[2026] IEHC 370

THE HIGH COURT

[2014/2737S]

BETWEEN:

AIB MORTGAGE BANK AND ALLIED IRISH BANKS PLC

PLAINTIFFS

AND

JUSTIN BURKE, ANNE BURKE AND GILLIAN BURKE

DEFENDANTS

JUDGMENT of Mr. Justice Barry O'Donnell delivered on the 10th day of June, 2026

INTRODUCTION

1. The purpose of this judgment is to address two related applications that came before the court on the 3 June 2026, and in respect of which there is some urgency. The applications, respectively, were made on behalf of Aengus Burns who is a receiver appointed on the application of the plaintiffs pursuant to two orders made in 2024, and by Justin Burke, the first defendant, who appeared in person.

2. The relative urgency relates to the fact that the application by Mr. Burns relates to the implementation of an agreement that has a long stop date of the 15 July 2026, and while there

is scope for that date to be extended there is a clear basis for ensuring that the position of the parties to that agreement is clarified in early course.

3. The background to the applications is that the plaintiffs obtained judgments against the defendants on the 3 July 2015. As against the first defendant, the first plaintiff obtained judgment in the amount of €1,616,934.11, and the second plaintiff obtained judgment in the amount of €4,233,606.66. As against the second defendant, the first plaintiff obtained judgment in the amount of €644,845.02, and the second plaintiff obtained judgment in the amount of €919,293.16. Those judgments were not the subject of any appeal.

4. The plaintiffs pursued options to recover the judgments, and this led to two applications by the plaintiffs for the appointment of Mr. Burns as receiver by way of equitable execution.

THE ORDERS APPOINTING THE RECEIVER

5. The first order was made on the 7 March 2024 by the High Court (Nolan J.) and amended, pursuant to the slip rule, on the 17 February 2025. The application concerned shares held in a company on trust for the first defendant. The order records that the court had been satisfied that while the shareholding in question was held in the name of Bernie Turley, the beneficial owner of the shares was Mr. Burke. The shareholding represented 22% of the company shares. In addition, the order records that the court was satisfied that, as of the 29 February 2024, €1,141,174.24 was owed to the first plaintiff by Mr. Burke and €5,071,046.92 was owed by Mr. Burke to the second plaintiff.

6. The amended order provided that:

> "*Aengus Burns of Grant Thornton Ireland be appointed Receiver by way of Equitable Execution (without salary or security) over the legal interest in the shareholding held by the Notice Party Bernie Turley and the beneficial interest of the shareholding held by the First named Defendant Justin Burke in Doughiska Ardaun Developments Limited Company Registration Number 574210 and granting to the said receiver the power to exercise all rights / entitlements that attach to or otherwise concern the said shareholding*."

7. The second order was made by this court on the 22 April 2024. The order recorded that the judgments remained unsatisfied and provided that:

> "*Aengus Burns of Grant Thornton be appointed Receiver by Equitable Execution (without remuneration or the requirement to give security) over the second named Defendant's interests in, and for the purpose of exercising all rights, powers and entitlements exercisable by the second named Defendant under, the following option agreements:*
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> *a. The Option Agreement entered into by the second named Defendant with Doughiska Ardaun Developments Limited on or about 6 July 2020 under which the second named Defendant has the right to exercise an option to purchase 16.6 acres of Folio 79680F from Doughiska Ardaun Developments Limited (the "Anne Burke Option Agreement"),*
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> *b. The Option Agreement entered into by the second named Defendant with Doughiska Ardaun Developments Limited on or about 6 July 2020 under which Doughiska Ardaun Developments Limited has an option to require the second named Defendant to re-sell 16.6 acres of Folio 79680F to*

Doughiska Ardaun Developments Limited for open market value (the "DAD option agreement").

THE ACTIONS TAKEN BY THE RECEIVER

8. After the making of the orders, issues relating to the receivership were brought back before the court on several occasions. It is important to note that on each occasion when the case was mentioned or addressed, the legal representatives for the receiver fully satisfied the court that the first and second defendants were on notice of the applications. The court was provided with clear evidence by affidavits that showed the first and second defendants had been properly served with and notified of the making of the orders, and notified of and properly served with the relevant papers in relation to each application.

9. A feature of the case is that the second defendant has never attended court or otherwise demonstrated any intention to participate in the proceedings. Likewise, until the 13 October 2025, Mr. Burke did not participate in the proceedings. Neither the first or second defendants have appealed the orders appointing Mr. Burns as receiver by way of equitable execution or applied to this court to vary or amend the orders.

10. As is apparent from the orders, the focus of the receiver was on the interests that the first and second defendants had in respect of Doughiska Ardaun Developments Limited (*DAD*). The first defendant was the beneficial owner of 22% of the shares in DAD. DAD owns lands set out in Folio 79680F in Co. Galway. Those lands include the 16.6 acres that are the subject of the option agreements involving the second defendant.

11. The receiver engaged in efforts to sell the shareholdings and extinguish the option agreements, and the court was notified of the progress of those matters over the course of the receivership.

12. That process initially culminated in an application to the court by Mr. Burns on the 16 May 2025. As part of that application, Mr. Burns sought and obtained court approval for a proposal to sell the shareholding and to extinguish the option agreements. Mr. Burns had explained that, at that point, the largest shareholder in DAD, Pale Horizon Limited (*PHL*) had agreed subject to contract and court approval to purchase the shares in DAD that were beneficially owned by the first defendant. The court had been satisfied that the first and second defendants were properly served and were on notice of the application. There was no appearance by the defendants, and they had not otherwise indicated or communicated any view about the application.

13. The applications were grounded on comprehensive affidavit evidence setting out the course of negotiations, which appear to have been conducted with PHL and a Michael McDonagh, and the reasons why the receiver considered the proposals represented the best deal reasonably obtainable in each case. The evidence was supported by a series of professional valuation reports which had been obtained by the receiver. At that point, certain of the proposals had not crystallised into binding agreements and the receiver was permitted to take certain steps if binding agreements were not achieved.

14. In the events, as described by Mr. Burns in various updating affidavits that were submitted to the court from time to time, PHL and Mr McDonagh did not follow through on the agreements. As a consequence, on the 4 December 2025, the receiver commenced

proceedings, which were admitted to the Commercial list of the High Court on the 15 December 2025.

15. Following settlement discussions on the 27 January 2026, the parties agreed to non-binding heads of terms, which involved largely the same agreements that had been presented to the court for approval in May 2025, subject to in one respect, an adjustment in price. The agreement was that DAD would pay €1.9 million in respect of the extinguishment of the option agreements and €1.3 million to purchase the shares beneficially owned by Mr. Burke. The difference with the earlier agreement was that the price for the purchase of the shares was €600,000 less than the price proposed in May 2025.

16. Following the settlement, the receiver took steps to seek fresh approval for the new terms. This process involved Mr. Burns swearing a affidavit on the 2 April 2026, which in turn exhibited a number of valuation reports, and which explained the heads of terms that emerged from the settlement of the proceedings in the Commercial list and various other documents.

THE SECOND APPLICATION FOR APPROVAL

17. Mr. Burns explains the course of events that followed the court application in May 2025 and then sets out the commercial rationale for the fresh proposal being made to the court. In summary, Mr. Burns explained that the value attached to the option agreements and Mr. Burke's shareholding are inextricably linked to the value of the lands held by DAD, as the lands appear to be the only asset of the company. In relation to the extinguishing of the option agreement it was explained that the proposal before the court mirrored the previous proposal that was the subject of approval in May 2025.

18. The receiver had obtained valuations for the 16.6 acres that are the subject of the option agreements from Savills and BNP Paribas. Grant Thornton had also conducted a valuation exercise. The valuations differed, but not very extensively. After costs and the application of a discount of €291,995 (which is provided for in the DAD Option agreement) the valuations identify a range of values between €2,028,505 to €2,298,005. Those values are based on vacant possession, which in fact is not available, and which justifies some element of discount.

19. In the premises, the valuation of €1.9 million (which represents a 6% discount of the lower BNP Paribas valuation, and a 17% discount on the Savills valuation) is viewed by the receiver as reasonable. In addition, the receiver has taken into account that the manner in which the two option agreements operate means that if the second defendant was to exercise her option to purchase the 16.6 acres, DAD had a further period of 15 years within which it could exercise its option to re-purchase the lands. This was viewed as impacting on the overall value of the lands. In all those circumstances the receiver considered that the offer of €1.9 million in consideration of the extinguishment of the of the AB option remained appropriate value for the transaction.

20. In relation to the sale of shares, Mr. Burns again referred to the range of values that had been provided for the lands held by the company (being its only asset), which was between €8.2 million and €7.9 million. As part of the exercise carried out by the receiver, account was taken of balance sheet liabilities (the original loan to purchase the lands and planning/consultancy costs) which amounted to €1,130,669. When the liabilities were accounted for and deducted from the average of the two valuations (which was €8,083,125), it produced a figure of €1,529,540.

21. Mr. Burns averred that while the original offer of €1.9 million represented good value, it was no longer available, having been countermanded by a shareholder in the company at a time when no binding agreement was in place. In addition, Mr. Burns explained that the original €1.9 million figure had not reflected a minority discount which would normally be applied when a shareholding of this type was being sold. In that regard, he stated that a discount of 20-30% would be appropriate. Viewed in that light, the offer of €1.3 million was one that Mr. Burns offered for approval where he considered it the best deal reasonably obtainable.

22. Finally, Mr. Burns explained how the proceeds of the transactions would be allocated, having regard to certain costs and expenses, to reduce the overall indebtedness of the defendants. Under the proposed allocations this would likely mean that the second defendant's indebtedness would be extinguished and the first defendant's indebtedness likely would reduce from a total amount of €6,213,247.64 (the debt as of the 17 April 2026) to €4,102,214.51.

THE DISPUTE

23. On the 1 May 2026, the first defendant delivered an affidavit in reply to Mr. Burns affidavit. The affidavit was sworn on his own behalf and constituted the first time that he sought to adduce evidence in connection with this aspect of the proceedings. The affidavit was reasonably wide ranging and somewhat unclear. The points that he sought to make as I understand it were as follows:

- He claimed that the company, DAD, in fact owed him a substantial amount of money.
- He stated that the second defendant had challenged the order of the 22 April 2024.

- He stated that in the context of other proceedings, the second defendant had entered a lis pendens on the folio relating to the DAD lands.
- He stated that the company DAD did not in fact own the lands, and raised an issue relating to the name of the company.
- He stated that the company had no standing to enter the transactions with the receiver.
- He made a number of complaints about the company and suggested that proceeding were to be brought.
- He stated that he has a purchaser who will buy his shares.
- He stated that the valuations were not accurate and undervalued the lands.
- He stated that the receiver had brought an excessive number of applications to court.
- He stated that the consequence of the transactions would leave him destitute financially.
- He proposed that the plaintiffs, defendants and DAD should negotiate a global settlement.

24. Mr Burns swore a replying affidavit on the 7 May 2026. He stated that he was not aware of any appeal taken by the second defendant against his appointment as receiver in relation to the option agreements. He stated (and exhibited the relevant order) that the first defendant had appealed the order under the slip rule that amended the share charging order, which appeal was dismissed on the 14 July 2025. He also stated (and exhibited the relevant order) that an application by the first defendant to extend the time to appeal the share charging order had been dismissed by the Court of Appeal on the 20 November 2025.

25. Mr. Burns explained and exhibited the relevant CRO documents that DAD had earlier changed its name from McDonagh Property Developments Limited in July 2019, but that it remained the same corporate entity.

26. Mr. Burns noted that while he had sought and obtained comprehensive valuations from reputable valuers, Mr. Burke had not provided any valuations to support his assertions. He also, by reference to the various affidavits of service that were before the court, pointed out that Mr. Burke had been aware of the various valuations for over a year and had taken no steps to dispute them.

27. Following that exchange of affidavits, Mr. Burke issued a notice of motion seeking a number of reliefs. In summary, Mr. Burke sought orders restraining the receiver from proceeding with the transactions, and permitting the first and second defendants to sell their interests in the lands to an (unidentified) investor for €11.5 million.

28. The motion was grounded on an affidavit sworn by Mr. Burke on the 13 May 2026. The affidavit did not state that it was made on behalf of or with any permission from the second defendant (from whom he suggested he was estranged) but nevertheless purported to make observations about her financial position.

29. In that affidavit Mr. Burke sought to rely on his earlier affidavit that had been made in the context of the receiver's application. In summary, Mr. Burke reiterated that he had an investor and that if that transaction was permitted to proceed it would fully extinguish the first and second defendants' debts to the plaintiffs and leave a surplus. The first defendant repeated

his belief that the company was not legally able to enter the transaction with the receiver. He repeated his belief that the valuations relied upon by the receiver were not accurate.

30. A short replying affidavit on behalf of the receiver was sworn on the 15 May 2026 by Michael Ohle, a solicitor acting for the plaintiffs and the receiver. Mr. Ohle referred to the folio for the lands, and documents which showed that in April 2016 the first defendant contracted to sell the lands to McDonagh Property Developments Ltd (which as noted later changed its name to Doughiska Ardaun Developments Limited). A Deed of Transfer was made on the 6 July 2020 whereby the first defendant's interest was transferred to DAD.

31. Mr. Burke swore his final affidavit on the 22 May 2026. Mr. Burke raised a number of matters relating to the propriety of Mr. Ohle swearing an affidavit, all of which appear misconceived. More substantively, Mr. Burke contended that the contract for sale in respect of the lands between him and the company was never concluded and was null and void. That assertion was based on contentions (a) that the contract price was not paid, and (b) that a signature on the deed of transfer (that closely resembled his signature on other documents) was not in fact made by him. Mr. Burke also persisted in his mistaken contention that the change of name by the company had the legal effect of changing the nature of the entity and that he did not contract with DAD. All of this was directed to the proposition that in fact he continued to own the lands and that the company was not in a position to enter contracts with the receiver in relation to the lands. Mr. Burke again asserted that he had an investor who was willing to purchase the lands for €11.5 million but provided no detail in relation to that arrangement.

THE HEARING

32. When the matter came on for hearing before the court, Mr. Burke, when asked, disclosed the name of the suggested investor. However, there was no evidence before the court in relation to the proposed investment other than the bare assertion that there was an investor. Mr. Burke appeared to be concerned that he should be afforded an opportunity to address his overall indebtedness before any further steps were taken by the receiver. Finally, Mr. Burke suggested that in fact he had sold the shares that are the subject of the application at some time in the recent past. There was no evidence before the court in relation to the share sale. Any such action by Mr. Burke could prove to be problematic for him, given that he was fully on notice that the shares were subject to orders that had been made by this court. However, as there was no evidence that such a purported transaction had occurred it is best to leave any issue relating to that matter until proper evidence is before the court, in the event that any issue needs to be ventilated.

33. On behalf of the receiver, counsel submitted that there was a strong basis for approving the proposed transactions. The receiver submitted that there was no merit to the application by Mr. Burke and that it should be refused. In relation to the various points that had been raised, the receiver observed, first, that the company's change of name was not material to these issues as that action did not affect the legal personality of the company. I agree, as a matter of company law, McDonagh Developments Limited is one and the same legal entity as DAD.

34. The second point was that any dispute between DAD and Mr. Burke as to the actual ownership of the lands was in fact irrelevant to the proposed transactions. The proposed transaction involved the second defendant's rights under an option agreement and the purchase

of shares beneficially owned by the first defendant. DAD is ready, willing and able to pay an agreed amount and clearly sees some value to the company in undertaking the transactions. If there is an issue between Mr. Burke and DAD, this does not affect the fact that the receiver will obtain considerable value that in turn will be applied to reduce the overall indebtedness.

DISCUSSION

Mr. Burke's motion

35. In the first instance, I want to make clear also that I am only considering the arguments made by Mr. Burke in relation to the proposed sale of his shares. I will not consider those arguments in the context of the extinguishment of the second defendant's options. At every stage in this process, Ms. Burke was on notice of the various applications and properly served. She must be treated as having made a choice not to participate. While Mr. Burke has seen fit to comment on aspects of the transactions that affect Ms. Burke, he was not acting on her behalf and did not swear his affidavits on her behalf or with her consent. It is clear from matters disclosed in his affidavits that there are strong reasons to consider that their interests are not aligned. Moreover, a feature of the course of action proposed by the receiver is that one consequence will be that Ms. Burke's indebtedness to the plaintiffs will be fully resolved, with a prospect that on her side there will be a modest credit.

36. With regard to Mr. Burke' substantive arguments, I agree with the receiver's submission. The validity or effectiveness of the transactions do not depend on or are affected by the claims made by Mr. Burke. DAD has entered into an agreement, subject to court approval, as part of the settlement of the proceedings in the commercial list where they are legally advised. Issues in relation to the ownership of the lands are matters between DAD and

Mr. Burke and do not present an obstacle to the company concluding the transaction with the receiver.

37. In relation to the other points raised by Mr. Burke, while the court has sympathy with a judgment debtor who considers that a process of execution will still leave part of the debt remaining, Mr. Burke has not made out any basis for the court intervening to restrain the receiver's proposal. The history of the proceedings makes clear that the judgments were made in 2015, and it was only in recent months that Mr. Burke has taken any substantive steps to address the efforts made by the plaintiffs to recover those debts. While Mr. Burke has attended scheduled court hearings from time to time since October 2025, the first substantive steps taken by him appear to have commenced in April / May of this year. Hence, the steps taken occurred over two years after the court appointed a receiver by way of equitable execution over his shares. Despite being properly served and fully on notice of every step taken by the receiver before the court Mr. Burke chose not to participate actively until close to the last minute. It can be observed that while Mr. Burke at this point asks the court not to approve the proposed transactions, it is only by happenstance that the transactions did not proceed to a conclusion following the court approval granted in May 2025.

38. Ultimately, Mr. Burke would like the lands to be sold for a higher price, however he has not provided any substantial evidence beyond mere assertion that this could be achieved. He has provided no evidence to suggest that there is any reality to the investment that he has asserted is available. He has provided no valuation evidence to contradict the persuasive professional reports obtained by the receiver from reputable entities. Regrettably it is not possible to treat his application as anything more than a last-minute attempt without any proper evidence or legal argument to prevent the inevitable.

39. Hence the court will refuse Mr Burke's application.

The application for approval

40. Turning the question of whether the court should approve the transaction, it is necessary to commence by considering whether court approval is required for the proposed transaction, and, if so, whether approval should be granted.

41. The position of the receiver was that the potential extent of the role of a receiver by way of equitable execution was addressed by the Supreme Court in *ACC Bank v. Rickard* [2019] 3 I.R. 557, where MacMenamin J. explained that the role of such a receiver was broader than previously understood.

42. In this case, the powers of the receiver in each order were clear, and I am satisfied that at the level of principle the receiver was entitled to negotiate and pursue the proposed transactions. The constraint on the power of the receiver – subject to the power being exercised as contemplated by the order giving rise to the appointment – is to carry out their functions in the manner of an ordinary prudent and reasonable receiver. When the receiver comes to dispose of the received assets, the obligation, so understood, is to obtain the best price reasonably obtainable. Understood in that way, there is no strict or overarching requirement for a court appointed receiver to return to court to seek approval for a proposed transaction.

43. However, the receiver submitted that, even so, it was possible for the receiver to seek such approval in certain circumstances, by analogy with the powers of trustees and administrators. The receiver was not able to identify any Irish authority on this point. I agree that this may well be attributable to the fact that there was a reasonably limited scope for the

appointment of receivers by way of equitable execution prior to the decision of the Supreme Court in *ACC Bank v. Rickard*; see for instance the earlier judgment of Keane J. in *National Irish Bank v. Graham* [1994] 1 I.R. 215.

44. In terms of an authority that set out a reasoned theoretical basis for the proposed approach, the receivers identified the judgment in England and Wales of Marcus Smith J.in *VB Football Assets v. Blackpool Football Club (Properties) Limited* [2019] EWHC 1599 (Ch), [2019] 4 WLR 93.

45. In that case, the petitioner (*VBFA*) was a minority shareholder in a football club (the fourth respondent). VBFA owned approx. 20% of the shares in the club, with most of the remaining shares in the club held by the first respondent. In turn, the second respondent owned 97.2% of the shares in the first respondent. VBFA had obtained order under the UK Companies Acts that that the affairs of the club were being conducted in a manner unfairly prejudicial to VBFA's interests. By way of remedy, the court ordered that the first to third respondents were to purchase VBFA's shares for circa £31 million, and the order provided for a payment timetable. The payments were not made in accordance with the timetable, and the court later made an order directing that the outstanding balance be made immediately due and owing. Following difficulties in recovering the debt, VBFA applied for and the court made orders providing for the appointment of receivers by way of equitable execution over *"the assets related to or relating to the fourth respondent*".

46. The receivers concluded that the best course was to sell the entire club as a going concern rather than disposing of assets piecemeal. They commenced a sales process that

produced three bids, with one being favoured by the receivers. The receivers applied to the court for approval having regard to the consequences of proceeding with the sale.

47. In his judgment, Marcus Smith J. explained that the arguments developed before him drew an analogy between the situation of trustee's duties and the functions of receivers by way of equitable execution, and he described the argument before him and his response to that argument as follows:

> "*42. Mr Phillips took me to the decision of Snowden J in Re Nortel Networks UK Limited [2016] EWHC 2769 (Ch) . In that decision, Snowden J reviewed the obligations and duties on trustees to seek approval of the court for certain transactions. He sought to analogise those duties to the duties of trustees. Mr Phillips' point was that, whilst this case did not concern either trustees or administrators, the position of receivers by way of equitable execution is very similar. He contended that the analogy sought to be drawn by Snowden J as between administrators and trustees ought also to extend to receivers by way of equitable execution.*
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> *43. I consider that to be right. The position of the Receivers is very similar to that of trustees and administrators, and I find the analogy drawn by Mr Phillips to be an apt one*."

48. Marcus Smith J. then considered the analysis of Snowden J., as he then was, in the *Re Nortel* judgment, of the similarities between administrators and trustees, and found that the analogy held good as applied to receivers by way of equitable execution. The court went on to approve of the approach adopted by Snowden J. at paras 45 *et seq*, in the *Re Nortel* judgment, set out below, to the question of how a court will consider applications for the approval of a

particular transaction or course of action (and I have underlined portions that I consider bear emphasis):

> "*45 In Re MF Global UK Ltd (No 5) [2014] Bus LR 1156 , David Richards J was asked to authorise a settlement agreement to compromise claims by the company to assets said to be held on its own account, which were also said to be held by the company on trust for its own clients. He addressed the approach to be taken by administrators when seeking to compromise the company's own claims as follows, at [41]:*
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> > *"In commercial matters, administrators are generally expected to exercise their own judgment rather than to rely on the approval or endorsement of the court to their proposed course of action: see In re T & D Industries plc [2000] 1 WLR 646. While the compromise of claims raising difficult legal issues may not be on all fours with a purely business decision, administrators commonly exercise the power of compromise without recourse to the court and in general apply to the court for directions only if there are particular reasons for doing so: see In re Lehman Bros International Europe [2014] BCC 132."*
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> *46. One such "particular reason" which might justify administrators applying to the court for directions in relation to the exercise of the power of compromise can be derived by analogy from the second category of cases in which trustees can seek directions from the court. This was identified by Hart J in Public Trustee v Cooper [2001] WTLR 901 , 922–924:*
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> > *"The second category is <u>where the issue is whether the proposed course of action is a proper exercise of the trustees' powers where there is no real doubt as to the nature of the trustees' powers and the trustees have decided</u>*

how they want to exercise them but, because the decision is particularly momentous, the trustees wish to obtain the blessing of the court for the action on which they have resolved and which is within their powers. Obvious examples of that, which are very familiar in the Chancery Division, are a decision by trustees to sell a family estate or to sell a controlling holding in a family company. In such circumstances there is no doubt at all as to the extent of the trustees' powers nor is there any doubt as to what the trustees want to do but they think it prudent, and the court will give them their costs of doing so, to obtain the court's blessing on a momentous decision. In a case like that, there is no question of surrender of discretion and indeed it is most unlikely that the court will be persuaded in the absence of special circumstances to accept the surrender of discretion on a question of that sort, where the trustees are prima facie in a much better position than the court to know what is in the best interests of the beneficiaries."

47. The instant case is, in my judgment, just such a case. In signing the documents comprising the global settlement, the administrators and the conflict administrator have already decided that the global settlement is in the best interests of each of the EMEA Companies and their creditors. They do not propose to surrender the exercise of their discretion in that regard to the court, but they seek the approval of the court because of the great significance of the global settlement in the context of the administrations of each of the EMEA Companies. Given the size and complexity of the affairs of the Nortel group and the amounts in the Lockbox, there can, in my judgment, be no doubt that the execution of the global settlement is a truly momentous decision.

48. In a category two case involving trustees, the approach of the court was summarised by David Richards J in In Re MF Global UK Ltd (No 5) [2014] Bus LR 1156 , at [32], where he cited with approval the following from Lewin on Trusts , 18th ed (2008), para 29-299:

> *"The court's function where there is no surrender of discretion is a limited one. It is concerned to see that the proposed exercise of the trustees' powers is lawful and within the power and that it does not infringe the trustees' duty to act as ordinary, reasonable and prudent trustees might act, ignoring irrelevant, improper or irrational factors; but it requires only to be satisfied that the trustees can properly form the view that the proposed transaction is for the benefit of beneficiaries or the trust estate and that they have in fact formed that view. In other words, once it appears that the proposed exercise is within the terms of the power, the court is concerned with limits of rationality and honesty; it does not withhold approval merely because it would not itself have exercised the power in the way proposed. The court, however, acts with caution, because the result of giving approval is that the beneficiaries will be unable thereafter to complain that the exercise is a breach of trust or even to set it aside as flawed; they are unlikely to have the same advantages of cross-examination or disclosure of the trustees' deliberations as they would have in such proceedings. If the court is left in doubt on the evidence as to the propriety of the trustees' proposal it will withhold its approval (though doing so will not be the same thing as prohibiting the exercise proposed). Hence it seems that, as is true when they surrender their discretion, they must put before the court all relevant considerations supported by*

evidence. In our view that will include a disclosure of their reasons, though otherwise they are not obliged to make such disclosure, since the reasons will necessarily be material to the court's assessment of the proposed exercise."

Similar (albeit expanded) observations appear in the current 19th ed (2014) of Lewin on Trusts , paras 27-079–27–081. Reference can also be made to the decision of Henderson J in Hughes v. Bourne [2012] WTLR 1333 , at [16].

49. For my part, whilst noting that the position of an administrator seeking directions under the Insolvency Act 1986 , and a trustee seeking directions under the Trustee Act 1925 are not identical, I see no obvious reason why most of the same considerations should not apply when the court considers giving directions to an administrator who wishes to enter into a compromise which is particularly momentous. In short, the court should be concerned to ensure that the proposed exercise is within the administrator's power, that the administrator genuinely holds the view that what he proposes will be for the benefit of the company and its creditors, and that he is acting rationally and without being affected by a conflict of interest in reaching that view. The court should, however, not withhold its approval merely because it would not itself have exercised the power in the way proposed."

49. Marcus Smith J. went on to observe:

"*44. Receivers by way of equitable execution do – unlike trustees and administrators – have the benefit of specific provisions explicitly conferring on them the right to seek directions. Such receivers are court-appointed pursuant to an equitable jurisdiction. That fact, as it seems to me, should not preclude a*

receiver by way of equitable execution seeking the court's approval in an appropriate case.

45. I will consider whether the transaction proposed by the Receivers – namely the sale of the Club to Bidder 1 –should be approved by the court at the end of this ruling. For the present, I hold that the decision and question of whether, and on what terms, to sell the Club, is a momentous decision, one that is enormously important both for Mr Oyston and for VBFA. Therefore, the Receivers have acted, in my judgment, entirely appropriately in making this application. So, I conclude that in answer to question 1, the Receivers both have the right to seek the court's approval for this transaction and that they have, in this particular case, acted appropriately in bringing this matter before the court. This is an application that I can and should entertain.

46. Mr Collings, in his submissions, laid great stress on the fact that, at least in the case of trustees and administrators, a degree of immunity follows if the court sanctions a particular transaction. That is not a question that is before me today. Logically, it follows from the analogy I have drawn with Re Nortel , but it is unnecessary for me to decide that point today. It seems to me the more important point is that there are some transactions conducted by receivers by way of equitable execution that are of sufficient importance so as to require the court appointing such receivers to look at the transaction in question to ensure that it is in the interests of all those concerned. If, as a result of such scrutiny and approval, a degree of immunity follows, then so be it. But I do not decide that question today."

50. In a similar way to the approach adopted in the English case law above, I am satisfied that the same position obtains in Irish law. The analogy between the role of the trustee and receiver, while not perfect, is apt in the type of the case that has come before the court.

51. I consider that, under the terms of the orders that appointed him, the receiver has the power to enter into the transactions that have been proposed. In all cases of this type, the receiver is required to exercise his own judgment, and ordinarily there is no need to seek court approval for a course of action (unless the relevant order so provides). However there may be cases where the decision is particularly significant that an application for court approval will be warranted and entertained by the court. These cases are of the type generally described by Hart J. in the portion of *Public Trustee v Cooper* included above, where the decision can be described as "*particularly momentous*".

52. I am satisfied also that when such an application is brought, this does not involve any surrender or transfer of discretion from the receiver to the court: the primary decision and the exercise of judgment it entails must be made by the receiver and is not delegated back to the court. Instead, what occurs is that approval of an existing decision is sought. That leads to the question of what actually is involved when the court is faced with an application for approval. In this regard again, I consider that the observations of Snowden J. in *Re Nortel* regarding the position of trustees which I underlined above are equally applicable when a receiver by way of equitable execution is proposing a particular transaction to the court. As put by the court, "*once it appears that the proposed exercise is within the terms of the power, the court is concerned with limits of rationality and honesty…"*

53. Finally, I should make clear that I am not making any determination or finding that the effect of court approval is to immunise the decision of the receiver from future challenge. If that question arose, it is a matter that would have to be addressed in a properly argued case at a later date.

54. Applying those considerations to the factual position before the court, I am fully persuaded and so find (a) that the agreements proposed by the receiver are transactions or dealings of a type expressly authorised by the relevant appointment orders; (b) that because of their value (in absolute terms and also in proportion to the outstanding judgment debts) and their effects on the debtors, the proposed transactions fall within the category of matters that are such particular significance that court approval is prudent; (c) that the receiver has approached his tasks in a reasonable and prudent manner, having taken reasonable steps to obtain a series of professional valuations and obtain proper advice; and (d) that the receiver has determined on a reasonable basis that the proposed transactions represent the best value reasonably obtainable in the circumstances that presented in respect of the assets and choses in action that were subject of the orders made by the High Court.

55. In those premises the court will accede to the application seeking approval for the transactions. I will list the matter before me at 10.30 am on Thursday, the 18 June 2026 where I will hear any arguments that require to be made in relation to final orders.