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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BENNION & DEVILLE FINE HOMES, INC., a California corporation, BENNION & DEVILLE FINE HOMES SOCAL, INC., a California corporation, WINDERMERE SERVICES SOUTHERN CALIFORNIA, INC., a California corporation,)	CASE NO. CV 15-1921-R
)	
Plaintiffs,)	ORDER DENYING COUNTER CLAIMANT WINDERMERE REAL ESTATE SERVICE COMPANY’S <i>EX PARTE</i> APPLICATION FOR TEMPORARY RESTRAINING ORDER
)	
v.)	
)	
WINDERMERE REAL ESTATE SERVICES COMPANY, a Washington corporation; and DOES 1-10,)	
)	
Defendants.)	
)	

Before the Court is Counter Claimant Windermere Real Estate Service Company’s *Ex Parte* Application for Temporary Restraining Order, which was filed on October 28, 2015. Having been thoroughly briefed by both parties, the matter was submitted on the papers.

Plaintiff/Counter Defendant Bennion & Deville Fine Homes, Inc. (“Bennion”) is the registrant of each of the approximately 306 domains at issue in this *ex parte* application. On August 1, 2001, Bennion entered into a Franchise Agreement with Windermere Real Estate

1 Services Company (“WSC”). The Agreement granted Bennion a license to use the WSC marks in
2 the operation of its real estate franchise. Section 7 of the Agreement obligated Bennion to
3 “discontinue all use of the Trademark” in the event of termination of the Agreement. During the
4 franchise relationship, Bennion purchased, developed, and used the domain registrations at issue
5 in this *ex parte* application.

6 On September 30, 2015, the contractual relationships between WSC and Bennion
7 terminated. Now, WSC argues that as part of the Franchise Agreement, Bennion is required to
8 discontinue use of the domain registrations and transfer ownership to WSC. Bennion concedes
9 that it must discontinue the use of the websites pursuant to their contractual obligations; however,
10 it argues that nowhere in the Franchise Agreement (or any other agreement) is Bennion obligated
11 to transfer any of the domains to WSC upon the termination of the parties’ relationship. Since the
12 termination of the contractual relationship, Bennion has proceeded to cancel registration of all
13 websites which use the WSC trademark. WSC has now asked this Court to order Bennion to
14 reverse its cancellation of the domain registrations and direct the domain registrar, GoDaddy.com,
15 to transfer the domains to WSC. In support of this, WSC cites to Section 3 of the Franchise
16 Agreement, which reads in part: “Upon request by WSC, [Bennion] shall cooperate fully and in
17 good faith assist WSC to the extent necessary in the procurement of any protection of or to protect
18 any of WSC’s rights in and to the Trademark and the Windermere System or any rights pertaining
19 thereto.”

20 WSC argues that by “releasing” or “cancelling” their registration of the domains, Bennion
21 has made those available to the worldwide public, including cyber squatters in Hong Kong. WSC
22 contends that if cyber squatters are able to obtain those domain names, they will be forced to pay
23 an excessive cost to acquire them. While this Court certainly understands WSC’s concerns, the
24 language of their own contracts does nothing to protect them from such an occurrence. The
25 language of Section 3 of the Franchise Agreement requires Bennion to act in good faith in
26 assisting WSC in protecting the WSC trademarks. It does not require them to affirmatively
27 transfer domain registrations. If this was something WSC expected at the creation of the Franchise
28 Agreement, it should have been memorialized to that effect; otherwise, the literal meaning of

1 contractual language will be given. Because the domains in question are in the process of
2 cancellation and Bennion has no obligation to transfer said domains to WSC, WSC's requested
3 injunctive relief is denied as moot.

4 **IT IS HEREBY ORDERED** that Counter Claimant Windermere Real Estate Service
5 Company's *Ex Parte* Application for Temporary Restraining Order is DENIED. (Dkt. No. 21).

6 Dated: November 6, 2015.



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9 MANUEL L. REAL
10 UNITED STATES DISTRICT JUDGE
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