



Neutral Citation Number: [2020] EWHC 3202 (Ch)

Case No: CR-2017-000140

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

(Remote hearing via Microsoft Teams)

Rolls Building
7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

Date of judgment: 11/11/2020

Before:

THE HON. MR JUSTICE FANOURT

Between:

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

Applicant

- and -

MR PAUL MILLINDER

Respondent

Mr Dov Ohrenstein (counsel instructed by Womble Bond Dickinson LLP) appeared on
behalf of the **Applicant**

Mr Paul Millinder, the Respondent, appeared in person

Hearing date: 11 November 2020

Approved Judgment

MR JUSTICE FAN COURT:

1. I have now to give judgment on two applications issued by the Applicant, which I will call Middlesbrough Football Club, or “the Club”, the first on 22 October and the second on 23 October 2020 for a new Civil Restraint Order to be made against the Respondent, Mr Millinder, and alternatively (by the second application) for the previous Extended Civil Restraint Order, which expired on 28 June 2020, to be extended. Mr Ohrenstein of Counsel appeared on behalf of the Club and Mr Millinder appeared in person.
2. I can start a brief summary of the background with the Extended Civil Restraint Order that was made against Mr Millinder by His Honour Judge Pelling QC on 28 June 2018. Judge Pelling was satisfied in the light of previous applications that had been certified by judges as having been made totally without merit that it was appropriate and necessary to make an Extended Civil Restraint Order.
3. In due course, Mr Millinder made an application to set aside that Extended Civil Restraint Order and it was heard by the Chancellor of the High Court, who prepared a long reserved judgment reviewing the whole factual background to the dispute, which was handed down on 8 February 2019.
4. The Chancellor found that the Civil Restraint Order had been wholly correctly made; that the applications that had been certified as totally without merit were correctly so certified; and that the order Judge Pelling made was justified. He described Mr Millinder’s suggestions that the Civil Restraint Order was an unlawful false instrument and an abuse of process used to conceal fraud and misconduct as “unfounded nonsense”.
5. The challenge of Mr Millinder to the legitimacy of the original Civil Restraint Order is still maintained. He contends that the applications that were certified as totally without merit were made in orders that were void. However, the matter was reviewed by the Chancellor and there has been no appeal against the Chancellor’s judgment and therefore it seems to me that, as a matter of law, it is now impossible in the absence of any appeal for Mr Millinder to seek to go behind the original Civil Restraint Order.
6. He says that he is entitled to do so because fraud unravels everything, but he has had one attempt to set aside the order, which has failed, and he has neither appealed that decision nor sought on the basis of new material that was not available to be deployed before the Chancellor to set aside the original order.
7. Following the Civil Restraint Order made by Judge Pelling, numerous further applications were made informally by Mr Millinder to the designated judge during the period of the restraint order for permission to pursue further applications. A significant number of these were dealt with by Nugee J, who refused permission on several occasions, in particular by his order of 18 June 2019 where he deals with a very large number of emails from Mr Millinder, who had sought to raise further arguments and pursue further remedies.

8. The Extended Civil Restraint Order expired on 28 June 2020, as I have said, and for whatever reason the Club did not seek in advance of that date to extend it. Since the expiry of the order a number of further applications have been made by Mr Millinder. The first such application was an application of 20 July 2020, in which he sought to set aside all orders founded by fraud upon the Court. In his mind, that means all orders that the Court has made in connection with or arising from the underlying dispute between the Club and his company, Empowering Wind MFC Limited.
9. That application was dismissed by Nugee J on 4 August 2020 and he determined that the application was totally without merit. On 7 August 2020, Mr Millinder issued a new claim against a number of senior judges and indeed the Lord Chancellor and other lawyers and government officials, including the Official Receiver and various others, in which he alleged human rights violations and a conspiracy to defraud. That claim was stayed by Master Yoxall and Mr Millinder then made an application to set aside the stay.
10. That application was considered by Murray J on 24 August 2020 and he dismissed that application certifying it as having been made totally without merit, and he also struck out the new claim in its entirety and certified that it had been brought totally without merit.
11. Following that, the statutory demand that I explained in my judgment of 6 November 2020 was served by Mr Millinder on the Club and the Club applied for injunctive relief in that regard. Mann J granted interim injunctive relief ex parte. In advance of the return date, Mr Millinder then issued his own application on 28 October 2020 to set aside two historic orders of the Court (9 January 2017 and 16 January 2017) and the order made by Mann J.
12. I heard that application last Friday, 6 November, 2020, and I dismissed it and certified that the application to set aside the two historic orders had been made totally without merit. My reason for doing so was that that part of the application was an attempt to relitigate once again an issue that has been determined before. That had been determined adversely to Mr Millinder's companies on 5 February 2018 by Nugee J and again on 7 June 2018 by Judge Pelling, and the basis for those decisions was explained and endorsed by the Chancellor in his judgment.
13. None of those decisions were appealed and therefore the question of whether the two 2017 orders should be set aside had been finally determined. The issue of a yet further application seeking to set them aside was therefore an abuse of process and totally without merit.
14. Mr Millinder maintains today that all of the orders that were made certifying applications as totally without merit are invalid and therefore there have been no applications lawfully certified as totally without merit. He says that they were invalid, as far as I can understand, on essentially two grounds.
15. First, that all the orders were made as part of a corrupt conspiracy involving the judges in question in an attempt to defraud Mr Milliner and/or his companies and favour the Club. Second, on the basis that the underlying case that his companies originally sought and now he seeks to advance did have merit in terms of the contractual dispute

and therefore any application made by him in that regard cannot have been made totally without merit.

16. However, I cannot go behind the orders that have previously been made and the certificates that various applications were made totally without merit. Those are matters of record. They are orders made by the High Court, which is a court of unlimited jurisdiction. Those orders are therefore valid unless and until they are set aside.
17. Mr Millinder has tried to set aside those orders, or at least some of them, but has failed in his endeavours. The orders therefore stand and mean what they say. It is clear to me that Mr Millinder has, on the basis of those orders, persistently made applications that are totally without merit. That was true in terms of the applications made before Judge Pelling's Extended Civil Restraint Order, as confirmed by the Chancellor, and it is true in relation to the applications that were certified this year as having been made totally without merit. It is inappropriate on this sort of application to seek to go behind those orders and reopen the matter.
18. Given that I am satisfied that Mr Millinder has continued persistently to make applications that are totally without merit, the question is what I should do about it. There is, in my view, a genuine need to restrain Mr Millinder from issuing hopeless applications that involve both the Club and the court in spending many hours and valuable resources in dealing with them. The Club seeks an Extended Civil Restraint Order. It submits that it is a matter for the court whether a General Civil Restraint Order is needed to confer additional protection on the court's resources.
19. The effect of an Extended Civil Restraint Order under paragraph 3.2 of Practice Direction 3(c) to Part 3 of the Civil Procedure Rules is that Mr Millinder would be prevented from making any application in the High Court or the County Court concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made without first obtaining the permission of a judge.
20. Those words give wide effect to an Extended Civil Restraint Order because any application with any link to the subject matter of the existing proceedings may easily be seen to involve or relate to or touch upon or lead to the issues in those proceedings.
21. As I have already said, I am quite satisfied that there is a need to restrain Mr Millinder and accordingly at least an Extended Civil Restraint Order is required in order to prevent a substantial waste of the Court's time, both judges' time, judges' clerks' time and the time of the Court staff time in dealing with applications that have no merit; and also to prevent any Respondents from such applications incurring very substantial costs in dealing with them.
22. I also bear in mind when assessing the need for the Civil Restraint Order the nature of the applications that Mr Millinder makes and the abusive and threatening nature of the correspondence that he conducts, and outrageous allegations of judicial impropriety (and impropriety on the part of the Club's lawyers) that he routinely makes. The applications are burdened with extremely large exhibits of documents (indeed, a whole database on a website, which Mr Millinder expects to be read), and lengthy argumentative witness statements and written arguments, which require considerable

time to attempt to digest and understand. The applications that are made therefore impose a very substantial burden on anyone – respondent or judge – who has to deal with them.

23. Since the hearing on 6 November 2020, there has been a torrent of vitriolic and threatening correspondence emanating from Mr Millinder and indeed repeated to a substantial degree in his skeleton argument in connection with this application. This is unjustifiable but for present purposes it is the irrational approach taken that underscores the likelihood of further meritless applications being made, at length.
24. It is very clear to me that Mr Millinder genuinely believes himself (or his companies, or both) to have been treated unjustly and that he is entitled to a remedy. It is evident that he will seek to pursue it at almost all costs. He will do so by seeking to reopen all the matters that have previously been canvassed in hearings and decisions from 2015 onwards.
25. I have no doubt that he will seek by means reasonably available to him to continue to have such matters heard by the courts. There is currently outstanding an application that Mr Millinder seeks to have heard by the Master of the Rolls, alleging conspiracy and contempt of court against all those who have previously been involved in hearings. In my judgment it is not appropriate that Mr Millinder should continue to be able to issue claims and make applications without restriction, because the applications that he persistently makes are entirely without merit. If any application he wishes to make is a reasonable application that has some prospect of success then a designated judge will give permission for it to be pursued.
26. The remaining question is whether or not the Civil Restraint Order should be an Extended Civil Restraint Order or a General Civil Restraint Order. The effect of a General Civil Restraint Order above and beyond an Extended Civil Restraint Order is that Mr Millinder would be restrained from issuing any claim or making any application in the High Court or the County Court.
27. In view particularly of the claim form that Mr Millinder issued on 7 August 2020 alleging fraudulent conspiracy and breaches of the Human Rights Act against senior judges and officials, it seems to me that there is evidence of a real risk of further claims or applications being brought that do not only involve or relate to or touch upon or lead to the issues in the underlying insolvency proceedings. For that reason, in my judgment, it is now appropriate that the Civil Restraint Order should be a General Civil Restraint Order and I therefore consider that there should be a new General Civil Restraint Order starting today that lasts for a period of two years, and I will so order.

(proceedings continue)

28. I am going to deal now with the summary assessment of costs. The summary of costs that the Club has filed amounts to £60,247. That includes £12,000 in total for counsel's fees, a small amount for court fees and, otherwise, the solicitors' fees.
29. Although the applications relate to a serious matter for the Club and there is some complexity involved in them nevertheless a total bill of £60,000 does seem to me to be somewhat on the high side. When I look for the possible reasons for that I fasten on two matters.

30. First, the appropriate guideline band for solicitors in the centre of Newcastle, as these solicitors are, is a rate of £201 for a Grade A fee earner and £177 for a Grade B fee earner. The rates charged to the Club are £390 for a Grade A fee earner and £340 for another Grade A fee earner and £275 for a Grade B fee earner, so they are very substantially in excess of the guidelines.
31. I must take into account two matters. First, as is generally recognised, these guideline rates are significantly out of date, being based at 2010 rates and they are therefore no more than a starting point as to what is a reasonable rate at which the legal work should be charged for this kind of case by solicitors in this location.
32. Second, I have determined that the costs should be payable on an indemnity basis, so no issue of proportionality arises and it is not for the Club in those circumstances to prove that the rates are reasonable. I do nevertheless consider that some reduction is appropriate because the rates charged are very significantly higher than the guideline rates.
33. The second matter that I have identified is that in the schedule of work done on documents an enormous sum of almost £26,000 is identified as work done on preparing witness statements, including just over 10 hours of work by Grade A fee earners and over 80 hours of work by the Grade B fee earner.
34. There was in fact only one witness statement that was prepared by the Club, comprising some 13 and a bit pages signed by Mr Stewart on 22 October 2020. That had a very substantial exhibit to it and the explanation for the hours spent is that it was necessary to spend considerable time collating the appropriate documents to exhibit. The content of the witness statement itself, however, was not particularly complex.
35. I am not satisfied that anything like £26,000 should be allowed for that item. It seems to me to be an unreasonably large amount of time to spend preparing a witness statement explaining why an injunction should be granted to restrain a petition based on a disputed debt. What I have in mind therefore is to make an adjustment to the overall amount of the costs taking into account those two factors.
36. Bearing those matters in mind and looking at the overall level of costs globally it seems to me that an appropriate amount at which to assess the costs on the indemnity basis is £45,000.

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
