

Receiver by Way of Equitable Execution – Irish Supreme Court Agrees to Hear Appeal

On 6 February 2018, the Irish Supreme Court agreed to hear an appeal in *ACC Loan Management Limited v Rickard*¹ ("**Rickard**"), in relation to the appointment of a receiver in aid of execution, on the basis that the issue was one of general and public importance.

Background

A judgment creditor, in order to execute its judgment, can apply to court for the appointment of a receiver to an asset of the debtor. The Supreme Court of Judicature (Ireland) Act 1877 (the "**Judicature Act**")² provides, in that the court may appoint a receiver wherever it is "just and convenient" to do so. This is referred to as appointment of a receiver "by way of equitable execution". The circumstances in which the courts will appoint a receiver in this way are not entirely settled.

Facts

In 2017, the Court of Appeal held, in *Rickard*,³ that it was permissible to appoint a receiver over a State grant known as the Basic Payment Scheme ("**BPS**") (a discretionary payment made to farmers by the Department of Agriculture). Once an application is made, the Department assesses whether the applicant qualifies for the payment. In *Rickard*, a few important points were decided:

(1) The appellant debtor argued that the BPS should be treated like future salary. The courts have held that they will not appoint a receiver over future earnings. The Court of Appeal held that the BPS constituted a subsidy. It was not to be treated in the same way as wages;

(2) The debtor also argued that they had only a right to apply for the BPS, which was not an asset over which a receiver could be appointed. The Court of Appeal held that the BPS is a right in action (chose in action). It considered the High Court decision in *O'Connell v An Bord Pleanála*,⁴ where it was held that a receiver could be appointed to potential future proceeds of a personal injuries action. Without approving *O'Connell*, the court held that the fact that the right to apply for the BPS was a conditional right was insufficient to prevent the court from appointing a receiver to the payment in this case. The court noted that the debtor had repeatedly applied for the BPS with success. Hedigan J described the likelihood of the payment being received as "highly probable" and "all but certain". The debtors were entitled, not only to apply for the payment, but to receive it if they met the conditions (and they were entitled to sue to enforce the right to payment, if they met the conditions and were refused payment). The situation was therefore different to the more speculative prospect of a damages award in *O'Connell*; and

(3) The debtor argued that the courts will only appoint a receiver by way of equitable execution to property in which a debtor holds an equitable interest, as opposed to a legal interest. The reasoning traditionally adopted for this approach has been that, if a debtor has a legal interest in property, then legal means of execution are available, i.e. the sheriff can seize (say) a milking herd. In *Flanagan v Crosby*,⁵ the High Court (Hogan J) had doubted the correctness of this approach, but was constrained to follow the existing

¹ [2018] IESCDET 36

² Section 28(7)

³ [2017] IECA 245

⁴ [2007] IEHC 79

⁵ [2014] 1 IR 576

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authorities which were also High Court decisions. The Court of Appeal in *Rickard* was not so bound.

Hedigan J held that the debtor's right to payment under the BPS was an equitable right, so the issue did not arise.

Finlay Geoghegan J said that it was not in dispute that the appellant's entitlement to receive the BPS payments is a legal chose in action. She held that, in the 21st century, the courts, in exercising their powers under the Judicature Act and the Rules of Court, are not precluded from appointing a receiver by way of equitable execution where what is sought to be executed against is a legal interest in property of a judgment debtor.

Practitioners await the next chapter of this saga, in the Supreme Court, with interest.

Further Information

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