

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Loginradius Inc. v. Gupta*,  
2024 BCSC 1256

Date: 20240516  
Docket: S243136  
Registry: Vancouver

Between:

**LoginRadius Inc.**

Plaintiff

And

**Deepak Gupta also known as Raj Singh also known as Sai Sundar,  
MojoAuth Inc. doing business as MoJo and doing business as Mailazy**  
Defendants

Before: The Honourable Justice Chan

## Oral Reasons for Judgment

Counsel for the Plaintiff:

C. Dennis, K.C.  
J. Foster

Counsel for the Defendants:

No appearance

Place and Date of Trial/Hearing:

Vancouver, B.C.  
May 15, 2024

Place and Date of Judgment:

Vancouver, B.C.  
May 16, 2024

**Introduction**

[1] LoginRadius Inc. (“Login”) seeks an interim interlocutory injunction restraining the individual defendant, Deepak Gupta from interfering with Login’s access and use of a number of domain names. Login was granted short leave on May 13, 2024, to bring this application, and was granted permission to serve the application materials on the defendants via email. This application and materials were served on the defendants on May 13, 2024, but no one appeared on their behalf at this hearing.

**Factual Background**

[2] I take the following background facts from the affidavit of Rakesh Soni, the chief executive officer and a director of Login.

[3] Login is a privately held company incorporated in 2012 by Mr. Soni. Login is a “middleman” technology service provider that supplies internet-based log in and authentication services to other businesses and their users. Login’s business is to provide end-users of their clients an online platform that allows the end-users to create online accounts with their clients, authenticate passwords for those accounts and log in to those accounts. As I understand it, Login is an online platform which allows Login’s clients to interact with their end-users. When someone logs in to a website like Netflix for example, Login is the online platform that provides that person the ability to log in. Login’s platform facilitates the management of hundreds of millions of user accounts and handles billions of user transactions annually.

[4] In 2012, Mr. Gupta began working for Login as a contractor programmer. From the beginning, Mr. Gupta was tasked with building and developing the technical side of the company. In 2015, Mr. Gupta was hired as a software development manager. At about this same time, Mr. Gupta also became a director of Login. Mr. Gupta remains a shareholder of Login.

[5] From 2012 to 2016, Login was headquartered in Edmonton. In 2016, Mr. Soni relocated the company to Vancouver. Mr. Gupta also moved to Vancouver and continued working for Login.

[6] In 2018, Mr. Gupta became the chief technology officer (“CTO”). In May 2018, an employment agreement was signed by Mr. Gupta, along with a confidentiality and proprietary information agreement (the “Proprietary Information Agreement”). As part of the Proprietary Information Agreement, Mr. Gupta agreed that Login retains exclusive ownership of all property that Mr. Gupta develops in his work and that Mr. Gupta will return any such property to Login upon request. The Proprietary Information Agreement contains a clause that it is governed by the laws of British Columbia.

[7] In 2022, Mr. Gupta wished to move to California and work from there. Login permitted this by having Mr. Gupta enter into an employment agreement with Remote Technology Services Inc. As I understand it, Mr. Gupta continued to work as the CTO for Login, and Remote Technology Services Inc. was the employer of record in the U.S.

[8] Mr. Gupta was terminated as CTO on December 7, 2023. On March 12, 2024, he was removed from Login’s board of directors.

[9] As part of Mr. Gupta’s work for Login, he set up Login’s Google Workspace account which provides email, chat, video calls and conferencing services for the company. Mr. Gupta had super administrative status on Login’s Workspace account, which provided him the ability to make changes to the account. Mr. Gupta also secured domain names for the company (the “Domain Names”). These Domain Names include loginradius.co, loginradius.io, loginradius.net and others. These Domain Names are the main vehicle through which Login conducts its business. Mr. Gupta registered Login’s various Domain Names with the domain name registry, GoDaddy, through Login’s GoDaddy online account, which Mr. Gupta set up through his company email address.

[10] In late November or early December 2023, Mr. Soni reached out to GoDaddy to have Login’s GoDaddy account unlinked from Mr. Gupta’s email and linked to a central Login email. Mr. Soni learned from GoDaddy that Login was not listed as the

domain name registrant or account holder for the Domain Names. Mr. Gupta was the only individual who had the ability to make that change to Login's GoDaddy account.

[11] After Mr. Gupta was terminated from Login, he failed to transfer access to Login's GoDaddy account to Login. Login did not have access to Mr. Gupta's work email account or the company's GoDaddy account.

[12] On December 8, 2023, Login through its U.S. counsel sent a letter to Mr. Gupta in California demanding that he transfer access to the company's Domain Names to Login. There was no response. This was followed up with two more letters in December 2023 and April 2024. There were no responses to those letters.

[13] In March 2024, Mr. Soni was advised that Login was able to regain access to Mr. Gupta's work email and Login's GoDaddy account. However, all of the Domain Names were no longer linked to or accessible by Login's GoDaddy account. The Domain Names had been moved from Login's GoDaddy account. Mr. Soni does not know where the Domain Names are currently hosted.

[14] Mr. Soni deposed that without control over the Domain Names, Login's business interests are severely threatened. If Mr. Gupta interferes with the Domain Names, the end-users of Login's clients may be prevented from accessing Login's digital platform, and may be prevented from logging into their accounts with Login's clients. Mr. Soni deposed that Login may be in breach of its service agreements with its clients, which guarantee that Login's digital infrastructure and platform will be online and accessible to the end-users 99.99% of the time. "Unavailability" of the infrastructure and platform is defined as a response time to a user request in excess of 3000 milliseconds. Further, some of Login's service agreements contain a termination clause which allow clients to terminate if Login fails to make its digital platform available for a prescribed period. If Mr. Gupta, intentionally or unintentionally, causes Login's Domain Names to be delayed in responding for more than 3000 milliseconds and that delay occurs for a number of times as specified in the service agreements, Login's clients can terminate their contracts with Login and switch to a competitor.

[15] Login filed a notice of civil claim (the “NOCC”) on May 13, 2024. In the NOCC, Login alleges that Mr. Gupta breached his contractual obligations and his fiduciary obligations as a director and CTO of Login. Login also alleges that Mr. Gupta wrongfully transferred the Domain Names from Login’s GoDaddy account to an alternate host, making the Domain Names inaccessible to Login. Login further alleges that MojoAuth Inc., the corporate defendant, is a company incorporated in the U.S. that was founded by Mr. Gupta using confidential information of Login, to be a direct competitor of Login. Login claims against Mr. Gupta for breach of contract, conversion, inducing breach of contract, breach of confidence, breach of fiduciary duty and unjust enrichment. The NOCC has not yet been served.

**Legal Framework**

[16] The test for the granting of an injunction is set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at 348–349, 1994 CanLII 117 [*RJR*]:

1. There is a serious question to be tried, in the sense that the application is not frivolous or vexatious;
2. The applicant will suffer irreparable harm if the relief is not granted; and
3. The balance of convenience favours the granting of the injunction.

[17] Generally, the threshold for whether there is a serious question to be tried is a low one. At this stage, the Court need not undertake a deep dive into the merits but conducts a preliminary assessment: *Vancouver Aquarium Marine Science Centre v. Charbonneau*, 2017 BCCA 395 at paras. 37–39 [*Vancouver Aquarium*]; *RJR* at 402–403. However, there are exceptions where a higher threshold test of the merits is required. Where the result of the interlocutory injunction would effectively determine the dispute, a more stringent examination of the merits is required: *RJR* at 338. Also, where an applicant seeks a mandatory injunction, as opposed to a prohibitory injunction, the first part of the three-part test requires a strong *prima facie* case: *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5 at para. 15 [*CBC*]. This has been described as showing a strong likelihood on the law and the evidence presented that,

at trial, the applicant will be ultimately successful in proving the allegations set out in the originating notice: *CBC* at para. 17. The three-part test for the granting of an injunction is not an “inflexible straightjacket”: *Vancouver Aquarium* at para. 38, citing *Mosaic Potash Esterhazy Limited Partnership v. Potash Corp of Saskatchewan Inc.*, 2011 SKCA 120 at para. 26. The fundamental question is whether the granting of an injunction is just and equitable in all of the circumstances of the case: *Vancouver Aquarium* at para. 37.

**Is Login Seeking a Mandatory or Prohibitive Injunction?**

[18] A mandatory injunction directs the defendant to undertake a positive course of action, such as taking steps to restore the *status quo*, while a prohibitory injunction requires a defendant to refrain from doing something: *CBC* at para. 6.

[19] Login seeks an injunction restraining Mr. Gupta from interfering with or preventing Login’s full use of and access to the Domain Names, from interfering with or modifying the Domain Names and from causing any interruption to the Domain Names’ functioning and operation. Login seeks an order that Mr. Gupta take such steps as may be necessary to achieve the foregoing. As I understand it, Login effectively seeks an order that Mr. Gupta return the Domain Names to the control of Login. Login’s position is this is in essence a prohibitive injunction, and while there may be some positive steps required by Mr. Gupta to return access to Login of the Domain Names, the nature of the order sought is to prohibit Mr. Gupta from taking control of the Domain Names.

[20] In my view, this is a prohibitive injunction. The steps Mr. Gupta is required to take to comply with the prohibition does not transform it into a mandatory injunction but goes to the burden of compliance: *Telus Communications Inc. v. Shaw Communications Inc.*, 2020 BCSC 1354 at para. 61. The overall effect of the injunction sought by Login is to restrain Mr. Gupta from taking control of the Domain Names. The steps Mr. Gupta needs to take to comply with the prohibition is to be considered in the balance of convenience. The applicable threshold is a serious question to be tried.

[21] The fact that this is a prohibitive injunction is supported by *Canivate Growing Systems v. Brazier*, 2019 BCSC 899 [*Canivate 2019*]. In *Canivate 2019*, the plaintiff sought an interlocutory injunction against Mr. Brazier, requiring him to cease interfering with the settings of Canivate’s domain name and to restore the previous settings to before he changed them. Mr. Brazier argued this was a mandatory injunction and the strong *prima facie* case test applied. Justice MacNaughton found it was a prohibitive injunction:

[46] I have concluded that, in the circumstances of this case, where the granting of an interlocutory injunction will not finally determine the merits of the dispute about ownership of the canivate.com domain name, and will not be costly or burdensome to Mr. Brazier, as it involves a mere key-stroke exercise, the more stringent analysis of the merits of Canivate’s position need not be examined.

**Serious Question to Be Tried**

[22] In this application for an injunction, Login relies on its claims against Mr. Gupta for conversion, breach of contract and breach of fiduciary duty.

[23] The tort of conversion involves the wrongful interference with the goods of another. The essential elements are: the defendant’s conduct must have been inconsistent with the rights of the person entitled to possession of personal property; the defendant’s conduct was deliberate; and the defendant’s conduct was so extensive an encroachment on the rights of the owner or other person as to exclude him or her from use and possession of the personal property: *Lam v. Flo Health Inc.*, 2024 BCSC 391 at para. 142. Interference with intangible goods such as electronic data, websites and email can constitute the tort of conversion: *Canivate Grown Systems Ltd. v. Brazier*, 2020 BCSC 232 at para. 71 [*Canivate 2020*].

[24] Mr. Gupta was bound by the Proprietary Information Agreement throughout his employment. That agreement set out that any property conceived or developed by Mr. Gupta including software, technical documentation, ideas, inventions, hardware and know-how is proprietary property owned exclusively by Login. The Proprietary Information Agreement sets out that during and after Mr. Gupta’s employment, he is not to use any of the proprietary information except for the purpose of carrying out

authorized activities on behalf of Login. He is obliged to return the proprietary property to Login upon request.

[25] The Domain Names were registered by Mr. Gupta for the benefit of Login. There is a serious question to be tried that Mr. Gupta wrongfully converted the Domain Names to his own use, by moving their registration from Login's GoDaddy account. Login no longer has access to them. This is not a frivolous or vexatious claim.

[26] With respect to the claim of breach of contract, Mr. Gupta is prohibited, pursuant to the Proprietary Information Agreement, from using any proprietary information except in the course of his work at Login. Mr. Gupta is clearly no longer working at Login. He is also in breach by not returning access to the Domain Names when requested to do so by Login. With respect to the claim of breach of fiduciary duties, Mr. Gupta as a director had duties of loyalty, to act in good faith and avoid conflicts of interest and self-interest. A breach of fiduciary duty can occur even after a senior officer and director has left the company: *Canivate* 2020 at para. 61. There is evidence that Mr. Gupta has acted against the interest of Login by denying Login access to the Domain Names, threatening Login's ability to maintain its services. I find there is a serious question to be tried with respect to these claims.

[27] Further, even if the higher threshold of *prima facie* case is required, on the basis of the evidence at this hearing, I find Login has met this part of the test. I note the Proprietary Information Agreement includes a term that Mr. Gupta agrees that Login will suffer irreparable harm if Mr. Gupta breaches his obligations under the agreement, and that Login will be able to seek injunctive relief restraining Mr. Gupta from continuing such acts. There is a further term that any claims Mr. Gupta may have against Login shall not constitute a defence in any injunction application brought by Login.

### **Irreparable Harm**

[28] Irreparable harm refers to the nature of the harm suffered and not its magnitude. It is harm which cannot be quantified in monetary terms or which cannot be cured: *RJR* at 341.

[29] As referred to earlier, the Proprietary Information Agreement contains a term that any breach of it by Mr. Gupta will cause irreparable harm to Login. While not determinative, these types of clauses have been held to raise a presumption of irreparable harm not easily compensable in damages in the event of a breach: *EnWave Corporation v. Dehydration Research, LLC*, 2022 BCSC 637 at paras. 105–106, leave to appeal ref'd 2022 BCCA 347. Further, there is evidence that Login being locked out of the Domain Names is a serious threat to its viability, as Login currently has no ability to access the digital platform on which it provides its services to attend to any maintenance or other issues. Any interruption in Login's ability to provide its clients almost instantaneous around the clock access to its digital platform may cause its clients to terminate their relationship with Login and use a competitor's services. If there are any functionality issues with the digital platform, Login cannot currently access the Domain Names to investigate or fix the issues. Any interruption in service will have a cascading impact on Login, Login's clients, and the end-users. It will negatively impact businesses owned by Login's clients. This type of cascading harm is difficult to measure and cure at a later time. I find there is evidence of irreparable harm if the injunction is not granted.

**The Balance of Convenience**

[30] The Court has to assess which of the parties would suffer the greater harm from the granting of the injunction pending trial. The Court is to consider the adequacy of damages, the preservation of contested property, which of the parties acted to affect the status quo, the strength of the plaintiff's case, the public interest and such other factors arising in the particular case: *Canivate* 2019 at para. 69.

[31] In my view, damages would not be an adequate remedy. If an injunction is not granted, Login has no control over its main asset, the Domain Names. It would be very difficult to calculate damages at a later time, as Login has an established clientele with millions of user accounts. A disruption in Login's ability to provide its digital platform will erode its market share.

[32] There is no evidence at this hearing that I can see which may support any right that Mr. Gupta has to withhold access to the Domain Names from Login. The Domain Names were registered by Mr. Gupta during his employment with Login and remain the property of Login. Mr. Gupta did not register or own the Domain Names before he started work with Login, unlike the situation in *Canivate* 2019. Mr. Gupta has no basis to continue using the Domain Names, as he no longer works at Login. Mr. Gupta will suffer no harm by the Court prohibiting him from interfering with Login’s use of the Domain Names, as Mr. Gupta has no ability to use them. By contrast, if the injunction is not granted, Login will suffer irreparable harm.

**Conclusion**

[33] In my view, an interim interlocutory injunction is just and equitable in this case. There will be an interim interlocutory injunction restraining Mr. Gupta from interfering with Login’s full use of the Domain Names in the terms as stated in paragraph 1 of Appendix A of Login’s Notice of Application.

[34] Mr. Gupta is ordered to take such steps as may be necessary to achieve the foregoing within 48 hours of being served with an entered order.

[35] Login may serve Mr. Gupta with the order by way of email.

[36] The costs of this application are to be in the cause.

“Chan J.”