

Neutral Citation: [2011] NICH 5

<i>Ref:</i> DEEA6054.T

*Ex tempore Judgment: approved by the Court for
(subject to editorial corrections)*

<i>Delivered:</i> 11/03/11

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

BETWEEN:

Financial Services Authority

Plaintiff;

and

ETIC SOLUTIONS LIMITED

Defendant.

DEENY J

I am satisfied that the Financial Services Authority is entitled to bring an application to wind-up the company. That application is listed for hearing next month before the Master. However, the Financial Services Authority have become apprehensive about a number of aspects about the continuing operation of this company to which I will turn in a moment and they therefore in this application seek to avail of the provisions of Article 115 of the Insolvency Order (Northern Ireland) 1989 which empower this court “at any time after the presentation of a winding-up petition” to appoint a liquidator provisionally and they seek to appoint two gentlemen, Mr Paul Rooney and Mr Daniel Schwarzmann, both of Price Waterhouse Coopers, of London

and Belfast, to be the joint provisional liquidators. The matter has been set out in a very full and helpful affidavit and the court has also had the benefit of helpful written and oral submissions by counsel for the Applicant. The court earlier refused an application to adjourn the matter on behalf of the company brought by Mr John Coyle of Counsel instructed by Messes Madden & Finucane. Mr Coyle was instructed to make no submissions upon the substantive application which the court decided should go ahead. It is not necessary for me for these purposes to set out in extenso the matters set out in the affidavit of Mr Mangioni - to a large degree they speak for themselves, but in summary what is clear is that ETIC Solutions Limited whether by its Directors Francois DeDietrich and Severine DeDietrich or other persons appear to be acting in breach of the previous order of this court with regard to their activities. Those activities were manifestly and clearly the unlawful taking of deposits in a way that was not permitted by licence under the statutory provisions in the United Kingdom. Furthermore, it seems increasingly likely that they were taking the deposits for the purposes of fraud on investors by luring them into a belief that they were trading in liquidation assets when this was not the case. There was some evidence, not over extensive evidence, but there was some evidence of somebody still acting on behalf of ETIC and sending and receiving emails after the Order of the Court and in breach of it. That is set out in more detail at paragraphs 79, 82, 89 and 98 of Mr Mangioni's affidavit. That means that there are persons who may still be seeking to defraud members of the public or to sequester assets from the Financial Services Authority which should be disclosed and discovered so that they can be returned to any investors who may be at a loss. Similarly, the Authority is

fully entitled to say that the affairs of the company require a thorough and prompt investigation. It is clear in my view that it is in the public interest that that be done. The most effective way of doing that would appear to be by the appointment of provisional liquidators. There is haste to do that because the assets obtained by Francois DeDietrich and his company have not been fully disclosed; happily some have been disclosed and restrained, but it appears likely that there are more assets which have not been disclosed and therefore the applicant's further ground that there is need to preserve whatever assets that can be located is indeed a very live ground. I observe in addition that they draw to my attention that two gentleman called O'Donnell have in the Republic of Ireland, so far as they are aware, obtained a judgment of a substantial kind against the company. They inform me and undertake to swear an affidavit to the effect that there are no insolvency proceedings commenced in any other jurisdiction. Those are Mr Shaw's current instructions and on that undertaking I am therefore satisfied that I do not have to consider further the relationship of this court with those in the neighbouring jurisdiction. ETIC is registered in the Republic but carried on business in Northern Ireland. I have been addressed on the Insolvency Regulations (Northern Ireland) 2007 which apply in this jurisdiction the Model Law adopted by the United Nations Commission on International Trade Law on the 30th May 1997 which relates to the enforcement of Foreign Insolvency proceedings. There is also a European Regulation in force but as the Authority is proceeding on a public interest basis i.e. that it is just and inequitable to wind-up the company rather than an Insolvency basis, apparently that regulation does not apply. So for all those reasons I am satisfied that it is proper to

make an order in the form of the minute of judgment discussed with Counsel subject to some modest amendments which can be incorporated in the final order and that this order takes effect from now 1.00 pm on the 11th March 2011. I further order that the costs of the Applicant are to be costs in the winding-up petition.