

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Naghmeh v. 1530378 B.C. Ltd.*,  
2025 BCSC 1673

Date: 20250828  
Docket: S255607  
Registry: Vancouver

Between:

**Ramezan Naghmeh and Leyla Mehmandoost**

Plaintiffs

And

**1530378 B.C. Ltd.**

Defendant

Before: The Honourable Madam Justice Tucker

## **Reasons for Judgment**

Counsel for the Plaintiffs: G.F. Gregory

Counsel for the Defendant: D.H. Griffith

Place and Date of Hearing: New Westminster, B.C.  
August 14, 2025

Written Submissions of the Plaintiffs August 20, 2025

Written Submissions of the Defendant August 21, 2025

Place and Date of Judgment: Vancouver, B.C.  
August 28, 2025

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**I. Introduction**

[1] This is an application for injunctive relief.

[2] The plaintiffs have three leases (“Leases”) with the defendant with respect to three units on a property (“Property”). There is a multi-unit commercial centre on the Property, comprising of some buildings, parking areas and green spaces. The parking areas and green spaces are common areas under the Leases.

[3] The plaintiffs operate Marina Bay Academy Educational Childcare (“Marina Bay”). The Leases were made on April 7, 2021 (“First Lease”), July 28, 2023 (“Second Lease”) and March 28, 2024 (“Third Lease”).

[4] Marina Bay opened under the First Lease, and then expanded under the Second Lease. At present, Marina Bay is operating in the units covered by the First and Second Leases. The Third Lease, which applies to Unit 4 at the Property, is at the centre of the present dispute between the parties and this injunction application.

[5] The plaintiffs assert that the District of West Vancouver (“West Vancouver”) has refused to grant applications they made as part of their plan to expand Marina Bay into Unit 4 and use Unit 4 for daycare services. The plaintiffs say that West Vancouver has advised that it will not grant their applications while the Property is non-compliant with zoning bylaws requiring off-street parking at the Property.

[6] On July 25, 2025, the plaintiffs filed a notice of civil claim against the defendant alleging breach of contract. The notice of civil claim also pleads promissory estoppel and unjust enrichment. Neither of the latter causes of action is relied upon in the application for injunction. Neither the notice of application nor the plaintiffs’ written submission at the hearing refer to promissory estoppel or unjust enrichment.

[7] The contract claims in the notice of civil claim are twofold. The plaintiffs assert that it is an implied term of the Third Lease that the Property will have parking that

complies with applicable bylaws, and that the defendant is in breach of that implied term.

[8] The notice of claim also asserts that the plaintiffs and the previous owner (“Original Landlord”) made an oral agreement (“Agreement”) allowing the plaintiffs to reconfigure the common areas to create 20 parking stalls on the Property, and that the defendant is bound by the Agreement and has breached it by prohibiting the plaintiffs from painting lines to create additional stalls in certain areas. The notice of claim alleges that the effect of the Agreement was to vary the Leases.

[9] Part 1 of the notice of application seeks the following orders:

An injunction requiring [the Defendant] to provide all reasonable cooperation to Marina Bay Daycare in meeting the licensing requirement of the City of West Vancouver;

An order enjoining [the Defendant] and anyone acting on its behalf from interfering with Marina Bay’s efforts to meet meeting the licensing requirement of the City of West Vancouver, including and not to limit the generality of the foregoing, painting lines on the parking lot.

[10] At the hearing, the plaintiffs abandoned the order regarding cooperation. The plaintiffs also narrowed the scope of the second order to specifically focus on the creation of parking stalls to meet the licensing requirement.

[11] As I understand it, the order sought as amended would read as follows:

An order enjoining the Defendant and anyone acting on its behalf from interfering with Marina Bay’s efforts to meet meeting the licensing requirements of the District of West Vancouver by painting lines [for parking stalls] on the parking lot (“Painting Order”).

**II. Background and Evidence**

[12] Ownership seems to have transferred from the Original Landlord to the defendant in early 2025. A notice of change in property management companies was sent to the plaintiffs for May 1, 2025.

**A. Lease Terms**

[13] The terms of the Leases are largely identical. I will make specific reference to the Third Lease.

[14] The Third Lease expressly authorizes use of Unit 4 for the purposes of a daycare.

[15] Section 7 of the Third Lease addresses common areas and facilities. Under s. 7.1, the plaintiffs have a non-exclusive licence to use the common areas, subject to the exclusive management and control of same by the Landlord. Under s. 7.2, the Landlord has the exclusive right to manage and control the centre, including the use and maintenance of the common areas.

[16] Under s. 7.3, Marina Bay has the use of two specified parking stalls for the term of the Third Lease and “any of the parking stalls located on the Land situated in the parking lot, will be available on a first come first serve basis”.

[17] Section 23.8 is entitled “No Modification” and reads:

No representation, understanding or agreement has been made or relied upon except as expressly set out in the Lease. This Lease may only be modified in writing signed by each party against whom the modification is enforceable.

[18] Section 23.11 is an “Entire Agreement” clause and reads:

This Lease contains all the representations, warranties, covenants, agreements, conditions, and understandings between the Landlord and the Tenant concerning the Premises of the subject matter of this lease.

**B. Evidence on the Application**

[19] Ms. Mehmandoost attests that Marina Bay applied to West Vancouver for “a *license to operate on a daycare* out of Unit 4” (emphasis added), and that West Vancouver refused to give them “a *daycare license*” (emphasis added) until the Property had 20 parking stalls. She attests that she then raised the parking issue with the Original Landlord’s property manager, Summer Wang.

[20] Ms. Mehmandoost's affidavit attaches an email sent by a West Vancouver Assistant Planner, Megan Roberts, to the plaintiffs (among others) on October 18, 2024. Ms. Robert's email was sent in response to an email from the plaintiffs' consultant seeking an update on *development permit* and *building permit* applications submitted in August. No details are provided about these permit applications. The permit applications in question are not attached to the emails exhibited nor otherwise made exhibits to Ms. Mehmandoost's affidavit.

[21] In her October 18, 2024, email, Ms. Roberts notes the existence of non-compliance issues that need to be addressed at the Property, including parking:

... One of the issues is vehicle parking for the site. The site is required to have 20 parking stalls, as per Zoning Bylaw Section 633.07, and they must be clearly delineated, as per Zoning Bylaw Section 142.05. This is required to be addressed before staff can issue the DPE and building permit applications for the childcare facility.

Staff are continuing to review and process the applications, however, until the parking issue is rectified for the overall site, the permits cannot be issue as the parcel remains non-compliant with the Zoning Bylaw.

[22] The zoning bylaw referenced by Ms. Roberts is No. 4662, 2010 District of West Vancouver, 633.07 ("Zoning Bylaw"). It reads:

633.07 Off-Street Parking

(1) One parking space minimum for every 32.5 square metres of building area, including residential and commercial space

(2) 30% minimum of the off-street parking spaces shall be kept accessible and available as unreserved visitor parking for the building(s) as a whole during normal business hours

[23] Ms. Mehmandoost's affidavit attaches an email from Marina Bay to Ms. Wang dated October 28, 2024. The email asks Ms. Wang "to check" the attached file. There is an attachment to the email entitled "Site Plan – Parking Study" ("Study"). The Study is an architectural drawing. Ms. Mehmandoost does not describe or explain the Study in the body of her affidavit. While notes on the Study refer to an existing parking "layout adjusted" and an "additional parking spot", on review of the Study I am unable to identify 20 parking stalls. The Study identifies a "proposed site

for daycare extension” (presumably referencing Unit 4), and shows a proposed playground area at the back of the Property.

[24] In November 2024, Marina Bay and Ms. Wang exchanged emails relating to Marina Bay seeking the Original Landlord’s signature for an application for a permit to remove a tree from the Property. The emails indicate that the tree removal in question pertained to creation of the proposed playground area out back. On November 29, 2024, Ms. Wang emailed that the Original Landlord was still considering its position regarding the tree removal.

[25] Ms. Mehmandoost’s affidavit attaches a letter from Ms. Roberts dated December 2, 2024, written from Ms. Roberts to the plaintiffs’ consultant. In it, Ms. Roberts advises that the July 19, 2024, application “to reinstate parking and expand a play area” was approved, subject to two conditions, on December 2, 2024.

[26] Ms. Mehmandoost’s affidavit does not explain what is meant by the term “to reinstate parking” nor is any meaning apparent from the surrounding context.

[27] One condition set out in Ms. Robert’s December 2, 2024, letter pertains to the tree removal permit. The other addresses parking and reads as follows:

1. Building Permit (BP119287) to expand the child care business will not be issued until the new parking stalls have been installed as the site must be brought into compliance with the parking regulations of the Zoning Bylaw.

[28] I note that in her letter Ms. Roberts specifically refers to a “Building Permit”. Nowhere in Ms. Roberts letter or emails does she refer to a license or to a “daycare license”.

[29] On December 3, 2024, Ms. Mehmandoost emailed Ms. Wang. Her email states that she is attaching an email from West Vancouver. There is no attachment to the copy of Ms. Mehmandoost’s email in evidence. Ms. Mehmandoost states in the body of her email that West Vancouver “requires the additional parking spaces to be developed” before they will “give us the permit”, and that Marina Bay needs the Original Landlord’s approval “regarding these additional parking spots”. Ms.

Mehmandoost asks Ms. Wang to “see the attachment that explains this in detail”. Again, there is no attachment in evidence.

[30] On December 18, 2024, Ms. Wang sent Ms. Mehmandoost an email saying that she wanted clarification on how the parking stalls would be divided up and how the units would be impacted before she presented Marina Bay’s proposal to the Original Landlord.

[31] Ms. Mehmandoost attests that at some time after December 18, 2024, Ms. Wang “indicated” that the Original Landlord accepted Marina Bay’s “proposal” to add 20 parking spaces. There are no details as to how or when this “indication” was made. There is no clear statement of what is alleged to have been the “proposal” accepted. (An earlier paragraph in the affidavit suggests Marina Bay “negotiated” with Ms. Wang to make alterations to make 20 parking spaces provided other tenants agreed (para. 11), but that is not expressly identified as the proposal said to have been accepted by the Original Landlord.)

[32] On July 16, 2025, Ming Song, property manager for the defendant, wrote the plaintiffs an email stating:

I notice that you continue the parking job without landlord authorization, you need to stop right away. I will notice [sic] city to withdraw the authorization of your BP application, since we never approve your drawing, according to lease, you need to get approval for any drawing you submitted to city.

**C. Plaintiffs’ Evidence of Harm**

[33] Ms. Mehmandoost has sworn a single paragraph pertaining to the consequences that will be faced by the plaintiffs if injunctive relief is not granted:

25. Marina Bay has planned to open the daycare in Unit 4 for the September school season, and have contracted with many parent [sic] to provide them space. It is not [sic] urgent that we sort out the parking issues immediately so we can get our licensing sorted out.

(Counsel agree that the inclusion of the word “not” in the last sentence above is a typographical error.)

[34] There is no documentary evidence supporting the statements made in para. 25 of Ms. Mehmandoost’s affidavit, nor does she provide any further details about the contracts referenced.

**D. Defendant’s Evidence of Harm**

[35] Ms. Song provided an affidavit in which she notes that s. 7 of the Leases gives the defendant the exclusive right to manage and control the common areas. She then states:

25. As the former tenant of the unit adjacent to the Garden Area and Back Lot is no longer in possession of that unit, I am considering how best to utilize that space moving forward.

26. As of the date of this affidavit, I am working with an architect to prepare drawings for the current intention of restoring the original three parking stalls in the Back Lot and returning the Garden Area to its original state as a landscaped garden.

27. For this reason, I have not authorized the Tenants to paint parking stall lines. I have not yet made final decisions, as I am awaiting the architect’s plans. Authorizing the painting of lines at this stage would signal a final commitment to converting the Garden Area into a parking lot, which would conflict with the restoration plans that the Defendant is actively undertaking within its prerogative as landlord.

28. I acknowledge concerns regarding compliance with zoning bylaws. However, the plans to restore the Garden Area and the three parking stalls in the Back Lot will ensure the Property has the required 20 parking stalls, properly allocated and marked in accordance with the applicable zoning bylaws.

**III. Legal Framework**

[36] Under s. 39(1) of the *Law and Equity Act*, R.S.B.C. 1996, c. 253, an injunction may be granted by interlocutory order in any case in which “it appears to the court to be just or convenient that the order should be made”.

[37] The onus is on an applicant for interim relief to show that it would be just and convenient to grant an injunction.

### A. Framework for Interim Injunctive Relief

[38] There was a dispute between the parties regarding the applicable framework for interim injunctive relief. The plaintiffs say *Tracy v. Installoys Financial Solutions Centres (B.C.) Ltd.*, 2007 BCCA 481 at paras. 30-33 [*Installoys*] represents the state of the law, and that “irreparable harm” does not need to be established in order to get an interim injunction.

[39] The defendant cites para. 37 of *Vancouver Aquarium Marine Science Centre v. Charbonneau*, 2017 BCCA 395 [*Vancouver Aquarium*], where the Court of Appeal sets out the three-factor test from *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at 334, 1994 CanLII 117 (SCC) [*RJR*]. The defendant says irreparable harm is a requirement, in keeping with the three-factor test set out in *RJR*.

[40] The three-factor framework from *RJR* requires the court to consider the following before issuing an interlocutory injunction:

- i. under a preliminary assessment of the merits of the case, whether there is a serious question (or, in some cases, a strong *prima facie* case) to be tried,
- ii. whether irreparable harm will be suffered by the applicant if the relief is not granted, and,
- iii. whether the “balance of convenience” (an assessment of which of the parties would suffer the greater harm from the granting or refusing the injunction) favours the applicant.

[41] In my view, the parties have not identified any actual conflict in the law. The cases they have cited are complementary. The real difference between their positions reflects the parties each, in their own favour, stating the law in more absolute terms than they properly should.

[42] The *RJR* three-factor framework *does* apply in British Columbia. However, it sets out factors, not “requirements”. The *RJR* framework is not to be rigidly or formulaically applied, as the framework itself is nothing more than a judicial expression of the authority conferred under s. 39(1) of the *Law and Equity Act*. (This is the point made at para. 33 of *Instaloans*, and it remains an accurate statement of the law.)

[43] The three *RJR* factors are *not* watertight compartments. The factors are interrelated, and strength in one may compensate for weakness in another: *British Columbia (Attorney General) v. Wale*, 1986 CanLII 171 (BC CA), 9 B.C.L.R. (2d) 333 at 346–47, *aff’d* 1991 CanLII 109 (SCC), [1991] 1 S.C.R. 62; *Cambie Surgeries Corporation v. British Columbia (Attorney General)*, 2019 BCCA 29 at para. 19.

[44] Nor does the factors constitute mandatory requirements. There is no absolute requirement to establish a risk of irreparable harm. If that were an absolute requirement, then the second factor would constitute an “independent hurdle” to obtaining relief. As was recently re-stated in *Air Passenger Rights v. WestJet Airlines Ltd.*, 2025 BCSC 155, at para. 41, it is *not*.

[40] The elements of the conventional test are not necessarily a checklist or a series of independent hurdles. They are intended to be considered together in assessing the central issue of the relative risks of harm to the parties resulting from granting or withholding interlocutory relief.

[41] It is not required that all factors be satisfied before injunctive relief is granted – the strength of one factor may compensate for weakness in another. The fundamental question is “whether the granting of an injunction is just and equitable in all of the circumstances”.

[Cites omitted; emphasis added]

[45] The plaintiffs are correct in asserting that there is no absolute requirement to establish a risk of irreparable harm to obtain interim injunctive relief. Nothing in the law before me suggests, however, that there is much practical likelihood of success on an application in the absence of any demonstrated risk of irreparable harm. To the contrary, the case law suggests that absent evidence of irreparable harm, it would likely require exceptional circumstances for consideration under the remaining *RJR* factors in order to make an injunction just or convenient.

### B. Serious Question/Strong *Prima Facie* Case

[46] Where the interlocutory injunctive relief sought is prohibitive in nature, the “serious issue to be tried” threshold applies on the first factor. At this standard, the applicant need only show that the underlying claim is neither frivolous nor vexatious: *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5 (CanLII), [2018] 1 SCR 196 [CBC] at para. 13. This threshold is relatively low.

[47] Where the injunctive relief sought is mandatory in nature, an applicant must meet the higher threshold of a strong *prima facie* case: *CBC* at para. 15. This standard requires an applicant to satisfy the application judge that there is a strong likelihood on the law and the evidence presented that the applicant will ultimately prevail at trial on the allegations in the originating notice: *CBC* at paras. 17-18.

[48] In *CBC*, the Supreme Court acknowledged the difficulty that can arise in distinguishing mandatory and prohibitive relief. At para. 16, the Court articulated the distinction as whether, in substance, the overall effect would be to require the defendant to *do* something (mandatory) or *refrain from doing* something (prohibitive). The application judge is directed to look past “the form and the language” the applicant has used to frame the order sought, and “identify the substance” of what is being sought and consider the likely “practical consequences” of the order: paras. 16-18.

### C. Irreparable harm

[49] In *RJR*, the Supreme Court described the nature of the inquiry on the second factor. Justices Sopinka and Cory (writing for the majority) wrote:

“Irreparable” refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. Examples of the former include instances where one party will be put out of business by the court's decision; where one party will suffer permanent market loss or irrevocable damage to its business reputation; or where a permanent loss of natural resources will be the result when a challenged activity is not enjoined. ...

[citations omitted]

#### **IV. Analysis**

[50] I will now consider the *RJR* factors.

##### ***Appropriate threshold for the first factor***

[51] The defendants say the Painting Order constitutes a mandatory injunction and engages the strong *prima facie* case threshold on the first factor. This is on the theory that the order would positively require the defendant to cede its management right to control and manage the common areas to the plaintiffs.

[52] I do not agree. In practical terms, the defendant would not be required to do anything other than to stand aside while lines are painted on pavement in the common area, and then tolerate the continued presence of the lines and parking in the stalls so drawn. The substance of the order would oblige the defendant to refrain from interfering.

##### ***Serious question to be tried***

[53] The question to be tried is determined by reference to the pleadings. The threshold is low. As noted in *RJR*, "a prolonged examination of the merits is generally neither necessary nor desirable" unless an injunction would in effect amount to a final determination of the action, which is not the case here. While the threshold is low, I must be satisfied that the plaintiff's claim is not frivolous or vexatious.

[54] The plaintiffs plead that the Leases include implied terms that the parking spaces they are given access to under the Leases will be lawful parking and, in particular, will comply with the Zoning Bylaw. They plead that the Zoning Bylaw requires 20 parking off-street parking sites and that the defendant has not provided for that number on the Property.

[55] I am satisfied that the plaintiffs' breach of contract claim based on the existence and breach of an implied term is not frivolous or vexatious. In addition to the facts above, the plaintiffs have alleged facts that would at least permit them to argue that, with respect to the Second and Third Leases in particular, the parties to

the Lease contemplated that Marina Bay might need building permits or other District approvals to expand its business into the additional units.

[56] The claim based on the Agreement is more problematic. As the defendant points out, neither the terms of the Agreement nor how or when it came into existence are expressly pled. The legal basis for the claim under the Agreement is also unclear. Although the defendant raised no specific objection, Part 3 baldly states “the common law of contract”. Part 3 does not provide a summary of the law relied upon nor identify the issues that the court would need to decide in order for the claim against the defendant based on Agreement to succeed: *Mercantile Office Systems Private Limited v. Worldwide Warranty Life Services Inc.*, 2021 BCCA 362 at paras. 21-23.

[57] As I have found that contract claim asserting breach of an implied term does raise a serious question to be tried, there is no need to further address the claim with respect to the Agreement.

***Whether irreparable harm if relief not granted***

[58] I find that the plaintiffs have not established any risk of irreparable harm. Ms. Mehmandoost does not attest that irreparable harm will result in, nor identify, any specific or concrete harms at all.

[59] While counsel for the plaintiffs raised reputational loss in argument, Ms. Mehmandoost did not identify this as a concern. Counsel for the plaintiff nonetheless argues that injury to reputation obviously follows from Ms. Mehmandoost’s evidence that Marina Bay has “contracted with many parent[s] to provide them space”.

[60] Even as an argument of implication, that argument cannot be maintained based on Ms. Mehmandoost’s minimal evidence. “Many” is a meaningless descriptor. There is no evidence as to what parents understood about the expansion nor that they signed up specifically for services to be provided using Unit 4. It is unclear whether Unit 4 can be used to provide services even in the absence of the building permit sought. It is unclear whether the parents signed up can be

accommodated by Marina Bay in the two existing units. The argument for reputational harm is entirely speculative.

[61] Even if there were evidence that Marina Bay will have to decline parents because it has no building permit for Unit 4, that would still be inadequate to show irreparable harm. In *Aulakh v. WIT Management Corp.*, 2023 BCCA 108, the plaintiff attested that his “business will be seriously impacted” (para. 43). The Court of Appeal commented on the distinction between reduced business and bankruptcy, and also on the insufficiency of speculation:

[48] [T]he chambers judge did not find that the defendant would be put out of business if an injunction was issued. Rather, she found that an injunction would lead to a reduction in business, the kind of harm that can be compensated for by damages.

[49] In my opinion, the respondent is correct that Mr. Aulakh’s testimony that he faced a risk of bankruptcy was a bare assertion unsupported by the evidence. As Bennett J.A., writing for the Court on this point, noted in *Vancouver Aquarium Marine Science Centre v. Charbonneau*, 2017 BCCA 395, at para. 60, there must be a foundation, beyond mere speculation, that irreparable harm will result from the issuance of an interlocutory injunction because such relief is a significant remedy, and “should be invoked only when the test in *RJR-MacDonald* is satisfied on a sound evidentiary foundation”.

[50] Mr. Aulakh did not adduce any evidence that the injunction sought by the respondent would interfere with the operation of his trucking company. It could certainly stand as an obstacle to the creation and growth of a new transloading company, but that risk was speculative, not defined in the evidence. ...

[62] There is no evidence that Marina Bay will have to cease business. Unit 4 was an intended expansion. Marina Bay will presumably continue to operate in the two units it already has. There is no evidence that the already existing operation is at risk due to non-compliance with the Zoning Bylaw.

[63] In any event, I find Ms. Mehmandoost’s evidence about the impact of non-compliance with the Zoning Bylaw vague and confusing. She attests that it is urgent to get “our licensing sorted out”, but the documentary evidence deals with a building permit, not a daycare license. It is fundamentally unclear why Marina Bay needs the

building permit it applied for in order to provide daycare services, either in general or using Unit 4 in particular.

[64] Further, as noted by Justice Lamb in *Grewal v Gill*, 2024 BCSC 1087, an applicant for an interim injunction must establish that granting the injunction will actually remedy the harm relied upon as support:

[24] Further, “the evidence must support that the harm is generated by that which is sought to be prohibited by the injunction” [Emphasis added.]: *Vancouver Aquarium* at para. 66. In other words, the evidence must support a finding that the irreparable harm will be avoided if the injunction is granted, which makes sense: if an injunction will not avert the irreparable harm, then such a powerful pre-trial remedy should not be granted.

[65] Here, there is no evidence establishing that but for lack of the building permit sought Marina Bay would be providing daycare services in Unit 4 effective September 2025. There is no evidence about the work the permit was for nor what it would take to complete that work. There is no evidence that Marine Bay has obtained all the other required permits, approvals and licenses needed to open for September 2025. There is no evidence that if stall lines were to be painted under the injunction tomorrow, West Vancouver could and would provide a building permit in time for the actual work (whatever it is) to be done for September 2025.

[66] I am not persuaded that the plaintiffs are at risk of any irreparable harm if relief is not granted. If Marina Bay should suffer a reduction in business by reasons of the defendant’s breach of contract, its damages appear to be readily calculable and there is no evidence (nor even suggestion) that the defendant is without means to the pay an award.

### ***Balance of Convenience***

[67] The third factor requires the court to consider which party would suffer greater harm from the granting or refusal to grant the interlocutory injunction. In *Canadian Broadcasting Corp. v. CKPG Television Ltd.*, 1992 CanLII 560 (B.C.C.A.), Lambert J.A. listed the considerations under the balance of convenience as including:

... 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 the 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.

[68] With respect to the status quo, it is unclear on the evidence what the status quo was or who disrupted it. It is unclear if there were ever 20 parking stalls on the Property. Ms. Song attests that plaintiffs eliminated two stalls by the placement of their dumpsters. The evidence is confusing, contradictory and rife with gaps. No weight can be given to status quo in the circumstances.

[69] The plaintiffs argue that parents who signed up for daycare starting September 2025 will be adversely impacted. Assuming (without deciding) that that parent group constitutes a “public” for public interest purposes, there is no evidence as to how many parents or children are impacted, nor regarding the availability of alternative daycare in the area. The public interest is not a consideration on the evidence here.

[70] Ms. Song’s assertion that painting lines on the pavement above the former garden area would somehow amount to “a final commitment” to making that area part of the parking lot is meritless. If the pavement is removed to restore the garden, the paint will just go along with the pavement.

[71] Ms. Song does, however, attest that she is actively working with an architect on a reconfiguration of the Property and they are considering restoring the former garden area back to its garden state. Her evidence is that change is under consideration as part of a plan for developing and reletting the adjacent rental unit (formerly, a restaurant). She maintains that the order sought will infringe on her otherwise (i.e., subject to the plaintiffs’ claim succeeding on the merits) unfettered right to configure the common areas as she wishes.

[72] The Painting Order, in seeking to prohibit the defendant from interfering with the plaintiffs' efforts to paint *to satisfy West Vancouver's licensing requirements*, would effectively create 20 parking stalls on the Property and include the use of the former garden area for that dedicated purpose. It is implicit in the defendant's rejection of the plaintiffs' claims that Ms. Song takes the position that the defendant owes no legal obligation to the plaintiffs to have 20 parking stalls, let alone to have parking stalls in any particular common area of the Property. Thus, the order sought would interfere with Ms. Song's managerial discretion. While not an irreparable harm, that fetter on her discretion would be a harm.

**Conclusion**

[73] The three *RJR* factors are to be considered together in assessing what is just and equitable in all of the circumstances. The factors do not constitute independent hurdles, but rather should be considered altogether in assessing what is just and convenient in the circumstances.

[74] The plaintiffs have established that they have a serious question to be tried with respect to at least the implied term contractual claim. There is no evidence that the plaintiffs are at risk of any irreparable harm. If Marina Bay suffers a business loss, it will be calculable and compensable in damages. While the order sought would not cause the defendant irreparable nor even significant harm, the defendant would be impaired in terms of its ostensible current discretion to deal with the Property.

[75] On the evidence, and considering all three *RJR* factors, it would not be just or convenient to grant the injunctive relief sought.

**V. Disposition**

[76] The notice of application is dismissed.

[77] The defendant is entitled to its costs.

Tucker J.