

ORDER under the Companies Act 2006

In the matter of application

No. 1328 by Zoopla Property Group Plc, now ZPG Plc

For a change of company name of registration

No. 10352912

DECISION

1. The company name ZOOPLA PROPERTY LIMITED has been registered since 31 August 2016 under number 10352912.

2. By an application filed on 9 December 2016, Zoopla Property Group Plc, now ZPG Plc, applied for a change of name of this registration under the provisions of section 69(1) of the Companies Act 2006 (the Act).

3. A copy of this application was sent to the primary respondent's registered office on 3 February 2017, in accordance with rule 3(2) of the Company Names Adjudicator Rules 2008. The copy of the application was sent by Royal Mail recorded delivery. It was returned "not called for". A copy of the application was then sent by ordinary post. On 3 February 2017, the Tribunal wrote to Kamran Bashir and I&V A UK Limited to inform them that the applicant had requested that they be joined to the proceedings. No comments were received from them in relation to this request. On 22 June 2017, Kamran Bashir and I&V A UK Limited were joined as co-respondents.

4. The letter from the Tribunal, dated 3 February 2017, which served the application on the primary respondent (which is the company) enclosed a copy of the statutory notice of defence, form CNA2, which carries a

mandatory fee of £150. A copy of the Tribunal's Practice Direction was also enclosed. The substance of the letter was as follows:

"If you wish to file a defence, you should complete the enclosed form CNA 2 (notice of defence)¹ and return it within **one month** of the date of this letter, that is on, or before, **3 March 2017**. This is in accordance with rules 3(3) and 3(4) of the Company Names Adjudicator Rules 2008. A fee of £150 must accompany form CNA 2 or paid before the expiry of the deadline for the filing of form CNA 2.

Before you decide whether to file a defence, you may wish to refer to The Company Names Tribunal Practice Direction (copy enclosed).

If you choose not to file a form CNA 2 and the £150 fee the adjudicator may treat the application as not being opposed and may make an order under section 73(1) of the Companies Act 2006.

If you decide not to defend your company name, the application will normally succeed. A decision in favour of the applicant will normally include an award of costs in favour of the applicant.

If you inform the tribunal that you did not receive adequate notice that an application would be made before it was filed, the tribunal will normally not award costs to the applicant. If you are not defending the application and you consider that you did not receive adequate notification from the applicant before the filing of the application, you should inform the tribunal on or before the date for the filing of the defence.

Once an order is issued by the tribunal the adjudicator cannot revisit any costs issues.

¹ Cheque payments of the fee should be made payable to **Intellectual Property Office.**"

5. On 6 March 2017, the Tribunal received from Kamran Bashir a document ending with a statement of truth, dated 1 March 2017, which was called "Reply to the Application Made By Zoopla Property Group Plc". The document was not accompanied by a form CNA2 and it was not accompanied by any payment.

6. Consequently, the Tribunal wrote to the primary respondent on 24 March 2017, saying:

"The official letter dated **3 February 2017** informed you that if you wished to defend your company name you should file a form CNA2 on or before **3 March 2017**. This is in accordance with rules 3(3) and (4) of the Company Name Adjudicator Rules 2008. The letter and enclosures have been returned to the Tribunal, as not called for. I have enclosed these for your reference.

The period for filing a defence has now passed, this expired on 3 March 2017. Should you wish to file a Form CNA2 to defend your company name, a Form CNA5 and a request to extend the time will be required.

A period of 14 days is allowed from [sic] the date of this letter, therefore the CNA5/CNA2 should be received on or before **7 April 2017**.

If no CNA2 has been filed within the time period set, in accordance with Rule 3(4) the adjudicator may treat the application as not being opposed and may make an order under section 73(1) of the Companies Act 2006.

However, in accordance with rule 5(3), either party has the right to be heard. The request must be made on form CNA4. A fee of £100 must accompany form CNA4. A period of 14 days from the date of this letter is provided for either party to make a request for a hearing; so any request must be made on or before **7 April 2017**.

If no hearing is requested within this term the adjudicator will consider making an order.

This letter and the letters to the other parties are being sent both by recorded delivery and normal post.”

7. On 22 June 2017, the Tribunal sent the following letter to the primary respondent and to the two co-respondents:

“The Tribunals [sic] letter dated 24 March 2017 informed you that a form CNA2 and a CNA5 must be filed by [sic] in order to provide a defence in the above proceedings.

I acknowledge receipt of the form CNA2, received 6 April 2017.

As the CNA5 was not filed the period for defence is deemed to have expired on 3 March 2017. As no CNA2 was filed within this period and no further time to file the form has been requested, the above application has been deemed as not defended.

However, in accordance with rule 5(3) either party has the right to be heard. The request must be made on form CNA4. A fee of £100 must accompany form CNA4. A period of 14 days from the date of this letter is provided for you to make a request for a hearing; so any request must be made on or before **6 July 2017**.

If no hearing is requested within this term the adjudicator will consider making an order.”

8. On 6 July 2017, a form CNA4 and £100 fee was filed by Kamran Bashir, requesting a hearing. The hearing took place before me by telephone conference at 10.30am on 30 August 2017. Several attempts were made to connect to the applicant’s representative, but without success. It later

transpired that the telephone number supplied by the applicant's representative had been set to 'call forwarded'. The hearing took place without the attendance of the applicant's representative.

9. Mr Bashir told me that the statutory forms should have been filed as set out in the Tribunal's letters, but was unable to explain why a) no form CNA2 was filed with the 'reply' document (which was late) and b) why no form CNA5 was filed on 6 April 2017 with the form CNA2 in order to request, retrospectively, an extension of time in which to file the form CNA2.

10. Rule 3(3) specifies that the primary respondent must file a defence within the period specified by the adjudicator. 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)."

11. The primary respondent did not file a counter-statement within the one month period specified by the adjudicator under rule 3(3). Even if the 'reply' by the co-respondents could be considered in lieu of a defence by the primary respondent (the company), it was not accompanied by form CNA2 and the fee, as clearly stated in the Tribunal's letter of 3 February 2017. Apart from the lateness of the 'reply' document, there were, therefore, two major errors here: the 'reply' document was not filed by the primary respondent (the company) as required by the legislation; and, secondly, it was not accompanied by the form CNA2 and fee, as required by the legislation. These requirements were all set out in the Tribunal's letter of 3 February 2017. Even though the recorded delivery version of this letter was returned to the Tribunal as 'not called for', the standard delivery version was clearly read by Mr Bashir because he filed the 'reply' document on 6 March 2017.

12. That could have been the end of the matter; however, the Tribunal's caseworker allowed, in his letter of 24 March 2017, the primary respondent a

chance to file a properly constituted defence by giving it until 7 April 2017 to file a form CNA2 and fee which had to be accompanied by statutory form CNA5 (and fee) to ask for a retrospective extension of time in which to file the form CNA2.

13. Again, these directions were not followed by the respondents. The form CNA2 was filed (with the fee) but there was no form CNA5 (and fee) in order to ask for the further time to file the defence. The consequence of this was, as set out in the Tribunal's letter of 22 June 2017, that the defence was filed out of time.

14. Under the provisions of rule 3(4), the adjudicator may exercise discretion so as to treat the primary respondent as opposing the application. I bear in mind that the directions given in the letter of 3 February 2017 were ignored and the directions given (at the Tribunal's discretion) in the letter of 24 March 2017 were also ignored. These letters both warned of the consequences of non-compliance with the directions and the statutory rules. Mr Bashir told me that the filing of the correct forms (twice) 'should have happened', but could not tell me why it had not happened.

15. The rules are there to regulate the proceedings so that parties can expect finality of litigation, have an idea of when finality of litigation will be achieved, and to give parties the means to work out, in relation to the timetable, how much it is likely to cost them (in terms of both time and money) to bring the proceedings to a conclusion. Failure to observe the rules increases time and cost for parties and is unfair to the party not in default. Failure to observe the rules takes up a disproportionate amount of the Tribunal's resources (as can be seen by the number of letters and the time this case has taken so far) which are then unavailable for other litigants in other sets of proceedings. In *Denton v TH White* [2014] EWCA Civ 906, Lord Dyson MR and Vos LJ stated, at paragraph 40:

“Litigation cannot be conducted efficiently and at proportionate cost without a) fostering a culture of compliance with rules, practice

directions and court orders, and (b) cooperation between the parties and their lawyers. This applies as much to litigation undertaken by litigants in person as it does to others....”

16. In this case I can see no reason to exercise discretion under rule 3(4) 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) ZOOPLA PROPERTY LIMITED shall change its name **within one month** of the date of this order to one that is not an offending nameⁱ;
- (b) ZOOPLA PROPERTY LIMITED, Kamran Bashir and I&V A UK Limited each 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.

17. 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.

18. In any event, if no such change is made within one month of the date of this order, 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.

19. 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.*

20. ZPG Plc, having been successful, is entitled to a contribution towards its costs. I order ZOOPLA PROPERTY LIMITED, Kamran Bashir and I&V A UK Limited, being jointly and severally liable, to pay ZPG Plc £1000 on the following basis:

Fee for application:	£400
Statement of case:	£400
Preparation of skeleton argument for joint hearing:	£200

Total: £1000

21. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

22. 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.

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

Dated this 1st day of September 2017

Judi Pike

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.