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

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Delivered:	04.02.2002

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION (COMPANY INSOLVENCY)

IN THE MATTER OF REVIEW PUBLISHING LIMITED
(IN ADMINISTRATION)

AND IN THE MATTER OF THE INSOLVENCY
(NORTHERN IRELAND) ORDER 1989

GIRVAN J

JUDGMENT

The applicant is the administrator of Review Publishing Limited, a company which was put into administration by order of this court on 6 March 2001. The purposes of the administration were firstly the approval of a voluntary arrangement within Part 2 of the Insolvency (Northern Ireland) Order 1989 ("the 1989 Order") and secondly a more advantageous realisation of the company's assets than could be effected in a winding up. It is now clear that the purposes for which the administration order was made have been achieved and there is an affidavit from the administrator Mr Kelly setting out the background to the achievement of those purposes. He now seeks an Order of Discharge under Article 30(2)(a) of the 1989 Order which provides that the administrator shall make an application under that article if "it appears to him that the purpose or each of the purposes specified in the

order has been achieved". Under Article 30(3) it is provided that on the hearing of an application under the article the High Court may make an order to discharge or vary the administration order and make consequential provision as it thinks fit or adjourn the hearing conditionally or unconditionally or make an interim order or any other order it thinks fit. When the matter first came before me I raised the question whether it was desirable in this type of situation for the company after the conclusion of the administration to be left in existence as in reality an empty shell. I oppose the question whether it would be more appropriate for the discharge to be in some way linked to the taking of steps to wind up or dissolve the company.

The terms of the arrangement are proved by the creditors provided for a dividend for the ascertained preferential creditors and provided for no payment to be made to the ordinary creditors as ascertained. The scheme of arrangement in clause N provided that "upon completion of the arrangement the company should have no assets or liabilities and in the circumstances the directors may write to the Companies Registrar and request that the company be struck off the Companies Register." The creditors voted in favour which was approved with the requisite majority would thus appear to have envisaged that the administration came to an end it would be for the directors of the company to take appropriate steps to dissolve the company.

On one view it does not really concern the creditors what happens in relation to the company because the company's liability to the creditors has been discharged as a result of the approval of the scheme. It is only a matter

of administrative tidiness to clear the name of the company from the register. The continued existence of the company can in effect cause no harm. It is not going to trade and it is not going incur further debts. Its continued existence thus cannot prejudice creditors who signed up to the scheme. It clearly was envisaged by all parties that the company would not carry on with any business thereafter and it would be struck off. It is also envisaged by the terms of the scheme that the company would not as such be put into liquidation with the expense that such a liquidation would of itself create.

Having heard the submissions made by Mr Dunford on behalf of the administrator I am satisfied that in this situation, unlike certain other situations, the court is not concerned to ensure that the company as such be wound up. Where for example there was a winding-up petition in existence at the outset to the administration it may be envisaged that ultimately there will be a winding-up. The authorities indicate that in such cases one needs to be careful to take account of the different commencement dates that would apply in an insolvency situation depending on whether or not the administration order exists or has ceased to exist and the winding-up order is made. It does have an effect upon the relevant commencement date of the insolvency. I do not consider that in this case we need to be drawn into that rather complex area of law because the effect of the approval of the scheme is that there are now no known debts or liabilities, preferential or otherwise and in the result we are not now concerned with any problems of fixing a commencement date for an insolvent winding-up.

Article 603 of the Companies (Northern Ireland) Order 1986 provides that:

> "If the registrar has reasonable cause to believe that a company is not carrying on business or an operation he may send to the company by post a letter inquiring whether the company is carrying on business or in operation. If he does not within one month of that letter being sent receive any answer to it, he shall within 14 days after the expiration of that month send to the company by registered post or recorded delivery service a letter referring to the first letter and stating that no answer to it had been received and that if an answer is not received to the second letter within one month a notice will be published in the Belfast Gazette with a view to striking the company's name off the register. If the registrar either receives an answer to the effect that the company is not carrying on business or in operation or does not in fact receive any letter he may publish in the Belfast Gazette and send to the company a notice that at the expiration of three months from the date of that notice the name of the company will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved."

It is regrettable in a way that the legislation does not make provision for a straightforward and simple application to the registrar to strike out a company after the completion and implementation of a scheme of arrangement which has cleared all the debts and where the assets of the company have all been got in and dealt with as part of a scheme of arrangement. The current legislation relating to administrations is under review in a number of respects and the present type of situation is one which might be worthy of further investigation. The current legislation envisages that it is the registrar who is the moving party in striking a defunct company

off the register. It is the registrar who has to serve the notice on the company which appears to be defunct giving it one month to respond and he then gives the appropriate notice in the Belfast Gazette. The total procedure involves a timescale of some five months. In practice it appears that in response to information from directors of a company that the company is no longer carrying on business the registrar does on occasion take steps in response by activating the procedural steps referred to as a preliminary to striking the company off the register. This is what appears to have been envisaged under the scheme of arrangement.

I consider that at this point in time the administrator has fulfilled his functions and that the future of the company can be dealt with by the directors who in accordance with the provisions of clause N of the scheme can apply to have the company struck off. It will take a number of months to effect this procedure having regard to the complex mechanisms set out in Article 603 but I am satisfied that that is not something that should lead to a delay of the discharge of the administration order. In the course of the argument it was tentatively argued on behalf of the administrator that the administrator himself should give notice to the registrar and bring into play the provisions of Article 603. That is not something that the creditors have required of the administrator as part of the scheme which envisaged that it was a matter for the directors.

In the circumstances I am satisfied that it is appropriate to make an order discharging the administration order of 6 March 2001 on the grounds

that the purposes specified in the administration order had been achieved. In the circumstances I will also make an order under Article 32 releasing the administrator for the purposes of the 1989 Order. I direct that the costs of the application be paid as an expense of the administration.

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