IN THE HIGH COURT OF JUSTICE No. CR-2018-001137

QUEEN'S BENCH DIVISION

BUSINESS AND PROPERTY COURT OF ENGLAND & WALES

INSOLVENCY & COMPANIES LIST

Rolls Building
Fetter Lane
London EC4A 1NL

Wednesday, 28th March 2018

Before:

INSOLVENCY AND COMPANIES JUDGE BARBER

B E T W E E N :

EARTH ENERGY INVESTMENTS LLP Debtor/Applicant

- and -

MIDDLESBROUGH FOOTBALL AND ATHLETIC COMPANY (1986) LIMITED Creditor/Respondent

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THE DEBTOR/APPLICANT did not appear and was not represented.

MR U. STAUNTON (instructed by Womble Bond Dickinson (UK) LLP) appeared on behalf of the Creditor/Respondent.

P R O C E E D I N G S

I N D E X

(Transcript prepared from poor quality recording)

Wednesday, 28th March 2018

(12.07pm)

MR STAUNTON: Judge, for the second time around, I believe perhaps you received an email or the court received an email from Mr Millinder----

JUDGE BARBER: Yes.

MR STAUNTON: -- which I----

JUDGE BARBER: Who is Mr Millinder?

MR STAUNTON: The debtor----

JUDGE BARBER: He's the director, is he?

MR STAUNTON: The debtor's only one member which is Mr Millinder.

JUDGE BARBER: I see.

MR STAUNTON: So, he's the sole representative. Mr Millinder has a tendency to fire off numerous emails, so I hope I have in mind the one that you're looking at. He says he's unwell----

JUDGE BARBER: Yes.

MR STAUNTON: -- and unable to attend court and invites the court to dismiss the petition on the basis it's an abuse or to adjourn it to sometime from 10th June.

JUDGE BARBER: Yes.

MR STAUNTON: May I explain why neither of those grounds are good grounds for adjourning the petition?

JUDGE BARBER: Is this the first hearing of the petition?

MR STAUNTON: It is, yes, but the matter----

JUDGE BARBER: He's----

MR STAUNTON: Yes, but the matter----

JUDGE BARBER: -- saying in his email that the – the petition is disputed.

MR STAUNTON: Indeed, but that matter has been fully ventilated in front of Judge Jones, terminating Monday of this week when he dismissed (inaudible) application. I can explain what that is. And also, the adjournment to 10th June is because he wanted to make a second application, the first having been dismissed by Mr Justice Nugee on 5th February. Can we go back? Earth Energy has a fully owned subsidiary, Empowering Wind, which is now in the process of being wound up. The liquidator is Mr Hammond from the OR's office. The subsidiary had an agreement with the petitioner. The petitioner has, as part of that group, terminated the agreement and also a lease underlying it and Mr Millinder then said, "Well,

the subsidiary has a significant claim for damages against Middlesbrough", but it never brought any proceedings.

JUDGE BARBER: It's not a cross-claim then.

MR STAUNTON: That is the cross-claim.

JUDGE BARBER: Well, it's not a cross-claim though, is it?

MR STAUNTON: Well, I – in my submission, no, however, the company – the subsidiary then goes into liquidation and Mr Hammond's the OR. Mr Hammond's filed a report that the subsidiary has no assets, so he cannot investigate the claim that Mr Millinder says the subsidiary has against Middlesbrough.

JUDGE BARBER: Yes.

MR STAUNTON: On 15th November, Earth Energy issued another application, amongst other things that it wants directions that that claim should be pursued. That came on before Judge (inaudible) for the first hearing on 21st December, where he made it clear to Mr Millinder that as the subsidiary had no assets it couldn't pursue the claim unless Mr Millinder could put forward proposals to finance that claim, and he adjourned it to allow Mr Millinder to put in such evidence. It came back before Judge Jones on Monday of this week where Mr Millinder had failed to put in any sensible evidence to finance the claim and Mr Hammond said that obviously the subsidiary couldn't pursue it. Judge Jones then dismissed that application. That's the cross-claim. That's disposed of Monday of this week.

Now, to 10th June. In January '17 the (inaudible) obtained an injunction restraining Earth Energy from presenting a petition. That was disposed of by agreement on 16th January whereby Earth Energy agreed to pay £25,000 in costs. That's addition debt. In January of this year Mr Millinder applied to set aside the injunction on the grounds of non-disclosure. That was heard by Mr Justice Nugee who dismissed the application. On 1st March Mr Millinder issued an identical application. That's to be heard in the three-day window of 6th June, so again it's simply a repeat of an application that's already been dismissed. So, the two grounds that Mr Millinder puts forward to resist the petition have already been dealt with and disposed of by the court.

JUDGE BARBER: Yes, I see.

MR STAUNTON: So, he seeks to keep the ball alive but in an improper fashion.

JUDGE BARBER: Yes, very well.

MR STAUNTON: So therefore, on the invitation of the creditors----

JUDGE BARBER: Well, on the basis of what I've been told, I'm not minded to accede to the informal written request that the petition be adjourned. The grounds of dispute which Mr Millinder now seeks to raise have already been dealt with and adjudicated upon by judges of the High Court and, on that basis, any further attempt to revisit those arguments would be abusive. I am not minded to adjourn the petition simply to allow Mr Millinder an opportunity to put forward arguments which have already been adjudicated upon. That would be simply facilitating an abuse of process. The debt is a judgment debt. It is clearly due and owing. The partnership has not paid it. On that basis I make the usual compulsory order main proceedings.

MR STAUNTON: I'm obliged.

(12.12pm)

CERTIFICATE

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