

# CVS LAW

## GAME CHANGER: ADMINISTRATORS PAYING RENT

Up to now, Administrators and Liquidators of companies could wait until the day after the rent became due before taking control of any property where the company was a tenant, thereby avoiding paying that quarter's rent. Following the recent case of *Jervis -v- Pillar Denton Ltd re: Game Station Ltd*, Administrators, as well as Liquidators, can no longer do this. As a result, although Landlords are still not able to forfeit the lease, they will no longer be classed as unsecured creditors for outstanding rent.

Now the Administrator who continues to use/trade from a property for the benefit of the administration is required for the "period of beneficial retention" to pay rent which accrues daily. This means that the daily rent is now a cost of the administration and therefore gives Landlords a priority over unsecured creditors. However, this is only for the time and rent arising due to the Administrator being in possession. The *Game* case shifts the onus from when a tenant went into insolvency to whether a property was or is being used/traded from by the Administrator.

The *Game* case really does change both Landlord and Administrator's perceptions of the tenant's situation. For the Administrator he will now be driven by the need to avoid paying rent. He will therefore focus on which units he can justifiably retain for trade or use. Property he considers to be marginal could be closed or disposed of or, in the case of a Liquidator, disclaimed more readily. This could mean that Landlords of marginal properties may find themselves with empty units, which previously may not have been the case. For a Landlord whose property is retained he is assured that rent will be paid by the Administrator. In light of the judgment there may also now be a test as to whether it is possible to claim the rent from the Administrator even if the tenant had already paid the rent in advance of its going into administration.

Whatever the position nothing overrides the need for a Landlord to always retain close management of its tenants. Early indications that a tenant is struggling provides a Landlord with more options than seeking to take action once the tenant is in some form of insolvency.



Should you want to discuss this or any landlord/tenant related matter, please contact:

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