Court File No. CV-13-480391

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

MOLD.CA INC., MOULD.CA INC. and MRI-MOLD REMEDIATORS INC.

Plaintiffs

-and -

MOLDSERVICES.CA INC., ROSS SULLIVAN, MICHEL-ANGE ROMELUS and BHARATI GANGAPERSUAD

Defendants

John H. Simpson for Plaintiffs

Francois Sauvageau for Defendants

Michel-Ange Romelus for self

(D.L. Corbett J.)

December 30, 2013

ENDORSEMENT

This motion for summary judgment is limited to the ownership of domain names belonging to the business. The facts are not in material dispute as regards this issue.

Mr. Sullivan and Mr. Dalrymple were involved in establishing the plaintiffs in the business of mold inspection and removal services in the Greater Toronto Area. Mr. Dalrymple says these businesses were corporations that he alone capitalized. Mr. Sullivan characterizes the relationship as a partnership. This conflict need not be resolved for the purposes of this motion. The domain names were purchased by Sullivan, with Dalrymple's money. They were purchased in Sullivan's name without Notice to Dalrymple or his consent. When the business relationship fractured, Sullivan retained the web sites, which, when this was challenged, he had purportedly transferred to Mr. Romelus. Administrative proceedings challenging Mr. Romelus' use of the domain names apparently foundered because Dalrymple could not show bad faith by Romelus. By the time of this motion, the domain names had been transferred by Romelus back to Sullivan. Before me, the issue is a simple matter of property law.

On Dalrymple's theory of the case, the domain names are company property and have been wrongly converted by Sullivan. On Sullivan's theory, the domain names are partnership property and would be subject to division on a final settling of accounts between the partners. Sullivan would have no right use the domain names pending a final settling of partnership accounts. Sullivan, on his theory, has breached his partnership duties of good faith and loyalty.

Title to the domain names belongs to the corporate plaintiffs. Any claim Mr. Sullivan has on the "partnership" theory concerns beneficial ownership of the plaintiffs, and not each piece of property owned by the plaintiffs.

Finally, Mr. Sullivan's explanation for his conduct – paragraph 6 of his affidavit – is no explanation at all. Rather, it seems to establish that his decision to use Mr. Dalrymple's money to buy the domain names in Mr. Sullivan's own name was not some slip or mistake all along, but rather was deliberate and calculated. This evidence cloaks this routine conflict upon dissolution of a business relationship with a none-too-subtle air of dishonesty. Mr. Sullivan's evidence in paragraph 9 of his affidavit in fact refers to payments made after his conversion of the domain names – and so is of no assistance to him.

Order to go as sought in paragraphs (i), (ii) and (iii) of the notice of motion. Costs to the plaintiffs in an amount to be agreed. If the parties cannot agree, plaintiffs shall provide bill of costs and submissions by January 15, 2014; responding submissions by January 24, 2014.

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ONTARIO

SUPERIOR COURT OF JUSTICE

THE HONOURABLE MR.	)	THURSDAY, THE 10th DAY OF
JUSTICE DAVID L. CORBETT	)	January, 2014

BETWEEN:

MOLD.CA INC., MOULD.CA INC. and MRI-MOLD REMEDIATORS INC.

Plaintiffs

-and-

MOLDSERVICES.CA INC., ROSS SULLIVAN, MICHEL-ANGE ROMELUS and BHARATI GANGAPERSAUD

Defendants

THIS MOTION, made by the plaintiffs for summary judgment regarding ownership of the domain names set out in Schedule "A" to this Order (the "Domain Names"), was heard on December 20, 2013, at 393 University Avenue in Toronto.

ON READING the motion records, authorities and written arguments filed by the parties and on hearing the submissions of the lawyers for the parties,

THIS COURT ORDERS that:

i. Summary judgment is hereby granted against the defendants, Sullivan and Moldservices.ca Inc. ("Sullivan"), pursuant to Rule 20.01(1) in respect of the following issues:

a. Are the plaintiffs the rightful owners of the Domain Names?

b. Are the plaintiffs entitled to the return of the Domain Names from Sullivan?

ii. The Court hereby declares that the plaintiffs are the rightful owner of the Domain names and Sullivan is unlawfully withholding the Domain Names;

iii. Sullivan shall forthwith:

a. transfer and convey the Domain Names to the plaintiffs and deliver up all account information and passwords in his possession, power or control relating to the Domain Names;

b. transfer all rights of access, administration and control for and over the Domain Names to the plaintiffs; and

c. direct the applicable domain name registrar(s) to transfer all rights of access, administration and control for and over the Domain Names to the plaintiffs.

iv. The plaintiffs are entitled to their costs in an amount to be agreed upon by the parties. If the parties cannot agree, the plaintiffs shall provide a bill of costs and submissions by January 15, 2014 and Sullivan shall provide responding submissions by January 24, 2014.

SCHEDULE "A"

mold.ca

mould.ca

gtaremediators.ca

moldremediator.ca

moldtoronto.ca

gtamold.ca

theremediators.ca

800gotmold.ca

800gotmold.com

growops.ca

growopfacts.ca

factsaboutmold.ca

cleaningmold.ca

getridofmold.ca

factsaboutmould.ca

mrmold.ca

moldservices.ca