

# **COMMERCIAL LEASE CONFERENCE**

## **TENANT DEFAULT**

### **CASE STUDY**

The year is 2018. Donald Trump is in his second year of office as US President and Jeremy Corbyn has just been elected Prime Minister following a snap general election. The UK is still negotiating its exit from the EU and a new global recession is hovering on the horizon.

Out of Pocket Investment Company Limited ('Oops' for short) is the landlord of mixed office and retail premises known as 'Wits End'. Wits End is situated on the edge of a small town centre in the South East of England.

Wits End is let as a whole to Highly Geared Clothing Company Limited which occupies the office premises on the upper floors. The ground floor retail unit is sub-let to Going Under Limited (Australian long haul flight specialists). The premises are over-rented.

Highly Geared occupy under a 15 year lease which has four years left to run. Highly Geared acquired its interest by assignment from the Optimistic Factoring Co. Limited some five years ago. Highly Geared's liabilities under the lease are guaranteed by the companies' two principal directors, Mr Gates and Mr Getty. Oops very sensibly also took a six month's rent deposit which has not yet been drawn down.

Highly Geared's business has suffered significantly in recent years due to the continuing economic uncertainty. However, the directors have continued to trade relying on the Micawber theory that 'something will turn up'! Substantial arrears have been allowed to build up over a period of time and now three quarters rent is overdue.

There have been protracted but sporadic discussions between Oops and Highly Geared about how to resolve the situation. Various proposals have been tabled by Highly Geared including a surrender of the lease or a reduction in the rent. No proposals have been accepted by Oops and Highly Geared has taken no independent action itself. The situation has simply been allowed to drift.

As another quarter day looms Mr Gates and Mr Getty have asked for an urgent meeting with Oops. They tell Oops the following:

- Highly Geared will again be unable to pay its rent on the quarter day;
- Trade creditors are pressing for payment and one has now served a statutory demand on Highly Geared which the company are unlikely to be unable to satisfy;
- Mr Gates and Mr Getty maintain that they have personal liabilities which exceed their personal assets. Their residential properties are held in the names of their respective wives;
- All office equipment, photocopiers, computers etc. are held on lease;
- There are no arrears on Going Under Limited's rent account. Going Under's rent under its sub lease is roughly 20% of Highly Geared's rent under its head lease with Oops.
- The Optimistic Factoring Co. Limited has just announced record profits for the year.

Oops is a very troubled landlord. Oops has rushed in panic to its solicitors asking for urgent advice. Oops wants to know:

1. What are its options against Highly Geared?
2. Does it have rights against any third parties? If so, against whom and for what?
3. What steps might Highly Geared now take which might prejudiceOops' position further?
4. What will happen if an Administrator is appointed?
5. What happens if the statutory demand is not paid and Highly Geared is wound up?