

Decision under the Companies Act 2006

In the matter of application No 12

by Albourne Property Plc

for a change of the company name of registration

No 06235770

DECISION ON COSTS

The company name Albourne Properties Limited has been registered since 2 May 2007 under number 06235770

By an application filed on 27 November 2008, Albourne Property Plc applied for a change of name of this registration under the provisions of section 69(1)(b) of the Companies Act 2006 (the Act).

A copy of this application was sent to the primary respondent's registered office. Albourne Properties Limited filed a notice of defence to the application. On 23 March 2009 the adjudicator received a letter withdrawing the application.

Subsequent to this, a letter was received from Mr N Badrudin of Albourne Properties Limited. Mr Badrudin seeks costs for the defence of the application. He seeks a reimbursement of "the £400 paid by the Company to the Tribunal". The £400 fee was paid by the applicant, not the respondent. The fee for the defence is £150. Mr Badrudin also seeks £200 for preparing the counterstatement. He also requests £500 for preparing evidence and considering the evidence of the applicant. Mr Badrudin states that the respondents solicitor was involved in the preparation of the defence.

Rule 11 of The Company Names Adjudicator Rules 2008 states:

"11. The adjudicator may, at any stage in any proceedings before him under the Act, award to any party by order such costs (in Scotland, expenses) as he considers reasonable, and direct how and by what parties they are to be paid."

Prior to the filing of the application, the solicitors for the applicant wrote to Mr Badrudin on 14 October 2008 and again on 31 October 2008, asking why the company had chosen its name and asking it to change to its name. In the counterstatement Mr Badrudin states that he regrets that he did not reply to these letters but he was involved in other matters at the time, which took up all of his time.

On 13 March 2009 Mr Richard Tillard of Albourne Property Plc wrote directly to Mr Badrudin apologising for making the application. He stated:

“We were simply trying to protect the name in case you were a ‘baddy’ which clearly you are not.”

The respondent is effectively asking for compensation for the counterstatement twice; once as a counterstatement and once as evidence. No evidence has been filed, evidence must be in the form of a witness statement, affidavit or statutory declaration. The respondent simply filed a counterstatement outlining its case. If the respondent had replied to the applicant’s solicitors it is quite possible that no application would have been made. I am not convinced that between 14 October 2008 and 27 November that the respondent could not have responded, even if that response was only a holding response. Clearly there was no legal requirement to make a response, however in the letter of 31 October the applicant’s solicitor advised that if a response was not received by 7 November 2008 an application to the tribunal would be made. Of course, the application was not made until 27 November 2008. It would have been prudent for the respondent to have made a response. It had plenty of time to do so.

Taking these factors into account I do not consider it appropriate to compensate the respondent in relation to this action. The applicant has made no submissions in relation to costs. Each party shall bear its own costs.

Dated this 14th day of May 2009

David Landau
Company Names Adjudicator