

**IN THE SENIOR COURTS OF BELIZE**

**IN THE HIGH COURT OF BELIZE**

**CLAIM NO. 0285 OF 2024**

**BETWEEN:**

**BORIS MANNSFELD & ASSOCIATES  
BELIZE REAL ESTATE LIMITED**

Applicant

**And**

**FRIK DE MEYERE**

Respondent

**Appearances:**

Mr. William Lindo for the Applicant

Mr. Morales holding for Mr. Andrew Bennet for the Respondent

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2024: June 10;  
July 30  
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**Catchwords:**

APPLICATION FOR INTERIM INJUNCTION

**DECISION**

[1.] **NABIE, J.:** This application for interim injunction concerns the control of a domain that hosts a website and email. The parties have both made compelling arguments. I have considered both and the principles regarding the grant of such an order. In the circumstances the injunction is hereby granted in the terms set out below.

- [2.] The applicant, Boris Mannsfeld and Associates Belize Real Estate Limited (referred to as BMA or applicant) is in the business of real estate. The parties were in a business relationship, but there are two versions as to the nature of that business relationship. The applicant's evidence is that the respondent, Frik de Meyere was an employee, sales agent and later general manager. On the other hand the respondent says he was a business partner along with Boris Mannsfeld in BMA. In any event the relationship between the parties came to an end in August 2023 and as between Boris Mannsfeld and the respondent as well. The applicant's website and email are hosted on a domain '*realestateplacencia.com*'. The respondent holds legal title to the 'domain'- '*realestateplacencia.com*' that hosts the website for the applicant and the emails for the applicant's employees. The respondent has disabled the domain. As a result the applicant has brought these proceedings.
- [3] There has been a disruption of the business of BMA including its website and emails as a result of the shutting down of the domain. The respondent has indicated that he has done so and this is evidenced in the affidavit of respondent<sup>1</sup>. The first disruption occurred on or about the 8th November 2023, when BMA's website and email were disabled. The hosting server for the domain '*realestateplacencia.com*' changed from '*ns1.bmaserver.com*' and '*ns2.bmaserver.com*' to '*ns1.501properties.com*' and '*ns2.501properties.com*' which is also owned by the respondent.
- [4.] BMA's situation was resolved soon thereafter until May 2024. On 21st May 2024 the hosting server was again changed to '*josh.ns.cloudflare.com*' and '*mary.ns.cloudflare.com*' around 11.18 am and was changed back one hour later. Thereafter on 23rd May 2024, the email addresses for the BMA employees were disabled causing a major disruption in sales among other things.

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<sup>1</sup> Affidavit of Frik De Mayere paragraphs 20, 27 and 33

[5.] Since August 2023 after severing ties with the applicant, the respondent has registered as Prime Belize Real Estate and many clients of BMA have moved over to advertise their properties to that company. There are several matters in the High Court of Belize involving either BMA and/ or Boris Mannsfeld on one hand and the respondent on the other. The applicant has filed an “Urgent Application Notice” for the following:

1. An interim injunction compelling the Respondent to transfer ownership, possession, control and custody of the domain ‘realestateplacencia.com’ and its associated website domain and email domain ending in ‘realestateplacencia.com’ to the Registrar of High Court, or an independent third party to be approved by the Court, until the determination of this matter or until further order of the Court;
2. Further and alternatively, an interim injunction restraining the Respondent, whether by himself, his servants agents or howsoever, until the determination of this matter or, until further order of the court, from
  - i. interfering with the setting of the domain ‘realestateplacencia.com’ and its associated website domain ‘https://realestateplacencia.com’ and email domain ending in ‘@realestateplacencia.com’;
  - ii. changing servers for the domain ‘realestateplacencia.com’;
  - iii. disabling the domain ‘realestateplacencia.com’ and its associated website domain ‘https://realestateplacencia.com’ and email domain ending in ‘@realestateplacencia.com’;
  - iv. transferring, assigning, selling, surrendering, or otherwise disposing of the domain ‘realestateplacencia.com’;
  - v. accessing and using information from the website domain ‘https://realestateplacencia.com’ and the website domain server and email domain database;
  - vi. interfering with, contacting, intercepting, or otherwise dealing with the clients and contracts of the Applicant; and

- vii. interfering with, accessing, utilizing, or sabotaging the Daylite Customer Relationship Management Computer Software and database and Dropbox file storage used by the Applicant.
3. Further and alternatively, an interim injunction compelling the Respondent, until the determination of the matter or, until further order of the Court, to restore and keep the hosting servers for the domain 'realestateplacencia.com' to the Applicant's original hosting servers 'ns1.bmaserver.com and'ns2.bmaserver.com';
4. Cost of this application be cost in the cause; and
5. Such further or other orders this court may deem fit.

### **Applicant's Submissions**

- [6.] The applicant submits there is a serious issue to be tried and that is the determination of the ownership of the domain '*realestateplacencia.com*'. The applicant argues that the domain was registered in the respondent's name after he was employed with BMA. The applicant has annexed a draft claim seeking declaratory relief that the domain belongs to BMA.
- [7.] The applicant is of the view that damages would not be an adequate remedy. BMA has virtually shut down so to speak and is unable to access emails, client information, marketing and accounting software. Counsel submitted that it would appear that BMA does not exist. However, the applicant submits that damages would be an adequate remedy for the respondent. The respondent has shown he is the owner of the domain and can be compensated for it.
- [8.] BMA was shut down by the respondent as a result of alleged defamatory statements made through BMA's website Boris Mannsfeld. An action for defamation has been filed by the respondent against Boris Mannsfeld in Claim No. 274 of 2024. Therefore BMA submits that the respondent has taken the right approach and can file an injunction in that claim. It was submitted that the balance of convenience lies with granting the injunction. Further thereto, BMA pointed out that the respondent's statement in paragraph 6 of his affidavit which states:

“6. I was not an employee of the Applicant (“BMA”). The affiant Boris Mannsfeld and I were partners in the real estate market, and we provided our broker services to the Applicant until I gave Mr. Mannsfeld notice of dissolution of our partnership in August 2023.”

[9.] Additionally, in a letter to Boris Mannsfeld dated 23<sup>rd</sup> August 2023, from the respondent’s attorneys it was stated:

“While upon dissolution of the partnership the assets of the partnership are to be firstly be applied to the debts and liabilities of the partnership, and if there is any surplus, to be distributed to the each of the partners, our client is willing to release any interest he may have in any such surplus assets, save and except two official tables and a chair which was gifted to our client by his mother. Kindly indicate when our client may collect the said items.”

[10.] BMA argued that based on the respondent’s position and in accordance with section 22 of the **Partnership Act**, the domain is partnership property. Therefore it was argued that the respondent who holds the legal title does so in trust for the partnership and accordingly the respondent can be compensated for the domain.

[11.] The applicant lastly pointed out that there was an undertaking in damages if the injunction was wrongly granted. This was given by Boris Mannsfeld in his first affidavit<sup>2</sup>. A copy of the draft claim was also exhibited in which the applicant proposes to obtain the rights to the domain “*realestateplacencia.com*”.

### **Respondent’s Submissions**

[12.] The respondent referred to the **Senior Courts Act** with regard to what a court has to consider when granting an injunction. It must be just and convenient to do so and that must be considered in this application.

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<sup>2</sup> Paragraph 30 of the affidavit of Boris Mannsfeld filed on 27<sup>th</sup> May 2024

- [13.] The court was asked to consider if the practice of a business was worth more than a man's dignity and reputation. It was posited that the applicant had a duty to provide full and frank disclosure in the affidavit in support of the injunction. Instead the applicant was saying that the respondent was taking matters into his own hands to disrupt the business of BMA. The website hosted by this domain was being used as a weapon against the respondent by destroying his reputation.
- [14.] The respondent's evidence is that after he gave notice of dissolution of the partnership, Boris Mannsfeld launched an attack against him through BMA's website and email with the aim of defaming his character and business. This was done through daily emails to the respondent's clients and other persons. These statements included accusations of fraud, embezzlement, bribery, theft, and deceit.<sup>3</sup> Copies of statements were exhibited by the respondent. It was argued that while it was true that the respondent had a remedy to be compensated that being the defamation claim, the court was asked to note that the domain that was being used to attack him is the very domain that BMA is asking to restore to it. The respondent submitted that it has become clear that Boris Mannsfeld is intent on defaming and vilifying him. The respondent complains about the lack of candor on the part of the applicant in these proceedings namely that BMA does not say that the domain is being used to defame the respondent. The applicant has also filed a claim for breach of fiduciary duty and compensation for monies and alleged misappropriation of funds in Claim no.260 of 2023 against the respondent.
- [15.] The respondent pointed out that even though there is a claim for defamation, BMA argues that the respondent has taken the law into his own hands. It was argued on behalf of the respondent that if the domain is restored for the use of BMA then the attacks will continue, as they continue even without the domain as can be seen from a document dated 6<sup>th</sup> June 2024.<sup>4</sup> This is alleged to be a daily conduct by Boris Mannsfeld through BMA's website and email.

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<sup>3</sup> Paragraph 16 of the affidavit of Frik De Meyere filed 10<sup>th</sup> June 2024

<sup>4</sup> Exhibit "FD6" to the affidavit of Frik De Meyere filed 10<sup>th</sup> June 2024

- [16.] The respondent went on to show that he had registered the domain in 2011 and submitted that he had the legal and equitable title to the said domain. He stated that BMA had used the domain '*realestatebelize.com*' prior to 2013 but when he and Boris Mannsfeld became partners the domain "*realestateplacencia.com*" was then used in the partnership. While the respondent allowed the domain to be used gratuitously by BMA, there was no agreement, consideration or trust deed that gave any indication that BMA would be entitled to the legal or beneficial ownership of the domain name. The respondent advances that he maintains all rights in the domain and that BMA never made any financial contribution for the use of the domain.
- [17.] The respondent insisted that the domain was not a partnership asset. Further, even if it was considered such, BMA is a stranger to the partnership, because the partnership was between the respondent and Boris Mannsfeld.
- [18.] Counsel for the respondent pointed out that the exhibit "BMA1-1" to the first affidavit of Boris Mannsfeld shows that HostGator.com hosts BMA's website and this is controlled by BMA. HostGator.com exists and hosts the website separately. The respondent submitted that he does not have control over this website. It is not hosted by the bname.net. Counsel went on further to say that the exhibit "BM1-1" also illustrates that BMA has a domain name to host the webpage and email, this is '*realestateplacencia.info*'. Therefore if the injunction is not granted it does not mean that the applicant's business comes to a halt. The injunction is therefore unnecessary. Counsel has submitted that all the IT personnel has to do, is to transfer the website and email servers namely, '*ns1bma.com*' and '*ns2bma.com*' to the domain it has acquired and the applicant's business can go on.
- [19.] The respondent says that damages are adequate as that is what he is seeking in the draft claim form that BMA has suffered loss and damage as a result of the respondent's actions.

[20.] In closing Counsel for the respondent urged the court not to grant the injunction because the domain is registered to the respondent and there is no contractual agreement that the applicant has any rights in domain name. There is no evidence that BMA made any claims for the domain upon the dissolution of the partnership. Lastly the respondent has been attacked through the dissemination of defamatory statements and the shutting down of the domain therefore was a form of abatement. If the domain is re-activated, the respondent is without doubt that the conduct of Boris Mannsfeld would continue through BMA's website.

### **Applicant's Reply**

[21.] It was submitted that the respondent had put forward a paper owner argument. The issues regarding defamation has nothing to do with the actual ownership of the domain '*realestateplacencia.com*', it supports the applicant's claim as the respondent has in effect granted his own injunction by shutting down the domain to prevent the alleged attack. It was suggested that the respondent can seek an injunction in his defamation action against Boris Mannsfeld. It was suggested that the respondent has several domain names and that this domain name could be held by a third party. The applicant indicated that the other matters have nothing to do with the ownership of the domain. I assume that reference to other matters are the alleged defamatory statements made by Boris Mannsfeld against the respondent. Lastly the applicant says that there is no need for a trust deed and section 5 of the **Trust Act** was referenced by Counsel.

### **Issues to be Determined**

- [22.] Which party should control of the domain '*realestateplacencia.com*' in the interim?
- (1) Is there a serious issue to be tried?
  - (2) Are damages an adequate remedy?
  - (3) Where does the balance of convenience lie?



## Law and Discussion

[23.] The law on interim injunctions is well established. A court is required to consider the following in an application for an interim injunction, namely:

- (i) Whether there is a serious issue to be tried,
- (ii) Where does the balance of convenience lie and
- (iii) The adequacy of damages.

[24.] These factors are to be considered together and not necessarily in isolation. I refer to the matter of **Inshan Ishmael v. Weston Rawlins and COTT** Claim No. CV 2023-00753 (T&T), where Seepersad J. set out the following guidelines **American Cyanamid Company v Ethicon Ltd**<sup>5</sup>:

- “(i) The court must be satisfied there is a serious issue to be tried.
- (ii) Unless the evidence available at the hearing of the interlocutory application fails to disclose that the plaintiff has a real prospect of success in his claim for a permanent injunction at the trial, the court should then proceed to consider whether the balance of convenience is in favour of granting or refusing the interlocutory relief sought.
- (iii) The governing principle in considering the balance of convenience is whether the plaintiff if successful at trial and can be adequately compensated in damages for any loss he would sustain by the defendants’ continued acts between the application for an interlocutory injunction and the trial. If damages are an adequate remedy then no interim injunction should be granted.
- (iv) However, if damages would not be an adequate remedy, the court should then consider if the defendant is successful at trial, he would be adequately compensated for the loss he sustained from the injunction.
- (v) The question of balance of convenience will arise where there is doubt on the adequacy of the respective remedies in damages available. Whichever party is unsuccessful on the application for interim injunction would suffer disadvantages such as inability to compensate him fully if such party is successful at trial. This is a significant factor in assessing where the balance of convenience lies.”<sup>6</sup>

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<sup>5</sup> [1975] AC 396

<sup>6</sup> Inshan Ishmael v. Weston Rawlins and COTT Claim no. CV 2023-00753 (T&T)

- [25.] The Court's power to grant the orders sought is derived from section 34 of the Senior Courts Act and Part 17 of the CPR.
- [26.] This application for injunction seeks to remove the control of the domain "*realestateplacencia.com*" from its registered owner, the respondent to the either the applicant or a third party as sought in the reliefs. There is no dispute that the relationship between the Boris Mannsfeld, sole director of the applicant and the respondent is a hostile one. This is evident from their undisputed actions. The court is mindful of the loose interchange made by both counsel regarding the applicant and Boris Mannsfeld.
- [27.] It was argued by Mr. Lindo that the domain was partnership property and therefore BMA was entitled to control of it. I am in disagreement, the partnership if any existed between the respondent and Boris Mannsfeld. The applicant disputes that there was ever any such partnership but that the respondent was a mere employee. I find that the applicant is unable to rely on an argument which contradicts his position that the respondent was an employee.
- [28.] The evidence shows that the domain was registered to the respondent before his engagement with the applicant and Boris Mannsfeld in 2013. The applicant having used the domain since that time for the conduct of its business in my view forms the basis of a serious issue to be tried to establish the ownership of the domain.
- [29.] I have considered the conduct of the parties and in this regard also I have considered that the email and website hosted by the domain in issue has allegedly been used as a smear campaign against the respondent. The actions of the respondent may be understandable in the circumstances. I would say no more on this as it is the subject of another claim before the courts of Belize.

[30.] On the issue of adequacy of damages, I refer to the judgment of the Chief Justice Michael De la Bastide of TTCA in **Jetpak Services Ltd v B.W.I.A International Airways** CA No. 212 of 1997 at page 10;

“It is a truism that facts are infinitely variable, and it is dangerous to prescribe or apply a single formula for determining whether an interlocutory injunction should be granted in all cases unless it is expressed in very broad terms. I would consider the rule that an injunction ought never to be granted if damages can provide an adequate remedy to be one which is too narrow to be applicable in every case. It is more obviously so if by ‘damages’ is meant the damages which are legally recoverable in the action, and if by ‘adequate’ is meant quantifiable. The learned trial judge relied on a statement of Lord Justice Buckley in **Polaroid Corporation v Eastman Kodak** (1977) RPC 379 at 395 which reads in part:-

‘Accordingly, if the plaintiff can be compensated in damages for anything he may wrongfully suffer between the date of the application and the trial, the defendant should not be restrained save in exceptional circumstances....’

The dictum recognizes the possibility of “exceptional circumstances” which may render what is laid down as a general rule inapplicable. I would prefer with respect the way in which the matter was put by Lord Justice Sachs in **Evans Marshall v. Bertola** (1973) 1 WLR 349 at 379 when he suggested that:

‘The standard question in relation to the grant of an injunction, ‘Are damages an adequate remedy?’ might perhaps in the light of the authorities of recent year, be written: ‘Is it just in all the circumstances that a plaintiff should be confined to his remedy in damages?’”

[31.] I agree that the applicant is unable to be compensated in damages. The applicant’s business must heavily rely on its website and email and access to its software must be vital to the business. I am nonetheless aware that the applicant can use other forms of social media in conducting its business. The respondent has quite rightly filed an action for defamation from which he can seek compensation and injunctive relief through that claim.

[32.] I must now consider the balance of convenience in whether or not to grant the injunction. The applicant has used this domain to host its website and email since 2013. The Court has noted that the applicant has registered another domain "*realestateplacencia.info*" and I agree that the applicant can host the website and email on that domain. However, I am not convinced that the applicant is able to do without some control of or access to the respondent's domain "*realestateplacencia.com*".

[33.] I have noted the emails and statements attached to the respondent's affidavits which has not been denied by the applicant. I also bear in mind that BMA has used that domain for over a decade and I am not convinced that the migration from one domain to another is as easy as articulated by Mr. Bennett. On a balance of convenience I am minded to grant the injunction.

**Conclusion:**

[34.] I find that the applicant is entitled to access to the domain '*realestateplacencia.com*' to enable BMA's website and email. The custody and control of the domain will be transferred or assigned in the interim to a third party agreed to by the parties. I have considered the evidence of the newsletters emanating from BMA through the domain which caused the respondent to shut it down. I therefore will award costs to the respondent in the cause. The respondent as the legal title holder should not have to have his property used in that manner against him.

[35.] The applicant has made an undertaking to file the claim within 14 days and also undertakes that not to disseminate or publish through its website and emails any statement or information or correspondence of a defamatory or disparaging nature about the respondent and/or his business.

**Disposition:**

[36.] I hereby order as follows:

1. Until the determination of this matter the respondent is to transfer or assign custody and control of the domain '*realestateplacencia.com*' to a third party as agreed by the parties within three business days of such agreement.
2. Upon assignment of the domain to the third party, the respondent, whether by himself, his servants, agents or howsoever, until the determination of this matter or, until further order of the court, are restrained from
  - i. interfering with the setting of the domain '*realestateplacencia.com*' and its associated website domain '*https://realestateplacencia.com*' and email domain ending in '@*realestateplacencia.com*';
  - ii. changing servers for the domain '*realestateplacencia.com*';
  - iii. disabling the domain '*realestateplacencia.com*' and its associated website domain '*https://realestateplacencia.com*' and email domain ending in '@*realestateplacencia.com*';
  - iv. selling, surrendering, or otherwise disposing of the domain '*realestateplacencia.com*';
  - v. accessing and using information from the website domain '*https://realestateplacencia.com*' and the website domain server and email domain database; and

- vi. interfering with, accessing, utilizing, or sabotaging the Daylite Customer Relationship Management Computer Software and database and Dropbox file storage used by the Applicant.
3. Costs are awarded to the respondent in the cause.

**Nadine Nabie**  
**High Court Judge**