

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS & PROPERTY COURTS OF ENGLAND & WALES**

**[2021] EWHC 1190 (Ch)**

Royal Courts of Justice  
Strand  
London WC2A 2LL

Friday, 26 March 2021

BEFORE:

**MR JUSTICE MORGAN**

BETWEEN:

-----  
**(1) GARY TAYLOR**  
**(2) MATTHEW DIX**

Applicants

- and -

**ERROL ANTHONY LUESHING**

Respondent

-----  
**MR J TITMUSS** appeared on behalf of the Applicants

The Respondent did not appear and was not represented

-----  
**APPROVED JUDGMENT (2 of 2)**  
**Approved**

-----  
Digital Transcription by Epiq Europe Ltd,  
Unit 1 Blenheim Court, Beaufort Business Park, Bristol, BS32 4NE  
Web: [www.epiqglobal.com/en-gb/](http://www.epiqglobal.com/en-gb/) Email: [civil@epiqglobal.co.uk](mailto:civil@epiqglobal.co.uk)  
(Official Shorthand Writers to the Court)

*This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.*

*WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.*



1. MR JUSTICE MORGAN: This is an application by a Mr Taylor and a Mr Dix (who are the joint trustees of the estate in bankruptcy of Errol Anthony Lueshing) to commit Mr Lueshing to prison for contempt of court.
2. The contempt of court which is alleged relates to a number of alleged breaches of an order made by ICC Judge Jones on 27 May 2020. The contempt which is alleged is that an order of the court (namely that order) was not complied with.
3. Another way of putting the matter, but very much to the same effect, is that the order of 27 May 2020 was made pursuant to section 363 of the Insolvency Act 1986. Section 363(4) provides that:

"If any person without reasonable excuse fails to comply with any obligation imposed on him by [an order under that section], he is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject)."
4. Section 363(4) specifically refers to the failure being "without reasonable excuse". In fact, the matter that has been investigated at the hearing today is whether Mr Lueshing failed to comply with the order. It has not been suggested on his behalf that a failure by him was with reasonable excuse. Accordingly, the issue which I need to determine and the findings of fact I need to make relate to whether the applicants have proven beyond reasonable doubt that Mr Lueshing failed to comply with the order.
5. The particulars of failure, which are the particulars of the breach and the contempt, are set out in an amended application notice. The particulars refer to paragraphs 6, 7, 8, 9, 10, 11 and 12 of the order but, as supported by evidence and as presented at this hearing, the allegations do not relate to paragraphs 8 and 9. Therefore, I will be focussing upon the requirements of paragraphs 6, 7, 10, 11 and 12 of the order and the evidence relating to those paragraphs and what was done or not done under them.
6. I should say that the order was served on Mr Lueshing and/or was deemed to be served pursuant to an order made by Zacaroli J in August 2020. The order as served contained a penal notice in proper form.

7. The specific requirements of paragraphs 6, 7, 10, 11 and 12 of the order are set out in some detail in the order and I will not read out at length in this judgment the specific requirements of those paragraphs. Instead, I will identify the respects in which I am able to make findings as to compliance or non-compliance with those paragraphs.
8. I will start with the requirements of paragraphs 6 and 7 of the order. Paragraph 6 is, in summary, an order that Mr Lueshing shall not interfere with the trustees' statutory duties, functions or management of Mr Lueshing's bankruptcy estate. Paragraph 7 of the order is said to be without prejudice to the generality of paragraph 6 and again, in summary, it is an order that Mr Lueshing shall not interfere with the management of or dealings with any of the properties, tenancies or tenants set out in schedule 1 to the order.
9. Schedule 1 to the order identifies 27 specific properties. The properties are, in large part, residential properties but the list in schedule 1 also includes some shop properties. The properties are in south-east London with postcodes in SE20, SE23, SE26 and also, I think, a Croydon postcode.
10. Returning to paragraph 7 of the order, I can summarise it by saying that it continues, having referred to the schedule of properties, by ordering that Mr Lueshing shall not do a number of things. He is not to:
  - "(i) collect or attempt to collect any rents payable for any of the properties set out in schedule 1 to this order;
  - (ii) attend any of the properties set out in schedule 1 to this order without the permission of the applicant or permission of this court, or
  - (iii) seek to contact all or any of the tenants of those properties."
11. The allegations of noncompliance with paragraphs 6 and 7 of the order are contained in paragraph 7 of the amended application notice. The allegations are supported by the fifth affidavit of one of the trustees in bankruptcy, Mr Taylor, and the evidence in support of the application also includes two affidavits of a Mr Puccinelli, who is a surveyor and valuer of a firm of agents, Price Taylor LLP, in London N1. I am also

provided with an affidavit of a Mr Faydali, who is the tenant of the ground-floor shop at 147 Anerley Road, London SE20, which is one of the properties in the schedule to the order.

12. There is no evidence tendered in any form on behalf of Mr Lueshing which addresses the allegations of breach of the order, so the evidence is all one-way. The evidence, in some respects, is hearsay evidence and indeed double hearsay evidence. However, the authorities establish that the Civil Evidence Act 1995 applies to an application of the present kind. These are civil proceedings for the purposes of the 1995 Act. I refer to the decision of David Richards J in *Daltel Europe Ltd v Makki* [2005] EWHC 749 (Ch). The evidence is all admissible and, as I have indicated, there is no evidence from Mr Lueshing to set against the hearsay evidence I have been given.
13. There is no particular reason to be doubtful about the hearsay evidence. Taking the nature of the case as a whole, it cannot be said that there is any improbability about the hearsay evidence or any reason for me to reject it. My conclusion is that I ought to accept that evidence and indeed to find that it establishes the matters of fact which are alleged beyond reasonable doubt, which is the standard I am to apply for the purpose of this application.
14. Going through the allegations separately and making specific findings about them, the first allegation, which is in paragraph 7(i) of the amended application notice, relates to a Ms Paulina Pulaski, who is a tenant of 5A Parish Lane. That is one of the properties in the schedule (indeed all of the properties to which I will later refer are in the schedule to the order and I will not repeat each time that that is the case).
15. Ms Pulaski told the applicants that Mr Lueshing had contacted her and had told her that she should continue to pay the rent under her tenancy to Mr Lueshing. Accepting that evidence as I do, I find that Mr Lueshing committed a breach of paragraph 7(i) and paragraph 7(iii) of the order in relation to 5A Parish Lane.
16. The next allegation is that Mr Lueshing did the same thing which he had done to Ms Pulaski to other tenants of his. This is an allegation based on double hearsay because other tenants of Mr Lueshing are said to have told Ms Pulaski and Ms Pulaski

told the applicant but it is admissible evidence. There is no other evidence to set against it. There is no reason to regard the evidence as doubtful or suspect. Accordingly, I find that, in relation to other tenants of Mr Lueshing, he broke paragraph 7 of the order. In particular, he acted contrary to paragraph 7(i) and paragraph 7(iii).

17. The next allegation is that, on or about 1 July 2020, Mr Lueshing committed essentially the same breaches of paragraphs 7(i) and 7(iii) but this time in relation to a different tenant, a Mr Francis. Again, the evidence is double hearsay. It is based on what Mr Francis told his daughter, Ms Francis, and on what she told the applicants. But, as before, there is no evidence to set against this hearsay evidence, there is no reason to doubt the hearsay evidence and I make the finding beyond reasonable doubt that Mr Lueshing committed a breach of paragraphs 7(i) and 7(iii) of the order in the respect alleged.
18. The fourth allegation is that the same thing happened in relation to Mr Francis on 4 August 2020. For the reasons I gave in relation to the allegation by reference to 1 July 2020, I find that, on or about 4 August 2020, Mr Lueshing did commit a breach of paragraph 7(i) and paragraph 7(iii) of the order.
19. The next allegation relates to 25 July 2020. It relates to the property at 5A Parish Lane. It appears that Ms Pulaski, who was the subject of one of the earlier matters, had vacated 5A Parish Lane and the allegation is that Mr Lueshing let 5A Parish Lane to a new tenant, a Mr Tepulus, and Mr Tepulus had moved in or about 18 July 2020. If that is so, then Mr Lueshing had granted a tenancy and, at the time of granting it, he contacted someone who was then a tenant of the property. That seems to me to establish, if I accept the evidence, a breach of paragraph 7(iii) of the order. I do accept the evidence. The evidence comes from Mr Puccinelli and I have Mr Puccinelli's affidavit verifying the relevant facts.
20. The next allegation in paragraph 7(vi) of the amended application notice arises out of essentially the same matter. The allegation is that Mr Lueshing had sought and received a deposit and one month's rent, together amounting to £2,300, from

Mr Tepulus. I am satisfied on the evidence beyond reasonable doubt that that occurred and that was a breach by Mr Lueshing of paragraph 7(i) of the order.

21. The allegation in paragraph 7(vii) of the amended application notice relates to further payments of rent by Mr Tepulus. He has confirmed that he continues to pay rent and that Mr Lueshing continues to collect rent from him and that three monthly rental payments had fallen due between Mr Tepulus taking occupation of 5A Parish Lane and the date of the amended application notice in November 2020. Again, I find that that has occurred and that Mr Lueshing has committed further breaches of paragraphs 7(i) and 7(iii) of the order.
22. The next allegation is that Mr Lueshing has collected rent from other properties. That is, in addition to 5A Parish Lane involving Ms Pulaski and Mr Tepulus and in addition to 52D St German's Road involving Mr Francis, Mr Lueshing has been collecting rent from other tenants. The amended application notice refers to a number of other properties. It refers to the fact that they are tenanted. It gives the rents and the periods of rent becoming due.
23. The affidavit in support of the application refers to a schedule of properties and to rents which it is said were collected by the bankrupt, Mr Lueshing, in the period May 2019 to October 2020. When one examines the schedule, the rents are all before the date of the court order with, I think, the exception of the payment of rent and indeed a deposit by Mr Tepulus in relation to 5A Parish Lane.
24. Although the schedule to which reference is made in the affidavit does not show payments of rent after the making of the order with the exception of Mr Tepulus's rent, the allegation is that Mr Lueshing has continued to accept rent, and implies that the allegation is since the date of the court order. The affidavit itself, as distinct from the schedule to which I was referred, invites the court to draw the inference that, just as Mr Lueshing was collecting rents from other properties prior to the date of the court order, he continued to collect rents from other properties after the date of the court order.

25. It is open to me on an application of this kind to draw inferences where they are justified and where I can draw the inference beyond reasonable doubt. I am able to draw the inference that, since the date of the court order, Mr Lueshing has collected rents from properties in addition to those I have referred to already of 5A Parish Lane and 52D St German's Road.
26. The reason I draw that inference is that Mr Lueshing, prior to the bankruptcy, was the landlord of these other properties, they were tenanted, rents were payable, no rents have been paid by tenants to the trustees in bankruptcy and it is overwhelming likely that Mr Lueshing has continued to collect rents. After all, he has collected rents in relation to specific properties from specific tenants to whom I have already referred. It is also clear from communications from Mr Lueshing that he regards himself as fully entitled to continue to collect rents. It seems to me an inevitable finding that that is exactly what he has done.
27. I do not, however, make more specific findings as to the name of a tenant of a specific property paying a specific amount of rent on a specific date. The evidence would not permit me to go further than I have done.
28. The result is that I have now made findings that Mr Lueshing has committed breaches of paragraphs 7(i) and 7(iii) of the order. Paragraph 7(ii) prohibited Mr Lueshing from attending any of the properties in the schedule to the order. I am not making a specific finding that he has committed a breach of that. Although there must be a real likelihood that he has done so, I think it is not justified on the evidence for me to make a specific finding.
29. If Mr Lueshing has committed breaches of paragraphs 7(i) and 7(iii), then I make the further finding that he has committed a breach of the general prohibition in paragraph 7 and I make a further finding that he has committed a breach of the general prohibition in paragraph 6 of the order.
30. I go from there to paragraph 10 of the order. The purpose of paragraph 10 was to require Mr Lueshing to transfer the deposits and rents which he had received and which he had retained to the trustees in bankruptcy on the basis that those assets had vested in

the trustees as part of the bankruptcy estate. The allegation of breach is not so much by reference to sums received by Mr Lueshing prior to the order; the allegation is based on the sentence at the end of paragraph 10 of the order, which refers to further deposits or rents being received by Mr Lueshing. In that case, he was required as soon as practicable to transfer them or cause them to be transferred to the trustees' bank account. Mr Lueshing has not transferred any monies to the trustees' bank account so, if I am satisfied that he received deposits and rents after the date of the order, it will follow that he is in breach of that sentence in paragraph 10 of the order.

31. In the light of my findings as to paragraphs 6 and 7 of the order, I do find that Mr Lueshing has received rents and deposits and is therefore in breach of paragraph 10 of the order by not transferring them to the trustees' bank account. I should say that the order required the transfer to happen after the deposits and rents were received, so they were received prior to the making of this application for committal, and so a breach occurred whenever they were received and not transferred.
32. I go from there to paragraph 11 of the order. Paragraph 11 required Mr Lueshing, by 4.00 pm on 12 June 2020, to serve a witness statement which contained a great deal of detailed information specified in paragraphs (i) to (iv) of paragraph 11 of the order. It seems to me that, on the ordinary reading of paragraph 11, this is not an order to give disclosure of pre-existing documents; it is an order to give information in the form of a schedule or in some other way containing the requisite details. Mr Lueshing did not provide any witness statement of the kind required by paragraph 11.
33. I should say that there was a request made on behalf of Mr Lueshing for more time to comply and the trustees' solicitor extended the time for compliance to 19 June 2020 but still no witness statement was provided.
34. Paragraph 12 of the order required Mr Lueshing, by 4.00 pm on 18 June 2020, to deliver to the trustees all and any documents which remained in his possession or control in regard to any of the properties listed in the schedule, including but not limited to a list of five classes of documents.

35. I am not able to make a specific finding that a specific document in relation to a specific property was in the possession or control of Mr Lueshing following the making of the order, but I am able to find beyond reasonable doubt that Mr Lueshing did retain documents which would fall within classes 1 to 5 in paragraph 12 of the order. It is overwhelmingly probable that he did so. These are the sorts of documents which a landlord would routinely bring into existence and retain in relation to a tenanted property. I do not say that every property had the full set of documents in relation to it but it is inescapable that Mr Lueshing had some documents. In fact, he disclosed no documents, so that means there was a failure to comply with paragraph 12 of the order.
36. I should say that the date of 18 June 2020 was extended to 19 June 2020 following a request from a representative of Mr Lueshing and the agreement of the solicitors for the trustees. But, as I have indicated, no documents were delivered.
37. Those are the allegations of breach of the order. Those are my findings beyond reasonable doubt that those breaches have occurred. It follows that Mr Lueshing has committed a contempt of court by failing to comply with the court order in the respects which I have found. The case is also within section 363(4) of the Insolvency Act 1986 and I repeat that there has been no suggestion that there is a reasonable excuse for the failure to comply with the court order. Those are my findings on the application.

**Epiq Europe Ltd** hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE

Email: [civil@epiqglobal.co.uk](mailto:civil@epiqglobal.co.uk)

**This Transcript has been approved by the judge.**