

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

BOYKO & SONS LTD. and DRB 2023 LTD.,	)	<u>Maria L. Grande</u>
	)	for the plaintiffs
	)	
plaintiffs,	)	
	)	
- and -	)	
	)	
WEST PANET PROPERTIES LTD.,	)	<u>Curran McNicol</u>
defendant.	)	for the defendant
	)	
	)	<u>Judgment Delivered:</u>
	)	May 11, 2026

BOCK J.

INTRODUCTION

[1] This is a motion for interlocutory injunctive relief by the plaintiffs, Boyko & Sons Ltd. ("Boyko & Sons") and DRB 2023 Ltd. ("DRB 2023") against their neighbour, the defendant West Panet Properties Ltd. ("West Panet").

[2] Boyko & Sons and DRB 2023 allege that under the terms of a lease with West Panet, they have the right to use a portion of West Panet's property at 474 Panet Road in Winnipeg to access two loading docks located on Boyko & Sons'

neighbouring property at 450 Panet Road. (In these reasons I refer to 474 Panet Road as the “West Panet property” and the smaller portion used by the plaintiffs to access their loading docks as “the loading area”.) By this motion the plaintiffs seek an order permitting them continued access to the loading area pending the trial of this action.

[3] For the reasons that follow, the plaintiffs’ motion is granted.

BACKGROUND

[4] The following facts are not in dispute.

[5] Boyko & Sons is a family-owned company founded by Peter and Tena Boyko in the 1970s. Since its inception, Boyko & Sons has operated a mechanical service repair shop focussed on large transport trucks and related equipment from premises located at 450 Panet Road.

[6] As the name suggests, the Boykos’ sons, Larry Sr., David and Gary, were also involved in the business. In 1986, David Boyko expanded Boyko & Sons’ business to include freight haulage, which he carried on under the trade name DRB Transport. When David died in 1996, Larry Sr. acquired the DRB Transport business and continued to operate it under the auspices of Boyko & Sons. Eventually, Larry Sr. transferred the haulage business into a separate corporation, the predecessor to DRB 2023. In 2023, DRB 2023 was incorporated as part of Larry Sr.’s estate and succession planning. (In these reasons, references to DRB 2023 include its predecessors.) DRB 2023 is owned by Larry Sr.’s three children.

[7] Since then, the business carried on by Boyko & Sons and DRB 2023 has comprised two complementary components, one involving truck repair and the other freight haulage.

[8] Boyko & Sons and DRB 2023 have always operated from a large warehouse building with two loading docks located at 450 Panet Road. The loading docks are awkwardly situated at the back of the building, on its west side. The location of the loading docks is awkward because, in order to access them, drivers have to pull their trucks into a portion of the West Panet property immediately west of the docks before they can back themselves into position. The area required to make this manoeuvre is “the loading area” with which this motion is concerned.

[9] There have been three owners of the West Panet property over the last 50 years. The first, Albert Gross, owned it until 1996. Mr. Gross and Boyko & Sons had an easement agreement which permitted Boyko & Sons to access the loading area in order to access its loading docks. That same agreement also allowed Boyko & Sons to park trucks and trailers on certain adjacent portions of the West Panet property lying north and west of Boyko & Sons’ property. The second, Cambrian Equipment Sales Ltd., owned it until 2021. Cambrian and Boyko & Sons had a verbal lease agreement which essentially continued the earlier arrangements with Mr. Gross. The third owner is the defendant, West Panet.

[10] West Panet is a real estate developer and one of a group of companies owned and operated by the Tallman family. In 2021, it acquired the West Panet property for

development as a site for a 105,000 square foot “flagship” retail store for Princess Auto Ltd., another Tallman-owned company.

[11] In May 2021, David Carefoot, a representative of West Panet, informed Larry Boyko Sr. that West Panet was purchasing the West Panet property. Further discussions between those two allowed Mr. Carefoot to inform himself with respect to the Boyko & Sons’ use of the West Panet property and its ongoing requirements.

[12] The discussions between Mr. Carefoot and Larry Boyko Sr. led to negotiations between the parties, and those negotiations culminated in the execution of a written lease agreement on March 24, 2022, effective January 1, 2022 (the “Lease”). By that Lease Boyko & Sons secured the right to use certain defined areas of the West Panet property to the north and west of Boyko & Sons’ property, defined as the “Leased Premises”, for parking trailers. In addition, s. 2.1 of the Lease granted Boyko & Sons a “non-exclusive license throughout the Term to the benefit or use (as may be appropriate) of those Common Areas which provide access to the Leased Premises...” As defined, the “Common Areas” included the loading area. As a result, the plaintiffs were able to continue their operations in the same way they had prior to West Panet’s acquisition of the West Panet property.

[13] The initial term of the Lease was five years, with two additional five-year options which, if exercised by Boyko & Sons, would extend the term of the Lease to December 31, 2036.

[14] West Panet proceeded with its construction plans on the West Panet property. In the months that followed, the plaintiffs grew concerned that West Panet’s planned

development could result in their access to the loading area being cut off. Those concerns soon proved to be justified. By letter dated May 15, 2025, to Boyko & Sons, West Panet informed it that fencing would be installed along the shared boundary between their respective properties. The effect that such fencing would have on the plaintiffs' business was made clear to West Panet and its counsel in an email sent the following day by plaintiffs' counsel: "[a]s you and your client will know this action will prevent Boyko from having access to its loading docks. This will effectively put them out of business."

[15] Subsequent discussions to resolve the issue were unsuccessful. Thus, on June 6, 2025, Boyko & Sons and DRB 2023 commenced action against West Panet for, among other things, interim and interlocutory injunctive relief. The plaintiffs' motion was heard and dismissed by the motions court judge on June 13, 2025. As a result, on June 16, 2025, West Panet installed a temporary construction fence along the shared boundary between the properties. In July 2025 the construction fence was replaced with a permanent chain link fence with posts inserted in the ground.

[16] Boyko & Sons and DRB 2023 appealed the motion judge's decision. The appeal was heard and allowed on November 4, 2025 (*Boyko & Sons Ltd. v. West Panet Properties Ltd.*, 2026 MBCA 1). The Court of Appeal ordered West Panet "to relocate the fence to give the plaintiffs access to the common area and the loading docks on the Boyko property in the same manner as before the fence was erected, pending further court order" (at para. 93). Boyko & Sons' access to the loading area was restored on November 7, 2025 and has continued since then.

[17] Since the hearing of the appeal, both sides have filed additional affidavits and conducted cross-examinations on affidavits. The plaintiffs' motion for interlocutory injunctive relief was heard afresh by me on March 18, 2026. Meanwhile, construction of the Princess Auto Ltd. flagship store has continued and is now nearing completion. The store is scheduled to open in May 2026.

The issue for determination on this motion

[18] The issue for determination on this motion is whether the plaintiffs are entitled to an interlocutory order granting them continued access to the loading area pending trial. It stands to be decided in accordance with the three-part test in ***RJR-MacDonald Inc. v. Canada (Attorney General)***, 1994 CanLII 117 (SCC): Have the plaintiffs raised a serious question to be tried? Do they risk irreparable harm if an injunction is not granted? In whose favour does the balance of convenience tip?

DISCUSSION and DISPOSITION

[19] My discussion and disposition of each question follows.

a. Have the plaintiffs raised a serious question to be tried?

[20] In my opinion, the plaintiffs meet the low bar set by the first of the ***RJR*** criteria. On a preliminary assessment, their claim is neither frivolous nor vexatious (***RJR***, at pages 337 – 338).

[21] Reduced to its simplest, the plaintiffs' claim puts in issue the proper interpretation of certain terms in the Lease and whether West Panet has acted in breach of those terms.

[22] The plaintiffs argue s. 2.1 of the Lease grants Boyko & Sons “a non-exclusive license throughout the Term to the benefit or use (as may be appropriate) of those Common Areas which provide access to the Leased Premises or which are generally made available to all Tenants of the Premises...” The “Leased Premises” are specifically identified as the areas to the west and north of Boyko & Sons’ property used by the plaintiffs for parking trailers. The “Premises” are defined as “the lands municipally known as 474 Panet Road”.

[23] “Common Areas” is defined in s. 1.3 of the Lease as those “areas of the Premises [i.e., 474 Panet Road] that are designated by the Landlord (which designation may be changed by the Landlord from time to time, but not so as to include any part of the Leased Premises [the areas to the west and north used by the plaintiffs for parking trailers]...”

[24] The plaintiffs contend the definition of “Common Areas” in s. 1.3 extends Boyko & Sons’ right to use the Common Areas to its “licensees and invitees”, which would include DRB 2023. In addition, they argue DRB 2023, which did not exist when the Lease was signed, gained rights under the Lease pursuant to s. 2.3(b)(iii), which provides for transfer of voting control of Boyko & Sons within the Boyko family.

[25] The plaintiffs submit that although the Lease gives West Panet the discretion to designate which areas of 474 Panet Road will be set aside as Common Areas for the use of Boyko & Sons, its licensees and invitees, West Panet does not have the right to remove all areas from the Common Areas designated under the Lease. Put another way, West Panet is obligated to designate some portion of 474 Panet Road as Common

Areas under the Lease. West Panet's installation of the boundary fence effectively eliminated all Common Areas that had been designated under the Lease, so depriving the plaintiffs access to the loading area and, by extension, the loading docks. The plaintiffs allege this constitutes a breach of the Lease giving rise to a claim for declaratory and injunctive relief.

[26] In reply, West Panet argues the plaintiffs' interpretation of the Lease does not withstand close scrutiny. First, it submits the plaintiffs' interpretation relies on inadmissible evidence of the history of the parties' negotiations. Second, the stated purpose of the Common Areas is "to provide access to the Leased Premises", which do not include the loading docks. Third, the plain language of the Lease gives West Panet the right, but not the obligation, to designate Common Areas. Fourth, DRB 2023 is not a party to the Lease and does not fall within the change of control provisions contained in s. 2.3(b)(iii).

[27] I acknowledge West Panet has raised arguable defences in response to the plaintiffs' claims. But at this stage, subject only to certain exceptions, none of which applies here, a close examination of the merits of the parties' positions is neither necessary nor desirable (*RJR* at page. 348; *Ramanand v. De Paula*, 2012 MBQB 335, paras. 24 – 25). For now, it is enough to say that the plaintiffs have presented a plausible, coherent interpretation of the Lease and evidence to suggest it has been breached by West Panet. On that basis, they have demonstrated a serious issue to be tried.

b. Do the plaintiffs risk irreparable harm if an injunction is not granted?

[28] In my view, the plaintiffs have presented credible and compelling evidence of a meaningful risk of irreparable harm in the sense contemplated by *RJR* (at pages 340-342) if an injunction is not granted. Their concern, which I find to be justified, is that absent a court order, one or both may be put out of business before the trial can be heard.

[29] The evidence strongly suggests that since 1986 Boyko & Sons' repair business and DRB 2023's haulage business have been highly integrated. They have always operated from and shared the use of the building and loading docks at 450 Panet Road. They have always required access to the loading area to permit the type of large trucks and tractors they deal with to access the loading docks. DRB 2023 has used 450 Panet Road to store its trucks and trailers, and Boyko & Sons has performed necessary repairs on those same trucks and trailers. Throughout their history, the businesses have been managed and controlled by members of the Boyko family. Today, they are essentially managed by Larry Sr. and Larry Jr. with input from Gary Boyko. In addition, several members of the Boyko family are employed by Boyko & Sons and DRB 2023.

[30] The evidence also suggests that while the operations of the plaintiffs' repair and haulage business have always been distinct, they have also been complementary. For instance, Boyko & Sons' repair business involves repairing trucks, trailers and other heavy equipment for a variety of corporate customers who come to it directly for those services but also includes a considerable amount of work derived from DRB 2023's haulage business.

[31] What emerges is a picture of a symbiotic relationship: a close, long-term and mutually beneficial collaboration between two business entities, Boyko & Sons and DRB 2023, owned and operated by the same family from the same premises, and whose success over the last 40 years has depended, in no small part, on their interdependence.

[32] Against this background, the concerns of irreparable harm expressed by Larry Sr. and Larry Jr. in their affidavits sworn June 4, 2025, gain force. According to them, the use of the loading docks at 450 Panet Road is an integral part of DRB 2023's haulage business, and DRB's continued presence is an integral part of Boyko & Sons' repair business. A lifetime of experience tells them that without access to the loading area, it would not be possible for trucks and trailers, which measure over 70 feet, to access the loading docks. Without access to the loading docks, DRB 2023 would be unable to carry on its business. This in turn would lead to the loss of employment for DRB 2023's 22 employees. They go on to predict that without the presence of the haulage business and the revenue it produces, Boyko & Sons' repair business and its eight employees will also be severely, and likely irreparably, harmed.

[33] West Panet essentially makes two arguments in reply.

[34] First, West Panet argues that the plaintiffs have failed to put forward any business or financial records to support their allegations of irreparable harm. In the absence of such records, the plaintiffs' submissions of irreparable harm are little more than bald assertions.

[35] I disagree. The evidence adduced by the plaintiffs comprises a long and detailed history of a relatively modest family business and its record of success over the last 40 years. The nature of the harm they fear if an injunction is not granted is not merely economic but existential, because they will be deprived of access to the loading docks which have been an essential part of that success. The absence of financial or business records does not cause me to doubt the plaintiffs' assertions with respect to the risk of irreparable harm.

[36] Second, West Panet argues the plaintiffs' fears of irreparable harm are belied by their experience during the five-month period when the fence was installed and access to the loading docks was limited, from June 16 to November 7, 2025. West Panet goes so far as to say that the evidence obtained from Larry Boyko Sr. and Larry Boyko Jr. on cross-examination actually refutes the assertion that the boundary fence caused any harm to either business, let alone material harm. Through cross-examination of Larry Sr. and Larry Jr. it was confirmed that both Boyko & Sons and DRB 2023 were able to continue business while the fence was in place. DRB 2023 managed to establish some limited access to the loading docks. Other services were temporarily moved to a different location owned by a third party. During those five months no employees lost their jobs, the businesses continued to earn revenue and profit, and there were no customer complaints.

[37] I find myself unable to accept the inferences drawn by West Panet from that evidence. In my opinion, the fact that the plaintiffs were able to withstand five months of disruption to their normal operations pending the hearing of their appeal does not

necessarily mean that they will be able to withstand an indefinite period of disruption, probably years-long, pending trial. As Larry Jr. testified, the five months during which the plaintiffs had to deal with the effects of the fence on their normal operations caused real and serious challenges, including increased wages, expenses and fuel expenditures, as well as other inefficiencies.

[38] In short, the evidence satisfies me that there is a meaningful risk of irreparable harm if the plaintiffs are not granted the injunctive relief they seek.

c. In whose favour does the balance of convenience tip?

[39] The third branch of the *RJR* test, the balance of convenience, calls for an assessment of the harm the responding party might suffer if an injunction were to be granted and to balance that against the harm the moving party faces if it is not granted (*RJR*, pages 342 – 343). As I will explain, I find the balance of convenience tips in favour of the plaintiffs.

[40] West Panet has identified three possible sources of harm if the injunctive relief sought is granted.

[41] First, West Panet says it would be prevented from meeting all of its obligations under the terms of its lease with Princess Auto Ltd., because Schedule A-2 of that lease calls for the installation of the border fence between the properties and reserves the loading area for 39 parking stalls for “Team Member Parking”.

[42] This is an easily surmountable hurdle. I see no reason why the border fence and Team Member Parking cannot both be temporarily relocated pending the trial of the action. Moreover, the plaintiffs’ experience since the Court of Appeal’s decision

indicates that only 21 of the 39 parking stalls allocated for "Team Member Parking" are required to allow the plaintiffs continued access to the loading area and loading docks. Finally, on cross-examination Andrew Hodgson, a senior executive within the Tallman group of companies, admitted that Princess Auto Ltd. would not take steps to enforce the lease against West Panet in such circumstances. This is hardly surprising given West Panet and Princess Auto Ltd. are both Tallman-owned.

[43] Second, West Panet fears if an injunction is granted it may be prevented from accessing a retention pond located west of 450 Panet Road for snow piling. I am not satisfied on the evidence that access to the retention pond cannot be accommodated in light of the uncontested evidence led by the plaintiffs that most of the properties neighboring 450 Panet Road are also Tallman-owned. I question whether some portion of those properties could not be used to provide Princess Auto Ltd. temporary access to the retention pond. But even if access to the retention pond cannot be accommodated, the only risk identified by West Panet is that this may require Princess Auto Ltd. to haul snow offsite "at considerable additional expense". Since the amount of this "additional expense" has not been quantified, it is not possible to assess whether it truly is "considerable". In any event, it is presumably quantifiable, and West Panet has not raised any concerns about the plaintiffs' ability to fulfil their undertaking as to damages should that become necessary.

[44] Third, West Panet has plans to develop and construct for leasing two standalone, 4000-square-foot retail spaces on the northwest corner of what is now 500 Panet Road, the result of its consolidation of the West Panet property at 474 Panet with the property

next door at 494 Panet Road. West Panet submits that if an injunction is granted, it will be deprived of 21 of the 39 parking spaces designated for “Team Member Parking”. In that event, it fears it will fall short of the total number of parking stalls it would need to meet the City of Winnipeg’s parking requirements for development of these two additional retail spaces.

[45] The evidence on this point does not persuade me. The plaintiffs calculate that even if the development of those two retail spaces were to proceed as planned, West Panet would still meet the City of Winnipeg’s total parking requirements, though only by a single parking stall. But even if that is not so, at worst West Panet’s plans to develop these two additional retail spaces may be delayed pending the trial of the action. In my view, this might actually work in West Panet’s favour, since the trial will determine whether or not the Lease to which West Panet is a party prevents it from proceeding with its plans in any event. Prudence may dictate that before West Panet embarks on a significant investment to develop these two spaces it first obtain the answer to that question.

[46] Ultimately, the kind of harm West Panet fears is not the kind of existential harm which the plaintiffs have raised. Rather, it is inconvenience compensable in damages. Here it is worth noting that West Panet and its affiliates are large and successful corporations, with annual sales exceeding one billion dollars. The new Princess Auto Ltd. flagship store is expected to generate annual revenue exceeding \$30 million. There is no reason to doubt that West Panet has the financial capacity to withstand

and, if necessary, absorb the inconvenience which might follow the imposition of an interlocutory injunction.

CONCLUSION

[47] In conclusion, the plaintiffs' motion is granted. West Panet is ordered to provide the plaintiffs with access to the loading area and the loading docks on Boyko & Sons' property in the same manner as existed before the erection of the fence in June 2025.

[48] As the successful parties, I would order one set of costs in favour of the plaintiffs in any event of the cause.

J.