

Federal Court



Cour fédérale

Date: 20210712

Docket: T-898-20

Citation: 2021 FC 735

Ottawa, Ontario, June 30, 2021

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

**THE TORONTO REGIONAL REAL  
ESTATE BOARD**

**Plaintiff**

**and**

**R E STATS INC. operating as REDATUM  
KENNETH DECENA  
GABRIEL STEFANESCU**

**Defendants**

**ORDER AND REASONS**

I. Introduction

[1] This is an *ex parte* motion, brought by the Plaintiff, the Toronto Regional Real Estate Board [TRREB], seeking:

- A. An Order granting default judgment for infringement of copyright against the corporate Defendant, R E Stats Inc., operating as ReDatum, in the amount of \$250,000.00;
- B. A permanent injunction against each of the Defendants, R E Stats Inc., operating as ReDatum, Gabriel Stefanescu and Kenneth Decena, restraining each of them, their officers, directors, employees, agents, assigns, servants, or any person acting under their direction, or any person having knowledge thereof:
- i. from accessing, copying, data scraping, data mining, downloading, displaying, distributing, accessing to make available for distribution, streaming for public display, any and all information obtained in any manner from the TRREB MULTIPLE LISTING SERVICE [TRREB MLS®] and any of the Internet based online systems and services operated by the Plaintiff in relation to the TRREB MLS® [TRREB MLS® System] and from implementing any means or method to avoid, bypass, remove, deactivate, impair or circumvent any technological protection measure [TPMs] put in place to protect or limit access to the TRREB MLS® System;
  - ii. from operating, conducting, or having any involvement in or providing or offering any means to access the TRREB MLS® System, or assisting in the collection, display and distribution of any information obtained from the TRREB MLS® System; and

- iii. from maintaining, operating, implementing, marketing, or having any involvement with any entity for the purpose of providing or offering a means to access the TRREB MLS® System via any means or method, including any Internet based technology, without the express written permission of the Plaintiff;
  
- C. A mandatory Order requiring each of the Defendants to disclose, within five (5) days of service of the Order upon them, all methods and means used by the Defendants, or those acting under their direction, to access or obtain content from the TRREB MLS® System;
  
- D. A mandatory Order requiring each of the Defendants to permanently destroy or deliver up to the Plaintiff, within five (5) days of service of the Order upon them, all TRREB MLS® System content in their power, possession, or control;
  
- E. The costs of this motion on a solicitor and client basis; and
  
- F. Such further and other relief as this Honourable Court may deem just.

## II. Background

[2] The Plaintiff is the largest real estate board in Canada, serving its members – more than 56,000 licensed real estate brokers and salespersons. It is a not-for-profit entity, incorporated under the laws of Ontario and is operated as a trade association.

[3] The Plaintiff develops and operates the TRREB MLS® System, which:

- A. Allows for exclusive access by real estate professional members and partner real estate boards to a curated online system;
- B. Permits members to access information from several information partners pursuant to exclusive licence agreements; and
- C. Offers more than 100 online services to its members under various proprietary links, including access to active real estate sales listings, detailed unique property descriptions, archival information, unique photography, detailed neighbourhood descriptions, listing schools and community features, and other curated information related to real property – including purchase prices for properties located in the Greater Toronto Area and other parts of Ontario.

[4] The corporate Defendant, R E Stats Inc., operates as ReDatum. It is a company based in Toronto, Ontario, providing services to parties in the real estate industry. It operates through an on-line portal, using the URL [www.redatum.com](http://www.redatum.com), which has been in existence and operational since at least 2007. Gabriel Stefanescu and Kenneth Decena are allegedly directing the operations of ReDatum.

[5] The TRREB MLS® is a copyrightable work owned by the Plaintiff. The Plaintiff has registered its copyright interest with respect to its MLS® System with the Canadian Intellectual Property Office for each successive year since 2015.

[6] In *Toronto Real Estate Board v Commissioner of Competition*, 2017 FCA 236 at paragraphs 183 to 196 [*TREB v Commissioner of Competition*], the Federal Court of Appeal considered whether a claim of copyright existed in the MLS® database. This was in the context of an appeal from two decisions of the Competition Tribunal. The Federal Court of Appeal concluded that the originality threshold was not established in the context of those pleadings.

[7] The Plaintiff's Statement of Claim in this current action was issued on August 11, 2020. Counsel for the Defendants, R E Stats Inc., operating as ReDatum and Gabriel Stefanescu, confirmed acceptance of service on October 28, 2020. They also confirmed their consent to electronic service of documents on November 16, 2020.

[8] The Defendant, Kenneth Decena, was served with the Statement of Claim on November 16, 2020.

[9] The Plaintiffs then sought an interlocutory injunction as against the Defendants, which was dismissed in the Order and Reasons of the Honourable Mr. Justice Southcott, dated January 8, 2021. The Plaintiff sought to restrain the Defendants, R E Stats Inc., operating as ReDatum and Gabriel Stefanescu, from certain activities, allegedly infringing the Plaintiff's copyright interests. Kenneth Decena did not appear and was not represented by counsel.

[10] The Honourable Mr. Justice Southcott considered the Defendant's reliance on *TREB v Commissioner of Competition*, but nonetheless found that the threshold for satisfying the first element of the interlocutory injunction test was met.

[11] Counsel for the parties subsequently exchanged further communications to agree on the quantum and payment of the costs for the motion.

[12] The Defendants have not filed any Statement of Defence or indicated an intention to do so, nor have they requested an extension of time to file a Statement of Defence. More than seven months have expired since the timeframe in which the Statements of Defence should have been filed.

[13] Based on the evidence filed with the Court, I am satisfied that the Plaintiff has, *prima facie*, established subsistence of copyright in the TRREB MLS® System and ownership of that copyright. The Plaintiff has obtained copyright registrations for the TRREB MLS® System for each of the years 2015 to 2021.

[14] Given that there has been no defence filed, notwithstanding over seven months have passed since the Statement of Claim was filed and served, and having regard to the previous proceedings between the parties in this Court, I am also satisfied that the Plaintiff is entitled to an order for default judgment. However, the relief claimed is overly broad and the Order will be more limited than requested by the Plaintiff.

[15] As the Court advised counsel for the Plaintiff, notice to the solicitors for the Defendant of the motion for default judgment would have been the more prudent course of conduct given the history of this action. Nevertheless, the Plaintiff was entitled to proceed on an *ex parte* basis.

[16] That said, it is incumbent on the Plaintiff to establish the relief sought and the Plaintiff has failed to establish a basis for the damages sought in the amount of \$250,000. As such, I find that damages should be limited to the amount of \$50,000 in the circumstances.

**ORDER in T-898-20**

**THIS COURT ORDERS that:**

1. Default judgment be and is hereby granted against each of the Defendants.
2. A permanent injunction is hereby granted against each of the Defendants restraining each of them, their officers, directors, employees, agents, assigns, servants, or any person acting under their direction:
  - (i) from accessing, copying, data scraping, data mining, downloading, displaying, distributing, accessing to make available for distribution, streaming for public display, any and all information obtained in any manner from the TRREB MLS® System and from implementing any means or method to avoid, bypass, remove, deactivate, impair or circumvent any TPMs, as defined by the *Copyright Act*, RSC, 1985, c C-42, [the “Act”], put in place to protect or limit access to the TRREB MLS® System;
  - (ii) from operating, conducting, or having any involvement in or providing or offering any means to access the TRREB MLS® System, or assisting in the collection, display and distribution of any information obtained from the TRREB MLS® System; and
  - (iii) from maintaining, operating, implementing, marketing, or having any involvement with any entity for the purpose of providing or offering a means to access the TRREB MLS® System via any means or method, including any internet based technology, without the express written permission of TRREB.



3. Each of the Defendants shall disclose, within fifteen (15) days of service of the Order upon them, all methods and means used by them, or those acting under their direction, to access or obtain content from the TRREB MLS® System.
4. Each of the Defendants shall permanently destroy or deliver up to the Plaintiff, within fifteen (15) days of service of the Order upon them, all TRREB MLS® System content in their power, possession, or control. In the case of destruction, the Defendants shall provided proof thereof within the prescribed timeframe.
5. The corporate Defendant, R E Stats Inc., operating as ReDatum, shall pay damages to TRREB in the amount of \$50,000 for infringement of copyright and breaches of the *Act*, including the circumvention of TRREB's TPMs.
6. The Defendants shall pay costs to the Plaintiff fixed in the amount of \$20,677.59, which is approximately 37.5% of the Plaintiff's actual fees, together with disbursements.

"Michael D. Manson"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-898-20

**STYLE OF CAUSE:** THE TORONTO REGIONAL REAL ESTATE BOARD  
v R E STATS INC. OPERATING AS REDATUM,  
KENNETH DECENA AND GABRIEL STEFANESCU

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** JUNE 29, 2021

**ORDER AND REASONS:** MANSON J.

**DATED:** JULY 12, 2021

**APPEARANCES:**

Kevin Fisher  
James Beesley

FOR THE PLAINTIFF

**SOLICITORS OF RECORD:**

Gardiner Roberts LLP  
Barristers and Solicitors  
Toronto, Ontario

FOR THE PLAINTIFF

Shift Law Professional  
Corporation  
Barristers and Solicitors  
Toronto, Ontario

FOR THE DEFENDANTS