

The GAME case (Pillor Denton Ltd & Others v Jervis & Others) - Victory for landlords

04 AUGUST 2014

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Background

Game Station Limited ('GAME') was the tenant of hundreds of retail properties. Rent was generally payable in advance each quarter. GAME went into administration on 26 March 2012, the day after the quarterly rent, of approximately £10 million, was due. Some stores were closed immediately but many continued to trade and were sold by the administrators as part of the business, to a separate company, Game Retail Limited. Some £3 million in rent remained unpaid in respect of these stores.

GAME relied on previous case law to argue that as the rent fell due prior to the administration process, it was not an administration expense and none of it was recoverable by the landlord.

The decision

The Court of Appeal overturned previous decisions and found that whether rent can be treated as an administrative expense does not depend on when rent falls due or accrues but on how long the tenant uses the landlord's property for its own advantage. An administrator or liquidator must therefore pay rent, on a daily basis, for the duration of time they remain in beneficial occupation of the premises. Liability for rent will end as soon as occupation ceases.

Practical consequences

This decision is undoubtedly a significant victory for landlords. The next logical battleground will be the treatment of service charge, insurance rent and other sums payable under the lease.

In the meantime, if you are a landlord with a tenant who has become insolvent and the administrators or liquidators have refused to pay rent, it may be worth seeking advice to see whether any sums can be recovered.

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