

Sheriffs Review Group

Submission of Mason Hayes & Curran LLP

Dated 24 March 2023

Thank you for inviting Mason Hayes & Curran LLP (“MHC”) to provide a written submission in respect of the stakeholder engagement process in terms of your examination of the role of Sheriffs, in respect of State work. We note that the Review Group are examining the future role of Sheriffs, with a view to establishing if the nature of the role is currently in line with best international practice, or if there is a more efficient and cost-effective system of debt collection.

MHC provides debt collection services to clients across the public sector, to Banks and other lenders and to businesses generally. In order to collect debts, if early engagement with the debtor is not possible or proposals are not acceptable to the creditor, we are frequently engaged to obtain and enforce judgments in favour of creditor clients, as against debtors. Accordingly, whilst part of our remit is to do that for public sector clients (such as the Revenue Commissioners where we are one of a number of firms on its legal debt collection panel) we engage the Sheriffs on foot of judgments obtained, for a broad base of creditors. For the avoidance of any doubt, please note that the submissions made below are made in that context.

Introductory/general comment

Whilst we may be stating the obvious, obtaining an Order directed to the Sheriff (or outside Dublin or Cork, the County Registrar) commanding him to seize goods within his bailiwick belonging to the judgment debtor and to produce the sum due (including any interest) out of the sale of any such goods, was described by the Law Reform Commission as “*the primary method of enforcement*” of money judgments¹. This dates back to the Law Reform Commission’s Report relating to Sheriffs, which was published in 1988. As a general comment then, we invariably consider referral of practically every monetary judgment to the Sheriff, for execution. Referral to the Sheriff is very much seen as “*a bread and butter*” remedy to enforce a judgment and (at the outset at least, before say an indemnity is requested) is a low-cost method of doing so, for any given judgment creditor.

Legislative basis

While we note that there is a legislative framework relating to the operation of Sheriffs, in particular the Court Officer’s Act 1926 and Court Officer’s Act 1945, we would suggest that a revised statutory framework underpinning the rights and responsibilities of Sheriffs, would be desirable, for the reasons set out below.

Engagement of the Sheriff by a judgment creditor and priority of orders

Once the appropriate court instrument² is obtained, it may be sent by the judgment creditor to the relevant sheriff or County Registrar in the relevant county or counties for enforcement. Such orders shall generally remain in force for one year only, from the date of their issue. However, in practice, we have found that although judgment set papers take some 2 to 3 months to process, the date of the judgment instrument, is nonetheless marked as at the date the judgment set was lodged with the court office. So for example, a creditor lodges a judgment set on 1 January, that is eventually processed by say 31 March, but its judgment instrument is back-dated to 1 January. Therefore, that creditor may have lost up to 3 months or so of its one-year execution period, by the time it receives

¹ Law Reform Commission, *Report on Debt Collection (1) The Law Relating to Sheriffs* (LRC 27-1988) p.3

² An order of fieri facias in the High Court, an execution order in the Circuit Court, or a District Court judgment

that judgment instrument. We acknowledge that this is not a fault of the sheriff. However, when engaging the sheriff, this difficulty can be compounded.

This compounding can occur where the creditor lodges that order with the Sheriff, for seizure and sale of goods, but if there are other orders lodged first against a particular judgment debtor, they rank in the priority of which they were delivered to the sheriff. We are not challenging the fairness of that, but if, (using the above example) the 1 January order goes out of date, it is then returned and must be when renewed and relodged with the Sheriff, but that particular order then loses priority, if other orders that were received by the Sheriff, in the interim. If the judgment creditor could slot back into the previous position they were in, prior to the required renewal, it would be fairer.

The Sheriff's Return

As noted by the Law Reform Commission in its 1988 report, upon completing execution, the Sheriff has a duty to file a return to the Court³, and not to the judgment creditor, who has no statutory right to information on the results of execution. From a practitioner's point of view, this is a significant shortcoming as we frequently find ourselves in a position of seeking to explain to a creditor client, what action the Sheriff might have taken in terms of the seizure of goods and to explain why there may have been no goods available to seize. Usually, we obtain a very cursory, template report from the Sheriff especially where the Sheriff makes a *nulla bona* return. We attach a sample redacted copy at **Appendix 1** to this submission. We would suggest that the information here gives very little insight to the judgment creditor as to the results of the attempt to execute and this is the source of frustration, especially where that judgment creditor believes that the judgment debtor has assets that should be liable to seizure and sale. It would be our recommendation that the Sheriffs should give considerably more detail to judgment creditors in respect of their efforts relating to search, seizure and sale on foot of an Execution Order, referred to them for execution.

The Sheriff in relation to seizures of real estate interests

Although it is probably beyond the remit of the Review Group, we have also had cause to engage Sheriffs following the obtaining of an Order for possession on foot of proceedings in legal actions for possession or sale of land. It is frequently the case that engagement between the Sheriff and the occupier of that land (usually the named Defendant in the legal proceedings) is fraught and there is argument in relation to the limits of the Sheriffs' functions and powers. Were it the case that there was a clearer statutory basis in respect of the Sheriffs functions, powers, rights and responsibilities, it would also be a development welcomed by practitioners working in the area.

Register of Assets particularly vehicles

As a firm acting for judgment creditors, we have frequently found that the asset that may be most amenable to search, seizure and sale by a Sheriff is a vehicle or other equipment that belongs to a judgment debtor. We have also frequently found that the Sheriff is unable to seize these kinds of assets, on the basis that there is a verbal claim by the judgment debtor or his agent that the asset is "*subject to hire purchase*" or a similar leasing agreement in which a third party has an interest. A sheriff will frequently take this at face value and the judgment creditor may be unable to challenge that assertion – and may be unwilling to indemnify the Sheriff, on an open-ended basis - to sanction seizure and sale. We would suggest that where a judgment debtor alleges that an asset is subject to hire purchase, or some other finance arrangement, the onus of proving same should be on the judgment debtor.

³ Law Reform Commission, *Report on Debt Collection (1) The Law Relating to Sheriffs* (LRC 27-1988) p.28

Whilst this is probably beyond the remit of the Review Group, if

(1) the Sheriffs had access to the Department of Transport database of registered vehicles in Ireland and

(2) if there existed a register of the recording of security interest such as hire purchase or leasehold interest in such non real estate assets,

it would be very useful both for the Sheriffs in terms of execution efforts and also indeed for judgment creditors. It would also serve the legitimate interests of judgment debtors and third-party security holders as a publicly accessible and searchable register of such interests would ensure that assets where there is a genuine third party security interest, such as that described above, are not susceptible to seizure and sale.

Fees and Expenses

We have mentioned above that engaging the Sheriff is a low-cost option for most judgment creditors. Indeed the fee payable to the Sheriff with an Execution Order is usually just €19 (as per the most recent Sheriffs' Fees and Expenses Order 2005⁴). It would seem to us that if the office of the Sheriff is to be reviewed, reformed and expanded, that the Sheriffs' fees and expenses should simultaneously be reviewed. Our view is that any recommendations for reform will invariably involve additional administration and expense on the part of the Sheriff, which will have to be funded.

Final Comments

It is probably worth noting that in its 1988 report, the Law Reform Commission observed that, at that time, the law relating to Sheriffs had not been the subject of any significant change for over 60 years⁵. The Law Reform Commission made a total of 34 recommendations in its report in 1988, but it appears that most of the recommendations in that report have not been implemented (with the notable exception of an increase pursuant to the 2005 Fees and Expenses Order).

Jason Harte
MASON HAYES & CURRAN LLP

⁴ S.I. No 644 of 2005.

⁵ Law Reform Commission, *Report on Debt Collection (1) The Law Relating to Sheriffs* (LRC 27-1988) p.3

Appendix One



An tSeirbhís Chúirteanna
Courts Service

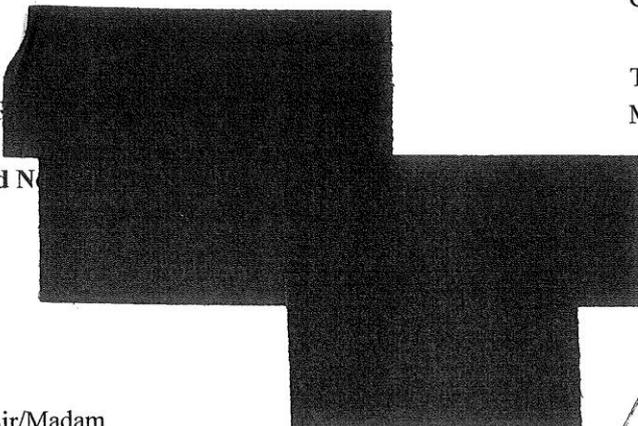
Mason Hayes & Curran
Solicitors,
South Bank House
Barrow Street, Dublin 4.

SHERIFF'S OFFICE
Clare Circuit Court
The Courthouse
Ennis
Co Clare

Date:

Your R

Record N



Tel: 065 686 7500
Mob: 087-2894630

Dear Sir/Madam

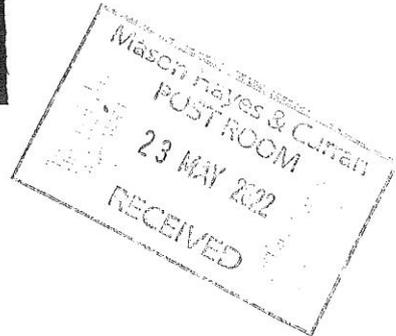
Please find Order returned "Nulla Bona" herewith.

See back of Order for Endorsement.

Kindly acknowledge receipt.

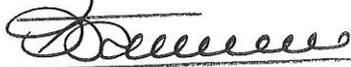
Yours faithfully

Patrick Wallace
County Registrar



I certify that the within Fi-Fa / Execution / Decree is returned as follows:

- | | |
|--|--|
| <input type="checkbox"/> Recalled | <input type="checkbox"/> Deceased |
| <input checked="" type="checkbox"/> Nulla Bona | <input type="checkbox"/> Unable to Locate |
| <input type="checkbox"/> Left Address | <input type="checkbox"/> Out of Jurisdiction |
| <input type="checkbox"/> Ceased Trading | <input type="checkbox"/> Gone into Liquidation |
| <input type="checkbox"/> Out of Date | <input type="checkbox"/> Nulla Bona (bal) |



Sheriff of County Limerick
Date 18.5.2022

Between:

AN CHÚIRT DÚICHE
(The District Court)

District Court

District No. 12

Claimant

Respondent

JUDGMENT (DECREE)

Mason Hayes & Curran
Solicitors for the claimant
South Bank House
Barrow Street
Dublin 4
Ref: CMK/REV002/6167