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Appointing receivers by equitable execution – good news for creditors

On 9 May 2019 the Supreme Court handed down the seminal judgment of [ACC Loan Management Limited DAC v Mark Rickard and Gerard Rickard](#), which provides clarity on the question of when a receiver can be appointed by equitable execution.

Background

The appointment of a receiver by way of equitable execution is a powerful remedy for creditors to enforce judgment debts, as it enables a creditor to collect income from a debtor's assets, thereby preventing the debtor from receiving those payments. It is particularly useful where the debtor has no legal interest in the assets.

Judgment

In *Rickard*, the Supreme Court stated that whether a receiver by way of equitable execution should be appointed turns on whether it is “*just or convenient*” to do so. What is determined as just and convenient will depend on the facts of each case and, importantly, the Court emphasised that convenience “*cannot be subservient to justice*”.

The Supreme Court noted, however, that the Courts “*must be vigilant to ensure...the position of a judgment debtor is not rendered unsustainable*”. The burden is on the judgment-debtor to provide the Court with evidence that the appointment of such a

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receiver would render their position unsustainable. In *Rickard*, however, the Court found that the burden had not been discharged as Mr. Rickard had failed to provide the Court with a statement of affairs.

In its judgment, the Supreme Court set out the following requirements and considerations for the appointment of a receiver by equitable execution:

- That the asset is in the nature of a grant or entitlement, and not a salary;
- whether such appointment would have a prejudicial effect on third parties, or their interests – this criterion is emphasised in the judgment as “*one of the factors to which a court must have significant regard*”;
- the interest, which is to be the subject matter of the application, must be sufficiently well defined; and
- the effect upon the judgment debtor.

Conclusion

This judgment provides welcome clarity on the question of appointing a receiver by way of equitable execution, which has been subject to conflicting authorities for over a century. It confirms that a flexible approach is to be adopted by the Courts going forward so that the circumstances in which it is considered “*just and convenient*” to appoint a receiver by equitable execution may be incrementally developed.

Consequently, the Courts now have a wide discretion to appoint a receiver by equitable execution in circumstances where it is deemed “*just or convenient*” in accordance with today’s standards.

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