

**FILED**  
KING COUNTY WASHINGTON

MAY 27 2016

SUPERIOR COURT CLERK  
BY Susan Bone  
DEPUTY

THE HONORABLE SEAN O'DONNELL  
Noted for Consideration: March 18, 2016  
ORAL ARGUMENT REQUESTED

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  
CURT BEARDSLEY, an individual, and  
DOES 1-20,

Defendants.

Case No. 14-2-07669-0 SEA

~~PROPOSED~~ ORDER DENYING  
DEFENDANT CURT BEARDSLEY'S  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT ON TRULIA CLAIMS AND  
BREACH OF FIDUCIARY DUTY  
CLAIM

1 THIS MATTER came before the Court on Defendant Curt Beardsley's Motion For  
2 Partial Summary Judgment On Trulia Claims ("the Motion"). The Court has reviewed the filings  
3 in support of and in opposition to the Motion, and has heard oral argument from counsel, and  
4 deems itself fully advised.

5 Summary judgment is appropriate only if there is no genuine issue of material fact and  
6 the moving party is entitled to judgment as a matter of law. *Trimble v. Wash. State Univ.*, 140  
7 Wn. 2d 88, 93 (2000); CR 56. In ruling on a summary judgment motion, "[a]ll facts submitted  
8 and all reasonable inferences from them are to be considered in the light most favorable to the  
9 nonmoving party." *Trimble*, 140 Wn. 2d at 93. The motion should be granted "only if, from all  
10 the evidence, reasonable persons could reach *but one* conclusion." *Id.* (emphasis added). Here  
11 Beardsley fails to meet his burden, and for the reasons set forth below, the Motion is DENIED.

12 Beardsley's first argument is that this Court should treat Beardsley separately from the  
13 other Defendants. However, Plaintiffs have put forward sufficient evidence to create a triable  
14 issue of fact regarding whether a conspiracy between Beardsley and the other Defendants exists.  
15 For example, Plaintiffs have introduced evidence that Samuelson and Beardsley began  
16 investigating how to kill ListHub in October 2013, and that by November 2013 they were  
17 plotting to join Move's chief rival Zillow. While Beardsley claims that he personally did not  
18 know information about the Move/Trulia merger, so he cannot be liable for its misappropriation,  
19 if the jury were to find the existence of a conspiracy, Beardsley will be liable for any act of trade  
20 secret misappropriation perpetrated by one of his co-conspirators, even if he did not commit the  
21 act himself. *See Sterling Business Forms, Inc. v. Thorpe*, 82 Wn.App. 446, 454, 918 P.2d 531  
22 (1996). Accordingly, the Motion must be denied on this basis.

Second, Beardsley argues that he did not know any trade secret information about the  
Move/Trulia merger discussions because Move did not share that information with him,  
precluding Plaintiffs' misappropriation claims. However, Plaintiffs have put forward evidence

1 from which a reasonable juror could conclude that he knew about the Move/Trulia merger  
2 opportunity and misappropriated that knowledge. For example, Samuelson emailed Beardsley  
3 the letter he was sending to Rascoff in which Plaintiffs allege Zillow was tipped off to the  
4 Move/Trulia merger negotiations. Beardsley read the letter, responded to it twice, and told  
5 Samuelson that Rascoff would “get the inference.” Even if this were all that Beardsley knew  
6 about the Move/Trulia merger, a reasonable juror could infer that he knew enough to “get the  
7 inference” that a Move/Trulia merger was in the works, he knew without a doubt that Samuelson  
8 was going to share the information with Rascoff, and he knew that doing so “certainly could  
9 impact Zillow’s valuation in the near term.” Plaintiffs have also identified a number of other  
10 facts indicating Beardsley took steps to impact Move’s steps with Trulia regarding a merger.  
11 Plaintiffs have introduced sufficient evidence that Beardsley misappropriated Move trade secrets  
12 relating to the Move/Trulia to create a triable issue of fact.

13 Even if Beardsley’s knowledge of the Move/Trulia merger talks was limited, Beardsley  
14 had other trade secret information and Plaintiffs have put forward facts showing he used that  
15 information to harm them. Beardsley knew how significant ListHub was to Move and to its  
16 plans to build a new industry platform. He also knew that attacking Move’s metrics was the way  
17 to kill ListHub; he had even written about that in his Attack ListHub memo, and he knew that  
18 disrupting the relationship between ListHub and Trulia would be an effective way to damage  
19 ListHub’s metrics. A reasonable juror could conclude that Beardsley’s intent was to (1) carry  
20 out his “attack ListHub” plan to torpedo Move’s industry platform strategy; (2) prevent the  
21 Move/Trulia merger by dissuading Trulia from further collaboration with ListHub; (3) begin  
22 convincing Trulia that collaboration with Zillow was a better option; or (4) all of the above.

~~Further, a reasonable juror could conclude that Beardsley’s actions contributed to the loss of the  
Move/Trulia merger by tainting the two companies’ collaboration efforts. Hence, a genuine~~

1 issue of material fact exists as to Beardsley's liability for the loss of the Move/Trulia merger  
2 opportunity.

3 Beardsley's argument in favor of summary judgment on Plaintiffs' ~~breach of contract and~~  
4 breach of fiduciary duty claims fails as Beardsley's only argument is that Plaintiffs have not (P)  
5 found any evidence of his knowledge of information regarding the Trulia-Move discussions.  
6 However, as discussed above, Plaintiffs have put forth evidence that Beardsley did have  
7 information about the Move/Trulia merger opportunity, and Beardsley owed Moved a fiduciary  
8 duty. Accordingly, dismissal of the ~~breach of contract claim~~ and the breach of fiduciary duty  
claim ~~is~~ also denied. *on the issue of disclosure of Trulia information.* (P)

9 To the extent Beardsley claims that Plaintiffs may not properly rely on circumstantial  
10 evidence to support their claims, he is incorrect.

11 Plaintiffs in trade secret cases...are confronted with an extraordinarily difficult  
12 task. Misappropriation and misuse can rarely be proved by convincing direct  
13 evidence. In most cases plaintiffs must construct a web of perhaps ambiguous  
14 circumstantial evidence from which the trier of fact may draw inferences which  
15 convince him that it is more probable than not that what the plaintiffs allege  
16 happened did in fact take place. Against this often delicate construct of  
17 circumstantial evidence there frequently must be balanced defendants' witnesses  
18 who directly deny everything.

19 *SI Handling Systems, Inc. v. Heisley*, 753 F.2d 1244, 1261 (3d Cir. 1985); *see also* Washington  
20 Pattern Jury Instruction 1.03 ("The law does not distinguish between direct and circumstantial  
21 evidence in terms of their weight or value."). In light of the reality that trade secret  
22 misappropriation is often covert, "a plaintiff may establish misappropriation of a trade secret  
with circumstantial evidence that shows access to similar information." *USA Power, LLC v.*  
*PacifiCorp*, 235 P.3d 749, 761 (Utah 2010) (collecting cases from Second, Third, Fourth, Sixth,  
Seventh, Eighth, Ninth, and Federal Circuits). Plaintiffs have introduced enough circumstantial  
evidence to create a material issue of fact. For example, Plaintiffs have introduced evidence that  
at the time of the tip-off, Samuelson and Beardsley had already begun avoiding a paper trail,  
explicitly for the purpose of making it difficult for anyone to argue they were working against

1 Move. A reasonable juror could infer from this that they were working against Move, and  
2 accordingly, this issue must be reserved for the jury.

3 Finally, the Court notes that Defendants ~~including~~ <sup>Mr</sup> Beardsley himself ~~have~~ <sup>has</sup> destroyed a  
4 large amount of evidence related to the underlying facts of this case. ~~The impact of that evidence~~  
~~destruction is being considered in connection with an ongoing sanctions proceeding. It would be~~  
5 ~~entirely inappropriate, in the context of the broad evidence destruction by Defendants, to grant~~  
6 ~~summary judgment in favor of those same Defendants.~~  
7

8 NOW THEREFORE, it is ORDERED that the Motion is DENIED.

9 Dated this ~~23<sup>rd</sup>~~ <sup>May</sup> day of ~~March~~, 2016.

10   
11 THE HONORABLE SEAN O'DONNELL

12 Presented by:

13 **JENNER & BLOCK LLP**  
14 Attorneys for Plaintiffs

**GORDON TILDEN THOMAS &  
CORDELL LLP**  
Attorneys for Plaintiffs

15 By s/Brent Caslin  
16 Richard L. Stone (*pro hac vice*)  
17 Brent Caslin, WSBA #36145  
18 David Singer (*pro hac vice*)  
19 633 West Fifth Street, Suite 3600  
20 Los Angeles, California 90071  
21 T: 213-239-5100  
22 F: 213-539-5199  
E: [rstone@jenner.com](mailto:rstone@jenner.com)  
E: [bcaslin@jenner.com](mailto:bcaslin@jenner.com)

By s/Mike Rosenberger  
Jeffrey M. Thomas, WSBA #21175  
Mike Rosenberger, WSBA # 17730  
Mark Wilner, WSBA #31550  
1001 Fourth Avenue, Suite 4000  
Seattle, Washington 98154  
T: 206-467-6477  
F: 206-467-6292  
E: [jthomas@gordontilden.com](mailto:jthomas@gordontilden.com)  
E: [mwilner@gordontilden.com](mailto:mwilner@gordontilden.com)

1 **CABLE, LANGENBACH, KINERK &**  
2 **BAUER LLP**

3 Attorneys for Plaintiffs

4 By s/Jack Lovejoy

5 Jack M. Lovejoy, WSBA #36962  
6 1000 Second Avenue Bldg., Suite 3500  
7 Seattle, Washington 98104  
8 T: 206-292-8800  
9 F: 206-292-0494  
10 E: [jlovejoy@cablelang.com](mailto:jlovejoy@cablelang.com)