Neutral Citation: [2014] IEHC 656

**THE HIGH COURT**

**[2011 No. 547 S]**

**START MORTGAGES LIMITED**

**PLAINTIFF**

**AND**

**CHRISTOPHER DOHENY AND DOROTHY DOHENY**

**DEFENDANTS**

**JUDGMENT of Ms. Justice Donnelly delivered on the 19th day of December 2014**

**Introduction**

1. On the 10th of February, 2014, Peart J. made a conditional order appointing David Lane as receiver by way of equitable execution over any settlement proceeds or award of damages made to the defendant, from High Court proceedings bearing Record Number 2013/458P, limited to the amount of €158,017.03. This is an application to make that order absolute.

2. The background to this application is that on the 8th of February, 2012, the plaintiff obtained an order for judgment by consent against both defendants in the sum of €158,017.03 plus costs measured at €2,000.00. This judgment remains outstanding in its entirety save for €200.00 paid by the second defendant during a period of attempted negotiations. The plaintiff has secured this judgment against land that belongs to the first named defendant only. The plaintiff has not taken any steps to secure a judgment against the second named defendant as there are no available assets in her name. While she is a registered joint owner of a certain property, there is already in existence a first legal charge registered over same in favour of the plaintiff.

3. The plaintiff has become aware that the second defendant has issued personal injury proceedings against Persian Restaurants trading as McDonald's Restaurant. These proceedings were recently transferred from the Circuit Court to the High Court.

4. No notice of trial has been served in those proceedings but the plaintiff is concerned that the parties may well decide to settle the action. Alternatively, the plaintiff submits that if the matter does come before the court, it could give rise to an award of damages made in favour of the second defendant.

5. The plaintiff claims an entitlement to an equitable interest in the proceeds of any settlement or award that the second defendant may be awarded. The plaintiff says that David Lane has agreed to act as receiver. The estimated cost of the receiver would be in the region of €500.00 plus VAT. Mr. Lane has sworn an affidavit indicating a willingness to act as receiver. He confirmed that he will act in the best interests of both the plaintiff creditor and the second defendant in administering the proceeds to satisfy the debt due and owing to the plaintiff with any surplus being returned to the second defendant.

**The issues**

6. The plaintiff relies upon *O'Connell v. An Bord Pleanála* [2007] IEHC 79 to show that there is jurisdiction for the court to appoint a receiver by way of equitable execution in these circumstances. The plaintiff submits that under O.45, r.9 of the Rules of the Superior Courts, it is just or convenient that such appointments be made having regard to the amount of the debt claimed by the defendant, to the amount which may probably be obtained by the receiver and to the probable costs of his appointment.

7. No affidavit was sworn by or on behalf of the second defendant. Counsel for the second defendant states that she does not represent the defendant in the personal injuries action, but submits, in any event, that it is for the plaintiff to show the details of the proceedings.

8. Counsel for the second defendant's main submission is that, despite the *O'Connell* decision, the law is by no means settled as to whether a power to appoint a receiver over a claim for future damages for personal injuries exists. Counsel relies upon Glanville, *The Enforcement of Judgments* (Round Hall, 1999) at para. 16.12. She submits that here, there is no property either legal or equitable, there is nothing capable of assignment and that this could be a fruitless appointment as there is no real knowledge of what may be ascertained. She notes that Glanville refers to examples of property not covered, e.g. future payments and unliquidated damages (although noting the reference to unreported judgments).

9. Counsel opened the *O'Connell* case. She notes the distinction made by the learned trial judge regarding earnings and wages necessary for an applicant to live. In *O'Connell*, the High Court said that the fund at issue was in the nature of a debt due for payment in the future. She notes that the order made by the court excluded the costs of the continuing personal injuries action. She says that there were two cases which preceded *O'Connell* which were not opened to the Court. She makes reference to the *National Irish Bank Ltd v. Graham* [1994] 1 IR 215 and *Honniball v. Cunningham* [2010] 2 IR 1. She submits that the Supreme Court in *National Irish Bank v. Graham* stated that the remedy only applied to a debtor's equitable interest in property.

10. In *Graham*, the Supreme Court refused to grant an order appointing a receiver by equitable execution in respect of a herd of cattle. The Supreme Court said that the plaintiff bank could execute its judgment in the ordinary way by the seizure of the herd. The relevant passage of the Supreme Court judgment includes the following sentence: *"[i]t is clear that the jurisdiction to appoint such a receiver is confined to cases in which a debtor enjoys an equitable interest in property which cannot be reached by legal process."* She says that the principles and in particular the second aspect thereof, i.e. *"which cannot be reached by legal process"*, was further explored in *Honniball*, a case not opened to the court in *O'Connell*. She submits that Laffoy J., with reference to *Graham*, stated *"[t]he principle is that the equitable remedy is only available where the judgment debtor has only an equitable interest in property against which the judgment creditor seeks recourse".*

11. Counsel also relies upon Keane, *Equity and the Law of Trusts in the Republic of Ireland* (2nd edn, Bloomsbury Professional, 2011) in which the learned author states with respect to the decision in *O'Connell* that "[s]ince there was no property of any sort to which the judgment debtor was entitled, either immediately or in the future, it is difficult to understand over what equitable interest in property the execution process could attach."

12. Counsel for the second defendant also draws the attention of the court to the case of the *Waterside Management Company Limited v. Kelly* [2013] IEHC 143. The President of the High Court noted that a *prima facie* divergence was evident between the conceptual approaches taken to the exercise of the court's jurisdiction to appoint a receiver by way of equitable execution in the authorities cited to him. In that case however, he was of the view that it was not a suitable case in which to appoint a receiver and

he did not find it necessary to distinguish between them.

13. My attention was also drawn to the decision of Hogan J. in *Flanagan v. Crosby* [2014] IEHC 59. That case concerned future emoluments to a county councillor. Hogan J. also made comments about the decision in *O'Connell* and the decision in *National Irish Bank Ltd. v. Graham.* He noted that *O'Connel*l was concerned with future payment of an unliquidated sum which was contingent on uncertain events and the High Court had stressed that regular future payments by way of salary or emolument represented a different category of cases. Hogan J. felt bound by *stare decisis* to refuse the application to appoint a receiver by way of equitable execution over future salary or other emoluments. He did so despite noting that from the standpoint of first principles, tradition apart, there seems no reason in principle why an order for the appointment of a receiver by way of equitable execution could not be made in respect of legal as well as equitable interests.

14. Counsel for the second defendant has, in furtherance of her argument, drawn an analogy with the principles as set out in bankruptcy. She says that the right of a bankrupt to bring personal injuries actions does not vest in the Official Assignee. She also submits that the future damages from a personal injuries action does not vest in the Official Assignee and she says there is good reason for this. She instances the person who suffers catastrophic injuries. She says that those principles in bankruptcy may show why this should also apply to the situation with regard to the appointment of a receiver by way of equitable execution over the future proceeds, if any, from a personal injuries action.

15. In reply, counsel for the plaintiff says that this is an equitable interest because it is in the nature of a future debt that will become due and owing. Counsel for the plaintiff says that this is a case which must have value as it has been transferred from the Circuit to the High Court. She argues that the right to these damages at this time is an equitable as distinct from a legal right of the second defendant. Counsel for the plaintiff submits that the facts in *Graham* are entirely different. In that case, there were legal remedies available which are not available in the instant case. She submits that there is nothing to suggest that *O'Connell* was wrongly decided.

**Decision**

*Just and convenient*

16. If the sole question was whether, using the words found in section 28(8) of the Supreme Court of Judicature (Ireland) Act 1877 and of O.45 r.9, it was "just and convenient" to appoint the receiver by way of equitable execution, the matter could be disposed of with ease. The court must have regard to the amount of the debt claimed by the plaintiff, the amount which may be obtained by the receiver and to the probable costs of his appointment. In this case, the debt claimed is over €158,000.00. The amount which may be obtained by the receiver is less certain. However, it is clear that the second defendant views her claim as being worth at least €38,000.00 (the former limit of the Circuit Court). The probable costs of the receivership have been estimated at €500.00 plus VAT.

17. The plaintiff knows little about the claim save that it is one for personal injuries, that the defendant by its title appears a mark for damages and that it was viewed as a significant claim, being transferred to the jurisdiction of the High Court. The details of the claim, including the issue of liability or the nature of the injuries are unknown. The second defendant knows these matters but has decided not to place them before the Court.

18. By virtue of the transfer of the proceedings to the High Court, the minimum amount claimed in damages is approximately enough to satisfy a quarter of the debt. It is a potential fund that cannot be reached by legal process. Furthermore, the plaintiff can have no knowledge of the progress of the second defendant's case. The plaintiff would not be in a position to know if the case settles in advance of the hearing and would not be in a position to make a timely application for a garnishee order over any settlement monies. In light of the amounts at issue and the comparatively low probable costs of the receivership, I believe that it would be both just and convenient that an order should be made.

19. I am conscious of the issue of any award of costs that may be made or agreed. No appearance was made by the current solicitors on record for the personal injuries claim (who are not those on record in these proceedings). Nonetheless, it is not a stretch to say that there may be a difficulty with a plaintiff proceeding with a claim in circumstances where the solicitor will not be able to retain any costs awarded or agreed. That could, in all likelihood, result in the claim not being pursued. While I am conscious that the appetite to pursue a claim by the second defendant may not be so great where it is possible that the entire award could be paid over to the plaintiff, there is the real prospect that no progress will be made if the lawyers have little, if any possibility of being paid. I am quite satisfied that if there is to be an order for the appointment of a receiver by way of equitable execution, it should only be over the damages part of any award or settlement.

*The power to appoint a receiver by way of equitable execution*

20. The remaining issue in the case is of far greater complexity. The issue is whether there is jurisdiction to appoint a receiver by way of equitable execution over future debts and in particular over a future award of damages that may be made in a personal injuries case. Central to that determination is a consideration of the decision in *O'Connell*. Although counsel for the second defendant submitted that the law was by no means certain, in fact, the arguments she made were primarily directed towards showing that O'Connell was wrongly decided. Her argument was that on the authority of both *Graham* and *Honniball,* there is no jurisdiction to appoint a receiver by way of equitable execution over unascertained, unliquidated damages that may be awarded/agreed upon in a personal injuries action.

21. The claim for damages is not a debt that is due nor is it a debt that is "accruing due". It is not, as Keane in *Equity and the Law of Trusts in the Republic of Ireland* says, "property of any sort which the judgment debtor was entitled, either immediately or in the future." In the Supreme Court in *Law Society of Ireland v. O'Malley* [1999] 1 IR 162, Lynch J. stated that a bare right of action for damages for personal injuries was not assignable. Both of the judgments delivered in that case stated that an assignment of a future debt operates only as a contract to assign, i.e. it remains a purely equitable assignment. Barron J. held that until the debt becomes a present debt, nothing passes (having cited Parker J. in *Glegg v. Bromley* [1912] 3 KB 474 that nothing passes, even in equity, until the property comes into its present existence). Thus, although an assignment may operate as a contract to assign the future damages in an unliquidated claim, the fact remains that there is no actual property to assign in these circumstances.

22. Hogan J. in *Flanagan* identified the right of a councillor to his future emoluments as a statutory (i.e. legal) right. It seems to me that even in the High Court of England and Wales decision of *Soinco SACI v. Novukuznetsk Aluminium Plant* [1998] QB 406, relied upon by the High Court in *O'Connell*, Colman J. made clear at p. 417 (para. B) of the judgment that in the case of future debts, there was no question of the property being of an equitable nature. I too am clear that there is no equitable interest in the future debt. The judgment debtor has a legal right to pursue the action for damages and a legal right to those damages once ascertained and awarded. Those damages are uncertain, unliquidated and unascertainable at present.

23. In order to assess the binding or otherwise nature of the *O'Connell* decision, it is necessary to analyse the judgment and find the *ratio decidendi* of the case.

24. In *O'Connell,* the learned trial judge held that the reasoning of Colman J. in the English decision of *Soinco* was persuasive and he saw no reason why the court should conclude that the law here be any different. Colman J. had stated at 422 that:-

> *"[i]n these circumstances I can see no reason whatever why, 124 years after the Judicature Acts, the Court should deny to itself a jurisdiction which is self evidently likely to be extremely useful as an ancillary form of execution. I would therefore hold that there is jurisdiction to appoint a receiver by way of equitable execution to receive future debts as well as debts due or accruing due at the date of the order."*

25. The High Court held that the damages claim were not in any way equated with earnings or wages necessary for the applicant to live. The learned trial judge held that the damages at issue in those proceedings were a fund entirely removed from such a category. He stated it was in the nature of a debt due for payment in the future, in the event of an award of damages being made in favour of the judgment debtor.

26. I have considered whether there is any relevance in the fact that damages for assault were at issue in *O'Connell*, whereas this is a claim for damages for personal injuries. I note the distinction made by Baker J. in the case of *PR v. KC (Legal Personal Representative of the Estate of MC Deceased)* [2014] IEHC 126 between a personal injuries claim and a claim for assault. I do not believe that the distinction between a personal injuries claim and a claim for assault has any relevance to the principle upheld in *O'Connell*.

27. In essence, the decision in *O'Connell* was that the jurisdiction to appoint the receiver by way of equitable execution applied to unliquidated damages that might be awarded in future. In short, a receiver by way of equitable execution could be appointed in respect of future debts.

*Stare Decisis*

28. The principles applicable to the operation of the doctrine of *stare decisis* in the High Court have been reaffirmed on a number of occasions in recent years. In *A.G. v. Residential Institutions Redress Board* [2012] IEHC 492, Hogan J. said as follows at para. 38:

> *"The earlier decisions in* JOB *and* MG *were fully argued and there is no suggestion that any relevant authorities or arguments were overlooked. In these circumstances, I propose to follow the approach enunciated by Clarke J. in* Re Worldport Ltd. [2005] *IEHC 189 with regard to stare decisis in the High Court:-*
>
> > 'It is well established that, as a matter of judicial comity, a judge of first instance ought usually follow the decision of another judge of the same court unless there are substantial reasons for believing that the initial judgment was wrong. *Huddersfield Police Authority v. Watson* [1947] K.B. 842 at 848, *Re Howard's Will Trusts, Leven & Bradley* [1961] Ch. 507 at 523. Amongst the circumstances where it may be appropriate for a court to come to a different view would be where it was clear that the initial decision was not based upon a review of significant relevant authority, where there is a clear error in the judgment, or where the judgment sought to be revisited was delivered a sufficiently lengthy period in the past so that the jurisprudence of the court in the relevant area might be said to have advanced in the intervening period. In the absence of such additional circumstances, it seems to me that the virtue of consistency requires that a judge of this court should not seek to second guess a recent determination of the court which was clearly arrived at after a thorough review of all of the relevant authorities and which was, as was noted by Kearns J., based on forming a judgment between evenly balanced argument. If each time such a point were to arise again, a judge were free to form his or her own view without proper regard to the fact that the point had already been determined, the level of uncertainty that would be introduced would be disproportionate to any perceived advantage in the matter being reconsidered.'
>
> *Indeed, the Supreme Court has recently confirmed that this approach is the appropriate one, with Clarke J. urging that earlier High Court decisions should be followed unless there are compelling reasons to the contrary: see* Kadri v. Governor of Cloverhill Prison *[2012] IESC 27."*

(Note the incorrect name of case – the respondent was the Governor of Wheatfield Prison).

29. In *Kadri,* Clarke J. said at para. 2.2:

> *"It seems to me that that jurisprudence correctly states the proper approach of a High Court judge in such circumstances. A court should not lightly depart from a previous decision of the same court unless there are strong reasons, in accordance with that jurisprudence, for so doing."*

*Is O'Connell a binding authority?*

30. The foregoing case law establishes that I am bound to follow the *O'Connell* decision unless there are strong reasons from departing from the decision. Of particular relevance to the issues here are considerations of whether that decision was based upon a review of significant relevant authority or if there is a clear error in the judgment.

31. Even more importantly, I am bound to follow a Supreme Court decision that sets out the law even if that decision is contrary to a subsequent High Court authority. Usually the existence of an apparently contradictory Supreme Court decision will necessitate consideration of whether the subsequent High Court decision was made without review of that other authority. As *O'Connell* is the last decision in time and on its face it deals with the specific issue of the appointment of a receiver by way of equitable execution to future debts, it is appropriate to address whether it represents binding authority for that jurisdiction.

32. In *O'Connell*, there was an examination of the law by the learned High Court judge. The case of *National Irish Bank v. Graham* was in fact referred to in the judgment. It was cited with reference to the situation when a receiver will not be appointed where methods of legal execution were sufficient, for example where there are goods of the judgment debtor which can be seized on foot of a writ of *fieri facias*. *Honniball* is not referred to in the judgment and may not have been opened. That was a High Court decision which identified and applied the principle set out in *Graham*. It is perhaps worth noting that the particular reference to Graham is in reasonably similar terms to the relatively brief reference to *Graham* in Glanville's *The Enforcement of Judgments*. It is not, therefore, entirely clear if the full decision in *Graham* was opened to the court in *O'Connell*.

33. In *Graham*, the judgment debtor was the owner of the herd – his legal interest in the herd could be executed against. In *Honniball*, the judgment debtor was the owner of the share – he was therefore the legal owner of the share. The share was and remained charged in favour of the judgment creditor.

34. In my view, the reference in *Kadri* means that it is not sufficient that an authority simply to have been opened to or referred to by a court for the principle of *stare decisis* to apply. There must be a review of the significant legal authorities. The rationale for that may be bound up with consideration of whether there is a clear error in the judgment. In relation to error, it is not sufficient to identify error, there must be a clear error.

35. It must be observed that the learned trial judge in *O'Connell* gave a considered judgment. Counsel on both sides had apparently placed before the court materials, including texts and authorities, which set out the historical position. The *Graham* decision was referred to by the Court. However, the High Court made reference to it in a limited fashion. As stated above, *Graham* was cited as authority for the proposition that where normal methods of legal execution are sufficient, e.g. a writ of *fieri facias*, a receiver will not be appointed. The High Court did not expressly address the legal principle that had been found there, i.e. that the jurisdiction was confined to cases in which a debtor enjoys an *equitable interest* in property which cannot be reached by legal process.

36. Similarly, the learned trial judge did not refer at all to the High Court decision of *Honniball*. With reference to Graham, Laffoy J. at para. 30 of the judgment in *Honniball* says *"[t]he principle as I understand it, is that the court will not appoint a receiver by way of equitable execution over property of which the judgment debtor is the legal owner and which can be the subject of legal process"* (emphasis added). There is nothing to suggest that Laffoy J. interpreted the test as disjunctive. Indeed, Laffoy J. went on to say that the principle is that the equitable remedy is only available where the judgment debtor has *only* an equitable interest in property (emphasis added).

37. Hogan J. in *Flanagan* observed that the decisions in *Graham* and *Honniball* stress that the appointment of a receiver by way of equitable execution is confined to the enforcement of equitable rights only. Hogan J. also observed that cases such as *Graham* and *Honniball* were not examined in *O'Connell*. If Hogan J. is correct, then in light of the finding that the right to claim damages for personal injuries does not amount to an equitable interest in property, it would appear that the decision in *O'Connell* was wrongly decided.

38. Hogan J. went on to point to the differences between the factual situation before him and that in *O'Connell*. The law on future wages and emoluments has been clear for some time that they cannot be subject to the appointment of a receiver by way of equitable execution. Hogan J. did not have to, nor did he, reach any conclusion on whether *Graham* or *O'Connell* represented the law in this area.

39. It is of some note that the High Court in *O'Connell* referred to Colman J.'s rejection in *Soinco* of the plaintiff's argument that the previous case law concerning future wages could be distinguished from the case of other future debts because they are regarded as not being capable of being subject to process of execution at law and therefore not the subject matter of the appointment of a receiver by way of equitable execution. In so doing, Colman J. was prepared to accept that the law as set out in those earlier decisions purported to cover the position with respect to *all* future debts (emphasis added).

40. Kearns P. in *Waterside* noted that there was a *prima facie* divergence evident between the conceptual approaches taken to the exercise of the court's jurisdiction to appoint a receiver by way of equitable execution in the relevant Irish authorities. In that case, he was not required to *distinguish* between them (emphasis added).

41. As the issue was not before either court, there is no express finding in *Graham* or *Honniball* that a receiver by equitable execution can never be appointed over unliquidated damages that may be awarded or agreed. Those cases did however make reference to the overall principles for appointment of receivers by way of equitable execution.

42. Given that the direct issue of future debts was not before the Supreme Court, is it possible to distinguish *Graham* from *O'Connell*? The decision in *O'Connell* did not seek to distinguish *Graham*. As Hogan J. correctly observed, there was no examination of either *Graham* or *Honniball*. Thus, there is no analysis of the principles set out in *Graham*.

43. In *Soinco*, the decision relied upon in *O'Connell*, Colman J. made reference to the development of the law in England and Wales. Colman J. was quite clear that in the immediate aftermath of the Judicature Acts, the courts had only the same power to appoint receivers as the previous Court of Chancery. With specific reference to the development of the law in England and Wales, he held that it was wrong in principle to treat the rules of the Court of Chancery before the Judicature Acts as carved in stone and as expressing immutable principles. He used the Mareva injunction as an example of how the development of the common law applied to equitable remedies as to any other remedy. It should be observed that he used a Court of Appeal decision as binding authority for this development of the principle within the context of the appointment of receivers by way of equitable execution.

44. By contrast, the Supreme Court in *Graham* cited *dicta* supportive of a reductive view of the relevant provisions of the Judicature Act. The *dicta* from the two earlier decisions relied upon by the Supreme Court referred to the powers of the previous courts of equity to appoint receivers. The decision of the Court of Appeal of England and Wales in *Holmes v. Millage* [1893] 1 QB 592 from which the Supreme Court quoted approvingly, related to future earnings. The headnote to that reported decision makes two pithy assertions: *"The court has not jurisdiction to enforce satisfaction of a judgment debt by appointing a receiver of the future earnings of the judgment debtor. The court cannot grant "equitable execution" by the appointment of a receiver in a case where prior to the Judicature Acts no court could grant such relief."* In *Graham,* the statement of principle goes beyond the circumstance of future earnings. Without doubt, the Supreme Court's own assertion that it is clear that the jurisdiction to appoint such a receiver is confined to cases in which a debtor enjoys an equitable interest in property which cannot be reached by legal process, is an unequivocal statement of law. The second statement in the headnote is implicit in the judgment of the Supreme Court. Therefore, contrary to the position in England and Wales, there has been no indication by the Supreme Court that this particular area of law is open for development.

**Conclusion**

45. I am satisfied that although *Graham* was referred to by the High Court in *O'Connell*, there was no significant review of it or of the case which followed and applied it, i.e. *Honniball*. It is a curious feature of *O'Connell* that while the case of *Holmes v. Millage* was discussed at some length by the learned trial judge, the treatment given to that decision by the Supreme Court in *Graham* did not form part of that analysis. Indeed, while part of the same quote was used in both judgments, it is perhaps unfortunate that the earlier part of the paragraph was not quoted as it had been in the Supreme Court. Lindley L.J. as quoted by the Supreme Court stated *"[t]he only cases of this kind in which Courts of equity ever interfered were cases in which the judgment debtor had an equitable interest in property which could have been reached at law, if he had had the legal interest in it, instead of an equitable interest only..."* That

quote embodied the finding of the Supreme Court, yet there was no discussion of that fact or the implications of it in O'Connell.

46. The decision in *O'Connell* placed its emphasis on the decision in *Soinco* without consideration of the decision of the Supreme Court in *Graham*. There was no analysis of the principle that had been set down in *Graham* and applied in *Honniball*. Unlike the situation in *Soinco*, where the superior courts of England and Wales had been developing the jurisprudence, the Supreme Court has indicated a containment of the jurisprudence on this issue.

47. Any apparent limitation in *Graham* and *Honniball* based upon an analysis of their facts is exactly that – more apparent than real. The legal principle identified by the Supreme Court in *Graham* is not mere *obiter dicta* but instead is the *ratio decidendi* of the case. In the cases of *Graham* and *Honniball*, the facts did not warrant the appointment of a receiver by way of equitable execution on the basis of the applicable law.

48. If there was any doubt as to the applicable principle as found by the Supreme Court, it was restated by Laffoy J. in *Honniball* as follows:-

> *"The principle is that the equitable remedy is only available where the judgment debtor has only an equitable interest in property against which the judgment creditor seeks recourse".*

49. The nature of the findings in National Irish Bank Ltd v. Graham and in *Honniball v. Cunnigham* have been set out in detail above. For the reasons set out above, I am of the view that I am bound by those decisions. In all the circumstances, although the decision in *O'Connell v. An Bord Pleanála* was handed down subsequent to those decisions, there are strong reasons to depart from its conclusion. I therefore hold that there is no jurisdiction for this court to appoint a receiver by way of equitable execution over future debts that may become payable to the judgment debtor.

50. Hogan J. in *Flanagan v. Crosby* expressed the view that there is no reason in principle as to why there should not be a receiver by way of equitable execution appointed in these circumstances. Arguably, there may be no logical reason why the scope of the power to appoint a receiver by way of equitable execution has to remain at the state it was in 1877. It would appear just and convenient for the courts to have this power. However, the Supreme Court has determined the scope of the jurisdiction to appoint a receiver by way of equitable execution. That finding is binding on the High Court.

51. I therefore refuse the relief sought in the notice of motion.