

Case No: BR-2020-000333
Neutral Citation Number: [2021] EWHC 920 (Ch)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY DIVISION

The Rolls Building
7 Rolls Buildings, Fetter Lane
London EC4A 1NL

Friday, 12 February 2021

BEFORE:

MR JUSTICE MORGAN

BETWEEN:

RE ERROL ANTHONY LUESHING
(In Bankruptcy)

MR TITMUSS appeared on behalf of the Trustees in Bankruptcy
MR HAYES appeared as a “common law advocate” on behalf of Mr Errol Lueshing

APPROVED JUDGMENT

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1. MR JUSTICE MORGAN: I am dealing with a preliminary challenge to an application which is listed before me. The application is to commit the respondent to prison for contempt of court. The applicants are Mr Taylor and Mr Dicks who are the joint trustees of the estate in bankruptcy of Errol Lueshing. The respondent is Errol Lueshing, the bankrupt.
2. The principal basis of the application to commit for contempt of court is that the trustees contend that Mr Lueshing is in breach of an order of the court. The order is an order made on 27 May 2020 by Insolvency and Companies Court Judge Jones. That is a detailed order and it will be necessary to refer to its contents in due course if this matter proceeds.
3. The preliminary point which is raised on behalf of Mr Lueshing is that that order, and other orders, are void, that is they have no legal effect as court orders, and therefore if I am persuaded that is the case there cannot be a breach of a court order and there cannot, therefore, be a basis for applying to commit Mr Lueshing for breach of a court order.
4. I will go to the detailed points that are made in a moment but I think I can say at the outset that the suggestion that I can hold that the order of 27 May 2020 is void and it does not exist, cannot be broken and cannot be relied upon in this application to commit is wholly without foundation. The order was made in the Insolvency and Companies Court. There is no defect in the form of the order. The judge who made the order had jurisdiction to make it. It is an order made in the High Court. The order is valid until it is set aside, if it ever were to be set aside. There is no subsequent order setting aside this order.
5. I have been told various things as to what Mr Lueshing believes and what he is prepared to do and what conditions he wishes to impose before he complies with this order. His belief and his preparedness to comply, on condition, are wholly at variance with the binding character of the order of 27 May 2020.
6. However, so that the matter is beyond doubt, I will refer to the other matters which have been identified which are, perhaps, only background to the above conclusion.

7. I will now refer to the bankruptcy order which was made in the County Court at Croydon on 7 May 2019. By that order, DJ Bishop adjudged that Errol Lueshing was bankrupt. There was an application by Mr Lueshing to set aside the bankruptcy order. The application was made on 8 May 2019. It was ordered to be heard on 2 July 2019. Mr Lueshing filed evidence in support of his application. I have seen that evidence. The matter was dealt with in the County Court at Croydon on 2 July 2019. It was dealt with by DJ Bishop. Mr Lueshing appeared in person. The District Judge ordered that the application for annulment of the bankruptcy order was dismissed. That means that the bankruptcy order, to which I have referred, is not open to challenge in this court. I must proceed, and will proceed, on the basis that there is a valid bankruptcy order. This is not an appeal against the bankruptcy order. It is irrelevant to today's application to know whether there could be or could not be an appeal against the bankruptcy order or an appeal against the order of 2 July 2019.
8. However, I will go into other matters, although they are irrelevant to my decision. I have been shown the statutory demand that was served in this case and the bankruptcy petition. The statutory demand identified the debt, the subject of the demand, and the debt was by reference to liability orders made in the Greenwich Magistrates' Court, save that one I think was obtained in the Bromley Magistrates' Court. The statutory demand sets out the date of the liability orders and the amount remaining due pursuant to the liability orders. There was no application to set aside the statutory demand. Thereafter, the creditor, the London Borough of Lewisham, presented a bankruptcy petition and they relied upon the same debt as had been specified in the statutory demand and they relied upon the statutory demand. So, if there was anything wrong with the assertion that there were valid and effective liability orders, that was the time at which the point ought to have been taken. It was not taken and the court made a bankruptcy order which is a valid and effective order, not subsequently set aside, on that basis.
9. I will go even further into the detailed background. The court has been shown the liability orders referred to in the statutory demand and in the petition. The form of the order is that the relevant magistrates' court makes a liability order in respect of non-domestic rates. The order is dated, it identifies the power to make the order. It refers to the complaint made by the London Borough of Lewisham, giving the court

jurisdiction to consider the matter. The order then refers to the sum specified in the attached list and then the order adjudges that the defendants are liable to pay the outstanding amounts in respect of them in the attached table, together with the sum of £175 in each case in respect of costs. The order further provides that the amounts may be enforced in the manner set out in the regulations.

10. The order itself is signed by the relevant District Judge or Justice of the Peace or by the order of the Clerk of the Court. The order states that there is an attached list and the attachment to the order, I have been shown the attached list and in the case of each order it identifies Mr Lueshing. It identifies him by the correct address, it identifies the property which is the subject of the original complaint, it identifies the amount in question. I have no concerns as to the validity and efficacy of those liability orders.
11. Mr Lueshing, who has not appeared at this hearing but has been represented by Mr Roger Hayes, apparently takes the view that he only has to be shown the liability order and he will co-operate in full and cease his challenges to orders of the court. I cannot for myself see any further information which Mr Lueshing can legitimately ask for to satisfy himself on that matter. But, and I stress but, whether I am right or wrong about these liability orders is wholly irrelevant to the validity of the bankruptcy order and also irrelevant to the validity of the order made by ICC Judge Jones on 27 May 2020. Therefore, the application is validly before me and I will, in a moment, enquire into whether there have been breaches of that order.
12. I should add that in the paperwork which has come from Mr Lueshing and Mr Hayes, it is said that the court does not have jurisdiction to deal with this application to commit Mr Lueshing. It is said that Magna Carta has the effect that an application of this kind must be dealt with by a jury of Mr Lueshing's peers. That is wrong in law. The Insolvency Act 1986 and the Civil Procedure Rules made under statutory authority expressing the will of Parliament have conferred jurisdiction on the High Court on a High Court judge sitting alone and without a jury to hear applications to commit to prison for breach of court orders. Magna Carta has to be considered together with the further legislation made by Parliament binding on all citizens which I am required to apply and I will apply it.

13. Accordingly, I have jurisdiction to hear this application. I determine the preliminary point in that sense.

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This transcript has been approved by the Judge