In the High Court of Justice
Business and Property Courts of England and Wales
Insolvency and Companies Court (ChD)

Case Number: CR-2017-000140

BETWEEN

Middlesbrough Football & Athletic Company (1986) Limited

Applicant

and

Paul Millinder

Respondent

ORDER

Before **the Honourable Mr Justice Miles** sitting at the Rolls Building, 7 Rolls Building, Fetter Lane, London, EC4A 1NL on the 27th day of November 2020

UPON considering the Application issued by Mr Paul Millinder dated 10 November 2020 made pursuant to CPR 3.1(7) to set aside the order of 23 October 2020 and the order of 6 November 2020

AND UPON the court considering that a hearing would not be appropriate.

IT IS ORDERED THAT:

1. The application of 10 November is dismissed.

2. The Court certifies that the application was totally without merit.

This order having been made without a hearing either party may apply (by application notice) to set it aside within seven days of service of this order on such party.

REASONS

1. Mr Millinder has made an application by notice dated 10 November 2020 pursuant to CPR 3.1(7) to set aside orders of 23 October 2020 (Mann J) and 6 November 2020 (Fancourt J) "as they were both founded on fraud and fraud by the Court but also manifest error wherein Fancourt admitted that he did not read or consider any part of the Claimant's case nor apply any standard review irrespective of fraudulent non-disclosure." He has also sought to recuse Fancourt J. The grounds are set out in a Continuation Sheet. I have read this

material carefully. I have also read the skeleton argument submitted by Mr Millinder dated 26 October 2020 and the supporting material.

2. The order of 23 October 2020 was made ex parte on an application by Middlesbrough Football & Athletic Company (1986) Limited ("the Club"). It restrained Mr Millinder from presenting a petition to wind up based on a statutory demand dated 5 October 2020. The debt specified in the statutory demand arose from dealings between the Club and a company called Empowering Wind MFC Ltd ("EW") in 2015 ("the underlying claim"). The claims of EW were claimed to be assigned to another company Earth Energy ("Earth") in 2017. Earth presented a statutory demand against the Club based on the underlying claim.

3. On 9 January 2017 Arnold J granted an injunction preventing Earth from presenting a petition based on Earth's statutory demand. That order was continued by consent by Norris J on 16 January 2017.

4. Earth applied to set aside the 16 January 2017 order for alleged non-disclosure. Nugee J dismissed that application on 5 February 2018.

5. Earth then applied again to set aside the order of 16 January 2017 and the order of 5 February 2018. On 7 June 2018 HH Judge Pelling QC dismissed that application and shortly afterwards made an Extended Civil Restraint Order against Mr Millinder.

6. In 2019 Sir Geoffrey Vos C conducted a hearing at which he reviewed the entire history. He held that it was too late to challenge the orders already made; but in any event held that the order of Arnold J of 9 January 2017 had been made correctly, as there was a genuine and substantial dispute about the underlying claim.

7. Despite this judgment Mr Millinder sought again to reopen the earlier orders. He applied to Nugee J for leave to bring an application. Nugee J made an order on 18 June 2019 rejecting numerous Mr Millender's applications to do so.

8. The statutory demand of 5 October 2020 is based on the same underlying claim as that made by Earth in 2017. Mr Millinder claims the benefit of an assignment of the claim by Earth to him dated 18 March 2018.

9. The order of Mann J of 23 October 2020 restrained Mr Millinder from presenting a winding up petition based on that statutory demand. Fancourt J's order of 6 November 2020 continued that injunction.

10. I have read a transcript of the judgment of Fancourt J. He concluded that there was a genuine and substantial dispute as to the underlying claims. This had already been determined by earlier decisions, including by the Chancellor in his 2019 judgment. Fancourt J also concluded that there was a genuine and substantial dispute as to the legal validity of the assignment from Earth of its rights to Mr Millinder of March 2018 arising from the fact that Earth is deemed

to have entered liquidation on 12 February 2018 (so that the assignment arguably became void under s.127 of the Insolvency Act 1986).

11. Fancourt J directed himself (correctly) that he did not need to decide the merits of these disputed points; only whether there was a genuine and substantial dispute. He concluded that there was and that any winding up proceedings based on the statutory demand of 5 October 2020 would therefore be an abuse of process. He decided that the Club was therefore entitled to an injunction.

12. Fancourt J went on to consider an application by Mr Millinder to set aside the order of Mann J for material non-disclosure. He noted that it would not make any difference because he would still have granted an injunction in any case. But he carefully considered Mr Millender's submissions and concluded that there had been no material non-disclosure.

13. Fancourt J continued the injunction and dismissed Mr Millinder's application to set aside Mann J's order.

14. I should also note that on 11 November 2020, after hearing argument from the Club and Mr Millinder, Fancourt J made a General Civil Restraint Order against Mr Millinder.

15. By his application notice of 10 November 2020 Mr Millinder applies to set aside the two orders. He says that the two orders were procured by fraud and fraud upon the court. His supporting evidence contains nothing at all to support this very serious allegation. He has made a series of wild and unsubstantiated allegations of fraud and corruption against many parties including the various judges who have ruled against him and the Club's lawyers. He has also accused the Court officers of being part of a conspiracy. That is wholly unjustified.

16. A party dissatisfied with a Court's order cannot seek to set it aside without proper reason. Simply saying that the order was founded on fraud is not enough. There must be proper evidence, and here there is none. This aspect of the application is totally without merit.

17. He also says that Fancourt J did not read or consider his case. This too is totally without merit. Fancourt J clearly gave careful consideration to Mr Millinder's arguments. Fancourt J did not entertain extensive argument about the merits of the underlying claims. He was entirely right: the question for the Court was whether there was a substantial and bona fide dispute. Mr Millinder has misunderstood the nature of the winding up jurisdiction: the winding up court is not for the trial of disputed claims. This has been explained to him by a number of judges but he chooses to ignore it. A measure of Mr Millinder's approach can be seen from his request to Fancourt J that there should have been a hearing of his application of some 21 days over a period of 7 days. Fancourt J addressed Mr Millinder's arguments with proper care and attention and came to a decision that cannot be faulted. I also reject Mr Millinder's application to recuse Fancourt J. There is nothing in the application or the supporting evidence to justify it. I also add that Mr Millinder's accusations that this judge and the other

judges who have found against him were dishonest are wholly inappropriate and should not have made.

18. This is in my view a wholly misconceived attempt to reopen the outcome of the hearing before Fancourt J. The Court has limited resources and there are many other court users who seek access to those resources. The Court will not allow disappointed litigants to waste those resources by attempting repeatedly to reargue hearings they have lost without proper reason.

19. The application is therefore dismissed. It is totally without merit.

20. Mr Millinder's application notice asked for a telephone hearing with a four hour estimate. Fancourt J made his order after a contested hearing at which Mr Millinder had the opportunity to make submissions. I consider that I should dispose of this application without a hearing pursuant to CPR 23.8. I have taken account of the need to allot to the application an appropriate share of the court's resources while taking into account the need to allot resources to other cases. I consider the position is entirely clear and it does not require or justify a hearing.

21. Finally I note that Mr Millinder asked for the case to be assigned to the Master of the Rolls. As explained by the listing officer the Master of the Rolls sits in the Court of Appeal. His application was not an appeal, but an application to set aside an order. In any case it is not for a litigant to demand the judge of his choice.

SERVICE OF THE ORDER

The Court has provided a sealed copy of this order by email to the parties and/or their legal representatives.