

-COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT CLERK'S OFFICE

November 22, 2016

RE: No. 2015-P-1583  
Lower Ct. No.: 0774CV00056, 93-0059

BENJAMIN L. HALL [1]  
vs.  
PATRICIA BRIDIER & another [2]

NOTICE OF DOCKET ENTRY

Please take note that on November 22, 2016, the following entry was made on the docket of the above-referenced case:

ORDER: Benjamin L. Hall, as agent for Seagate, Inc. (Seagate), purports to appeal from two orders denying pretrial motions in a Superior Court case. For the following reasons, the appeal is dismissed.

Background. Seagate is a foreign corporation with a principal office in Florida. From 1977 through 2002, Seagate leased a commercial building to Patricia Bridier. *Seagate, Inc. v. Bridier*, 72 Mass. App. Ct. 1114 (2008) (unpublished memorandum and order issued pursuant to rule 1:28) (Seagate I). In 1994, Seagate and Bridier executed a consent decree that outlined the parties' obligations to maintain and to repair the subject property. In 2003, Seagate brought an action for contempt of the consent decree which resulted in a finding for Bridier. The judgment was affirmed on appeal by a different panel of this court. *Seagate I*, supra. On October 3, 2007, Seagate brought an action against Bridier to enforce the consent decree (the instant action).

On January 3, 2008, Seagate assigned its interest in the subject property to Lucky 7 Realty Trust, "together with all rights of ownership including choses-in-action." On March 31, 2008, the Commonwealth revoked permission for Seagate to operate herein. On June 2, 2008, Seagate filed an amended complaint in the instant action, in which it alleged that it owned the subject property.[3] Seagate maintained its claim to ownership of the property in its opposition to a motion by Bridier for summary judgment, and it presented as "[a]greed [f]acts" in its pretrial memorandum that Seagate does business in the Commonwealth and owns the subject property.

With the trial of the instant action poised to begin in October of 2010, on September 29, 2010, Seagate moved to bifurcate and "to clarify and interpret the consent decree & if the court finds arbitration appropriate under the circumstances to order arbitration of those issues & stay the remaining issues, together with allowing the parties to first try to settle an order for arbitration." On October 8, 2010, and February 23, 2011, the motions were denied. Seagate timely filed a notice of appeal from the order denying its motion to clarify and the case was stayed pending appeal. There it lay dormant for four years before the record was assembled. In the meantime, on

August 2, 2011, Lucky 7 Realty Trust assigned all of its interest in the subject property to Luce Brothers Realty Trust (Luce Brothers), "together with all rights of ownership including choses-in-action."

On February 19, 2016, more than eight years after Seagate transferred its interest in the subject property, Seagate filed a motion in this court to substitute Luce Brothers as the appellant. By then, counsel for Bridier had retired and three witness were deceased. The motion was denied without prejudice and Seagate was given leave to refile the motion in the trial court. No such filing appears on the trial court docket.

Discussion. A notice of appeal must "specify the party or parties taking the appeal." Mass.R.A.P. 3(c), as appearing in 430 Mass. 1602 (1999). The notice of appeal in the instant action names Seagate as appellant. Seagate no longer had any interest in the subject property or in the lawsuit when it filed a notice of appeal; rather, Lucky 7 Realty Trust was the actual party in interest. Now, Luce Brothers is the actual party in interest. In eight years Seagate never moved to substitute these successors-in-interest as parties; nor did it avail itself of the opportunity to do so, given by a single justice of this court. We exercise our independent judgment not to allow this appeal to proceed, see *Patten v. Mayo*, 23 Mass. App. Ct. 657, 661 (1987), because we have no jurisdiction over Luce Brothers' or Seagate's purported appeal. See *Filios v. Commissioner of Rev.*, 415 Mass. 806, 807 n.2 (1993); *Cummings v. City Council of Gloucester*, 28 Mass. App. Ct. 345, 347-349 (1990).

We agree with Bridier that Seagate's appeal is frivolous within the meaning of Mass.R.A.P. 25, as appearing in 376 Mass. 949 (1979). Bridier is invited to file a verified and itemized application for fees and double costs within fourteen days of the date of this memorandum and order. Seagate will have fourteen days thereafter in which to file any opposition to the amounts requested. See *Fabre v. Walton*, 441 Mass. 9, 10 (2004). (Green, Grainger & Carhart, JJ.). [4]  
\*Notice/Attest

#### Footnotes

1. As agent for Seagate, Inc.
2. Elizabeth C. Murray, as executrix of the estate of Philip Murray.
3. In a letter dated June 7, 2008, in connection with the appeal in *Seagate I*, Seagate moved in this court for permission to expand the record to include the pleadings in the instant action. No mention was made of Seagate's transfer of its interest in the subject property.
4. The panelists are listed in order of seniority.