
Defendants/Respondents.

¹ Christopher Allen Kroblin, Esq., of Kellerhals Ferguson Fletcher Kroblin LLP appeared on behalf of Plaintiff VI 4D LLLP. David Bornn, Esq., appeared as a representative for VI 4D, LLLP. Hank Smock, Esq., made a limited appearance on behalf of the Defendant the Economic Development Commission. Ariel Smith-Francois, Esq., made a limited appearance on behalf of the Government of the Virgin Islands. Defendants Crucians In Focus, Inc. and Demmansay.com did not appear at the hearing.

I. FACTS/PROCEDURAL HISTORY

The Court will briefly discuss the facts leading up the Court's issuance of a temporary restraining order in this matter on July 13, 2012. Afterwards, the Court will discuss the July 26, 2012 hearing on Plaintiff VI 4D LLLP's Motion for Order to Show Cause that is the subject of this Memorandum Opinion.

A. OVERVIEW OF THE TEMPORARY RESTRAINING ORDER.

On July 12, 2012, VI 4D, LLLP moved this Court for a temporary restraining order against the Defendants in this matter. VI 4D is a U.S. Virgin Islands Limited Liability Partnership that, on or about November 17, 2011, filed an Application for Economic Development Commission Benefits with the United States Virgin Islands Economic Development Commission, for a proposed project to construct a 4D Giant Screen Theater. The application process involves the submission of certain confidential, proprietary, trade secret, financial, and investment analysis information, for review by the EDC. In its Motion, VI 4D alleged that Defendants Crucians in Focus, Inc. and Demmansay.com, obtained a copy of the Virgin Islands Economic Development Authority's Executive Summary of VI 4D's application and published it on its website.

Subsequently, on July 13, 2012 at 6:58 p.m., this Court entered an Order granting VI 4D's request for a temporary restraining order and enjoined the Defendants and anyone acting on their behalf from publishing or posting any of VI 4D's confidential, proprietary, trade secret, and otherwise protected information. In its Order, the Court set a bond in the amount of \$1000.00, which VI 4D paid on July 19, 2012. The Court also set the matter down for a preliminary injunction hearing on July 23, 2012. VI 4D provided Crucians In Focus with electronic service of the Court's order granting the temporary restraining order on July 13, 2012 at admin@cruciansinfocus.com and with physical service to its registered agent, Michael Springer, on July 16, 2012.

The preliminary injunction hearing took place on July 23, 2012. The Plaintiff appeared at the hearing. However, the Defendants Crucians in Focus, Inc. and Demmansay.com did not appear at the hearing. Accordingly, the Court extended the temporary restraining order in this matter until August 6, 2012 and continued the preliminary injunction hearing until August 6, 2012. In addition, at the conclusion of the hearing, the Court set down a hearing on VI 4D's Motion for Order to Show Cause for July 26, 2012. The Court memorialized this information in an Order entered on July 24, 2012. VI 4D provided Crucians In Focus with electronic service of that order, along with a copy of its Complaint, its Motion for Order to Show Cause and the Court's Summons to Crucians In Focus, Inc. on July 24, 2012 and with physical service to its registered agent, Michael Springer, on July 25, 2012.

B. HEARING ON VI 4D'S MOTION FOR ORDER TO SHOW CAUSE.

During the July 26, 2012 hearing, VI 4D called David Bornn, Esq., as its only witness. Bornn testified that he is an attorney and advisor to VI 4D. He described VI 4D's project as a giant screened 4D theater that would also serve as a cultural center in the Virgin Islands. Bornn further testified that VI 4D is an applicant for EDC benefits and as part of the application process, the company submitted documents that included sensitive information on the project's finances, marketing and promotion, projections, technical and mechanical specifications of the theater, schedule of structure and feasibility, investor information, and other trade secret information. Furthermore, Bornn testified that the 4D technology is innovative and there are not many theaters with its design around the world. If VI 4D's trade secrets are published, Bornn testified that it could give competitors an edge in the Virgin Islands and in the Caribbean overall. According to Bornn, other effects of the continued dissemination of the protected information is that it would be injurious to VI 4D's attempts to secure investors for the project. Bornn testified that in total, the project will require an investment of twenty three million dollars and thus far, \$900,000 has already been spent by the principals of the project for preliminary design, investment and feasibility studies, architectural plans, and legal advice.

Bornn further testified that CruciansInFocus.com and Demmansay.com removed the links of the protected information in question on or about July 14 or 15, 2012. He testified that on July 19, 2012, the two websites reposted the documents and the documents remained posted until at least July 25, 2012. He stated that he knew this information because he had accessed the website each day and clicked on the links himself. Bornn further testified that the documents did not appear on the website as of July 26, 2012. He stated that he did not access the websites himself to confirm that the content had been removed on July 26, 2012. However, he was informed by an assistant in his office that the documents had been taken down. Last, he testified that although the links to the documents have been removed from CruciansInFocus.com and Demmansay.com, on July 19, 2012, he discovered that there are back portals on yahoo.com and google.com that still make the information available on the general web. When asked his estimate on how much the company has lost thus far as a result of the protected information being posted from July 19 to July 25, 2012, Bornn replied that he could not give an answer since he could have potentially lost the entire project due to the posting of valuable trade secrets.

VI 4D introduced six exhibits during the hearing, all of which were admitted into evidence. The first exhibit was an article that appeared on CruciansInFocus.com on July 6, 2012 entitled "Your EDC Dollars At Work?"² At the conclusion of the article were three links. The first link was entitled "EDA Summary and 4D Application," the second was entitled "EDA Attachments on 4D," and the third was entitled "Job Titles and Salaries."³ Bornn testified that he clicked on those links on or about July 6, 2012 and the original documents were posted under those links.

² Pl.'s Ex. 1.

³ *Id.*

The second exhibit introduced by VI 4D was a printed screen shot of the homepage of Demmansay.com on July 19, 2012.⁴ The homepage contained a link to VI 4D's initial Cease and Desist letter to the Demmansay.com and also two links entitled "EDA Summary" and "EDA Misc. Attachments."⁵ Bornn testified that he clicked the links and they led to VI 4D's EDA Executive Summary. Bornn further testified that CruciansInFocus.com and Demmansay.com took the protected documents down shortly after receiving notice of the Court's Temporary Restraining Order, but reposted them on July 19, 2012.

VI 4D's third exhibit was a sealed copy of the protected documents that are the subject of this dispute.⁶ Its fourth exhibit was a copy of a news article from the St. Croix Source, dated August 5, 2010, entitled "DemManSay, Crucians In Focus Websites Sued for Defamation."⁷ VI 4D directed the Court's attention to the following portion of the article:

"Springer has previously confirmed to the Source that he is a principal in both Crucians in Focus and DemManSay. 'Yes I'm one. There are several of us,' Springer said to the Source on March 31. 'We welcome comments at DemManSay from anyone with a genuine interest in the community.'"⁸

Later in the article, Springer states "I don't have any authority in terms of what is being printed on that website."⁹

VI 4D's fifth exhibit was an article posted on CruciansInFocus.com, dated July 16, 2012, entitled "Carroll Issues TRO to CIF on EDC Documents Pending Hearing July 23; EDC Issues 'Cease and Desist' Letter."¹⁰ The article discussed the merits of the Court's July 13, 2012 restraining order and included two links at the end of the article entitled "Carroll Temporary Restraining Order to CIF" and "Cease and Desist Letter from EDC."¹¹ VI 4D's final exhibit was an article posted on CruciansInFocus.com, dated July 22, 2012, entitled "No Summons; No Copy of the Complaint; No CIF Court Appearance on July 23." The article provided an excerpt of a letter that Springer sent to counsel for VI 4D, explaining the reasoning behind his plans to not attend the preliminary injunction hearing that the Court had scheduled for July 23, 2012. That concluded VI 4D's exhibits.

Last, VI 4D referenced to the Court, an exchange of emails that took place between its assistant, Nicole Miller and Springer on July 18, 2012. In the exchange, Miller provides Springer with an email with an attachment containing a cease and desist letter. In response, Springer says "our docs are still up, its public information."¹² The Court directed VI 4D to provide an affidavit from Miller with respect to this email exchange with Springer. VI 4D

⁴ Pl.'s Ex. 2.

⁵ *Id.*

⁶ Pl.'s Ex. 3

⁷ Pl.'s Ex. 4.

⁸ *Id.*

⁹ *Id.*

¹⁰ Pl.'s Ex. 4.

¹¹ *Id.*

¹² See Affidavit of Nicole Miller.

complied and filed the affidavit on July 27, 2012 along with a copy of the emails exchanged attached as an exhibit.

II. DISCUSSION

A. Crucians In Focus, Inc. received notice of both the Temporary Restraining Order and the Hearing on VI 4D's Order to Show Cause.

As a preliminary matter, the Court finds that Crucians In Focus, Inc. had notice of the temporary restraining order and the hearing on VI 4D's Order to Show Cause, which took place on July 26, 2012. With respect to the temporary restraining order, VI 4D provided Crucians In Focus with electronic service of the Court's order granting the temporary restraining order on July 13, 2012 at admin@cruciansinfocus.com and with physical service to its registered agent, Michael Springer, on July 16, 2012. In addition, Crucians In Focus displayed actual notice of the Court's order by virtue of its article dated July 16, 2012, which discussed the merits of the temporary restraining order and provided a link to the Court's opinion granting VI 4D's request for a temporary restraining order. Similarly, with respect to the hearing on VI 4D's Order to Show Cause, VI 4D provided Crucians In Focus with electronic service of the Court's July 24 Order, along with a copy of its Complaint, its Motion for Order to Show Cause and the Court's Summons, to Crucians In Focus, Inc. on July 24, 2012 and with physical service to its registered agent, Michael Springer, on July 25, 2012. Accordingly, the Court finds that Crucians In Focus had notice of the temporary restraining order and the hearing on VI 4D's Order to Show Cause and chose not to attend the hearing.

VI 4D argues that Springer is a principal for Demmansay.com in addition to being the registered agent for Crucians In Focus and therefore, service to Springer constituted notice to Demmansay.com. The Court, however, is not convinced at this time that that is indeed the case. VI 4D bases its argument on the article in the St. Croix Source in which Springer allegedly admits that he is one of the principals for the website. Of course, newspaper articles are self-authenticating.¹³ The Court treated the article as an admission by an opposing party, thus qualifying the statement made by Springer as a hearsay exception under the Federal Rules of Evidence.¹⁴ In the Court's estimation, the combined statements made by Springer in the article are not sufficient proof that Springer is the owner of the website. The statement "yes im one, there are several of us" is seemingly contradicted by his later statement in that same article in which he said "I don't have any authority in terms of what is being printed on that website." While the Court is wary of a website operated by anonymous users whose posted content is potentially in violation of the Virgin Islands Code, the Court finds that VI 4D must provide the Court with additional proof that Springer is an owner or principal of Demmansay.com. The Court finds that VI 4D's providing notice to Springer did not constitute providing notice to Demmansay.com. In addition, unlike CruciansInFocus.com, Demmansay.com did not show actual notice of the Court's temporary restraining order by referencing it on its site or posting a

¹³ See Fed. R. Evid. 902(6) (listing "printed material purporting to be a newspaper or periodical" as a self-authenticating documents that requires no extrinsic evidence of authenticity to be admitted into evidence.).

¹⁴ Fed. R. Evid. 801(d)(2)(A).

copy of the Court's order on its site. Accordingly, there is not sufficient proof that Demmansay.com had notice of the temporary restraining order and the Court cannot hold it in contempt of Court.

B. Crucians In Focus, Inc. was in contempt of Court from July 19, 2012 until July 25, 2012.

By virtue of the testimony developed at the show cause hearing combined with the evidence provided by VI 4D, the Court finds that Crucians In Focus violated the Court's temporary restraining order from July 19, 2012 through July 25, 2012 and therefore, was in civil contempt of Court during that period. Under the Virgin Islands Code, "any person who willfully violates, neglects, or refuses to observe or perform any lawful order of a court shall be guilty of contempt of court and upon being found guilty of such contempt may be punished as provided by law."¹⁵ To establish that a party is liable for civil contempt, three elements must be proven: (1) that a valid order of the court existed; (2) that the defendant had knowledge of the order; and (3) that the defendant disobeyed the order."¹⁶

Here, the Court entered a temporary restraining order on July 13, 2012. Furthermore, the record shows that Crucians In Focus received electronic notice of the Court's order on July 13, 2012 and received physical notice on July 16, 2012. Initially, Crucians In Focus complied with the Court's Order by removing the links to the protected material. The record further shows, however, that Crucians In Focus disobeyed the Court's order when it reposted the links to the protected content on July 19, 2012 and did not remove the links until July 25, 2012. This is evidenced by the testimony by David Bornn, stating that he personally observed that the protected content had been reposted on CruciansInFocus.com as of July 19, 2012 and had remained posted until at least July 25, 2012. This is further evidenced by the email exchange between Nicole Miller and Crucians In Focus' registered agent Michael Springer in which on July 19, 2012, Springer replied "our docs are still up, its public information." Crucians In Focus' behavior in posting the protected materials while it had notice that a temporary restraining order was in place appear to be willful and purposeful. Accordingly, the Court finds Crucians In Focus in civil contempt of Court from July 19, 2012 through July 25, 2012. The Court will order Crucians In Focus to pay a contempt fine of \$1000.00 for each day that it violated the Court's temporary restraining order, totaling \$7000.00.

C. Crucians In Focus, Inc. and Demmansay.com are Currently Complying with the Court's Temporary Restraining Order.

By removing the links to the protected material on July 25, 2012, Crucians In Focus and Demmansay.com are both complying with the Court's temporary restraining order at this time. VI 4D argues that because there are copies of the documents that are located on back portals on yahoo.com and google.com, Crucians In Focus and Demmansay.com are still actively violating the Court's temporary restraining order. The Court disagrees. In the Court's temporary restraining order, it enjoined the defendants "from publishing or posting any of the Petitioner's

¹⁵ V.I. Code Ann. tit. 14 § 244 (1997).

¹⁶ *Berne Corp. v. Gov't of the V.I.*, 570 F.3d 130, 140 (3d Cir. 2009).

confidential, proprietary, trade secret, and otherwise protected information." In doing so, the Court contemplated that it was enjoining the Defendants from placing a direct link to the protected information on its website, not making the Defendants responsible for what appears on archived google.com and yahoo.com searches. The Defendants have now removed the links to the protected information from their respective websites and in the Court's judgment, has complied with its Order. Accordingly, if VI 4D would like to amend its request for injunctive relief to include what appears on the back portals of certain search engines, it must provide sufficient evidence establishing that CruciansInFocus.com and Demmansay.com can control what appears in those searches.

III. CONCLUSION

Crucians In Focus, Inc. is in civil contempt of Court for violating this Court's temporary restraining order during the period of July 19, 2012 through July 25, 2012 and will be fined \$1000.00 for each day that it violated the Court's Order, for a total of \$7000.00. Currently, Crucians In Focus is complying with the Court's temporary restraining order. In addition, Demmansay.com has not been provided with proper notice in this matter since the owner of the website has not been identified and therefore has not been served, and because there was no admission on the website that it had received notice of the temporary restraining order.

DATED: August 6, 2012

ATTEST: VENETIA H. VELAZQUEZ, ESQUIRE
Clerk of the Court

BY: Donna D. Donovan
DONNA D. DONOVAN
Court Clerk Supervisor 8/6/2012

James S. Carroll III
JAMES S. CARROLL III
Judge of the Superior Court
of the Virgin Islands

CERTIFIED A TRUE COPY

Date: 8/6/12
Venetia H. Velazquez, Esq.
Clerk of the Court

By: _____
Court Clerk