



Sales out of administration: Court of Appeal refuses landlord permission to commence proceedings to terminate purchaser's temporary licence to occupy

Last week, the Court of Appeal handed down judgment in the case of Innovate Logistics Limited (in administration) v Sunberry Properties Limited (2008) EWCA Civ 126. The case involved an application by a landlord for leave to bring proceedings under paragraph 43 Schedule B1 Insolvency Act 1986 (“IA”). The tenant company had, in conjunction with a pre-packaged sale of its business and assets out of administration and in breach of the terms of its lease, granted to the purchaser a temporary licence to occupy the premises from which it had operated its frozen food warehousing and distribution business. The purchaser did not want to take an assignment of the lease and intended to vacate the premises at the end of the licence period. The landlord wanted to exert pressure on the purchaser to take an assignment of the lease and so sought leave of the Court to commence proceedings for the immediate termination of the purchaser's licence to occupy.

The Court of Appeal, applying the principles it set out in Re Atlantic Computer Systems plc in relation to leave applications under the old section 11(3)(d) IA, which was in substantially similar terms to paragraph 43 Schedule B1 IA, refused the landlord leave to bring the proceedings.

The case highlights that whilst a Court will normally allow a landlord to exercise his proprietary rights, leave can be refused if this will impede the purpose of the administration and having balanced the interests of the landlord against the interests of the company's other creditors, the landlord fails to demonstrate that it would be inequitable to refuse to allow him to exercise his proprietary rights.

In this case, the Court of Appeal held that one of the purposes of the administration was the collection of the Company's book debts and that the purchaser's temporary continued occupation of the property was essential to ensure the orderly collection of those book debts for the benefit of the company's creditors, which included the landlord. The Court of Appeal held that it was therefore required, in accordance with the Atlantic Computers guidance, to carry out a balancing exercise between the interests of the landlord and the interests of the company's creditors and that balancing exercise clearly demonstrated that there would be significant loss to the Company's creditors if permission were given whereas the loss to the landlord would be minimal if leave were refused. In the circumstances, the Court of Appeal decided that leave should be refused.

For a more detailed report on the case, please see the Insolvency update – 2 Dec 08 case report.

Contact us

For further information, please contact:

Sue Lowry

DD 0845 310 7215

E sue.lowry@berryman.co.uk

Carl Mifflin

DD 0845 310 7265

E carl.mifflin@berryman.co.uk

Berryman Park House Friar Lane Nottingham NG1 6DN

DX 10004 Nottm 1 **T** 0115 945 3700 **F** 0115 948 0234

W www.berryman.co.uk

DISCLAIMER OF LIABILITY FOR CONTENT

The above article is intended to provide general information only and is not to be treated or relied upon as specific legal or commercial advice. Specific professional legal advice should be taken before any course of action is pursued in relation to the information contained in the article. We make no representations or warranties of any kind with respect to the accuracy, completeness, or suitability for any purpose of the article and the information contained in it. We expressly exclude all liability for any loss or damage howsoever arising from the information contained in this article to the fullest extent permitted by law. The copyright in the above article is owned by Berryman Shacklock LLP. Any copying or adaptation of the article without prior consent of the copyright owner is prohibited.