



## November 2019

### 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

For further information on any of the issues discussed in this article please contact:



**John O'Riordan**  
**Partner, Litigation**  
DD: + 353 (0)1 673 1792  
[john.orriordan@dilloneustace.ie](mailto:john.orriordan@dilloneustace.ie)

**Caoimhe Hickey**  
**Trainee, Litigation**  
DD: + 353 (0)1 673 1847  
[caoimhe.hickey@dilloneustace.ie](mailto:caoimhe.hickey@dilloneustace.ie)

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.

**Dillon Eustace**

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**DILLON □ EUSTACE**

**Dublin**

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

**New York**

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

**Tokyo**

12th Floor, Yurakucho Itozia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

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