

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
CBD FRANCHISING INC.)
) M. Polvere and R. Danter, for the
Plaintiff/Moving Party) Plaintiff/Moving Party
)
– and –)
)
2340993 ONTARIO LIMITED,)
1001512437 ONTARIO CORPORATION,)
d.b.a. DREAM SPACES, 1000186957)
ONTARIO INC., CLIFFORD HOLDINGS)
INC., INTEGRITY TRANSPORTATION)
INC., TODD CLIFFORD, DARREN)
CLIFFORD, GEORGE CLIFFORD, AND) D. Hamson and L. Bellisario, for the
SUSAN CLIFFORD) Defendant/Responding Party
)
Defendant/Responding Party)
)
) **HEARD:** September 18, 2026

2026 ONSC 5451 (CanLII)

REASONS ON MOTION

J.R. McCARTHY J.

- [1] The Plaintiff (“CBDFI”) is the owner of the franchise system for Closets by Design (“CBD”). It seeks an injunction restraining the Defendants from engaging in business activities that violate the Defendants’ obligations set out under a franchise agreement (“the agreement”).
- [2] Under the agreement, the relief sought is available to CBDFI in Ontario while it pursues its action for other claims in California.

Background

- [3] The background here is somewhat complex. For the purposes of the motion before the court, suffice to say that the Defendants Todd Clifford (“Todd”) and Darren Clifford (“Darren”) purchased the shares of a predecessor franchisee of CBCFI, 2340993 Ontario

Limited (“234”), in June 2022. Through 234, they began to operate the franchise upon the execution of a consent and assumption agreement (“CAA”) involving, inter alia, the previous owner of 234, Clifford Holdings Inc., Darren, Todd, and the Plaintiff, on or about September 14, 2022.

- [4] Although not all the Defendants in this action were signatories to the CAA, out of convenience, I will refer to them collectively as the “Defendant franchisee”.
- [5] It is not seriously contested that the CAA bound the Defendant franchisee to the agreement which included certain post-termination obligations. Among these were the following:
- a. To turn over immediately all Pending Leads and Pending Orders to CBDFI and to transfer any, some, and/or all deposits, other sums of money, and/or compensation in relation thereto to CBDFI;
 - b. To return all Confidential Information to CBDFI upon termination of the Franchise Agreements, including all customer records, and to delete all copies of any such records;
 - c. Not to engage, directly or indirectly, in any Competitive Business within the Territory covered by the Franchise Agreements, or within 75 miles of the perimeter thereof or of the Territory of any other CBDFI franchisee;
 - d. Not to identify themselves as former franchisees of CBDFI, or to use in any manner or for any purpose the Plaintiff’s Confidential Information, including trade secrets, forms, customer lists or records, or price book information; and
 - e. To turn over possession of the Franchisee Defendants’ business to CBDFI.

I would refer to paragraphs “c” and “d” above as the “non-compete clause”.

- [6] The Defendant franchisee began to operate the franchised business within their allotted territory (Peel Region, York Region, Simcoe County and Dufferin County) in the fall of 2022.
- [7] On April 29, 2026, counsel for the Defendant franchisee alleged that CBDFI had repudiated the agreement and advised the Plaintiff that 234 intended to commence operating a competitive business effective May 1, 2026.
- [8] On May 1, 2026, the Plaintiff sent a letter to the Defendant franchisee stating that the latter’s April 29 allegation constituted a repudiation of the agreement, and that CBDFI was terminating the agreement due to the Defendant franchisee’s multiple breaches. The Plaintiff gave other notices and warnings in line with the termination provisions in the agreement.

- [9] On May 1, 2026, through a new company incorporated and ostensibly controlled by Todd and Darren's parents George and Susan Clifford, a competing business called Dream Spaces began to operate within the territory covered by the agreement.
- [10] There is evidence that suggests that the Defendant franchisee planned the termination and launching of Dream Spaces well before April 29, 2026: Todd's own admission that concrete efforts were made to separate from CBDFI in November 2025; statements made by employees and representatives of the Defendant franchisee and Dream Spaces to investigators; and the incorporation of a company to operate Dream Spaces by Todd's parents, George and Susan Clifford, in February 2026.

The Integrity of Franchising v Restraint of Trade

- [11] This motion reveals the tension that exists between the integrity of the franchising system on the one hand and the reluctance that a court should have to impose restraint of trade, especially when that restraint would not just hamper, but effectively terminate an operating business.

Test for Injunctive Relief

- [12] To succeed on this motion, the Plaintiff must satisfy the 3-pronged test set out in *RJR-Macdonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at 334-35. The prongs are as follows:
- a. a serious issue to be tried or, for some situations, a strong prima facie case;
 - b. irreparable harm; and
 - c. the balance of convenience favouring the granting of the injunction.

I refer to this 3-pronged test as the “*RJR* test”.

- [13] The parties do not agree on whether the Plaintiff in this case must show a strong prima facie case, or merely a serious issue to be tried. The Plaintiffs argue that this is a case where the positive obligations that would apparently arise from the injunction sought are pre-existing and flow from the parties' contract: *TDL Group Ltd. v. 1060284 Ontario Ltd.*, [2001] O.J. No. 3614 at para. 9. The Defendants assert that the strong prima facie case standard applies to restrictive covenants in franchise agreements. However, all but one of the authorities they refer to speak of employment agreements and not franchise agreements. The Defendants also contend that where the injunction would amount to a final determination of the rights between the parties, the strong prima facie case standard applies: *Second Cup Ltd. v. Niranjana*, [2007] O.J. No. 3409 at para. 22.
- [14] I agree with Cavanagh J. that “each case must be considered in the context of its own facts in order to decide whether the moving party needs to show that there is a serious issue to be tried or whether it must show that it has a strong prima facie case”: *Romijay Enterprises Ltd. v 11 Yorkville Partners Inc.*, 2017 ONSC 2388, 138 O.R. (3d) 24 at para. 24. However,

in this case, I find it unnecessary to determine whether the Plaintiff must show a strong prima facie case or a serious issue to be determined. The motion in any case must be dismissed because the remaining prongs of the test cannot be satisfied.

Case Law

- [15] In *MBEC Communications Inc. v. Nagel*, 2007 CarswellOnt 2042 (SCJ), the court granted the franchisor an injunction when it appeared the franchisee was in breach of a negative covenant. At paras. 13-15, Conway J. held that restrictive covenants like non-compete clauses are specifically designed to protect the integrity of the franchise system and are drafted to avoid franchisees from ceasing to operate under the franchise agreement, de-identifying the business and carrying on a competitive business at the same location. Parties cannot escape their post-termination obligations by having new actors carry on a competing business and having proxies solicit their former clients, as the Defendants have done. In that case, the court found it obvious that the Defendants intended to continue with their breaches in violation of the Franchise Agreements.
- [16] I have been referred to the decision of Eberhard J in *Scantron Corp. v Bruce*, (1996), 136 D.L.R. (4th) 64 (Ont. Gen. Div.), where at para. 31 she explained why the balance of convenience will generally favour a plaintiff in a situation where the plaintiff is attempting to enforce a restrictive covenant:

But there is another consideration relevant here. If the governing factor were the balance of convenience, a person who is prima facie in breach of a contractual obligation could place an apparently innocent party at an irretrievable disadvantage by claiming that he, the ostensible wrongdoer, will be the more hurt by an interlocutory injunction wrongly granted. This would be an invitation to persons to sign solemn documents without any intention of honouring them and to seek, by this cynical act, to place the other party at a disadvantage. I know of no law, and have been shown none, that obliges me to blind myself to the equities of the situation before me... While they are no doubt entitled to have the reasonableness of their covenants tested in the Courts, they were not obliged to place their business enterprise in jeopardy for this purpose. They chose to do so. I have no doubt that the balance of convenience lies with the applicants.

- [17] Other courts considering whether to grant injunctive relief in restrictive covenant cases have emphasized that that the irreparable harm must be clear and not speculative: see, for example, *RFSP Equipment v. Singh*, 2022 BCSC 538 at para. 56. There is also authority for the proposition that harm which has already occurred and is not ongoing is not irreparable: see *Liberty Tax Service, Inc. v Pinto*, 2025 ONSC 2429 at para 61. The consensus of the governing authorities is that irreparable harm is that which cannot be

quantified in monetary terms: *Canada (Attorney General) v Oshkosh Defense Canada Inc.*, 2018 FCA 102 at para 24.

- [18] I was referred to no authority where the court, in considering whether to grant an injunction in cases involving restrictive covenants in franchise cases, and regardless of the facts on the ground, did not feel compelled to consider the second and third prongs of the *RJR* test.

Analysis

Serious Issues to be Tried

- [19] There is no doubt that there are serious issues to be tried. These include the alleged repudiation of a franchise agreement, the rights and remedies available to the parties upon termination, the enforceability of a non-compete clause; the temporal parameters of the non-compete clause, whether the non-compete clause is overbroad, the scope and meaning of “competitive business” in the non-compete clause, and of course the calculation of damages. This standard is certainly satisfied.
- [20] I find it unnecessary and even unwise to make a finding that the Plaintiff has a strong prima facie case. Unnecessary because I have concluded that the Plaintiff has failed to establish that it will suffer irreparable harm, or that the balance of convenience weighs in favour of granting the injunctive relief sought. Unwise because findings of fact that would establish a strong prima facie case at this stage might unfairly hamper the trier of fact in a trial or summary judgment setting, as those findings may be presented to the court as subject to *res judicata*.

Irreparable Harm

- [21] The Plaintiff has failed to establish that it will suffer irreparable harm if the injunctive relief is not granted. There is no piece of property or means of production being held by the Defendants which is at risk of being put beyond the reach of the Plaintiff or the court. Similarly, neither Dream Scapes’ occupation of the premises nor its possession of any expertise or materials prevents the Plaintiff, or anybody at its behest, from engaging in the business of marketing and selling space organizers. There is no evidence that customers are presently confusing CBDFI with Dream Spaces. The Plaintiff is free to offer the terminated franchise to a third party; this would include the know-how, trade name, trade secrets, customer lists, contacts and leads, etc., that it furnished to 234. Indeed, the evidence establishes that the Plaintiff has already begun to reintroduce its trade name and its services into the territory once covered by the franchise agreement. There is no restriction on CBDFI advertising its products and services online or via more traditional media: radio, television, billboards, newspapers, fliers.
- [22] There is also no compelling evidence that damages would be unquantifiable. The Plaintiff would be free to call on all manner of data, numbers, projections, sales figures both from its own records and those to be obtained from the Defendants in litigation upon which to calculate its damages. The quantification of damages would be challenging, even daunting, but that does not render the exercise impossible or the numbers incalculable. Damages for

breach of contract quite often include compensation for business disruption, loss of reputation, and damage to goodwill which, while not liquidated, are nonetheless based upon digestible numbers. Indeed, CBDFI utilizes customer management software which contains sales information about all its franchisees' customers and potential customers. Having operated in Ontario since 2008, it has almost 20 years of sales data which it can rely on to quantify its losses.

- [23] Nor are the Defendants all shell corporations. They include the two franchisees personally. There is no evidence that these Defendants are judgment proof or would become so in the future.
- [24] The Defendants have severed their ties with the Plaintiff franchisor such that any confusion in the marketplace or amongst customers should have long dissipated. The evidence suggests that customers are hardly repeat buyers since the products offered by CBDFI (custom-made closet spaces) are intended to be long-lasting or even permanent. Unlike, say, a restaurant selling hamburgers, there is no expectation nor any likelihood that CBDFI will be routinely and continuously deprived of any repeat customers in the future. There is no evidence that the other franchisees of the Plaintiff intend to follow the Defendant's lead. Indeed, they were already invited to do so but declined; by all accounts their franchises appear to be profitable; each individual franchisee is in a unique situation.
- [25] I am unable to conclude that any harm suffered by the Plaintiff by the actions of the franchisee defendants is irreparable, ongoing or incapable of quantification.

Balance of Convenience

- [26] The balance of convenience does not favour the Plaintiffs. I agree that a status quo that arises from a contractual breach should not be viewed favourably by a court. That said, the Dream Spaces business is seemingly prosperous and employs as many as 19 people. It has entered a long-term lease at its present location. While I accept that Todd and Darren are both capable of earning income from other sources, I equally recognize that CBDFI is fully capable of reoffering its franchise, recapturing any lost clientele or contacts, and operating its business wherever it might like, including in the territory covered by the terminated franchise agreement.
- [27] In the case at bar, I am not persuaded that the Plaintiff's business is left in such jeopardy or faces such an "irretrievable disadvantage" owing to any breach of the agreement that it cannot survive and prosper, thereby making an interlocutory injunction the only practicable and just remedy for it to avoid irreparable harm.
- [28] There is also evidence that Dream Spaces sells and installs kitchen cabinets (a quarter of its business), which is a product that the Plaintiff does not offer. Dream Spaces appears to have its own branding and provides services as far away as Alberta, that is, outside of the franchise agreement territory. Most importantly, there is evidence that Dream Spaces does not use confidential information, knowledge, methods, or know-how belonging to CBDFI, but rather employs practices, materials, and methods which are widely used in the carpentry

and cabinetry industries. The Defendants have returned all materials, books, records, manuals, computer databases or software belonging to CBDFI. There is no evidence that Dream Spaces is servicing any former customers of 234, and it appears that any remaining overlap with CBDFI's customer base is minimal to non-existent. It is fair to say that Dream Spaces has disassociated itself from the Plaintiff's enterprise.

- [29] Balance of convenience is a broad enough concept to extend to third party interests as well. The employees of Dream Spaces would see their employment either terminated or severely disrupted by an injunction. George and Susan Clifford might well see their investment in Dream Spaces disappear. The landlord who recently signed a five-year lease with Dream Spaces would be presumptively denied the benefit and security of that lease if the injunction were granted; none of Dream Spaces itself, George or Susan have any contractual relationship with CBDFI. And what of the clients and customers of Dream Spaces who have contracted for the goods and services provided by Dream Spaces? And what about projects that are partially completed? I can fairly take judicial notice that a disruption or suspension of these contracts and projects would greatly impact the innocent third parties who have entered good faith business dealings with Dream Spaces.
- [30] Finally, the Plaintiff has launched an action for its damages in California. I heard no evidence that it cannot prosecute the matter with full vigour and recover appropriate damages under the jurisdiction of that court.

Disposition

- [31] For the reasons set out above, I find that the Plaintiff has not made out two of the components of the three-part conjunctive test which would entitle it to the sought-after injunctive relief.
- [32] The motion is therefore dismissed.
- [33] If the parties are unable to agree on the issue of costs, they shall request an appointment to appear before me through the trial coordinator at Barrie to address that and any other outstanding issues.

J.R. McCARTHY J.

Released: September 25, 2026