

O-387-15

ORDER under the Companies Act 2006

In the matter of application

No. 980 by Construction & Real Estate Limited

For a change of company name of registration

No. 09083367

DECISION

The company name REAL ESTATE CONSTRUCTION LIMITED has been registered since 12 June 2014 under number 09083367.

By an application filed on 3 July 2015, Construction & Real Estate Limited applied for a change of name of this registration under the provisions of section 69(1) of the Companies Act 2006 (the Act).

A copy of this application was sent to the primary respondent's registered office on 9 July 2015 in accordance with rule 3(2) of the Company Names Adjudicator Rules 2008. The copy of the application was sent by Royal Mail special delivery. On the same date, the Tribunal wrote to Mr Yehuda Berlinger to inform him that the applicant had requested that he be joined to the proceedings. On 15 July 2015 an email was sent to the Tribunal by Austin Berlinger stating that the company would be closed and that the name would not be defended. On 21 July 2015, letters were sent to both parties indicating that the Tribunal was minded to suspend the application as being without object. A period of 14 days was allowed for comment. On the same day a letter was sent to Mr Berlinger confirming that he had been joined to the proceedings. No responses were received and no request for a hearing has been made.

The primary respondent did not file a defence within the one month period specified by the adjudicator under rule 3(3). Rule 3(4) states

“The primary respondent, before the end of that period, shall file a counter-statement on the appropriate form, otherwise the adjudicator may treat it as not opposing the application and may make an order under section 73(1).”

Under the provisions of this rule, the adjudicator may exercise discretion so as to treat the respondent as opposing the application. In this case I can see no reason to exercise such discretion and, therefore, decline to do so.

As the primary respondent has not responded to the allegations made, it is treated as not opposing the application. Therefore, in accordance with section 73(1) of the Act I make the following order:

- (a) REAL ESTATE CONSTRUCTION LIMITED shall change its name **within one month** of the date of this order to one that is not an offending nameⁱ;
- (b) REAL ESTATE CONSTRUCTION LIMITED and Mr Yehuda Berlinger shall:
 - (i) take such steps as are within their power to make, or facilitate the making, of that change;
 - (ii) not to cause or permit any steps to be taken calculated to result in another company being registered with a name that is an offending name.

In accordance with s.73(3) of the Act, this order may be enforced in the same way as an order of the High Court or, in Scotland, the Court of Session.

In any event, if no such change is made within one month of the date of these orders, I will determine a new company name as per section 73(4) of the Act and will give notice of that change under section 73(5) of the Act.

All respondents, including individual co-respondents, have a legal duty under Section 73(1)(b)(ii) of the Companies Act 2006 not to cause or permit any steps to be taken calculated to result in another company being registered with an offending name; this includes the current company. *Non-compliance may result in an action being brought for contempt of court and may result in a custodial sentence.*

Construction & Real Estate Limited, having been successful, would normally be entitled to a contribution towards its costs. However, paragraph 10.4 of the Company Names Tribunal Practice Direction states:

“If an application is undefended, an award of costs is likely to be made against the respondent, provided pre-action enquiries have been made and provided the application succeeds. It should be noted, however, that the adjudicator will not normally award costs to the applicant if the respondent, whilst not defending the application, nevertheless satisfies the tribunal that it did not receive any notice, or did not receive adequate notice, that the application would be made. The adjudicator will, likewise, normally not award costs if the applicant indicates in box 6 of the application form (CNA1) that it did not contact the company prior to making the application.”

The applicant has confirmed, on the CNA1, that no contact was made with the respondent prior to filing this application at the Tribunal. Consequently, I decline to make an award of cost in respect of these proceedings.

Any notice of appeal against this decision to order a change of name must be given within one month of the date of this order. Appeal is to the High Court

in England, Wales and Northern Ireland and to the Court of Session in Scotland.

The company adjudicator must be advised if an appeal is lodged, so that implementation of the order is suspended.

Dated this 18TH day of August 2015

Al Skilton
Company Names Adjudicator

ⁱAn “offending name” means a name that, by reason of its similarity to the name associated with the applicant in which he claims goodwill, would be likely to be the subject of a direction under section 67 (power of Secretary of State to direct change of name), or to give rise to a further application under section 69.