

## **An obstacle to business rescue?**

On 2 March 2007 the High Court held that non-domestic business rates on premises constitute administration expenses in post-Enterprise Act Administrations [*Exeter City Council v Bairstow and Others, Re Trident Fashions*].

In respect of premises occupied by a company in Administration, non-domestic rates accruing during that time are now necessary disbursements and therefore payable in priority to floating charge holders.

In addition it also appears that rates for unoccupied premises will also be payable as expenses.

The judge acknowledged that the payment of rates as an expense, on both occupied and unoccupied property, will result in a significant detrimental effect to both floating charge holders and unsecured creditors.

It will also, of course, impact on the consideration given by prospective and appointed Administrators as to whether the statutory objectives will be achievable or whether trading on is financially possible or desirable.

The impact on the return to floating charge holders and unsecured creditors will also need to be assessed.

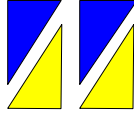
Unlike in a Liquidation, Administrators have no power to disclaim a lease and the result of this decision is likely to be either:

- an attempt to dispose of property interests prior to the appointment of Administrators;
- even more pre-packaged Administrations where the ongoing rates liability passes to the purchaser of the business; or
- an alternative insolvency process, either Administrative Receivership if a pre-September 2003 charge exists or Liquidation.

One of the main beneficiaries of the decision are likely to be landlords who may now be able to command reverse premiums from Administrators for agreeing to the surrender of leasehold properties.

It will be interesting to see how many situations arise where trading on post-appointment of an Administrator is not deemed viable due to the financial constraints imposed by this case and a potential sale of the business is therefore not given the opportunity to proceed.

Stephen Goderski



### **Who are we?**

*The firm was formed in 1983 by Geoffrey Martin, who was until then a partner with Arthur Andersen. It now operates from offices in Leeds and London which collectively employ 5 partners and 30 staff.*

*We are business recovery professionals (the new term for what used to be called insolvency practitioners). We have no audit or corporate finance arms or associations and are solely dedicated to assisting companies, partnerships or individuals with financial or cash flow difficulties.*

*We would welcome the opportunity of working alongside you to provide bespoke solutions to the needs of your clients. These would not necessarily be formal insolvency procedures.*

*For further information, please contact:*

*Geoffrey Martin  
Stephen Hull  
John Twizell*

*Stephen Goderski  
James Sleight*

*Geoffrey Martin & Co  
4<sup>th</sup> Floor, St Andrew House  
119-121 The Headrow  
Leeds  
LS1 5JW*

*Geoffrey Martin & Co  
7-8 Conduit Street  
London  
W1S 2XF*

*Telephone 0113 244 5141*

*Telephone: 020 7495 1100*

*Fax: 0113 242 3851*

*Fax: 020 7495 1144*

*[www.geoffreymartin.co.uk](http://www.geoffreymartin.co.uk)*

*[www.geoffreymartin.co.uk](http://www.geoffreymartin.co.uk)*