



The Game is Up!

Game Retail Ltd. (Appellant) v. Pillar Denton Ltd. and Others (Respondents)

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The Supreme Court has recently declined to hear retailer Game's appeal, ruling that there was no arguable point of law of general public importance which ought to be considered, particularly bearing in mind the case had already been the subject of judicial decision and reviewed on appeal.

"... permission to appeal be refused because the application does not raise an arguable point of law of general public importance which ought to be considered by the Supreme Court..."

Accordingly, the Court of Appeal's earlier Judgment stands: therefore, irrespective of when the rent falls due, if an administrator is using a premises for the benefit of an administration, the rent will be treated as accruing on a daily basis and must be paid as an expense of that administration.

The law, prior to *Game*, under *Goldacre* and *Luminar* was largely seen as being unsatisfactory and was often criticised as being 'pro' insolvency practitioner and 'anti' landlord, particularly as landlords would often find that their insolvent tenants waited to go into administration just days after the rent quarter date had fallen due (and had not been paid).

The subsequently appointed administrators could then enjoy occupation of the premises for the rest of the quarter, safe in the knowledge that the rent for that same period would not be payable as an expense.

The Court of Appeal's common sense approach in the *Game* case was broadly seen as curing some of these inequities, and also as bringing to an end a complex, and, at times, uncertain area of the law.

The Supreme Court's refusal to hear *Game*'s appeal now means that the law is settled.

It remains to be seen whether this really will be the end of the story. It is likely, for example, that disputes will arise in determining when precisely an administrator begins using a premises for the 'benefit' of the administration, particularly if there is a lapse in time between the tenant going into administration and the administrator going into occupation.

However, the main issue of the treatment of rent arising during an administration has been resolved once and for all ~ this certainty will no doubt be welcomed by landlords and insolvency practitioners alike.

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