

Case study: Jirsch Sutherland successful in having an extension of the rent free period

By way of background, following the appointment of a voluntary administrator, the appointed administrator has five (5) business days to assess any leases in the name of the company and decide whether to use the property and pay the required lease payments, or to issue a notice to the owner that the administrator does not wish to exercise rights to the property and does not wish to be liable for the lease payments.

In a recent matter, the administrators of a company, Rod Sutherland and Andrew Spring were unable to gain access to the records of the company and were therefore unable to form an opinion in regard to the leases.

Following an application to the Supreme Court of NSW, Rod and Andrew were successful and an order was made for the extension of time for which an administrator is not personally liable under section 443B of the *Corporations Act*.

Background information:

- Retail phone accessories business
- The companies operated 25 retail outlets in NSW, VIC, QLD and the ACT
- Rod Sutherland and Andrew Spring were appointed voluntary administrators in April 2013
- The companies continued to trade after the appointment of the administrators
- Difficulties were encountered in gaining access to the books and records of the companies
- The inability to gain access to the records prevented the administrators from being able to:
 - write to all known lessors; and
 - form an opinion in regard to the leases in place and the continuation of those leases

Given the difficulties in gaining access to the records and in particular the documents relating to the leases, the five (5) day period permitted under Section 443B of the *Corporations Act* in which an administrator becomes personally liable was simply not long enough.

Consequently, an application was made to the Supreme Court of NSW, requesting an extension of the time before an administrator becomes personally liable.

The following orders were made by Justice Black:

“The words “within five business days after the beginning of the administration” in section 443B(3) of the Act read “after 24 May 2013”.”

The order provided sufficient time to gain access to the records and enough time to properly deal with the leases.