

## **An Analysis of Powers and Duties of a Receiver under Nigerian Company Law**

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### **ABSTRACT**

The law draws a distinction between the functions of a receiver and a manager. A receiver has the duty to stop the business, collect the debts and realize the assets. He has no authority to carry on a going concern. Nevertheless, a manager, on the other hand, has powers to continue a business or any going concern. Thus, the primary motive for the appointment of the receiver/manager is that of the realization and preservation of the company's security of those on whose behalf he is appointed. The actual role of a receiver is that of an agent. He as an agent is personally liable on any contract entered into by him in the performance of his functions except where the contract provides otherwise. As an agent, the primary duties of the receiver involve good faith, special confidence, and candour towards another. Basically, the duties of a receiver are those which can justifiably be said to be incidental to his powers of management. The paramount duty of the receiver on his appointment is to take possession of all the assets covered by the charge, since those are the things he is appointed to manage with a view to recovering what may be due to the debenture holders or mortgagees.

**Keywords :** Receiver/Manager, Debenture, Duties, Power, Preservation, Realisation.

### **INTRODUCTION**

There appear to be no express provisions for the nature of powers and duties to be performed by receivers and managers in the Companies Act. Nevertheless, the Companies and Allied Matters Act, (Revised Edition) Laws of the Federation of Nigeria Act, 2004, C.20, ss.391 and 393 make provision for the powers of a receiver and manager respectively (Sasegbon, 1991; Mrabure & Awhefeada, 2020). Thus, section 393 of Company and Allied Matters Act (CAMA) provides that once a person is appointed receiver to a company by its secured creditors, example, debenture holders in respect of a company being wound up, such a person takes control of the entire Company's property and must exercise a protective handover of it. It is also his duty to collect rents and profits accruing on the property as well as discharging all out-goings for example rates, taxes, and other maintenance expenses on such property and in this capacity exercising the debenture holder's power of realization (Sasegbon, 1991; Ehirim et al., 2022).

The receiver acts in the interest and to the benefit of the debenture holders. His primary functions are to pay off the debts of the company to the debenture holders either from income receipts or asset realization. Normally, the duties of a

receiver are generally spelt out in the instrument under which he is appointed. It is therefore incumbent upon him to act in good faith for; he occupies a fiduciary position (Re: Mogadi Soda Co.Ltd; 1925). Floating charges normally confer full powers on a receiver. Thus, because of the tendency of fixed charges to contain inadequate powers, reliance is always placed on powers provided for in relevant legislations (Property & Conveyancing Law of ,1978 and English Law of Property Act, 1925). Under section 391 of CAMA, a receiver (even if appointed out of Court) may apply to court for directions and while not amounting to a direct enlargement of his powers, a direction so given will validate what might otherwise be a questionable method of proceeding.

The appellation “receiver” connotes a power merely to collect and realize assets. But in fact, a debenture may give specific power for carrying on the business even if the appointee is not named as ‘manager’ as well. It is advisable however, to always include a managerial power in the trust deed where a charge includes good will (Walton, 1978).

**POWERS AND DUTIES AS ENUMERATED IN COMPANY AND ALLIED MATTERS ACT, (REVISED EDITION) LAWS OF THE FEDERATION OF NIGERIA ACT, C.20, 2004**

The Companies and Allied Matters Act, LFN, 2004, C.20, S.393 (3) reference was made to certain specific and general powers incorporated as eleventh schedule II to the Act. These powers are granted by the Act to the receivers. In fact, the receiver of the whole or substantially the whole of the company’s property has the following powers in the realization and preservation of Company (Onuoha, 2003; Adeniji, 1995; Odife, 2004). They include:

1. Power to take possession of, collect and get in the property of company, and for that purpose, to take such proceedings as may seem to him expedient.
2. Power to sell or otherwise dispose of the property of the company by public auction or private contract.
3. Power to raise or borrow money and grant security therefore over the property of the company.
4. Power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions.
5. Power to bring or defend any action or other legal proceedings in the name and on behalf of the company.
6. Power to refer to arbitration any question affecting the company.
7. Power to effect and maintain assurance in respect of business and property of the company.
8. Power to use the company’s seal.
9. Power to do all acts and to execute in the name and on behalf of the company any deed, receipt or other documents.
10. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company.

11. Power to appoint any agent to do any business, which he is unable to do himself for which can more conveniently be done by an agent and power to employ and dismiss employees.
12. Power to do all such things as may be necessary for the realization of the property of the company.
13. Power to make any payment which is necessary or incidental to the performance of his functions.
14. Power to carry on the business of the company.
15. Power to establish subsidiaries of the company.
16. Power to transfer to subsidiaries of the company the whole or any part of the business and property of the company.
17. Power to grant or accept a surrender of a lease or tenancy of any property of the company and to take a lease or tenancy of any property required for this business of the company.
18. Power to make any arrangement or compromises on behalf of the company.
19. Power to call up any uncalled capital of the company.
20. Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the company and to receive dividends, and to accede to trust deeds for the creditors of any such person.
21. Power to present or defend a petition for winding up of the company.
22. Power to change the situation of the company's registered office.
23. Power to do all other things incidental to the exercise of the foregoing powers.

**ANALYSIS OF THE POWERS AND DUTIES OF A RECEIVER AS ENUMERATED UNDER THE COMPANY AND ALLIED MATTERS ACT PROVISIONS CAP. C20, LAWS OF THE FEDERATION OF NIGERIA, 2004**

**Duty to take Possession of, Collect and get in the Property of the Company**

The receiver has power to take possession of the estate or other property the subject-matter of dispute in the action, and also protect the property, receive the rates and profits, discharge all outgoings there from and manage same with a view to the beneficial realization of the security (CAMA, LFN, 2004, C.20, S.393(1)(2)). The receiver in exercising the debenture holder's power of realization of its assets, he is to act in the best interest of the company and to the benefit of the debenture holders.

A receiver appointed manager of the whole or any part of the undertaking of a company is deemed to stand in a fiduciary relationship to the company and shall observe a duty of utmost good faith towards it in any transaction with it or on its behalf (CAMA, LFN, 2004, C.20, S.390(2)(a)). A duty of care is imposed on the receiver in managing the business of the mortgagor-company. The receiver is expected at all time to preserve the company's assets, further its business and promote the purposes for which it was formed and in such manner as a faithful, diligent, careful and ordinary skillful manager would act in the circumstances (*Standardford Chartered Bank v. Walker*, 1982).

## **POWER TO CALL UP ANY UNCALLED UP CAPITAL**

In Nigeria, before the enactment of CAMA, there has been a long standing doubt whether a receiver has power to make calls on shareholders where uncalled capital is included in the security (Mrabure & Awhefeada, 2021). In (*Standley Case, Re British Provident Life and Fire Assurance Society*, 1864), it was said that the receiver could not represent the board of directors for the purpose of making calls because the directors were precluded from charging uncalled capital under the terms of the particular constitutional documents concerned. Turner L.J. swiftly asked how it would be possible for a receiver to exercise a discretion or power which according to the constitutional documents of the company is reposed in the directors. He went further to state that: "There may be cases where an equity may be created to compel directors to make a call"

In (*Re Phoenix Steel Co; 1875*) Jessel MR in referring to Stanley's case, made light of the difficulty previously raised by Tuner L.J. by saying that: "If the company had a power or discretion to charge future calls, there had to be a way of fulfilling the power and making good the charge". The judge went further to state that this could be done where a receiver was appointed, by ordering the directors to make the calls and pay the proceeds to the receiver or by ordering the receiver himself to make the calls (*Newton v Anglo Australian Investment Co's Debenture Holders*, 1895):

In the same vein, in (*Sadler v. Worley*, 1894) where it was considered that uncalled capital could not be vested in a mortgage by way of foreclosure, Kekewich J. ordered the directors or liquidator to make the necessary calls and do all such acts and things as might be necessary to vest the uncalled and do all such and things as might be necessary to vest the uncalled capital in the mortgagee (Onuoha, 2003).

The power of a receiver and manager appointed out of court is more problematic. At times, it has been said that a receiver has no authority whatsoever to make calls and is obligated to call upon directors or the liquidators to exercise their powers on his behalf (Onuoha, 2003). These powers are too widely stated and ambiguous. These general powers do not extend to the creation of property as distinct from exercising a chargee's security over property (Onuoha, 2003).

The receiver may make calls where the articles of association of the company give power to the directors to delegate to a receiver their power of making calls, but a delegation of this nature need not be made in express terms (Onuoha, 2003). The general charging power of a company readily lends itself to an interpretation which includes powers to grant to a charge adequate enforcement procedures and in particular power to delegate to the charge, or a receiver appointed by the charge, the power of the directors to make calls. The power of a receiver to make a call must be expressly conferred by the charge, for this purpose the express power to call uncalled capital does not extend to uncalled premium (Onuoha, 2003). The power conferred by a charge on a receiver to make calls should expressly include future calls in respect of both uncalled capital and uncalled premiums (Gough, 1996).

Where a receiver exercises the delegated power of the directors to make call, the call needs to be made by the receiver, to ensure its validity as a procedural

matter, in the manner and form provided in the articles of association when exercised by the directors (*Chocolate Box Confections Ltd v. Wonnacott*, 1984). As earlier pointed out, it is the practice to exclude uncalled capital from a receivership order, even though it is included in the charge given by the debentures. Thus, the current position in Nigeria is that apart from any power to make calls conferred on a receiver by a charge, a receiver unless inconsistent with the charge has a statutory power to call up any uncalled capital of the company (Insolvency Act, 1986, s.42 (1)). The position of the law however, is that if there is doubt as to whether the uncalled capital is included in the security (*Re Streatham Estate Co.*, 1897), it may be necessary to issue a summons to determine the point (*Re Gregory, Loe & Co.*, 1916).

### **DUTY TO TAKE PROPER RECEIPTS**

A receiver is responsible for any loss occasioned to the Estate over which he is appointed by reason of his willful default (*Re Skerrett's*, 1829). If he places money received by him in what he knows to be improper hands, he will have to answer the loss out of his own pocket (*Knight v. Lord Plymouth*, 1747). He must, however, take proper receipts from the persons to whom he makes the payments, and it must be remembered that, in passing his accounts, he will be subject to the rules to which all other accounting parties are subject, and accordingly will be allowed to discharge himself by affidavit only as to payments under £2: for all other payments he must produce vouchers (Walton, 1978), unless he can give good reason for their absence. When the order directs that the receiver shall keep down the interest of incumbrances, or make any other payments he must, of course, comply with the order, and the sums so paid by him will be allowed in his accounts (Walton, 1978).

A receiver is only justified in paying to the person named in an order for payment, or on a power of attorney duly executed by him. Express authority for payment in any other way must be shown by the receiver, on peril of being disallowed credit therefore in vouching his accounts (Walton, 1978).

### **POWER TO LEASE**

A lease is demise or grant of land by one person, called the lessor, to another, called the lessee, for an interest less than a freehold and less than that of the grantor, the interest which remains in the grantor being called a reversion. Alternatively a lease is an agreement by Deed made between two or more parties whereby the owner of an estate in land grants by means of a contract the right to the exclusive possession of his land or part of it to another person to hold under the grant for a term of years. The grant is called a lease, demise or tenancy. The grantor is called the land lord or lessor while the grantee is the lessee or tenant. The period granted is called the term of years and the interest which the landlord retains which included the right to possession at the end of the term is called the reversion (Adubi, 1995; Kersley, 1970).

The powers of the receiver here are limited to receiving proposals and making arrangements as to the leasing of the property over which he has been appointed receiver (*Gibbins v. Howell*, 1818). He has no power by a lease made in his own name to transfer the legal estate in the property, nor can such a power be given to him by the judge. Although in appropriate cases, he may be authorized to execute in the name of the estate owners, if a party leases by a mortgagor or mortgagee, or under the Settled Land Act 1925, or other statute, may be granted in the name of the estate owner, by the person empowered to grant the same, whether the Estate owner or not (Property Act, 1925, s.8). The lease may be executed by the receiver in the name of the proper party. Of recent times, a direction to set and let is not inserted in an order appointing a receiver over real or leasehold estate (*Thornhill v. Thornhill*, 1845), the judge having power to give any direction in chambers as to the management of the estate though in special circumstances the order may include a direction for the granting of a specific lease or power to grant a class of tenancies.

A receiver cannot, without the sanction of the court, set or let even for a single year (*Wynne v. Lord Newborough*, 1979). The case of *Shuff v. Holdway*, cited in Seton (7<sup>th</sup> ed.) :769) was formerly cited as authority for the proposition that the receiver can now, without obtaining the sanction of the court, let for a period not exceeding three years; the court of Appeal has now held it down that no valid lease can be made by a receiver without the sanction of the court; though the court can give a general authority to let or approve any lease which it considers necessary for the protection of or making fruitful, the property over which a receiver is appointed, and this, if necessary, even after the letting has in fact begun. But even where the receiver is also appointed manager, he should obtain the sanction of the court to a proposed lease.

If a receiver himself grants a lease without sanction, as between him and the person who takes the lease, the lease will be binding by estoppel (*Dancer v. Hastings*, 1826). As between the lessee, however, and the owner of the legal estate, the lease has, in the absence of special circumstances, no binding force, even though it may have been made with the sanction of the judge. A receiver must let the estate over which he is acting as receiver to the best advantage. He is bound to obtain the best terms (*Wynne v. Lord Newborough*, 1719). He need not, either in his own name or through the medium of a trustee, become tenant of any part of the estate over which he is acting as receiver (*Meagher v. O'Shaughnessy*, 1826). A receiver cannot raise the rents on slight grounds without the leave of the court, nor can he abate the rents, or forgive the tenants their arrears, without leave or the consent of all parties beneficially interested (*Evans v. Taylor*, 1837).

#### **POWER TO INSURE**

A receiver of the rents and profits of real and leasehold estate may with propriety insure the property against damage by fire, either in his own name or in the names of trustees, and he will be allowed in his accounts the premiums which he has paid (*Re Graham*, 1895).

#### **POWER TO BORROW**

Whenever a receiver requires money to enable him to discharge his duties, the court will give him leave to borrow upon the security of the property in his hands. This power is mostly exercised by a receiver and manager appointed to oversee the debenture holder's actions. Where a receiver and manager appointed in a debenture holder's action have been authorised to raise money, this gives him, by implication, power to create a charge to secure the money in priority to existing debentures (*Lathan v. Greenwich Ferry Co.*, 1895).

In order to secure the money raised, the receiver sometimes gives a certificate, sometimes a charge, or the amount may be raised on the security of debentures. in *Milward v. Avilland Smart*, 1897). Here the receiver was authorised to borrow £700 and, not requiring all the money at once, overdrew £500 from the bank and afterwards paid off the overdraft. It was held that he had not exhausted his borrowing powers to the extent of £500 but was still able to borrow the entire £700 without further leave. The claim of persons who have advanced money to receivers and managers under an order of the court upon security of a charge on the assets is, unless the order otherwise directs, postponed to the receiver's rights. The receiver is under no personal liability for the sums advanced unless the contract provides otherwise.

## **POWER OF SALE**

When the receiver exercises the power of sale (where applicable), it is necessary to get the best price obtainable in the market (CAMA, LFN 2004, C.20, s.39(1)). The appointment of a receiver doesn't give him the power to sell property, but in most cases, the court can tell the receiver to sell the property. For example, if the appointment is made in an action for foreclosure, redemption, or sale (Property Act, 1925, ss. 90 and 91), including, of course, debenture holder's actions, or in the administration of the estate of a deceased person, the court can tell the receiver to sell the property.

On the application of any party, the court has the power to make an order for the sale by any person and in any manner of any goods, wares, or merchandise that may be of a perishable nature, likely to be harmed by keeping them, or for which it may be desirable to have them sold at once (Supreme Court Practice, 1976).

However, in the case of statutory corporations formed to work a public undertaking, a sale of the undertaking cannot be ordered (*Re Working UDC*, 1914 Act) except where the statute under which the incorporation takes effect authorises a sale (*Re Crystal Palace Co.*, 1911). In fact, the law has balanced the interests of the mortgage parties by imposing a duty of care on the receiver-manager both at law and in equity to ensure that the mortgagor's business or property is managed profitably and, in the event of sale, to exercise due care to obtain the best price reasonably obtainable in the market.

Where the receiver enters into a contract that is subject to approval by the court and the receiver takes no step before the day fixed for completion to obtain such approval, the purchaser is entitled to repudiate the contract and recover his deposit (*Re Sandwell Park Colliery Co. Ltd.*, 1920). However, where a receiver is

appointed manager, he can carry out all such sales as are necessary for the ordinary conduct of the business over which he is appointed, but no sale of the permanent plant or assets should be made without leave of court (Walton, 1978).

While agreeing with Smith that the duty of care imposed on the receiver-manager under the general law accords with good commercial sense and may go a long way in safeguarding the assets of the mortgagor (Smith, 2000), However, there is an inherent problem or pitfall, and that is the receiver's option of selling off the mortgaged property or the adoption of legal draughtsmanship exonerating him from negligent mismanagement may constitute a practical impediment in protecting the mortgaged property, which remains the mortgagor's property in equity (Smith, 1978). This impediment, however, has been gladly removed by CAMA so that neither a debenture nor any other agreement can exonerate the receiver-manager from fulfilling his statutory obligation (Smith, 1978).

### **POWER TO USE THE COMPANY'S SEAL**

This is a great improvement on the powers of the receiver over the old law, which was very unsatisfactory and saddled with ambiguities and uncertainties (Schmittchoff, 1970).

With the current position of the law, the administrative receiver now has authority independent of agency to use the seal and to execute deeds in the name of the company in respect of property covered by the charge. This invariable, appears to be an incident of administrative receivership powers and not dependent on agency. Even upon winding up, such powers are not terminated (Schmittchoff, 1970).

### **POWER TO MAKE ARRANGEMENTS OR COMPROMISES**

In order to protect the company's members and creditors, the management under receivership may resort to some schemes and arrangements, either alone or in conjunction with some other companies. This reorganization may take form in any of the following ways.

- (1) By compromise and arrangements under sections 539 and 537-538 of CAMA respectively.
- (2) Reconstruction and amalgamation or by sale under power in the memorandum; or
- (3) By a take-over bid.

'Arrangement(CAMA,LFN,2004,C20.S.537), means any change in the rights or liabilities of members, debentures or creditors of a company or any class of them or in the regulation of a company, other than a change effected under any other provision of this Degree or by the unanimous agreement of all parties affected thereby. An arrangement and compromise is usually between the company and its creditors or between the company and its members. It usually involves a reorganization of the company's share capital (Ekpo, 2004).

Compromise and arrangement occurs if the company is about to be or in the course of being voluntarily wound up and if, it is a compulsorily wining-up, the liquidator may, with the sanction of the court or of the committee of inspection

make any compromise or arrangement with creditors. The receiver has onerous duty to ensure arrangements and compromises on behalf of the company. The Company and Allied Matters Act, 1990, is not quite explicit whether the receiver's duty covers situations where the company voluntarily goes into arrangement. This situation is very unsatisfactory and we are still awaiting judicial pronouncement on this issue.

Arrangement as a matter of course, is resorted to where a sale is impracticable, or is not desired, and then only the receiver can obtain the sanction of the court for a scheme of arrangement. It is not necessary that such scheme should be in the nature of a compromise (*Re Guardian Assurance Co.*, 1917), but if it involves a reduction of capital the provision of the Act relative there to must be observed (*Re White Pass Ry.*, 1918).

An order for sale does not prevent the court from subsequently approving a scheme of realization involving the disposal of the assets for shares in a new company (*Re Buenos Aires Transways Ltd*; 1920). The report of the receiver is a very vital factor to be considered with regard to the question of whether such a scheme should be approved (*Re Buenos Aires Transway Ltd*).

## **GENERAL POWERS**

The receiver is entrusted with general powers to do all other things incidental to the exercise of the numerous other powers assigned to his functions. CAMA has made provisions for the receiver's obligation towards the realisation of the security of the debenture holder (that is, the mortgagee) as well as the specific obligation of the receiver manager towards the mortgagor company.

Section 393 (1) and (2) of CAMA make it the primary duty of the receiver-manager to take possession of and protect the property, receive the rents and profits, discharge all outgoings therefrom, and manage the same with a view to the beneficial realisation of the security. The receiver-manager's obligation to the mortgagor-company is unaffected by who is the receiver-manager's agent under the debenture deed (CAMA, LFN, 2004 c. 20, ss. 390(1) and 393). As we can see, the administrative receiver is given broad authority to carry on the company's operations and to engage in winding down operations. By "sale by hiring down," we mean that instead of the receiver selling the undertaking and assets to a purchaser immediately, he enters into a contract as receiver binding the company to sell them down to a "clean" subsidiary directly or indirectly in exchange for shares. He then sells shares in the subsidiary to the purchaser (Schmittoff, 1987).

The advantages of selling by dividing are that it is a useful method of separating the viable from the unviable parts of the business; it also passes the asset without the liabilities; and it provides clear continuity of employment, minimising the risk of compensation for loss of office and redundancy payments. The main disadvantages are the formalities, which must be carefully carried out, and certain fiscal consequences. For instance, when the subsidiary leaves the group, there will be corporation tax on capital gains arising from a reopening of the previous transaction. The purchaser will seek an indemnity, which the receiver will be

reluctant to give. In the end, the matter is often settled by a reduction in the purchase price.

## CONCLUSION

The Company and Allied Matters Act, Laws of the Federation of Nigeria, 2004 Cap. C20, Section 393(1) and (2), make provision for the duties and powers of the receiver/manager which for clarity purposes is hereunder stated thus:

S.393(1) provides inter alia that”

A person appointed a receiver of any property of a company shall subject to the rights of prior incumbrancers, take possession of and protect the property, receive the rents and profits and discharge all outgoing in respect thereof and realize the security for the benefit of those on whose behalf he is appointed.

By the same sub-section, such a person shall not have the power to carry on the business or undertaking of the company unless he is also appointed a manager. The implication of the foregoing is that there appears to be a distinction between a receiver and manager in our law (Scottish Act, 1972, s. 15(2)).

The case of *Ponson Enterprises Nig. Ltd. and 3 Ors v. Celestine Chukwuma Njigha*, 1991, buttresses this point as follows: The law draws a distinction between the functions of a receiver and a manager. A receiver has the duty to stop the business, collect the debts, and realise the assets. He has no authority to carry on a going concern. But a manager, on the other hand, has the power to continue a business or any ongoing concern. The provisions of Section 290(3) of CAMA are very instructive here. It gives a receiver appointed under the section the authority, among other things, to sell the assets. Section 650 of the Companies and Allied Matters Act, 1990, which defines "receiver" as including a manager, has not affected the established distinct functions of a receiver and a manager. However, the law gives the receiver or manager sole authority over the management and operation of any business.

The Act re-emphasizes the primary motive for the appointment of the receiver/manager as being the realisation of the security of those on whose behalf he is appointed. In *Agbaje v. Adelokun*, 1993, [1] the Court of Appeal held that "the object of appointing a receiver or manager is to safeguard the property in issue for the benefit of those entitled to it." The actual role of a receiver is that of an agent. He is personally liable under any contract entered into by him in the performance of his functions, except where the contract provides otherwise. Section 394(1) (CAMA, c. 20 of 2004) states that "a receiver or manager of any person's or a company's property shall be liable on any contract entered into by him except insofar as the contract expressly provides otherwise."

As an agent, the primary duties of the receiver involve good faith, trust, special confidence, and candour towards another. Apart from the statutory obligations imposed on a receiver, he is also required to discharge certain non-statutory obligations under the common law or equity. For example, a receiver is basically a fiduciary who is expected to display a high degree of loyalty and fidelity

not only to the authority that appoints him but also to the company. The receiver's relationship necessitates great confidence and trust on the part of the appointee and a high degree of faith on the part of the debtor.

Generally, the duties of a receiver are those that can justifiably be said to be incidental to his powers of management. It is, however, significant to note that his paramount duty on his appointment is to take possession of all the assets covered by the charge, since those are the things he is appointed to manage with a view to recovering what may be due to the debenture holders or mortgagees.

Where the receiver or manager enters into contracts with the authority under Section 394(1), he is entitled to an indemnity from the assets of the company. Subsection (2) also includes the following:

As regards contract entered into by a receiver or manager in the proper performance of his functions, such receiver or manager shall, subject to the rights of any encumbrances, be entitled to an indemnity in respect of liability thereon out of the property over which he has been appointed to act as receiver/manager"

It is noteworthy to point out that the receiver's agency relationship terminates on the liquidation of the company. Upon liquidation of the company, the receiver acts as a principal and in some cases as the agent of the mortgagee, but his powers over the assets continues (Odife, 2004).

In sum, in examining the nature of the receiver's duties, the following facts invariably emerge He must weigh his action to determine whether they are unnecessarily detrimental to the unsecured creditors and shareholders, but must at all-time act as his prime duty entails (Odife, 2004). He must show the degree of care of a prudent businessman.

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