

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

7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

BEFORE:

HIS HONOUR JUDGE PELLING QC sitting as a Judge of the High Court

BETWEEN:

EARTH ENERGY INVESTMENTS LLP

APPLICANT

- and -

**MIDDLESBROUGH FOOTBALL & ATHLETIC
COMPANY (1986) LTD**

RESPONDENT

Legal Representation

The Applicant appeared by its director Mr. Millinder
Mr. Ulick Staunton instructed by [] appeared for the Respondent

Judgment

Judgment date: 28 June 2018
Transcribed from 15:54:35 until 16:47:41

Reporting Restrictions Applied: No

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

“This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.”

Number of folios in transcript **91**
Number of words in transcript **6,502**

His Honour Judge Pelling QC:

1. This is an application made by the Respondent to the applications I determined on 7 June, Middlesbrough Football Club, who I refer to hereafter as ‘the club’ for an Extended Civil Restraint Order against Mr Millinder following upon the various applications which have been made in these and related proceedings which, it is maintained by the club, are applications which were totally without merit.
2. The applications that are relied on for these purposes are four in number being first an application determined by Mr Justice Snowden on 16 May 2018, secondly, but faintly, the application to rescind the Winding Up Order made against Earth Energy Investments LLP, thirdly, the application that I determined on 7 June last, being an application brought by Mr Millinder in the name of Earth Energy Investments LLP, for an order setting aside a Consent Order and setting aside a judgment of Mr Justice Nugee refusing to set aside a Consent Order and, finally, an application which I dismissed earlier today and which, although not very clear on the face of the application notice, was an attempt to challenge a decision made by Mr Registrar Jones dismissing an application brought by Mr Millinder in the name of Earth Energy Investments LLP, to set aside or have discharged various proofs said to have been lodged with the liquidator of Earth Energy Investments by the Club.
3. In considering an application for an Extended Civil Restraint Order the relevant principles are these. First, on the case law as it currently stands, in order for there to be jurisdiction to make the order sought, I must be satisfied that at least three claims or applications have been brought by the party against whom an Extended Civil Restraint Order is sought, which were totally without merit. Secondly, if that jurisdictional hurdle is passed, I must be satisfied in the exercise of my discretion that it is, in all the circumstances, appropriate to make an Extended Civil Restraint Order.
4. This application is made against Mr. Millinder personally although the applications relied on have been issued in the name of a company controlled by him. It is not in dispute between the parties however that the Court has power to make an Extended Civil Restraint Order against the person who is the real party behind totally without merit applications that have been made in the name of corporate entities - see in this regard, the judgment of Mr Justice Newey, as he then was, in CFC 26 Ltd v Brown Shipley and Co Ltd and Others [2017] EWHC 1594 (Ch) particularly at paragraph 20 where Mr Justice Newey says this:

“On balance, it seems to me that, in a comparable way, references in Practice Direction 3C to a “party” who has issued claims or made applications, or to a “party” issuing claims or making applications, should be read as extending, not only to the named claimant or applicant but, where different, to the “real” claimant or applicant. Where the person against whom a CRO is sought has been the “real” party behind totally without merit claims or applications, it must, I think, be possible to take them into account. Likewise, if a claim or application is issued in the name of someone who is not subject to a CRO, but the “real” claimant or applicant has had such an order made against him, the CRO will, as it seems to me, bite on the claim or application. That is by no means, though, to say the CRO will be in point wherever, say, the person subject to it has an interest, however small, in a company or trust that brings a claim or makes an application.”

5. The final point that perhaps ought to be made by way of general introduction is that a Civil Restraint Order is not a bar to the commencement of a meritorious claim or application. Quite the contrary, a Civil Restraint Order operates so as to provide a filter through which a meritorious Applicant or Claimant can pass simply by demonstrating to the Court that the claim is an appropriately arguable one that ought to go forward for determination by a Court upon its merits. That decision is taken by a High Court Judge, on the basis of materials lodged by someone who is the subject of a CRO.
6. The first stage therefore is to satisfy myself that there are at least three applications which are totally without merit.
7. The first relied upon by the Club is an application determined by Mr Justice Snowden by a judgment delivered on 16 May 2018. That application was an application for an order requiring the Court to consider:

“The Claimant’s claim and make an interim costs order against the Defendant based on the Claimant’s quantum of claim to compensate in the interim for loss of damages to the Claimant as a result of winding up its sole purpose company.”

Mr Justice Snowden dismissed that application essentially on two grounds. The first was that Earth Energy Investments LLP was itself the subject of a Winding Up Order made by ICC Judge Barber on 28 March 2018 and thus Mr Justice Snowden concluded, at paragraph 5 of his judgment, that Mr Millinder was not, and could not be, authorised or empowered to issue or pursue any application on behalf of Earth Energy Investments LLP. As Mr Justice Snowden observed, at paragraph 6 of his judgment:

“On that basis alone the application must fail.”

The application also failed for the reasons identified in paragraphs 7 and 8 of the judgment - that is to say that it was an application for an interim order as to costs or damages to be made in favour of Earth Energy Investments LLP when no claim for compensation had been issued by that entity in an appropriate form under CPR Part 7. That being so, no question could arise of any damages being awarded. As Mr Justice Snowden observed, at paragraph 8, the effect of Mr Millinder’s application was an attempt to jump the queue of cases and to have it heard in the Interim Applications Court and to prejudge matters which stood adjourned or be listed to be heard on a future occasion and to advance claims which had not yet been the subject of any originating process.

8. Counsel then appearing for the club applied to the Judge for an order that certified the application to have been totally without merit. The Judge concluded that it would be inappropriate to do so essentially because there was a pending application to rescind the Winding Up Order made in relation to Earth Energy Investments LLP and he considered that it would be appropriate for the question of whether or not the application was totally without merit to be resolved finally by the Judge before whom that application came, as indeed it came before me on 7 June. The Judge concluded, in the course of argument, that the Judge hearing the application in June would be in a position to decide the question with the added benefit of having looked at the other applications then adjourned over until 7 June but he recognised that it might be that

the Judge would conclude that the only person who could certify the application as totally without merit would be him.

9. In my judgment in the circumstances of this case I can and should reach a conclusion as to whether the application was totally without merit by reference to the reasoning of the Judge in dismissing the application. To do otherwise would not be an appropriate use of judicial resources and would expose all parties to unnecessary additional costs. In any event, it has long been recognised that it is open to a Court to conclude that an application is totally without merit even though not formally certified as such by reviewing the judgment and the application itself. The reasons identified by Mr Justice Snowden in dismissing this application make it abundantly clear that the application was totally without merit since Mr Millinder had no locus to bring the application which was the primary basis on which the application to Mr Justice Snowden failed but also, in any event, because he sought relief on behalf of Earth Energy Investments LLP that the Court was incapable of giving on any proper analysis of the Civil procedure Rules. Thus, I conclude, that the application determined by Mr Justice Snowden was totally without merit.
10. The second application relied upon by Middlesbrough Football Club as constituting a totally without merit application was the application made by Mr Millinder to set aside or to rescind the Winding Up Order made against Earth Energy. That was an application which had not previously been made. It was an application which, as I suggested in the course of the submissions that were made this morning, engaged a different test and different evidence to that which had been considered previously albeit by reference to a topic that had previously been considered. In those circumstances, whilst the application failed for the reasons I gave at the time, it is nonetheless difficult to see how it would be proper to certify that in and of itself as being a totally without merit application.
11. I turn next to the third application relied upon by the Club namely the application to me to set aside the order of Mr Justice Nugee refusing to set aside the Consent Order (being the Order defined as such in my judgment dismissing that application) and to set aside the Consent Order. The material that was deployed in support of the application to set aside the Consent Order and the order made by Mr Justice Nugee was not materially different from the evidence which was considered by Mr Justice Nugee when he dismissed the earlier application to set aside the Consent Order.
12. Two points were at issue on the application before me. First it was asserted that there had been no agreement to the effect set out in paragraph 2 of the Consent Order, which imposed upon Earth Energy an obligation to pay £25,000 contribution towards the costs of the Club in relation to the proceedings in which the Consent Order was made. Secondly, it was asserted that the order had been obtained by material non disclosure of critical documents including, in particular, a set of minutes which it was contended contained assignments of causes of action to Earth Energy from its subsidiary by operation of which Earth Energy had a cross claim against earth Energy that was significantly in excess of the sum claimed by the Club.
13. Mr Justice Nugee had concluded, as did I, that the document relied on by Mr. Millinder did not even arguably constitute an assignment but evidenced at best an agreement to explore the possibilities of assignment with a view to enabling any claims to be brought in the future by Earth Energy. In addition, the Club deployed before me two pieces of correspondence, both emanating directly or indirectly from Mr Millinder, each of

which was entirely inconsistent with the suggestion that there was an assignment in place as alleged. These documents were now shown to Mr. Justice Nugee. That they been I have no doubt that they would have fortified the view he came to when making his order. This material – that is the minutes and the correspondence - led me to conclude that there was no proper basis to set aside Mr Justice Nugee’s order and there was no realistically arguable cross claim available to Earth Energy that provided a proper basis for setting aside the Consent Order.

14. In relation to the assertion that there had been no agreement on the part of Mr Millinder as to the making of paragraph 2 of the Consent Order, I drew attention to the fact that Mr Justice Nugee had indicated, in his judgment, that there was an absence of evidence on that issue which it was legitimate to expect would be put right between the date when Mr Justice Nugee’s order was made and the date of the hearing before me but, in the event, it was not. In those circumstances the reality is that the application to set aside Mr Justice Nugee’s order and set aside the Consent Order that was heard before me, was an application that was totally without merit because it proceeded by reference to essentially all the evidence that was heard before Mr Justice Nugee. If Mr. millinder was dissatisfied with the outcome before Mr. Justice Nuge his proper remedy was to apply either to that Judge of the Court of Appeal for permission to appeal.
15. The fourth application relied upon by Middlesbrough Football Club as being totally without merit was the application which came before me this morning. As it was drafted, the application described various forms of relief sought but it proceeded principally as an application that I should set aside an order made by ICC Judge Jones by which he dismissed an application made under the Insolvency Rules by Mr Millinder in the name of Earth Energy seeking to set aside or have discharged various proofs allegedly lodged by the Club with the Official Receiver as the initial liquidator of Earth Energy.
16. The application before ICC Judge Jones was opposed and was adjourned. Between the date when it was adjourned part heard, and its resumption, Mr Millinder applied for an order requiring ICC Judge Jones to recuse himself on the grounds of either actual or apparent bias. When the matter came back before ICC Judge Jones both the application that he recuse himself and the application brought by Mr Millinder in relation to the proofs failed and were dismissed. The remedy that was available in relation to that result was one which was only available to Earth Energy and was to apply for permission to appeal from the order made ICC Judge Jones. No such applicationw as made. The basis on which the application before ICC Judge Jones failed was that none of the proofs that were described had been admitted to proof in any formal sense because there were no assets available in the winding up and therefore there was no basis on which the proofs could be processed.
17. Mr Millinder maintains that the lodging of the proofs or claims to be a creditor by the Club is having a material effect on his ability to advance what he maintains is a viable claim available to Earth Energy in relation to losses said to have been suffered as a result of the failure by the Club to proceed with a joint venture, which Mr. Millinder maintains was a breach of contract or duty owed by the club in its capacity as a party to the joint venture. The effect of the Club’s claims is set out in a letter from the Official Receiver dated 16 June 2017 in which the Official Receiver says that because his office had received claims of about £4,900,000 of which the claim submitted by Mr Millinder totalled £770,000, Mr Millinder’s interest as a creditor was less than 25% of the known

liabilities and thus Mr Millinder was unable to commence the decision making process by which the Official Receiver could be replaced by a liquidator.

18. As counsel for the Club submits, ICC Judge Jones determined the application before him on the basis that there were no formal proofs and that any such application was by therefore by its nature premature. In those circumstances it seems to me the application before me this morning was one which was totally without merit. The only entity with locus to challenge ICC Judge Jones' decision was Earth Energy but Earth Energy is in liquidation so only the Official receiver could commence such proceedings. Mr. Millinder has no locas to do so just as he had no locus to commence the application dismissed by Mr. Justice Snowden. In any event any such challenge would have to be by way of appeal not an application to set aside the order made by the Registrar. In those circumstances the application before me this morning was bound to fail and I certify it to have been totally without merit.
19. There are therefore a minimum of three applications that have been dismissed on the basis either that they have been certified as totally without merit or on proper analysis were totally without merit. The more difficult question that now arises is whether in exercise of my discretion I should make a Civil Restraint Order as sought against Mr Millinder.
20. The submissions made in support of making such an order, in summary, come to this. First, it is submitted tht Mr Millinder has bombarded a wide variety of different people, including counsel for the club, the solicitors for the club, club officials and directors, Court officials and judges with correspondence which strays very far from what is appropriate even in hard fought litigation. Secondly, it is said that the applications which have been brought show the classic signs of a vexatious litigant being a refusal to take no for an answer and the repetitious making of applications which go over the same ground again and again in order in an attempt to advance claims that Mr. Millinder is convinced are bound to succeed. Thirdly, and as a result of each of those points, it is submitted that the club has been exposed to significant legal cost as a result of the activities of Mr Millinder, which would otherwise have been avoided and needs to be brought under control. And it is further submitted that significant Court resources have been used as a result of the various applications made by Mr. Millinder, which could otherwise have been avoided.
21. The partial chronology that I set out in the course of my earlier judgment concerning the multiple applications that have been made make good the point concerning the use of Court resources. A particular and perhaps extreme example concerns the application in relation to the Consent Order where the original Consent Order having been made, Mr Millinder applied to have it set aside, which application failed before Mr Justice Nugee. A further application was then issued by Mr. Millinder seeking to set aside both that order and the Consent Order. Thus, in the end, two fairly lengthy hearings took place in relation to a Consent Order when at least one of those applications should never have been made and possibly both of them.
22. Turning first to the detail of the correspondence it is necessary that I should quote from a selection that was identified by counsel in order that readers of this judgment can understand the nature of the difficulty. The correspondence relied upon by counsel for the football club is confined to the period between the orders I made on 7 June and the hearing today. There is earlier correspondence which has a similar flavour but is not relied upon and I need not refer to it.

23. On 14 June, Mr Millinder sent an email to Mr Kevin Gray, a solicitor and partner at the firm of solicitors acting for the club. It contained the following:

“I also need to inform you that I have laid information on the DJ sitting in the Magistrates’ Court for warrants for the arrest of Mr Gill, Mr Stewart, Mr Brown and the body corporate Middlesbrough Football & Athletic Club (1986) Limited, those parties concerned and others explicit. A further warrant will follow for Mr Staunton ...”

As I understand it Mr Gill and Mr Brown are both partners in the Claimant’s solicitors, Mr Staunton is counsel who appeared before me on 7 June and has been primarily the counsel instructed on behalf of the club during these proceedings. On the same day, there was an assertion made in email correspondence by Mr Millinder that the solicitors acting for the club were in breach of its insurance covenants:

“For engaging in fraud, blackmail and corruption, needless to say a fundamental breach of trust.”

In the same email, Mr Millinder referred to the club having:

“... made an unwarranted demand with menaces as in Section 21 of the Theft Act 1968 ...”

And a little later, in paragraph 6 of the same email, he said this:

“I refer to Exhibit 16 which made the position perfectly clear, you choose to ignore it because you were reliant upon the later collusion between Registrar Briggs and Radcliffe Chambers to seek to ‘bury the issue’ again acting dishonestly and against the interests of justice in contravention of your duties in the SRA code.”

24. The tone continued with an email of 18 June, again to Mr Gray, saying this:

“Your partners are guilty of fraud and you come back dictating to me after destroying my business reputation and causing me significant losses and breach of trust with your criminal misconduct. You are an utter cretin and a joke, that is all I will say for now.”

25. On 18 June, Mr Millinder sent an email to an official here at the Rolls Building, a Mr Steve Rogers, with copies to various others including Mr Staunton, the Chancery Judges’ listing department, and Miss Charlotte Brice, one of the Chancery listing officials employed at the Rolls Building. In that email, apart from anything else, it contained the following:

“Justice is not subject to status and fraud is fraud whether committed by white collar criminal lawyers or anyone else ... no advantage should be gained by fraud that includes Court orders and any disproportionately inflated costs of the other side. Nobody is paying for their misconduct, least of all me. That also goes for the £25,000 obtained in fraudulent non-disclosure and indeed, most critically, the unwarranted demand date of 25 June 2015. All bets were off from

that date in relation to the club's defence, it was unwarranted plain and simple. Please ensure the Judge gets sight of this email chain and the enclosures."

In another email of 18 June, addressed to Mr Rogers here at the Rolls Building, and to ICC Judge Jones, Mr Millinder said, amongst other things:

"It is not for me to make an application to put right gross judicial error. The only application I will be making is to lay the information to prove the offences at the Magistrates' Court. Please do send me that judgment by return, it should have been available on the system three months ago ..."

26. On 19 June, a further email was sent by Mr Millinder, to various addressees including the clerks at Radcliffe Chambers, the Chancery listing section, Mr Rogers, who I have mentioned already, and various partners at the club's solicitors as well as Mr Hannon, the Official Receiver. In that email, Mr Millinder said this:

"I note, despite my numerous requests since 4 January 2017, you failed to disclose the first and second proofs of debt claims that you made against Empowering Wind MMC Ltd ... in addition the same is needed as evidence in criminal prosecutions in process at the Magistrates' Court. I ask for you to make the disclosure referring to standard disclosure in CPR Part 31, as usual you failed to disclose ... Mr Hannon had a legal duty to disclose same to me in January 2017 ... hence my request is still outstanding at today's date and if I do not have these by 4pm today without fail in their complete form, I will be heading to the Interim Applications Court to deal with an application pursuant to CPR Part 31, against Mr Staunton, Womble Solicitors and Hannon so as to obtain this evidence. Clearly you would be liable for costs if you force this position on me ..."

As will be apparent Mr Staunton was counsel primarily instructed on behalf of the club in relation to these proceedings, the entity described as:

"Womble Solicitors"

Are Womble Bond Dickinson, the solicitors acting for the club in these proceedings and:

"Hannon"

Is Mr Hannon, the Official Receiver.

27. On 19 June 2018, an email was sent direct, by Mr Millinder, to ICC Judge Jones. Again, it was a relatively lengthy email and it is probably unnecessary for me to set it out in total however in the email he referred to various damages claims that he was proposing to make and then said this:

"It would cost me nothing to file the damages claim because I already have (inaudible) claiming damages dated 9 January 2017 and in this respect you cannot and should not have become involved in complex

and protracted proceedings being heard by senior judiciary. I contend that in fact, by having done so, your order is void ab initio and request therefore that you take this into account by setting it aside without application ...”

This was a reference to the orders made by ICC Judge Jones that I referred to earlier in this judgment concerning the proofs.

28. On 20 June, Mr Millinder emailed a number of addressees including various partners at Womble Bond Dickinson, the Solicitors Regulatory Authority and the Chancery listing section, in these terms:

“Unless you provide me by return with copies of the first and second proof of debt, received by 1pm at the outside by email, I will make the application in the Interim Applications Court to obtain the evidence you’ve been withholding both from Mr Hannon and Womble Bond Dickinson this afternoon in preparation for a hearing of the 28th and because I need the evidence for criminal proceedings at York Magistrates. I have only been asking since 4 January 2017 and, as a result of this fraudulent non disclosure and breach of duty, it has resulted in that Section 1 Magistrates’ Court application against Mr Hannon ...”

29. This was followed on 21 June by an email sent direct to Mr Staunton, with copies to various partners at Womble Bond Dickinson and Miss Brice, the Chancery listing official I mentioned earlier, and to the Chancery listing sections here at the Rolls Building and apparently to Northumbria Police and to an identified Metropolitan Police officer. The subject was said to be:

“Section 1 Magistrates’ Court Act 1980 and Section 2 and 4 of the Fraud Act - Mr Staunton.”

The email contained the following statement:

“I trust I’m not going to get any response from your client and in any case you have made a false representation as in Section 2 of the Fraud Act 2006 when on 19 September 2016 you attended Court to make that false representation in full knowledge of the full background. After having viewed the papers you made that false representation in the sum of £256,206.69 on 19 September 2016 with intent to cause loss to another. On the balance of probabilities, given that you are of counsel and clearly you did review the papers before attending Court, you clearly did know then what you were doing was of dishonest intent. I allege therefore that you are also guilty of the offence of fraud by use of position where you had a duty to disclose a full and fair account of the correct accurate position of law. You failed to do so and you acted with intent to cause loss to another based on that false representation. On 9 January 2017, you then attended an ex parte hearing where your client withheld 172 pages of witness exhibit that should otherwise have (inaudible) statutory demand ...”

Continuing:

“Would you jump off a bridge also if your client told you to do it? I will be laying a case at the Magistrates’ Court against you by first thing in the morning unless I receive your fully rationalised and honest account of your position by 4pm today ...”

On 21 June, at 17.53, Mr Millinder sent another email, addressed to various addressees including Miss Brice, the Chancery listing section here at the Rolls Building, Mr Staunton, various partners at Womble Bond Dickinson, Andrew Field MP at Parliament UK and Mr Hannon and to someone at the Insolvency Service, with copies sent to various police officers. The email was to the following effect:

“Again, as usual, absolutely no response given. I’m done with this nonsense, fraud, thefts and abuse of position from those that purport to be judges. They act against the public interest to assist other dishonest jobsworth members of the legal and insolvency cabal, intent on stealing people’s assets. As for Staunton and the rest of the clowns at Womble solicitors, this is now personal business between you and I. It is business that you are not going to resolve because now things are going to be done my way. I’m sick of this abuse of our justice system, collusion from dishonest scum that are intent on stealing from my estate and making me pay for the privilege of their misconduct. There is no justice in that Court because it has been infected with this cancer of corruption and filth such as the likes of Staunton and co that then go on to become judges. That is the root of the problem and it is all too evident in my case. I am not the one looking utterly foolish and incompetent though, you have played games with the wrong party. I take it personally and I am coming for all of you corrupt, dishonest jobsworth ...”

30. This was preceded by an email to Miss Brice at the Chancery listing section here at the Rolls Building, on 21 June, in which he criticised her personally for fixing the hearing on 7 June before with me. He said of me:

“You decided it would be prudent to bring HHJ Pelling QC into my complex case, all the way from Manchester. I allege he’s connected with Peel Holdings, the party which is subject to litigation for making a false representation and causing me loss and delay of over a year. That is one issue but that is not the issue in question ... why would I have to extend further resources to put right these wrongs? My case needs to be heard by Mr Justice Nugee or Mr Justice Arnold but I would be very happy for any decent High Court Judges, including Mr Justice Snowden to hear this case. You made sure it was HHJ Pelling QC, all the way from Manchester, what a coincidence ...”

Before moving on I record that I have no connection with Peel Holdings of any sort (other than having heard cases to which it or a subsidiary was a party) and was not aware I was to be listed to hear this case until after I started my London sitting in the Rolls Building back at the end of June.

31. I turn next to an email of 20 June, which Mr Millinder had sent to various people in which he said, amongst other things:

“I want justice and I’m coming to get it. I pity anyone else that attempts to circumvent it, I will take out each and every single one of you that has aided and abetted these frauds in the public interest for the good of our country so others do not have to suffer as a result of dishonest jobsworths in office ... please send this to Chief Registrar Briggs, Jones, HHJ Pelling QC and confirm it’s been done.”

32. These emails, it is submitted, show a very unsatisfactory approach to litigation particularly when looked at in the light of the applications which have been made totally without merit which I referred to earlier in this judgment. It is entirely unnecessary for correspondence of this sort to be sent although I am bound to say that I accept that a large part of it is driven by a sense of frustration arising from a belief, on the part of Mr Millinder, that there is a cause of action available to Earth Energy Investments Ltd or its subsidiary which, if only it could be commenced and adjudicated upon, would result in substantial damages being awarded against the club.
33. In essence, Mr. Millinder alleges that there was a joint venture between Earth Energy and its subsidiaries on the one hand and the Club on the other whereby a wind and turbine electricity generating set would be installed on land rented by Earth Energy’s subsidiary from the club which would then yield electricity for use by the club for which the club would pay Earth Energy’s subsidiary, with any surplus electricity being sold to the National Grid. There were difficulties in relation to the delivery of the scheme generated, in particular, by a claim by the local regional airport that the wind generator would interfere with flight operations at that airport. That airport is owned, so it is asserted by Mr Millinder, by Peel Holdings, which explains the significance of the reference to Peel Holdings in the emails I referred to earlier. He maintains that there is a cause of action available against Peel Holdings in relation to the delay caused to the project by an assertion that the wind generator would interfere with operations at the airport which, Mr Millinder maintains, were without foundation and were eventually conceded having been discussed for some months perhaps even, as mentioned, as long as a year.
34. Mr. millinder maintains that there is a claim available to the subsidiary by reference to the fact that the Club refused to sign what is referred to in these proceedings as the connection agreement. The connection agreement was an agreement, as I understand it, between the club and a commercial electricity generating company concerning the ownership of a substation and its connection to the wind generator. Mr Millinder maintains that the failure to sign that agreement was what brought the joint venture arrangements to collapse. He maintains that the club was either under a contractual or some other duty to execute the connection agreement and that in consequence there is a cause of action available to the subsidiary against the club for losses arising from the failure to sign that agreement.
35. The detail of how, in law, that is likely to work has never been fully explained but the consequence of all that has taken place comes in the end down to a belief, on the part of Mr Millinder, that there is a cause of action which he would wish to proceed with against the club to recover damages resulting from the loss of the business opportunity that would have been represented by the construction of the wind generator which he has been precluded from advancing by reason of the causes of action being vested in companies which are in liquidation.

36. In order that Mr. Millinder may make the claim he believes is available, he needs to control Earth Energy. That is why he applied to set aside the Consent Order because it is the Consent Order which contains the obligation to pay £25,000 which is the basis on which Earth Energy was wound up. It is why he sought to set aside the order of Mr Justice Nugee because he had refused to set aside the Consent Order which contains the obligation which is the basis of the winding up proceedings against Earth Energy. He sought to have the Winding Up Order rescinded for similar and obvious reasons. If he cannot set aside the winding up order then he wishes to bring about the appointment of a liquidator over Earth Energy Investments who can be relied upon to bring a claim against the Club, which is why he commenced the proceedings determined by ICC Judge Jones.
37. In all those circumstances I accept the submission that Mr. Millinder has consistently refused to take no for an answer resulting in repetitious applications which go over the same ground again and again in order to advance claims that Mr. Millinder is convinced are bound to succeed. I accept too that this has resulted in the Club incurring significant legal expense that it would otherwise have avoided and use of public resources that would not otherwise have been needed for these proceedings. Mr. Millinder has disclosed no insight into the vexatious nature of this activity. On the contrary, in the course of his submissions, he very fairly said that that is precisely what he intended to continue as he has in the past.
38. In those circumstances, I accept the submission that it is highly likely that further applications will be issued in the future designed to secure the ability of Mr Millinder to bring the claim he maintains is available to Earth Energy or its subsidiary, against the Club. It is likely, having regard to the correspondence that has passed before that if, and to the extent these further applications fail, there will be further unpleasant correspondence addressed to those who are doing their best to ensure that these various applications are dealt with in accordance with relevant legal principle. I am entirely satisfied, in the circumstances of this case, that the time has now come to put in place a filter that limits Mr. Millinder to making applications that he can demonstrate are realistically arguable by making an Extended Civil restraint Order. I propose to make one therefore which will identify the Judge to whom applications are to be made before they can be issued as being Mr Justice Arnold with the reserve Judge being Mr Justice Norris.
39. I emphasise that the filter will not prevent the bringing of meritorious claims which are legally realistically arguable but it will preclude further applications such as those which have been determined so far which end up being dismissed as totally without merit.

This Transcript has been approved by the Judge.

The Transcription Agency hereby certifies that the above is an accurate and complete recording of the proceedings or part thereof.

The Transcription Agency, 24-28 High Street, Hythe, Kent, CT21 5AT
Tel: 01303 230038
Email: court@thetranscriptionagency.com
