Appeal ref: CR-2017-008690

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

INSOLVENCY & COMPANIES COURT (ChD)

BETWEEN:

DUEDA LTD

Applicant

THE OFFICIAL RECEIVER
MIDDLESBROUGH FOOTBALL AND ATHLETIC COMPANY (1986) LTD

Respondents
Company

ORDER

Before **The Honourable Mr Justice Miles** sitting at the Rolls Building, 7 Rolls Building, Fetter Lane, London, EC4A 1NL on the **20 September 2023**

UPON reading the Application Notice dated 7 September 2023 signed by Martin Richard Walsh on behalf of Deuda Ltd

AND UPON noting a request for a remote hearing in the Application Notice

IT IS ORDERED THAT:

1. The application for a remote hearing is refused.

2. The hearing will be heard in person at the Rolls Building, Fetter Lane, London EC4A 1NL on a date to be fixed.

REASONS

The application is highly contentious, involves serious allegations (including of fraud), and depends on a long and complicated history. The application notice seeks a substantial hearing. The usual position is that hearings of this length are heard in person. In the exercise of my discretion I do not consider that it is appropriate to depart from this and allow a remote hearing. I have taken into account the reasons given in box 11 of the application notice for seeking a remote hearing. These do not justify a remote hearing and are in any case without substance. The allegations of political interference and that the claimant cannot rely on the courts in the UK to act fairly are wholly without merit. In any case the claimant is bringing this application before the courts in the UK and is therefore invoking their jurisdiction.

Service of the Order:

The court has provided a sealed copy of this order to the Applicant, by its director, Martin Richard Walsh via email (walsh@sepulveda-asset.net).

N244

Application notice

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

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Name of court Insolvency & Companies	**Claim no.** CR-2017-008690
Fee account no. (if applicable)	**Help with Fees – Ref. no.** (if applicable)
	H W F – – – –
Warrant no. (if applicable)	
Deuda Ltd ("**C**")	
The Official Receiver of London ("**D1**") Middlesbrough Football & Athletic Company (1986) Ltd ("**D2**")	
Date	07 September 2023

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

Martin Richard Walsh (director of the Claimant)

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?

To restore Empowering Wind MFC Ltd to the register as it has substantial assets to be realised for its creditors and to declare void and set aside the order of 26 March 2018 as it was founded by fraud on several levels - See continuation sheet.

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 remote hearing

6. How long do you think the hearing will last? 12 Hours Minutes

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

7. Give details of any fixed trial date or period

18/09/2023 - 18/12/2023

8. What level of Judge does your hearing need?

High Court Judge (**None previously involved**)

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.

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.

This application relies on the 10 documents listed below which should be viewed and considered electronically for ease in navigation for the Court and the parties:

DOC-1.___SKE_&_EX-D1: A3 size 5-page skeleton dated 17th July 2023 & the 104-page exhibit (**EX-D1**) at pages 6 – 109. (109-pages)

DOC-2.___SCHEDULE-OF-EVIDENCE: A3 size 7-page schedule setting out judicial statements from January 2017 – February 2019 in chronological order hyperlinking to the 75-page exhibit (**EX-2**). (82-pages)

DOC-3.___EX-D3: 18th August 2017 letter before action served on D1 by Edmund Robb, counsel acting for Mr Millinder. Pages 10 – 11 set out what D1 was asked to decide on. The letter bears a seal dated 17th November 2017 in EEI's originating application. (12-pages)

DOC-4.___EX-D4: 28th September 2018 application by Mr Millinder. (5-pages)

DOC-5.___EX-D5: 12-page submission to City of London Police Commissioner McLaren from Mr Millinder - hyperlinks to evidence at 13 – 31. (31-pages)

DOC-6.___F--SKE-04-04-2022-AUTHORITIES: 20-page skeleton hyperlinking to the appended schedule of C's authorities at pages 21 – 384. (384-pages)

DOC-7.___G---AUTHORITIES: C's schedule of authorities 21 – 24. (95-pages)

DOC-8.___PM-Proof_of_debt_PM_30_01_2020: Mr Millinder's proof of debt dated 30th January 2020. (2-pages)

DOC-9.___Deed_of_Assignment_25_03_2022 - Deed of assignment dated 25th March 2022. (17-pages)

DOC-10.___DRAFT-ORDER - Draft order sought by the Claimant with detailed reasoning. (13-pages)

11. Do you believe you, or a witness who will give evidence on your behalf, are vulnerable in any way which the court needs to consider?

☑ Yes. Please explain in what way you or the witness are vulnerable and what steps, support or adjustments you wish the court and the judge to consider.

Due to political inteference by the Attorney General's Office and others, it is proven that those involved in the case to date cannot be trusted to administer the law fairly and impartially.

The ordinary informed lay observer reviewing the material would determine that Mr Millinder has been victim of serious human rights abuse as he was deprived of the right of insolvency set off, a right that law intended the Court and the office holder to have adminsitered. It failed, then sought to conceal its wrongdoing and the wrongdoings of others.

In truth and reality it is clear that the Claimant cannot rely on the UK system to administer law fairly, nor to act properly on the evidence presented.
It is recorded that the Claimant seeks restitution in the international courts.

☐ No

IMPORTANT CONSIDERATIONS TO BE ADJUDICATED

The Claimant emphasizes that there was no reference to rule 14.25 of the Insolvency Rules 2016 anywhere in the 26th March 2018 judgment, however, it is notable that the application of 15th November 2017 by Earth Energy Investments LLP and Mr Millinder was based on the fact that it was the office holder's decision to fail in his duty to administer that mandatory law of set off.

There was actual bias and fraud in the Court and office holder failing to administer rule 14.25 of the Insolvency Rules 2016 and the decision not to engaged rule 14.11. The order of 26 March 2018 was founded by fraud, collusion, gross error of law (whether deliberate or otherwise), and acts in excess of jurisdiction.

The Insolvency Rules 2016 is designed to recover assets for creditors to prevent creditors of insolvent companies suffering fraud and injustice.

The Court, the office holder and the Insolvency Service dishonestly deprived Mr Millinder of that statutory right which would have ensured, as law intended, that he was to have been paid,
pursuant to rule 14.25(5), the sum of the net quantified damages claim, which became due and
payable from 19/08/2015, plus statutory interest accruing from that date on.

In truth and reality, there was never a debt owed to D2 and the claims arising through mutual dealings, if ever D2 could dispute it, were to have been determined prior to set off. It is proven that Mr Millinder's case is fundamentally defective and void as a result of this fraud and others.

Similarly, each of the Claimant's applications ever made sought to deal with rule 14.25 of the Insolvency Rules 2016, and no purported determination ever touched upon it. There is a perversion of the course of public justice by dishonest concealment. Continuing that, simply aggravates. Clearly the evidence is a matter of public record.

Statement of Truth

I understand that proceedings for contempt of court may be brought against a person who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

☐ **I believe** that the facts stated in section 10 (and any continuation sheets) are true.

☒ **The applicant believes** that the facts stated in section 10 (and any continuation sheets) are true. **I am authorised** by the applicant to sign this statement.

Signature

☒ Applicant

☐ Litigation friend (where applicant is a child or a Protected Party)

☐ Applicant's legal representative (as defined by CPR 2.3(1))

Date

Day	Month	Year
07	09	2023

Full name

Martin Richard Walsh

Name of applicant's legal representative's firm

If signing on behalf of firm or company give position or office held

Applicant's address to which documents should be sent.

Building and street

Claimant accepts service by email only to:walsh@sepulveda-asset.net

Second line of address

Town or city

County (optional)

Postcode

If applicable

Phone number

Fax phone number

DX number

Your Ref.

Email

walsh@sepulveda-asset.net

*(number), page & para. 10 documents set out in the evidence box are referred to by number

C inherited the rights of the Second Applicant:

1. By Deed of Assignment dated 25th March 2022, the Claimant ("**C**") acquired the legal rights of action from Mr Millinder ("**M**") in relation to claims against D1, D2 and others. In the November 2022 Administrative Court proceedings of which C was applicant in M's case, it was held by Andrews LJ that the order against M does not preclude C from its rights as the Assignee to litigate the claims. C maintains that M's order is founded by fraudulent conspiracy, inextricably linked to this application and the actions since 19th September 2016.

2. The grounds set out have never been considered, there is no singular reference to rule 14.25 of the Insolvency Rules 2016 ("**IR 2016**") in any of the purported determinations within, or ever since the judgment of 26th March 2018 which C asserts is a nullity on the basis made out herewith. The Administrative Court and the Court of Appeal also concealed and evaded the issue entirely.

3. An application to set aside the judgment of 26th March 2018 by the second application has never been considered. This is therefore a fresh course of action, and C seeks a trial of the underlying fraud that has been concealed. (See: *Takhar (Appellant) v Gracefield Developments [2019] UKSC 13).*

The issue:

4. Empowering Wind MFC Ltd ("**EW**") never had contractual liability to Middlesbrough Football & Athletic Company (1986) Ltd ("**D2**"). The £256,269.89 unwarranted demand of 25th June 2015 was deployed to fraudulently forfeit the wind turbine lease after D2 prevented EW from performing on the rights granted. On 19th August 2015 when D2 forfeited, the EW claim against it became indefensible. Even if D2 had not refused the connection on 30th April 2015, there was still no money contractually owed under either the lease or the energy supply agreement. See: ***1:** pages 1 – 5.

5. D2 sought to prove that claim against EW during C.V.A proceedings, causing the company to be wound up. It was a claim arising through direct mutual dealings, albeit one that is obviously false.

6. Making an unwarranted demand is unlawful, and the issue has never been determined. The issue "goes to the heart" of the case, which is wrapped up in a point of law. The claim has been due and payable since 19th August 2015.

Fraudulent failure to administer statutory law:

7. Statute, the mandatory law of due process conferred in rule 14.25 of the IR 2016 intended that D2's purported claim was to have been set off against the EW quantified claim exceeding £10 million, prior to making the insolvency order. A continuing duty to do so vests in the liquidator (D1).
See: ***1**; page 68, para.2.57 – 3.26 of page 72 - *Bresco Electrical v Lonsdale (2020)* – para. 27 – 34 of the Supreme Court's judgment).

8. C relies on the Bresco judgment, para. 27 - 34 in support of this application.

9. If ever D2 could raise a genuine dispute in respect of the claim exceeding £10 million against it for fraudulently forfeiting the wind turbine lease, then the dispute was to have been adjudicated on, before administration of statutory insolvency set off.

10. D1 is alleged to have fraudulently breached his duty by accepting multiple claims from D2, but whilst acting dishonestly in conspiracy to defraud M and EW creditors, acting with D2, of the very substantial asset which rule 14.25(4) / 14.25(5) intended be paid as dividends to M.

11. In *Forster v. Wilson (1843)*, it was said that "*the purpose of insolvency set off was to do substantial justice between the parties."* Without it, there is fraud and injustice.

12. C's evidence at: ***1:** pages 10 & 11 is the precis on which the application of 15th November 2017 under rule 14.11 of the IR 2016 was based. Page 10 sets out the claim exceeding £9.2 million net, and cites rule 14.25 of the IR 2016.

13. Page 11 asks D1 to decide. D1 decided in respect of the proof of debt, not to set it off, contrary to what law intended. Rule 14.11 was therefore engaged.
See: ***1**: page 58, para. 11.1 – 11.3 - *Paragon Offshore Plc Re [2021] EWHC 2275*.

14. Rule 14.25 of the IR 2016 is all about creditor's claims and dividends, yet at paragraph 27 of Jones's 26th March 2018 judgment, he stated this:

"It arises in the context of paragraph 1 of the Application and the fact that there has been no decision by the Official Receiver as Liquidator to admit or reject any proof of debt for a dividend".

15. Unless the proof is rejected by the office holder, it stands for dividends. It was D1's statutory duty to have set off the first claim, which the third grew from. He decided not to.

16. There is no mention of 14.25 of the IR 2016 anywhere within the 26th March 2018 judgment, which falsely stated no decision was made in respect of the proof. The proof was all about dividends and rule 14.25. There is a purported determination, which in the eyes of the law, cannot be a determination at all, but a nullity.

17. It was D1's decision to act contrary to his fiduciary duty to M and other EW creditors by failing to have wholly rejected an obviously bad proof that the ordinary informed lay observer could determine was false in less than 5 minutes.

18. It was D1's decision in respect of the proof not to disclaim the energy supply agreement on which over £4 million of it is purportedly based.
See: ***1**; page 14, para. 1 – 5.

19. D1 accepted 3 proofs of debt from D2, with the first of £256,269.89 on 1st December 2016, and the second in the sum of £541,308.89 on 20th December 2016.

20. The 3rd of £4,111,874.75 came in on 2nd February 2017. Rule 14.25(1), 14.25(2) intended that D2's claims were to have been set off entirely. Only after set off, if there is a balance owed to the putative creditor, can that creditor go on to prove. The first was to have been set off, and the third grew from it.

21. D1 decided to fail in his duty to have set off any of the claims, but then made the decision to retain the 3rd proof, exceeding c£4.1 million. He made the decision once again not to have set off against the quantified net EW claim exceeding £9.2 million as the law required him to have done.

22. ICCJ Jones acted in excess of jurisdiction to prevent EEI from relying on the rule when the rule was engaged. No judge has jurisdiction to act on his own whim to deprive a person of a statutory right, in this case a duty of inquiry in relation to a proof. See: ***1**; page 3, para. 23 - *Sirros v Moore and others 1974*.

23. There was no jurisdiction from which to have made an insolvency order against either of M's wind turbine sole purpose vehicles in absence of administration of the mandatory law of due process where both companies prior to liquidation have claims against D2 far exceeding theirs.

24. The preliminary issue is inextricably linked to the fact that the claim vested in EW against D2 is indefensible, because contractually no money was ever owed.

25. There is collusion, fraud on the Court, gross violations of Article 1 of the First Protocol, Article 6.1, Article 10, and in respect of M, Article 7, Article 8 of the Human Rights Act 1998.

26. There has been flagrant dishonest concealment of the issue around 14.25 of the IR 2016 which strikes at the heart of the case.

27. Depriving a person of a statutory right of which they are entitled, to obtain pecuniary interest by deception is fraud.

28. Steve Gibson O.B.E of D2 and his team of corrupt lawyers who conspired with D1 were granted impunity, whilst M was tortured and maliciously denied all remedy and the right to a fair trial, after being defrauded by D2, and then D1.

29. The corrupt UK establishment purported to jail the victim of their fraud, whilst providing the fraudsters immunity due to their political connections. It is serious human rights abuse and corruption.

This Application & evidence:

30. This is an application for a remote only hearing to try fraud that has been concealed and to set aside the order of 26th March 2018 which is proven in law to be a nullity on 3 different grounds.

31. This application seeks an order restoring EW to the Companies House register, and that the Official Receiver acts as provisional liquidator until a liquidator is appointed by C and M to recover the Company's assets as D1 should have done.

Error in law as to jurisdiction:

32. It was falsely determined that any challenge to the 26th March 2018 judgment which C seeks to set aside was "TWM" because the only party with locus to challenge the decision was EEI. See: ***2**; page 2, para. 7 & 8.

33. M was made the "Second Respondent" / Applicant by Jones). C now seeks to set it aside with its application to restore. See: ***3**; page 3, para. 17 cites para. 15 and 16 of the judgment of 26th June 2018.

34. The manifest error (deliberate intent to deny justice) is evidenced at page 4, para. 18 which cites para, 17, 18 & 19 of the purported ECRO against M. There was no jurisdiction in law from which to have made the ECRO against M, and it is proven therein.

35. Knowing that M was requisite majority creditor of EW, at ***3**; page 6, this cites para. 57 of the Vos C judgment where he stated that:

"HHJ Pelling essentially decided that the third application was totally without merit because Mr Millinder had no standing to bring it on behalf of Earth Energy"

A nullity through acts in excess of jurisdiction:

36. It is incontrovertible and proven beyond doubt that the judgment by ICCJ Jones of 26th March 2018 is a nullity on 3 separate grounds that have never been determined:

a. Rule 14.25 of the IR 2016 intended that the £256,269.89 unwarranted demand that D2 sought to prove as a claim against EW was to have been set off:

- against the corresponding claim direct dealings founded by unlawful forfeiture of the lease which exceeds £10 million. The £4,111,874.75 claim grew from that 25th June 2015 demand. One cannot originate something upon nothing, it is a nullity, and all founded by it, void ab initio.

- See: *Anisminic Ltd v Foreign Compensation Commission [1969] 2 A.C. 147* , *MacFoy v United Africa Company Limited 1961*, *Firman v Ellis [1978] 3 WLR 1* & Denning, the Master of the Rolls in *Pearlman v Governors of Harrow School [1978] 3 WLR 736*:

It does not exclude the power of the High Court to issue certiorari for absence of jurisdiction. The way to get things right is to hold thus: no court or tribunal has any jurisdiction to make an error of law on which the decision of the case depends. If it makes such an error, it goes outside its jurisdiction and certiorari will lie to correct it

b. Rule 14.11 was engaged and ICCJ Jones acted in excess of jurisdiction by preventing the applicant from relying on it:

- The application was made under the rule, and acting with bias and off his own whim, Jones precluded the Applicant from relying on it.

c. Practice Direction 2B, Section II the High Court, rule 3.1(b) precluded Registrar Jones (a Master / District Judge) from making orders or granting interim remedies: At para. 33 of the 26th March 2018 judgment, Jones stated this:

"...he alleges as part of his arguments that the Official Receiver has committed fraud by the non-disclosure of the first two proofs. There is absolutely no basis for alleging fraud against the Official Receiver and he should not do so"

37. There is a proper legal basis for alleging fraud against D1 because it is proven he has fraudulently abused his position as liquidator of EW by failing in his statutory duty on 3 counts to have administered rule 14.25 of the IR 2016, setting off D1's claims as law intended, with the balance then collected in by him and paid as a dividend to EW creditors.

38. D1 is proven to have committed 4 additional criminal offences which cross over with fraud in abuse of his position as liquidator of EW and then as purported liquidator of EEI under the IA 1986 on multiple counts.
See: ***1**; pages 73 – 74.

39. In law, a "proof of debt" is "*the document on which a creditor submits details of its claim*" and on 1st December 2016 and on 20th December 2016, D1 had in his possession 2 proofs of debt.

40. Rule 14.6 of the IR 2016 confers a legal duty on D1 to have disclosed "at any reasonable time, on any business day" the proofs of debt in his possession.

41. D1 lied in his statutory reports to Court stating there is only one proof of debt. The actus reus and mens rea of the offence of fraud by failing to disclose is complete. Jones however, had no jurisdiction to hear it.

42. Paragraph 36.c refers to the fact that the application deals with criminal matters of fraud by failing to disclose information against D1 and D2 during an ex-parte financial injunction proceeding. Those are criminal matters and Practice Direction 2B, section II, rule 3.2(b) precluded Jones from making any orders.

43. It is therefore proven beyond a reasonable doubt that any order made by Jones in M's case is a nullity through acts in excess of jurisdiction on the ground set out in para. 9.c above.

44. It was falsely determined on 9th January 2017 at paragraph 3 of his judgment by Arnold J that the rent owed to MFC was £550,000 per annum.

45. In between, on 5th February 2018, Nugee J found that the demand of 25th June 2015 was unwarranted. (See: ***2**; page 1, para 3.

46. It was falsely determined by Vos C on 8th February 2019 at paragraph 105 that the rent owed to D1 was £256,269.89.

47. The Court must correct its fallacies in the interests of justice and it must provide restitution.

Relief sought:

A. **RESTORE EW TO COMPANIES HOUSE:** C applies for an order to restore Empowering Wind MFC Ltd ("**EW**") to Companies House registry. C intends to appoint a liquidator to realise a substantial asset in either development of the project, or the value of the wind turbine long-term lease. The project is ready to construct with all technical supply contracts procured and engineering design works and surveys complete. The long-term leasehold interest from which to "construct, connect to the grid and operate" the wind turbine for 26-years exceeds £1.2 million as a stand-alone development project. That is a substantial asset which should have been realised as a dividend for EW creditors at the absolute worst case.

- C intends to claim to reinstate the wind turbine lease vested in EW and to construct, connect to the grid and operate the wind turbine, or in the alternative, to realise the substantial asset in the long-term lease by its sale to an interested party. C intends, through EW, to construct, connect to the grid and operate the wind turbine by claiming the rights granted under the lease and backdating based on the force majeure provision in its favour. Consequentially, if D2 seeks to oppose providing the connection once the lease is re-instated, obstructing would present EW a fresh cause of action, with a similar damages claim exceeding £10 million.

B. **DECLARE VOID AND SET ASIDE THE ORDER:** C seeks a declaration of nullity in respect of the 26th March 2018 decision, that the order is set aside, and that pursuant to rule 14.11 of the Insolvency Rules 2016 ("**IR 2016**") the Court remove and exclude D2's proof of debt.

Reasons:

Section 15.1 of the Limitation Act 1980 provides for 12-years from which C has to recover rights over the registered long-term leasehold interest in Land at Riverside Stadium. That limitation period expires on 19th August 2027.

D1 wrongfully dissolved EW from the Companies Registry knowing of the substantial assets that were to be realised as a dividend for its body of creditors, and it is submitted that those actions were fraudulent and that the Court must grant restitution.

Issue estoppel:

48. On 5th February 2018 in his judgment at paragraphs 3 & 4 it was determined by Nugee J that D1's demand of 25th June 2015 was unwarranted and that therefore from that date the claim has been payable as a dividend to Mr Millinder pursuant to rule 14.25(5) of the IR 2016:

    a. Paragraph 3 of the judgment:

"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".

    b. Paragraph 4 of the judgment:

"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".

49. In consideration of all matters, the Court should make the order on the terms proposed by the Claimant. (See: draft order at DOC-10)