

Court of King’s Bench of Alberta

Citation: Chatters Limited Partnership v Chatters Deerfoot Meadows Limited, 2025 ABKB 536

Date: 20250917
Docket: 2401 13531
Registry: Calgary

Between:

Chatters Limited Partnership, by its General Partner, Chatters GP Inc

Plaintiff/Applicant

- and -

**Chatters Deerfoot Meadows Limited, The White Rabbit Beauty & Blowout Bar Limited
and Tania Larko**

Defendants/Respondents

**Reasons for Decision
of the
Honourable Justice M.A. Marion**

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I. Introduction

[1] Chatters Limited Partnership, by its General Partner, Chatters GP Inc (**Chatters**) applies (**Application**) for an interlocutory injunction (**Injunction**) restraining the defendants Chatters Deerfoot Meadows Limited (**CDML**)¹, The White Rabbit Beauty & Blowout Bar Limited (**White Rabbit**) and Tania Larko (**Larko**) from owning, maintaining, operating, engaging in or having any interest in any business the same or similar to or directly competitive with the Chatters “Deerfoot Meadows” salon located at 8180 – 11 Street SE in Calgary (**DM Salon**), as per a November 6, 2019 franchise agreement (**Franchise Agreement**) between Chatters, CDML and Larko (as indemnifier).

[2] More specifically, Chatters also seeks an injunction restraining the defendants from owning, maintaining, operating, engaging in or having any interest in a salon business at a specific location in the Seton area of Calgary (**Seton Business**), which it asserts is owned and operated by

¹ Now known as 1169960 Alberta Ltd. Larko was and is the only shareholder and director of CDML.

White Rabbit/Larko in breach of a non-compete clause in the Franchise Agreement (**Non-Compete Clause**).

[3] Chatters filed its statement of claim seeking the Injunction, together with an undertaking as to damages, in fall 2024. The statement of claim alleges breach of the Franchise Agreement by CDML and Larkin, conspiracy by unlawful means to breach the Franchise Agreement, and unlawful interference with economic interests.

[4] By consent of the parties, no statement of defence has yet been filed in the action. However, since the statement of claim, the parties have engaged in an evidentiary process, with further affidavits and questioning on affidavits occurring between November 2024 and July 2025. On June 9, 2025, the matter was set down for hearing before me on August 19, 2025 (**Hearing**).

[5] Chatters argues it has a strong *prima facie* case of breach of the Non-Compete Clause. It asserts the Non-Compete Clause is lawful and reasonable. It argues it will suffer irreparable harm if the Injunction is not granted, and that the balance of convenience is in its favour.

[6] The defendants argue that Chatters does not have a strong *prima facie* case because the Non-Compete Clause is unreasonable and unenforceable for several reasons, Chatters will not suffer irreparable harm if the Injunction is not granted, and the balance of convenience favours the defendants. The defendants argue that it is not just and equitable to grant the Injunction.

[7] For the reasons set out below, the Application for the Injunction is dismissed.

II. Record

[8] The record before me is:

- (a) September 27, 2024 affidavit of Chatters' Vice President of Franchise Operations and Vendor Relations, Barbara Sim (**Sim**), together with a November 6, 2024 transcript of questioning on her affidavit (including exhibits and undertaking responses);
- (b) November 1, 2024 Larko affidavit filed November 5, 2024, together with a November 8, 2024 transcript of questioning on her affidavit (including exhibits and undertaking responses);
- (c) January 24, 2025 Sim affidavit filed January 29, 2025;
- (d) April 23, 2025 transcript of questioning on Sim's undertakings;
- (e) April 24, 2025 transcript of questioning on Larko's undertakings;
- (f) June 26, 2025 affidavit of Lacey Short, a private investigator, together with a July 30, 2025 transcript of questioning on her affidavit; and
- (g) June 25, 2025 notice to admit facts and July 21, 2025 reply to notice to admit facts.

III. Issues

[9] The issue in this Application is whether to grant the requested Injunction.

IV. Analysis

A. Fact Findings

[10] Much of the voluminous evidence filed for the Hearing is not disputed. Below, I summarize my fact findings for the limited purpose of the Application.

[11] From 1993 to 2005, Larko worked in the beauty and wellness industry in various capacities.

[12] In 2005, Chatters opened the DM Salon in Deerfoot Meadows, as a corporate location.

[13] In 2006, Larko and a business partner started operating the DM Salon as a Chatters franchise. By 2010, Larko's business partner transitioned out of the business.

[14] In December 2014, CDML and Chatters Canada Limited entered into a franchise agreement for the DM Salon, which included a non-compete clause that was substantially similar to the Non-Compete Clause.

[15] In November 2019, CDML, Chatters and Larko entered into the Franchise Agreement. As part of that process, in October 2019 a Chatters disclosure document (**Disclosure Document**) was provided to Larko and CDML, and CDML entered into a sublease for the DM Salon's premises with Chatters Salon Limited.

[16] At the time of the Franchise Agreement, Larko resided in the Seton area of Calgary, approximately one mile from the Seton Business location at issue in this matter. According to Larko, operating in Seton has always been a preference for her. She raised a Seton Chatters location with Chatters in approximately 2010, but there is no evidence about what, if anything, Chatters' response was to the idea.

[17] At the time of the Franchise Agreement, Chatters operated a corporate Chatters salon in South Centre Mall (**SC Salon**), which is approximately four miles from the DM Salon, and there were Chatters locations in seven provinces, including 15 in Calgary.²

[18] Larko is not a stylist. She acted as the receptionist, did not maintain a customer database or personal relationships with customers, and did not disclose to customers that she was the owner.

[19] In early 2023, CDML approached Chatters for rent relief at the DM Salon.

[20] In February 2023, Larko again communicated with Chatters about a Chatters location in Seton. At that time, Sim advised Larko that Chatters did not have a Seton location on its radar, had looked at it two years earlier but passed it up because it "sucked", and that there had been "zero discussion" on it since. Sim offered to see what the options were. There is no evidence before me as to whether Chatters ever responded to Larko with any options. However, there is evidence that

² At the time of the Hearing, there were 21 Chatters salons operating in Calgary.

Chatters, in August 2023, discussed with its board a possible Chatters Seton location in 2025 with the location as “a placeholder depending on Real Estate”. This does not appear to have been pursued.

[21] In December 2023, CDML stopped paying royalties under the Franchise Agreement. On January 1, 2024, CDML and Chatters entered into a Franchise Amending Agreement to provide CDML a royalty deferral for the period January 1, 2024 to June 30, 2024.

[22] Commencing in at least April 2024, Larko began taking steps to sell the DM Salon franchise and to start the Seton Business. In particular:

- (a) in April 2024, Larko approached Chatters about whether it would support selling the DM Salon franchise to another franchisee. Chatters did not oppose a sale;
- (b) on April 23, 2024, Larko incorporated White Rabbit, which she owns and controls;
- (c) on May 29, 2024, Larko caused CDML to enter into a sale agreement to sell the DM Salon franchise to a third party, 2611689 Alberta Ltd (**261 Alberta**);
- (d) on or about June 12, 2024, Larko caused White Rabbit to enter into a commercial lease (**Seton Lease**) for the Seton Business at the Seton Location with Brookfield Residential (Alberta) LP, by its general partner, Carma Ltd (**Brookfield**) as landlord. Larko negotiated a covenant by Brookfield not to lease to “Chatters” within the landlord’s Seton “North Retail District” (in which the Seton Business was to be located);
- (e) in June 2024, White Rabbit’s website was registered and a Facebook page was created;
- (f) on July 1, 2024, the sale of the DM Salon franchise to 261 Alberta closed, and Chatters, CDML and Larko entered into a Franchise Termination Agreement;
- (g) in July 2024, CDML changed its name to 1169960 Alberta Limited;
- (h) on July 13, 2024, Larko accepted and signed a \$168,500 plus GST quote for fixturing the Seton premises. By August 2024, a fixturing plan was in place;
- (i) in July 2024, Looking Glass Treatment Room Ltd (**Looking Glass**) was incorporated, with Larko and her sister as 50% shareholders, apparently for the purpose of providing esthetician services at the Seton premises; and
- (j) in July and August 2024, Larko prepared financial forecasting as part of a business plan for the Seton Business, at least some of which was provided to RBC. Larko did not ultimately proceed to finance White Rabbit through RBC or any other financial institution. She testified that she has personally financed the Seton Business.

[23] CDML and Larko did not disclose their activities to start the Seton Business to Chatters or 261 Alberta during this period.

[24] During this same period, in early June 2024, Chatters appears to have again been exploring an opportunity for a Chatters location in Seton, also with Brookfield as landlord. This opportunity was not in the Seton North Retail District but in another Brookfield development district in the Seton area referred to as the “**Market Street District**”. The anticipated opening for this opportunity was in Q4 2025. Sim testified that the Chatters board decided not to pursue this opportunity.

[25] Sim deposed that Larko was privy to Chatters’ plans to obtain a location in Seton, as it was discussed in several meetings with Calgary franchisees in Larko’s presence. Larko disputes that she was privy to or had any knowledge of Chatters’ plans to open a Chatters salon in Seton. I cannot (and need not) resolve this evidentiary dispute on the record before me.

[26] In September 2024, Larko advised Chatters of her plans to open the Seton Business. She confirmed that she had a lease, that her plan included treatment rooms, a “hair focus” on “blowout and express root bar ... with full service options available” (which would be the “biggest service push” other than the treatment room), that she would differentiate her business from Chatters, that she would not hire Chatters’ stylists, that she would not sell online, and that she would “in no way” be in competition with Chatters. She advised that construction was to start in October 2024.

[27] Chatters response appears to have been the filing and service of the statement of claim and the Injunction Application.

[28] While the parties engaged in the evidentiary process for the Hearing, and in the face of the Injunction Application, Larko and White Rabbit continued steps to open the Seton Business and ultimately did so. The Seton Business officially opened in February 2025, soft-launched in March 2025, and had its grand opening in May 2025. As of the Hearing, it continues to operate and provide services, including hair and esthetician services, and the sale of hair and other products. Two of its employees used to work with Larko at the DM Salon (one receptionist and one hair stylist).

B. Interlocutory Injunction Legal Framework

[29] The Court may grant an interlocutory injunction in “all cases in which it appears to the Court to be just and convenient that the order should be made”, and an order may be made unconditionally or on any terms the Court thinks just: *Judicature Act*, RSA 2000, c J-2, s 13(2).

[30] The usual three-part test for determining whether a court should exercise its discretion to grant an interlocutory injunction is: (1) is there a serious issue to be tried; (2) would the person applying for the injunction suffer irreparable harm if the injunction were not granted; and (3) is the balance of convenience in favour of granting the injunction or denying it: *Google Inc v Equustek Solutions Inc*, 2017 SCC 34 at para 25, citing *RJR-MacDonald Inc v Canada (Attorney General)*, 1994 CanLII 117 (SCC). The fundamental question is whether the granting of an injunction is just and equitable in the circumstances of the case, which will be a context-specific determination: *Google Inc* at para 25; *Brown v Alberta*, 2025 ABCA 146 at para 13.

[31] In some cases, injunction applicants must meet the more rigorous standard of establishing a strong *prima facie* case, for example for mandatory injunctions (*R v Canadian Broadcasting Corp*, 2018 SCC 5 at paras 13-18; *Poole v City Wide Towing and Recovery Service Ltd*, 2020 ABCA 102 at para 17; *Avmax Aircraft Leasing Inc v Air X Charter Limited*, 2022 ABCA 252 at

para 69) or to enforce a restrictive covenant in restraint of trade, at least in the employment context (*City Wide Towing and Recovery Service Ltd v Poole*, 2020 ABCA 305 at para 26, leave to appeal to SCC refused, 2021 CanLII 13260 (SCC)[*City Wide Towing*]).

[32] The “strong *prima facie* case” standard has often been adopted by Canadian courts for injunctions seeking to enforce restrictive covenants, including non-compete clauses, in franchise agreements: *Quizno’s Canada Restaurant Corporation v 1450987 Ontario Corp*, 2009 CanLII 20708 at paras 37–42 (ON SC); *Home Instead, Inc v 244674 Ontario Inc*, 2015 ONSC 7630 at para 3; *MTY Tiki Ming Enterprises v Azmy Enterprises Inc*, 2018 NLSC 169 at para 45; *ServiceMaster of Canada Limited v Meyer*, 2019 ABCA 130 at para 105; *Garcha Bros Meat Shop Ltd v Singh*, 2021 BCCA 134 at para 26; *Turtle v Valvoline Canadian Franchising Corp*, 2021 SKCA 76 at para 33; *Garcha Bros Meat Shop Ltd v Singh*, 2022 BCCA 36 at paras 54, 95–96 [*Garcha 2022*]; *RFSP Equipment v Singh*, 2022 BCSC 538 at paras 28–32; *OPA! Souvlaki Franchise Group Inc v Tiginagas*, 2024 BCSC 1318 at para 26; *Northam Distributor Ltd v Roman Hardware Inc*, 2025 BCSC 238 at para 54; *Liberty Tax Service, Inc v Pinto*, 2025 ONSC 2429 at paras 31–33.

[33] Further, where an interlocutory injunction will likely serve to finally determine or render at least some of the issues in dispute moot, for example, because the duration of the restrictive covenant sought to be enforced will expire before trial, then courts have held a strong *prima facie* case should be shown: *Northam Distributor* at para 61, citing *Dentalcorp Health Services Ltd v Dr Kenneth Hamlin Dental Corporation*, 2024 MBCA 44 at paras 18–25 [*Dentalcorp MBCA*]; *Daniels Sharpsmart Canada Ltd. o/a Daniels Health v Alberta Health Services*, 2024 ABKB 282 at para 16, citing *RJR MacDonald* at para 56; *Questor Technology Inc v Stagg*, 2020 ABQB 3 at paras 17–22; *Greco Franchising Inc v Franco Milito et al*, 2021 ONSC 3950 at para 26; *Second Cup Ltd v Niranjana*, 2007 CarswellOnt 5285, [2007] OJ No 3409 at para 22; *MTY TIKI MING Enterprises v Boundris*, 2016 ONSC 3290 at paras, 26, 30 [*Boundris*].

[34] In this case, both parties agree that the strong *prima facie* standard is applicable.

C. Has Chatters Established a Strong *Prima Facie* Case?

[35] As noted earlier, in the statement of claim Chatters pleads breach of the Non-Compete Clause, conspiracy and unlawful interference with economic interests. However, in oral argument, Chatters confirmed that it only relies on the Non-Compete Clause to support the Injunction Application, and I limit my analysis accordingly.

1. Legal Framework for Assessing the Merits of an Injunction Application to Enforce a Non-Compete Clause in a Franchise Agreement

[36] A strong *prima facie* case requires the applicant to show a case of such merit that it is “very likely to succeed at trial”, or that upon a preliminary review of the case, the court is satisfied that there is a “*strong likelihood* on the law and the evidence presented that, at trial, the applicant will be ultimately successful in proving the allegations” in the claim [emphasis in original]: *R v Canadian Broadcasting Corp* at para 17; *2145448 Alberta Ltd v Beverage Container Management Board*, 2024 ABKB 113 at para 39; *ANC Timber Ltd v Alberta (Minister of Agriculture and Forestry)*, 2019 ABQB 710 at para 80.

[37] This requires a strong case with a high, but “not absolutely assured likelihood of success based on the material presently before the court”: *Quizno’s* at para 42; *Café Can Cun Co Inc v Halcor Development Corp*, 2018 ABQB 303 at para 15; *Fiberex Technologies Inc v Bank of Montreal*, 2015 ABQB 496 at para 14; *Al-Ghamdi v Alberta Health Services*, 2015 ABQB 469 at para 40.

[38] The Court will consider several interrelated matters in determining whether an applicant seeking to enforce a non-compete covenant has established sufficient merit to support injunctive relief. There is no rigid formula or order of operations to be applied; however, an injunction application lacking in any of these areas may very well fall short.

[39] First, the Court will consider whether the non-compete clause is unambiguous. The onus is on the party seeking to enforce a restrictive covenant to show the reasonableness of its terms, which cannot be determined without first establishing the meaning of the covenant: *Shafron v KRG Insurance Brokers (Western) Inc*, 2009 SCC 6 at para 27. An ambiguous restrictive covenant, in the sense that what is prohibited is not clear as to activity, time, or geography, will be *prima facie* unenforceable because the party seeking enforcement will be unable to demonstrate reasonableness: *Shafron* at paras 27, 43; *M & P Drug Mart Inc v Norton*, 2022 ONCA 398 [*M & P Drug CA*] at para 35; *Chhina v Rebecca L Darnell Law Corporation*, 2021 BCCA 430 at para 25; *961945 Alberta Ltd (Servicemaster of Edmonton Disaster Restoration) v Meyer*, 2018 ABQB 564 at para 36, aff’d 2019 ABCA 130; *Specialized Property Evaluation Control Services Ltd v Les Evaluations Marc Bourret Appraisals Inc*, 2016 ABQB 85 at para 18.

[40] Second, the Court will consider whether the non-compete clause is engaged on the facts of the case. Is the restrictive covenant being breached or will it be breached?

[41] Third, the Court will consider whether the applicant has a legitimate or proprietary interest that is entitled to the protection of the restrictive covenant: *MEDIchair LP v DME Medequip Inc*, 2016 ONCA 168 at paras 37–41 [*MEDIchair CA*]; *Payette v Guay inc*, 2013 SCC 45 at para 61; *Elsley v JG Collins Insurance Agencies Ltd*, 1978 CanLII 7 (SCC) at 925. This can include an assessment of whether the applicant had a legitimate or proprietary interest at the time the restrictive covenant was agreed to (*Payette*), but also at the time it is sought to be enforced (*MEDIchair CA*).

[42] A desire solely to eliminate or control competition is not alone a valid interest justifying a restrictive covenant: *Human Logistics v PAL Airlines*, 2018 ONSC 7433 at para 131, citing *Maguire v Northland Drug Co*, 1935 CanLII 35 (SCC) at 418; *Elsley* at 927; *Dow Chemical Canada ULC v NOVA Chemicals Corporations*, 2020 ABCA 320 at para 147; *Giacomodonato v PearTree Securities Inc*, 2023 ONSC 3197 at para 235, aff’d 2024 ONCA 437.

[43] Courts have recognized several business interests that may be entitled to protection through restrictive covenants, including goodwill, trade secrets, confidential information, trade connections, customer lists / books of business, customer relationships, information about customer preferences, proprietary pricing models, unique merchandising styles and methods of operation: Jennifer Dolman et al, “Governing Principles & Recent Trends in the Enforcement of Restrictive Covenants in Franchise Agreements” (2015) 43:4 *Advoc Q* 448 at pp 450–451 [Dolman et al]; *Human Logistics* at paras 127-133; *Elsley* at 924; *W-K Trucking Inc v Bidulock Oilfield Service Ltd*, 1998 ABQB 959 at para 16; *IBM Canada Ltd v Almond*, 2015 ABQB 336

at paras 55–60, *aff'd* 2015 ABCA 379; *Innersolutions Ltd v Hooper*, 2015 ABQB 258 at paras 39–50; *National Hearing Services Inc (Connect Hearing) v Chiasson*, 2024 NBKB 18 at paras 51, 71.

[44] Fourth, even if it is unambiguous, the Court will consider whether the non-compete clause is reasonable and enforceable: *Renfrew Insurance Ltd v Cortese*, 2014 ABCA 203 at para 9; *City Wide Towing* at para 30; *M & P Drug CA* at paras 36–37. Restrictive covenants that are unreasonably broad, with reference to the public interest, will not be enforced: *City Wide Towing* at para 31, citing *Elsley* at 923–924. A non-competition covenant will be reasonable provided it is limited as to the applicable scope of activities, duration, and geography as are necessary for the protection of the legitimate interests of the party in whose favour it was granted: *City Wide Towing* at para 33; *Payette* at paras 61–62; *Shafron* at para 17; *Adderley v 1400467 Alberta Ltd*, 2012 ABCA 216 at para 6. This assessment involves consideration of a number of factors, including the clear identification of the reason why the covenant was entered into, and its purpose, based on contractual interpretation principles (including the wording of the agreement and its surrounding circumstances): *Payette* at paras 45, 61–62; *Demand Science Group, LLC v Gladish*, 2024 ONSC 214 at para 16; *People Corporation v 2578649 Alberta Ltd et al*, 2024 ABKB 375 at para 14.

[45] The approach to assessing reasonableness of a restrictive covenant is different for covenants made in the employment context versus those in the commercial context, as explained in *Payette* at paras 35–39, 45:

[35] The rules applicable to restrictive covenants relating to employment differ depending on whether the covenants are linked to a contract for the sale of a business or to a contract of employment. This has long been recognized to be the case: [*Elsley*]; [*Shafron*]; and *Doerner v. Bliss & Laughlin Industries Inc.*, 1980 CanLII 50 (SCC), [1980] 2 S.C.R. 865.

[36] The application of different rules in the context of a contract of employment is a response to the imbalance of power that generally characterizes the employer-employee relationship when an individual contract of employment is negotiated, and its purpose is to protect the employee.

[37] These rules have no equivalent in the commercial context, since an imbalance of power is not presumed to exist in a vendor-purchaser relationship. The inclusion of non-competition and non-solicitation clauses in a contract for the sale of a business is usually intended to protect the purchaser's investment. In limiting the vendor's right to compete with the purchaser and preventing the vendor from working for a competitor of the purchaser for a certain time after the transaction, such clauses enable the purchaser to protect its investment by building strong ties with its new customers [translation] “without fearing, for a given period, competition from the vendor” (C.A. reasons, at para. 62), which had previously established a relationship with its customers, suppliers and employees.

[38] In this Court's decision in *Shafron*, my colleague Rothstein J. referred to what is now a cardinal rule, that parties negotiating the sale of assets have greater

freedom of contract than parties negotiating a contract of employment. He made the following comment:

The absence of payment for goodwill as well as the generally accepted imbalance in power between employee and employer justifies more rigorous scrutiny of restrictive covenants in employment contracts compared to those in contracts for the sale of a business. [para. 23]

[39] Thus, the common law rules for restrictive covenants relating to employment do not apply with the same rigour or intensity where the obligations are assumed in the context of a commercial contract. This is especially true where the evidence shows that the parties negotiated on equal terms and were advised by competent professionals, and that the contract does not create an imbalance between them.

[...]

[45] To determine whether a restrictive covenant is linked to a contract for the sale of assets or to a contract of employment, it is, in my view, important to clearly identify the reason why the covenant was entered into. The “bargain” negotiated by the parties must be considered in light of the wording of the obligations and the circumstances in which they were agreed upon. The goal of the analysis is to identify the nature of the principal obligations under the master agreement and to determine why and for what purpose the accessory obligations of non-competition and non-solicitation were assumed.

[46] The focus and purpose of restrictive covenants in commercial contracts for the sale of businesses, versus employment agreements, was explained this way in *National Hearing Services Inc (Connect Hearing) v Chiasson*, 2024 NBKB 18 at para 51:

Restrictive covenants in employment agreements and those in agreements for the sale of a business share the common goal of restricting certain actions of the parties. However, they differ in their focus and purpose. Restrictive covenants within contracts for the sale of a business serve to safeguard the purchaser's genuine interest in preventing the vendor from engaging in competitive activities within the same market. The purpose of those contained in employment agreements are to protect the employer's interests, such as trade secrets, confidential information, and client relationships...

[47] Characterizing the purpose of the restrictive covenant and the nature of the relationship has important consequences: the “rules will be more generous in the commercial context, but much stricter in the context of contracts of employment or service”: *Payette* at para 2; *Shafroon* at paras 18–23; *Dentalcorp MBCA* at para 29; *961945 Alberta* at para 37; *Goska J Nowak Professional Corporation v Robinson*, 2016 ABCA 240 at paras 71–72; *Senos v Pacesetter Performance Drilling Ltd*, 2010 ABQB 533 at para 34.

[48] If a restrictive covenant is part of an employment relationship, the court will consider the potential imbalance of negotiating power. As noted, the Court will only enforce it if the clause is reasonable, and the burden is on the party seeking to enforce it: *Elsley* at 924; *Shafron* at para 27.

[49] However, if a restrictive covenant is found to be part of a commercial agreement akin to the sale of a business, the covenant will be presumed to be lawful unless it can be shown on a balance of probabilities that its scope is unreasonable: *Payette* at para 58; *Dentalcorp MBCA* at para 32; *Ruel v Rebonne*, 2023 ABCA 156 at para 10.

[50] The assessment of whether non-compete clauses in franchise agreements are more like employment agreements or commercial agreements is presently unresolved at the appellate level in Canada and continues to be a source of debate: *MEDIchair CA* at para 36; *Garcha 2022* at para 95. Each case will depend on its own facts.

[51] Some Canadian courts have recognized that franchise agreements are often contracts of adhesion, “usually have an inequality of bargaining power”, and “can also contain elements of economic dependency similar to employment contracts”: *Bilomba Inc (Fully Promoted Canada) v Barrett*, 2025 NSSC 124 at para 26; *Northam Distributor* at para 57; *Shelanu Inc v Print Three Franchising Corporation*, 2003 CanLII 52151 (ON CA) at paras 58, 66; *Strategy Summit Ltd v Remington Development Corporation*, 2011 ABQB 549 at para 181; *BMR Bath Master Reglazing Ltd v Watson*, 2010 BCSC 1170 at paras 16–18; *760437 Alberta Ltd v Fabutan Corporation*, 2012 ABQB 266 at para 98.

2. Is the Non-Compete Clause Unambiguous?

[52] As noted, if a restrictive covenant “is ambiguous, in the sense that what is prohibited is not clear as to activity, time or geography, it is not possible to demonstrate that it is reasonable”: *Shafron* at para 43. If it is impossible to predict when a restrictive covenant is being breached, or if its meaning cannot be ascertained, it should not be enforced: *Globex Foreign Exchange Corporation v Kelcher*, 2011 ABCA 240 at paras 19–20. Further, “[o]nly if an ambiguity can be resolved is it then possible to determine whether the unambiguous restrictive covenant is reasonable”: *Shafron* at para 43.

[53] The assessment of whether a restrictive covenant in a franchise agreement is ambiguous is based on ordinary principles of contract interpretation, discussed below.

a. Principles of Contractual Interpretation Applied to Restrictive Covenants

[54] The goal of contractual interpretation is to determine the objective intent of the parties at the time the contract was made through the application of legal principles of interpretation: *IFP Technologies (Canada) Inc v EnCana Midstream and Marketing*, 2017 ABCA 157 at para 79, citing *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 at para 49. Provisions must be interpreted in light of the contract as a whole: *IFP* at para 79, citing *Tercon Contractors Ltd v British Columbia (Transportation and Highways)*, 2010 SCC 4 at para 64.

[55] An important consideration in determining the objective meaning of a restrictive covenant is the purpose or object for which the provision was included: *Rhebergen v Creston Veterinary Clinic Ltd*, 2014 BCCA 97 at para 75.

[56] Further, courts must consider the relevant surrounding circumstances, including the “objective evidence of the background facts at the time of the execution of the contract ... that is, knowledge that was or reasonably ought to have been within the knowledge of both parties at or before the date of contracting”:³ *IFP* at paras 82–83; *Sattva* at para 58; *Nexxtep Resources Ltd v Talisman Energy Inc*, 2013 ABCA 40 at para 20; *Earthco Soil Mixtures Inc v Pine Valley Enterprises Inc*, 2024 SCC 20 at para 65. Relevant background facts can include the genesis, aim or purpose of the contract, the nature of the relationship created by the contract, the nature or custom in the industry in which the contract was executed, antecedent agreements leading up to the contract, and even negotiations if they shed light on the factual matrix: *IFP* at paras 83–85 [citations omitted]; *Alberta Union of Provincial Employees v Alberta Health Services*, 2020 ABCA 4 at para 32.

[57] “Surrounding circumstances” do not include the parties’ subjective intentions and cannot be used to add to, detract from, vary, or otherwise overwhelm the written words: *Sattva* at paras 59–60; *IFP* at paras 81–82; *Talwandi Video Lab Inc v 1441419 Alberta Ltd*, 2024 ABCA 140 at para 11; *Alberta Union* at para 26; *Heritage Property Corporation v Triovest Inc*, 2025 ABCA 64 at para 14.

[58] “Mere difficulty in interpreting a contract is not the same as ambiguity”: *IFP* at para 87; *Paddon Hughes Development v Pancontinental Oil*, 1998 ABCA 333 at para 29. “A contract is ambiguous when its words are reasonably susceptible of more than one meaning”: *IFP* at para 87; *Karras v Wizedemy Inc*, 2024 BCCA 301 at para 35; *Rhebergen* at para 73.

[59] If the terms of an agreement are ambiguous, the court may refer to the parties’ post-contractual conduct to resolve the ambiguity: *IFP* at para 87; *Shewchuk v Blackmont Capital Inc*, 2016 ONCA 912 at paras 46, 56.

[60] Courts should prefer interpretations that are consistent with the reasonable expectations of the parties, and avoid interpretations that would give rise to an unreasonable result or that would not have been in the contemplation of the parties at the time of the contract: *Progressive Homes Ltd v Lombard General Insurance Co of Canada*, 2010 SCC 33 at paras 23–24; *IFP* at paras 350–351; *Swan Group Inc v Bishop*, 2013 ABCA 29 at para 23.

[61] If ambiguity remains after application of these rules, *contra proferentum* can be employed to construe a contract of adhesion against the party who drafted it: *Progressive Homes* at para 24; *Condominium Corporation No 9312374 v Aviva Insurance Company of Canada*, 2020 ABCA 166 at para 17.

b. Interpretation and Assessment of the Non-Compete Clause

[62] As noted, Chatters relies only on the Non-Compete Clause to support its Injunction Application. Chatters did not provide detailed submissions on the question of ambiguity. It simply stated it is a “clear contractual term restricting competition”³, and is “unambiguous in that it only relates to the provision of certain defined services and retail”⁴. The defendants argue that the Non-Compete Clause is ambiguous and vague.

³ Chatters Brief at para 61(a).

⁴ Chatters Brief at para 74.

[63] The Non-Compete Clause provides:

12.2. Restriction Upon Termination or Expiration

Except as otherwise approved in writing by the Franchisor, the Franchisee shall not for a continuous and uninterrupted period commencing upon the termination or expiration of this Agreement or any extension thereof, and continuing for two years thereafter, either directly or indirectly, for itself or through or on behalf of in conjunction with a Related Party or any other person, firm, partnership or corporation, own, maintain, operate, engage in or have any interest in, whether directly or indirectly, any business which is the same as or similar to or directly competitive with the Salon and which is located at the Premises or within a ten mile radius of the Premises.

[64] “Salon” is defined in the Franchise Agreement as “the Chatters retail business for which the Franchise is granted”. “Franchise” is the franchise to operate a Salon only at the Premises and “Premises” is defined as “the premises known as Deerfoot Meadows, #852, 8180 – 11th Street SE, Calgary AB, within which the Salon is or will be operated....”. Thus, the “Salon” is the DM Salon as I have defined it above, operating as a Chatters franchise under the Chatters “System” as defined in the Franchise Agreement.

[65] There is no question that the Non-Compete Clause is unambiguous as to its duration (two years from the expiration or termination of the Franchise Agreement) or geographic scope (at the DM Salon Premises or within a 10 mile radius of the DM Salon).

[66] With respect to the scope of activities it restricts, the core of the restricted activities are for businesses which are the “same as or similar to or directly competitive with the Salon...”. Unlike some cases, like *Adderley*, where the restricted activity was a defined term in the Franchise Agreement, the Non-Compete Clause does not use a defined term. In this case, the restricted activity is not expressly linked to the “Products” or “Services” as defined in the Franchise Agreement, which defined terms could include products or services that are never offered in the DM Salon. In my view, the Non-Compete Clause instead refers to the actual business of the DM Salon (which will include Products and Services, but may not include *all* the defined Products and Services). This is not ambiguous as between these parties, as were all acutely aware of the DM Salon’s actual business at the time of Franchise Agreement given it had been operating for years.

[67] This conclusion is consistent with the commercial purpose or object of the Non-Compete Clause, which I interpret to be to protect the *DM Salon* from CDML/Larko operating a business that is the same as or similar to or directly competitive with the *DM Salon* after the Franchise Agreement expires or is terminated. Unlike many similar provisions in other franchise agreements, the commercial purpose is not, in this case, to protect *all Chatters salons or franchisees*.

[68] This purpose and object is plain from the use of the words “the Salon”, instead of “all” or “any” Chatters salons, or “a Chatters salon”, or something to that effect in the Non-Compete Clause. Further, clause 12.1.2 of the Franchise Agreement, expressly references “any other franchisee” of the Franchisor. Chatters knew how to delineate between different Chatters salons, to protect one franchise or salon, or to protect all Chatters salons.

[69] Reported decisions illustrate that, for years, some non-compete clauses in franchise agreements have had the broader purpose of protecting the entire franchise system from similar competitive operations which could cause confusion in the marketplace or draw away business from the system as a whole. See, as just a few examples [emphasis added]:

- (a) *MEDChair CA* at para 6 (“...any business similar to the business carried by MEDChair **or any of its authorized Franchisees** within an area of 30 miles **of the nearest MEDChair Store businesses in Canada** or the MEDChair business operated by Franchisee prior to termination of this Agreement...”);
- (b) *OPA!* at para 11 (“...in any business in connection with the operation of a Competing Business and which is located at the Premises or anywhere within a radius of five (5) kilometres of the Premises **or the premises of any other Franchisor owned or franchised "OPA! of Greece" location...**”);
- (c) *RFSP Equipment* at para 10: (“... within five (5) kilometers of the Franchised Business, **or any Freshslice franchise in operation** or under construction as at the effective date of this contract; or, ... **any Freshslice franchise opened during the term** of this contract and as at the termination date of this contract...”);
- (d) *Boundris* at para 14: (“... At or from the Premises ... Within a three (3) mile radius of the Premises; or Within a **three (3) mile radius of any other Mr. Sub Restaurant** as of the date of such expiration, termination or Transfer of this Agreement...”);
- (e) *Allegra of North America Inc v Stevens*, 2008 BCSC 1220 at para 101: (“...any business or principal activity including the sale of signs, or which is similar to or **competitive with any Signs Now Center**, on or within nine (9) miles of the site of the Center which Franchisee has operated under the Franchisee Agreement or **within nine (9) miles of any Signs Now Center...**”);
- (f) *Saint Cinnamon Bakery Ltd v Cimat Recycle Inc*, 2006 NBQB 420 at para 12: (“...any business competitive with or similar to the Franchised Business, or the **current or future business of the Company...**”);
- (g) *Magnetic Marketing Ltd v Print Three Franchising Corp*, 1991 CanLII 763 (BCSC) at 38: (“... within seven (7) miles of **any other Print Three Centre** which is being operated by another Licensee, the Licensor or its designate”); and
- (h) *Liberty Tax Service* at para 12 (“...within forty (40) kilometers of the boundaries **of the Territory** except, if applicable, in your capacity as a Liberty Tax franchisee pursuant to a valid Liberty franchise agreement...”).

[70] That the parties to the Franchise Agreement were aware that the Non-Compete Clause could be drafted to protect all Chatters salons is obvious from the context of the Disclosure Document, which was known to both parties at the time the Franchise Agreement was executed. The Disclosure Document stated [emphasis added]:

Pursuant to Section 12.2 of the Franchise Agreement, except as approved in writing by the Franchisor, a Chatters franchisee shall not for a continuous and uninterrupted period commencing upon the termination or expiration of this Agreement or any extension thereof, and continuing for two years thereafter, either directly or indirectly, for itself or through or on behalf partnership or corporation, of in conjunction with any Related Parties or any other person, firm, own, maintain, operate, engage in or have any interest in, whether directly or indirectly, any salon and which business **which is the same as or similar to or directly competitive with a Chatters Salon** and which is located at the Premises or within a ten mile radius of the Premises.

[71] Based on this passage, and a review of the Disclosure Document as a whole, the reference to “a Chatters Salon” clearly refers to *any* Chatters salon, not only the one that is the subject of the proposed franchise. The Disclosure Document distinguished between descriptions of Chatters franchises generally and specific franchises.⁵ Therefore, this passage shows that Chatters was aware of how to draft the Non-Compete Clause to protect all Chatters salons. It did not include that language in the Franchise Agreement.

[72] Chatters appears to agree with the more restricted scope and purpose of the Non-Compete Clause in its brief. It acknowledged that: “The focus is on protecting the new Purchaser of the Franchise from Ms. Larko’s new business, White Rabbit”.⁶

[73] So, having regard to the purpose and object of the Non-Compete Clause, is it unambiguous about what activities are restricted? This requires a closer look at the phrase “same as or similar to or directly competitive with” the DM Salon.

[74] I find that the use of the words “same as” the DM Salon is unambiguous. This objectively means that CDML/Larko cannot continue operating the identical business at the Premises or within the prohibited geographical radius.

[75] Similarly, I find the words “directly competitive with” is unambiguous. Competition has been defined as “the act or process of competing, such as the effort of two or more parties acting independently to secure the business of a third party by offering the most favourable terms”.⁷ In my view, it objectively means that CDML/Larko cannot operate a business that secures, or has the purpose of securing, DM Salon customers or sales.

[76] Whether prohibiting a business that is “similar to” the DM Salon’s business is unambiguous is a more difficult question. There are cases that go both ways, for example:

- (a) in *Magnetic Marketing*, the Court held that a non-compete clause in a franchise agreement restricting a business “similar” to a printing service “introduces a massive breadth of possible interpretations and hence introduces great uncertainty and ambiguity into the clause”. The clause was not enforced;

⁵ For example, in other areas, the Disclosure Document refers to “its Chatters salon”, “their own Chatters salon”, or “the Chatters Salon for the Chatters franchisee” when referring to one specific Chatters salon.

⁶ Chatters Brief at para 78.

⁷ <https://www.merriam-webster.com/dictionary/competition>.

- (b) in *Allegra of North America*, the Court declined to find a clause that restricted business for the sale of signs “or which is similar to or competitive with any Signs Now Center” as uncertain. However, the injunction was not granted because the plaintiff could not prove that there was a breach of the clause, in part due to the general nature of the description of the business in the franchise agreement;
- (c) in *Key Pos Business Systems Inc v Singh*, 2008 CanLII 21229 (ON SC) (not a franchise case), the Court held a clause that prohibited any business “similar to that currently carried on by KEY POS Business Systems Inc” as being unambiguous;
- (d) in *Invescor Restaurants Inc v 3574423 Canada Inc*, 2011 ONSC 1609, the non-compete clause prohibited a business “which is substantially similar to the Business, namely the operation of a restaurant selling generally all the products listed in Section 2.1.18”. At para 70, the Court held this clause was unambiguous and was upheld on appeal: 2012 ONCA 387;
- (e) in *Craig v CEO Global Network Inc*, 2019 ONSC 3589 (not a franchise case), at para 55, the Court held that a non-compete clause that prohibited engaging in a “business similar” to another business broadened the scope of an already generally described business so much that the clause became ambiguous;
- (f) in *MEDIchair LP v DME Medequip Inc*, 2015 ONSC 3718 [*MEDIchair SC*], the Court held that a clause prohibiting “any business similar to the business carried on by MEDIchair or any of its authorized Franchisees” was unambiguous in that case. In *MediChair SC*, the defendant simply carried on with the same business the day after expiration of the agreement, offering the exact same products for sale. At para 20, the Court distinguished the matter from others “where franchisees carried on businesses that were distinguishable from those they operated while still a franchisee, thus establishing ambiguous circumstances”. The Ontario Court of Appeal upheld this finding (but overturned the injunction on other grounds): *MEDIchair CA* at para 32; and
- (g) in *M & P Drug Mart Inc v Sydney (Alan) Norton*, 2021 ONSC 5211 (not a franchise case), at para 36, the Court held that a clause prohibiting an employee from being engaged in “any business the same as, similar to or competitive with” a pharmacy business was ambiguous because its scope was unclear. For example, it was unclear whether the clause prevented the former employee pharmacist from working in the produce section of a grocery store that also had a pharmacy. The Court of Appeal upheld the decision: *M & P Drug CA* at 47–48.

[77] In my view, based on the record before me, I find that the prohibition of businesses “similar to” DM Salon’s business is unambiguous. “Similar” has been defined as “having characteristics in common” or “alike in substance or essentials”.⁸ Or as “having a marked resemblance or likeness; of a like nature or kind”; and is “synonymous with ‘comparable’”: *Canada v Mont-Sutton Inc*, 1999 CanLII 8196 (FCA) at para 24.

⁸ <https://www.merriam-webster.com/dictionary/similar>.

[78] I find that the only reasonable objective interpretation is that the Non-Compete Clause applies to businesses that resemble and have essential characteristics common to the DM Salon's business operated as a Chatters franchise. As noted above, there would be no uncertainty between the parties about the content of the DM Salon's actual business.

[79] Another question pertinent to the assessment of ambiguity is that of the time at which DM Salon's actual business is considered for the purpose of the Non-Compete Clause. When considering enforcement of a restrictive covenant the court needs to compare the defendants' activities against the prohibited activity: *Adderley* at para 12. Should the prohibited business, namely one similar to DM Salon's business, be determined based on when the Franchise Agreement was executed, terminated, or ongoing during the duration of the Non-Compete Clause's two-year term?

[80] I find that the only reasonable and objective interpretation is that the business of DM Salon referenced in the Non-Compete Clause is that which exists at the date the Franchise Agreement expires or terminates. It cannot be that the parties objectively intended that the restricted activities would be based on the *potential* scope of business of the DM Salon, or could change, post-termination, at the whim of whomever is operating the DM Salon. For example, if (as is the case here) the DM Salon was never engaged in the business of esthetics services during the term of the Franchise Agreement, the parties did not objectively intend those services to be prohibited. Further, it was not objectively intended that DM Salon could expand its business to new areas post-termination so as to bring them under the Non-Compete Clause and thereby prevent CDML/Larko from offering those services. This is all consistent with Chatters' position in this matter, as it does not seek to prohibit the Seton Business from offering esthetic services.

[81] Accordingly, I do not find the Non-Compete Clause ambiguous based on the interpretation of what the "business" of DM Salon is, what is similar to it, or when to measure it. It is intended to refer to the actual business of DM Salon at the time the Franchise Agreement expires or terminates. If I am wrong in that interpretation, and the prohibited business could change post-termination during the two-year duration of the Non-Compete Clause, then the Non-Compete Clause would be ambiguous and unenforceable.

[82] In conclusion, I find that Chatters has sufficiently established that the Non-Compete Clause is unambiguous.

3. Are the Defendants Engaging in Conduct Prohibited by the Non-Compete Clause?

[83] The issue here is whether the Seton Business is, in fact, the same as or similar to or in direct competition with the DM Salon.

[84] Is the Seton Business the same as the DM Salon business? No. Although it offers hair services and sells hair products, it does so as part of a larger offering of services, including skin services and esthetics services which were not part of the DM Salon business. It has completely different branding.

[85] Is the Seton Business similar to the DM Salon business? Yes, I find, there is ample evidence of common characteristics between the Seton Business and the DM Salon's business that the Seton Business is "similar to" the DM Salon business. Its main source of anticipated (and likely its actual)

revenue is hair services, including many of the very same services offered at the DM Salon while operated by CDML. White Rabbit has a significant retail hair products section, noted by Ms. Short to be more substantial than ordinary salons, similar to the DM Salon. Hair services and a large retail product sales area appear to have been the two main pillars of the DM Salon business.

[86] Larko has gone out of her way to avoid describing the Seton Business as a salon, preferring instead to brand it as a “beauty and blowout bar” with a primary focus on skin and esthetic services. Larko’s attempts to distinguish the Seton Business from the DM Business in this manner were not persuasive. Her assertions do not align with the evidence. Larko acknowledged in questioning that White Rabbit provides a full service salon experience with hair services including barbering, cutting, colouring and texturizing. It is fitted out with nine salon chairs and four shampoo stations. It employs six hair stylists. The Seton Lease noted that “primary services” permitted at the Seton premises were of “appointment and walk-in...hair care, skin and body care products and services, spa services, hair tools and accessories and directly related merchandise”. Secondary services were “blowout and express root bar treatments, laser skin and facial treatment”. White Rabbit has not provided detailed evidence of its actual revenue sources, but Larko’s business plans showed that virtually all White Rabbit’s *pro forma* revenues were expected to be from hair services and sale of retail products. Although White Rabbit/Larko have suggested that revenues from hair services/hair product sales were or were anticipated to be significantly less than this, I draw an adverse inference against them because they have not provided the revenues or revenue sources from the actual Seton Business operations since it opened in February 2025.

[87] While the branding and additional services provided by White Rabbit does differentiate the Seton Business from the DM Salon, in particular in its look and feel, that is not enough to avoid the obvious conclusion that they are similar businesses. At their core, they are both retail stores providing hair services, with significant retail space dedicated to the sale of retail hair products. In this case, the addition of skin and esthetic services (or rental income from renting space to Looking Glass to provide those services) does not make the businesses sufficiently different to avoid being caught by the “similar to” language in the Non-Compete Clause.

[88] Is the Seton Business “directly competitive” with the DM Salon? In my view, there is insufficient evidence to find that it is. Sim acknowledged in questioning that Chatters had no evidence of business cannibalization by the Seton Business, and none was provided. Sim’s evidence that, in her experience, there can be cannibalization up to 20 miles was vague, without context, unsupported, and speculative in this case. Chatters’ own investigator concluded that the Seton Business’ clientele “primarily consists of local residents, particularly catering to younger, trend-conscious individuals”.

[89] The Seton Business and the DM Salon are almost 10 miles apart. There is no, or insufficient, evidence that White Rabbit/Larko’s aim was to draw, or that it actually has drawn, business away from the DM Salon, its customer base, or its trading area. Larko adduced hearsay evidence, which is admissible in this interlocutory application under rule 13.18 of the *Alberta Rules of Court*, Alta Reg 124/2010 (*Rules*), that the purchaser of the DM Salon franchise has no concern with the operation of the Seton Business and “feels I am not in competition in any way”. The fact that White Rabbit sought exclusivity in the North Retail District in the Seton Lease suggests White Rabbit acknowledges it may compete with Chatters in the Seton area, it does not prove direct competition with the DM Salon.

[90] Although a former DM Salon stylist now works at the Seton Business, the evidence is that she was terminated by the DM Salon and there is no evidence that she brought any DM Salon customers with her. Without any evidence or information about this stylist’s book of business (if any), or industry evidence about hair stylist books of business generally, I am not prepared to simply infer that this stylist has brought DM Salon customers with her. Inferences must be drawn from the positive proven (i.e. accepted) facts which are reasonably supported by the record, because otherwise they are speculation or conjecture: *Chavez-Salinas v Tower*, 2022 BCCA 43 at para 24, citing *Housen v Nikolaisen*, 2002 SCC 33 at paras 19–23; *Gray v McNeill*, 2017 ABCA 376 at para 18; *Grafikom Speedfast Limited v Heidelberg Canada Graphic Equipment Limited*, 2013 ABCA 104 at para 16; *Walton v Alberta (Securities Commission)*, 2014 ABCA 273 at para 26, leave to appeal to SCC refused, 2015 CanLII 14759. Drawing inferences when there is an evidentiary gap, based on an “educated guess” is speculation: *Walton* at para 26, citing *United States of America v Huynh*, 2005 CanLII 34563 (ON CA).

[91] In my view, there is insufficient evidence to support that DM Salon is drawing, or is likely to or aims to draw business from the DM Salon. On the record before me, I do not find it is directly competitive with the DM Salon.

[92] In conclusion, I find on the record before me that Chatters has established that the defendants have operated, and will likely continue to operate, in a way prohibited by the Non-Compete Clause because the Seton Business is operating a similar business to the DM Salon business, but not that it is the same as or directly competitive with the DM Salon business.

4. Does Chatters Have a Legitimate or Proprietary Interest Entitled to Protection?

[93] As confirmed in *MEDChair CA*, if a party does not have a legitimate or proprietary interest worthy of protection at the time the restrictive covenant is enforced, the restrictive covenant may be unenforceable. A desire to solely eliminate or control competition is not alone a valid interest.

[94] Chatters asserts it has a legitimate or proprietary interest to be protected by the Non-Compete Clause. Its primary argument is that it has contemplated a Chatters location in the Seton area before the termination of the Franchise Agreement. It points to the fact that White Rabbit negotiated an exclusivity clause in the Seton Lease preventing Brookfield from leasing to Chatters in the North Retail District as proof that the defendants were aware that White Rabbit was going to be a competitor to Chatters.

[95] In my view, Chatters’ argument is unpersuasive for several reasons.

[96] First, in my view, in order for a proprietary or legitimate interest to warrant protection of the restrictive covenant, it should be connected to the purpose of the restrictive covenant. Determining the purpose or object of the restrictive covenant is critical: *MEDChair CA* at paras 39–40. In my view, Chatters’ interest in protecting a potential future Chatters salon in the Seton area is insufficiently linked to the Non-Compete Clause’s purpose and object of protecting the DM Salon (not all of Chatters’ present or future salons or franchises). For the same reasons, it is insufficient that the Seton Business could potentially draw business from the Chatters corporate-operated SC Salon, as the Non-Compete Clause’s purpose was not to protect the SC Salon.

[97] Second, even if a potential Chatters salon in the Seton area could be the basis for a proprietary or legitimate interest, as argued by Chatters, Chatters has simply not established that it has any intention or desire to open or franchise a Chatters salon in the Seton area during the term of the Non-Compete Clause or reasonably thereafter.

[98] The evidence is that Larko has long been interested in the Seton area because that is where she lives. She raised it with Chatters at least twice, in 2010 and 2023, and there is no evidence Chatters had any interest in the area at those times. In 2023, Sim confirmed to Larko that Chatters had considered it “maybe 2 years ago” and passed it up, but would revisit and look at what real estate was then available. In August 2023, the Chatters board appears to have considered a possible Seton location in 2025, but there is no evidence any steps were taken in pursuit of it. In June 2024, Chatters was presented with a concrete opportunity for a Chatters location in Seton in a new development nearby the Seton Business but in the different Brookfield Market Street District, which contemplated an opening in Q4 2025, but Chatters decided not to take any action on it. Therefore, the best evidence before me is that Chatters has considered but decided not to operate in Seton at this time, or for the foreseeable future (including for remaining term of the Non-Compete Clause, which ends on July 1, 2026).

[99] Third, I have also considered whether Chatters has other legitimate or proprietary interests relating to its franchise “System” as defined in the Franchise Agreement. Chatters points to clause 12.1 of the Franchise Agreement by which CDML/Larko acknowledged they would receive specialized training and trade secrets relating to, among other things, “operational, sales, promotional and marketing mechanism techniques of the Franchisor and the System”.

[100] As noted in Dolman et al at 451: “In the franchising context, it is dangerous to assume that the courts will accept without robust evidence that the franchise system contains trade secrets that are worthy of protection through restrictive covenants”. I agree.

[101] Larko’s undisputed evidence was that she did not have customer lists, is not using any customer list from the DM Salon, she was not a stylist, and she did not have relationships with DM Salon customers. There is insufficient evidence that the defendants are using trade or business connections from the DM Salon. Further, there is no evidence that the defendants are using, or would damage, any goodwill in the Chatters name or brand, given the distinct branding and additional service offering of White Rabbit. There is insufficient evidence that the defendants are using any “Names and Marks” as defined in the Franchise Agreement, or any trade secrets, marketing strategies, pricing models, or unique merchandising styles or methods of operation. Further, there is no or insufficient evidence that the defendants are using Chatters’ confidential information and, in any event, Chatters does not rely on clause 11.2 of the Franchise Agreement, which contains a specific restrictive covenant to prevent use of confidential information if that was its concern.

[102] Accordingly, I find that Chatters has not established it has a legitimate or proprietary interest to protect through the Non-Compete Clause. It appears that what Chatters really wants to do is simply to restrain competition for hair services and sale of retail hair products in an area it has no current interest in, not to protect the DM Salon but to protect other existing or future Chatters salons. In my view, in this case, this does not constitute a legitimate or proprietary interest warranting protection.

[103] For these reasons, I find that Chatters has not established a strong *prima facie* case that the Non-Compete Clause is enforceable and the Application is dismissed.

[104] In case I am wrong on my conclusion on this point, I will proceed to further consider the other elements of the Application.

5. Is the Non-Compete Clause Reasonable and Enforceable?

[105] As noted above, to be reasonable and enforceable, a non-competition covenant must, having regard to the purpose of the restrictive covenant, be limited as to the applicable scope of activities, duration, and geography as are necessary for the protection of the legitimate interests of the party in whose favour it was granted: *City Wide Towing* at para 33; *Payette* at paras 45, 61; *Shafron* at paras 17, 27 and 43; *Adderley* at para 6; *Demand Science* at para 16; *People Corporation* at para 14. In the context of this specific Non-Compete Clause, the geographical scope must align with the need to protect the DM Salon, not all Chatters salons.

[106] I have considered whether, in this case, the Franchise Agreement and Non-Compete Clause should be considered using the more stringent framework used in employment relationships, or the less stringent “commercial contract” framework, as discussed earlier in these Reasons. I find that a more stringent framework is applicable in this case. Chatters’ counsel acknowledged in oral argument that the Non-Compete Clause is a clause of adhesion and would not have been negotiable. While CDML and Larko executed the Franchise Agreement with legal counsel, and Larko was an experienced Chatters franchisee, I find that there was nonetheless an imbalance of bargaining power and the Franchise Agreement was a contract of adhesion that was not the subject of any material negotiation. Further, the Franchise Agreement binds Larko personally as if she was the franchisee and the Non-Compete Clause, if enforced against her, could significantly restrict her ability to work in an area covering most of Calgary, in the industry she has worked in for many years.

[107] I turn now to consider the Non-Compete Clause’s duration, scope and geography.

[108] The defendants do not take issue with the two-year duration. Two-year restrictive covenants have frequently been upheld as reasonable: *RFSP Equipment* at para 48, citing Dolman et al 452. I find the two-year duration reasonable in this case.

[109] I also find that the scope of activities covered is reasonable, as prohibiting CDML/Larko from being involved with the same, similar or directly competitive business as the DM Salon’s business at the time of termination is a reasonable way to protect the DM Salon from market confusion or drawing away of DM Salon’s customers.

[110] However, I find that the geographic scope of 10 miles from the DM Salon’s Premises has not been established as reasonably required to protect the DM Salon.

[111] In cases involving the sale of a business, the geographical scope of the restrictive covenant is judged by the scope of the business sold rather than the business of the purchaser, and must generally be limited to the area where the vendor’s business was active: *City Wide Towing* at paras 34–35; *Payette* at para 65; *Dr C Sims Dentistry Professional Corporation v Cooke*, 2024 ONCA 388 at para 22. However, the question is whether the scope is reasonable, not whether it maps exactly to the business’ trading area: *Dr C Sims* at para 23. The radius generally reflects how far

a customer might be willing to travel to access services: *Dr C Sims* at para 23. In my view, these cases are analogous to the Non-Compete Clause given its focus on protecting the DM Salon business and not other Chatters locations.

[112] Sim was unable to speak to the rationale or basis for the 10-mile radius. While the geographic limit does not need to perfectly match the DM Salon’s trading area, Chatters provided no evidence at all of the DM Salon’s trading area, or of hair salons more generally, or otherwise, to establish that a 10 mile radius is a reasonable radius rather than an arbitrary geographic limitation unconnected to the protection of the DM Salon. The fact that the 10-mile radius covers most of Calgary is of concern. Further, the fact that, at the time of the Franchise Agreement, and now, there are several other Chatters salons within the 10-mile radius (with a current average distance between them of only 3.16 miles), while not determinative, is some evidence that a reasonable geographical area to protect the DM Salon, as known to the parties at the time of the Franchise Agreement, was likely something materially less than 10 miles.

[113] In these circumstances, on the record before me, Chatters has not established that the Non-Compete Clause is reasonable in geographic scope. Further, neither blue-pencil or notional severance can be used to save it: *Shafron* at paras 2, 29–42; *City Wide Towing* at paras 39–52; *People Corporation* at paras 61–63; *Globex* at para 49. The 10-mile radius cannot simply be struck out and it is not for the Court to rewrite the scope of the Non-Compete Clause in this situation. Clause 12.3 of the Franchise Agreement, which effectively provides for contractual severance to impose “the maximum duty permitted by law” in the event the Non-Compete Clause is held to be unreasonable or unenforceable, does not assist Chatters. The Court does not have evidence to determine what might be reasonable and, therefore, “permitted by law”.

[114] While the result on this issue may very well be different on a full trial record, for example, with an evidentiary record of the DM Salon’s trading area and or the trading area of hair salons more generally, on the record before me Chatters has not established a strong *prima facie* case that the Non-Compete Clause will ultimately be held to be reasonable and enforceable.

[115] If necessary, I would have also denied the Injunction Application on this basis.

D. Irreparable Harm

[116] Irreparable harm 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): *RJR-MacDonald* at 341; *Stogryn v McGovern*, 2020 ABCA 38 at para 27; *Pendosi Holdings Ltd v The Forzani Group Ltd*, 2011 ABCA 171 at para 22, citing *Dreco Energy Services Ltd v Wenzel*, 2004 ABCA 95 at para 15. It can include circumstances where one party will suffer permanent market loss or irrevocable damage to its business reputation: *RJR-MacDonald* at 341. In the context of franchise agreements, irreparable harm can include evidence of incalculable loss of goodwill: *Demand Science* at para 52; *Garcha 2022* at paras 106–107. Or irreparable damage to the integrity or goodwill of the franchise system: *Quizno’s* at paras 92–93; *Bilomba* at para 43; *OPA!* at para 41; *BMR Bath Master* at para 41; *Second Cup* at paras 28–31; *Home Instead* at paras 7, 12–13.

[117] An applicant for an interlocutory injunction may not need to have “full economic evidence” at this stage: *Dentalcorp Health Services Ltd v Dr JS Minhas Dental Corp*, 2024 BCSC 2006 at

para 133 [*Dr JS Minhas Dental*], leave to appeal to BCCA refused, 2025 BCCA 286. However, there must be a sufficient evidentiary foundation for the Court to draw reasonable inferences, rather than mere speculation: *Modry v Alberta Health Services*, 2015 ABCA 265 at para 82; **961945 Alberta Ltd** at para 59; *ANC Timber Ltd* at para 92; *Stier Financial Group Inc v Stier*, 2012 ABQB 713 at paras 34–35; *Vancouver Aquarium Marine Science Centre v Charbonneau*, 2017 BCCA 395 at paras 58–60; *Northam Distributor* at paras 82–86; *Gold In the Net Hockey School Inc v Netpower Inc*, 2007 ABQB 520 at para 49; *Stonewater Group of Restaurants Inc v Mikes Restaurants Inc*, 2005 ABQB 799 at para 45, aff'd 2006 ABCA 193.

[118] Where a clear breach of a negative covenant is established, irreparable harm and balance of convenience must still be considered but may be given less weight: *City Wide Towing* at para 28; **364661 Alberta Ltd v 735608 Alberta Ltd**, 2010 ABCA 6 at para 8; *Dr JS Minhas Dental* at para 129; *OPA!* at paras 26–27.

[119] Where a contract includes a clause by which the parties have agreed that a breach of a restrictive covenant will give rise to irreparable harm, and/or have agreed to an injunction or waived any defences to an injunction, this is important but not determinative: *City Wide Towing* at para 53; *Dreco Energy* at para 15; *Demand Science* at para 53; *Rock Developments (Prince Albert) Inc v Carlton Spur Development Corporation*, 2017 SKQB 247 at paras 71–77; *Dr JS Minhas Dental* at para 127. In my view, such clauses provide substantial evidence but cannot override the Court's exercise of its equitable discretion. This is particularly so in contracts of adhesion involving imbalances of bargaining power such as the Franchise Agreement.

[120] Clause 12.5 of the Franchise Agreement provides that CDML acknowledges that a breach of the Non-Compete Clause “will result in irreparable injury” for which no adequate remedy at law may be available, and that it consents to an injunction and waives any defences it might otherwise have to it. However, in oral argument Chatters confirmed it does not place significant reliance on clause 12.5. Nonetheless, as noted above, it would be given significant weight in the context of all the evidence.

[121] Chatters' asserted irreparable harm is the damage to its reputation and goodwill, with its core argument related to the integrity of its franchise system. It argues that other franchisees will see its system as weak if the Non-Compete Clause can be deliberately breached, and then other franchisees will not follow it. It argues that a strong message must be sent to “inoculate the system”. The defendants argue that Chatters makes bare, speculative and unproven assertions of irreparable harm.

[122] With respect to lost business or market share, for the reasons addressed earlier, there is insufficient evidence that there will be any such loss or that any loss proven would be irreparable. If necessary, it will likely be possible at trial to ascertain White Rabbit's revenues generated from the sale of hair services and hair products or the specific customers or sales, or proportions thereof, if any, DM Salon has lost to White Rabbit.

[123] With respect to Chatters argument that it would not be able to collect a damage award, I am not satisfied that this has been established on the record before me.

[124] With respect to damage to Chatters' trademarks, reputation and goodwill in the marketplace, there is no evidence that it will suffer irreparable harm if White Rabbit is not

enjoined. As noted earlier, White Rabbit’s premises, brand and design is very distinct from Chatters. There is no reasonable prospect of confusion in the marketplace. In this respect, this case is similar to *RFSP Equipment* at paras 81, 96.

[125] With respect to damage to Chatters’ franchise system, I am not satisfied that Chatters has established irreparable harm. This case is distinguishable from *Quizno’s*, where there was evidence that several franchisees (three specifically involved in the litigation and eight others) had decided not to participate in Quizno’s mandated delivery system and were challenging matters “fundamental to the integrity of the franchise system”: *Quizno’s* at para 101. In *Quizno’s* the Court also noted, at para 99, that “inadvertent or only occasional harm caused by a breach of a franchise agreement by an individual franchisee or a small number of franchisees” would set the bar too low for irreparable harm.

[126] In this case, there is no evidence of any harm, or even an asserted “threatened” harm, to the integrity of Chatters’ franchise system or its goodwill with its other franchisees. Further, as noted, the purchaser of the DM Salon does not appear to take any issue with White Rabbit’s operation. In my view, this case is more analogous to cases where courts have refused interlocutory injunctions due to lack of sufficient evidence of irreparable harm to the franchise system: see, for example: *961945 Alberta* at para 68, citing *Allegra of North America and Allegra Corporation of Canada v Russell Sugimura*, (2008) (unreported) Court File No. CV-08-21790-00 (Ont SupCt); *BMR Bath Master* at paras 54–55, *Second Cup* at para 31; *WAB Bakery Franchising Ltd v Canam Advertising Ltd*, 2007 CarswellOnt 8989 (ON SCJ) at paras 16–21.

[127] On balance, even if I am wrong in my earlier conclusions about the merits of Chatters case on the question of liability, I would have found that, notwithstanding clause 12.5 of the Franchise Agreement, Chatters has not established any irreparable harm by virtue of a one-off breach of the Franchise Agreement in these circumstances.

E. Balance of Convenience

[128] The balance of convenience requires consideration of which party would suffer greater harm from the granting or refusal of the remedy: *RJR-MacDonald* at 334, 342; *Vancouver Aquarium* at para 69. It is a factual inquiry based on the facts of each individual case, and may include consideration of the nature of the relief sought, the nature of the harm the parties contend they will suffer, the relative strengths of the parties’ positions, and the public interest: *RJR-MacDonald* at 350; *Manchester Rose Group Inc v Rutherford Seniors Development Ltd*, 2025 ABKB 491 at para 51; *OPA!* at para 43; *Quizno’s* at para 46.

[129] In this case, I need not assess the balance of convenience because Chatters’ Application fails on the first two branches of the tripartite test.

F. Conclusion re Injunction

[130] Chatters has failed to discharge its onus to justify the granting of the Injunction. I find it is not just and equitable to grant the Injunction.

V. Conclusion

[131] Chatters’ Application is dismissed.

[132] The defendants have been successful on the Application and are presumptively or *prima facie* entitled to costs: *JWS v CJS*, 2022 ABCA 63 at para 24; *McAllister v Calgary (City)*, 2021 ABCA 25 at para 21.

[133] If the parties are unable to reach agreement on costs within one month of these Reasons, then the following process shall apply:

- (a) within four weeks of this decision, the parties shall file and serve on each other, and submit to my office a written cost submission setting out their costs position;
- (b) within six weeks of this decision, the parties shall file and serve on the opposing party and submit to my office their response cost submissions; and
- (c) each party's costs submission shall provide: (a) their position with respect to the factors set out in rule 10.33; (b) any formal offer or other settlement offer they wish considered that predates these Reasons; (c) a draft proposed bill of costs pursuant to Schedule C of the *Rules*; (d) a summary of their proposed reasonable and proper costs that the party incurred in respect of the Application. These submissions will be a maximum of three pages in letter format, single spaced (excluding authorities, offers, or proposed bills of costs).

Heard on the 19th day of August, 2025.

Dated at the City of Calgary, Alberta this 17th day of September, 2025.

M.A. Marion
J.C.K.B.A.

Appearances:

G. James Thorlakson and Ainslie Fowler
for the Plaintiff/Applicant

Harsimrat Nahal
for the Defendants/Respondents