

REMPEL J.

BACKGROUND

[1] The core issues driving the competing interlocutory injunction motions between Peg City Limo Corporation (“Peg City”) and the Winnipeg Airports Authority Inc. (the “WAA”), involve the legal classification of the roadways on the campus of the James Armstrong Richardson International Airport in Winnipeg (the “Airport”) and the legitimacy of the unlicensed commercial operations of Peg City on these roadways.

[2] Both sides agree that by raising these hotly disputed core issues, they have satisfied one of the three prongs of the legal test governing interlocutory injunctions in their competing motions, namely the “serious issue to be tried”.

Position of the WAA on the Core Issues

[3] The WAA asserts that all of the land on which the Airport is situated (the “Airport Property”), including the roadways that can be accessed by the public such as the passenger pick-up lane, are privately owned and under the exclusive management and control of the WAA under federal legislation and by virtue of a lease (the “Lease”) it holds from the Government of Canada as owner. As the occupier or lessee of the Airport Property, the WAA maintains it not only has the exclusive authority, but also a legal obligation to control all forms of access to the Airport Property and oversee all commercial activities that occur on it.

[4] Given the admission of Peg City that it operates a commercial luxury car service for its clients that travel to and from the Airport and that it does so without a commercial licence, the WAA contends that Peg City’s commercial use of the Airport Property amounts

to trespass, both in tort and as prescribed by ***The Trespass Act***, C.C.S.M. c. T156, of Manitoba. It is this trespass on private property that must be enjoined by the court through an injunction, according to the WAA.

Position of Peg City on the Core Issues

[5] Peg City, as part of the injunctive relief it is claiming, seeks to enjoin the WAA from any effort to limit or restrict its unlicensed commercial vehicle-for-hire operations on the so-called public lanes at the Airport Property. Peg City asserts that the specific areas they use are the “public lanes” or the “passenger pick-up lane” and these parts of the Airport Property are open for use by members of the public without a fee or charge, thus falling under an exception to the definition of trespass under ***The Trespass Act***.

[6] Further, Peg City also argues that the claim for injunctive relief advanced by the WAA is shrouded in bad faith as it forms part of a vendetta against the director of Peg City, who has sued the WAA with respect to the cancellation of a commercial licence that was issued by the WAA to a different corporation he controls.

DECISION

[7] I am satisfied that the WAA has met its burden of proof and that an interlocutory injunction should be issued against the named defendants in its action filed as CI 25-01-54173 (the “WAA Matter”).

[8] I am also satisfied that Peg City has failed to meet its burden of proof and that its claim for an interlocutory injunction enjoining the WAA from enforcing its right to issue trespass notices on the Airport Property or seek other remedies against Peg City in its action filed as CI 25-01-53968 (the “Peg City Matter”) should be dismissed.

[9] My reasons follow.

INJUNCTIONS - GOVERNING RULES AND LEGAL PRINCIPLES

[10] ***The Court of King's Bench Act***, C.C.S.M. c. C280, of Manitoba provides:

Injunctions and receivers

55(1) The court may grant a restrictive or mandatory interlocutory injunction or may appoint a receiver or receiver and manager by an interlocutory order where it appears to the judge to be just or convenient to do so.

Terms on injunction or appointment

55(2) An order under subsection (1) may include such terms as are considered just.

Injonctions et séquestres

55(1) Le tribunal peut accorder une injonction interlocutoire de faire ou de ne pas faire ou peut nommer un séquestre ou un administrateur-séquestre au moyen d'une ordonnance interlocutoire, dans tous les cas où le juge estime qu'il est juste ou approprié d'agir ainsi.

Conditions

55(2) L'ordonnance prévue au paragraphe (1) peut être assortie des conditions que le tribunal estime justes.

[11] There is no dispute that the governing test for an interlocutory injunction was articulated by the Supreme Court of Canada in ***RJR-MacDonald Inc. v. Canada (Attorney General)***, 1994 CanLII 117 (SCC), [1994] 1 S.C.R. 311. The test requires a moving party to satisfy the court that an interlocutory injunction should be granted based on the balancing of three factors:

- a) There is a serious issue to be tried (which as I have already stated is not in dispute in this case as counsel admit that the moving party with respect to each motion has satisfied this part of the test);
- b) The moving party will suffer irreparable harm or harm not compensable by an award of damages, if the injunction is not granted; and

- c) The balance of convenience favours the moving party, in the sense that the harm to the moving party if the injunction is not granted must exceed the harm to the responding party if the injunction is granted.

[12] It is also agreed that the three factors under the ***RJR-MacDonald*** test are not stand-alone requirements or hurdles that must be overcome individually.

[13] ***Hudson Bay Mining & Smelting Co., Limited v. Dumas et al.***, 2014 MBCA 6, teaches:

[82] The three criteria mentioned in *RJR -- MacDonald Inc.* (serious issue to be tried; irreparable harm to the moving party if injunction is not granted; and the balance of convenience) are not separate hurdles for an applicant for an injunction; rather, they are "interrelated considerations." Depending on the circumstances, strength in one of the factors can compensate for weakness in another (see *Apotex Fermentation Inc. et al. v. Novopharm Ltd. et al.* (1994), 1994 CanLII 16694 (MB CA), 95 Man.R. (2d) 241 at para. 14 (C.A.)).

[14] In ***Apotex Fermentation Inc. et al. v. Novopharm Ltd. et al.***, (1994), 1994 CanLII 16694 (MB CA), 95 Man.R. (2d) 241, the Court of Appeal noted:

14. ... The approach which will normally be taken by the court in considering an interlocutory injunction is well set forth in R.J. Sharpe, *Injunctions and Specific Performance* (2nd ed., 1992), at pp. 2-32-34:

The terms "irreparable harm", "*status quo*" and "balance of convenience" do not have a precise meaning. They are more properly seen as guides which take colour and definition in the circumstances of each case. More importantly, they ought not to be seen as separate, water-tight categories. These factors relate to each other, and strength on one part of the test ought to be permitted to compensate for weakness on another. ...

[15] In the same paragraph of the ***Apotex*** case, the Manitoba Court of Appeal also adopts the comments in the Sharpe text that the central issue in any interlocutory injunction application is the assessment of "*the relative risks of harm to the parties from granting or withholding injunctive relief*".

[16] I like to think of interlocutory injunctions as a kind of judicial pause button that brings a hotly contested board game to a stop. Activating the pause button will not decide who wins the game, but it will stop the players from destroying the board while they argue about the rules.

Irreparable Harm

[17] In ***Purolator Inc. v. John Doe et al.***, 2024 MBKB 189, the irreparable harm factor was described as follows:

[38] To obtain an injunction, a moving party must show it will suffer irreparable harm if the order is not granted. Irreparable harm means harm that cannot be quantified in monetary terms or remedied through the payment of damages. If the harm can be compensated by damages, it is not irreparable.

Balance of Convenience

[18] The balance of convenience factor entails a risk analysis in which the court asks which party will suffer the greater harm if the interlocutory injunction is granted or denied. This risk analysis is a fact-driven exercise.

[19] In this balancing act the court must consider if the withholding of the injunctive relief will impair the rights of the moving party to such an extent that it will be impossible for the moving party to receive an adequate remedy at trial and juxtapose this consideration against the infringement of the rights of the responding party should the remedy be granted and it then suffers harm by complying with the injunctive relief or is prevented from engaging in what proves at trial to be a lawful or proper conduct. (See ***Mystic Manitoba Inc. v. 3064107 Manitoba Ltd. et al.***, 2004 CarswellMan 224, 49 C.P.C. (5th) 306, at para. 50.)

THE FOUNDATIONAL CLAIM OF THE WAA JUSTIFYING INJUNCTIVE RELIEF

[20] The WAA asserts, correctly in my view, that every nook and cranny of the Airport Property is private property belonging to the Government of Canada and subject to the exclusive use of the WAA by virtue of the Lease it has obtained from the Government of Canada as owner. This fact results in the Airport Property, in its entirety, being subject to the WAA's exclusive control.

[21] It is also beyond dispute that the legislative scheme governing the terms of the Lease, mandate a licensing regime for any commercial entity engaged in business activity anywhere on the Airport Property.

[22] Given its exclusive control of the Airport Property, the WAA correctly asserts that all roadways on the Airport Property, including the "passenger pick-up lane" at the main terminal (which Peg City refers to as the "public lanes"), are private roadways under its control. The fact that members of the public are permitted to drive or stop their vehicles in the passenger pick-up-lane does not make it a public roadway. In short, none of the roadways on the Airport Property can be described as public roadways.

[23] As the occupier, operator, and manager of the Airport Property, the WAA has the exclusive jurisdiction to regulate and prohibit the movement and stopping of all vehicles and any class of vehicles on all roadways on the Airport Property, pursuant to its governing legislation, the regulations under the governing legislation and the Lease.

[24] As part of its legislative mandate and its Lease, the WAA properly requires that anyone providing commercial transportation services (vehicle-for-hire services) at, to, or from the Airport Property must obtain a commercial licence. Commercial ground

transportation on the Airport Property can only take place if the service provider holds a commercial licence issued by the WAA.

[25] I am satisfied that any commercial operator of ground transportation trying to circumvent this commercial licensing regime, by using the so-called public lanes on the Airport Property rather than the designated commercial lanes, to conduct commercial operations is engaging in the tort of trespass and breaching the provisions of ***The Trespass Act*** of Manitoba.

The Lease

[26] The Lease of the Airport Property between the Crown in Right of Canada as Landlord and the WWA as tenant is a net lease, which means the Landlord is explicitly relieved of any responsibility to pay any costs, charges or expenses incurred by the WAA related to its occupancy or operations on the Airport Property, including alterations, renovations, construction, development or maintenance thereon.

[27] The upshot of the net lease provisions is that the WAA has to generate cash flow from its operations on the Airport Property in order to pay the costs related to those operations and its other payment obligations under the Lease. The fact that the WAA is a not-for-profit corporation does not relieve it of its obligation to raise sufficient funds to cover its operating expenses.

[28] As to the Airport Property itself, the land titles searches confirm that there are no easements or rights-of-way over the Airport Property in favour of third parties.

[29] The aerial photographs of the Airport Property show various roadways leading from Wellington Avenue North to the terminal building and then looping around the hotels

and parking areas that are located on the Airport Property. These roadways include the passenger pick-up lane outside the terminal building.

[30] The WAA refers to all parts of the Airport Property that are unrelated to aircraft operations as “land side” operations.

[31] The website of the WAA contains a page dedicated to information to commercial ground transportation operators, setting out licence fees for every commercial vehicle operating on the Airport Property along with arrival fees and “dwell fees” for every minute spent on the commercial vehicle curb adjacent to the terminal.

[32] The WAA also issues two kinds of commercial licences for commercial ground operators. One pertains to “on-demand” services requested by passengers and the other one is for “pre-arranged licences”. All limousine and taxi service providers accessing the Airport Property must also hold a valid dispatcher licence issued by the City of Winnipeg.

[33] It is beyond question that the WAA has a licensing requirement for every ground transportation services provider on the Airport Property

The Legislation and Regulations supporting the WAA’s Position as to Exclusive Control

[34] Under the ***Aeronautics Act***, R.S.C., 1985, c. A-2, the Minister of Transport is responsible for the safe and effective operations of all federal airport facilities in Canada. Under s. 4.3(1) of the ***Aeronautics Act*** the Minister can authorise or delegate an airport authority to perform the powers, duties and functions of the Minister other than making orders and regulations or imposing security measures or emergency directions.

[35] By way of the “Order Designating the Winnipeg Airports Authority Inc. as a Designated Airport Authority and Designating the Date for the Transfer of the

Winnipeg International Airport to the Winnipeg Airports Authority Inc., SI/96-84", pursuant to subsection 2(2) of the ***Airport Transfer (Miscellaneous Matters) Act***, S.C. 1992, c. 5, the Minister named the WAA as a designated Canadian Airport Authority and transferred responsibility of all operations of the Airport to the WAA.

[36] The ***Traffic on the Land Side of Airports Regulations***, SOR/2006-102 (the "***TLSAR***"), passed under the ***Aeronautics Act***, regulates all pedestrian and vehicle traffic (private or commercial) on federally regulated airports. Without limiting the generality of those provisions, the ***TLSAR*** also applies to the design, construction, repair and maintenance of all roadways on the Airport Property including snow removal. Land side operations also include the regulation of:

- the speed limits of vehicles;
- the load limits of commercial vehicles;
- parking or stopping;
- the movement of vehicles;
- loading areas;
- issuing commercial licences and permits;
- the health and safety regulations of food service providers; and
- the efficiency of all operations on the Airport Property.

THE CASE LAW SUPPORTING THE WAA'S POSITION AS TO EXCLUSIVE CONTROL

[37] There is ample case law supporting the position of the WAA that there is no such thing as a public roadway on land designated as airport property under federal law.

[38] The Ontario Court of Appeal offers an extensive review of the cases that have considered this question in ***R. v. Trabulsey***, 1995 CanLII 1414 (ONCA), 22 OR (3d) 314, (at pp. 278-279). The ***Trabulsey*** decision cites ***Rex v. Red Line Ltd.***, (1930), 1930 CanLII 511 (ON CA), 66 O.L.R. 53, which states in part:

The driveway being upon the property of the [Airport], I am wholly unable to see why it may not lay down conditions for its use, exclude any traffic it sees fit and admit what it sees fit -- there is no dedication to the municipality, no total dedication to the public to use as the public sees fit, nothing which takes away from the elementary right which every one, individual or corporation, has to use his property according to his own wishes without regard to how some one else would like to use it -- this, of course, in the absence of something in the nature of an easement, etc.

. . .

But, while they may be highways for the purpose of the Highway Traffic Act, they are clearly not highways in the true sense. The [Airport] has clearly the right to close up or alter its roadways as it pleases, just as any public hospital or college or university might close up or alter the location of its roadways. Such roadways are public only in the sense that the public is permitted by the owner to use them. They are not thereby dedicated to the public in such a way as to deprive the owner of all title or control.

[39] Based on the cited authorities in ***Trabulsey***, the Ontario Court of Appeal concluded (at p. 279):

In my view, the roadway leading to and from the Airport is not a common and public highway to which all members of the public have unrestricted access. It is rather a roadway which is subject to the control of the federal Crown. Although members of the public may use the roadway to travel to and from the Airport, the roadway is not dedicated to the public in such a way as to deprive the owner of the fundamental right to restrict access.

[40] In ***R. v. Roshanimeydan***, 2013 NSSC 106, a taxi service operating without a licence on the property leased to the Halifax Airport Authority also failed to persuade the Nova Scotia Supreme Court that there was no legal basis for the Airport Authority to

demand that the taxi service operate under a commercial licence in the so-called public lanes:

[47] Bell Boulevard, within the boundaries of the lands owned by the Government of Canada and leased by it to and occupied by the Authority, is a private roadway on private property. It was designed to be and is accessible to the general public for the operation of motor vehicles; that is, the operation of motor vehicles on that roadway is subject to the provisions of the *MVA*. The fact that the provisions of the *MVA* apply to the operation of motor vehicles on that roadway does not detract from the underlying fact that it is a private roadway and not a public highway.

[48] The essential characteristic of a public highway, that is, the right to pass subject only to those restrictions that apply to all users alike, does not apply to a roadway on private property, whether or not the operation of motor vehicles on that roadway is subject to the provisions of the *MVA*.

[49] Said differently, the *MVA* does not grant a right of public access to a private roadway that is accessible to the general public. It only regulates the operation of motor vehicles on such a roadway.

[41] In a scenario similar to the case before me, ***Airport Taxicab v. Minister of Transport***, 1985 CanLII 5545 (FC), [1985] 2 F.C. 392, involved a taxi service which sought an injunction preventing the federal Minister from regulating taxi services at Pearson International Airport in Toronto. The Federal Court in ***Airport Taxicab*** concluded (at p. 401):

What then is the harm that the defendant will suffer if the injunction is granted? Counsel indicated that there might be monetary loss as a result of actions already taken by it to implement the independent dispatch service (e.g.: as a result of contracts which have already been signed?) I do not find any evidence on the file attesting to this fact. However, it is clear that the defendant will suffer damage in the sense of having to tolerate "chaos on the platform" as it was put in the cross-examination of Mr. Mann. The damage which will occur will be the hassling of the travelling public and consequent complaints by members thereof to the airport management. The defendant is responsible for the orderly administration of the airport. Its ability to fulfil that responsibility will be diminished if an injunction is granted. It is clear, this is not an injury which can be compensated by a monetary award in damages.

[42] The argument that an airport is public land from which members of the public cannot be excluded without showing cause was addressed in ***The Calgary Airport Authority v. Canadian Centre for Bio-Ethical Reform***, 2014 ABQB 493. At para. 73 of ***The Calgary Airport Authority*** case Wittmann C.J. cites ***R v. S.A.***, 2014 ABCA 191, at length. For the purpose of these reasons, the key points to be gleaned from this paragraph of ***The Calgary Airport Authority*** case are:

- Land and buildings owned by the government vary greatly in their “*character, contents, milieu and purpose*”;
- The right of members of the public to access government land and buildings does not flow from the fact that the government owns them;
- The word “*public*” has two distinct meanings that cannot be conflated. One meaning pertains to “*ownership*” and the other applies to a “*right of use*”; and
- Governments can properly restrict or place conditions on how and under what circumstances public buildings or lands can be accessed by members of the public.

ANALYSIS

Serious Question to be Tried in the WAA Matter

[43] The core argument of the WAA rests on the foundational principle that its rights as a leaseholder of private property cannot be limited or infringed by Peg City or the other corporate defendants named in the WAA Matter, which are all controlled by Rupinder Singh Brar. It is not disputed that Mr. Brar is causing Peg City to carry on commercial ground transportation services in the passenger pick-up lane at the Airport Property. As

I have already stated, I am satisfied that the commercial activities of Peg City constitute both the tort of trespass and the act of trespass as defined in ***The Trespass Act*** of Manitoba.

[44] The law places a high value on protecting the rights of an owner or lease holder of private property from acts of trespass (***University of Toronto (Governing Council) v. Doe et al.***, 2024 ONSC 3755, at para. 123).

[45] Later in the reasons in the ***University of Toronto*** case the court states:

[127] Common law trespass occurs if someone enters, remains on or places any object on land in the plaintiff's possession without lawful justification. Trespass must be voluntary and direct as opposed to being an indirect, unintended contact with property.

[46] The ***University of Toronto*** case defines the paramount principle regarding private property rights in the following way:

[15] In our society we have decided that the owner of property generally gets to decide what happens on the property. If the protesters can take that power for themselves by seizing Font Campus, there is nothing to stop a stronger group from coming and taking the space over from the current protesters. That leads to chaos. Society needs an orderly way of addressing competing demands on space. The system we have agreed to is that the owner gets to decide how to use the space.

[47] The assertion of Peg City that the passenger pick-up lane is a public lane and its commercial operations in the public lane do not constitute trespass has no merit on a legal or evidentiary basis. The case law is clear that by granting public access to certain roadways on the Airport Property, the WAA is not limiting its right to regulate or control how the passenger pick-up lane can be utilized by commercial vehicles. Further, there is no merit to the argument of Peg City that it is not trespassing because Mr. Brar sincerely believes that the commercial activity he is engaging in is not trespassing.

[48] As noted in *The Calgary Airport Authority* case, the arguments of Peg City erroneously conflate the concepts of public ownership and public's right to use public land. The WAA has an absolute right and a legal duty to operate the Airport Property in a safe and commercially responsible manner and can therefore impose a licensing requirement on any business entity that enters or accesses the Airport Property to engage in commercial activity.

[49] The WAA has exclusive jurisdiction over the land side operations of the Airport Property under the Lease and the *TLSAR*. To exercise this control, the WAA has properly established a mandatory commercial licensing regime that applies to all vehicle-for-hire operators. As Peg City does not hold a commercial licence, its commercial activity is unauthorized, unlawful, and constitutes a trespass in tort and under statute.

[50] It can be argued that the application of the high value the law places on private property in injunction cases could result in the granting of an interlocutory injunction upon proof of trespass alone, without regard to the irreparable harm and balance of convenience factors set out in *RJR-MacDonald*. This option was considered but ultimately rejected in the *University of Toronto* decision:

[130] As former Court of Appeal Justice Robert Sharpe notes in his authoritative work, *Injunctions and Specific Performance*, there is a strong presumption in favour of granting injunctive relief where a plaintiff complains about trespass or other interference with property rights:

Where there is a direct interference with the plaintiff's property constituting a trespass, the rule favouring injunctive relief is even stronger than in the nuisance cases. Especially where the trespass is deliberate and continuing, it is ordinarily difficult to justify the denial of a prohibitive injunction. A damages award in such circumstances amounts to an expropriation without legislative sanction. The courts have expressly condoned injunctive relief, even where the balance of convenience is overwhelmingly in favour of the defendant. It has also been held that where there is no arguable case against a plaintiff's

right of possession, an interlocutory injunction may be granted against a trespasser without consideration of the second and third stages of the *RJR MacDonald* test.

[131] In other words, so strong is the protection of property rights that it is possible to grant an injunction based solely on the fact there has been a trespass without even considering the factors of irreparable harm and balance of convenience. I do not do that here and will consider irreparable harm and balance of convenience. These principles do, however, demonstrate that the University's case is at the stronger end of even the strong *prima facie* case spectrum.

[51] I do not accept the argument of the WAA that I should conclude my reasons in favour of an interlocutory injunction based on a finding of trespass to private property alone, because the case before me does not engage the ***Charter*** right of freedom of expression which was at issue in the ***University of Toronto*** case. The Manitoba Court of Appeal in ***Apotex*** urges a high degree of caution before trial judges engage in the kind of approach advocated by the WAA.

[52] In all of the circumstances, however, I have no hesitation in agreeing with the parties that the WAA has established a serious question to be tried based on trespass to private property. I find that this factor weighs heavily in favour of the WAA's application for an interlocutory injunction.

[53] A concluding comment on the serious question to be tried factor is appropriate here because allegations of "bad faith" were made against the WAA by Mr. Brar. The bad faith argument arises in the context of litigation that Mr. Brar caused one of the other corporate defendants he controls, namely Hollywood Transportation Services Inc., to issue a claim against the WAA for damages related to the lapse or cancellation of a commercial licence it held from the WAA (the "Hollywood Litigation"). The inference Mr. Brar wants me to draw is that the interlocutory injunction sought by the WAA in this

case arose solely because of ill-will that the WAA holds against him due to the Hollywood Litigation.

[54] The bad faith argument fails for several reasons. The main reason for the failure of this argument is that the pleadings of Peg City do not raise the bad faith issue and it is not supported by the evidence. When the bad faith question relating to the Hollywood Litigation was put to an officer of the WAA in cross-examination it was explicitly denied, so I am left only with the personal opinion of Mr. Brar, rather than evidence, that the WAA's claim for an interlocutory injunction arises from some kind of bad faith.

[55] But even if I should accept the personal opinion of Mr. Brar on this point, I fail to understand how a possible contractual breach against an unrelated corporation in the Hollywood Litigation can transfer a benefit of some kind to Peg City in the case before me. Hollywood Transportation Services Inc. can pursue whatever remedies it may be entitled to in the Hollywood Litigation, but that fact cannot give an unrelated corporation, namely Peg City, the right to avoid the commercial licensing scheme established by the WAA.

[56] With respect to the issue of a breach of natural justice, which Peg City attaches to its bad faith argument, it should be noted that in ***Airport Limousine Drivers Association v. Greater Toronto Airports Authority***, 2005 CanLII 29654 (ONSC), the court was unwilling to explicitly apply the principles of natural justice to the operations of the airport authority which is not a creature of statute but rather a private corporation that holds all of the rights or powers of a natural person (at para. 119).

[57] *Airport Limousine* does not shut the door to the potential of an implied duty of natural justice on the airport authority, but the court found the argument to be highly problematic and was unwilling to apply it on the facts of that case (see paras. 126-128).

[58] I am not persuaded that the natural justice argument can be sustained on the facts before me, as it rests entirely on the personal opinion of Mr. Brar that the Hollywood Litigation caused the WAA to seek an interlocutory injunction against Peg City in this case. The best possible line of attack for Peg City in this case would have been to argue that management of the WAA was engaging in misfeasance in public office by failing to issue a commercial licence to Peg City, but that was not pled in this case and there is no evidence to support such an allegation. In fact, none of the evidence in the Hollywood Litigation is before me in this matter.

[59] In any event, there is no credible evidence before me that the rules of natural justice were breached in this case. I am satisfied that the deep issue in this this case is about the rights of the WAA as a private corporation to enforce its exclusive right to manage and protect private property that it has exclusive control over in the same way any exclusive leaseholder of private property could.

IRREPRABLE HARM IN THE WAA MATTER

[60] Peg City's central claim is that the prevention of its commercial vehicle-for-hire service at the Airport Property would cause catastrophic financial harm to its business operations that could not be compensated through an award of damages at trial.

[61] The financial loss it would suffer if an interlocutory injunction was granted to the WAA was described by Peg City as "catastrophic" because the vast majority of its

operations involve passenger trips to and from the passenger pick-up lane at the Airport Property.

[62] There are no financial or business records in evidence to support a conclusion that an interlocutory injunction would result in economic catastrophe for Peg City. The bald assertion of Mr. Brar that the business model of Peg City would be untenable if an interlocutory injunction was granted to WAA is very weak evidence and the decision of the WAA not to cross-examine Mr. Brar on this point does not somehow add to its weight. In short, this bald assertion carries virtually no weight and it does not become more significant in the absence of cross-examination.

[63] No explanation is offered as to why Peg City could not deploy its vehicles to transport customer to different locations in Winnipeg apart from the Airport Property or why its assets, such the vehicles it operates, would become worthless if trips to the Airport were no longer possible.

[64] Apart from the economic catastrophe allegation, Peg City also argues that damages could not compensate it from the reputational loss it would suffer if it was prohibited from operating at the airport without a commercial licence and its employees or directors were charged under ***The Trespass Act***. I fail to understand how the WAA's enforcement of its commercial licensing regime by way of an injunction to those who flout the rules could cause reputational harm to Peg City

[65] I will comment more about the irreparable harm issue when I assess Peg City's claim for an interlocutory injunction later in these reasons.

[66] For now it will suffice for me to state that I am satisfied that if the WAA is not granted an interlocutory injunction it will suffer irreparable harm, because it will become impossible for the WAA to credibly assert its exclusive authority to manage and control the Airport Property or to regulate the health and safety of the travelling public as it is required to do under the terms of the Lease and by virtue of the governing legislation. The inability of the WAA to fulfill its mandate for the orderly administration of the Airport would constitute an irreparable injury that cannot be compensated through damages. The inability of a leaseholder of private property to effectively manage its property as it sees fit is clearly the kind of harm that cannot be compensated in damages at a later date.

[67] If the WAA cannot restrain the unlicensed commercial activity of Peg City on the Airport Property, the commercial regulatory regime on the Airport Property would be undermined to such an extent that it would create a two-tiered system for commercial operators. A two-tiered system would clearly result in prejudice to fee-paying commercial operators by allowing unlicensed non-fee-paying commercial operators like Peg City to flout the WAA's licensing regime.

[68] That kind of scenario would certainly create incalculable financial harm to the WAA in my view. It is difficult to imagine why existing commercial operators would continue to play by the rules established by the WAA and pay their licensing fees in a two-tiered system.

[69] The response offered by Peg City that a carve out, exempting it from the WAA commercial regulatory regime, is justified because the Hollywood Litigation is ongoing

and may turn out to be favourable to it, makes no sense. The unrelated Hollywood Litigation cannot fairly create an exemption for an unrelated company like Peg City, because it would become easy for any licensed commercial operator to have an unrelated company issue a statement of claim against the WAA and then rely on the logic of the Peg City exemption to avoid payment of licensing fees until the unrelated litigation is resolved.

[70] The fact that Peg City can point to a perfect safety record since it began commercial operations at the Airport Property earlier this year is also not persuasive in defeating the irreparable harm argument advanced by the WAA.

[71] The vital work of airport authorities, like the WAA, is not merely about managing the logistics involving the efficient movement of people and cargo from point A to point B. The complex logistical issues that the WAA manages on a daily basis also demand careful attention to the ever-present risks that air travel poses to public safety and national security.

[72] The management and assessment of those risks by the WAA does not start when a passenger reaches the security screening area in the terminal. Every vehicle or pedestrian crossing the boundaries of the Airport Property represents a potential risk.

[73] I am satisfied that placing limits on how or where the WAA could properly exert control over the land side of the Airport Property would have catastrophic consequences for the WAA that could not be compensated in damages. Any such limitations would also in all likelihood represent an increased risk to public safety.

[74] The irreparable harm factor weighs heavily in the WAA's favour on these facts.

Balance of Convenience in the WAA Matter

[75] I am satisfied that the WAA has demonstrated that its rights as a leaseholder of private property will be nullified by the time this matter comes to trial if an interlocutory injunction is not granted. Requiring Peg City to cease commercial operations at the Airport Property unless and until it obtains a commercial licence from the WAA will not make it impossible for Peg City to receive an adequate remedy at trial.

[76] The current state of affairs is one of persistent trespass that is not consistent with private property rights that Canadian law has always regarded as highly valuable and deserving of legal protections. Allowing Peg City to operate a commercial enterprise without a licence would create a wild west of unmanageable commercial activity at the Airport Property that would run contrary to the public interest. Conversely, I do not see how compliance with the existing commercial regulatory regime would place Peg City in a position that would make an adequate remedy at trial impossible.

[77] For all of these reasons I am satisfied that the balance of convenience factor also weighs heavily in favour of the WAA. The interlocutory injunction sought by the WAA should therefore be granted.

Irreparable Harm in the Peg City Matter

[78] Although I have already commented on my views of the absence of irreparable harm to Peg City in these reasons, I will offer a few further comments on this factor with respect to Peg City's claim for injunctive relief. There is no need for me to assess the serious question factor as the WAA has conceded this point.

[79] ***Dang Variety Store v. Pioneer Energy LLP et al.***, 2012 ONSC 5743, establishes that bald assertions or conclusory statements about financial catastrophe cannot satisfy the onus of a moving party to establish irreparable harm:

[19] It is true, as was submitted by the plaintiff, that where the failure to issue an injunction will result in the moving party being forced out of business that may be considered to be irreparable harm (see for example *Struik v. Dixie Lee Food Systems Ltd.* 2006 CarswellOnt 4932 (S.C.)).

[20] Despite the foregoing, it is not sufficient, as was done in this case, for the plaintiff to simply make bald allegations of irreparable harm (see *Milligan v. Byrne* 2011 ONSC 5562 (S.C.)).

[21] In the case at bar, I note that the plaintiff operates a convenience store and a restaurant from the same location. It has not been explained why those parts of its business cannot be relied upon to keep the business operating.

[22] Counsel for the plaintiff also did not dispute that his client could obtain an alternative supplier of fuel. However, he submits that his client would lose the value of a leading supplier like Esso and that his client has no chance of obtaining another major supplier. Therefore, he states that his client would be driven out of business.

[23] The difficulty with this argument is twofold. First, other than a bald statement in his client's affidavit that a new major supplier cannot be obtained there is no other evidence in support of this proposition. Second, there is also no reliable evidence that there would be a significant loss in revenue if his client was supplied by a "no name" supplier or a lesser known supplier. Given that the plaintiff operated the gas bar previously as a "no name" station, one would assume that this evidence would be readily available. In fact, the evidence filed by the defendants suggests that there was no major difference in volume between the sales as a "no name" station and an Esso station.

[80] Apart from the lack of evidence of irreparable harm, Peg City was also unable to explain why it built its entire business model on the successful operation of an unlicensed vehicle-for-hire service at the Airport that would be able to somehow successfully flout the commercial licensing regime established by the WAA. Mr. Brar undoubtedly knew of the licensing requirement for vehicle-for-hire services at the Airport Property as a result of one of his other transport companies being involved in the Hollywood Litigation.

Despite Mr. Brar having this knowledge, there is no credible evidence that Peg City ever made a serious effort to apply for a commercial licence from the WAA.

[81] I also fail to see how or why calculating damages for Peg City would be impossible in this case. Peg City has only been in business since January of this year (2025) and its financial records showing its income and expenses could not be extensive or difficult to analyze.

[82] Apart from a bald assertion by Mr. Brar of financial catastrophe, there is absolutely no evidence favourable to Peg City as far as irreparable harm factor is concerned and it cannot meet its onus on this factor.

Balance of Convenience in the Peg City Matter

[83] Peg City relies on a status quo argument in support of its balance of convenience argument. This argument rings hollow in the circumstances and cannot bear scrutiny.

[84] ***Manos Foods International Inc. v. Coca-Cola Ltd.***, 1997 CanLII 12365 (ON SC), [1997] 74 C.P.R. (3d) 2 (Ont. S.C.J.), notes that the oft cited preservation of the status quo is not a helpful guide to the analysis of the balance of convenience factors:

[49] Preservation of the status quo, was considered by R.J. Sharpe (now Mr. Justice Sharpe), in his text *Injunctions and Specific Performance*, 2nd ed., looseleaf (Supp.) (Aurora: Canada Law Book, 1995), where he states at p. 2-33, ¶2.550:

Preservation of the status quo is frequently used to describe the purpose of an interlocutory injunction although it adds little or nothing to the analysis and in fact, may produce a possible source of confusion. Properly understood, the phrase merely restates the basic premise of granting an interlocutory injunction, namely, that, the plaintiff must demonstrate that, unless an injunction is granted, his or her rights will be nullified or impaired by the time of trial.

Maintaining a status quo that would allow Peg City to continue flouting the rules established by the WAA as a private property holder would create turmoil in the existing commercial regulatory scheme at the Airport Property.

[85] The alleged inconvenience to existing Peg City customers who would no longer be able to access the Airport Property in the absence of an interlocutory injunction restraining the WAA from asserting its rights is an illusion in my view. There are other licensed vehicle-for-hire operators who could meet the transportation needs of Peg City customers.

[86] I would also note that the remedy sought by Peg City is overly broad and completely unmanageable in practical terms. Peg City seeks to restrain the WAA from interfering with its unlicensed commercial vehicles-for-hire services on the so-called public lanes of the Airport Property.

[87] Requiring the WAA not to interfere with an unlicensed commercial operator by way of an interlocutory injunction would result in a completely unmanageable situation on the Airport Property. It would also create fertile ground for future contempt motions as the scope of such an injunction would be less than clear.

[88] Peg City's interlocutory injunction, if granted, could for example prevent the WAA from demanding that Peg City refrain from parking in the public lanes and clearing out from the public lanes after an extended period of time in order to allow for the smooth flow of traffic. The creation of such completely unmanageable circumstances makes it impossible for Peg City to discharge its onus on the balance of convenience factor.

CONCLUSION

[89] I am granting the WAA's motion seeking an interlocutory injunction as follows:

- a) The WAA will be entitled to an interlocutory injunction strictly restraining, enjoining and prohibiting the defendants and each of them or any other person, or organization, employee, agent, representative or otherwise, acting under their direction or control or on their behalf or in association with or in support of them and all other persons having knowledge of the court's order from, directly or indirectly, by any means whatsoever:
 - i. Trespassing at the lands, entering on the lands, or departing from the lands leased by the WAA commonly known as the James Armstrong Richardson International Airport in Winnipeg, or any part of said lands, including, without limitation the road commonly known as Wellington Avenue when such road is on the lands leased by the WAA, being the Airport Property;
 - ii. Conducting any limousine, taxi, bus or any other commercial vehicle service at or on the Airport Property;
- b) The said order excludes a person who enters the Airport Property for purely personal purposes, which personal purposes are not in any way, directly or indirectly, associated with the commercial activities of any of the defendants.

[90] The motion for an interlocutory injunction filed by Peg City is dismissed.

COSTS

[91] The parties can make written submissions as to costs if they cannot agree. The WAA will file briefs as to costs in the WAA Matter and the Peg City Matter as soon as practically possible. The responding briefs of Peg City will be filed in both matters within 21 days of receipt of the WAA briefs as to costs.

Rempel J.