

THE HIGH COURT

[2025] IEHC 261

Record No. 2025/138 MCA

MERCER AGENCIES LIMITED (IN ADMINISTRATION)

AND

**IN THE MATTER OF AN APPLICATION BY MERCER AGENCIES LIMITED FOR
RECOGNITION AND ORDERS IN AID OF FOREIGN INSOLVENCY**

PROCEEDINGS

RESPONDENT

JUDGMENT of Mr. Justice Michael Quinn delivered on the 7th day of May 2025

1. This judgment relates to an application by Mercer Agencies Limited (“the Company” or “the Applicant”), acting by joint administrators appointed to it pursuant to the Insolvency (Northern Ireland) Order 1989 (“the 1989 Order”), for an order recognising:

(a) the entry of the Company into a process of administration pursuant to the 1989 Order,

(b) the appointment of joint administrators Scott P. Murray and Ian Davison, of Keenan Corporate Finance Limited, Belfast as joint administrators (“the Joint Administrators”),

(c) the powers of the Joint Administrators to bring or defend any action or legal proceedings in the name of and on behalf of the Company pursuant to s. 627, Table 1, Paragraphs (a) and (b) of the Companies Act 2014, in a manner analogous to Article 6 of Schedule 1 of the 1989 Order,

(d) the power of the Joint Administrators to collect and gather in the property of the Company and for that purpose to maintain such proceedings as may seem to them expedient in accordance with s. 624(2) of the Companies Act 2014, which power corresponds to the power contained in Article 1 of Schedule 1 of the 1989 Order.

2. The Company applies also for an order that this court and its officers act in aid of and be auxiliary to the High Court of Justice of Northern Ireland, Chancery Division, in respect of the administration proceedings.

3. The application was made ex parte and was stated to have been made pursuant to the powers of this court at common law or alternatively pursuant to the inherent jurisdiction of this court.

4. No direct precedent was cited for this court making an order for recognition of administrators appointed under the 1989 Order.

5. Although the application was made ex parte, the ex parte docket and grounding affidavits were provided to the court in advance. Having considered these documents and the submissions of counsel on this application I concluded that, having regard to the legislation and to cases cited as to the common law and inherent jurisdiction of this court to recognise and provide assistance to foreign courts in relation to insolvency proceedings, this court has jurisdiction to make the order sought. I decided also that, on the evidence, this was an appropriate case in which to make such orders. On 25 March 2025 I made the orders applied for and stated that I would give my reasons later, which I now do by this judgment.

The Company and appointment of joint administrators

6. The Company was incorporated under the laws of the United Kingdom and had its registered office at Moira Industrial Estate, Old Kilmore Road, Moira, County Down, Northern Ireland. Its principal place of business was in Northern Ireland. It operated from warehouses and trade showrooms near Lisburn, Co. Down and in Coventry, England. Its principal business

was the wholesale supply of Christmas decorations, garden furniture and garden trellises. It had become one of the leading suppliers of such products within the Irish market, both Northern Ireland and in the State, and had a strong presence also in the United Kingdom.

7. The Company had at least 35 live customers in the State, one of whom was said on this application to owe the Company, at the time of the making of this application USD\$1,499,339.17.

8. The court was informed that the Company had no creditors in the State.

9. Arising from a deterioration of trade and ensuing financial difficulties the Company entered administration on 28 November 2024.

10. One of the procedures by which a company can be placed in administration under the 1989 Order is that the directors resolve to place the Company in administration and to appoint administrators. Notice of the appointment is then filed with the High Court of Justice, Northern Ireland Chancery Division. The administration and appointment of joint administrators takes effect on the filing of such a notice. This was the procedure availed of in this case.

11. In a case where the Company has granted floating charges, the procedure described above can only be availed of where the holders of those floating charges have consented, as they did in this case, namely the Governor and Company of the Bank of Ireland (U.K.) Plc and N.I. Growth Loan Fund II General Partner Limited, both of which had their registered offices in Belfast. Each of these floating charge holders consented to the appointment of administrators and the appointment therefore took effect on 29 November 2024.

Conduct of the administration

12. The application was grounded on an affidavit sworn on 12 March 2025 by one of the Joint Administrators Mr. Scott P. Murray.

13. A supporting affidavit was sworn by the solicitor acting for the Joint Administrators Ms. Ellen Forester. Ms. Forester is a solicitor qualified and holding a practising certificate with the Law Society in Northern Ireland and with the Law Society of Ireland.

14. Mr. Murray described the statutory purpose of the administration and his powers under the 1989 Order, to which I shall return later. He outlined the steps taken by him to achieve a better result for the creditors of the Company as a whole than would be achieved if the Company were wound up without first being placed in administration. This is one of the permitted objectives under the 1989 Order and was the objective being pursued by the administrators in this case. Further to that objective the Joint Administrators have since their appointment pursued the collection of debts due to the Company.

15. The largest single debt due to the Company was owed by Rath-Wood Home and Garden World Limited, which had its registered office at Rath, Tullow, County Carlow (“Rath-Wood”). It is said by Mr. Murray that the debt due by Rath-Wood to the Company as of the date of swearing his affidavit was USD\$1,499,339.17.

16. In describing Rath-Wood and the debt claimed by the Company and the engagement between the Company and Rath-Wood, I am relying on Mr. Murray’s affidavit. In doing so I caution that since this application was made ex parte and Rath-Wood did not participate or have any opportunity to respond, nothing I say in the description of the engagement between the Company and Rath-Wood may be treated as determinative of any issue, should one arise, as between the Company and Rath-Wood. The adjudication of any such issue would be a matter for another day in the context of any inter partes proceedings which may become necessary. Subject to that caveat, I have for the purpose of this application for recognition adopted Mr. Murray’s description of events.

17. Mr. Murray outlined efforts made by the Company prior to the appointment of the Joint Administrators to secure repayment of the debt. A repayment plan had been agreed. Payments

were not made on time under that plan, and accordingly it is stated that the balance of USD\$1.4 million remains due.

18. An extensive quantity of stock had been supplied to Rath-Wood which was still held at its premises at Tullow, County Carlow. Title to much of this stock had been retained by the Company pursuant to its terms and conditions of supply.

19. After their appointment the Joint Administrators attempted to inspect and take stock of the products at Carlow. Mr. Murray says that Rath-Wood did not cooperate and it became necessary to threaten legal proceedings, including an injunction. A meeting was then held between the Joint Administrators and Rath-Wood and their respective legal advisors. Following that meeting a stock take was made, and it was discovered that some of the stock in the possession of Rath-Wood had been sold without the consent of the Company. After further engagement, the Joint Administrators secured a measure of co-operation with Rath-Wood. Arrangements were made whereby Rath-Wood would continue to sell stock for which it would account to the Company. However, Mr. Murray says that it cannot be assumed that the debt due by Rath-Wood to the Company will be paid in full. It may yet become necessary, depending on events which follow, to commence proceedings for recovery of the debt or take other measures, including injunction applications, to preserve or retrieve stock owned by the Company.

20. Mr. Murray says that obtaining repayment of the debt due and securing stock owned by the Company is critical to the objective of achieving the best possible result for creditors of the Company. It may therefore become necessary to commence legal proceedings to secure repayment of the debt and recovery of stock, either from Rath-Wood or from any of the Company's other debtors in the State. The purpose of this application is to ensure that in the course of any such proceedings no issue would arise as to the standing of the Joint

Administrators to realise assets and commence proceedings in the name of the Company, such as would restrict or delay his ability to realise debts or other assets.

Necessity for this application post Brexit

21. On 31 March 2002 Council Regulation 1346/2000 of 29 May 2000 on insolvency proceedings, the European Insolvency Regulation (“EIR” or “the Regulation”) entered into force. It provided for recognition throughout the EU (except Denmark) of insolvency proceedings opened in member States, and orders made in the course of those proceedings. In the case of the United Kingdom, such proceedings included administration and orders made in the course of those proceedings. Until the exit of the United Kingdom from the EU on 31 January 2020 the effect of that Regulation, and its recast (EU 2015/848 of 20 May 2015), was that the appointment of administrators under the 1989 Order and their powers would be recognised in the State without any further formality, subject to certain basic conditions of the Regulation, and limited exceptions such as the exercise of powers offensive to public policy in the State. (See *Apperley Investments Limited & Ors v Monsoon Accessorize Limited* [2020 IEHC 523]). Under that regime this court would not look behind the order or other evidence of the appointment of an insolvency office holder, such as an administrator. Nor would it be necessary for this court to consider, as I do below, such questions as equivalence of the insolvency process. The differences between administration in Northern Ireland and liquidation in the State would not be relevant. Recognition would be accorded of the appointment and powers of the administrators in accordance with the *lex concursus* of their procedure, namely the powers conferred on them under the 1989 Order. An application of this nature would, subject to some exceptions, not be required.

22. The fact that for 18 years the EIR governed recognition of insolvency proceedings as between the UK and the State may explain why, despite close trading relationships, there has been no precedent for an application of this nature.

23. Since the EIR no longer governs recognition in the State of administrators appointed under the 1989 Order, I am required to consider this court's inherent jurisdiction as a matter of common law to recognise foreign insolvency proceedings. Although there is no reported precedent of a case from Northern Ireland, this question has been considered in a number of cases concerning non-EU states, most notably in two cases in 2012, namely *Fairfield Sentry Limited (In Liquidation) v Citco Nederland NV* [2012 IEHC 81], which was considered by Laffoy J. in *Re Mount Capital Fund Limited (In Liquidation) and Another* [2012 IEHC 97].

Re: Mount Capital Fund Limited (In Liquidation) and Another

24. Joint liquidators were appointed to the applicant companies by the High Court of Justice of the British Virgin Islands. The liquidators sought the aid of this court for the purpose of recovering or getting in (1) all of the books and records relating to the companies and (2) all of the assets and property of the companies, within the jurisdiction of this court or within the power, possession or procurement of any person within the jurisdiction of this court. Specific relief was sought in an ex parte application in the following terms:-

“(a) that this court recognise the Liquidation Orders made on 22nd September, 2009 (the orders of the BVI High Court); and

(b) that this court and the officers of this court act in aid and be auxiliary to the High Court of Justice of the British Virgin Islands and in particular assist and act in aid of the said Court in the following matters:-

(i) authorising the liquidators to exercise in relation to the Companies the powers afforded to an official liquidator under s. 245 of the Companies Act 1963 (“the Act of 1963”);

(ii) granting to the liquidators liberty to apply for such orders under s. 245 of the Act of 1963 in relation to the Companies and each of them;

(iii) giving the liquidators liberty to apply for such further and other reliefs as shall appear appropriate to them in exercise of their functions as liquidators of the Companies and which the court shall see fit to grant.”

25. The purpose of the application was to give the liquidators standing to seek, in subsequent applications, orders on an inter partes basis in this court to obtain certain documentation which it was said ought to be comprised within the books and records of the companies but which were not at that time available to the liquidators and other information concerning the business and affairs of the companies. Those were the kind of orders the court could make in a winding up of a company in the State, pursuant to Section 245 of the Act of 1963. The parties against whom it was intended to bring such applications under s. 245 if recognition was granted were PricewaterhouseCoopers, Deloitte & Touche LLP Ireland and City Hedge Fund Services (Ireland) Limited.

26. The liquidators in that case adduced evidence, by an affidavit of their solicitor, as to the equivalence of approach to the winding up to companies under the Insolvency Act 2003 of the British Virgin Islands (“the BVI Act”) with the approach adopted in this jurisdiction under the Companies Act 1963 and amending legislation.

27. The solicitor’s evidence described the provisions of s. 284 of the BVI Act under which an application can be made by a liquidator for an order that a person specified appear before the court *“for examination concerning the Company, or a connected company, including the promotion formation business dealings accounts, assets, liabilities or affairs of the Company or connected company”*. The persons in respect of whom such an order could be made included an officer or former officer of the Company and any person who had been an accountant or auditor of the Company or any other person whom the liquidator considered was capable of giving information concerning the Company or a connected company. The applicants

submitted that the power of this court under s. 245 of the Act 1963 was closely analogous to s. 284 of the BVI Act.

28. Laffoy J. was satisfied that the liquidators had shown a prima facie case for the conclusion of equivalence between s. 245 of the Act of 1963, which the liquidators proposed to invoke if given recognition, and the corresponding provision, s. 284, of the BVI Act.

29. Laffoy J. conducted a comprehensive review of authorities concerning the power of a court to grant recognition to insolvency proceedings opened in another jurisdiction. She considered the decision of the Privy Council in *Cambridge Corporation v. Unsecured Creditors* [2006] UKPC 26, the decision of this court (Dunne J.) in *re D.D. a Bankrupt* [2010 IEHC 546], the decision of this court (Finlay Geoghegan J.) in *Fairfield Sentry Ltd (In Liquidation) v Citco Bank Nederland NV* [2012] IEHC 81, the judgment of the Supreme Court in *re Flightlease (Ireland) Ltd (In Voluntary Liquidation)* [2012] IESC 12 and the very early case of *Re Bolton* [1920] 2 IR 324.¹

30. Laffoy J. stated her conclusions as follows:

“I consider that the Court does have an inherent jurisdiction to give recognition to insolvency proceedings in jurisdictions outside the European Union. However, I consider that, in the exercise of that jurisdiction, the Court should be satisfied that recognition is being sought for a legitimate purpose. I believe that a legitimate purpose has been demonstrated in this case, in that the objective of the liquidators is to seek to obtain relief of the nature provided for in s. 245 of the Act of 1963, having demonstrated that, there is equivalence between the law of the British Virgin Islands and the law in this jurisdiction in relation to corporate insolvency generally and, in particular, in relation to disclosure, production of documentation and such like for the purpose of

¹ In *Re Bolton* the Court in fact applied a statutory provision for orders in aid in bankruptcy matters (s. 71 of the Bankruptcy (Ireland) Amendment Act 1872).

performance by a liquidator of his principal duties of taking possession, protecting and realising the assets of the Company and distributing the assets, or the proceeds of realisation, in accordance with law.

While I do not discern any prejudice to any creditor in this jurisdiction or the infringement of any local law in affording recognition, so that, to use Lord Hoffmann's terminology, there is 'no discretionary reason for withholding recognition', I have to take into account that this application is made ex parte and parties likely to be affected have not been heard. I propose to address that circumstance in the form of order which I intend making."

31. The court then made the orders sought. As far as concerned the position of parties not heard but likely to be affected, the court made an order granting liberty to apply, on notice to the liquidators, to any party who wished to challenge the jurisdiction of the court to make this order insofar as it affected that party.

Section 1417 of the Companies Act 2014

32. In *Mount Capital*, Laffoy J. considered the implications of s. 250(1) of the Companies Act 1963, the predecessor of s. 1417 of the Act of 2014. Section 250(1) provided as follows:-

"Any order made by a court of any country recognised for the purposes of this section and made for or in the course of winding up a company may be enforced by the High Court in the same manner in all respects as if the order had been made by the High Court."

33. Laffoy J. noted that the only country recognised for the purpose of s. 250 was the United Kingdom of Great Britain and Northern Ireland, which had been recognised pursuant to a Ministerial Order made in 1964. Therefore, that section could not be relied on by the applicants for recognition of orders made in the British Virgin Islands.

34. Laffoy J. noted also that the Ministerial Order recognising the UK had been superseded in respect of insolvency orders by the European Insolvency Regulation.

35. Laffoy J. considered whether it could be said that by making an order giving recognition to the liquidators appointed in the British Virgin Islands, the court was usurping the powers of the secondary legislator, which had made no recognition order in favour of the British Virgin Islands. Having reviewed the case law of this court and international jurisprudence (see para 29 above) the learned judge was satisfied that even prior to the enactment of s. 250 of the Act of 1963 there was an inherent common law jurisdiction to provide assistance to a foreign court in relation to insolvency proceedings and section 250 did not eliminate that jurisdiction.

36. No Ministerial Order has been made under s. 1417 of the Act of 2014, recognising any country. Furthermore, S. 1417 (and its predecessor s. 250 of the Act of 1963) relates only to recognition and enforcement of orders of foreign courts, recognised for the purpose of the section and made in the course of the winding up of a company. In this case I am not being asked to give recognition to an order made in the course of a winding up, but instead to administration proceedings, which are not winding up proceedings. The significance of *Mount Capital* was that the court was not deterred by the non-applicability of s. 250, and was satisfied that there existed a common law jurisdiction to recognise foreign insolvency proceedings.

37. Although Laffoy J. declared herself to be satisfied that the court had jurisdiction to recognise foreign insolvency proceedings, the case related to foreign winding up proceedings. Therefore, I am required to consider the application of this precedent to a different form of foreign insolvency proceedings, being administration proceedings.

The Insolvency (Northern Ireland) Order 1989: Administration

38. In *Mount Capital* the applicants were the liquidators of companies in the British Virgin Islands seeking to obtain recognition and assistance of this court pursuant to s. 245 of the

Companies Act, 1963, which corresponded to almost the identical provision of s. 284 of the BVI Act.

39. Administration is not the same as liquidation, governed by Part 11 of the Act of 2014. Nor is it the same as examinership under Part 10 of the Act. This brings me to the question of whether there is sufficient equivalence of jurisdiction in terms of the powers which the Joint Administrators of the Company seek to invoke on this application.

40. Ms. Forester exhibited extracts from the 1989 Order and referred also to relevant provisions of the Act of 2014.

41. Paragraph 4 of the First Schedule to the 1989 Order provides that an administrator must perform his functions with one or more of three objectives, namely:

“(a) rescuing the Company as a going concern, or

(b) achieving a better result for the Company’s creditors as a whole than would be likely if the Company were wound up (without first being in administration), or

(c) realising property in order to make a distribution to one or more secured or preferential creditors.”

42. By contrast, examinership under Part 10 of the Act of 2014 can only be invoked for the first of these purposes, namely the rescue purpose, and only where the court is satisfied that there is a reasonable prospect of survival of the subject company and all or part of its undertaking as a going concern. There is in Part 10 no stated *“alternate purpose”* such as corresponds to 4(b) (or (c)) above namely, *“achieving a better result for the Company’s creditors as a whole than would be likely if the Company were wound up.”*

43. Conversely, of course, the rescue of a company as a going concern is not one of the stated purposes of a winding up under Part 11 of the Act. In certain cases the survival of the business of a company may be achieved through a disposal by the liquidator of assets, and where possible interests in contracts. Where necessary for the beneficial winding up of the

company the liquidator may carry on the business of the company. But the objective is not rescue of the company itself. It is the realisation of assets and distribution of net proceeds for the benefit of creditors (and members in the case of a solvent winding up), the conduct of any necessary investigations and application of any required sanctions for breaches of company or other laws, and the final dissolution of the company.

44. The Second objective stated in Paragraph 4 of the First Schedule to the 1989 Order, namely, to achieve a better result for the company's creditors as a whole than would be likely if the Company were wound up without first being in administration, has no direct equivalent in the Act of 2014. Under Paragraph 4(b), a winding up and later a dissolution may follow, but the premise of this permitted objective is to secure a better outcome for creditors than would be achieved if the company entered liquidation directly.

45. These differences do not mean that there is not an equivalence of jurisdiction in relation to corporate insolvency generally, as it was put by Laffoy J. in *Mount Capital*, or that recognition is not being sought for a legitimate purpose in the performance of the statutory functions of the insolvency office holder seeking recognition. This requires a consideration of the nature of administration and the powers of administrators generally and a focus on the purpose for which recognition and orders in aid are sought in this case.

Equivalence of jurisdiction

46. By reference to para. 4 of the First Schedule to the 1989 Order, Mr. Murray and Ms. Forester gave evidence that in the context of this particular administration the objective which is being pursued is that identified in para. 4.1(b), namely, to achieve a better result for the Company's creditors as a whole than would be likely if the Company were wound up without first being in administration. Ms. Forester says that in pursuit of this objective the Joint Administrators are exercising their powers to continue the Company trading, and that this power is analogous to the power conferred on liquidators in paragraph 1(c) and (d) of the table

contained in s. 627 of the Act of 2014 which are: “(c) *recommence and carry on the business of the Company so far as may be necessary for the beneficial winding up thereof, where such business was not continuing at the date of the appointment of the liquidator or had ceased, and (d) continue to carry on the business of a company so far as may be necessary for the beneficial winding up thereof, where such business was continuing at the date of the appointment of the liquidator and had not subsequently ceased.*”

47. Ms. Forester says that Para. 6 of the First Schedule to the 1989 Order confers on administrators the “*power to bring or defend any action or other legal proceedings in the name and on behalf of the Company*”. This is analogous to the power conferred on a liquidator in paragraphs 1 (a) and (b) of the Table to Section 627 of the Act of 2014, to “bring or defend any action or other legal proceeding in the name and on behalf of the Company.”

48. Para. 1 of the First Schedule to the 1989 Order confers on the administrators “*power to take possession of, collect and get in the property of the Company and, for that purpose to take such proceedings as may seem to him expedient*”. This corresponds to the duty conferred on a liquidator by s. 624 of the Act of 2014 which provides:

“(1) *Subject to subsection (3), it shall be the duty of a liquidator to administer the property of the Company to which he or she is appointed.*

(2) *For the purpose of subsection (1) ‘administer the property of the Company’ includes ascertaining the extent of the property of the Company and, as appropriate:*

(a) *the collection and gathering in of the Company's property;*

(b) *the realisation of such property; and*

(c) *the distribution of such property;*

in accordance with law.”

49. Ms. Forester describes the obligation of the Joint Administrators to realise assets of the Company wheresoever located. She says that if further difficulties were to arise between the Company and any of its debtors in the State it would be incumbent on the Joint Administrators to bring such proceedings in the State as may be necessary pursuant to their statutory function of securing assets of the Company for the benefit of its creditors. The power of an administrator in Northern Ireland to gather in the assets of the Company is equivalent to the function of a liquidator pursuant to Section 624 of the Act of 2014 to ascertain, collect, gather in and realise the assets of the Company to which he has been appointed.

50. Although administration under the 1989 Order is not the same as liquidation or examinership because it can be utilised for a number of different purposes, including the alternate purposes of a rescue or asset realisation for the benefit of the creditors, each of these objectives and the attendant powers have an equivalent within different parts of the Act of 2014, namely Parts 10 (examinership) and 11 (winding up). Most importantly for the purpose of this application, the asset realisation function of the Joint Administrators, coupled with the power to bring or defend legal proceedings in the name of the Company, directly corresponds with the provisions of Part 11 of the Act of 2014 quoted by Ms. Forester. It seems to me that in those circumstances there is sufficient evidence of equivalence between the two insolvency regimes to warrant the making of the orders of recognition sought on this application.

51. For completeness, the applicants have drawn my attention to other features of the 1989 Order which correspond to provisions of Part 11 of the Act and which relate to safeguards afforded to creditors in the context of the respective procedures. Both jurisdictions provide a basis for the convening and holding of meetings of creditors (para. 52, schedule B1 of the 1989 Order and s. 587 of the Act of 2014). Both permit a creditor who feels that the process is being undertaken unfairly or in a manner prejudicial to their interests can make an application to court

seeking redress, including in appropriate cases removal of the office holder (para. 89 schedule B1 of the 1989 Order and sections 637 and 638 of the Act of 2014).

Legitimate purpose

52. It is necessary, as Laffoy J. pointed out in *Mount Capital*, to consider not only the question of jurisdiction but whether recognition is being sought for a legitimate purpose. The purpose of this application is to ensure that insofar as it may be necessary for the Joint Administrators, in the performance of their statutory duties of realising assets for the benefit of creditors, to take any action, whether by way of legal proceedings or otherwise, in the State they may do so without encountering delay associated with establishing their standing to do so on behalf of and in the name of the Company in administration. This is clearly a legitimate purpose, again having direct equivalence with the functions of a liquidator appointed under Part 11 of the Act of 2014.

53. For all these reasons I was satisfied that it was appropriate to make the orders sought, and described in paragraphs 1 and 2 above. Since the Company's principal debtor in the State, Rath-Wood was not represented on the hearing of this application, I directed that this order be served on that party, and that it or any party affected would have liberty to apply to this court on notice to the Company.