

JERSEY / JUDGMENT

Representation of RTI Limited re Pirie and Roberts 4-Sept-2025 (Royal Court : Hearing (Civil) : Thompson : Companies) [2025] JRC 221 (4 September 2025)

[2025] JRC 221

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judgment

the commissioner:

Introduction

1. This judgment contains our reasons for granting an application by Mr James Pirie and Mr Alan Roberts as the provisional liquidators of RTI Limited (the "Provisional Liquidators" and "the Company" respectively) in support of the Provisional Liquidators' application to the Royal Court for the issuance of a Letter of Request to the High Court of Justice of England and Wales. 2. The Provisional Liquidators were appointed in respect of the Company by an Act of Court dated 17 July 2025 (the "Appointment Act"). 3. The reasons for making the Appointment Act were set out the judgment of the Royal Court dated 8 August 2025 ("the Judgment"). In particular, we refer to paragraphs 65 to 67 of the Judgment: "65 In this case, RTI is not a trading company. Based on the material before us, it seems to be undergoing some form of restructuring. However, as Advocate Christie contended, there are serious questions about why a loan of US Dollars 166 million was repaid shortly before the arbitration award was about to be released and whether, as he alleges, some form of asset stripping has occurred. The evidence filed on behalf of RTI to date is lacking in sufficient detail and begs more questions than it answers. In particular, it is not clear when the loan of US Dollars 166 million was repaid to RTI, why these monies were then paid away by RTI, who they were paid to and what was the legal basis for making such payment. In addition, there are questions as to why payments were made with the speed that they were.
66. All of this, in our judgment, requires investigation and further warrants steps being taken to preserve assets. We also agree with Advocate Christie if we were therefore to leave matters until the question of a creditors' winding up order being made was resolved, then any trail would have been likely to have gone cold. The investigation needs to take place as a matter of urgency.

67. As matters stand, it is also right to recognise that OWH is in reality only likely to recover assets which are outside Russia. We therefore conclude it is important for a provisional liquidator to be able to preserve such assets. We accordingly grant the application to appoint a provisional liquidator." 4. The Appointment Act and the Judgment also noted that determination of whether the Company should be subject to a creditors' winding up was to await the outcome of firstly the appeal of the Company against the Royal Court judgment in OWH SEIL v RTI Limited

[2025] JRC 137 and secondly, a challenge made by the Company's under Section 68 of the Arbitration Act in the English Commercial Court. This challenge was against an Arbitration award made against the Company. The background to the arbitration award is set out at paragraphs 3 to 22 of the judgment of the Royal Court under appeal. We also note that the Company sought a stay pending appeal which was refused by Sir Michael Birt, sitting alone, for the reasons set out in a judgment dated 16 June 2025 reported at

[2025] JRC 160 . 5. We also note, however, that the challenge made pursuant to Section 68 of the English Arbitration Act 1996 was subsequently dismissed by a judgment dated 28 July 2025 exhibited to the affidavit of James Pirie, one of the Provisional Liquidators, sworn in support of the present application. 6. The same affidavit summarised investigations to date made by the Provisional Liquidators. In particular, the Provisional Liquidators have sought information from the current sole director of the Company, Roman Khaev ("Mr Khaev"), former officers of the Company, the Company's shareholder, and from law firms in England and other jurisdictions holding funds received from the Company. 7. The Provisional Liquidators had also been notified of certain claims made in arbitration proceedings against the Company. 8. The most significant asset concerns a hedge instrument governed by English law in the form of an ISDA Agreement with Goldman Sachs. Goldman Sachs have served a Notice of Default terminating this agreement. The Provisional Liquidators have received a further notice indicating that Goldman Sachs are holding approximately US Dollars 7.4 million to the order of the Provisional Liquidators. 9. The Letter of Request was therefore sought to enable the Provisional Liquidators, through having the appointment of the Provisional Liquidators formally recognised in England and Wales: (i) To obtain information from any current or former officers and/or employees and/or other third party service providers to the Company; (ii) To obtain books and records of the Company from third parties who may be holding such books and records; (iii) To ensure that the appointment of the Provisional Liquidators was recognised in relation to monies held by Goldman Sachs. 10. The Provisional Liquidators also wanted to ensure that the moratorium arising pursuant to Article 157B(4) of the Companies Law is recognised and applied by the English Court. 11. The detailed evidence in support of these matters was set out in the affidavit of Mr Pirie and it is not necessary for the purposes of this judgment to repeat that detail which we have carefully considered. The Company (i.e. its directors) was also aware of the application and a representative of the Company's Advocates was in Court observing the hearing of the application. Moreover, the Company was represented by its Advocates at the hearing that led to the Appointment

Act. 12. The main issue that the Provisional Liquidators properly raised was the question of the jurisdiction of the Royal Court to request the assistance of a foreign court. This was because there is no statutory authority creating such jurisdiction. In other types of insolvency matters, the Royal Court instead has relied upon its inherent jurisdiction. 13. The use of the Court's inherent jurisdiction to seek assistance in insolvency matters was recognised in *Re OT Computers Limited*

- [2002] JLR N10. In *OT Computers*, what was sought was the issue of a letter of request so that an administration in order could be made in England. This was requested because there would be a more advantageous realisation of the assets of the company in *OT Computers* through an administration order, instead of a winding up. 14. The question of jurisdiction was further explored in *Re REO (Power Station) Limited*
- [2011] JRC 232A at paragraphs 5 to 15, leading the Court to state as follows at paragraph 16: "16. All these considerations, however, go to support these two propositions:- The Court does lend its assistance in an appropriate case to a process by which formal proceedings against a debtor can be suspended in order to achieve an orderly realisation of the debtor's assets; In insolvency matters generally, the Court has in the past exercised an inherent jurisdiction in a number of different respects." 15. Advocate Sanders quite properly noted that decisions such as *OT Computers* and *REO* were seeking to subject Jersey incorporated companies to an English insolvency process, which process did not exist in anything like the same form in Jersey. He submitted however that the principles recognised in them were of more general application to a jurisdiction of the Royal Court to request assistance in other insolvency matters. 16. He further noted that a letter of request was issued in the *Representation of The Viscount v Cochrane and Orb ARL*
- [2017] JRC 025 . In the *Cochrane* decision, Dr Cochrane and Orb were the subject of *désastre* proceedings in Jersey. Letters of request were approved and issued seeking the assistance of the English Court in accordance with Section 426 of the Insolvency Act 1986. 17. The judgment of the Royal Court in *Cochrane* did not set out the jurisdictional basis or approach adopted in the *OT Computers* or *REO* case. However, Advocate Sanders contended, and we agree, that it was clear that in *Cochrane* the Royal Court was prepared to issue letters of request to seek the assistance of the English Court to pursue necessary steps in the context of *désastre* proceedings. 18. The reference in *Cochrane* to the Court being in no doubt that the Viscount needed to be able to gather information of third parties in England chimes with the necessity test discussed in *REO* , in particular at paragraph 12 where Sir William Bailhache referred to the well-known passage of the Court of Appeal in *Finance and Economics Committee v Bastion Offshore Trust Company*
- [1994] JLR 370 at page 382. That decision in particular noted that the inherent jurisdiction was: "...a virile and viable doctrine that has been defined as being the reserve or fund of powers, a residual source of powers, which the Court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression to do justice between the

parties and secure a fair trial between them." 19. In the present case, we were equally satisfied that the Court's inherent jurisdiction should be exercised because it is necessary for the Provisional Liquidators to seek the assistance of the English High Court and we accepted the submissions of Advocate Sanders as representing the law of Jersey. 20. We further agreed that the position is analogous to that in *Cochrane*. In the *Cochrane* decision, there were bankruptcy proceedings in Jersey and the Viscount was seeking the assistance of applicable powers available under the equivalent English insolvency regime to assist the Viscount discharge the duties owed under the Bankruptcy (Désastre) (Jersey) Law 1991. 21. In the present case, the concept of provisional liquidation is known to both jurisdictions. We are therefore of the view that there is every reason to accept that this Court possesses jurisdiction to request the assistance of another Court in matters of provisional liquidation where that other Court is able to grant provisional liquidators powers to assist the provisional liquidators to discharge their functions. 22. To that extent, the jurisdiction of the Royal Court to request assistance clearly exists where Jersey is exercising insolvency procedures available to it and needs the help of another Court. Where the insolvency procedure invoked in Jersey and the procedure to be relied upon in the country to whom the request is being sent are analogous, that provides the strongest ground for this Court making use of its inherent jurisdiction to request assistance. 23. Having determined that the Court possessed the jurisdiction to issue a Letter of Request at the invitation of Provisional Liquidators appointed by this Court, we then considered whether to exercise the Court's discretion to issue the Letter of Request as asked for. 24. We agreed with the Provisional Liquidators that it was plainly in the best interests of the creditors as a whole for their appointment to be recognised in England when: (i) the Company had substantial connections to England; (ii) it was a named defendant of the English arbitration; (iii) it was party to a number of other arbitration proceedings which the Provisional Liquidators needed to deal with; (iv) there is a need to collect and preserve funds held by Goldman Sachs; (v) there is a need to obtain information from companies, firms or individuals in England relating to the Company's affairs; and (vi) there is a need to ascertain whether funds held by various law firms could be recovered. 25. We further agree that the matters set out in the Judgment also justified a detailed investigation as to what had happened. 26. The affidavit of Mr Pirie, to which we have already referred, was also clear about the efforts that had been made to date and that it was apparent that progress would not be made with certain parties unless the appointment of the Provisional Liquidators was recognised by the English Courts. 27. Advocate Sanders also reminded us that, for this Court to exercise its discretion to issue a Letter of Request, we had to be persuaded that Letter of Request would be favourably received by the English Court. Exhibited to Mr Pirie's affidavit was therefore an opinion from Jessica Powers of New Square Chambers in London who provided a detailed opinion for which we are grateful. In summary, Ms Power's opinion concluded: (i) The English Court will receive a Letter of Request in the form drafted; (ii) The Letter of Request will enable the English Court to consider making the orders sought under Section 426 of the Insolvency Act 1986; and (iii) On the material available to English counsel, she was of the opinion that the

English Court would be likely to consider this an appropriate case for the granting of the assistance sought. 28. We were also provided with copies of the authorities referred to by Ms Powers in her opinion which we have considered. 29. The opinion provided meant that we were satisfied that it was likely that the English Court would grant the orders sought in the proposed Letter of Request. Consequently, we were able to exercise our discretion to issue the draft Letter of Request to the English Court. 30. In approving the draft order, we noted the observations of Mrs Allo from the Viscount's Department. However in this case we were satisfied that the concerns expressed in the Judgment meant that it was appropriate for the Provisional Liquidators to be able to possess and exercise the same broad powers available to them in England as we had granted by the Appointment Act. We were however careful to ensure that the scope of the powers sought by the Letter of Request went no further than and was subject to the same limitations as the Appointment Act. 31. Finally, it is right that we record that in relation to the draft order and Letter of Request, we made certain minor modifications to the draft provided to us. 32. The first of these was a modification to the draft order where we granted the Provisional Liquidators liberty to apply to come back to this Court for further directions. This was to avoid the Provisional Liquidators having to issue a fresh Representation each time it wanted to seek further directions. In that regard, we ruled that the Representation that led to the appointment of the Provisional Liquidators and the adjourned creditors' winding up should in the future deal with whether or not a winding up order should be made. The Representation leading to this application should be used in the future for any further directions sought by the Provisional Liquidators. 33. The second minor modifications we made were to make it clear that any permission sought from the English High Court was in respect of assets or information within England and Wales, and any investigations should be limited to that jurisdiction. We made these modifications because we regard this jurisdiction as being the primary jurisdiction dealing with the role of the Provisional Liquidators and, in due course, whether or not the Company should be wound up on the basis of a creditors' winding up. While we are extremely grateful for any assistance the English Court can give, it is important that, as the Company is a Jersey company, any liquidation, including the ongoing role of the Provisional Liquidators, is subject to the ultimate scrutiny and powers of this Court. This means that while we recognise and accept the jurisdiction of the English High Court to give directions in respect of matters falling within this Court's request for assistance, the overall conduct of the Provisional Liquidation and whether assistance should be sought from any other court or whether substantive claims should be made or continued as part of preserving assets (i.e. some form of blessing of such claims), remains a matter for the Royal Court. Authorities Companies (Jersey) Law 1991. OWH SEIL v RTI Limited

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[2025] JRC 160 . Re OT Computers Limited

[2002] JLR N10. Re REO (Power Station) Limited

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