

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST

Rolls Building
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Fetter Lane
London
EC4A 1NL

BEFORE:

THE HONOURABLE MR JUSTICE FANCOURT

BETWEEN:

MIDDLESBROUGH FOOTBALL & ATHLETIC APPLICANT
COMPANY (1986) LIMITED

- and -

PAUL MILLINDER RESPONDENT

Legal Representation

Mr Dov Ohrenstein (Counsel) on behalf of the Applicant
Mr Paul Millinder (Respondent), in Person

Other Parties Present and their status

None known

Whole Hearing

Hearing date: 6 November 2020
(start and end times cannot be noted due to audio format)

Reporting Restrictions Applied: No

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A **Fancourt J:** Right, Mr Ohrenstein.

Mr Ohrenstein: (muted)

B **Fancourt J:** I cannot hear you. You are muted.

Mr Ohrenstein: Apologies, good afternoon, My Lord. Can you hear me now?

C **Fancourt J:** Yes, I can hear you now, thank you.

Mr Ohrenstein: Thank you. I appear for the --

D **Fancourt J:** Can --

Mr Ohrenstein: Applicant --

E **Fancourt J:** Mr Millinder hear, hear me and can I hear him?

Mr Millinder: Yeah, good afternoon, My Lord.

Fancourt J: Good afternoon.

F **Mr Millinder:** Are you OK?

Fancourt J: Thank you, good.

G **Mr Ohrenstein:** My Lord, there has been a bundle of documents that has been filed. I hope that has reached you. There have been various updates over the last couple of days, but the bulk of the folder has remained the same. There has been --

H **Fancourt J:** I have got --

Mr Ohrenstein: Additional --

A **Fancourt J:** An electronic --

Mr Ohrenstein: Correspondence --

B **Fancourt J:** Bundle which I gather has just been updated recently, so hopefully I have got the correct version.

Mr Ohrenstein: Thank you, and in that bundle or separately you should have my skeleton argument.

C **Fancourt J:** Yes, I have, thank you.

D **Mr Ohrenstein:** And I am not sure what opportunity there has been to, to go through some of that pre reading that I suggested. *If you --*

Fancourt J: Well, I spent about two and a half hours last night reading into this to understand --

E **Mr Ohrenstein:** *Yeah.*

Fancourt J: The, the background. I have to say your, your time estimate of pre reading was hopelessly low.

F **Mr Ohrenstein:** I, I --

Fancourt J: I do not know what you envisaged I would be doing *in --*

G **Mr Ohrenstein:** I apologise.

Fancourt J: *An hour.*

H **Mr Ohrenstein:** It, the, in fact, the, the, the, the bundle and the, the documentation expanded during the course of the week. So anyway, I apologise --

Fancourt J: *I did not read the whole bundle --*

A

Mr Ohrenstein: For the time estimate.

Fancourt J: But I, I did read everything you suggested in paragraph 2 and the documents you referred to in paragraph 3.

B

Mr Ohrenstein: Yes, well, then, then, then you will see what this application relates to.

Fancourt J: Can I, can I just say at the outset I, I have until 4.15 today? I am very happy to give this case the, the whole of the afternoon because I see it needs some time.

C

Mr Ohrenstein: Yes.

Fancourt J: But I cannot sit beyond 4.15, because I have got a meeting at 4.30, so ...

D

Mr Ohrenstein: Yes, well, I, *OK, well*, well, I, I anticipate being relatively brief, and Mr Millinder, I expect, may have quite a bit to say. What has, what has triggered this application is that since the expiry of the Extended Civil Restraint Order that had been made against Mr Millinder, he has served a statutory demand on my clients on 5 October with the clear threat of a winding up petition to follow. That prompted my clients' applications, application, singular, to restrain presentation of a petition and for a fresh extended Civil Restraint Order or a General Civil Restraint Order, and that came at an ex parte hearing before Mann J --

E

F

Fancourt J: Yes.

Mr Ohrenstein: On the, on 23 October.

G

Fancourt J: I have seen his order, yes.

Mr Ohrenstein: And during the course of submissions at that hearing, it came up that another way forward, an alternative way forward, would be to extend the previous Extended Civil Restraint Order. Notwithstanding that it had expired, it can still be, in effect, resurrected for a further period of two years, so a further application was made on the day of that hearing, immediately after that hearing, so that that alternative scenario could be

H

A followed if the Court so wishes. So what we have today are the, is, is the return date on the injunction. We would want the injunction preventing a petition. We would want that to continue, and in similar form to that which Mann J ordered. We would want it also to cover the presentation of any further *statutory demand* based on, on, on the similar circumstances to the previous statutory demand.

B And in addition, we seek a Civil Restraint Order. From my clients' personal perspective, the Extended Civil Restraint Order would protect them. However, because there has been a voluminous amount of accusations against anyone who has had anything, however tangential, to deal with the proceedings concerning Mr Millinder, the, may, the Court may think it is appropriate, rather than having an Extended Civil Restraint Order, either a fresh one or an extension of the previous one to, to grant a General Civil Restraint Order.

D The communications from Mr Millinder, if you have spent, as you say, you, you, you spent a considerable amount of time looking at those, those have continued over the last, well, today and over so forth. They have continued to make accusations against counsel, solicitors, the judiciary, anyone who is anything to do with Mr Millinder and this litigation. What has not, *or* what, what, what is not there in the, in the documentation is really an answer to the point that is made in my skeleton argument that deals with the fact that the statutory demand is over a disputed debt and it is no basis for a petition. And the, all, however much E Mr Millinder wants to assert that he feels that he is entitled to pursue a claim or something of that sort, the way forward on that is not by way of a statutory demand and a, *or*, *or* the threat of a winding up petition.

F **Fancourt J:** Yes.

G **Mr Ohrenstein:** And this is not simply me asserting a view of the law and the facts and the circumstances. These are matters which have been addressed by previous judgments *in the circumstances* of the, the chain of assignment, so he comes nowhere near the threshold that is required for presenting a statutory demand and, and, and pursuing a petition.

H **Fancourt J:** We *understand* the point. Just in terms of how, how we are going to approach it, before you embark on the, the substance of it, Mr Ohrenstein, obviously it is, it is your, your application for injunctive relief. Mr Millinder, I know, wishes to apply to set aside the order made by Mann J *ex parte*, on the basis of non disclosure or false representation.

A Probably, that can most conveniently be done with, I would have thought, in answer to your application for the injunction, because effectively, if you could make out a ground now for an injunction, he would have to be saying that the previous non disclosure or false representation was so serious that the Court should mark that by refusing to grant an injunction now. So --

B **Mr Millinder:** *My Lord --*

Fancourt J: In, in my --

C **Mr Millinder:** *If I can just --*

Fancourt J: Mind at least, the, the convenient way to deal with that, that application of his would be in response to, to you. Mr Millinder, do you want to say anything about that *at --*

D **Mr Millinder:** *Well --*

Fancourt J: *This stage?*

E **Mr Millinder:** Yes.

Fancourt J: *Or --*

F **Mr Millinder:** My application is to deal with illegality and it is to deal with setting aside the order on the grounds that these people have presented an entirely false case, and that needs to be heard first and I reserve my right to be heard. Number 1, the debt cannot be --

G **Fancourt J:** All right, I am not, not asking you to embark on it now. I am just trying to sort out how --

Mr Millinder: *Yeah, good.*

H **Fancourt J:** *We will make it convenient. We are --*

Mr Millinder: *Because there are --*

A **Fancourt J:** Going, going to deal *with this all*.

Mr Millinder: *Because there are* serious delusions. Sorry? Sorry, *what*, My Lord, what did you say there? I did not --

B **Fancourt J:** *Mr Millinder* --

Mr Millinder: Quite catch it.

C **Fancourt J:** I am not asking you to embark on the argument now. I am just trying to sort out between us what is the most --

Mr Millinder: Oh, of course.

D **Fancourt J:** Convenient way of --

Mr Millinder: Yeah, yeah, fine.

E **Fancourt J:** *Dealing with the application*.

Mr Millinder: It is not a great line. It is not actually a great reception from this end. You keep going in and out. However, we shall persevere the best we can. It is a *little*, rather intermittent, the connection. That is what the --

F

Fancourt J: All right.

G **Mr Millinder:** Problem is.

Fancourt J: *If, if*, if I --

H **Mr Millinder:** And what *I do not understand* --

Fancourt J: Disappear for any length of time, put, put up a hand and I, I will --

Mr Millinder: OK.

A

Fancourt J: Stop *until you --*

Mr Millinder: Will do, *thank you.*

B

Fancourt J: *Come back on the screen.*

Mr Millinder: *So there are three points that I want to get across, three fundamental salient points that I can do extremely quickly, and this all goes back down to the originating ex parte application of 9 January 2017. Fundamentally, the Defendants could not defend my claim in the statutory demand, so they dishonestly withheld 172 pages of witness exhibits that --*

C

Fancourt J: Yes.

D

Mr Millinder: Would have otherwise proven that demand.

Fancourt J: I, I --

E

Mr Millinder: In this proceeding --

Fancourt J: I know, I know what, what, what type of argument it is, Mr Millinder, because I have read the documents --

F

Mr Millinder: *It is why I am --*

Fancourt J: That you sent in.

G

Mr Millinder: Asking you --

Fancourt J: *But that --*

H

Mr Millinder: Asking you, so I am pleased about that.

A **Fancourt J:** At, at the moment, it seems to me the most convenient thing is for Mr Ohrenstein to say why he wants an injunction, then I will --

Mr Millinder: Yeah.

B **Fancourt J:** Hear you on why there should not be one and on why you --

Mr Millinder: *All right.*

C **Fancourt J:** Say *the* --

Mr Millinder: No problem.

D **Fancourt J:** *Why the, yeah,* the previous order should be set aside.

Mr Millinder: OK.

Mr Ohrenstein: OK.

E **Fancourt J:** All right, Mr Ohrenstein.

Mr Ohrenstein: Thank you. My Lord, the statutory demand clearly has a threat of a petition --

F **Fancourt J:** Yes.

G **Mr Ohrenstein:** To follow, and so the question is, is whether there is the basis for a real dispute to the debt that is alleged by the statutory demand. The statutory demand appears at page 22, and the details of it at page 23, of the bundle.

H **Fancourt J:** Thank you. Yes.

Mr Ohrenstein: And from the details that are put with the statutory demand, one can see that what Mr Millinder is concerned with originates with an agreement between one, a company with which he was connected, Empowering Wind MFC Ltd and an agreement that

A that company had with the, the, the Applicant football club, the company had a lease which was forfeited and then there was a dispute between the club and Empowering Wind. The allegation is then that Empowering Wind assigned the benefit of its dispute to another entity controlled by Mr Millinder, Earth Energy Investments LLP, and then Mr Millinder now says that, that in turn Earth Energy assigned the benefit of that dispute to him.

B Now the underlying dispute is, is, is disputed, but we can tackle the statutory demand at a, a, another level where it has already been determined by the courts that the chain of assignment breaks down at the first stage. We see this from the decision of the Chancellor at page 152 of the bundle, starting at [123]. The Chancellor was considering a, the issue of
C the alleged assignment from Empowering Wind to Earth Energy.

Female: *Yeah.*

D **Mr Ohrenstein:** And I ask --

Fancourt J: Yeah.

E **Mr Ohrenstein:** The Court to see the, the, the, [123].

Fancourt J: Yes, I have read that.

F **Mr Ohrenstein:** Hundred and, and carrying on, hundred and, well, you can look through to [124], but [125], [126] and [129] to [130].

(pause)

G **Mr Ohrenstein:** [130]. Sorry.

Fancourt J: Yes.

H **Mr Ohrenstein:** [129] I think I have just *one* --

Fancourt J: And what --

Mr Ohrenstein: One line there:

A “It was never open to Mr Millinder to allege that his companies' claims,
whether in contract or fraud, were open and shut, as he seems to have
thought. The windings up of Empowering Wind MFC and Earth Energy
B were not the product of any conspiracy or fraud as Mr Millinder repeatedly
alleges. They were simply the inevitable result of non-payment ... and the
failure to take a valid assignment or to enunciate clearly any substantial
cross claim in Earth Energy.”

C So the, the chain of assignment of this, this dispute broke, breaks down at the, at the, at the
first stage, never mind the fact that the underlying allegation is also disputed. And this has
been, this has been addressed there and it was addressed by Nugee J as well, and nevertheless
Mr Millinder is repeatedly trying to resurrect the same, the same arguments.

D **Fancourt J:** What, what --

Mr Ohrenstein: *I do not* --

E **Fancourt J:** The Chancellor was saying was that, that the underlying substantive issues have
never in fact been tried, that there was an opportunity to raise such substantive issues at an
earlier time, but they were not taken as points at the right time and, because of orders that
were then made, it is too late to try to raise them now. That, that is really his line of
F reasoning, I think.

Mr Ohrenstein: Yes. Yes, so we are, we are a long way from having a debt that can be the
form, that can form the basis of a statutory demand, you know, without being the substance
G of, you know, a, a, of a real dispute, the threshold --

Fancourt J: *The* --

H **Mr Ohrenstein:** That --

A **Fancourt J:** The debt, as I understand it, is the £200,000 premium that was paid for the lease, £330,000 of other losses or associated expenditure, and *then*, then interest and costs. I think that is what makes up the amount of the, the statutory demand. Is that right --

Mr Millinder: Yeah, *that is right*.

B **Fancourt J:** Mr Millinder? Yeah, yeah.

Mr Millinder: That is right, My Lord, yes, thank you. All --

C **Fancourt J:** *OK*.

Mr Millinder: Of the investments in the project were assigned.

D **Fancourt J:** Yes.

Mr Millinder: All of the investments, absolutely, thank you.

E **Fancourt J:** Thank you.

Mr Ohrenstein: Yes, the debt and --

Fancourt J: Yes, Mr Ohrenstein.

F **Mr Ohrenstein:** The, the, the, the, the debt, the debt on the, the alleged debt on the statutory demand is, is £1.172 million. That is the figure that is, that is claimed, and certainly, but this is not a question of us saying the debt is exaggerated. Well, it is, the entire debt is challenged.

G **Fancourt J:** Yes, I follow.

Mr Millinder: If I may just cross-examine Mr Ohrenstein --

H **Fancourt J:** Well, no --

Mr Millinder: On this point --

A **Fancourt J:** Mr Millinder, not, not now please. Yeah, I will give --

Mr Millinder: OK.

B **Fancourt J:** You every opportunity in, *in a*, in a moment.

Mr Millinder: Yeah.

Fancourt J: But it, it --

C **Mr Millinder:** *No problem.*

Fancourt J: We will get on --

D **Mr Millinder:** Thank you.

Fancourt J: Quicker and better, I think, if Mr Ohrenstein has his say --

E **Mr Millinder:** OK.

Fancourt J: First, *and* then you, you --

F **Mr Millinder:** *OK.*

Fancourt J: Come back.

G **Mr Millinder:** *OK.*

Mr Ohrenstein: The --

H **Fancourt J:** OK?

Mr Ohrenstein: And the --

Mr Millinder: Fine.

A **Mr Ohrenstein:** The, the position at least as appears to have been communicated by Mr Millinder is not that he disputes that the various judges have found against him in relation to the claims which he was initially trying to pursue through the companies and is now trying to pursue personally. He is instead trying to challenge the validity of those decisions themselves by way of asserting that there has been some sort of fraudulent conspiracy by the judiciary together with those instructing me or others to, to, to defraud him. But where, where we are at is that there are decisions of the courts which indicate that this is not a debt which is, would, would, would, would, which --

C **Fancourt J:** *Yeah.*

D **Mr Ohrenstein:** Can form the basis of a statutory demand where there is no genuine dispute in relation to this, so in fact my client's position is much, is much higher than that. There's no, there's no basis for this claim whatsoever, but we do not even have to get anywhere near that level, because we are dealing with the threat of winding up petition.

E **Fancourt J:** You say at the very least there is a substantial dispute about the underlying debt.

Mr Ohrenstein: Yes.

F **Fancourt J:** I understand.

Mr Ohrenstein: The underlying debt and, and the, and the alleged assignments, and that is the very low threshold we have to reach.

G **Fancourt J:** One of the assignments has been the subject of a, at least several previous decisions, but there is one, I think, that arises new, newly this time, and that is the assignment by Earth Energy to Mr Millinder. *Is that right?*

H **Mr Ohrenstein:** Yes, that, that is correct. If, the, the first assignment has been addressed by, by various judges, but clearly if the first assignment is ineffective then there is nothing for Earth Energy to pass on to Mr Millinder.

A **Fancourt J:** Yes.

B **Mr Ohrenstein:** There would be, if, if there, if that was not the case, there are additional hurdles preventing Earth Energy, which has been the subject of a winding up petition, to in turn assign anything that it had, because it would be, there would be problems of void dispositions under, *well*, Section 127 of the Insolvency Act. But we, we do not get to that stage, because the first assignment has clearly been considered by the Court on repeated occasions.

C **Fancourt J:** *All right.* You, you say it has been held to be invalid or ineffective, do you, previously?

D **Mr Ohrenstein:** Yes. Let me see the, we are back to 152, 152. On page 152 of the Chancellor's judgment, [124]:

“There had been ...”

E About two thirds of the way down that paragraph:

F “There had been nothing stopping him (subject to the Insolvency Act ...), up to Empowering Wind MFC's winding up, assigning ... [the] claims clearly and validly to Earth Energy, but he did not do so. Instead he relied on ambiguous Minutes. [Instead t]here had been nothing stopping Mr Millinder formulating a clear claim for the return ... but he never did so. Had he done both things, successive courts might have been enabled fairly to evaluate his claims. But they were never able to do so ...”

G **Fancourt J:** Well, all right, I mean, it is not dealing with it in terms, but did Nugee J have to address this question at some stage?

H **Mr Ohrenstein:** Page 182.

Fancourt J: Yes.

Mr Ohrenstein: [153] [sic]:

A **“The claim for the return of the premium was also vested in EMW, although Mr Millinder’s position is this claim was assigned” --**

Fancourt J: *Well*, sorry.

B
Mr Ohrenstein:

“to” --

C
Fancourt J: I am not with you.

Mr Ohrenstein: Sorry.

D
Fancourt J: Which --

Mr Ohrenstein: Sorry, page 182 --

E
Fancourt J: Yes.

Mr Ohrenstein: [53].

F
Fancourt J: [53], yes, thank you. Difficulty with all this, yes.

Mr Ohrenstein: [53] there:

G **“... claim for the return of ... premium was also vested in EMW, although Mr Millinder’s position is that this claim was later assigned to EEI. That was the view taken by the Chancellor: ‘Mr Millinder's new claim against Middlesbrough was equally misconceived, since it purported to advance claims that lay in [the companies] ... As I have explained, Mr Millinder [has] and [had] no standing to advance claims on behalf of those companies.’ Having considered the matter for myself [Nugee J says] I entirely agree and can see no fault in this**

H

A reasoning. Mr Millinder says that the right of action vests in him as
investor and originator of the project ... paid £200,000. He chose to
operate *this* project through corporate entities, with the consequence,
B as the Chancellor explained, that claims in relation to the project
vested in those companies. It follows that any such claim by Mr
Millinder personally would have no reasonable project of success. In
those circumstances, I refuse permission under the Extended Civil
Restraint Order application number 4.”

C So that seems to be squarely on point at that stage. Application number 4 related to
permission under the Civil Restraint Order to issue a Part 7 claim form alleging pretty much
the same matters as are now the basis of the, of the statutory demand, the 2020 statutory
demand.

D **Fancourt J:** But brought by Mr Millinder personally.

Mr Ohrenstein: Brought by Mr Millinder personally.

E **Fancourt J:** Yes.

Mr Ohrenstein: That claim form which he *pursued* is, I think that is in the bundle as well.
I will find that if, if that is helpful.

F **Mr Millinder:** I think we were talking about the assignment.

G **Mr Ohrenstein:** So, for the same, I would say for the same reason that Mr Millinder was
not, has been found not to have a reasonable prospect of success on a claim form, well, that
underlines the point that there is a proper basis for disputing the same allegation as they, as
are the basis of the statutory demand.

H **Fancourt J:** Well, *it* seems to me the position is that the, the validity of the assignment by
EW MFC to EE was never actually decided by a judge at a, at a trial. It is just that various
opportunities to raise it along the way were never taken and then Mr Millinder was not in
the position to do so because ENW was in liquidation, so he could not raise the point. And
then EE also went into liquidation, did it not?

A **Mr Ohrenstein:** It did, yes.

Fancourt J: But there is no, there is, the point has never actually squarely been decided at a, at any sort of trial, has it?

B **Mr Ohrenstein:** There has not been a trial of these matters.

Fancourt J: No.

C **Mr Ohrenstein:** There have been various applications for permission to, to pursue the arguments.

Fancourt J: Yes.

D **Mr Ohrenstein:** And he has not, he has not, he has not been able to show, effectively they have been dealt with summarily on the, effectively, on the summary judgment type, type test ...

E **Fancourt J:** *Yeah.*

Mr Ohrenstein: *That they had.*

F **Fancourt J:** Anyway, what, what, what you say, I think, is essentially this. The, the underlying debt is disputed because the two parties have completely different cases on the termination of the original contractual relationship as to who, who was at fault and what damages claims or debt claims arise out of that, so that, that is one level of dispute. There, there is a level of dispute about the assignment to EE, and now you say there is a further level of dispute about whether there could have been a valid assignment to Mr Millinder personally --

G **Mr Ohrenstein:** Yes.

H

A **Fancourt J:** Because he says it happened and he has produced a deed, I think, which I have seen in the bundle, but the date, date of that deed is after the presentation of the petition to wind up EE.

Mr Ohrenstein: That is correct.

B **Fancourt J:** That is the point you take, is it not, so --

Mr Ohrenstein: Yes.

C **Fancourt J:** *It not* --

Mr Ohrenstein: Yeah.

D **Fancourt J:** *Being* valid, void? Right, and I follow those points.

Mr Ohrenstein: So *those*, those are all real, real disputes.

E **Fancourt J:** Yes.

Mr Millinder: *True*.

Mr Ohrenstein: So this is --

F **Fancourt J:** *And you* --

G **Mr Ohrenstein:** This is, this is not, you know, there, *there*, there is, you know, ample authority to, you know, about how and when to use statutory demands and the, and the petition procedure, and, you know, it is normally for things, you know, clear matters, judgment debts and so forth. And we are a long, long way from that in this scenario.

H **Fancourt J:** Right, so you say, what, a, presentation a petition would be an abuse of process --

Mr Ohrenstein: Exactly.

A **Fancourt J:** And should be, should be restrained?

Mr Ohrenstein: Yes.

B **Fancourt J:** *But* you want to go further in the terms of the injunction you seek, and prevent any different petition or a further statutory demand being served.

C **Mr Ohrenstein:** *Any*, yes, because the, the, the history of this matter is that there has *been* circumstances where Mr Millinder has effectively not taken no for an answer when he has heard it from the judiciary and we have had to go over the same arguments before different tribunals on different occasion. So what I am seeking is that there should not be a, either a petition and there should not be a statutory demand relating to the, effectively, the same sort of allegations all over again. Otherwise we may be back in a, in a month's time on a fresh, on a fresh --

D **Fancourt J:** *As* --

E **Mr Ohrenstein:** Statutory demand and a, and a fresh application.

Fancourt J: So did, is the order that Mann J made in paragraph 1 of his order in accordance with what you were, what you are seeking in the, the application?

F **Mr Ohrenstein:** Yes, I have, I have, I have cut and pasted, let me just, I have cut and pasted into my skeleton, skeleton argument the substantive provisions on the injunction restraining the petition and statutory demands, and that is, that is reflecting the wording from Mann J's order which should continue that.

G **Fancourt J:** So, just looking at that, it is restraining presentation of a petition based on the actual statutory demand, then it is restraining presentation of a petition based on any allegation relied on in the statutory demand, even if it is in a later statutory demand. Then (c) is any further statutory demand in respect of any of the same or substantially similar allegations, *so it seems*.

H **Mr Ohrenstein:** That is correct.

A **Fancourt J:** What does (d) add to, to all that?

Mr Ohrenstein: (d) is if there had been a petition presented. We are not aware that there has been a petition, but if there --

B **Fancourt J:** Right.

Mr Ohrenstein: Was, in, in, sometimes in these circumstances, one does not always know -

C **Fancourt J:** Yes.

Mr Ohrenstein: When one is making the application what has actually gone in to the Court. There should not have been a petition presented, because there are time limits under the stat demand, but it was not, it is not something we wanted to, to risk.

D **Fancourt J:** What, your instructing solicitors have searched, have they, since the date of the, the application, to see if there is a petition that has been --

E **Mr Ohrenstein:** Somebody --

Fancourt J: Presented?

F **Mr Ohrenstein:** Will, somebody will confirm to me.

Fancourt J: Because if they have and there is not, then (d) is no longer necessary, is it?

G **Mr Ohrenstein:** The, my instructing solicitor is online, so I expect to receive a message shortly to --

H **Fancourt J:** OK.

Mr Ohrenstein: Confirm that.

Fancourt J: All right, yes.

A

Mr Ohrenstein: So that is, that is essentially the, the basis of why we are seeking the, the injunctive relief, and we seek the, the Civil Restraint Order either in, in the, in the extended form or the general form. When one sees the, the flurry of threats of continuing claims and allegations and applications that have been made by Mr Millinder, notwithstanding the fact that previously he has, he has, he has brought numerous applications which have been found to be entirety without merit and that gave rise to the original Extended Civil Restraint Order, he is continuing to make all sorts of allegations and threats, and the likelihood is that he will continue to make applications if he is permitted to do so.

B

C

Now what I submit should happen is that those applications should be the subject of the judicial screening in the way that the Civil Restraint Orders provide, so that any respondents to those applications who, well, it may, they, that may be Middlesbrough Football Club, it may be my instructing solicitors, it may be whoever, do not have the costs and inconvenience of having to deal with such matters if, as has previously been the case, there is no merit in them. So there is a, there is a, a screening, a filter --

D

E

Fancourt J: Well, yes, I understand --

Mr Ohrenstein: That applies.

Fancourt J: That bit, but during the previous ECRO --

F

Mr Ohrenstein: Yes.

Fancourt J: A, a number of applications were made by Mr Millinder to, it looks like Nugee J was the supervising judge in this case, because I have seen his judgment in 2020, where he --

G

Mr Ohrenstein: Yes.

H

Fancourt J: Refers to a number of applications made for permission to bring further applications, all of which he, he rejected, I think. Did he reject them on the basis they were all totally without merit? Did *he*, did he say so, or not?

A **Mr Ohrenstein:** *In* 1, well, I look at 1, page 162.

Fancourt J: Is that the order?

B **Mr Ohrenstein:** That is the order, but it gives reasons with ...

Fancourt J: Yes. *Yeah. It is* quite a long document. I *do not*, I do not think he does. I mean, there is probably good --

C **Mr Ohrenstein:** I do not think he uses *the* --

Fancourt J: *Reason* for that, because he is not --

D **Mr Ohrenstein:** I am not sure *that* --

Fancourt J: *Dealing with, in fact* --

E **Mr Ohrenstein:** Yes.

Fancourt J: Applications strictly, so called. He is dealing with applications for permission to make an application, so --

F **Mr Ohrenstein:** Yes.

Fancourt J: He just refuses --

G **Mr Ohrenstein:** *It does not, it does not* --

Fancourt J: Permission, does he not?

H **Mr Ohrenstein:** *All right.* Yes.

Fancourt J: *But, but* --

A **Mr Ohrenstein:** Certainly in, there was consideration of possible need for a further Civil Restraint Order if he continued, and this, this I refer to in paragraph 10(b) of my skeleton argument. Murray J --

Fancourt J: Yes.

B **Mr Ohrenstein:** Referred to the claim that was being advanced by way of a Part 8 claim as absurd and abusive and stated in the final paragraph of his order on 24 August of this year:

C **“It may be necessary to make another ECRO against the Claimant, should he persist in making unmeritorious applications in relation to the matters with which the claim is concerned.”**

D **Fancourt J:** And there was a previously application made to Nugee J to set aside his own previous --

Mr Ohrenstein: Yes.

E **Fancourt J:** Order, I think, which was dismissed totally without merit, and that is 4 August --

Mr Ohrenstein: Yes.

F **Fancourt J:** This year.

G **Mr Ohrenstein:** So certainly, certainly since the expiry of the Extended Civil Restraint Order, he has made applications which have been totally without, have been found to be totally without merit, and I refer to that of, that, that decision of Murray J.

Fancourt J: Yes, I have got that.

H **Mr Ohrenstein:** And now that has prompted, at least in correspondence *there* may not be further application, *but it* has, has, has prompted further unmeritorious attacks. And now we have the application that has been made, well, you have not heard Mr Millinder on that, but

it is the application that he has made on 29 October, which obviously is, *it*, it appears to be before the Court now.

A

Fancourt J: Yes.

Mr Ohrenstein: And the way he has, and the way he has put that application, certainly making allegations which I would say are totally without merit on that. But that has not been, that has not been determined at this stage.

B

Fancourt J: Help me. I am not, I am not sure whether there is a real distinction between an application to make a new Civil Restraint Order and an application to continue an existing one, at least where the second is made after the expiry of the initial. I mean, there is, there is not different approach required to be taken, is there, under the, the rules?

C

Mr Ohrenstein: No, it is, it is, on the extension of a previous order, it is simply that the Court can make such an extension where it is appropriate to do so. And that is paragraph 3.10 of Practice Direction 3C. So it is simply a court considering whether it is appropriate. The original Extended Civil Restraint Order requires a party to have persistently issued claims or made applications which are totally without merit. And persistently has been generally thought to be at least three applications. Where one is making a fresh Extended, Extended Civil Restraint Order, one does not need a further three entirely unmeritorious applications on top. You know, one can still rely on the ones that were there before. So, in practice, it makes little difference. If the Court is satisfied that it is appropriate to do so, then we, we can extend the, the, the previous Civil Restraint Order which ran from, *well, it* ran until, until June of this year, so the, the *new*, the extension would run two years from June.

D

E

F

Fancourt J: But it would not have retrospective effect.

G

Mr Ohrenstein: No, it would, but the time, the end date ...

Fancourt J: *Would* be calculated from --

H

Mr Ohrenstein: Would be calculated --

Fancourt J: *The dates* --

A **Mr Ohrenstein:** From, I think it is 28 June, so it would not be. So that is the only practical difference between a fresh ECRO --

Fancourt J: I see.

B **Mr Ohrenstein:** Which would, which would run out two years from today, and extension of the, the old one, 18 months or however many months it is.

Fancourt J: Right. Yes, all right.

C **Mr Ohrenstein:** And then the, and then the, the decision for the, for, for, very much for the Court is whether *it* should be an ECRO or a, a GCRO. A GCRO is obviously a wider, if the Court is concerned about protecting potential respondents to applications and potential

D defendants of claims by Mr Millinder who are in a, in a, in a slightly wider context, given the, given the nature of the emails and communications which he is writing and, and the sorts of threats that he is making against all sorts of people. So, if the Court considers those are

E real threats and that those sorts of application may be made, then the Court may, may consider the General Civil Restraint Order is, is necessary. As I say, from --

Fancourt J: *On that --*

F **Mr Ohrenstein:** My client's perspective, my client directly is protected by an ECRO, but it is what, the Court is here to, to consider the wider interests as well.

G **Fancourt J:** An, an ECRO has very wide effect anyway because it, it captures any application relating to or touching upon, in very broad language, the subject matter of the previous claim. Which is the claim that is to be identified, do you say, as the, the claim in any ECRO? Because *you* need to identify one or more.

H **Mr Ohrenstein:** *What you,* there have been a number, there have a been a number of proceeding, oh, looking --

Fancourt J: Yes.

Mr Ohrenstein: At the previous ECRO, I will find that in the bundle, the draft order is, the way it has been, well, the draft order is at page 247 for the General, and for the Extended Civil Restraint Order *it* is at 249, and the wording, I think, there reflects something close to what was previously ordered:

“Mr Millinder shall not commence proceedings or make any fresh applications concerning the Claimant and any issues arising from the arrangements between the Claimant and Empowering Wind MSC for the construction of wind turbine *on* part of the Claimant’s land. Nor shall he present any petition for the winding up of the Claimant.”

Fancourt J: *Well, that ...*

Mr Ohrenstein: So the, the, whether that is wide enough to, to, to prevent attacks on, collateral attacks on anyone who is immediately involved in the litigation process, I think there may be merit in, in, in, in avoiding any room for doubt or any room for debate, either by having a general, ECRO or a, a General Civil Restraint Order or, or widening that, but there, because there does seem to be an appetite on the part of Mr Millinder to, to attack the entire process and not just focus on the issue in the litigation.

Fancourt J: Yes, your, your draft ECRO has three, three, looks like three sets of insolvency proceedings --

Mr Ohrenstein: Yes.

Fancourt J: Which I think are the same ones as in the title on your skeleton argument.

Mr Ohrenstein: Yes, 1137, 0140 and 0690, yes.

Fancourt J: But the, this application that is before me, your application that is before me today is, is it brought in those existing proceedings, or is it brought in new proceedings?

Mr Ohrenstein: Brought in existing proceedings. No fresh --

Fancourt J: *I --*

A **Mr Ohrenstein:** Proceedings were issued.

Fancourt J: OK, all right, thank you.

B **Mr Ohrenstein:** The application notice itself uses the number, the 2017-000140 number is on the application notice.

Fancourt J: *All* right.

C **Mr Ohrenstein:** But the, but then it says expressly, *and* it is page A5:

“This application is brought in relation to ...”

D And then it names the three sets of proceedings, then:

“any other proceedings brought by Mr Millinder.”

E **Fancourt J:** Sorry, where, where is that?

Mr Ohrenstein: Page, the application starts on page A4, and then on page A5 it make clear that it is in those three sets of proceedings.

F **Fancourt J:** Yes, I see, I have got it.

Mr Ohrenstein: Because I think the box on the first page was, there, there was not enough space to, to write multiple claim numbers.

G **Fancourt J:** I see. All right, is there anything else you want to say?

Mr Ohrenstein: I am not sure there is at this stage.

H **Fancourt J:** Thank you, OK. Right, Mr Millinder.

A **Mr Millinder:** Yes, My Lord. OK, well, I have heard, obviously, everything that Mr
Ohrenstein has said, and there are several issues that immediately sort of hit home. And the
first one is that these people have made an ex parte application, and in the ex parte
applications, as My Lordship will know, the duty of candour is on the Applicants to disclose
B all material facts relevant to the application in question, and they were seeking to obtain an
ex parte injunction for a Restraining Order [sic] preventing me from winding up
Middlesbrough Football Club and they were seeking to obtain, ex parte, an Extended Civil
Restraining Order [sic]. Your Lordship will note that I did address this rather substantially
in my first witness statement, and I refer, to cut a long story short, I appreciate we have not
got a lot of time and there is a lot of information to go through, but if we turn to my bundle
C and just go across to tab 13, we have got the letter there from myself to Ms Drewitt, Arnold
J's clerk, dated 20 May 2020. I think really we can condense most matters just by focusing
on this salient letter that was withheld by the Defendants, which is pertinent to the application
ex parte.

D **Fancourt J:** Sorry, I am not, I am not there yet.

Mr Millinder: *OK.*

E **Fancourt J:** Your, your bundle.

F **Mr Millinder:** Yeah, in my bundle, tab 13. So you have got the PDF portfolio of exhibits,
with the front page being my indexed bundle. Tab 13, you can actually just click on the
link that I have included within it, for very clear ease of navigation.

Fancourt J: I do not have it --

G **Mr Millinder:** *And these takes us --*

Fancourt J: In the same form, I am afraid. I have, I have got a number of electronic
documents that you filed for this hearing, but --

H **Mr Millinder:** *Oh.*

Fancourt J: I --

A **Mr Millinder:** You should --

Fancourt J: *I cannot see the --*

B **Mr Millinder:** Have a bundle. With the application that I made, there was a bundle titled EXPM27102020. It is a PDF portfolio of exhibits. It is rather pertinent because that is the index of exhibits that I was referring to with my statement.

C **Fancourt J:** I am just going to ask my clerk, if he is listening to this, whether he can help me track this down, because I cannot see it on the ...

Court Clerk: *Well, Mr, Mr --*

D **Fancourt J:** *The PDF files.*

Court Clerk: Millinder, did, if you have emailed it to me, do you, do you know which email it was?

E **Mr Millinder:** Well, I did not. I filed it. I filed it.

Court Clerk: Oh, it is on --

F **Mr Millinder:** I did not email it.

Court Clerk: CE-File, is it?

G **Mr Millinder:** Yes, it is on CE-File, yeah.

Court Clerk: *Right, OK.*

H **Mr Millinder:** Yeah.

Court Clerk: Is, this is under the 1, 140.

A

Mr Millinder: Well, I mean, it *is*, just to, to keep it very simple, I mean, I did actually make it very clear in my first witness statement, which is the one that is dated, bear with me, this one here, which is titled Witness Statement Dated 28 August. On the first page of that witness statement, sorry, at page 2, you have got a password and a username, and then each, wherever I have referred to an exhibit, it is actually linked for ease in reference, so all you would have had to have done was click on it to view the exhibit. Makes life very easy --

B

Fancourt J: Right, *now* --

C

Mr Millinder: *When we have the* --

Fancourt J: Which --

D

Mr Millinder: *Case law.*

Fancourt J: Which exhibit is it you are trying to refer me to?

E

Mr Millinder: Well, I am talking about tab 13, My Lord, which is tab 13 of that index of exhibits contained at the first three pages of the PDF portfolio title E, EXPM27102020.

Fancourt J: It is not allowing me to access that, I am afraid. It is asking for a username and password to --

F

Mr Millinder: Well, that is --

Fancourt J: *To access it.*

G

Mr Millinder: Correct, and that is the username and password which is at page 2 of my witness statement. I would have thought you would have read that. It says:

H

“Username ... In this statement, I refer to my exhibit, the PDF portfolio, and, for ease in navigation of the documents, I include access.”

And there is a username at page 2, and a password.

A **Fancourt J:** Well, I am sorry, this is, that is not the format in which documents are supposed to be filed for *a* court hearing *and I* --

Mr Millinder: Well, *they are* --

B **Fancourt J:** *Do not want* --

Mr Millinder: They are also filed electronically in that *bundle* and I have always filed a PDF portfolio containing all of the exhibits referred to, and it is that exhibit that I am referring to that has been filed.

C **Court Clerk:** If it is --

D **Fancourt J:** Is it the --

Court Clerk: In the correct format --

E **Fancourt J:** The letter of 23 October 2020 to Mann J's clerk, is it?

Mr Millinder: No, it is the letter dated 20 May 2020, at tab 13, to Ms Drewitt, of ten pages.

Fancourt J: Right, well, I do not have access to that.

F **Mr Millinder:** Oh, God, well, that is not a very good start, unfortunately, because all of the evidence upon which I seek to rely and then I have referred to in these statements, are all --

G **Fancourt J:** Well, show --

Mr Millinder: Linked to those --

H **Fancourt J:** Well, show --

Mr Millinder: Exhibits.

Fancourt J: Show, show me in your skeleton argument where, where you refer to the points, and then I will, I will pick it up from there.

A

Mr Millinder: OK, no problem, yeah. I mean, let us work, actually, from, from my first witness statement, which is the statement dated 28 August 2020.

B

Fancourt J: Yeah, I have got that up, *yes*.

Mr Millinder: *The*, so, the second page there, we have a table of contents also for further ease of, in navigation.

C

Fancourt J: Yes, I have got that.

Mr Millinder: Page 3, if we go, let us do it this way round then. Let us go to page 3 and let us --

D

Fancourt J: *Yeah*.

Mr Millinder: Talk about the preliminary issues, OK? Before we move to Drewitt, I will come to Drewitt in a minute, let us just focus on this because we can --

E

Fancourt J: *All right*.

Mr Millinder: Cut this to the chase here. The point I am making is an extremely simple one, and that is that on 25 June 2015, when Middlesbrough Football Club made an unwarranted demand for payment, no rent was due until 15 September 2015 and no energy supply was due, anyway, because I could not get any satisfaction of the connection agreement that they refused. So that means that on 25 June 2015, when they made an unwarranted demand in the sum of £256,269.89, they used that demand to unlawfully forfeit the lease when no money was owed, but they did so after refusing the connection, preventing me from performing on the rights granted under that lease. And that is one salient point that actually goes to the heart of all of these proceedings that the Defendants have withheld from the ex parte proceedings, all three of them, in fact.

H

A It is pertinent to note that my energy supply agreement is conditional upon my full
satisfaction of two conditions precedent, namely the full satisfaction of the connection
agreement, encompassing the three salient contracts that I referred to as being a completed
collateral contract. If, My Lord, at paragraph 7, you can actually click on the link Completed
Collateral Contract, that will take you through to a part of my website that deals with the
B specific point which is also absolutely critical to my case, because there is a completed
collateral contract affirming the connection configuration for the wind turbine that was
completed during the option period.

C **Fancourt J:** Yes.

Mr Millinder: So what I am getting at there is that this is a side contract that affirms the
configuration that was pre-agreed in open email correspondences during the option period,
the purpose of the option being that if either party became aggrieved with either the technical
D or commercial terms being proposed, then the aggrieved party could negate without financial
commitment. Having that flexibility, as I am sure My Lord will appreciate, is the
very purpose of having an option in the first place.

E **Fancourt J:** Yes.

Mr Millinder: So, therefore, these people did indeed negotiate that connection agreement
with me, and the completed collateral contract was effected on 7 November 2012 during the
option period. The option period ran from 15 June 2012, and it was extended by Mr Bloom
F of the First Defendant on 7 November 2012 on the specific basis of securing the terms of
that very same connection offer. Did My Lordship have chance to look at the (break in
connection) --

G **Fancourt J:** Sorry, I have lost you, Mr Millinder. Can you, you have frozen, I am afraid,
and I cannot hear you now.

Mr Millinder: Sorry, I lost you there for a second. I am back now.

H **Fancourt J:** Yes, I lost you.

Mr Millinder: Are we all there? OK.

A **Fancourt J:** *If you would like to --*

Mr Millinder: Sorry about that.

B **Fancourt J:** *Repeat that, yes.*

C **Mr Millinder:** OK, so what I am saying is that the grid connection, the entire agreement for the grid connection, was made up of three salient contracts, namely something called the connection offer, then there is the connection deed and then there is the Northern Powergrid Middlesbrough Football Club agreement for making the connection. It just so happens that Middlesbrough Football Club withheld those three salient contracts from the first ex parte hearing. They also made no mention of the fact that they did in fact breach the completed collateral contract affirming the terms of the connection, rendering the project entirely useless. Now, given the fact that these people did indeed complete these agreements with me and pre-negotiate them prior to completing the option agreement and that the lease and the salient energy supply agreement was appended to the same agreement, there was indeed an absolute understanding between the parties in respect of the terms of those completed contracts.

D **E** And the point I make, My Lord, is that the energy supply agreement was conditional upon my full satisfaction of, in fact, two conditions precedent. The first one is the connection agreement that I clearly could not get any satisfaction of, and the second one is commissioning of the wind turbine. Clearly, the two go hand in hand, i.e. without a connection, the turbine is defunct. It cannot be commissioned. And that is really the heart of all of this, and it is a, the, the position is actually already found. It has been found by Nugee J, on 5 February 2018, and it just so happens that that document, namely the judgment of 5 February 2018 and indeed the transcript of those proceedings, were withheld from the last ex parte hearing.

F **G** **Fancourt J:** Will you show me --

H **Mr Millinder:** What these *people* --

Fancourt J: You will, I will need you to show me where, where --

A **Mr Millinder:** Absolutely --

Fancourt J: Nugee J so, so found as you say he --

B **Mr Millinder:** Absolutely.

Fancourt J: Found in his judgment.

Mr Millinder: The easiest way of working on that is to refer to my report at tab 07.

C **Fancourt J:** Sorry, your report?

D **Mr Millinder:** My 54 page report at tab 7 that the Defendants also withheld from the ex parte hearing.

Fancourt J: Where *do I find that report?*

E **Mr Millinder:** I *will* refer to my report. *It*, in fact, let us go further into my witness statement that we are on at the moment.

Fancourt J: OK.

F **Mr Millinder:** And let us go to page, bear with me, I gave a list. *Oh, no.* Where are we here? Bear with me. Yeah, if we turn to page 17 of my witness statement that we are on now ...

G **Fancourt J:** Yes.

H **Mr Millinder:** We have got a list here of, which is a non exhaustive list, may I add, of material documentation that was withheld by the Defendants at this last ex parte hearing, and paragraph (d) of seventy, 73(d) is that report dated 2 June 2020, and that is my 54 page report that I condense all of the issues, and that report, at page 1 (break in connection) *I*, all, *have you seen* (break in connection) --

Fancourt J: I cannot access --

A

Mr Millinder: Have you seen --

Fancourt J: That *on this*.

B

Mr Millinder: The report? Have you seen --

Fancourt J: I --

C

Mr Millinder: The report, My Lord?

Fancourt J: I cannot access that.

D

Mr Millinder: Well, it is, it is on the CE-File and it has been, it is actually on the CE-File as a separate document as well. Let me just log on to the CE-File. You should be able to see the report dated 2 June 2020.

(pause)

E

Mr Millinder: *All right, gents, they are not* on the same page. Bear with me. I wish I had have known that we were going to have these problems. I would have delivered a hardcopy bundle to you.

F

Fancourt J: There would have been a limit to what I could read anyway, Mr Millinder, I afraid. And this is --

G

Mr Millinder: Ah.

Fancourt J: This is an application that is limited to two hours, including pre reading --

H

Mr Millinder: Well, we are --

Fancourt J: Time.

A **Mr Millinder:** Not going to get it done in two hours. It is as simple as that. I mean, there is a lot of stuff to go through that are salient points that are pertinent to the issues in question. We are not going to get it done in two hours. I did not give two hours on my application to deal with it. And there are issues here that need to be addressed because they are all pertinent to the issues in question here, and there has been material non disclosure. And we must get to the bottom of this because there has been this consistent attempt by the Defendants and **B** their counsel Mr Staunton, who has gone AWOL, the colleague of Mr Ohrenstein, and Mr Ohrenstein himself knows about the full background but he is being rather dishonest in concealing all of the material facts from this Court. We need to get to the bottom of this --

C **Fancourt J:** *Well --*

Mr Millinder: Because Mr Ohrenstein has presented a false case.

D **Fancourt J:** Let, let, let me try --

Mr Millinder: *So specifically --*

E **Fancourt J:** And approach it this way, Mr Millinder, to cut --

Mr Millinder: Yeah.

F **Fancourt J:** Cut through --

Mr Millinder: Yeah.

G **Fancourt J:** This. What, what, what are the relevant facts --

Mr Millinder: Well, certainly.

Fancourt J: You, you --

H **Mr Millinder:** The relevant --

Fancourt J: Say --

A **Mr Millinder:** Facts are --

Fancourt J: Mann J should *have*, no, no, just listen to me first.

B **Mr Millinder:** Yeah.

Fancourt J: What are the relevant facts that you say Mann J should have been told about the background or anything else that he was not told about?

C **Mr Millinder:** Absolutely --

Fancourt J: Not, not what --

D **Mr Millinder:** Simple.

Fancourt J: Documents. What, what --

E **Mr Millinder:** No, no.

Fancourt J: Facts?

Mr Millinder: That is fine.

F **Fancourt J:** *Not documents.*

Mr Millinder: That is fine. I can work on that basis.

G **Fancourt J:** OK.

Mr Millinder: Number --

H **Fancourt J:** OK, *Mr* --

A

Mr Millinder: 1, number 1 is that Middlesbrough Football Club were never owed any money. They unlawfully forfeited the lease on the basis of payments that were never due after they refused the connection. That is how the unlawful forfeiture of the lease came about. That is number 1.

B

Fancourt J: Right.

C

Mr Millinder: Number 2 is that they did in fact lie about the in, the assignment, and they did the same at the first ex parte hearing, of 9 January 2017. And in Mr Bloom's ex parte witness (break in connection) they never had any sight of, but actually it is proven beyond reasonable doubt that Mr Bloom had the assignment in his possession, in fact by hard copy in June 2015, on, on or around the 30th, but then, on 3 January 2017, he had that in, in email copy and he responded to the email containing that assignment. And then, on 6 January 2017, when I served the demand with the assignment on him, he had it in hard copy, the confirmation of service.

D

Fancourt J: When you say --

E

Mr Millinder: And Mr Bloom --

Fancourt J: *The demand*, is that a reference to the board minutes?

F

Mr Millinder: It is a reference to the counterpart assignment, and that counterpart assignment was already served on the Defendants, Middlesbrough Football Club, in June 2015. It was then served with the statutory demand, wherein part B of the demand refers specifically to that assignment counterpart.

G

Fancourt J: *Right*.

H

Mr Millinder: And the demand itself shows how the sum was accounted, namely accrued through unlawful forfeiture of the lease. Now this is an irrefutable position in law here that we need to get to because it is absolutely relevant to the issues in question, and I am going to talk about Section 136(1) of the Law of Property Act 1925:

“Legal assignments of things in action.”

A **Fancourt J:** Before you do that, can, can we see whether --

Mr Millinder: Yeah.

B **Fancourt J:** We have completed the list of things that you said Mann J was not told that he should have been told?

Mr Millinder: Well, no, I, I, I mean, there is a long list of things that he has not been told.

C **Fancourt J:** What, what are --

Mr Millinder: Number 1 --

D **Fancourt J:** *Key points?* Give, give me the --

Mr Millinder: OK.

E **Fancourt J:** Five key --

Mr Millinder: Number 1, OK, *let me* --

Fancourt J: Five key facts.

F **Mr Millinder:** Sure, OK.

Fancourt J: You have given me --

G **Mr Millinder:** Number 1 --

Fancourt J: Two so far.

H **Mr Millinder:** Number 1 is that we do not owe the people any money and therefore the unlawful forfeiture of the lease is proven. Number 2 is that the Defendants misrepresented the assignment.

A Number 3 is that they withheld the report of 54 pages that proves an, an array of criminal offences committed by the Defendants, fraud by false representation where they have made numerous random false representations in insolvency proceedings to stymie the liquidation, with the third claim being over £4.1 million, pursuant to the energy supply agreement, when
B Mr Staunton himself, on 9 January 2017, admitted in writing in the ex parte note of hearing that, for the purpose of the energy supply agreement, force majeure has effect, but yet they omitted that the energy supply agreement was conditional upon my full satisfaction of the connection that they refused. So, on 9 January 2017, it is proven beyond reasonable doubt that the Defendants and counsel were abundantly well aware that no such claim could be
C established pursuant to the Energy Supply Agreement. 24 days later, Mr Gill of Womble Bond Dickinson Solicitors made that claim, of which over £4,000,000 was sought pursuant to that conditional agreement. That is a fraud by false representation and it --

D **Fancourt J:** Right, *and* --

Mr Millinder: Was made to --

E **Fancourt J:** *You are getting* that from the --

Mr Millinder: Stymie --

F **Fancourt J:** Report you say, you, 54 --

Mr Millinder: Everything --

Fancourt J: Pages *effectively* --

G **Mr Millinder:** *Is in the* 54 --

Fancourt J: Covering four --

H **Mr Millinder:** Page *document*.

Fancourt J: Allegations, right.

A **Mr Millinder:** And the page 1 of that report --

Fancourt J: Got that.

B **Mr Millinder:** Covers an array of criminal offences committed by the Defendants, and I, they also knew that I was relying on the defence of illegality. One cannot found a civil cause of action if the cause is dishonourable, i.e. *ex turpi causa non oritur actio*. The, the cause is dishonourable. Their cause is founded by illegality, namely a conspiracy to defraud where they have made various fraudulent claims in insolvency proceedings. And Mr Ohrenstein was abundantly well aware of these particulars, but nowhere within any of their submissions have they made any mention of it whatsoever. Mr Ohrenstein had that report in his possession some months ago. He made absolutely no disclosure of it whatsoever.

C **Fancourt J:** All right, so I have got (1) and (2) we have covered, (3) they withheld the report of 2018 showing fraud, (4) they did not refer the judge to the *ex turpi causa* defence, no claim arising from, *from* --

D **Mr Millinder:** Well, no, there is --

E

Fancourt J: Illegality.

Mr Millinder: More to it than that. There is more to it than that because they --

F

Fancourt J: I am trying to *take* five key points --

Mr Millinder: Yeah.

G

Fancourt J: That, that *will help me*.

Mr Millinder: Yeah, yeah. *Yeah*.

H

Fancourt J: OK. If *that*, if that is not number --

Mr Millinder: *OK*.

A **Fancourt J:** 4, tell, tell me what the next point is that --

Mr Millinder: The point I am --

B **Fancourt J:** Mann J --

Mr Millinder: Making --

Fancourt J: Was not told.

C
Mr Millinder: Here is, the point I am making here is that had that report been disclosed, all of the instances of fraud committed by these people would have been brought to light. In addition, we have another irrefutable position, and that is the continuing duty of disclosure
D *ex parte*, where I made Mr Ohrenstein aware that there was this disclosure actually on the, immediately after receiving the order on the 23rd of last month. And Mr Ohrenstein, even having that email in his possession, failed to disclose it to the Court. Therefore, they have breached their duty and continuing duty of candour *ex parte*. The order was founded by
E fraud.

Now the next point, and the next point is the one I am going to come on to in relation to the law, and that is that the assignment that they contend is disputed cannot possibly be disputed in any way, shape or form. The assignment meets the criteria of Section 136(1) of the Law
F of Property Act 1925. The assignment is valid. Therefore, in addition to this, the Defendants withheld the order of Nugee J of 21 March 2018 where Nugee J, in consideration of my application of 1 March 2018, listed my application for a hearing, and that was the application to set aside the order of 16 January 2017. The report is material because the report itself
G refers specifically to Mr Staunton lying, and therefore the order winding up my company Earth Energy Investments LLP was in fact founded by fraud because Mr Staunton, in full knowledge of the crossclaim that he by his own admission admitted was in *existence*, lied about that crossclaim, and the Defendants (break in connection) --

H **Fancourt J:** Sorry, Mr Millinder, you are, you are --

Mr Millinder: But also the --

A **Fancourt J:** Breaking up again. I lost you there.

Mr Millinder: Oh dear, OK.

B **Fancourt J:** Only for the last --

Mr Millinder: Sorry, I will repeat.

Fancourt J: 20 seconds.

C **Mr Millinder:** The Defendant --

Fancourt J: *If you repeat 20 seconds.*

D **Mr Millinder:** Oh, I, no, OK, all right. The Defendants withheld not only the salient order
E of 21 March 2018, thereafter listing their alleged petition debt for a hearing, but they
withheld the transcript of ICC Judge Barber when they knew that I referred to that transcript
to prove that Staunton has fraudulently abused his position, committing perjury by lying
F about the assignment and lying about the order of Nugee J. And I am going to take you to
these parts because this is very relevant to my case because their 25 grand alleged petition
debt is a nullity. On the, on 28 March 2018 that alleged petition debt was subject to challenge
by order of a High Court Judge. It is irrefutable that a, an alleged debt that is subject to
challenge by order of a High Court Judge is indeed disputed on genuine and substantial
grounds, and that is not and cannot possibly be a petition debt.

G In addition to that, My Lord, were Mr Staunton candid in my absence, it would have been
discovered by ICC Judge Barber that in fact the crossclaim extinguishes their alleged petition
debt anyway. And because of this fraudulent misrepresentation by Staunton, the judge failed
to apply the applicable rule in setoff, namely Rule 14.25 of the Insolvency Rules 2015, sorry,
2016, and I am just going to pull up that rule. If My Lordship is not acquainted with it, I
H will just read out the specifics. Rule 14.25(1) of the Insolvency Rules 2016:

“This rule applies in a winding up where, before the company goes into
liquidation, there have been mutual dealings between the company and a

creditor of [a] company proving or claiming to prove for a debt in ...
liquidation.

A

(2) An account must be taken of what is due from the company and the
creditor to each other in respect of their mutual dealings and the sums due
(break in connection) must be set off against the sums due from the other.”

B

That did not happen, My Lord, because Staunton lied about the crossclaim and he said that
the crossclaim was the claim that vested in Empowering Wind MFC, namely the claim that
they had stymied with their £4.1 million fraudulent claim. But Staunton knew, and it is
proven beyond doubt in my report, that actually the crossclaim was the claim of the demand
that I had served on them, and he had that all in his possession and he made the conscious
and deliberate, premeditated *intent* to mislead the Court by stating that all proceedings had
terminated, when he knew of the order of 21 March 2018 that they have repeated and
withheld from this ex parte proceeding. It --

C

D

Fancourt J: *Right.*

Mr Millinder: Is proven beyond reasonable doubt that all of the ex parte orders were
founded by fraud. Therefore, they are a nullity. They cease to exist from the outset.

E

Mr Dov Ohrenstein has known about all of this, and I am going to produce in this trial that
I have requested in my application all of the evidence that I refer to in this proceeding and
on this hearing to substantiate every single part of my allegation, because these people are
in contempt of court.

F

Fancourt J: Right.

G

Court Clerk: Sir, sorry to interrupt, but can I just check Mr Ohrenstein --

Mr Millinder: Well, no.

H

Court Clerk: *Is totally* --

Mr Millinder: I have not finished, Mr Ohrenstein.

A **Fancourt J:** Just a moment.

Mr Millinder: I need to come on to the --

B **Fancourt J:** *OK*, just a --

Mr Millinder: Other points.

C **Fancourt J:** Just a moment, Mr Millinder, it is my clerk. It may be something to do with the --

Mr Millinder: *Oh*, OK, sorry.

D **Fancourt J:** The recording.

Mr Millinder: Sorry, yeah.

E **Court Clerk:** Sorry, Mr Millinder, I was just wondering if Mr Ohrenstein had, had disconnected from the hearing, because he *has just* --

Mr Ohrenstein: No, I am still, I am still here.

F **Court Clerk:** Oh, OK.

Mr Ohrenstein: Am I too stationary, sorry?

G **Court Clerk:** Sorry.

Fancourt J: Sorry, Mr Millinder, carry on.

H **Mr Millinder:** OK. The other pertinent points within this non disclosure are the three affidavits that I made before the Queen's Bench that were never heard nor tried, but indeed it is proven to the criminal standard of proof that these people are in contempt of court, they have made false statements that they have known were false, and all of that has been

A disregarded by Murray. These people have perverted the course of justice. They have prevented justice from being served on one another and they have colluded to ensure that these matters were never brought to the attention of the Court. There has been dishonest concealment throughout these entire proceedings. The rule of law has been extremely far departed, and it is your duty, My Lord, to make right this wrongdoing.

B **Fancourt J:** It would help, help me, Mr Millinder, if you, you could explain *what*, what, why you say that there cannot be any genuine dispute about the amount of the debts --

C **Mr Millinder:** Absolutely.

Fancourt J: That are claimed in the statutory demand.

D **Mr Millinder:** *And I*, I can explain *it all* extremely clearly. Firstly, when Middlesbrough Football Club unlawfully forfeited the lease that I paid them the £200,000 for on 17 June 2013, it was the purpose of the lease and the intention of the completed contract that the wind turbine be capable of commercial operation. They refused the connection and prevented it from being capable of commercial operation, but when they, when they unlawfully forfeited the lease in August 2015, they were not owed any money. And these people completely rejected any mention whatsoever of the operative provision of force majeure. In fact, Staunton twice lied about the existence of the operative provision of force majeure that is a very wide definition within both my lease and my energy supply agreement, and that operative provision of force majeure applies solely in my favour. The lease has a 12 month period free of rent from which I had to commission the wind turbine. The first event of force majeure was incurred just three months into the 12 month period free of rent.

E
F
G
H The issue of force majeure, which was found by Nugee J to be an issue of force majeure beyond my reasonable control, suspended that 12 month period free of rent accordingly, and therefore no rent was due until 15 September 2015. The Defendant have been abundantly well aware of this material *in* particular. It is somewhat material, given the fact that no money was ever owed to Middlesbrough Football Club and they used that demand after refusing the connection, to unlawfully forfeit the lease. But furthermore, they withheld that very same judgment, order of 5 February 2018 by Nugee J, that found just that. So, therefore, issue estoppel applies to the finding.

Fancourt J: Yes.

A

Mr Millinder: Likewise, issue estoppel applies to the fact that the claims that these people have been making in insolvency proceedings, the claims that they have known have, were false, were found to be false on 5 February 2018, but Hannon retained the false claims, breaching his duty, his fiduciary duty to me, otherwise majority creditor with over 90% of the requisite majority voting interest in the SPV, which clearly does have an asset, namely the claim founded by unlawful forfeiture of the lease.

B

And these are issues that have been proven and found to be true and correct by Nugee J on 5 February 2018.

C

Fancourt J: Will you show me that in his judgment? I would like to --

D

Mr Millinder: *Yeah.*

Fancourt J: *Read that.*

E

Mr Millinder: Absolutely. Let us turn to, I mean, I do wish you could access my index of exhibits. It would make life a whole lot easier because that bundle is actually at tab, bear with me, it is at tab 8.

F

Fancourt J: I *cannot*, I --

Mr Millinder: Transcript --

Fancourt J: Cannot get it there, but the, the judgment is in the Applicant --

G

Mr Millinder: It is in there.

Fancourt J: Bundle *somewhere.*

H

Mr Millinder: I mean, I have referred to it very clearly, but I also refer to it very clearly in my report and --

Fancourt J: *Mr --*

A

Mr Millinder: *Also in --*

Fancourt J: Mr Millinder, I need you to take me to the judgment please. If you are (break in connection) what, what Nugee J said in his judgment --

B

Mr Millinder: *Well --*

Fancourt J: You must show me --

C

Mr Millinder: *Well, at the --*

Fancourt J: The judgment *please*.

D

Mr Millinder: I mean, and I have referred to it in my submissions, in my skeleton and in my, in my exhibit.

Fancourt J: Take me, please, to the judgment --

E

Mr Millinder: *Well, I cannot --*

Fancourt J: *And the page references to --*

F

Mr Millinder: You know, you have got, you have got access to open a PDF portfolio. This is --

G

Fancourt J: Mr --

Mr Millinder: *Not in fact --*

H

Fancourt J: Ohrenstein, can you help us with where the judgment is in your bundle?

Mr Millinder: Well, it is not in their bundle. They have withheld it. That is the whole purpose. It is not in --

A **Fancourt J:** *Mr Ohrenstein* --

Mr Millinder: Their *bundle*. It is in my bundle --

B **Mr Ohrenstein:** The --

Mr Millinder: Not theirs.

Mr Ohrenstein: The judgment of Nugee J that we have is the one at 162. I am not sure --

C **Mr Millinder:** Yeah, but *he put that in after*.

Mr Ohrenstein: What Mr Millinder is, I am not sure what Mr Millinder is referring to.

D **Mr Millinder:** You put that in afterwards. You did not put in the transcript and the judgment until after I informed you of the material non disclosure.

E **Fancourt J:** 162.

Mr Millinder: *You cannot*, you cannot steal sweets off the shelf and then put the sweets back on after you have been caught out. That does not --

F **Fancourt J:** *Well*, I --

Mr Millinder: Work.

G **Fancourt J:** I think Mr Ohrenstein, he, he is referring to Nugee J's judgment of 5 February 2018.

Mr Millinder: 2018, correct, yeah.

H **Fancourt J:** Is that in the bundle?

Mr Ohrenstein: I am not sure that it is.

A **Mr Millinder:** Well, it is not, because that is of --

Fancourt J: *I have got --*

B **Mr Millinder:** The list that has been fraudulently withheld, but yet you do know that I was relying on that position of issue estoppel. I do want to take you to it, My Lord.

Fancourt J: All right.

C **Mr Millinder:** *Shall --*

Fancourt J: *So let us see if you can direct me to it.*

D **Mr Millinder:** Right, I am going to just log on to CE-File. I am sorry that there is this problem with the PDF portfolios. I thought it would actually be very convenient for the Court to access the PDF portfolio, which is what we all use now. It is what we have been using in the Magistrates' Court, where I am prosecuting these people. It makes a navigation of the various exhibits much easier and more seamless because --

E

Fancourt J: Which case reference --

Mr Millinder: One can just click on --

F

Fancourt J: Are you --

Mr Millinder: The tab --

G

Fancourt J: Relying on please?

Mr Millinder: And be taken straight --

H

Fancourt J: *Which reference --*

Mr Millinder: To it.

A **Fancourt J:** Which case reference are you looking up on CE-File? *And what did you --*

Mr Millinder: The one ending 140.

Fancourt J: 140.

B

Mr Millinder: 140 please. Let me just log on to it at the same time from this end and I will direct you into it. Bear with me.

C (pause)

Mr Millinder: I mean, fortunately, I did actually upload all of this stuff anyway, but the Defendants never took Mann J or any other judge to it, because they have been relying on concealing all of these material facts. I am just logging into it now.

D

Fancourt J: All right, if you give me the I, ID, the event number, then I will be able to find that judgment.

E

Mr Millinder: Cool, OK, bear with me one second.

(pause)

F

Mr Millinder: Oh, that is a pain. OK, now then, the report that I refer to is, if you scroll right down to the bottom of the first page, page 1, on 2 June 2020 you have got the report there. It is titled For Nugee J: Police Report on Systemic Corruption.

G

Fancourt J: What I am asking for is Nugee J's judgment of the 5th of --

Mr Millinder: Yeah.

H

Fancourt J: February 2018 please.

Mr Millinder: Yeah, let us go to that. Let us go to it. Bear with me, I will find it in here.

Fancourt J: If it is there.

A

Mr Millinder: It will be here because I will have uploaded it.

Fancourt J: OK.

B

(pause)

Mr Millinder: I mean, it was served in hard copy on these people. I find it very frustrating that we cannot actually access the bundle, the PDF portfolio that I have put with these proceedings to make everything absolutely seamless.

C

Fancourt J: Transcript of judgment, I have got it at event 36. This might be the one. Let us have a look.

D

Mr Millinder: You are quicker than me if you have got through there. Right, OK. There is quite a bit of activity on there.

E

Fancourt J: Yes.

Mr Millinder: Have you got it? Is that the one with the transcript as well?

Fancourt J: It is the whole transcript by the look of it, yes.

F

Mr Millinder: The transcript, and the judgment is right at the bottom of it. I have put it all into one for ease of navigation.

G

Fancourt J: Yes, I think on the court file it is two separate documents, but ...

Mr Millinder: All right.

H

Fancourt J: Right, now show, show me what it is you want me to see that Nugee J found *if it is --*

Mr Millinder: OK.

A **Fancourt J:** Relevant to today, that is.

Mr Millinder: *Sorry*, I am just trying to find where you have found that within CE-File. My system is probably a bit slower than yours this end.

B **Fancourt J:** It is event number 36, dated 19 March 2018.

Mr Millinder:

C **“Filing transcript of judgment.”**

Got you, OK, thank you. Transcript of judgment is just opening up. I am scrolling right down to the bottom. Where is the judgment then? That is only the transcript. OK, they are in two parts, sorry, yeah.

D **Fancourt J:** It is in two parts. Yes, the second one is the judgment.

E **Mr Millinder:** All right. OK, so we turn to page 2 of 6 and 3 of 6, [3].

Fancourt J: *Go on then.*

Mr Millinder: Let me just get through to the middle of the paragraph:

F
G
H **“... Empowering Wind, or EW as I will call it, being able to generate more electricity which could feed into the National Grid. In the event the project did not succeed ... I have heard some explanation from Mr Millinder as to why the project did not succeed, his contention being that it was in effect all Middlesbrough’s fault for failing to enter into an agreement called the connection agreement. The upshot of that was EW was unable to generate any money. That meant it was neither (break in connection) pay the rent under the lease, nor pay what were quite substantial charges ostensibly payable under something called the energy supply agreement.”**

Now if we go on to page 3, [4]:

A **“On the basis of those matters, Middlesbrough demanded payment of money from EW, terminated the lease for non payment of rent and subsequently appeared as a supporting creditor.”**

B **Fancourt J:** Yes.

Mr Millinder: And then if you go further down in this judgment, [6]:

C **“It is now ...”**

Sorry, [5]:

D **“It is now suggested by Mr Millinder on behalf of EEI that 16 January was obtained as a result of material non disclosure before Arnold J on a without notice application, [19th of] 9 January. He relies on this non disclosure of a large number of documents, which, as I understand it, supported the statutory demand and which explain the background to the dispute, in particular the collection agreement, which, in his submissions to me, he explained was the foundation of his argument that the project was effectively killed by Middlesbrough.”**

E

F [6]:

“It is not disputed that those documents were not put (break in connection)” --

G **Fancourt J:** Sorry, we have lost you again, Mr Millinder.

Mr Millinder:

H ***“Arnold J ...”***

Oh, no.

Fancourt J:

A

“It is not disputed that those documents ...”

You had just reached.

B

Mr Millinder: OK, thank you, yeah.

C

“were not put before Arnold J. I was also shown a note of hearing in which Mr Staunton, who appeared for Middlesbrough then as he does for Middlesbrough today, says this: ‘There is a definition of force majeure in the lease. There is no other reference to force majeure in the lease.’ That was something he repeated before me, but in fact there was a provision in the lease at schedule 5, paragraph 6, which provided that ‘If either party is prevented for a period of time from performing on its obligations under this lease by reasons of force majeure, that party shall not be in breach of such obligations for so long as and to the extent to which such reasons shall subsist’. It is true that that provision was in fact referenced in the evidence, being a witness statement of Mr Bloom, but actually it was not referenced in the witness statement.”

D

E

F

That is not correct.

G

“But in any event, this judgment was not presented, when this judgment is absolutely pertinent because it found fundamentally, as any judge would do in any detailed or standard review of the particulars, that no money was ever due to Middlesbrough.”

H

If we go further into this judgment, it is also absolutely material that unfortunately Nugee J did in fact misrepresent the terms of the assignment, and when he conveyed the terms of the assignment, he conveyed it in such a way at [10] to make the assignment not absolute, when the terms of the assignment are absolute. And they came with the part B of the statutory

demand referring to that assignment that was served (break in connection) and it cannot be disputed, My *Lord* (break in connection) --

A

Fancourt J: I am afraid you are breaking up again. Cannot hear you. You have frozen, Mr Millinder.

B

Mr Millinder: Sorry, I lost you there for a second. So, what --

Fancourt J: *OK.*

C

Mr Millinder: I am getting at is this position that they have invented on the assignment is a nonsense. Can you hear me OK?

Fancourt J: I can hear you now, yes, thank you.

D

Mr Millinder: OK, thank you. So what I am getting at now is this position that they have invented on the assignment is also a nonsense, but what they have done is that they have withheld this additional order of 21 March 2018 from the ex parte hearing and yet they seek to rely on the fact that this petition business was legitimate and bona fide, when actually if that order had been presented, it would have been proven to the Court that in fact on 28 March 2018 there was no petition debt, because Nugee J had listed the application that I made to set aside the order of 16 January 2017 for a hearing in the usual way, proving beyond doubt that the petition of 25 grand never even existed.

E

F

Fancourt J: Now, Mr Millinder, we need to progress this, this hearing.

Mr Millinder: Well, we do, yeah, yeah.

G

Fancourt J: I am going to give you another 15 minutes maximum to make any further points you want to make, then I am going to ask Mr Ohrenstein to reply briefly and then I am going to give a, a judgment. So 15 minutes now please.

H

Mr Millinder: Well, yeah, number, where I want to go from here is that we have fraud in this case, and fraud that has never been tried by, in any proceedings. Your Lordship will not be able to take me to a single judgment where any of these issues have been tried. It has

A never been tried. And I, in my application I have requested a 21 hour trial to try all of the
issues, amounting to perjury, contempt of court, false statements of truth certified as true
when the Defendants knew they were false, fraudulent non disclosure, false representations
in insolvency proceedings that makes any, any such representation a criminal offence. We
need to get to the nitty gritty. We are going to get justice. These issues are not going to be
evaded and concealed any longer. I want a trial. It is my right to have a trial, and these
B issues are already proven beyond reasonable doubt, to the criminal standard of proof. I am
prosecuting them. We need a trial, and I want restitution in this court for the damages that
these people have caused me over six years with their utter nonsense.

C **Fancourt J:** Yes, I understand.

Mr Millinder: That is where we need to go, My Lord, thank you. You know, let us cut to
the chase. This is where we are at. It is proven that there has been material non disclosure.
D All of these matters that I have raised and all of the information is clearly material to
advancement of the case part, but furthermore this letter to Drewitt, Ms Drewitt, at tab 13, is
absolutely critical to the case because it highlights all of the relevant points and it also proves
beyond reasonable doubt that none of my applications were ever without merit. We need to
get to the nitty gritty of all of this.

E **Fancourt J:** I, I do not understand. Please explain to me the, the email --

Mr Millinder: *Sir* --

F **Fancourt J:** To Mrs Drewitt. I do not understand how an email --

Mr Millinder: Well, it is not --

G **Fancourt J:** *Can lead me to* --

Mr Millinder: An email. It is a, it is a ten --

H **Fancourt J:** *Form an opinion on* --

Mr Millinder: Page letter --

A **Fancourt J:** *On anything.*

Mr Millinder: Dated 20 May 2020, at tab 13 of my, my PDF portfolio --

B **Fancourt J:** *But I have --*

Mr Millinder: Of exhibits.

Fancourt J: Already explained I cannot access that, but just explain it to me.

C **Mr Millinder:** Well, we are --

Fancourt J: What --

D **Mr Millinder:** On a sticky --

Fancourt J: Is it *that is* --

E **Mr Millinder:** Wicket, are we not?

Fancourt J: *That is said in that* --

F **Mr Millinder:** We are *at* --

Fancourt J: *That is* material?

G **Mr Millinder:** *You*, how can you, how can you possibly try the issues when you have not even got the evidence before you?

Fancourt J: Explain --

H **Mr Millinder:** You know, let us --

Fancourt J: *To me*, Mr Millinder, why that --

A **Mr Millinder:** *Because*, read it.

Fancourt J: Is a significant email.

B **Mr Millinder:** OK.

Fancourt J: I just do not --

Mr Millinder: Fine.

C **Fancourt J:** Understand.

Mr Millinder: I will explain it, no problem. Let us get to the nitty gritty, all right?

D **Fancourt J:** *Please*.

Mr Millinder: I am going to turn to page 3 of that letter. Can I email it to you now so you have got it in front of you? Shall I email it to your clerk?

E **Fancourt J:** You, you, you can if you like, if you can do it quickly.

Mr Millinder: Let us *deal with that*.

F **Fancourt J:** But there is not --

Mr Millinder: Let us do that.

G **Fancourt J:** Very much time now.

Mr Millinder: Well, let us do it, because these things do need to be dealt with. They do.

H **Fancourt J:** If you think this is the most important point and it is worth spending --

Mr Millinder: Well, it is --

A **Fancourt J:** Time --

Mr Millinder: Far from --

B **Fancourt J:** On it, then --

Mr Millinder: The --

Fancourt J: Do it.

C **Mr Millinder:** Most important points. They are all important points. The fact is --

Fancourt J: *I believe that you have got --*

D **Mr Millinder:** There has been material non disclosure.

Fancourt J: Got another 11 minutes now. That is, that is the --

E **Mr Millinder:** OK.

Fancourt J: Time that I am giving for this hearing, have to move on.

F **Mr Millinder:** Well, we need to cover all of the issues. That is where I am going with this. But bear with me. Let me just pull it up. I am going to email this to you immediately.

Fancourt J: Send it to Mr Brilliant, who *will forward --*

G **Mr Millinder:** Yeah, yeah.

Fancourt J: *It to me.*

H (pause)

Mr Millinder: Oh, for fuck's sake.

(pause)

A

Mr Millinder: This is a pain. It is actually not letting me send this for some reason. I do not know what is going on here, but I am going to cut to the chase now if you are pushed for time. Let us get to the nitty gritty of this letter. I want these issues to be dealt with at trial,

B

as I have made clear, and I want you to be able to review, even if I send them in separate exhibits, I want you to be able to review all of the evidence that I refer to. It would only be right to do so. But I am going to cut to the chase and I am just going to refer to page 3, paragraph 13 of that letter on the record.

C

Fancourt J: *OK.*

Mr Millinder: And what this says is:

D

“I refer to *Wasif and Another v The Secretary of State for the Home Department* [2016] [full citation not said] ...”

And at point 2 of the finding I quote:

E

“no judge [should] certify an application as [totally without merit] unless he [or she] is confident after careful consideration that the case [is truly] bound to fail.”

F

And the other point, at point, at paragraph 14, I, I cite the other point from this, the, the, what is the known as the seven inescapable points that Your Lordship will be acquainted with. Point 5:

G

“Where a judge suspects that there [may] be an arguable claim, even if the point in question has not been pleaded properly or at all, then it should not be certified as ‘totally without merit.’”

H

Right, that is point 1 within the letter, and now I go to page 4, paragraph 15, and I cite that:

A

“There is clearly an arguable claim in this case, and that is of unlawful forfeiture of the lease that founded all of this litigation in the first place. That unlawful forfeiture was founded by fraud, the tort of fraudulent misrepresentation in contract law, for which there must be restitution. The further, more serious, frauds all came about because of that initial fraud, and dishonesty is at the heart of it all. It is that fraud and dishonesty that this judiciary appear to have sought to evade.”

B

This brings me on to the next in the checklist, point 7 of the, of the Court of Appeal finding:

C

“Where a claim is (break in connection) ‘... without merit’ then ‘peculiar care must be taken to ensure that all the arguments raised in the grounds [have been] properly addressed’ ...”

D

I will just cut to the chase. That has never been done, because none of the issues have actually ever been tried.

E

Now I will cut to the chase further. I give an evaluation in there why none of the applications are totally without merit, and I list the points at paragraph 17, at page 4 through to, bear with me, through to the end of *para*, page 5.

F

And then at page 6, I also include some very relevant case law, and that is that the judge, bear with me. Let me just get to the relevant part. I refer to the judgment of *Fielding v Hunt*, and I was talking there about Hannon and his duty to have adjudicated on the proofs of debt when, from March 2017, I was calling a meeting of creditors and Hannon retained the fraudulent claim in breach of his fiduciary duty, and all of this was because of the Defendant’s fraud by false representation. (break in connection) *cannot* be made against an officeholder personally. Something more is required, so I talk about unreasonable conduct. Well, Hannon had that note of hearing in his possession, *ex parte*, where Staunton himself admitted, for the purpose of the energy supply agreement, force majeure had effect. Therefore, on 9 January 2017, they all knew that no such claim could be established. £4,000,000 of it was dead straightaway.

H

The next part that I quote is the judgment of *Re Home & Colonial Insurance Co Ltd* [1930] [full citation not said]:

A

“It has long been the law that an office-holder is under a duty to examine every proof and consider the validity of [a] debt which is sought to be proved ... He should require satisfactory evidence ... the debt on which the proof is founded is a real debt ...”

B

And then I quote the older judgment, of 1892, from *In re Fraser: Ex parte Central Bank of London*. It was also found that:

C

“if there is not a debt in truth and reality ... the consideration must be looked into.”

D

The actions of both Mr Hannon and the Insolvency and Companies Court in concealing these fraudulent claims, aside from being a legal act, conflicts directly with this long established precedent. I quote from Lord Eldon:

E

“‘Proof upon a judgment will not stand merely upon that, if there is not a debt due in truth and reality, for which [the condition] the consideration must be looked [in]to.’ Can this judgment be treated as conclusive in bankruptcy because the debtor has unsuccessfully attempted to set it aside? I think not, and I cannot see how the matter is any more [or less] res judicata because there has been an unsuccessful appeal [in] this Court. I agree in all that the Master of the Rolls has said on this point.”

F

The point I make here is that all these people knew that the claim against Empowering Wind was fraudulent. There has been no mention of this fraud whatsoever. All of the material facts have been withheld from the ex parte hearing. I could go on.

G

And I have then talked about the precedent which applies in all three of these ex parte cases. At paragraph 20 of page 6, I refer to *Bank Mellat*, which Your Lord will be very familiar with --

H

Fancourt J: Yes.

A **Mr Ohrenstein:** One of the ex parte authorities:

B “If material non-disclosure is established the court will be ‘astute to ensure that a plaintiff who obtains [an ex parte injunction] without full disclosure ... is deprived of any advantage he may have derived by that breach of duty:’ ...”

C And I cite some of the other relevant authorities that Your Lordship will already be very well acquainted with, so I need not recite that further, but you know where I am coming from.

D So, in short, to round off and conclude, there is no debt owed to Middlesbrough, the unlawful forfeiture of the lease has been found and proven and the assignment is indisputable, so therefore I have an indisputable debt that does accrue interest at 8%. And therefore it is proven beyond reasonable doubt that I have a claim that is recoverable by means of statutory demand and they cannot defend it. They could not defend it the first time, which is, *they*, why they withheld (break in connection) 9 January 2017. History repeats itself, My Lord.

E **Fancourt J:** Thank, thank you very much.

Mr Millinder: OK.

F **Fancourt J:** Mr Ohrenstein, could you just deal, deal with the allegations that various important matters were not disclosed to Mann J, or Mann J was misled? I, I asked Mr Millinder if he would enumerate his five main points, and I think it may have gone up to six or seven in the end, but can you just deal with that --

G **Mr Ohrenstein:** Yes.

Fancourt J: By way of brief reply please?

H **Mr Ohrenstein:** Yes. What Mann J was told in my skeleton argument that was before him, which is at page 272 and is, the relevant bit is paragraph 7 there, was almost the same as paragraph 8 of the skeleton argument for today, is that I fairly put before the judge that Mr, *and* I quote:

“Mr Millinder has argued that ...”

A

Sorry, I repeat, I said, I told the judge:

“The lease was forfeited and the ESA terminated by the Applicant. Mr Millinder has argued that this was wrongful, which the Applicant disputes, and that this gave EMW causes of action against the Applicant which were then assigned to Earth Energy Investments, another entity of Mr Millinder.”

B

C

So I fairly put to the Court that Mr Millinder’s position was that the, the forfeiture was, was wrongful, and that seems to be at the heart of the allegations that he is making today. There was --

D

Fancourt J: Yes.

E

Mr Ohrenstein: Certainly no material non disclosure. There were lots of things that were not shown to the judge. There *are* over 1,000 pages in today’s bundle, and there were nearly 1,000 pages last time, but the, but the point was clearly made there that Mr Millinder was asserting that there was a debt owed to his company and that the forfeiture was wrong and that that debt has since been assigned first to his other company and then on to him. That was made very clear to Mann J, and Mann J, I think, may have referred to it in *his*, in, in his judgment. That was certainly not concealed. And that is also set out in the witness statement of my instructing solicitor --

F

Mr Millinder: You are lying --

G

Mr Ohrenstein: *Who, who* --

Mr Millinder: About that, Mr Ohrenstein.

H

Mr Ohrenstein: *Who, who* --

Mr Millinder: You are --

A Fancourt J: Mr --

Mr Millinder: Lying about that.

B Fancourt J: Mr Millinder, please do not interrupt Mr Ohrenstein. He did not interrupt you.
Give --

Mr Millinder: OK, no problem, *I*, but I have something to say when he has finished.

C Fancourt J: Mr Ohrenstein --

Mr Ohrenstein: My --

D Fancourt J: May continue.

Mr Ohrenstein: My, my, my, my solicitor has, has fairly put the material facts in his witness statement. We can see, for example, at page 8 of the bundle, *at* paragraph 11:

E **“Empowering Wind and Mr Millinder subsequently argued that no**
F **payments were due and that as a result MFC had wrongly terminated**
the relationship and/or thwarted the project by not agreeing to take
responsibility for the required high voltage connection to the National
Grid.”

G So again the case that Mr Millinder is arguing was, *it, what* was highlighted to the Court. So there is, there is, there, there is, there is absolutely no basis for any suggestion of material non disclosure.

H So far as the, the, the next allegations, I think, concern the assignment. Mann J was taken, in, in my skeleton argument and in Mr Stewart’s witness statement, to the references that I have taken the Court to today. Mann J read *the, had*, told us that he had read the judgment of the Chancellor, and that is certainly something that I had highlighted, and that is, that is where the assignment was addressed, and the issues on the assignment. But again, Mann J was aware that Mr Millinder rejects in vehement terms all the findings of the courts in

A relation to the assignments and so forth. He had seen some of that material where Mr Millinder attacks the findings of the judiciary and the basis for the judiciary's conclusions. So there was no concealment on that basis.

B **Fancourt J:** You, you did not in fact show Mann J what Mr Millinder calls the counterpart assignment.

Mr Ohrenstein: No.

Fancourt J: No.

C **Mr Ohrenstein:** He, he, he, he, he, he saw the, the, he said he had read the --

Fancourt J: *Right.*

D **Mr Ohrenstein:** Judgments. I did not show him the underlying, any underlying document behind the judgment.

E **Fancourt J:** Yes, thank you. And did you show him Mr Millinder's report of 2 June 2018 about alleged fraud?

Mr Ohrenstein: I, I do not have that report, so I did not --

F **Mr Millinder:** *You had that report.*

Mr Ohrenstein: Show that to him.

G **Fancourt J:** *So* you did not show that. Mr Millinder --

Mr Ohrenstein: May I make --

H **Fancourt J:** Says, he --

Mr Ohrenstein: May I make it clear --

Fancourt J: Said he --

A

Mr Ohrenstein: Just --

Fancourt J: Told --

B

Mr Ohrenstein: Just, just --

Fancourt J: You after the, the hearing that you had not referred to that, that document, is that right, and you did not then draw the Court's attention to that, that document?

C

Mr Ohrenstein: Let, let me make clear I do not receive any emails from Mr Millinder. He has been --

D

Mr Millinder: *Oh, right.*

E

Mr Ohrenstein: Blocked from my email, from the chambers' email system for a number of, well, certainly months if not years. Any emails that he may have attempted to send to my solicitors which my solicitors received, some of which may have referred to me as a, as one of the many parties on, on, on, on the *receipt*, those are exhibited to the bundle. I believe that bundle is up to date. It may be that something came this morning that did not quite make it to the bundle, but certainly everything else in the bundle. Any attachment to any email that he sent is, is in the bundle. Things have not been necessarily accessed if he has put links to videos or to websites and so forth. *That*, that is not, those have not been pursued, but all the emails which he has sent with attachments are in the bundles today.

F

Mr Millinder: No.

G

Fancourt J: And finally, was, were the orders of Nugee J or Nugee J's judgment referred to, *Mr Ohrenstein*?

H

Mr Ohrenstein: The, the, the additional orders, no. The, I have seen them today, the, just during the course of this, this hearing. The order that Nugee J made in February 2018, it simply says:

“Upon the application of the Respondent [that is Earth Energy] by application notice dated 30 January ...”

A

And then:

“[on appearing] on hearing counsel, the application is dismissed. The Respondent do pay [pay] the Applicant’s costs of the application, summarily assessed in the sum of £10,000.”

B

I fail to see how an application, an, an order where his application has failed, *has* been dismissed, how that is of any material relevance and certainly how it could help Mr Millinder. If anything, it is another one of his applications which has been unsuccessful which would be chalked up potentially, I do not know the detail of that, but potentially as something where he was pursuing an application which he should not have done. But I do not see that as a, certainly as --

C

D

Mr Millinder: *Certainty* --

Mr Ohrenstein: A material non disclosure or why it is relevant to the injunction application that was being made two weeks ago before Mann J. *It* seems to me an attempt to relitigate very much old matters.

E

Mr Millinder: *Lies.*

F

Fancourt J: Right, and as to those documents that you did not show Mann J, you say those simply were not material, given that you would indicate, you were indicating to Mann J there was a genuine dispute about the underlying merits.

G

Mr Ohrenstein: Yes, we certainly said there is a, we, we, we, we made clear that there was a dispute about the merits and we made clear that there was a dispute about the assignments, and the, the force behind the dispute on the assignments was reinforced by judicial comments that have, that were, that I drew the Court’s attention to.

H

Fancourt J: Yes. Mr Millinder, you wanted to come back on a particular point. I will give you --

A **Mr Millinder:** I --

Fancourt J: One minute.

B **Mr Millinder:** I did, yeah. If we turn to Mr Stewart’s witness statement, the witness, his second witness statement please, My Lord, and turn to page 3, at paragraph 10 Stewart is saying that:

C **“Empowering Wind became liable to MFC for various payments under the lease and *the FESA*. When these were not paid, MFC exercised its right to terminate the contractual relationship.”**

Fancourt J: Yeah.

D **Mr Millinder:** There was no candour in relation to the completed collateral contract that I have drawn the Court’s attention to. There was no mention whatsoever that in fact Middlesbrough Football Club refused the connection and refused to sign the Northern Powergrid agreement for making the connection, rendering the project entirely useless, and there was no mention to the fact of the applicable application of force majeure respective of the actions of the landlord themselves, i.e. the act beyond my reasonable control, in them U turning on the completed collateral contract, rendering the project useless, and that is undoubtedly material. It is also material that no money whatsoever was owed under either **E** the lease or the energy supply agreement. So therefore Stewart has known this all the way along and he knows that there is no money owed, because I have told him that many times. **F** And in addition, My Lord, they did with, withhold that email that I sent to them in relation to the complaint of material non disclosure, and that has not been presented in the bundle. **G** They are lying.

Fancourt J: All right, thank you, that, that is it.

H **Mr Millinder:** Thank you.

Fancourt J: And I will give a, give a short judgment.

(judgment given)

A

Fancourt J: I am willing to arrange at an early date a resumed hearing of that matter so that, if he wishes, he can make further submissions --

Mr Millinder: Yes.

B

Fancourt J: In that regard.

Mr Millinder: Yes, please --

C

Fancourt J: *If you give my clerk --*

Mr Millinder: My Lord, yeah, thank you. If I may, when you are ready, Sir ...

D

Fancourt J: Yes.

Mr Millinder: *Would, I would just, I would like to make an oral permission to appeal on three simple grounds.*

E

Fancourt J: Yeah.

F

Mr Millinder: The first ground, My Lord, is that you have not viewed the report, and the point that I am making in relation to this assignment is one that cannot be disputed in law. You yourself had admitted during this hearing that the issue around the assignment has never been tried. In actual fact, the relevance of and the materiality of it is all centred around the order of 21 March 2018 that lists my application to set aside the order of 16 January 2017 for a hearing. The reason that this his material is because one week later they wound, the club wound up on the basis (break in connection) *is* disputed on genuine and substantial grounds, by your own admission, is not a petition debt. But the Court failed to set aside that petition, but the petition never existed, because it was extinguished by my claim, my crossclaim, and it was the duty of the Court pursuant to 10, sorry, 14.25 of the Insolvency Rules to consider the mutual dealings in setoff, but that was not applied, because Staunton lied about the assignment.

H

A

Those are material facts that we need to get to the bottom of because they are relevant to this issue. They are entirely relevant, because if the petition is a nullity and my assignment is valid, which has not been tried, then they are stuffed. We need to get to the bottom of it, and it is all within my report of 54 pages, so you cannot possibly make a ruling, a legitimate ruling and absolute finding until we get to the issues in question. You yourself have admitted that you have not even read the report.

B

Fancourt J: Thank you.

Mr Millinder: It has got to be done.

C

(judgment given)

Fancourt J: Mr Millinder --

D

Mr Millinder: OK, I --

Fancourt J: You are entitled to renew your application to the Court of Appeal, the Civil Appeals Office in the Court of Appeal, if you want to pursue your application.

E

Mr Millinder: *The* problem I have with that, My Lord, right now, the problem I have with that is that no money was owed to Middlesbrough, and in law the assignment cannot be disputed, so how the hell can you say that the debt is disputed? You cannot, you are not acting lawfully and you are not considering the points in question, so your order is a nullity. It ceases to exist from the outset because you have failed in your duty to properly try the arguments.

F

G

Fancourt J: You --

Mr Millinder: The order --

H

Fancourt J: You are --

Mr Millinder: That you have --

Fancourt J: Perfectly entitled --

A
Mr Millinder: *Made is just difficult to --*

Fancourt J: Mr Millinder, to make --

B
Mr Millinder: Yeah, OK.

Fancourt J: That submission to the Court of Appeal, asking for permission --

C
Mr Millinder: Well, *I am going to.*

Fancourt J: To appeal. If they --

D
Mr Millinder: *The --*

Fancourt J: If they think it is arguable, they will give permission to appeal.

E
Mr Millinder: (break in connection) failed in your duty? Well --

Fancourt J: Right, this --

Mr Millinder: What I understand --

F
Fancourt J: *Is what I am saying to you.*

Mr Millinder: My Lord, it is for you. You are the Judge.

G
Fancourt J: Mr Ohrenstein --

Mr Millinder: You are the Judge.

H
Fancourt J: *Is there anything else?*

Mr Ohrenstein: Yes, yes, there, there *are* three things.

A **Fancourt J:** Yes.

Mr Ohrenstein: Firstly, we will deal with the, the adjourned hearing of the Extended Civil Restraint Order or General Civil Restraint Order as soon as the Court is, that is convenient for the Court.

B **Fancourt J:** As it --

Mr Ohrenstein: *If My Lord should list --*

C **Fancourt J:** Happens, I, I was due to be doing something else on Wednesday next week, which has gone, so Wednesday is immediately a, a possibility for, for me, but it may not be convenient for everyone else.

D **Mr Ohrenstein:** That is Wednesday the 11th. I am, I am, I am certainly available on the 11th.

E **Fancourt J:** Mr Millinder, do you wish to deal with the ECRO application --

Mr Millinder: I --

Fancourt J: On Wednesday next week?

F **Mr Millinder:** Sorry, I *am*, I just lost you for about ten seconds there. It *is* just --

Fancourt J: We --

G **Mr Millinder:** Very intermittent.

H **Fancourt J:** We were just saying that both of us can make next Wednesday, 11 November, to continue the hearing on the Civil Restraint Order if that is convenient for you.

A **Mr Millinder:** Well, well, yeah, but there is nothing to consider in that respect, because you have not tried the arguments that go to the heart of it. You have not even read the report. You have not even --

Fancourt J: *It is a matter for you --*

B **Mr Millinder:** Read any of --

Fancourt J: *Mr Millinder.*

C **Mr Millinder:** The witness statements. You have failed in your duty.

Fancourt J: I am --

D **Mr Millinder:** That is --

Fancourt J: Suggesting --

E **Mr Millinder:** What you have done.

Fancourt J: I am suggesting a further hearing at which, if you wish to, you, you can make submissions about whether there should or should not be a new Civil Restraint Order. That is, it is up to you.

F **Mr Millinder:** Well, no, I think, I think what we need to do, well, firstly, I will take you up on that, but secondly you have not tried the issues pertaining to my application. It is history repeating itself, and you are not acting lawfully. The law states that the assignment is valid, and if you are changing that position, you are affronting the supremacy of the rule of law and you will be found in contempt of court --

G

Fancourt J: All right, Mr Millinder --

H **Mr Millinder:** Because you are *perverting* --

Fancourt J: I am not --

A **Mr Millinder:** The course of justice.

Fancourt J: Not asking for your commentary on my performance.

B **Mr Millinder:** Well, that is the facts.

Fancourt J: Tell --

Mr Millinder: The law --

C **Fancourt J:** Tell the --

Mr Millinder: Cannot be --

D **Fancourt J:** *Court of Appeal.*

Mr Millinder: Diminished.

E **Fancourt J:** So Wednesday the 11th at 10, 10.30?

Mr Millinder: Fine, yeah.

F **Mr Ohrenstein:** Yes, My Lord. The, the other, the other two matters, costs we can, we can either deal with today or at the hearing on, on Wednesday, and then the other point is that, whether you will find that the application of Mr Millinder of the 29th was entirely without merit.

G **Fancourt J:** Yes. Costs, *I*, I think we should deal with today. I will give some thoughts to whether that is totally without merit, and we will pick that up again first thing on Wednesday morning. Costs, you, you ask for your costs of the application and resisting --

H **Mr Ohrenstein:** That is right.

Fancourt J: Mr Millinder's application.

A **Mr Ohrenstein:** Yes.

Fancourt J: Mr Millinder?

B **Mr Millinder:** Well, as I have said, their cause is dishonourable and founded by multiple
frauds that you have not even looked at. And how can you possibly allow these people to
make gains founded by their own dishonour? It is illegal and you are not acting
constitutionally. The fact of the matter is that this is not a fair trial. The principles of natural
justice have been violated and, furthermore, you have failed to consider the evidence on my
side, and I have been disallowed the opportunity to present my case, looking at the issues in
question. Those issues need to be tried. Until they are tried, there can be no order for costs,
because the point I am making and the defence that I seek to advance is the fact that they
cannot pursue any action in restitution, including costs, because their action is dishonourable.
C You do know about the doctrine of illegality. You know its application in this civil court.
D So that is what I am saying. There can be no order for costs, because their cause is illegal,
they have committed fraud.

E **Fancourt J:** All right, thank you. I will make an order that Mr Millinder must pay the Club's
--

Mr Millinder: Well, you are breaking the law --

F **Fancourt J:** Costs of --

Mr Millinder: Goodbye. Goodbye, I am not listening to this any longer. You are acting
unconstitutionally, and I am going to deal with you in the criminal courts. Goodbye. Bye.
G *I am* not interested in --

Fancourt J: Mr Millinder --

H **Mr Millinder:** *Speaking with* you.

Fancourt J: Will pay the Club's costs of the --

Mr Millinder: I am not paying the costs.

A

Fancourt J: Application --

Mr Millinder: I disagree.

B

Fancourt J: For an injunction and his own application dated 28 October, on an indemnity basis.

C

Mr Ohrenstein: Thank you. There is a statement of costs in the bundle, at page, I think it is 1067 if the bundle is ...

Fancourt J: I am not, I am not going to summarily assess them now, because I am due in a --

D

Mr Ohrenstein: Thank you.

Fancourt J: Meeting elsewhere at 4.30, I am afraid, so we will pick that up again on --

E

Mr Ohrenstein: *Yeah.*

Fancourt J: On Wednesday --

F

Mr Ohrenstein: On Wednesday, thank you.

Fancourt J: At 10.30.

G

Mr Ohrenstein: Thank you.

Fancourt J: Thank you very much.

H

Mr Ohrenstein: Good afternoon.

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