

Neutral Citation No: [2026] NIMaster 9

Ref: [2026] NIMaster 9

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

ICOS No:

Delivered: 11/06/2026

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
CHANCERY DIVISION
IN THE MATTER OF HNW LENDING LIMITED

AND

IN THE MATTER OF THE COMPANIES ACT 2006

on 11 June 2026

25/74449

BETWEEN:
HNW LENDING LIMITED

Applicant
-and-

THE REGISTRAR OF COMPANIES FOR NORTHERN IRELAND
LARNE FARMS LIMITED (IN LIQUIDATION)
THOMAS KEENAN AS LIQUIDATOR OF LARNE FARMS LIMITED (IN
LIQUIDATION)

Respondents

Niall O'Neill for the applicant (instructed by Hool Law)
Alistair Fletcher for the liquidator (instructed by Tughans LLP)

MASTER KELLY

Introduction

[1] This is an application under section 859F(3) of the Companies Act 2006 (“the Act”) to extend time to register a charge as the prescribed 21 days for registration has elapsed. Time for registration in this case began to run on 12 July 2024, expired 21 days later, and the present application to extend time was not brought until 11 September 2025. The critical feature of the present case is not the length of the delay,

but what occurred in the interim: during the period of non-registration, the chargor company was wound up by order of the court and entered liquidation. The unregistered charge is thus void as against the liquidator by virtue of section 859H (3) of the Act.

[2] I am grateful to both Counsel for their helpful oral and written submissions on the discrete legal issues arising in this case.

Background

[3] The applicant's case may be briefly summarised as follows. On 11 July 2024, a charge deed was executed by or on behalf of Larne Farms Ltd (LF) to secure a loan of £500k advanced to it by the applicant. The director of LF is Mr Arnold Purdy. Mr Purdy is also director of another company, AP Developments Ltd (APD).

[4] The applicant's loan was to be secured against properties owned by both LF and APD. Consequently, two separate applications for registration were required. The applicant's solicitors prepared both applications and forwarded them together to Companies House via post on 22 July 2024. Companies House accepted the application for registration in relation to the APD charge and that charge was duly registered. The applicant's solicitors received the requisite certificate of registration on 6 August 2024. However, Companies House rejected the application for registration in respect of LF's charge. The applicant's solicitors say that the rejection was due to a "straightforward tick box" issue on the relevant form (Form MR01) which they swiftly corrected, returning the MR01 to Companies House by letter of 30 July 2024, and by way of first-class post.

[5] The applicant's solicitors claim they heard nothing further from Companies House and assumed that registration had been effected. As it turns out they were wrong to have made that assumption because Companies House had also rejected the second application.

[6] On 8 April 2025, a winding up petition was presented against LF and a winding up order made on 29 May 2025. The applicant contends that it knew nothing of the charge not having been registered until it received a letter dated 6 August 2025 from the liquidator's solicitor more than a year after the resubmission of the MR01 form. The applicant's solicitors also maintain that they, too, were unaware that the amended application had been rejected and as to the reason for the rejection. However, it may, in my view, be readily inferred from this application that it was because the amended application was delivered to Companies House outside the prescribed period.

The statutory framework

[7] Section 859A of the Act deals with charges created by a company and it provides:

“(1) Subject to subsection (6), this section applies where a company creates a charge.

(2) The registrar must register the charge if, before the end of the period allowed for delivery, the company or any person interested in the charge delivers to the registrar for registration a section 859D statement of particulars.

(3) Where the charge is created or evidenced by an instrument, the registrar is required to register it only if a certified copy of the instrument is delivered to the registrar with the statement of particulars.

(4) "The period allowed for delivery" is 21 days beginning with the day after the date of creation of the charge (see section 859E), unless an order allowing an extended period is made under section 859F(3)."

[8] Section 859F deals with the court's power to extend the time for delivery of a charge. It provides:

"(1) Subsection (3) applies if the court is satisfied that –

(a) neither the company nor any other person interested in the charge has delivered to the registrar the documents required under section 859A or (as the case may be) 859B before the end of the period allowed for delivery under the section concerned, and

(b) the requirement in subsection (2) is met.

(2) The requirement is –

(a) that the failure to deliver those documents –

(i) was accidental or due to inadvertence or to some other sufficient cause, or

(ii) is not of a nature to prejudice the position of creditors or shareholders of the company, or

(b) that on other grounds it is just and equitable to grant relief.

(3) The court may, on the application of the company or a person interested, and on such terms and conditions as seem to the court just and expedient, order that the period allowed for delivery be extended." {italics mine}

[9] Finally, section 859H addresses the consequence of failure to deliver charges. It provides:

"(1) This section applies if –

(a) a company creates a charge to which section 859A or 859B applies, and

(b) the documents required by section 859A or (as the case may be) 859B are not delivered to the registrar by the company or another person interested in the charge before the end of the relevant period allowed for delivery.

(2) “The relevant period allowed for delivery” is—

(a) the period allowed for delivery under the section in question, or

(b) if an order under section 859F(3) has been made, the period allowed by the order.

(3) Where this section applies, the charge is void (as far as any security on the company's property or undertaking is conferred by it) against—

(a) a liquidator of the company,

(b) an administrator of the company, and

(c) a creditor of the company.”

The parties' case

[10] Per paragraph 9 of the applicant's skeleton argument its case may be distilled into the following three grounds:

(i) That pursuant to section 859F(2)(a)(i) and section 859F(2)(b), there is sufficient cause or it is just and equitable to grant the relief sought.

(ii) Further or in the alternative, that there is no prejudice to creditors per 859F(2)(a)(ii) of the Act if the court were to grant the relief sought, and

(iii) That exceptional circumstances pertain such that the charge should now be registered.

[11] The liquidator's position is straightforward. He argues that there is no basis for the relief sought by operation of law, and that the applicant's case fails on all three grounds.

The question for the court to decide

[12] The key feature of this case is that the legislation does not, on the face of it, distinguish between applications to extend time made before or after liquidation. However, the legal consequences are materially different. Once liquidation intervenes, the charge is void by operation of law as against the liquidator and the company's creditors. In those circumstances, any order extending time for registration would not merely regularise a procedural default; it would alter the substantive legal effect of section 859H(3). Thus, the question the court now has to decide is the question of whether on the evidence it is just and equitable to grant the

relief sought. This necessarily involves looking at the application of sections 859A,F & H to the applicant's case, and the transformative effect of liquidation itself.

Consideration

Section 859F(2)(a)(ii): prejudice

[13] Of primary concern to the court post-liquidation is the question of whether any prejudice to creditors would be caused by the granting of the relief. Moreover, this is an issue on which the court must be satisfied. In my judgment, the prejudice to creditors is plain. A void charge ranks only as an unsecured claim in the order of priority, whereas a validly registered charge would enjoy priority status. In that setting, the court is not concerned with a routine extension of time to cure an omission, but with whether it should intervene after insolvency to disturb a legal position that has already crystallised.

[14] The height of the applicant's case under section 859F(2)(a)(ii) is that there is no evidence that any such prejudice would be caused. In my judgment, that proposition is not sufficient for the purpose of this application nor is it consistent with the strict requirement of section 859F(2)(a)(ii). Moreover, the basis for this claim appears to be the applicant's own professional valuations obtained for lending purposes. These valuations merely demonstrate that the properties intended to be secured appear to have a good loan to value ratio.

[15] Of greater significance is that the applicant has no factual knowledge of the company's affairs. Indeed, the financial position of the company remains unclear even to the liquidator. To complicate matters further, LF's director has failed to cooperate with the liquidator in his investigations into the company's affairs. Consequently, the applicant is unable to discharge the burden of satisfying the court that no prejudice will be caused by the granting of the relief. It follows then that the requirement under section 859F(2)(ii) cannot be met. On the other hand, the court can be satisfied that no prejudice to creditors will be caused by refusing the relief sought because if it transpires that there are sufficient assets to pay all creditors in full, the applicant as an unsecured creditor will recover its liability.

Other grounds: Section 859F(2)(a)(i) or 859F(2)(b)

[16] In principle, even if the applicant's case under section 859F(2)(a)(ii) fails, relief could still be granted under section 859F(2)(a)(i) or 859F(2)(b). However, in my judgment, if the court cannot be satisfied that no prejudice to creditors will be caused by the granting of the relief, then the issue of inadvertence etc, even if genuine, becomes otiose.

[17] The threshold for relief post-liquidation must be exacting. An application that might, before liquidation, have been comparatively straightforward becomes, once liquidation has commenced, an altogether different and inherently contentious matter. In such circumstances, only exceptional circumstances could justify the court's intervention. Even then, there is little in the way of authority for extending time to register a charge once the chargor company has gone into liquidation. The key authority, however, is *Re Ashpurton Estates Ltd* [1983] Ch110. The Court of

Appeal in *Re Ashpurton*, while not being prescriptive, did nevertheless suggest that it could only envisage something as serious as fraud as an example of exceptional circumstances once a chargor company has entered liquidation.

[18] The applicant has provided no evidence of exceptional circumstances which would justify the court granting the relief sought. Its case appears only to be that it was unaware that the charge had not been registered. There is no evidential basis for the applicant's vague suggestion that the fault for this somehow lies with Companies House nor is it relevant for the purposes of this application.

[19] The applicant also proposed that the court could make an order extending time but add a proviso that the order is without prejudice to any rights acquired by other parties in the period between when the charge *should* have been registered and when it actually *was* registered. Such a proviso flows from the case of *Re LH Charles & Co Ltd* [1935] WN15 and is commonly known as a *Re Charles* order. However, such orders may be appropriate when liquidation is envisaged but futile when it has actually occurred (see: *Re: Ashpurton* p124). In any, case, for such an order to be made, the applicant would still have to meet the requirement of section 859F(2) and for the reasons given, I do not consider that it has done so.

Conclusion

[20] Based on all the material before me, I am led to conclude that this is a case where the applicant failed to register the charge within the prescribed timescale and further failed to notice that no certificate of registration had issued (as it had in the related APD application). Regardless of whether that failure was inadvertent or not, during the period of delay which followed, the worst thing that could have happened did happen – namely, LF entered liquidation.

[21] The commencement of liquidation fundamentally changes the legal landscape within which an application to extend time for registration of a charge falls to be determined. The interaction between sections 859F and 859H is central to this application and, in my view, is fatal to the applicant's position as it directly informs the exercise of the court's discretion and the question of whether it is just and equitable to grant relief. The charge is void as against the liquidator and the applicant has provided no evidence of exceptional circumstances which would justify the court granting the relief sought.

[22] The requirements of section 859F (2) are not met here. The delay was not a short or technical default capable of being explained away without consequence; rather, the application was brought only after the registration period had long expired and after the company had entered liquidation. In those circumstances, the omission cannot realistically be characterised as merely accidental or inadvertent in any sense sufficient to justify relief. Nor can it be said that no prejudice would arise to creditors or shareholders, since liquidation has already fixed the rights and priorities of creditors within the statutory insolvency regime, and any extension of time would disturb that settled position by elevating what is presently void as against the liquidator and creditors into an effective security. No exceptional circumstances have been demonstrated which would justify intervention after liquidation. For the

same reason, there is no separate basis on which it could properly be said to be just and equitable to grant relief.

[23] For the reasons given, the application is hereby refused.

[24] I will now hear any submissions from the parties in relation to costs.