

In the Court of Appeal of Alberta

Citation: Manchester Rose Group Inc v Rutherford Seniors Development Ltd, 2026 ABCA 155

Date: 20260511
Docket: 2503-0181AC
Registry: Edmonton

Between:

Manchester Rose Group Inc.

Respondent

- and -

Rutherford Seniors Development Ltd.

Appellant

The Court:

**The Honourable Justice Kevin Feehan
The Honourable Justice William T. de Wit
The Honourable Justice Tamara Friesen**

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice K.L. Becker Brookes
Dated the 22nd day of August, 2025
Filed on the 23rd day of September, 2025
(2025 ABKB 491, Docket: 2503 11125)

Memorandum of Judgment

The Court:

[1] The Respondent, Manchester Rose Group Inc (Manchester Rose) was successful in obtaining an interim injunction prohibiting Rutherford Seniors Development Ltd (Rutherford) from restricting its access to the property referred to as Harmony: ***Manchester Rose Group Inc v Rutherford Seniors Development Ltd***, 2025 ABKB 491. For the following reasons, Rutherford's appeal of the injunction is denied.

Background

[2] Rutherford owns and operates a senior citizens' development known as Harmony. Harmony is not a licensed supportive living accommodation; it is an apartment complex consisting of 187 rental suites and common amenity areas, and its residents are therefore tenants. Manchester Rose is a licensed home care provider. Manchester Rose had, for several years, provided personal and healthcare services to Harmony's tenants pursuant to a resident services agreement Manchester Rose and Rutherford entered on November 27, 2021 (the Agreement). The Agreement benefitted both parties. Manchester Rose could be physically present in the building and promote and advertise its healthcare services to Rutherford's tenants, and Rutherford could offer onsite healthcare services to current and potential tenants. The Agreement also included a term indicating that Harmony's tenants were not required to use Manchester Rose and could elect to obtain healthcare services from a service provider of their choosing.

[3] Eligible tenants receiving healthcare services from Manchester Rose relied on funding from Alberta's publicly funded homecare program, Client Directed Home Care Invoicing (CDHCI). CDHCI assesses the needs of individuals and determines what services they require. To access CDHCI funding, eligible seniors must select a preferred service provider from the list of providers registered with Alberta Blue Cross. Manchester Rose is registered with CDHCI. The CDHCI service contract is between the eligible senior and the service provider.

[4] Rutherford terminated the Agreement in February 2025, resulting in claims being pursued by both parties against the other. After terminating the Agreement, Rutherford barred Manchester Rose from entering the property, thereby preventing it from providing its services to the residents of Harmony. Around the same time, Rutherford entered into a similar agreement with Harbor of Health Homecare Services Ltd (Harbor). Harbor competes with Manchester Rose in the supply of care services and one individual is a director of both Harbor and Rutherford.

[5] On June 4, 2025, Manchester Rose applied to the Court of King's Bench for an injunction. It argued it needed access to the building to continue to provide homecare services to two of

Harmony's residents. The chambers judge followed the test in *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 at 348-49, 1994 CanLII 117 (SCC) [*RJR-MacDonald*], and granted the injunction, characterizing the relief sought as "prohibitive." She found that while the bulk of harm to Manchester Rose was curable through damages, the loss of client relationships and reputational damage was irreparable. She further found that, among other factors, the residents' right to choose a service provider outweighed Rutherford's asserted property rights. The Court dispensed with the requirement for Manchester Rose to provide an undertaking as to damages because the impact of the injunction on Rutherford was so minimal; Manchester Rose was allowed onto the property, in effect allowing its staff to pass through the common areas, in order to provide healthcare services to two people in their private apartments.

[6] Rutherford says the chambers judge erred by:

- a) mischaracterizing the relief as prohibitive rather than mandatory,
- b) misapplying the test for irreparable harm,
- c) misapplying the balance of convenience,
- d) relying on hearsay or double hearsay evidence, resulting in procedural unfairness,
- e) waiving the undertaking as to damages without compelling justification, and
- f) granting an overly broad injunction that is vague and exceeds the proper scope of interlocutory relief.

[7] We consider the evidentiary issue in the context of our analysis of the other grounds of appeal rather than as a standalone issue.

Standard of Review

[8] Because injunctive relief is discretionary, this Court applies a deferential standard of review on appeal. Appellate courts should not interfere with a decision granting or declining injunctive relief unless there is an error in law or principle, a palpable and overriding error of fact, or the order is unreasonable in the circumstances: *McDonald v Alberta*, 2025 ABCA 175 at para 10; *Alberta Union of Provincial Employees v Alberta*, 2019 ABCA 320 at para 5. Interference is not justified simply because an appellate court would have exercised its discretion differently: *R v Canadian Broadcasting Corporation*, 2018 SCC 5 at para 27 [*CBC*].

Decision

The injunction is prohibitive in nature

[9] Rutherford submits the chambers judge erred by characterizing the injunction as prohibitive instead of mandatory. This distinction is significant because mandatory injunctions engage a higher standard of proof under the first branch of the **RJR-MacDonald** test due to the positive obligation and associated cost they impose on a defendant. To obtain a prohibitive injunction, the applicant must satisfy a three-part test: (1) there is a serious question to be tried; (2) the applicant will suffer irreparable harm in the absence of the injunction; and (3) the balance of convenience weighs in favour of granting the injunction: **CBC** at para 12, citing **RJR-MacDonald**. To obtain a mandatory injunction, the applicant must show a strong *prima facie* case to satisfy the first part of the **RJR-MacDonald** test: **CBC** at paras 12–15.

[10] The question of whether an interlocutory injunction is mandatory or prohibitive is one of substance, not form. If, in the circumstances, the practical effect of the injunction is to require the defendant to do something, it is mandatory. Conversely, if the injunction’s effect is to require the defendant to refrain from doing something, it is prohibitive: **CBC** at para 16.

[11] The chambers judge correctly characterized the injunction against Rutherford as prohibitive, not mandatory, framing Manchester Rose’s goal as “[wanting] Rutherford to refrain from prohibiting or preventing Manchester from providing services to residents.” The resulting Order states:

1. An interlocutory injunction is granted to Manchester Rose prohibiting Rutherford from:

(a) directly or indirectly restricting Manchester Rose’s access to Harmony for the purpose of providing personal and health care services to the residents of Harmony who choose Manchester Rose as their service provider under CDHCI; and

(b) directly or indirectly restricting the residents of Harmony from choosing their own service providers under CDHCI.

2. Rutherford may require Manchester Rose’s employees to sign in to Harmony in accordance with Harmony’s standard rules and regulations for visitors. Residents’ personal or health information shall not be disclosed without their consent.

[12] The Order does not require Rutherford to take positive action; rather, it prevents it from treating Manchester Rose employees any differently than it treats other visitors who attend the apartment complex. A prohibitive injunction does not become mandatory simply because the prohibited party is a private landowner being “required” to allow a commercial entity onto its

premises: see e.g. *Eco-Industrial Business Park Inc v Alberta Diluent Terminal Ltd*, 2014 ABQB 302 at para 29. The injunction is not mandatory because Rutherford does not have to take on any additional expenditures or perform any additional actions in order to comply with the Order. For example, the Order does not require Rutherford to follow the terms of the terminated Agreement or to take any significant extra steps to facilitate Manchester Rose’s presence on the premises. Considering the injunction sought was prohibitive, the applicant only needed to show there was a serious question to be tried. Rutherford has not argued that Manchester Rose did not meet this lower threshold. The chambers judge correctly applied the test from *RJR-MacDonald* in determining that Manchester Rose had illustrated there was a serious issue to be tried.

The chambers judge correctly characterized the nature of the harm

[13] In granting the injunction, the chambers judge characterized the majority of the harms asserted by Manchester Rose as quantifiable and therefore reparable, but she identified the loss of client relationships and reputation to be something not easily compensated by a damages award and therefore irreparable. Rutherford argues that the loss of client relationships is also quantifiable and reparable harm because Manchester Rose only had two clients remaining at Harmony and it is possible to ascertain the lost revenue that would otherwise flow from those clients.

[14] “Irreparable” harm refers to the nature of the harm, not its magnitude. It is harm that is not quantifiable in monetary terms or harm that cannot be cured: *RJR* at 341. Whether loss of market share and damage to customer or client relationships rises to the level of irreparable harm is a discretionary determination based on the evidentiary record: *GG & HH Inc v 2306084 Alberta Ltd*, 2022 ABQB 58 at para 179. Here, the chambers judge was satisfied the services provided by Manchester Rose were dependent on a positive relationship between its employees and clients, and that such a relationship takes time to develop. She found it was the kind of relationship that could be “easily disturbed but not easily established or reestablished.” Rutherford has not identified a palpable and overriding error in the chambers judge’s assessment of the evidentiary record, nor has it demonstrated an error in law or principle with respect to her characterization of the asserted harms.

[15] Rutherford further argues that the chambers judge’s finding of irreparable reputational harm was not supported by the evidence, contrary to the requirement that evidence of irreparable harm be “clear and not speculative”: see *Modry v Alberta Health Services*, 2015 ABCA 265 at para 82. This argument misapprehends the chambers judge’s reasons. She did not conclude that the harms were speculative in nature but rather noted that speculation about why Manchester Rose was no longer providing services to the residents of Harmony was “likely to have a lasting and hard-to-quantify impact on Manchester’s reputation.” Considering the correspondence received by Manchester Rose from or on behalf of their former clients, there was evidence in the record to support the chambers judge’s conclusion on this point.

[16] The appellant has not demonstrated that the chambers judge erred or misapplied the test for irreparable harm warranting appellate intervention.

The chambers judge properly weighed the balance of convenience

[17] Rutherford argues that, when addressing the balance of convenience stage of the test for injunctive relief, the chambers judge's analysis unduly favoured the respondent and ignored its property rights and safety concerns. Rutherford further argues that the chambers judge improperly relied on hearsay evidence.

[18] At the crux of Rutherford's argument is its role as a "residential landlord." This, Rutherford suggests, necessarily means it has the right to control the use of common amenity areas and the visitors to the property, full stop. Of course Rutherford has the right to control its property, but harms that Rutherford may suffer by not being in full control of which visitors may pass through common areas must be balanced against the harms that may be suffered by third parties if those visitors are prevented from doing so: **RJR-MacDonald** at 341. The chambers judge was clearly alive to this concern.

[19] The chambers judge considered the safety and security concerns identified by Rutherford related to Manchester Rose continuing to access the Harmony building. One example given was Manchester Rose employees "smoking in the stairwell." The chambers judge considered the risk of harm to Rutherford arising from the alleged safety and other infractions as part of her analysis when considering the balance of convenience. She found the potential harm to Rutherford of continued access was outweighed by the harm certain vulnerable residents of Harmony would suffer if prevented from receiving assistance from Manchester Rose, the home care services provider of their choice.

[20] Rutherford asserts the chambers judge's reliance on hearsay evidence compounded the alleged errors in her analysis of the balance of convenience. Rutherford says the chambers judge relied "heavily" on emails attached to an affidavit, which were hearsay or, in some cases, double hearsay. It is permissible for parties to rely on hearsay evidence in interlocutory applications: *Alberta Rules of Court*, Alta Reg 124/2010, r 13.18. The weight to be afforded hearsay evidence in interlocutory matters is a matter of judicial discretion that might depend on the judge's consideration of factors such as reliability and availability of the original source: **Graham v Graham**, 2026 ABCA 104 at para 56; **Guillevin International Co v Barry**, 2022 ABCA 144 at paras 55-57. Ultimately, Rutherford asks this Court to step in and reweigh the hearsay evidence that was before the chambers judge, in the absence of any identifiable error of law or principle, and to exercise our discretion differently. That is not the role of this Court: **CBC** at para 27.

[21] The chambers judge was entitled to rely on the hearsay evidence before her, and we do not read her reasons as placing any undue emphasis on it. Manchester Rose understood that some of its clients were upset and confused due to the change in service provider. Manchester Rose based its understanding on information it had received from clients and clients' family members. The chambers judge considered the reasonableness of that understanding in her assessment, relying in part on the correspondence Manchester Rose had received. She then weighed all of the information before her in the balance: the identified irreparable harms to Manchester Rose; the potential harms

to Rutherford if Manchester Rose's employees were still permitted to pass through the public areas; and the potential harm existing Manchester Rose clients would suffer if deprived of the service provider of their choice. She found that the balance of convenience favoured granting the injunction. While Rutherford would have preferred a different result, the weight she assigned the harms asserted by both parties was discretionary and is entitled to deference on appeal.

[22] The appellant has not demonstrated an error in law or principle with respect to the chambers judge's analysis on the balance of convenience.

Manchester Rose to provide an undertaking

[23] Rutherford raises, for the first time on appeal, that Manchester Rose ought to have provided an undertaking as to damages. Rutherford says an undertaking as to damages is the "price" of an injunction and that without it, the injunction should not have been granted.

[24] Neither party addressed this issue before the chambers judge. While Manchester Rose does not concede that an undertaking as to damages was required in this case, they are nevertheless willing to provide one. As such, we do not need to rule on this issue. Manchester Rose will file and serve the required undertaking, by consent, within 10 days of the release of these reasons.

The injunction is not overbroad

[25] Finally, Rutherford asserts that the injunction itself is overbroad. Rutherford argues that an injunction must be limited to what is necessary to preserve the rights of the parties pending trial, but because the order prohibits Rutherford from "directly or indirectly restricting" Manchester Rose's access to Harmony, it is impermissibly vague. The order is clear and the terms of the order do not permit Manchester Rose blanket access to Harmony. The order simply allows Manchester Rose employees access to the property "for the purpose of providing personal and health care services to the residents of Harmony who choose Manchester Rose as their service provider."

[26] Rutherford further argues that it is potentially exposed to contempt proceedings by enforcing standard building policies, like visitor sign-ins and parking rules. We disagree and note that the order itself includes the following provisions:

2. Rutherford may require Manchester Rose's employees to sign in to Harmony in accordance with Harmony's standard rules and regulations for visitors. ...
3. The provision of services to residents by Manchester Rose must adhere to Harmony's established regulations governing use of common amenity areas.

[27] The order is not overbroad in the circumstances. The same rules of access apply to Manchester Rose employees as to any other Harmony visitor. There is no error in principle or law warranting appellate intervention regarding the breadth of the order granted by the chambers judge.

[28] The appeal is dismissed.

Appeal heard on May 4, 2026

Memorandum filed at Edmonton, Alberta
this 11th day of May 2026

Feehan J.A.

de Wit J.A.

Friesen J.A.

Appearances:

H. Jhangri
for the Respondent

A. Mandair
for the Appellant