Neutral Citation Number: [2019] EWHC 1465 (Ch) (Costs judgment)

Case No: CR-2017-000140

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

The Rolls Building
The Royal Courts of Justice
7 Rolls Building, Fetter Lane,
London EC4A 1NL

Date: 08/02/2019

Before:

Sir Geoffrey Vos, Chancellor of the High Court

B E T W E E N

MIDDLESBROUGH FOOTBALL & ATHLETIC COMPANY (1986) LIMITED
Applicant

and

(1) EARTH ENERGY INVESTMENTS LLP (in liquidation)
(2) PAUL MILLINDER (joined by an order of HHJ Pelling QC dated 7th June 2018)

Respondents

and

PAUL MILLINDER

Applicant

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Mr Paul Millinder appeared in person

Mr Ulick Staunton (instructed by **Womble Bond Dickinson (UK) LLP**) appeared for **Middlesbrough Football & Athletic Company (1986) Limited**

Mr Anthony Hannon, Official Receiver, appeared as the liquidator of Earth Energy Investments LLP and Empowering Wind MFC Limited

Costs Hearing date: 8th March 2019

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Approved Judgment

Transcribed from 10:53:40 until 11:07:39

Sir Geoffrey Vos, Chancellor of the High Court:

1. I now have to deal in this case with two questions. The first is the application by Mr Millinder for permission to appeal my judgment dated 8 February 2019, and the second is the question of the costs of the hearing that gave rise to that judgment, which took place on 22 January 2019.

Permission to appeal

2. As regards the question of permission to appeal, Mr Millinder has submitted, as indeed he submitted before me at the substantive hearing and as is recorded in my judgment, that the underlying issue, namely that the proofs of debt made by Middlesbrough against Empowering Wind MFC were, as he put it, not legitimate, has not yet been decided.

3. Mr Millinder submitted that those proofs of debt were all linked to the conditional energy supply agreement which required his approval, and the grid connection agreement and the commissioning of the wind turbine. I think it is pretty clear that I have dealt with the arguments that Mr Millinder advanced in my judgment. For that reason, I fully understand the points that he wants to raise on appeal.

4. In response to these submissions, Mr Staunton for Middlesbrough contends that all I have decided is whether or not His Honour Judge Pelling was justified in granting the ECRO against Mr Millinder in the circumstances that he did.

5. Mr Staunton submits that Mr Millinder's arguments do not address the substance of what I decided in my judgment. As it seems to me, however, Mr Millinder is at least entitled to seek to argue that the issue underlying my judgment is whether I was right or wrong to decide that he was not, in the events which happened, able to argue the underlying commercial dispute that he still wants resolved. I do not diminish that argument; I have dealt with it in full detail in a lengthy judgment. Indeed, I do not diminish Mr Millinder's good faith in wishing to have permission to argue in the Court of Appeal that I was wrong. That is the way these Courts work.

6. The question, however, that I have to decide this morning is whether Mr Millinder has a real prospect of success in that appeal in the Court of Appeal. I gave considered thought to that question in preparation for this hearing, and I have now given further thought to it in the light of Mr Millinder's oral submissions.

7. I have, in these circumstances, concluded that Mr Millinder's arguments do not have a real prospect of success in the Court of Appeal. And that is because I have in my judgment been through the lengthy and complex history of this case. I have analysed the twists and turns of this litigation, and explained, I hope in some detail, precisely why the position that Mr Millinder finds himself in, has come about.

8. I have explained why, from Mr Millinder's point of view most unfortunately, the steps that he took have deprived him ultimately of the ability to have resolved the underlying commercial issues that lay between him and Middlesbrough. Indeed I think I went so far in my judgment as to say that that was unfortunate, and that it would have been better if it had been possible for those commercial issues to be resolved at a full trial

after the Court had heard evidence. The problem, as I pointed out in my judgment, was and is that Mr Millinder chose to trade using the limited liability companies in question, Empowering Wind MFC and Earth Energy, and those companies were wound up in the circumstances described in painstaking detail in my judgment.

9. Those windings up have had the consequence that Mr Millinder still complains about, namely that he has been unable to bring the commercial matters in dispute and the contractual matters in dispute between himself and Middlesbrough to a substantive dispute resolution hearing or trial. In my judgment, however, there is no real prospect that Mr Millinder will succeed in an appeal against my order refusing to set aside the ECRO. I would say also that Mr Millinder's complaint that I did not deal with one or two of the specific paragraphs of his application notice is a little unfair because, as I said in my judgment, I dealt with the substance of the application notice and treated it as an application to set aside the ECRO, which was all he was entitled to apply for.

10. So, in those circumstances, and after careful consideration, I have reached the conclusion that I should refuse permission to appeal. That does not prevent Mr Millinder making an application to the Court of Appeal for permission. He may do so, and I intend to extend time because of the delay between the delivery of the judgment on 8 February 2019, and today's date being 8 March 2019, so as to allow him the full period of 21 days from today's date to lodge his application with the Court of Appeal.

Costs

11. I turn then to deal with the question of costs. As Mr Millinder understands, in this Court when one makes an application and fails, it is normal for costs to follow the event. That means that it is normal for the party that is unsuccessful to be ordered to pay the costs of the successful party.

12. I bear in mind in this case that Mr Millinder has been to many judges and had many hearings, but in none of them has there previously been the opportunity to argue in full detail the whole history of this litigation. Therefore, I regard the substantive hearing before me as having had value. I do not underestimate the impact that the outcome has had on Mr Millinder. I understand that he is not happy with the outcome, but in litigation one party is almost always unsuccessful. But I do bear in mind, and indeed it was the reason that I decided in the first place to hear this case myself, that a full hearing of issues, that have proved very contentious and have been decided at numerous short hearings over a considerable period, can sometimes be very beneficial. In short, it is sometimes useful for a single judge to have the opportunity to look at all the documents and everything that has happened to see whether anything has gone wrong.

13. That is what I tried to do at this hearing, and I tried to record my reasons for reaching the conclusions I had formed in a detailed judgment. Even bearing that in mind however, I do think that Mr Millinder must, in accordance with Part 44.2 of the CPR, be responsible for Middlesbrough's costs. Mr Staunton submitted that I should assess them on an indemnity basis, bearing in mind Mr Millinder's allegedly unreasonable, conduct. I persuaded Mr Staunton in the course of argument simply to ask me to assess the costs rather than promoting a further dispute as to whether the costs should be assessed on an indemnity or a standard basis. And on instructions he very sensibly, I think, informed me that his clients would be content with costs on a standard basis.

14. Accordingly, I have to assess what those costs should be. Mr Staunton has put in a bill of costs which totals £44,836 for a one day hearing. It includes notable figures of £29,351 for the work done on documents, and £10,450 for counsel's fees. Looking at those figures I regard the counsel's fees and the other costs as entirely reasonable. I am not of the same view in relation to the sum of £29,351 for work on documents. Mr Millinder submits that there was what he described, in his usual vivid manner, as 'document bombing'. That meant that, when he had put in a bundle of documents, Middlesbrough put in their own bundle of documents. As I said in the course of argument, and in fact in preparing my judgment, I found the bundles from both sides useful. Whilst I would have preferred an agreed bundle, I needed Middlesbrough's documents as well as those provided by Mr Millinder and had to consider them all.

15. So, I do not regard the work done on the documents by Middlesbrough's solicitors as wasted, though I do regard the charge as rather large. I intend to take a broad brush view of the costs of this case and I intend to order that Mr Millinder pay Middlesbrough's costs in the assessed sum of £25,000. I fully understand that that figure is not as scientific as one might have on a detailed assessment, but it is a consequence of Middlesbrough asking me to assess it today rather than go through each figure in the bill. I will order that those costs are paid within 2 months of today's date, allowing Mr Millinder time to be able to raise the money.
