expressly overruled both decisions.





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