

Court of King's Bench of Alberta

Citation: Manchester Rose Group Inc v Rutherford Seniors Development Ltd, 2025 ABKB 491

Date: 20250822
Docket: 2503 11125
Registry: Edmonton

Between:

Manchester Rose Group Inc

Plaintiff

- and -

Rutherford Seniors Development Ltd. and Harbors of Health Home Care Services Ltd

Defendants

**Reasons for Decision
of the
Honourable Justice Kelsey L. Becker Brookes**

I. Application

[1] The Applicant, Manchester Rose Group, Inc. (“Manchester”), seeks an interim injunction or final order prohibiting the Respondent, Rutherford Seniors Development Ltd. (“Rutherford”), from directly or indirectly restricting Manchester’s access to 12020-12024 22nd Avenue SW, Edmonton, Alberta, known as Harmony at Rutherford (“Harmony”), for the purpose of providing personal and health care services to the residents of Harmony.

[2] In addition, Manchester seeks an interim or final order directing that Manchester shall have the right to attend at Harmony for the purposes of providing personal and health care

services to residents of Harmony and an interim or final order that Rutherford cannot restrict the residents of Harmony from choosing their own service providers.

II. Procedural History

[3] On July 30, 2025, Justice Lema adjourned Manchester's application to August 12, 2025, and granted an Interim Without Prejudice Order permitting Manchester to attend at Harmony for the sole purpose of providing existing health care services to existing clients and prohibiting Rutherford from directly or indirectly interfering with Manchester's access to Harmony.

[4] On August 12, 2025, I heard from counsel for Manchester and counsel for Rutherford, and extended Justice Lema's Interim Without Prejudice Order of July 30, 2025, to August 22, 2025, on the same terms.

[5] Manchester relied on the Affidavits of Shani DeShield, filed on July 28, 2025, and on August 11, 2025. Rutherford relied on the Affidavit of John Pray, filed on August 7, 2025.

III. Background

[6] Manchester is an established provider of home care, palliative care and hospice care to seniors in and around the Edmonton area.

[7] Rutherford developed Harmony, which is an apartment complex consisting of 187 rental suites and common amenity areas. Harmony is not a supported living facility but does cater to retirement living for seniors.

[8] Manchester and Rutherford entered into an agreement, dated November 27, 2021 (the "Agreement").

[9] Under the Agreement, Manchester agreed to provide personal and health care services to residents of Harmony on an as needed basis and allowed residents of Harmony to choose which services they specifically required. The Agreement permitted Manchester to advertise and maintain a presence at Harmony for the purpose of providing personal and health care services to residents, including office and storage space, and the use of the common amenity areas.

[10] Rutherford permitted Manchester to promote its services at Harmony and help residents access them. In exchange, Rutherford could offer optional health, wellness, and convenience services to attract current and future residents to Harmony.

[11] Rutherford terminated the Agreement on February 5, 2025, citing breaches of its terms by Manchester.

[12] Manchester commenced an Action against Rutherford in relation to the termination of the Agreement, claiming, among other things, breach of contract and defamation, and restrictions imposed by Rutherford on Manchester accessing Harmony to provide services to residents of Harmony.

[13] A Statement of Claim was filed on June 4, 2025. An Amended Statement of Claim was filed on July 9, 2025. Rutherford filed a Statement of Defence and Counterclaim on July 29, 2025, claiming, among other things, defamation, inducing breach of contract, intentional interference with economic relations and conspiracy.

[14] Rutherford subsequently entered into a similar agreement with Harbor of Health Home Care Services Ltd. (“Harbor”). Harbor was incorporated in April of 2024 and provides similar personal and health care services to Manchester. Harbor and Rutherford share a Director, Kyle Jacober.

IV. CDHCI

[15] Alberta Health Services offers a program called Client Directed Home Care Invoicing (“CDHCI”). CDHCI is a publicly funded home care service delivery model which permits qualified individuals to select their own private home care service providers from a list of approved providers.

[16] To access funding under CDHCI, individuals first need to be assessed by Alberta Health Services (“AHS”) to determine their unmet needs and the number of hours they require for personalized care delivery. Personalized care delivery is based on the unique circumstances of the individual and take into consideration the type of care they require and their personal preferences.

[17] Eligible private home care services consist of personal care, including hygiene, dressing, toileting, mobility support, home exercises, nutrition, and medical assistance. Homemaking tasks such as maintaining living spaces, cleaning, laundry, and sanitation are also included, along with publicly funded respite care.

[18] Once an individual is assessed and a care plan is in place, the individual and the case manager determine the most appropriate service option. Under CDHCI, an individual can choose a private care provider that is registered and contracted with Alberta Blue Cross as the approved provider to deliver the services that meet their specific requirements.

[19] Individuals contract directly with their chosen private care provider. Billing is processed directly through Alberta Blue Cross. Individuals requiring services outside of the hours approved by AHS are required to pay for those additional services personally.

[20] CDHCI is not approved for home settings owned by the care provider agency or in licensed facilities. It is only used in the homes of the individual and is intended to enable seniors to age in place.

[21] In a February 26, 2025, email to Manchester, Minister Nixon stated that CDHCI allows eligible individuals to select their private care provider:

- a. “CDHCI model of home and community care is intended to enable client choice.”
- b. “Eligible Albertans who are authorized by Alberta Health Services (AHS) to utilize CDHCI should not be restricted in which provider they choose. The only exception to this policy would be if AHS has contracted with a provider to deliver home and community care services for a licensed supportive living accommodation. In this case, residents may not be eligible for CDHCI as their home and community care needs are supported through this contract.”

- c. “Harmony at Rutherford is not currently a licensed supportive living accommodation but rather a landlord offering optional services to tenants.”

[22] The *Continuing Care Act* and regulations govern the operation of CDHCI.

V. Recent Events

[23] Manchester alleges that Rutherford has attempted to restrict Manchester from providing any services to residents of Harmony. Specifically, it alleges Rutherford has:

- (a) Deactivated key fobs purchased by Manchester for the purpose of providing care to residents;
- (b) Advised residents that effective July 31, 2025, Manchester would be restricted from entering Harmony to provide services and residents receiving services from Manchester ought to make alternate arrangements;
- (c) Reminded residents that Manchester would no longer be permitted in Harmony for the purpose of providing services to residents, effective July 31, 2025;
- (d) Held meetings with residents that remain clients of Manchester advising them that they must cancel their contracts with Manchester; and
- (e) Upon termination of the Agreement, required Manchester employees to sign in and advise who they were visiting.

[24] Rutherford’s position since the termination of the Agreement has not been entirely consistent with respect to Manchester providing services to residents.

[25] Specifically, sometime prior to April of 2025, John Pray, acting on behalf of Rutherford, advised the wife of a resident that residents of Harmony have a right to choose their care provider: “Harmony residents will always have choice in their preferred care provider and that will not change. We respect your appreciation of the care you receive from Manchester Rose and you will not have to change that.” This was before the Statement of Claim was filed.

VI. Evidentiary Issue

[26] In argument, counsel for Rutherford raised concerns about Manchester relying on hearsay evidence, specifically with respect to the emails attached as Exhibit “E” to the Affidavit of Shani DeShield, filed on July 28, 2025.

[27] Manchester’s affidavits rely on both personal knowledge and information and belief. *Rule 13.18* of the *Alberta Rules of Court*, Alta Reg 124/2010, permits this Court to rely on hearsay evidence on an interlocutory injunction application, provided it is accompanied by the source and the grounds for belief are given. In instances where Manchester relies on hearsay without identifying the source of the information, it may diminish the weight placed on the evidence.

VII. Analysis

a) Legal Test for an Interlocutory Injunction

[28] An injunction is an equitable remedy within the inherent jurisdiction of this Court. The test for an interlocutory injunction is the three-part test laid out by the Supreme Court of Canada in *RJR-MacDonald Inc v Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 SCR 311 at 348-49 [*RJR*], as confirmed in *AC and JF v Alberta*, 2021 ABCA 24, leave to appeal to SCC refused, 2021 CanLII 54465 [*AC*]:

- (a) Is there a serious issue to be tried?
- (b) Will there be irreparable harm if the injunction is not granted?
- (c) Does the balance of convenience favour granting the injunction?

[29] To be successful, the Plaintiff must satisfy all three parts of the test.

b) Is there a serious question to be tried?

[30] At this stage of the inquiry, a detailed review of the merits is unnecessary. The application should proceed to the next stages if it is not vexatious or frivolous, even if the Plaintiffs may not succeed at trial: *Bruneau v Quinn*, 2023 ABKB 719 at para 19, *RJR* at 337-38.

[31] Limited exceptions to the “serious issue to be tried” threshold have developed, where the strength of the case is subject to greater scrutiny. For example, the more onerous “strong *prima facie* case” standard may apply where the injunction sought is mandatory rather than prohibitive: *AC* at 26, *JF v Alberta*, 2021 ABCA 24 at para 26, *RJR* at pp 338-339, *R v Canadian Broadcasting Corp.*, 2018 SCC 5 (CanLII), [2018] 1 SCR 196 at paras 15-18 [*CBC*].

[32] In *2145448 Alberta Ltd v Beverage Container Management Board*, 2024 ABKB 113, Justice Friesen (as she then was) addressed the difference between mandatory and prohibitive injunctions as follows:

[34] Distinguishing between mandatory and prohibitive injunctions requires the Court to “look past the form and the language in which the order sought is framed, in order to identify the substance of what is being sought”: *CBC* at para 16; see also *Chehade v Crossroads Capital Corporation*, 2019 ABCA 48. Put more simply: “[a] mandatory injunction requires the respondent to do something rather than refrain from doing something”: *CBC* at para 16; *Cleanit Greenit Composting System Inc v Director (Alberta Environment and Parks)*, 2022 ABQB 582 at para 35 [*Cleanit*].

[33] In this case, Manchester is seeking an Order directing that Manchester shall have the right to attend at Harmony for the purposes of providing personal and health care services to residents and an order that Rutherford cannot restrict the residents of Harmony from choosing their own service providers.

[34] Counsel for Manchester raised additional, potential relief in oral argument, i.e., that Rutherford be required to advise residents that they are entitled to obtain services from Manchester. However, that position was not strenuously argued by counsel and is not relief included in Manchester’s application. Therefore, I am not considering that relief.

[35] In my view, the substance of the relief Manchester is seeking is a prohibitive injunction.

[36] Manchester wants Rutherford to refrain from prohibiting or preventing Manchester from providing services to residents of Harmony at Harmony. The relief sought can, arguably, be alternatively stated as Rutherford “allowing” Manchester to provide services to residents of Harmony at Harmony (a positive action).

[37] However, the situation prior to Rutherford’s impugned actions provides important context. Manchester has provided services to Harmony residents from 2021, and there are two residents still receiving services from Manchester. Manchester has been accessing Harmony for the purpose of providing services to residents for four years. At one point, Manchester had service contracts with approximately 25% of Harmony’s residents.

[38] The situation Manchester seeks to address is Rutherford preventing Manchester from entering the property to provide services. The “positive action” is Rutherford preventing Manchester from entering the property, which Manchester wants Rutherford to discontinue. In my view, the relief sought by Manchester is properly characterized as Rutherford refraining from doing something. Therefore, the standard that applies is whether there is a serious issue to be tried.

[39] I am satisfied Manchester’s application is neither vexatious nor frivolous. Essentially, Manchester’s argument is that Rutherford is interfering with seniors receiving personal and health care services from the provider of their choice. The evidentiary record raises issues with respect to the operation of CDHCI in a seniors’ apartment housing complex that will need to be resolved at trial, including the right of providers to provide services, the right of individuals receiving those services to engage directly with service providers and the right of the complex to control which service providers are entitled to provide services in their complex.

[40] Publicly funded personal and health care services, and access to those services is unquestionably a serious issue.

c) Will there be irreparable harm if the injunction is not granted?

[41] The assessment of irreparable harm was recently addressed by Justice Kuntz in *Egale Canada v Alberta*, 2025 ABKB 394, as follows:

[123] When considering irreparable harm, the question is “whether a refusal to grant relief could so adversely affect the applicants’ 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”: *RJR* at 341. “Irreparable” refers to the nature of the harm, and not its magnitude: *RJR* at 341. It is “harm which either cannot be quantified in monetary terms or which cannot be cured..”: *RJR* at 341.

[124] The burden is on the applicants to provide evidence of irreparable harm that is “clear and not speculative”: *Modry v Alberta Health Services*, 2015 ABCA 265 at para 82. The focus is on the harm suffered by the applicants; alleged harm to the respondent or to the public interest are weighed in the balance of convenience: *RJR* at 341.

[42] Therefore, at this stage, the key question is whether denying relief would irreparably harm Manchester’s interests if the final decision differs from the interlocutory outcome: *Bruneau v Quinn*, 2023 ABKB 719 at para 22 [*Bruneau*], *RJR* at 341.

[43] Irreparable harm must be assessed from the standpoint of Manchester. The alleged harm to residents of Harmony is considered under the balance of convenience stage, and not for the purposes of assessing whether Manchester has satisfied the irreparable harm requirement.

[44] Manchester argues that if the injunction is not granted, it will suffer irreparable harm because it will lose service contracts and clients that it will be unable to recover. Manchester argues Rutherford's actions have interfered with Manchester's contractual relationships with residents of Harmony. As a consequence, Manchester will be unable to continue to provide services to residents of Harmony with whom their employees have developed personal and professional relationships. Manchester has had all but two clients at Harmony terminate their services contracts and has been required to lay off staff due to the loss of clients.

[45] The bulk of the harm that would be suffered by Manchester is not irreparable harm because the loss is economic in nature and could be remedied in the final decision on the merits. Lost contracts and lost income are both examples of typical economic losses which are not considered irreparable.

[46] However, the way potential harm is characterized can be significant. I remind myself that irreparable refers to the nature of the harm, not its magnitude.

[47] Courts have recognized that loss of market share and damage to customer relationships and goodwill may constitute forms of irreparable harm: *GG & HH Inc v 2306084 Alberta Ltd*, 2022 ABQB 58 at para 179. The loss of clients or patients can pose unique challenges for businesses and professionals, as financial compensation may not fully address such losses. Quantifying the economic impact when these relationships are lost is often difficult.

[48] While the bulk of the harm that will be suffered by Manchester if an injunction is not granted is not irreparable harm, I find the loss of client relationships (which, in this case, are akin to patient relationships given the type of services provided) is not necessarily something that can be compensated by way of a damages award. The services provided by Manchester are very much dependent on the positive relationship and level of comfort that exists between the service provider and the client. This relationship can take time to develop and the impact of an interruption in that relationship is difficult to quantify in monetary terms.

[49] In addition, a relationship with a personal and health care service provider is one which is easily disturbed but not easily established or reestablished. Clients who moved to another service provider from Manchester are unlikely to return to Manchester because changing providers and reestablishing relationships would be disruptive for anyone, but especially seniors and those who are ill.

[50] Rutherford did not explain to residents why Manchester's access to Harmony residents was restricted, which could lead to damaging speculation about Manchester's reputation. Rutherford's communication to Harmony residents regarding Manchester's service removal is likely to have a lasting and hard-to-quantify impact on Manchester's reputation.

d) Does the balance of convenience favour granting the injunction?

[51] Numerous factors can influence the balancing process a Court undertakes at this stage, and these considerations are necessarily specific to the facts of each individual case: *Bruneau* at para 32, *RJR* at 342. Among the factors to be weighed in the balance are the nature of the relief sought, the nature of the harm which the parties contend they will suffer, and where the public interest lies: *RJR* at p 350.

[52] In this case, the balance of convenience requires assessing the need of Manchester and the residents of Harmony to be protected from harm against the harm Rutherford may suffer if it is prevented from exercising its legal rights if the trial ultimately was resolved in Rutherford's favour.

[53] Manchester argues that it does not require an agreement with Rutherford to attend at Harmony for the purpose of providing personal and health care services to residents under CDHCI. It was conceded by Rutherford that Harmony is not a supportive living facility and is not licensed to provide personal and health care services to its residents. Manchester characterizes Rutherford as a residential landlord.

[54] I heard no evidence from Rutherford that Harmony has a contractual or other right to monitor, control or restrict visitors to the residents' individual apartments. Arguably, this would extend to monitoring, controlling or restricting personal and health care service providers from visiting residents in their apartments for the purpose of providing those services. Conversely, Rutherford presumably does have the right to control the use of its common amenity areas by residents and visitors.

[55] According to Minister Nixon's email from February 26, 2025, the CDHCI program allows individuals to choose a private personal health care provider who is registered with Alberta Blue Cross and approved to deliver services tailored to their needs. The service agreement is between the service provider and the individual.

[56] In this context, what consequences could befall Manchester and the residents of Harmony if an interlocutory injunction is not granted?

[57] If an interlocutory injunction is not granted, Manchester will be unable to continue to provide services to residents of Harmony with whom their employees have developed personal and professional relationships. Manchester will also be unable to provide services to new clients, who would like to choose Manchester from the list of approved service providers. Manchester will suffer loss of profits and loss of market share. Manchester's reputation may be irreparably impacted.

[58] Perhaps more affectively, residents will be deprived of the opportunity to receive personal and health care services from the provider of their choice, from a company and employees whom they trust and are comfortable with. For existing, or past, clients of Manchester, this means finding and selecting a new provider, explaining their personal and health care service needs and preferences and developing a relationship with the new provider and their employees.

[59] The emails attached as Exhibit "E" to the Affidavit of Shani DeShield, filed on July 28, 2025, demonstrate the concerns that residents and their caregivers experienced when advised by Rutherford that they must stop using Manchester. They write of having their choice taken away, the inconvenience to residents and caregivers of having to change providers and feelings of sadness and sorrow in ending their contract with Manchester. Residents and their families clearly felt they were put in the middle of the dispute between Rutherford and Manchester.

[60] Only two residents of Harmony are continuing to receive services from Manchester, and both require significant care due to severe disability. Both individuals require Manchester employees to have a key fob to enter their apartment units as they cannot safely open their door on their own. These are not services that can be delivered off-site; the services are required to be

provided in the residents' apartments. Preventing Manchester employees from using a key fob to enter these residents' apartments for the purpose of providing services to these residents effectively prevents Manchester from providing the services at all, which in turn deprives the residents of the care they require.

[61] Injunctive relief would protect these individuals from the disruption and stress, and any impact on their care, which may result from changing service providers. For past or potential clients of Manchester, injunctive relief would preserve their right to choose their health care provider.

[62] On the other side of the equation, what harm could befall Rutherford if injunctive relief is granted?

[63] Rutherford argues that if Manchester is granted interim access to Harmony, it would materially interfere with their current service arrangements with Harbor and Bayshore Health, Harmony's right to contract freely, the clarity of resident care plans, the operational structure and liability framework of the facility, resident expectations, insurance premiums, and building security and workplace safety.

[64] I will address each of these points in turn.

[65] Harmony currently has multiple providers delivering the same types of care formerly offered by Manchester, including Harbor and Bayshore Health. Manchester is not seeking any of the privileges it enjoyed under the Agreement. It simply wants to be permitted to provide personal and health care services under CDHCI to residents of Harmony. If individuals can choose their service provider from an approved list, I fail to see how any one service provider providing care to residents of Harmony would interfere with another.

[66] Harmony can make agreements like the Agreement with other approved service providers. But under CDHCI, service agreements are between the service provider and the approved individual. Allowing Manchester to access Harmony to offer services to residents who have signed a service agreement does not affect Harmony's contracting rights.

[67] Harmony does not need access to resident care plans. As stated, CDHCI service agreements are directly between the approved individual and the provider.

[68] I heard no evidence that allowing Manchester to access Harmony for the purpose of providing personal and health care services under CDHCI to residents of Harmony would impact the operational structure and liability framework of the facility or insurance premiums. Manchester was, until quite recently, providing these services at Harmony and Harbor and Bayshore Health continue to provide these services.

[69] Regarding resident expectations, one purpose of the Agreement was for Rutherford to be able to offer residents the option of purchasing a variety of personal and health care services from Manchester to encourage seniors to choose Harmony as their place of residence. In my view, client expectations align with Manchester providing personal and health care services to residents of Harmony, not the other way around.

[70] If Rutherford is worried about its reputation due to alleged issues with Manchester, I do not agree that Manchester's on-site services necessarily reflect on Rutherford. Rutherford has named Harbor as its preferred provider, and the existence of multiple approved providers at Harmony makes clear that Rutherford is separate from the service providers.

[71] With respect to building security and workplace safety, Rutherford alleges Manchester employees have refused to return key fobs and have taken them off-site overnight and have used fire exits to hold meetings and take breaks. Certainly, this creates a safety and security concern for both apartment units and common amenity areas. Rutherford also raised concerns with respect to the use of the common amenity areas. While these concerns must be given adequate weight in the balancing, balancing also requires considering whether the injunctive relief sought can be adapted to minimize the harm to the defendant.

[72] Although building security and workplace safety are concerns, I am not convinced that Rutherford will face measurable harm if Manchester continues to provide personal and health care services to Harmony residents through CDHCI.

[73] In summary, if injunctive relief is denied, Manchester will lose profits and market share and may suffer reputational harm. Harmony residents seeking Manchester's services will lose provider choice and face disruption in their care and the stress associated with that. The relationship between Manchester and its clients will be affected. Granting injunctive relief poses minimal impact to Rutherford, although building security and workplace safety should be addressed.

[74] Therefore, I find the balance of convenience favours granting injunctive relief.

VIII. Undertaking as to Damages

[75] Neither party raised the requirement for an undertaking as to damages.

[76] A party requesting an injunction is required to provide an undertaking to indemnify the opposing party for any potential damages. This is an equitable requirement associated with seeking injunctive relief and forms part of the balance of convenience: *Alberta v Lac La Biche (Town)*, 1993 ABCA 104 at para 26 [*Alberta*], *Bureau* at para 45.

[77] The balance of convenience test weighs whether the plaintiff, denied an interlocutory injunction, or the defendant, wrongly subjected to one, would suffer greater harm. A plaintiff will generally provide an undertaking as to damages to limit risk to the defendant. The failure to do so may shift the balance against the plaintiff: *Alberta* at para 26. Because an undertaking as to damages is an integral part of the balance of convenience, both the need and the amount is discretionary: *Pendosi Holdings Ltd. v The Forzani Group Ltd.*, 2011 ABCA 171 at para 24.

[78] Having concluded that granting injunctive relief poses minimal impact to Rutherford, I find that an undertaking to indemnify Rutherford for any potential damages is unwarranted in this case.

IX. Conclusion

[79] For the foregoing reasons, the application is granted.

[80] There is a serious issue to be tried, irreparable harm to Manchester is a realistic outcome if injunctive relief is not granted and the balance of convenience overwhelmingly favours Manchester and the residents of Harmony.

[81] An interlocutory injunction is granted to Manchester prohibiting Rutherford from:

- (a) directly or indirectly restricting Manchester's access to Harmony for the purpose of providing personal and health care services to the residents of Harmony; and
- (b) directly or indirectly restricting the residents of Harmony from choosing their own service providers under CDHCI.

[82] Rutherford may require Manchester employees to sign in to Harmony in accordance with Harmony's standard rules and regulations for visitors. However, residents' personal or health information shall not be disclosed without their consent. Provision of services to residents by Manchester must adhere to Harmony's established regulations governing use of common amenity areas.

Heard on the 12th day of August, 2025.

Dated at the City of Edmonton, Alberta this 22nd day of August, 2025.

Kelsey L. Becker Brookes
J.C.K.B.A.

Appearances:

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