

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Harness Racing B.C. Society v.
Orangeville Raceway Limited,*
2025 BCSC 1249

Date: 20250530
Docket: S253761
Registry: Vancouver

Between:

Harness Racing B.C. Society and Margaret White

Plaintiffs

And

Orangeville Raceway Limited and Great Canadian Gaming Corporation

Defendants

Before: The Honourable Justice Marzari

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs:

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J. Virgin
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Place and Date of Hearing:

Vancouver, B.C.
May 28, 2025

Place and Date of Judgment:

Vancouver, B.C.
May 30, 2025

[1] **THE COURT:** The plaintiffs, the Harness Racing B.C. Society (“HRBC”) and one of its members, Mrs. Margaret White, have brought an action against Orangeville Raceway and its parent company Great Canadian Gaming Corporation (together “Orangeville”) for a breach of contract, amongst other things, in response to Orangeville giving notice to HRBC in March requiring its members to vacate the Fraser Downs Racetrack in Surrey, B.C., for the purposes of a rodent abatement program. Originally, members of HRBC were required to vacate their horses and possessions as of May 9, 2025. At the request of HRBC made earlier this month, Orangeville agreed to extend the deadline to vacate to May 30, which is today’s date.

[2] HRBC and Mrs. White then filed this interlocutory injunction application, together with a notice of civil claim, on or about May 20 seeking to enjoin Orangeville from preventing Mrs. White’s and HRBC’s use and occupancy the Fraser Downs Racetrack “for the purposes of training and competing in harness racing,” including the racetrack, barns, training facilities, and equipment (collectively the “Racetrack”), until December 31, 2025, or further order of this Court.

[3] I take it from their submissions, that HRBC is seeking this order not just for itself, but also on behalf of its members, who are the users of the Racetrack, and that they are seeking the order to allow these members to continue to occupy the Racetrack for the purposes not only of training and racing, but also of stabling and storage facilities for individual members and their horses.

[4] Orangeville says that it is required to close the Racetrack to address a rat infestation at Fraser Downs, and specifically in the barns used by HRBC members to stable their horses. The urgency of addressing this problem arose, in part, after HRBC raised this issue with Orangeville’s regulator, the Gaming Policy Enforcement Branch (“GPEB”), which governs the use of the Racetrack for racing (and betting on racing) after the problem had been ongoing for years.

[5] Orangeville argues that it has responsibilities to resolve this rodent issue not only to HRBC, but also other stakeholders. These stakeholders include, it says, (a)

Orangeville’s landlord, the City of Surrey; (b) Orangeville’s regulators, the GPEB, who maintains an office at the Racetrack; (c) the Fraser Health Authority; and (d) WorkSafe B.C. (“WorkSafe”). WorkSafe has reviewed the rodent infestation and identified a risk of hantavirus to workers on site as a result of the rat infestation.

[6] In addition, Orangeville’s parent company, the Great Canadian Gaming Corporation (“GCGC”), avers that it has obligations to other regulatory authorities and partners who are now engaged with the issue of the rat problem, all of whom require GCGC to keep them apprised of their progress in respect of this matter.

[7] WorkSafe has issued a series of recommendations, including that Orangeville continue to work with its existing pest control company and implement that company’s recommendations.

[8] GPEB has threatened that if the rat infestation is not dealt with it may vacate the Racetrack, and not allow its employees to attend at the Racetrack. This would mean that licenced harness racing will not be able to take place at the Racetrack as scheduled this fall, and not until the rat infestation is addressed.

[9] Orangeville has been working with a pest control company who has been engaged with the problem for several years now. Last year around this time, this pest control company recommended barn by barn treatment, and HRBC was asked to consolidate its members’ horses into one barn so treatment of other barns could proceed. HRBC did not do so, and the barn by barn treatment did not proceed. HRBC also declined shorter term removal of the horses for rat abatement last fall.

[10] The evidence establishes that HRBC has been involved in walk throughs and efforts throughout 2024 with the pest control company and Orangeville, including reviewing the application of dry ice to the barns last fall, and Orangeville provided HRBC with disposal bins to assist them to clean up their stall areas and barn areas to remove loose feed, old furniture, etc. to help control the rat population. The pest management company increased its efforts in 2025, and has been treating the Racetrack continuously for several months and has been in attendance most days to

do so. The parties agreed that the measures taken to date have not been successful.

[11] WorkSafe and Orangeville's pest control experts have told Orangeville that loose horse feed, garbage, and old furniture belonging to HRBC members in the barns at the Racetrack are contributing to the rat infestation. The pest control company has recommended that the barns be entirely emptied of these rodent attractants and shelters, and that treatment, including with rodenticides and carbon monoxide proceed for 60-90 days, representing 2 to 3 rat breeding cycles.

[12] More specifically, Orangeville has been advised that it is possible that 60 days will be sufficient, but if not, then another 30-day breeding cycle may also need to be completed. Orangeville has also been told by its pest control company that if the rat problem is not treated all at once, the rats will be able to migrate from barn to barn for food, shelter, and water sources defeating the effectiveness of this plan. Furthermore, Orangeville has been told by this company that it is not safe for members of the public or HRBC members, or horses, to be present on the premises while this treatment is ongoing.

[13] The plaintiffs challenge that this evidence is unqualified hearsay expert opinion evidence, and adduce their own unqualified hearsay expert opinion evidence to say that treatment could be completed in 24 hours and that the carbon monoxide gas treatment could be accomplished without risk to humans or horses present. In reply, the plaintiffs modified their position to say that even if their evidence is not admissible as hearsay evidence, it is admissible as evidence of their efforts to suggest alternative solutions, and evidence that Orangeville has not considered these alternatives.

[14] I find that for the purposes of this interlocutory short leave injunction I cannot rely upon hearsay evidence for the truth of its contents to issue an interlocutory injunction that engages the extraordinary and equitable powers of this Court to make orders before a trial on the merits: *Premium Weatherstripping Inc. v. Ghassemi*, 2016 BCCA 20. I, therefore, cannot rely on the plaintiffs' hearsay evidence of the

effectiveness of alternative pest control measures for the truth of their contents (many of which I note in any event have already been attempted unsuccessfully). I am also concerned about the volume of unqualified opinion evidence that was riddled throughout the affidavits in this case, but nothing will turn on that.

[15] I find that Orangeville, who is not seeking to invoke the powers of this Court to issue an interlocutory injunction, is entitled to rely on the fact that it has received advice and recommendations from its long-term contractors. That evidence is admissible not for the truth of its contents, but to establish that Orangeville has received this advice and these recommendations and that is what it is acting upon. Orangeville is the body responsible to its regulators, including the GPEB, WorkSafe, Surrey, and others, to satisfy them of the safety of the premises, and I find that Orangeville cannot simply ignore this advice, even though the effectiveness of that advice has not been and cannot be proven without expert evidence on this short notice interlocutory injunction application.

[16] I am certainly not in a position, on the unqualified hearsay evidence before me of other companies (companies who have not been on the ground dealing with this rat infestation for several years now), to find that an alternative rodent abatement program would be sufficient to meet Orangeville's health and safety regulatory requirements, or that the proposed treatments are not potentially harmful to human and horse health requiring the vacating of these facilities during treatment.

[17] I also find that the notice given by Orangeville to HRBC, on its face, contemplates a closure of approximately 60-90 days commencing May 9, 2025, and provides that stabling applications would be received again starting July 7, approximately 60 days after the first contemplated closure date.

[18] Although there is no promise in these materials that the Racetrack would reopen on July 7, I disagree with the plaintiffs' submission that these were notices of an indeterminate closure and that the members could not be expected to even be advised of the length of that closure until after 60-90 days had expired. I find that, on their face, the notices anticipate the Racetrack re-opening as early as July 7, 60

days after the first closure, with the possibility that another approximately 30 days might still be required beyond that date. That start date has now been delayed by three weeks at HRBC's request, but I find that the plaintiffs are responsible for any consequences of that delay, and not Orangeville.

[19] I suspect that Orangeville's plans to reopen the Racetrack for the race season in September may now also be delayed by the fact that Orangeville has undertaken, in response to this application, not to move one or two horses that were injured at the Racetrack after Orangeville gave notice to vacate the track, but before they were required to actually vacate. There is some veterinary evidence, albeit hearsay, that one of these horses cannot be moved for another month due to her injuries.

[20] I also find that it is not in Orangeville's interests, financial or otherwise, to close the Racetrack for any longer than necessary to address the rat infestation. It cannot collect fees from HRBC while the facilities are closed, or run its racing and betting operations while the facilities are shut down. I accept the evidence of Orangeville's officer that it had, and still has, no intention of cancelling the Fall racing season as a result of the rodent abatement program, and that it has been and can still be flexible with starting dates for that season if HRBC asks them to be. Indeed, Orangeville cancelled four days in the spring season at HRBC's request already this year, and the parties agree that the season used to start in October. I was taken to no evidence that would establish that Orangeville is motivated by an intention to harm HRBC or its members, or prevent the use of the Racetrack for harness racing.

[21] It is against this background that I must consider whether the plaintiffs' application for a *quia timet* interlocutory injunction should be granted in this case.

Test for a Quia Timet Injunction

[22] In order to obtain an interlocutory injunction, a three-part test has been described by the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, 1994 CanLII 117; and *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5. The *RJR-MacDonald* test sets out the test of having three elements that the applicant must establish in order to obtain an

interlocutory injunction. The first is that there is a serious question to be tried. The second is that the applicant will suffer irreparable harm absent the injunction. And the third is that the balance of convenience favours the granting of the injunction.

[23] In *Canadian Broadcasting Corp.*, the Court set out the history and content of the *RJR-MacDonald* test as follows:

[12] ... At the first stage, the application judge is to undertake a preliminary investigation of the merits to decide whether the applicant demonstrates a “serious question to be tried”, in the sense that the application is neither frivolous nor vexatious. The applicant must then, at the second stage, convince the court that it will suffer irreparable harm if an injunction is refused. Finally, the third stage of the test requires an assessment of the balance of convenience, in order to identify the party which would suffer greater harm from the granting or refusal of the interlocutory injunction, pending a decision on the merits.

[24] Ultimately, injunctions are equitable remedies and the fundamental question in each case is whether the granting of the injunction is just and equitable in all of the circumstances. That was the test stated in *British Columbia (Attorney General) v. Wale* (1986), 9 B.C.L.R. (2d) 333 at 346–347, 1990 CanLII 2335 (C.A.), aff'd [1991] 1 S.C.R. 62. Equitable doctrines, such as laches and clean hands also apply to this analysis.

[25] *Wale* also suggests that the test can be considered in two parts: requiring an applicant to establish that there is a serious issue to be tried, and that the balance of convenience favours the granting of the injunction in light of any irreparable harm established. It has been found that there is no practical effect to the distinction between the two-part test expressed in *Wale* and the *RJR-MacDonald* test; see *Coburn v. Nagra*, 2001 BCCA 607 at para. 7.

[26] Because the plaintiffs apply not only for an interlocutory injunction, but also a *quia timet* (or anticipatory) injunction, additional factors are also at play.

[27] The parties agree that the plaintiffs must show a high probability of an imminent activity that is the source of the harm that the plaintiffs seek to enjoin. The parties phrased this somewhat differently, and, to be fair, the leading case of *XY*,

Inc. v. IND Lifetech, Inc., 2008 BCSC 1215 [XY] also phrases this element in multiple ways between paras. 66–70.

[28] In *526901 B.C. Ltd. v. Dairy Queen Canada Inc.*, 2018 BCSC 1092 Justice Kent summarized the test as follows:

[71] For sure, the law permits a *quia timet* injunction to be granted when wrongful acts have not yet occurred but are imminent or have been threatened. To obtain such an injunction, an applicant must establish not only the three elements of the *RJR McDonald* test but also that there is a high degree of probability the alleged harm will in fact occur:

[29] I prefer Kent J.’s articulation, which emphasizes that due to the *quia timet* nature of the injunction, where no irreparable harm has yet occurred such that harm cannot be directly established, the court must also consider the imminence of such harm, and that there must be a high probability of that harm actually occurring.

[30] As with all interlocutory injunctions, the type of harm the court is concerned with when invoking its inherent jurisdiction before a trial of the merits of the claim is irreparable harm, i.e., harm that cannot be compensated for at a trial, for example, by damages or other remedies. The quantity of harm is generally of less importance in this context than its quality.

[31] As explained in *RJR-MacDonald* at 341:

At this stage the only issue to be decided is whether a refusal to grant relief could so adversely affect the applicant’s own interests that the harm could not be remedied if the eventual decision on the merits does not accord with the result of the interlocutory application.

[32] In *Belron Canada Incorporated v. TCG International Inc.*, 2009 BCSC 596 after referring to *RJR-MacDonald*, the Court stated:

[91] It follows that if the ordinary legal remedy of damages will provide appropriate or adequate compensation and the defendant is able to pay them, the extraordinary step of restraining a defendant’s conduct pending a determination on the merits, is not usually justified.

[33] Ordinarily, the standard to establish irreparable harm is, at least, a sound evidentiary foundation: *Vancouver Aquarium Marine Science Centre v.*

Charbonneau, 2017 BCCA 395 at para. 60. For a *quia timet* injunction, clear evidence is required to establish a highly probable event that will cause imminent harm as a threshold question, because the Court will not invoke this extraordinary remedy for a harm which may not come to pass. A speculative risk of harm will generally not justify the extraordinary remedy of an injunction: *XY* at paras. 66–69; *Gleneagles Concerned Parents Committee Society v. British Columbia Ferry Corp.*, 2001 BCSC 512 at para. 72; and *Conseil Scolaire Francophone de la Colombie-Britannique v. British Columbia (Education)*, 2013 BCSC 1242 at paras. 85–87.

[34] The *quia timet* nature of the injunction is also said, to raise the bar on the “serious question to be tried” element of the test for an interlocutory injunction. Ordinarily, the requirement is only that there is some basis, that is not frivolous or vexatious, to make out this element of the test in an interlocutory context. However, there is considerable authority that something more is required for some types of interlocutory injunctions, including injunctions where the injunctive relief will essentially accomplish the remedy sought in the claim, and in the case of a *quia timet* injunction. In those cases, a strong *prima facie* case will often be required: *526901 B.C. Ltd.* at para. 18.

[35] Broadly, this Court has recognized that the lower threshold of a serious question to be tried for an interlocutory injunction is not always appropriate, and that the strength of the claim is also a factor in considering the balance of convenience. In *Belron Canada Incorporated*, Justice Ballance explains this as follows:

[38] In *Injunctions and Specific Performance*, looseleaf (Aurora, Ont.: Canada Law Book, 2008), the Honourable Mr. Justice Robert J. Sharpe considers the threshold issue at length. He makes a compelling case against the courts slavishly following the lower formulation and, thereby, disregarding the strength of an applicant’s case in every instance. He cites dozens of Canadian authorities where the Courts have either explicitly or subtly elevated the serious question test to the strong *prima facie* case standard.

[39] At s.2.300, Sharpe J.A. writes that it is imperative as a “matter of justice” to consider the strength of an applicant’s case as the predominant factor in certain kinds of cases. In that regard, he identifies actions involving an alleged breach of a covenant in restraint of trade as classic examples of cases where the parties’ rights are disposed of with finality at the interlocutory stage. If granted, the interlocutory injunction basically has the same impact as issuing a permanent injunction without ever having had a trial on the merits,

and hence falls within one of the rare exceptions recognized in *RJR-MacDonald*.

[36] Here, the defendants argue that a strong *prima facie* case is required because this is a *quia timet* injunction, but argue that in the alternative, even on the lower standard advanced by the plaintiffs of a serious question to be tried, the burden has not been met.

[37] In my view, this case does require a higher standard, both because of its *quia timet* nature, and because the relief sought in the injunction is also the primary relief sought in the claim, acknowledging, of course, that the claim also seeks damages.

[38] Ultimately, the strength of the case and the extent of the irreparable harm have to be considered in the balance of convenience, where this Court decides whether it is just to invoke the extraordinary power of a pre-trial remedy on equitable grounds.

[39] There is no dispute between the parties with respect to the application of the balance of convenience test. Both parties cite and rely on *526901 B.C. Ltd.*, in this regard where the Court set out:

[28] The Court in *RJR-MacDonald* noted that the factors to be considered in assessing the "balance of inconvenience" are numerous and will vary in each individual case. It cautioned that it would be unwise to attempt even to list all of the various matters that may need to be taken into consideration, let alone to suggest the relative weight that should be attached to them.

[29] One case frequently referred to in injunction applications, which does list a number of factors that "should" be considered in assessing the balance of convenience, is *Canadian Broadcasting Corp. v. CKPG Television Ltd.* (1992), 64 B.C.L.R. (2nd) 96 at p. 102 (C.A.). The list is:

- the adequacy of damages as a remedy for the applicant if the injunction is not granted and for the respondent if an injunction is granted;
- the likelihood that if damages are finally awarded they will be paid;
- the preservation of contested property;
- other factors affecting whether harm from granting or refusal of the injunction would be irreparable;
- which of the parties has acted to alter the balance of their relationship and so affect the status quo;

- the strength of the applicant's case;
- any factors affecting the public interest; and
- any other factors affecting the balance of justice and convenience.

[40] I turn then to the application of the factors in this case.

Imminent Event Causing Irreparable Harm

[41] I start by saying that to the extent that the plaintiff must prove a particular course of conduct—that Orangeville is likely to close the barns and the Racetrack for 60-90 days as of today's date, May 30, to commence the rodent abatement program it plans, absent a court injunction restraining them from doing so—I am satisfied that burden has been met.

[42] However, in my view, that is not sufficient. The plaintiffs also bear the onus of establishing a clear foundation in the evidence that the closure of the Racetrack for the rodent abatement program will cause them harm, and that that harm is in the nature of irreparable harm, and that that harm is highly probable and imminent such that the harm should be enjoined before actually coming to be.

[43] The plaintiffs frame their claim for irreparable harm in various ways. In their application materials they describe it as “the loss of (or reduced) livelihoods for many HRBC members, including Mrs. White”.

[44] They also plead at paragraph 90 that the irreparable harm that HRBC, “its members,” and Mrs. White will suffer is “largely related to multiple witnesses’ expectations that the Racetrack closure [this summer] will cause the September meets to be delayed.”

[45] Furthermore, they argue and plead that such a delay in the September meet would cause:

- a) Mrs. White to lose earnings because her horses will win fewer purses and be worth less if sold after the season;

- b) Another member may earn less from racing his horses or selling his horses;
- c) Another member is expressing concerns about his livelihood if the Racetrack is closed;
- d) The potential loss of employment for people, including persons with disabilities, that work at the Racetrack during the season if the racing season does not proceed at all this Fall.

[46] In argument, the plaintiffs add that the risk of *delay* of the season to October, or that some of the local horses that train in the barn will not be able to start their races until October, is also a type of irreparable harm that may result from the rat abatement closure this summer, even if the Fall race season does proceed. In argument, they go further to say that the summer closure itself is irreparable harm in the sense that there is no stabling or training facility available during this period.

[47] To the extent that most of this evidence focuses on anticipated financial losses, I note that the amount that some of the affiant members attest to spending on their horses is extraordinary, and these amounts do not seem to be commensurate with their expectation of profit from their horses on the evidence before me. Many members attest to barely breaking even in a good year on their horses. I get the sense from these affidavits that horse racing for many of the members is less a financial endeavour than one of passion.

[48] Many members set out their potential income loss in affidavits with respect to the purses they hoped to or expected to win during the Fall race season, and how they rely on those winnings given the extraordinary funds they invest in their horses, their equipment, their training, etc. They also set out a concern that their horses would be worth less on re-sale if they have not had a chance to race in the Fall season and establish their worth as racehorses as opposed to working horses.

[49] The evidence of members' level of concern is not entirely consistent, with some members of HRBC saying their horses need two months of training on the

track before being raced, and others saying nothing less than 8 months (or even 10 months, in some cases) of continuous daily training will be sufficient for them to allow their horses to be raced. Some of this depends, it appears, on the age of the horse and the nature of the race. The most lucrative race, they say, is the race for 2-3 year old horses in November. Some members of HRBC aver that they have such a horse or horses that they wish to race in the November high stakes race, and that, unless they can find another track to train on (and they are not generally optimistic that they will be able to do that) their horse or horses will not be sufficiently trained to compete in that race or to enter the qualifying races that will occur before November.

[50] The owner of another stabling and training facility in Aldergrove avers that he has the ability to stable and train 15 horses but has only 2 spots currently open for this purpose, and that his ability to accommodate the training of 15 horses is a small percentage overall of the horses that will be needed to be trained to compete in the Fall season.

[51] Mrs. White, the named plaintiff, says that she is 66 years old, and has been involved in the standardbred horse racing industry for over 50 years. She and her husband support themselves with their pensions and their race winnings from her horses. In that respect, she avers that she earns, on average, \$2,000 to \$4,000 per week during the racing season from her horses.

[52] Mrs. White also avers that she spends over \$8,400 per month during the race season to others to assist her with grooming, stall cleaning, shoeing, veterinarian bills, and to the horse drivers who actually race her horses. She also spends over \$2,000 per month throughout the year on feed and hay for her horses. Again, this indicates to me a passion by Mrs. White, but not a terribly lucrative one.

[53] She owns 9 horses, including 2 2-year old horses and 2 3-year old horses, 2 4-year olds, a 5-year old, and 2 yearlings. All but the yearlings are currently stabled at the Racetrack.

[54] Her 2 and 3 year old horses are eligible, I take it, for the higher stakes racing in November, but she requires 8 months of continuous training for these horses to be able to race. Her older horses are more experienced and need only 2 months of training before a season begins to race in that season. For the last several years she has used the Racetrack to train her horses in the summer before the Fall season. She avers that she cannot train them anywhere else, other than the smaller facility in Aldergrove which she does not think is ideal.

[55] She has a stabling agreement with Orangeville that she signed in January of this year listing her horses that are stabled at the Racetrack. She says she has filled out similar stall applications in advance of a race season, but she “understood these documents as mostly used for keeping track of horses during a particular racing season.” For now, she has found a field where she can stable her horses if the Racetrack is closed for the rodent abatement program, but she would not be able to train her horses there.

[56] She is worried that her older horses will not be able to start training until September and will not be able to race until November. Her 2 3-year old horses will not be able to race at all and that she will have to sell them, and for less than she could have got for them if they had raced. This, she says, will be a “permanent setback to her livelihood”.

[57] She also has an injured horse currently at the Racetrack named Billy Buxton, and her veterinarian has said to her that he would check on him and tell her if he could be moved at the end of May. I do not have evidence as to whether there is a medical issue with moving Billy Buxton at this point despite having a second affidavit from Mrs. White sworn on May 27, and I do not know which age group he falls into.

[58] Ms. Scrannage is the vice president of HRBC and has been involved in the industry for over 45 years. She is a horse owner and groomer, but the horses she was employed to groom were owned by a man from Alberta who moved his horses back to Alberta after the closure notice came out for the summer. Ms. Scrannage was not able to continue working as a groomer for his horses and has lost income as

a result. She is also aware of another couple who race and train their standardbred horses but who moved to Alberta after the Racetrack closure was announced.

[59] The president of the HRBC, Mr. McMillan, avers that he has a “number of serious concerns” about the plan to close the Racetrack in May for the rodent abatement program, including that:

- (a) “the September racing season will be under threat” because he considers that not enough horses will be sufficiently trained to race by September with the loss of the track to train on during the summer;
- (b) That not enough 2-3 year old horses will be trained for the “stake races”, which are the “big races” of the season and these horses need 8 months of continuous training;
- (c) He views “the implications for the September racing season” as “potentially an existential threat” to the industry. He refers to the “potential cancellation” of the September racing season as impacting the persons with disabilities who work during that season; and finally
- (d) The closure would be “demoralizing” for the industry.

[60] In argument, the plaintiffs elevate these statements of concern and potentialities to probabilities that establish the imminence of irreparable harm. Acknowledging that financial losses are generally recoverable after a successful action by a plaintiff (here, HRBC and Mrs. White), and are therefore not generally speaking “irreparable,” they note the evidence of Mrs. White and some members of HRBC that this is their “livelihood” and rely on cases where the loss of a livelihood was found to be irreparable harm.

[61] They also rely on cases where societies loss of reputation or loss of members was found to be irreparable harm, citing *Burquitlam Care Society v. Fraser Health Authority*, 2015 BCSC 1343 (a case about the closure of a care facility with occupied beds); *Bruderheim Community Church v. Moravian Church In America (Canadian*

District), 2020 ABCA 393 where the Court of Appeal of Alberta concurred that membership in a church would diminish to non-existence if an injunction was not granted; and another Alberta decision where the Serbian Community Cultural Centre was found to have established reputational harm that supported an injunction.

[62] I find that the evidence before me does not establish that the closure of the barn and track for 60-90 days starting today will cause irreparable harm, or that that harm is currently imminent.

[63] The evidence of a “potential” existential threat to industry is not enough to establish a probability of such a harm.

[64] While the evidence establishes that the members of HRBC have many concerns in this regard, I do not consider that their expressions of concern rise to a level of establishing a probability either that the Fall meet will not occur at all (though I find that the evidence does support that it will likely be delayed and start in October, as it has in previous years) or may have fewer local horses ready to compete. There is a chance that the Fall season might be cancelled altogether and this is a real concern, but it is not established by the evidence to be a high probability, or even a probability.

[65] Nor have the plaintiffs established that their concern of a possibility of cancellation of the Fall season will cause irreparable harm, in the sense that they have only established that this possible event would likely cause reparable financial harm, for example that certain horses may miss their shot at winning in a stakes race and be worth less as a result. The evidence does not establish a likelihood, imminent or not, that the HRBC will cease to exist due to the 60-90 day closure, or that Mrs. White will more likely than not, be unable to continue to breed and train harness racing horses because of this closure.

[66] While members may lose money on the races if the races are cancelled for the season or their horses are not ready to race in them because of a loss of training time, the income earned from horse racing is highly speculative, and to the extent

that any losses are capable of proof, I find that those losses can be recovered at trial once the plaintiffs have established the breaches of rights they claim.

Serious Question to be Tried

[67] With respect to whether the plaintiffs have established a *prima facie* case, I am not satisfied that the pleadings or the evidence before me are capable of supporting the claims asserted.

[68] Four causes of action are plead before me:

1. Breach of duty of good faith in contractual performance;
2. Breach of contract;
3. Unlawful interference with economic interests; and
4. Conversion.

[69] I was not taken to any evidence that would establish that the closure is due to Orangeville intentionally seeking to interfere with the economic interests of HRBC or Mrs. White or HRBC's members, and for the reasons set out above, I think that such a proposition is unlikely to be established. Even on the much lower threshold of a fair question to be tried, the plaintiffs have not satisfied me that they have a viable claim of intentional unlawful interference with economic interests.

[70] The claim in breach of conversion fundamentally rests on establishing the wrongfulness of the closure, and the requirement to vacate of any equipment or horses that are left after May 30, after more than 2 months' notice, would not be converted, but abandoned, unless there was an established right to remain. The claim in conversion therefore depends on the breach of contract claim.

[71] With respect to the breach of contract claim, I find that HRBC has not plead or established in evidence the requisite particulars of an oral or written agreement between themselves and Orangeville, that entitles HRBC or its members to continue to occupy the barn or Racetrack in the summer of 2025.

[72] HRBC relies on an unsigned attachment to a 2022 email setting out Orangeville's proposed rental rates as being an enforceable contract between itself and Orangeville. This is the same email attachment which its president, in 2024, told Orangeville did not cover 2024 or 2025. HRBC objected to making payments on the basis of this proposal in 2024, and its payment record was spotty. On its face, that unsigned attachment does not appear to provide terms for 2025.

[73] Both parties agree that in December 2024, a new lease agreement was provided by Orangeville to HRBC to replace the 2022 email agreement. In response to Orangeville providing this lease, which would have allowed HRBC to continue to use the Racetrack throughout 2025, the president of HRBC wrote to Orangeville in January of 2025 that HRBC would not be signing that lease. He also stated that HRBC did not agree that they needed access to the Racetrack throughout the year, or for anything more than 2 months a year. On the evidence before me, I find that HRBC did not enter into an agreement to occupy the Racetrack on behalf of its members for 2025.

[74] The suggestion that the 2022 email agreement was extended by mutual agreement of the parties by subsequent conduct of Orangeville invoicing HRBC for the same amount of monthly rent, and HRBC paying that rent, is significantly undermined by the fact that HRBC did not, in fact, pay any of that rent for 2025 until they had counsel preparing this injunction application. I accept that earlier this month, counsel for the plaintiffs sent a cheque to counsel for Orangeville in an amount that would cover 5 months of rent on behalf of HRBC. They then, 11 days later, brought this application for breach of the alleged contract seeking to rely on that payment as confirmation of the existence of a contract that HRBC had, up until that point, disavowed.

[75] That is not conduct capable of supporting a mutual intention to continue the 2022 email agreement between HRBC and Orangeville, or the existence of a 2025 lease agreement providing HRBC with unconditional year-round access to the Racetrack in exchange for monthly rental fees.

[76] This is so particularly in light of the HRBC's own written statements denying the continuing effect or existence of these agreements in January 2025 and in the summer of 2024. While Orangeville acknowledges in its own affidavit that it has and does allow HRBC members to stable and train its horses at the Racetrack in exchange for a monthly fee (which was withheld for most of 2025 and not paid beyond May 2025), despite this apparent repudiation by HRBC, I find that the plaintiffs are unable to rely on any implied terms of that asserted agreement in seeking equitable relief from this Court, including that the contract would extend into the summer months of 2025 or that it would not require strict compliance with the stabling contract signed by HRBC's members.

[77] The other contract relied upon by the plaintiffs is Mrs. White's stabling contract. I do not have in evidence any other stabling contracts for any other horses for HRBC members in 2025. The evidence establishes that Mrs. White entered into a stabling agreement with Orangeville to stable a number of her horses in January 2025 on terms that are in evidence. Mrs. White was not required to pay anything to Orangeville for the stabling agreement, but she was required to abide by the terms of the agreement.

[78] I understand that the expectation of HRBC and Orangeville was that Mrs. White and other members would pay dues to HRBC, from which HRBC would pay Orangeville. However, there is no evidence before me that Mrs. White did pay those dues to HRBC, and, as noted, the evidence is that, until May 2025, HRBC did not pay its rental fees to Orangeville for its members' use of the Racetrack.

[79] Putting aside that there is no evidence of any consideration for this agreement paid by Mrs. White, on its face this agreement states that Mrs. White will be required to vacate her horses and any equipment from the stables, on 24 hours' notice by Orangeville. It also contains an entire agreement clause. Mrs. White's subjective evidence that she did not think the many pages of terms to this agreement were meaningful, does not assist her. If she had no contract, then she has no claim in breach of contract. If she is entitled to stable her horses because of

this agreement, then she is bound by the terms of that agreement, short of evidence that indicates a mutually stated agreement that she was not so bound. I do not have that evidence.

[80] The plaintiffs plead that Orangeville breached its duty of good faith of contractual performance by relying on the clause in its contract requiring Mrs. White to vacate on notice. Reliance on a term of a contract by one party is not a breach of a duty of good faith in contractual relations. Neither, I should add, is a failure to provide disclosure of Orangeville's rodent abatement plans, or declining to mediate where there is no agreement in place that disputes will be mediated, which are, as I take it, the primary complaints by the plaintiffs in terms of a lack of good faith. No other terms or implied terms to this alleged contract have been established even on a *prima facie* basis.

[81] HRBC pleads that the stabling contract does not prevent Mrs. White from using the Racetrack. Orangeville disagrees and says that it governs the use of the entirety of the Racetrack by members of the HRBC. However, even if Mrs. White is correct that the stabling agreement does not address her right to use the other parts of the Racetrack, on the evidence before me there is no other contract that would seem to allow her to use those aspects of the Racetrack either.

[82] Overall, I find that the plaintiffs have not made out a *prima facie* case, strong or otherwise, on the merits of their claim in advance of trial.

[83] Even if I were to apply the lower threshold of a fair question to be tried or a serious question to be tried, the plaintiffs would barely meet that test on the materials before me, and there are equitable bars to their reliance on a contract that HRBC has refused to sign, and said is not applicable to the years 2024 or 2025.

[84] In any event, on the balance of convenience test, the weakness of the plaintiffs' claim is a significant factor weighing against the injunction sought.

Balance of Convenience

[85] Favours the plaintiffs in this regard is the *status quo*, in that Mrs. White has her horses in a stable at the Racetrack, and that HRBC members have stabled their horses and trained their horses there in past summer months.

[86] On the other hand, they seem to have done so, at least in 2025, without a signed written agreement allowing them to do so, and without the HRBC paying for this privilege, at least until it was necessary for them to do so to bring this injunction application, and subject to a contract requiring them to vacate the stables on 24 hours' notice.

[87] I also have to weigh the interests of the members of HRBC who would like to continue to house and train their horses at the Racetrack, including Mrs. White, and seek an order to allow them to race their horses in September. There may not be enough trained horses stabled in Surrey in early September for the season to start then, but a delay in the start of the racing season is not irreparable harm. It is compensable in damages to the extent that damages can be proven, and 3 weeks of that delay is now attributable to HRBC's request to delay the start of the rodent abatement program, during which time they brought this application.

[88] Although not concentrating on irreparable harm, I find that these are all financial losses that can be compensated for if proven at trial. I do, nevertheless, consider that the owners and trainers of the younger horses who rely on the Racetrack to train continuously for the higher stake races, leading up to November's big race, may not be able to safely race their horses at all this fall, even if the stables and track are reopened in August, if they cannot find an alternate training facilities, and the 2 spots that were available as of the last week in Aldergrove are occupied by other horses. They may also have to pay more to train their horses than they do at the Racetrack, and they may have a lesser chance of winning purses, or selling their horses at their highest potential value. These are losses that they may seek to prove at trial, if these events come to pass.

[89] Finally, I have to weigh all of the parties' interests in dealing with the rat infestation, and the requirement that Orangeville is obliged to address with its regulator GPEB and others, to address that problem. There have been regular tripartite meetings throughout the spring between GPEB, Orangeville, and HRBC. It appears that HRBC did not attend many of them, but, in any event, all of the parties are aware of the critical nature of the rat problem.

[90] I find that the rat infestation poses a health and safety issue for all users and employees of the Racetrack. It also engages the viability of the future of harness racing at the Racetrack given GPEB's threats not to allow its employees to work at the Racetrack for the Fall season, or at all, if the rat infestation is not dealt with promptly and effectively.

[91] That is a weighty consideration that favours moving ahead with the rat abatement program recommended to Orangeville by its pest management contractor. The sooner this program starts, the more likely the season will be able to proceed on time or, at least, with minimal delays.

[92] Overall, I find that the balance of convenience does not support the plaintiffs' application for the extraordinary remedy they seek which invokes the Court's equitable jurisdiction to enjoin activity before a claim is made out, and before anticipated potential harm has occurred.

[93] The application for a *quia timet* interlocutory injunction is therefore dismissed. I will hear a brief application, should the plaintiffs wish to make an application for a 2-day interim injunction that would allow Mrs. White to do whatever she has to do to remove her remaining horses, if she would like to do that.

[94] CNSL: Madam Justice, in the circumstances we will make an application for a 2-day interlocutory injunction so that Mrs. White has the opportunity to move any remaining horses on the property.

[95] THE COURT: Mr. Virgin, is there an issue with that? I would still expect the abatement to be able to start on Monday if I did that.

[96] CNSL J. VIRGIN: That makes good sense in the circumstances.

[97] THE COURT: All right. So, it is not an interlocutory injunction because I am not applying the *RJR-MacDonald* test. It is an interim injunction, which is simply there to allow for things to happen.

[98] CNSL J. VIRGIN: If I understand your direction correctly, Justice, it is to allow for the removal of any remaining goods to insure that the abatement program can happen on Monday.

[99] THE COURT: Exactly. And it is by consent. So, all of the members of HRBC and Mrs. White have until 4:00 p.m. on Sunday to remove anything that they care about from the barns and to restable their horses. I do not know whether Billy Buxton still has a veterinarian note saying that he has to stay. Short of that, I do not expect Orangeville to accommodate him. There is a veterinarian note that does not amount to expert evidence in front of me, but I think it is appropriate that Orangeville recognize it with respect to Legacy. That note suggested that another month might be required. I think that the note was at the end of April and it said 2 months, though I am not sure. I am going to leave it to Orangeville to do what they say they will do, which is to perform the rat abatement program as best they can in conjunction with following the veterinarian advice that they might receive with respect to Legacy.

[100] That is not going to stop the rat abatement program and that is not going to stop the requirement that everybody else has to remove their horses and all their materials. As I said, I think it is in everybody's best interest to try to make this rat abatement program be successful as quickly as possible; i.e., a 2-breeding cycle as opposed to a 3-breeding cycle abatement program is in everybody's best interests. To the extent that the members can make sure that there are not things that are of potential value still in the barns, so contractors need not wonder whether they can toss them or not, for example, that would probably avoid unnecessary delays in getting this program done.

[101] Those are just some comments, not an order. But I am granting a 2-day stay of the stable closure to 4:00 p.m. on Sunday to allow the members to make whatever arrangements they need to for their horses and for any food, equipment, furniture, possessions that they have in the barns, understanding that anything that is left will be removed and destroyed, with the possible exception of Billy Buxton and Legacy. All right. Thank you.

[102] THE CLERK: Order in chambers. Chambers is adjourned.

“Marzari J.”