

KING COUNTY
SUPERIOR COURT CLERK

HONORABLE BARBARA LINDE
NOTED FOR HEARING: April 4, 2014, 2:30 p.m.
WITH ORAL ARGUMENT
E-FILED
CASE NUMBER: 14-2-07669-0 SEA

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

MOVE, INC., a Delaware corporation,
REALSELECT, INC., a Delaware
corporation, TOP PRODUCER SYSTEMS
COMPANY, a British Columbia unlimited
liability company, NATIONAL
ASSOCIATION OF REALTORS®, an
Illinois non-profit corporation, and
REALTORS® INFORMATION
NETWORK, INC., an Illinois corporation,

Plaintiffs,

vs.

ZILLOW, INC., a Washington corporation,
ERROL SAMUELSON, an individual, and
DOES 1-20,

Defendants.

Case No. 14-2-07669-0 SEA

**DECLARATION OF STEVEN
BERKOWITZ IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Steven Berkowitz declares as follows:

1. I am over twenty-one years old, I have personal knowledge of the facts in this declaration,
and I am competent to testify.

1 2. I am the Chief Executive Officer of Move, Inc. Move, Inc. is publicly-traded on the
2 NASDAQ exchange.

3 **Background regarding the corporate parties and the online real estate market**

4 3. In 1996, Move, Inc. (which used to be called Homestore, Inc.), through its subsidiary
5 RealSelect, Inc. entered into an operating agreement with Realtors® Information
6 Network, a subsidiary of the National Association of Realtors. For simplicity, I will refer
7 to Move, Inc. and/or its subsidiaries as Move and will refer to Realtors® Information
8 Network and National Association of Realtors collectively as NAR.

9 4. The 1996 operating agreement allows Move to operate www.realtor.com, which NAR
10 owns. The operating agreement has been amended over the years, but Move has
11 consistently operated realtor.com ever since.

12 5. Move's alliance with NAR has contributed to its ability to create unique relationships
13 with members of the real estate industry. For instance, Move has agreements with
14 Multiple Listing Services and real estate brokerages around the country that allow Move
15 direct access to those entities' real estate listings, with updates every fifteen minutes.

16 6. Listing data is a critical currency in the online real estate market because it tells agents
17 and consumers what properties are actually on the market. The more listing data a site
18 has, and the more accurate and current it is, the more value that site can offer to its
19 audience.

20 7. Move's direct access to listing data drives its business in several ways. It allows
21 realtor.com to provide consumers with listing data that is more complete, accurate, and
22 up-to-date than the competition's. Move is also able to leverage its data to create and
23

1 offer unique products and services to industry professionals. Additionally, Move is able
2 to sell aggregated listing data to other online publishers, including Zillow.

3 8. Zillow began operations in 2005. It has developed a reputation for being more consumer-
4 centered and less friendly to the real estate industry than Move.

5 9. In the online real estate market, there are three primary competitors: Move, Zillow, and
6 Trulia. Move considers Zillow its number-one competitor. In the past few years, Zillow
7 has taken over realtor.com's position as the most-trafficked website. However, in 2013,
8 Move continued to generate more revenue than Zillow.

9 **Move's business lines and Errol Samuelson's experience leading them**

10 10. Move's business-to-business lines—TopProducer® (www.topproducer.com),
11 TigerLead®, and FiveStreet™—provide real estate agents with lead-generation,
12 relationship-management, and website development services. Samuelson was President
13 of TopProducer from 2003-2007. Samuelson was responsible for identifying TigerLead
14 as an acquisition target, purchasing it, and incorporating it into Move.

15 11. Move's obtains the data it needs to maintain and develop its business-to-business
16 products from the real estate industry. And its strategies for maintaining and developing
17 its access to data and keeping that data away from Zillow are confidential and known to
18 Samuelson. The way in which Move uses data from the industry to power its business-to-
19 business products and services is also confidential and known to Samuelson.

20 12. Move's business-to-consumer lines—primarily Realtor.com®—provide consumers with
21 comprehensive real estate listings and other information. In 2007, Samuelson became
22 President of Realtor.com® and Move's steward of its strategic partnership with NAR. In
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2010 as well as in 2013, Samuelson was Move's chief negotiator of a major re-negotiation of the Move/NAR operating agreement.

13. Because of Samuelson's experience with NAR, he is privy to non-public written and unwritten agreements and joint strategies between Move and NAR and between realtor.com and MLSs and brokerages. These agreements and strategies are crucial to Move's ability to maintain its content advantage over competitors like Zillow.

14. Move's data syndication service—ListHub™ (www.listhub.com)—aggregates data directly from Multiple Listing services ("MLSs") and real estate brokers and syndicates it to approximately 130 publishers, including Zillow and other online real estate companies. Samuelson was primarily responsible for Move's acquisition of ListHub in 2010, its operations reported to him.

15. Until his resignation, Samuelson led a small team from Move who have travelled the country maintaining and developing Move's contracts and relationships with MLSs. Samuelson knows the details of the various individual agreements between Move and individual MLSs. These details are not generally known in the online real estate market.

16. Through his work with ListHub, Samuelson knows what data Move gets from which sources and how it uses that data to power its various business lines. Samuelson also personally negotiated many of ListHub's most significant customer contracts, including the contract with Zillow.

17. Samuelson was also responsible for Move's relationships with brokers, who also supply information to Move. For instance, Samuelson was party to Move's private discussions with real estate broker Crye-Leike. It is public knowledge that Crye-Leike has recently been considering whether to refuse to allow its listings to be shown on Zillow. What is

1 not public is the content of the discussions between Move and Crye-Leike regarding
2 whether and why Crye-Leike should or should not shut-off, or maintain, its connection
3 with Zillow. If Zillow had an insider view of those discussions, it could more effectively
4 devise a strategy to maintain or maximize its connection with Crye-Leike.

5 **Samuelson's company-wide responsibilities and access to confidential information**

6 18. In 2006, Samuelson became a section 16 officer of Move.

7 19. In 2006, Samuelson also became Move's head of sales, with responsibility for sales
8 across all product lines.

9 20. In 2009, Samuelson became Chief Revenue Officer, again with responsibilities across all
10 product lines.

11 21. In 2013, Move created the position of Chief Strategy Officer for Samuelson. Samuelson
12 was responsible for strategy and business development across all aspects of the company.
13 He was Move's second highest compensated employee.

14 22. As an officer and member of Move's executive team, Samuelson was one of 10-15
15 people in the company who received weekly financial reports. Those reports detailed the
16 company's performance relative to its quarterly and annual projections; variances from
17 the company's budget; and guidance given to various parts of the company to maintain or
18 improve performance.

19 23. He was also one of 10-15 executives who received monthly initiative reviews. Those
20 described how Move was performing versus its quarterly business plan.

21 24. Samuelson was one of four people aware of all merger/acquisition discussions and has
22 been, at times, Move's only representative in such discussions. Samuelson knows Move's
23 "target list" for companies to acquire and its prioritized target list.

1 25. Samuelson knows all of Move's high-level strategies whether they are written or not. He
2 and I regularly conducted strategy sessions where we would explicitly discuss how Move
3 should compete with Zillow. We would discuss, for example, the moves that Zillow
4 might make and how Move should respond to each one; the initiatives Move might
5 implement and the ways Zillow might react; how to prevent Zillow from exploiting
6 Move's weaknesses; and how to leverage Move's strengths against Zillow.

7 26. In August 2013, Move began discussing its 2014 budget, its one and threeyear strategic
8 plans for product development, and its technology development plan for 2014. It did not
9 complete that process until the week before Mr. Samuelson resigned. Mr. Samuelson was
10 involved in every step of that process.

11 27. At the time he resigned, there was probably not a single trade secret Move had that
12 Samuelson didn't know.

13 **The significance of Samuelson's confidential knowledge**

14 28. Samuelson's knowledge of confidential information relating to Move's business could
15 easily harm Move and help Zillow. With his knowledge of Move's budget, product plans,
16 and strategies, Samuelson will be able to predict what Move will do for several months
17 into the future, devise ways to interfere with Move's strategies, usurp opportunities he
18 knows Move is interested in, exploit weaknesses he knows Move has, and develop
19 industry relations strategies he has seen work at Move.

20 29. Samuelson can directly use Move's confidential information against Move in the case of
21 Zillow's interactions with ListHub. Zillow currently acquires most of its listing data from
22 ListHub. Zillow's contract with ListHub expires in April 2015. Samuelson knows
23 Move's strategy with respect to ListHub's relationship with Zillow. Using that
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1 knowledge he can help Zillow undermine Move's strategy more effectively than it would
2 otherwise be able to.

3 30. Samuelson can directly use Move's confidential information against Move in all aspects
4 of industry development, which I understand will be his primary responsibility at Zillow.
5 Because of his role as the long-time leader of Move's uniquely close relationships with
6 members of the real estate industry, Samuelson knows the desires, strategies, and fears
7 that members of the industry revealed in confidence to Move and he knows the intricacies
8 of Move's agreements with industry members and what Move can and cannot or does and
9 does not offer the industry. He can use that information, which he acquired because he
10 was affiliated with Move, to help Zillow develop initiatives for soliciting members of the
11 industry.

12 31. Because Zillow and Move are such significant and direct competitors, and because of the
13 breadth of Samuelson's confidential knowledge of Move's strategies and operations, I do
14 not believe Samuelson could advise Zillow on high-level strategy or even day-to-day
15 operations without explicitly or implicitly using his confidential knowledge of Move's
16 strategies, methods, budgets, and industry relationships.

17 **Samuelson's job performance in his last month at Move**

18 32. Samuelson's responsiveness and productivity fell below normal for him in the final
19 months before he left Move. In those final weeks, he failed to address ongoing matters
20 that required coordination with NAR, he neglected advertising issues, he cancelled an
21 interview with a candidate to become our economist, he tried to get out of a meeting to
22 discuss a significant possible merger, he missed a meeting with the Chairman of Move's
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1 board without telling me he wouldn't be there, he missed a quarterly business review, and
2 he generally avoided any detailed discussions that weren't pre-scheduled.

3 **The day Samuelson resigned**

4 33. On March 5, 2014, I was at a meeting with investors hosted by Morgan Stanley. That
5 meeting had been planned for several weeks and Samuelson knew I would be occupied
6 there all day.

7 34. A little after 9:00 a.m., I began receiving phone calls from multiple members of Move's
8 executive team including Errol, as did Rachel Glaser, Move's CFO, who was also in
9 meetings with investors. I broke from the meeting and listen to my voicemail, where
10 Errol left me a message that he was resigning. Before long, I was on the phone with
11 Samuelson and he told me he had resigned and Zillow would be issuing a press release at
12 1:00 p.m. I asked him if I could have more time (24 hours at a minimum), but the release
13 went out as scheduled. That was the last I spoke with him.

14 35. Samuelson and I had a one-on-one meeting scheduled for Thursday, March 6, 2014, at
15 which he could have tendered his resignation directly to me.

16 I was surprised to hear that Samuelson had wiped the memory from the computer, iPad,
17 and cell phone provided to him by the company because our entire executive team know
18 that Move had litigation holds in place. In addition Errol and I had numerous discussions
19 about his in-box and his computer files, that they were living history and a treasure trove
20 of historical information for the company. There were many times where I would request
21 from him historical information that was not available anywhere else in the company.

22
23 **My interactions with Beardsley after Errol resigned**

- 1 36. The day Samuelson resigned, I talked with Curt Beardsley about taking over some of
2 Samuelson's responsibilities, specifically in industry development. Beardsley accepted
3 the new role that day.
- 4 37. Over the course of the next ten days, Beardsley had multiple several-hour meetings with
5 me and Joe Hanauer, Move's Chairman. The purpose of these meeting was to bring
6 Beardsley up to speed on Move's strategies and plans, especially for realtor.com and to
7 devise a strategy for responding to Samuelson's departure.
- 8 38. Beardsley also attended a multi-day meeting with the NAR Broker Council (a group of
9 leading franchisors and brokers) and the NAR leadership team.
- 10 39. Before NAR leadership began the meeting with Beardsley, which I attended, Steve
11 Brown, the president of NAR, pointed at Beardsley and asked how NAR could be sure
12 Beardsley wouldn't follow Samuelson to Zillow. Beardsley assured him he would not
13 and signed a non-disclosure agreement.
- 14 40. At the meeting with the Broker Council, Beardsley received information about brokers'
15 and franchisors' goals, concerns, and strategies, which they shared with him because of
16 his affiliation with realtor.com. This information would be useful of him in his role as
17 Vice President of Industry Development for Zillow.
- 18 41. Attached as Exhibit 1 is a true and correct copy of an email I received from Beardsley on
19 March 16, 2014. In the email he gives notice that he is resigning, effective Wednesday,
20 March 19, 2014.

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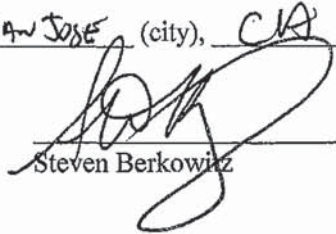
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 26 day of March, 2014 at SAN JOSE (city), CA (state).



Steven Berkowitz

1 **CERTIFICATE OF SERVICE**

2 The undersigned certifies that on March 27, 2014, I electronically filed the foregoing
3 with Clerk of the Court utilizing the King County Superior Court E Filing system and served a
4 true and correct copy of the same, in the manner described below, to:

5
6 VIA LEGAL MESSENGER:


7 Bruce M. Cross
8 James Sanders
9 Perkins Coie LLP
10 1201 Third Ave., Suite 4900
11 Seattle, WA 98101-3099
12 Attorneys for Zillow, Inc.

13
14 Clemens H. Barnes
15 Graham & Dunn PC
16 Pier 70, Alaskan Way, Suite 300
17 Seattle, WA 98121-1128
18 Attorneys for Errol Samuelson

19 I declare under penalty of perjury that the foregoing is true and correct.

20 DATED at Seattle, Washington on March 27, 2014.

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23
24
/s/ Katy M. Albritton
Katy M. Albritton, Legal Assistant
Cable Langenbach Kinerk & Bauer, LLP
1000 Second Avenue, Suite 3500
Seattle, WA 98104
Phone: 206-292-8800 / Fax: 206-292-0494
kalbritton@cablelang.com



From: "Beardsley, Curt" <Curt.Beardsley@move.com>
Date: March 16, 2014 at 11:08:02 AM PDT
To: "Berkowitz, Steve" <Steve.Berkowitz@move.com>
Cc: "Hanauer, Joe" <Joe.Hanauer@move.com>, "curt.beardsley@realtor.com"
(curt.beardsley@realtor.com)" <curt.beardsley@realtor.com>
Subject: URGENT - Please read

Dear Steve,

cc: Joe Hanauer

The last week and a half have been quite the whirlwind. It has been just in the last few days that I have taken the time to collect my thoughts and think through the direction I am heading – and I realize that I have made a mistake.

So, please accept this message as notification that I am resigning from Move, effective on March 19th. I will call you in the next hour, on your cell, to discuss this directly. I would also like to discuss a timing, communications and transition plan that provides the company the time and process to react as best as possible. Understanding your feelings, I would have strongly preferred to do this in person, but with the board

meeting tomorrow and the meetings planned for the following days, expediency is important.

Why? Ultimately I let my pride and ambition tilt me in a direction that I know will be the wrong choice for both myself and the company. Yes – for me – this new position is exhilarating and tempting – and the financial rewards tugs at me in ways that I am embarrassed to admit. Yes – for the company – it was an expedient and convenient decision. A path to mitigate Errol's departure and keep up an image of stability and progress

It was certainly tempting – but was also a false hope.

Because in my heart of hearts I know that this is not the right place for me – and because of that - I am not the right person for the company at this time.

Because I know that the elation will be short lived, and soon enough the glow of the spotlight will fade and in the harsh light of reality I will have to admit that I have lost faith in Move. I will remember that when our competition was delivering release after release – we were suffering through the aggressive and arrogant belligerence of Dave Story. And when our competitors were capturing the adoration of consumers with data that paled in comparison to ours – we were languishing under the friendly but ultimately ineffectual product leadership of Scott Boecker.

I have to admit that these disappointments are not healed. And the glory and reward of the position you so graciously offered could only mask them for only so long. When I think of having to work with a new head of realtor.com, this fills me with trepidation not excitement. When I think of the speed with which we will have to execute the “save ListHub” plan, this fills me with doubt, not hope.

This is a very hard decision, but I don't believe simply pushing ahead puts a happy ending on this story. I cannot be the hero that is required. It is unfair to the company for me to pretend that I can.

You may remember that when you told me the news that Errol had left the company – my first reaction was complete shock – but it was followed rapidly by anger. Not so much anger that he hadn't told me (although even though I understand the legal issues – it still makes me more than a little upset). What made me mad was that he jumped ship first. I didn't even believe he was thinking about leaving. I was the one who had been doing the thinking. For the last 4-6 months I have been looking for a path out. Talking to my connections and looking at opportunities.

And then suddenly - timing and opportunity conspired to present me with the keys to a kingdom I didn't want, and the spotlight on a stage I didn't want to be on.

On Friday, I reached out to Spencer at Zillow to see if there was a position available for me. He responded with a satisfactory offer which I have accepted. As I mentioned, I am open to discussing the timing of this transition and announcement.

I do wish I could have played the events of last week better. That regret will however be much less than that of misleading you and the company in believing in me – when I do not share that belief in the company.

Sincerely,

Curt Beardsley

Curt Beardsley

o 509.241.0553 | c 509.681.4048

curt.beardsley@move.com