In The High Court of Justice Claim No CR-2017-000140

Business and Property Court of England and Wales

Insolvency and Companies List (ChD)

In the matter of Empowering Wind MFC Limited

And in the matter of Earth Energy Investments LLP

Between:

Paul Millinder

Applicant

-and-

(1) Middlesbrough Football & Athletic Company 1986 Limited
(2) Gibson & O'Neill Ltd

Respondents

Skeleton for Respondents

The Applicant (referred to as "A") has served and lodged various bundles, which are not easy to follow. He has also served two skeletons, one dated 5 November 2018 which extends to 28 pages (it is at tab 8 of this bundle), and the second dated 9 November 2018 (at tab 9 of this bundle). This skeleton responds to the first of A's skeletons, it being contended that nothing arises out of the second skeleton. The Respondents (the First Respondent is referred to as "the Club") have lodged and served 10 files:

(1) The first is named "Bundle of skeleton arguments, orders and transcripts of judgments….".

(2) Next is the "Bundle for hearing on 5 February 2018".

(3) Next are two lever arch files containing the bundles for the hearings of the application of 16 November 2017, which had three hearings, 21/12/17, 26/03/18 and 5/10/18.

(4) "Bundle A filed on behalf of" the Club "Applications and Orders".

(5) "Bundle B Evidence filed…in respect of the hearing 5 February 2018".

(6) "Bundle C ….Invitation to court to dismiss second application", ie the application of 1/03/18, being the further application by Mr Millinder/Earth Energy to set aside the consent order restraining presentation of a petition in respect of the Club, alleging again significant material non-disclosure.

(7) "Bundle D evidence filed on behalf of" the Club "for hearing 16 May 2018", containing evidence in respect of the second application to set aside the injunction.

(8) "Bundle E evidence and documents filed by Mr Millinder for the hearing 16 May 2018.

(9) Bundle F containing another witness statement for the Club in respect of the second application to set aside the injunction, and the application for the extended civil restraint order with supporting evidence.

Reading: If time permits, it is suggested that the learned judge read the following, time estimate 1 hour:

(1) Skeletons at tabs 1, 7 and 8 of this bundle.

(2) Mr Stewart's witness statement at tab 3 of this bundle.

(3) What seems to be A's application at tab 6 of this bundle.

(4) The application at tab 9 of this bundle and the order of Arnold J of 24 July 2018 at tab 23 of the "Bundle of skeleton arguments, orders and transcripts of judgments….".

(5) The transcripts of judgments at tabs 4, 11, 14, 17, and 21 in the "Bundle of skeleton arguments, orders and transcripts of judgments….".

(6) The extended civil restraint order at tab 22 of the "Bundle of skeleton arguments, orders and transcripts of judgments….".

(7) The Claim Form recently issued and served by A, at tab 10 of this bundle.

The extended civil restrain order

1. In light of the extended civil restraint order, and the order of Arnold J of 24 July 2018, this application should be dismissed. Also, it is submitted that the claim as set out in the Claim Form at tab 10 of this bundle should be dismissed or referred either to Arnold J or to Norris J. The Claim Form was recently issued and served by A.

2. It is asserted by A in paras 8-44 of his skeleton that the order should be set aside on the grounds that it is an abuse of process in that it is being used to "*cover fraud and serious misconduct by lawyers and insolvency practitioners and I contend that it should not have been made on a number of grounds. I also submit that the ECRO was made with dishonest intent on the part of HHJ Pelling QC who should have known he was not empowered to make the ECRO, yet he sought, along with the Defendants to lead me to believe the ECRO was a genuine article as an attempt to violate my rights to a fair hearing in this court, predominantly it is alleged, to cover fraud and criminal misconduct of Mr Hannon* (Mr Hannon is the liquidator of Empowering Wind MFC Ltd, referred to herein as "Empowering", and Earth Energy

Investments LLP, referred to herein as "Earth Energy", and the Official Receiver) *and the Defendants."*

3. The first error on Mr Millinder's part, para 2 of his ske, is to assert that any claim against the Club is his claim. The claim arises out of the lease and energy supply agreement entered into between the Club and Empowering, the claim being that in breach of the terms the Club terminated one or both of the lease and the energy supply agreement, thereby causing loss to Empowering, which seems to be a loss of profit and also the sums it had paid under the lease and to pursue the wind turbine project.

4. The second error, paras 12-20 of the ske, is the assertion that HHJ Pelling QC did not have power to make the extended civil restraint order; the learned judge is a Deputy High Court Judge.

5. Next, paras 21-22 of the ske, A asserts that HHJ Pelling QC erred when he decided that three of the applications were totally without merit. The transcripts of the hearings 5 Feb, 16 May, 7 and 28 June (see the transcripts of judgments at tabs 4, 14, 17, and 21 in the "Bundle of skeleton arguments, orders and transcripts of judgments….") show that HHJ Pelling QC was correct; in any event, if A wishes to advance this argument he should do so in the Court of Appeal. An appeal is now somewhat out of time.

6. Para 23 ske. Next, that HHJ Pelling QC was conflicted being connected with Rs and Peel Holdings. In his judgment of 28 June 2018, see para 30 at tab 21 of the "Bundle of skeleton arguments, orders and transcripts of judgments….", HHJ Pelling QC expressly stated that he had no connection with Peel Holdings. Rs wait to hear how A

intends to deal with that part of the judgment of HHJ Pelling QC and the rest of A's arguments on this issue. Surely this is a matter for the Court of Appeal.

7. Para 23 of ske. A also asserts that HHJ Pelling has "quite some "form"". This is not understood; does A assert that this court has to decide whether HHJ Pelling QC handed down excessive jail sentences? If so how is this court to do so? Also, how can that be said to result in a decision that HHJ Pelling QC should not have heard the application for the ECRO? How does any of this enable A to assert that the ECRO should not have been made? Again, surely this is a matter for the Court of Appeal.

8. Para 24 of the ske. A also asserts that Peel Holdings made false allegations in respect of Durham Tees Valley Airport so as to frustrate his business, causing him loss. Rs understand that it is A's argument that the wind turbine scheme to be designed, built and operated by Empowering did not go ahead because of concerns that it would affect the operation of Durham Tees Valley Airport. Does A assert that this court has to decide whether Peel Holdings made false allegations in respect of Durham Tees Valley Airport, and that prevented the wind turbine scheme going ahead? If so how is this court to do so? How does A have a claim, surely it is the claim of Empowering? Also, how can any of this be said to result in a decision that HHJ Pelling QC should not have heard the application for the ECRO? Further, the ECRO does not prevent A bringing a claim, assuming he has a claim (Rs assert that any claim would be that of Empowering), rather it requires him to apply to Arnold J or Norris J for permission to issue and pursue such a claim.

9. Para 25 ske. The application of 1 March 2018 was the second application to set aside the injunction on the grounds of material non-disclosure in January 2017. It is asserted that the conduct of the listing officer, counsel, the Chief Registrar and others

caused the application to be heard by HHJ Pelling QC. This is not understood or supported by credible evidence. Also, it seems to be an assertion that HHJ Pelling QC erred when he decided to dismiss this second application; that is a matter for the Court of Appeal. Further, how that enables A to assert that the ECRO should not have been made is not understood.

10. Para 26 of the ske. This seems to hark back to paras 12 to 20 of the ske.

11. Paras 27-29 of the ske. These matters do not appear to be relevant.

12. Para 30 of the ske. This is the third time that A has asserted material non-disclosure in January 2017. How that enables A to assert that the ECRO should not have been made is not understood. The court has decided that any non-disclosure was not material. If he wants to challenge the decisions of Nugee J of 5 Feb and HHJ Pelling QC of June, he should do so by way of an appeal.

13. Para 31 of the ske. While A may believe that there was material non-disclosure in January 2017, the fact is that both Nugee J and HHJ Pelling QC have heard and dismissed the two applications to discharge the injunction on the ground of material non-disclosure.

14. Paras 34-35 of the ske. Again, A asserts material non-disclosure in January 2017. The court has decided otherwise, and that any non-disclosure was not material. If he wants to challenge the decisions of Nugee J of 5 Feb and HHJ Pelling QC of June, he should do so by way of an appeal.

15. Para 36 ske. This is simply wrong, that the second application to set aside the injunction had to be heard by a full time High Court Judge. Further, how is it said that HHJ Pelling QC erred in dismissing the second application?

16. Para 37 of the ske. If A wishes to challenge the decision of HHJ Pelling QC that the applications were totally without merit, and so justified the making of the ECRO, he should do so by way of appeal.

17. Paras 38-40 of the ske. ICC Judge Jones did not certify that the application of 16 Nov 2017 was totally without merit. A is simply wrong.

*page 7 of the Judgment - 26/3 - para 26 "totally without merit"

18. Paras 41-44 of the ske. Arnold J did give reasons, see the order at tab 23 of the "Bundle of skeleton arguments, orders and transcripts of judgments….". Also, any such argument should be in the Court of Appeal. Also, even if there is something in A's complaint, which there is not, it would not result in the setting aside of the ECRO.

Orders of Registrars, ICC Judges, and HHJ Pelling QC

19. Para 45 ske. It is not understood how it can be said that Registrar Baister, ICC Judges Jones and Barber, and Chief Registrar Briggs violated A's rights under Article 6. As to A's assertion that the decision of HHJ Pelling QC violated his right, this is addressed above.

Order of 26 March 2018 of ICC Judge Jones

20. Paras 46-49 of the ske. This appears to be an assertion that ICC Judge Jones erred in making his decisions on 21 December 2017 and 26 March 2018. Such complaints are those of Earth Energy, now in liquidation, and should be made to the Court of Appeal, if the liquidator decided to do so. In any event, A does not seek to establish how it is

said that ICC Judge Jones erred. Further, even if ICC Judge Jones erred, that would not result in the setting aside of the ECRO.

21. Paras 50-53 of the ske. It is not understood how it is said by A that he has established that the hearings and decisions of Arnold J on 9 January 2017, and ICC Judge Jones are inextricably linked. In para 53, A harks back to the complaint of material non-disclosure. But this has been dealt with by Nugee J and HHJ Pelling QC, and cannot now be further pursued by A. In any event, nothing said here would result in the setting aside of the ECRO.

22. Paras 54 to 63 of the ske. In these paras A appears to challenge the decisions of ICC Judge Jones. If such a challenge were to succeed, it would not result in the setting aside of the ECRO. Further, any such challenge should be made in the Court of Appeal, and would be a challenge by Earth Energy, which is in liquidation, and this is a matter for the liquidator.

23. Paras 64-68 of the ske. This is a challenge to the winding up order made by ICC Judge Barber on 28 March 2018. A fails to establish how ICC Judge Barber is said to have erred, the application to rescind the winding up order has been dismissed by HHJ Pelling QC, and any further challenges should be to the Court of Appeal.

24. Paras 69 to 72 of the ske. A shall have to refer to the evidence to establish what he means by the assertion that matters were not fully ventilated before ICC Judge Jones. The reference to the fact that matters were ventilated before ICC Judge Jones was in respect of the hearings on 21 December 2017 and 26 March 2018. It is not understood how it can be said that such matters were not then ventilated. As to para 71, A asserts he had a claim for costs, yet the application before ICC Judge Jones was

the application of Earth Energy so any claim for costs would be its claim, and ICC Judge Jones decided that Earth Energy and A should pay those costs, which decision is not appealed; A says that the claim for costs was his claim, and even if that were so, the petition to wind up Earth Energy was based on the £25,000 due from it to the Club under the consent order of 16 January 2017, see The Bundle for the Hearing 5 February, tab 1, pg 4 para 9.

25. Para 73 of the ske. This is not understood.

26. Para 74 of the ske. The assertion that there was material non-disclosure before ICC Judges Barber and Briggs and Nugee J is not understood. The assertion that there was material non-disclosure before Arnold J on 9 January 2017 has been heard by Nugee J and HHJ Pelling QC and they decided otherwise. Also, how this assertion affects the existence of the ECRO is not understood.

27. Paras 75-76 of the ske. All that ICC Judge Briggs, the Chief Registrar, decided to do was to adjourn the application of 29 March to rescind the order of 28 March 2018 to wind up Earth Energy. On 21 March 2018 Nugee J decided not to dismiss on paper without hearing the second application to set aside the injunction, which was then listed for hearing in June 2018, ICC Judge Jones was so informed, and hence his decision to adjourn to June the application to rescind the winding up order, see the "Bundle of skeleton arguments, orders and transcripts of judgments….", tab 11, para 13. The allegations of dishonesty on the part of counsel are not understood. ICC Judge Barber was informed of the decision of Nugee J on 21 March 2018 (the order is at tab 7 of the "Bundle of skeleton arguments, orders and transcripts of judgments…."), as was ICC Judge Briggs, the Chief Registrar. Also, how any of this

can be said to result in the setting aside of the ECRO is not understood or made out by A.

28. Para 78 of the ske. That the application of 1 March 2018 is said to be sub judice, and how that affects the orders of 26 and 28 March or later orders is not understood. It is not understood how mentioning to ICC Judges Barber and Briggs the existence of the application could contravene the sub judice rule. ICC Judges Barber and Briggs were aware of the existence of the second application and that Nugee J had ordered it be listed for a hearing.

29. Para 82 of the ske. It is not understood how it can be said that ICC Judge Briggs, the Chief Registrar, was minded to rescind the winding up order, and, it is submitted that, a reading of the transcript of his judgment shows otherwise, see the transcript at tab 11 of the "Bundle of skeleton arguments, orders and transcripts of judgments….", especially paras 12 and 13. In any event, all that the learned judge decided to do was to adjourn the application and there is no challenge by appeal against the decision of HHJ Pelling QC to dismiss the application.

30. Para 83 of the ske. The allegation that counsel "*pre-arranged for HHJ Pelling QC to hear the case"* is not understood. The allegation that HHJ Pelling QC failed to give reasons for dismissing the application to rescind the winding up order is wrong, see paras 20-22 of the transcript of his decision, at tab 17 of the "Bundle of skeleton arguments, orders and transcripts of judgments….".

31. Para 84 of the ske. Whatever is meant by this para, the fact is that HHJ Pelling QC dismissed the second application to set aside the January 2017 injunction, and that decision is not appealed.

32. Para 85 of the ske. That ICC Judge Briggs, the Chief Registrar, is said to have "*approved the confidential filings"*, whatever that means, resulted in him being conflicted is not understood, nor is it understood how that affects any of the matters concerning the ECRO or otherwise. All that ICC Judge Briggs did was adjourn the application to rescind the winding up order. A will have to take the learned judge to the evidence that A asserts shows that ICC Judge Briggs had *"an established relationship with both Mr Staunton and Mr Hannon",* and even if there is any such evidence A will have to explain how any such relationship affects the order of ICC Judge Briggs or other judges.

33. Paras 86 to 89 of the ske. These are not understood. ICC Judge Jones knew that it was part of the application that the agreement be disclaimed, see tab 1, pg 2 para 1(2) of the skeleton in the "Bundle of skeleton arguments, orders and transcripts of judgments…." Also, that was claimed in the Application, and a full copy was included in the bundles for the hearing before ICC Judge Jones on 21 December 20187 and 26 March 2018.

34. Paras 90 to 99 of the ske. None of this is relevant to whether or not the ECRO should stand or whether A can challenge any of the other orders.

35. Paras 100 to 105 of the ske. Aside from the serious allegations against Mr Hannon, the thrust of A's complaint appears to be that there was bias on the part of ICC Judge Jones. There is no evidence of bias.

36. Paras 106-109 of the ske. A is again going over old ground; Nugee J and HHJ Pelling QC decided to dismiss the two applications to set aside the injunction.

37. Para 110 of the ske. The assertion that Rs did something wrong in respect of the wind turbine project is one that may provide a foundation for a claim by Empowering, not A. The para ends with an assertion that *"the Defendant"* cannot bring any claim against *"the Applicant"*; this is not understood. Rs do not bring any claim against A, or Empowering or Earth Energy, save that Rs claim £25,000 from Earth Energy under the consent order of 16 January 2017.

38. Para 111 of the ske. Nugee J and HHJ Pelling QC refused to set aside the consent order of 16 January 2017, under which Earth Energy owed the Club £25,000 in costs, and the basis of alleged material non-disclosure.

39. Para 112 of the ske. The winding up order was made on the petition of HMRC; the Club was merely a supporting creditor.

40. Paras 113-114 of the ske. The Club's sols were not under any obligation to inform A that a petition had been presented.

41. Paras 115-121 of the ske. The relevance of any of these paras is not understood.

42. Paras 122-131 of the ske. Aside from the references to rule 14, these paras are not understood. If anything, they may support an appeal by Earth Energy against the decisions of ICC Judge Jones of 21 December 2017 and 26 March 2018; how that can assist A is not understood.

43. Para 132 of the ske. What fraudulent misrepresentation is the Club said to have made to ICC Judge Jones? How can it be said that any alleged frauds are linked to the alleged material non-disclosure in January 2017? Further, Nugee J and HHJ Pelling

QC have dismissed the two applications seeking to discharge the injunction on the ground of material non-disclosure.

44. Para 133 of the ske. This refers to a winding up order of 19 January 2017. It is presumed it was meant to refer to the winding up order of 28 March 2018. The winding up orders of both Empowering and Earth Energy were based on debts unrelated to "*unwarranted demands….forfeit of the Lease"*. As stated above, Empowering was wound up on the petition of HMRC and the Club was merely a supporting creditor; Empowering was not wound up because the Club was a supporting creditor.

45. Para 140 of the ske. It is not clear how A asserts that he has a claim against the Club. The £25,000 is a liability of Earth Energy pursuant to the consent order of 16 January 2017; it is not understood how any claim that A may have against the Club could reduce or extinguish the Club's claim against Earth Energy for £25,000.

* The costs from the hearing before ICCJ Jones & the assignment

46. Paras 141-142 of the ske. It is not understood how any of these allegations might assist A or affect the validity of the ECRO or other orders.

47. Paras 143-151 of the ske. These paras seek to run yet again the assertion that there was material non-disclosure. Those assertions have been rejected by Nugee J and HHJ Pelling QC. *who ordered on 21/03 that the 01/01 application be listed for hearing

48. A cannot be permitted to pursue the application of 28 September 2018 because of the ECRO, and if he wants to pursue that or any other application he should make the appropriate application to Arnold J or Norris J. The same is true of the Claim Form recently issued and served by A, see tab 11 of this bundle.

49. Rs say the application and the claim set out in the Claim Form at tab 11 of this bundle should be dismissed.

Radcliffe Chambers

Lincoln's Inn

12 November 2018

Ulick Staunton