

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

REASONS AND ORDER

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 to 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.
