N244

Application notice

For help in completing this form please read the notes for guidance form N244Notes.

Name of court High Court	**Claim no.** CR-2017-000140
Fee account no. (if applicable)	**Help with Fees Ref. no.** (if applicable) H W F – –
Warrant no. (if applicable)	
Claimant's name (including ref.) Mr Paul Millinder	
Defendant's name (including ref.) Middlesbrough Football & Athletic Company (1986) Ltd & others (see Counterpart N244)	
Date	28/09/2018

1. What is your name or, if you are a legal representative, the name of your firm?

   Mr Paul Millinder

2. Are you a ☑ Claimant ☐ Defendant ☐ Legal Representative

   ☐ Other *(please specify)*

   If you are a legal representative whom do you represent?

3. What order are you asking the court to make and why?

   Application pursuant to CPR Part 3 Rule 3.3 for the Court to make an order of its own volition; Determination of fraudulent non disclosure and misrepresentation and to vary and set aside orders accordingly, granting relief appropriately in remedy of miscarriage of justice against the malicious WUPs.

4. Have you attached a draft of the order you are applying for? ☐ Yes ☑ No

5. How do you want to have this application dealt with? ☑ at a hearing ☐ without a hearing

   ☐ at a telephone hearing

6. How long do you think the hearing will last? 6 Hours 0 Minutes

   Is this time estimate agreed by all parties? ☐ Yes ☑ No

7. Give details of any fixed trial date or period: 4/10 - 31/10/2018 (ASAP)

8. What level of Judge does your hearing need? Chancellor of the High Court

9. Who should be served with this application? Defendants

9a. Please give the service address, (other than details of the claimant or defendant) of any party named in question 9.

Womble Bond Dickinson (UK) LLP
St Anns Wharf
12 Quayside
Newcastle upon Tyne
NE1 3DX

10. What information will you be relying on, in support of your application?

- ☐ the attached witness statement
- ☑ the statement of case
- ☑ the evidence set out in the box below

If necessary, please continue on a separate sheet.

Refer to ; Counterpart N244_28_09_2018, being the continuation sheet with this Application.

The Claimant refers to the bundle lodged on CE File and the Index of Exhibits with this Application and the Part 8 Claim attached to it.

Statement_Claimant_28_09_2018, being the Applicant's Statement of Case with this Application and the enclosed Part 8 Claim.

Further evidence is referenced within CR-2017-008690 being the Claimant's Originating Application pursuant to Rule 14.11 of the Insolvency Rules 2016 and CR-2017-000140 being the history of proceedings from the First Defendant's Originating Application ex-parte on 9th January 2017.

Statement of Truth

~~(I believe)~~ (The applicant believes) that the facts stated in this section (and any continuation sheets) are true.

Signed _____ Dated 28th September 2018

Applicant('s legal representative)('s litigation friend)

Full name Paul Millinder

Name of applicant's legal representative's firm _____

Position or office held _____

(if signing on behalf of firm or company)

11. Signature and address details

Signed _____ Dated 28th September 2018

Applicant('s legal representative's)('s litigation friend)

Position or office held Managing Director

(if signing on behalf of firm or company)

Applicant's address to which documents about this application should be sent

Paul Millinder
LITIGIO LLP
3rd Floor
277 - 281 Oxford Street
London

Postcode W1C 2DL

	If applicable
Phone no.	0207 866 2401
Fax no.	0207 495 7021
DX no.	
Ref no.	CR-2017-000140

E-mail address	paul@empoweringwind.co.uk

In the High Court of Justice
Chancery Division

CR-2017-000140 – CR-2017-008690 – CR-2018-001137

COUNTERPART N244_28_09_2018

Relief sought:

1. The Claimant seeks relief pursuant to CPR Part 3, Rule 3.3 for the Court to consider all of the facts and to make an order of its own initiative, setting aside orders that the Claimant identifies as having been made improperly and founded by fraud;

2. The Claimant asks the Court to consider all of the circumstances founding the ECRO and Order made by HHJ Pelling QC on 28th June 2018 and to grant relief accordingly by setting aside that Order and setting aside or varying the ECRO for the reasons set out in the Statement of Case, page 8, paragraphs C, 44 – 50. See; Further Relief Sought on page 24 of the Claimant's Statement of Case;

3. To set aside the Order of ICCJ Jones of 26th March 2018 on the basis set out in the Claimant's Statement of Case, page 17, E, or in the alternative, the Claimant seeks relief pursuant to CPR Part 3.10 to rectify procedural error where the Claimant's Continuation Sheet 2, setting out the relief sought in disclaiming the Energy Supply Agreement was fatally omitted from the Application and where ICCJ Jones failed to consider this as intended on the Application. The Claimant in that alternative asks the Court to disclaim the Energy Supply Agreement and to set aside the proof of debt made by the Defendants pursuant to Rule 14.11 of the Insolvency Rule 2016.

4. To set aside WUP Order of 28th March 2018 as the Order ought not to have been made and to grant relief to the Claimant in the form of aggravated damages in consideration of this Application, the cross undertaking in damages in favour of the Claimant, the malicious winding ups, the unwarranted demands and fraudulent misrepresentations and to award damages to the Claimant accordingly with the Part 8 claim linked to this Application.

5. In essence, the Claimant contends that the primary argument contained in the Statutory Demand of 6th January 2017 is the same primary argument linked to the reason why the First Defendant cannot possibly establish any claim against either EWMFC, EEI or the Claimant himself and it is submitted that the fact has already been established and tried by Mr Justice Nugee during the first hearing on notice on 5th February 2018. For clarity, the Claimant refers to that passage from Mr Justice Nugee's Judgment;

   "3. In essence, a company called Empowering Wind MFC Ltd, which was a special purpose vehicle and was, I believe, a subsidiary of EEI, negotiated with the Applicant who has appeared by Mr Staunton, that is Middlesbrough Football and Athletic Company (1986) Ltd, which I will call Middlesbrough, for a suite of agreements under which it would, in effect, erect a wind turbine on a carpark next to Middlesbrough's stadium, the benefit to Middlesbrough being not only in the shape of an annual rent, but also the delivery of free electricity, and the benefit to Empowering Wind, or EW

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as I will call it, being to be able to generate more electricity which it could feed into the national grid and receive a tariff for. In the event, that project did not succeed. I have heard some explanation from Mr Millinder as to why that 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 that EW was unable to generate any money, that meant it was neither able to pay rent under the lease, nor to pay what were quite substantial charges ostensibly payable under something called the energy supply agreement under which, if it was not supplying energy to Middlesbrough it had to pay Middlesbrough a figure based on eight pence for each kilowatt hour of energy which Middlesbrough consumed.

4. 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 in support of a petition to wind up EW brought by HMRC. In January of 2017, Middlesbrough received a statutory demand, not from EW which was by then in liquidation, but by EEI claiming over half a million pounds in respect of what could be briefly described as abortive costs, namely £200,000 which had been paid by EW for the premium for the lease, and a further £330,000 said to be for costs which had been incurred on the project."

6. The Claimant submits therefore that a position of collateral estoppel arises insofar as the Claimant's primary argument is already proven and determined by the Judge, in that the Defendants caused loss to the Claimant by terminating the Lease and suite of documents after refusing the grid connection and making an unwarranted demand, then terminating the Lease that intended the turbine to operate on illogical grounds. The winding ups all came later.

7. It is further submitted that the Claimant's primary argument was again spelled out on Page 2 of the N244 Application in its Originating Application of 15th November 2017. That Claimant refers to that sealed Application; **EX1a - 8690 sealed & complete application form** and quotes the relevant passage;

"The Claimant refers to Clause 3.4.2 of the Energy Supply Agreement dated 7th November 2013 (Exhibit 1) of which £4,031,664.80 of the Middlesbrough Football Club Proof of Debt relates.

The Energy Supply Agreement is a conditional contract, subject to (full satisfaction of) the conditions precedent set out in Clause 2. Those conditions encompassed full satisfaction of (by Tenant), the Connection Agreement and, Commissioning of the wind turbine. Middlesbrough Football Club (Landlord) refused to complete the Agreement (Exhibit 3) with Northern Powergrid, the Distribution Network Operator in February 2015 so that the nnection for the wind turbine could be established. Condition 2.1 of the Energy Supply Agreeent could not be fulfilled due to actions of the Landlord in refusing that connection to customer owned substation assets.

The actions of the Landlord caused substantial losses to the Claimant, resulting in the insolvency of its subsidiary. The Start Date of the Energy Supply Agreement is the date upon which the conditions precedent in Clause 2 are satisfied. There was no Start Date, due to the actions of the Landlord in preventing the same connection from being established and therefore the Claimant asserts that the proof of debt, submitted to the Official Receiver is a false misrepresentation".

8. The Claimant contends therefore that it is abundantly clear that the primary argument is linked to the connection related documents the Defendants withheld from the ex-parte hearing, also linked to the false misrepresentations and that same argument had already been identified by Mr Justice Nugee on 5th February 2018 and that therefore it cannot reasonably be disputed that the actions of the Defendants were of dishonest intent to cause substantial losses from the wind turbine project the Claimant had invested in to receive what were otherwise, fully ascertainable income derived from the sale of electricity to energy offtakers via the OFGEM Feed in Tariff Scheme for the 1.5MW wind turbine. The revenue, net of interest, exceeds £9.2 million.

9. The Claimant refers to its Part 8 Claim, its Statement of Case, the Quantum of Claim and supporting evidence.

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