In the High Court of Justice ***Claim No: CR-2017-000140***
Business and Property Courts of England and Wales
Insolvency and Companies List (Ch D)

In the Matter of the Insolvency Act 1986

And in the Matter of Middlesbrough Football & Athletic Company (1986) Ltd

BETWEEN

Earth Energy Investments LLP

Applicant

and

Middlesbrough Football & Athletic Company (1986) Ltd

Respondent

ORDER

Before **the Honourable Mr Justice Nugee** sitting at the Rolls Building, 7 Rolls Building, Fetter Lane, London, EC4A 1NL on 21 March 2018

UPON the Application of the Applicant dated 1 March 2018

AND UPON reading a letter from the Respondent's solicitors dated 20 March 2018 applying for an order that the application be dismissed without a hearing

IT IS ORDERED AS FOLLOWS:

1. The Court does not think fit to dismiss the Application without a hearing.

2. The Application be listed for hearing in the usual way.

REASONS

1. The Respondent's letter is an invitation to the Court to determine the Application without a hearing. The Court has power to do this under CPR r 23.8(c) if it does not consider that a hearing would be appropriate.

2. However by PD 23A para 11.2 it is provided that "where rule 23.8(c) applies the court will treat the application as if it were proposing to make an order of its own initiative." This is a reference to the power of the Court to make orders of its own initiative under CPR r 3.3. The effect is that where an order is

made under r 28.3(c) without a hearing, any party affected may apply to set it aside under CPR r 3.3(5). The Court of Appeal has said that it is good practice to require any application under CPR r 3.3(5) to be made at a hearing: *Collier v Williams* [2006] EWCA Civ 20 at [37].

3. The practical effect therefore is that if I were to consider the Respondent's invitation to dismiss the Application without a hearing, and if I were to dismiss the Application, the Applicant would have a right to require the matter to be reconsidered and that would *prima facie* mean that there would have to be a hearing. In the circumstances of this case I have no doubt that Mr Millinder would exercise that right on behalf of the Applicant, and a hearing would in practical terms be unavoidable.

4. In those circumstances I do not see that it would be a sensible or proportionate use of the Court's time to deal with the application on paper. If a hearing is in practical terms inevitable, it is simpler to list the matter for hearing in the usual way. That will not prevent the Respondent from submitting at such a hearing that the application should fail because it is duplicative of the application heard and dismissed by me on 5 February 2018; but it will also give Mr Millinder an opportunity on behalf of the Applicant to make his submissions at an oral hearing.

5. I have therefore directed that the Application be listed for hearing in the usual way.