

29. Court Receivers

General

A court appointed receiver is a flexible means of enforcing security. Court receivers perform a wide range of functions. A court receiver will only generally be necessary where the mortgagee does not have a power to appoint a receiver under its mortgage or by statute or where the nature of the security requires it.

A receiver appointed by court is deemed an officer of the court. He or she owes duties to the court. The mortgagor and mortgagee will not be responsible for his wrongful acts. Generally, a court appointed receiver must give security as the court directs for the performance of his duties. The security may be given by an insurance company. In certain cases, security may be dispensed with.

The High Court and Circuit Court have powers to appoint a receiver. Certain of the functions may be exercised by Master and County Registrar.

The courts have an inherent power to appoint a receiver, where it is just and convenient to do so. The application to the court may be brought by a mortgagee. Generally, the receiver is appointed in the context of a pending legal action. The

appointment of a receiver is often an initial step in the proceedings.

Legal Proceedings

Strictly speaking a receiver is appointed ancillary to a claim such as for sale. He is appointed for the purpose of getting in, holding and securing funds pending the hearing of the legal action in relation to sale, realisation etc. Generally, the person against whom enforcement is taken, must be first served with legal proceedings.

Once the summons is issued, the application for a receiver is by way short notice application/motion to the court. It is necessary to show the basis and necessity for the appointment of a court receiver. Where urgent or necessary, the application can initially be made without notice to the person affected. This might be done where there is a risk an asset might be deliberately disposed off or dissipated.

Grounds for Appointment

Generally, the purpose of the appointment of the receiver is to preserve the secured property and assets on behalf of the mortgagee. The two main types of cases where an appointment is made, is where the ordinary rights are defective or where it is necessary to preserve the property from some danger which threatens it.

A receiver may be appointed over all kinds of real and movable property and over other assets. This can include future rights, dividends and receipts from foreign properties. The receiver cannot enforce against a foreign property, but orders may be made against persons within the jurisdiction, which are personally binding on them. Where a mortgage security includes a business, the court may appoint a receiver and manager.

A receiver may be appointed where the type of asset is such that it is not possible to take possession and ownership of the assets. This may be the case where the security represents a fund or a right to payments, or right to a share in a partnership or under a trust. A receiver may be appointed by court if the principal has become payable, if interest is in arrears there is reason to fear that the secured asset may be in jeopardy.

The right to appoint a receiver may be exercised in the case of an equitable mortgagee (e.g. loan agreement without perfected mortgage) or equitable mortgage by deposit where there is no document by deed allowing appointment or other enforcement. This is because there may be no power to appoint a receiver of court because of the lack of a deed containing or implying the power to appoint. These kind of cases also require a court order for sale, as discussed in the last chapter.

Another type of case in which a receiver is appointed is where it is necessary to preserve secured property and ensure its proper management pending litigation. In this category, it is necessary to prove some danger or peril to the asset.

Where there is an alternative legal remedy, the court has discretion not to appoint a receiver. An example would be where there is a power to appoint in a mortgage deed.

The existence of a prior legal mortgage does not prevent appointment of receiver at the application of a lower ranking mortgagee, unless the prior mortgagee is in possession. A receiver appointed on the application of lower ranking mortgagees is appointed without prejudice to the rights of prior mortgagees, who are entitled to take possession under their security.

Powers and Duties of Receiver

Under the order of the court, the receiver is entitled to assume control of the assets concerned. The order may be enforced by committal to prison for disobedience. The appointment of a receiver is effectively a mandatory court injunction restraining parties from dealing with the property or asset concerned in a manner inconsistent with that ordered.

In the case of rents, the receiver is entitled to require payment to him. A tenant who pays to a landlord after receipt of the notice is obliged, to repay the receiver. The receiver is entitled to all rents unpaid at the date of appointment. Similar principles apply to a receiver over debts and other obligations. The debtor is obliged to pay the receiver and this can be enforced by order for contempt of court.

An interference with the possession of the receiver is a contempt of court. A person interfering with the receiver's rights may be liable to be committed, although this would rarely occur. Interference may occur by a third party purporting to exercise rights against the asset, without lawful basis or court authority.

Court Supervision

The receiver appointed by court is obliged to collect in the assets and pay all money into court or as the court directs. A court receiver has power to discharge outgoings such as buildings insurance, rates, rents, taxes and duties. A receiver appointed at the application of a mortgagee is usually directed to pay the rent and profits according to the order of priorities of the mortgagees.

A receiver appointed by court without express rights of management may not generally incur expenditure, without court sanction. If expenditure is incurred, he

runs the risk of it being disallowed. Court approval is required to the grant of a lease. A receiver may generally terminate leases for a period of less than year to year without court leave.

A receiver is liable to account for monies which he receives or should have received but for his default or negligence. A receiver is entitled to an indemnity against liabilities properly incurred by him and costs, charges and expenses. This indemnity ranks as a first charge on the assets. The receiver appointed by court has no right of indemnity personally against the party who applied for his appointment.

The court will generally allow a receiver such remuneration as it sees fit. The receiver must submit accounts to court at such intervals as may be directed. The passing of the receiver's accounts must be certified by the court. Monies are usually paid into court in accordance with the court officer's certificate.

The receiver is accountable to court for his actions. The receiver may only be discharged when his functions have been fulfilled. Discharge will be ordered when the appointment is no longer necessary or when all payments have been made.

Statutory Receiver and Manager

When the assets involve an interest in a business, trade or partnership, the court has jurisdiction to appoint a receiver and manager. A manager may be appointed at the application of a security holder over the goodwill of a business. The appointment is made with a view to realisation of the security by sale of the assets as a going concern.

This is an extract from our "Legal Guide to the Management and Enforcement of Security in Ireland" (2009). The Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances. It should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances. While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in it. The reader should rely only on specific legal or taxation advice. This extract is based on the law as of 1st October 2009.

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