IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Saunders v. Ciammaichella,* 2025 BCSC 1888

Date: 20250926
Docket: S245714
Registry: Vancouver

Between:

R. Sean Saunders and Drs. Sean and Aileen Saunders Inc.

Plaintiffs

And

Anthony Ciammaichella, Dr. Anthony Ciammaichella Inc. and 0428962 B.C. Ltd.

Defendants

Before: The Honourable Mr. Justice Milman

Reasons for Judgment

Counsel for the Plaintiffs:	L. Kotler M. Switzer
Counsel for the Defendants:	R. Cooper, K.C. A. Dhawan
Place and Date of Hearing:	Vancouver, B.C. August 29, 2025
Place and Date of Judgment:	Vancouver, B.C. September 26, 2025

Table of Contents

I. INTRODUCTION

[1] This action arises from a dispute between two dentists who, through their respective professional corporations, own and operate a dental clinic located at 7180 Lantzville Road in Lantzville, British Columbia, known as the Lantzville Dental Clinic ("LDC"). For many years, they both practised dentistry exclusively at LDC.

[2] That is no longer the case. One of them, the defendant, Anthony Ciammaichella ("Dr. Ciammaichella"), has recently opened a second dental clinic, known as the Azura Dental Clinic ("ADC"), on an adjacent property located at 7184 Lantzville Road. He now spends half of his working hours seeing patients there and the other half at LDC.

[3] The other dentist is the plaintiff, R. Sean Saunders ("Dr. Saunders"). He commenced this action because he believes that, by doing those things, Dr. Ciammaichella is in breach of a contract that the parties signed when Dr. Saunders purchased his half interest in LDC from Dr. Ciammaichella in 1999. He also believes that Dr. Ciammaichella has breached that same contract by overdrawing on LDC's joint bank account for his own personal use, including to set up and operate ADC. He has sued Dr. Ciammaichella and his companies not only for breach of contract but also for breach of the implied duty of good faith and honest performance and fiduciary duties that are alleged to be owed.

[4] To prevent any further harm, which Dr. Saunders claims would be irreparable, he now seeks an interlocutory injunction to prohibit Dr. Ciammaichella from:

a) providing dental services at ADC;

b) causing patients of LDC to be treated at ADC;

c) hiring or inducing staff at LDC to work at ADC;

d) publicly associating himself with ADC;

e) using LDC's tools, equipment or facilities at ADC; and

f) withdrawing funds from LDC's bank account beyond his entitlement.

[5] He also seeks an order requiring that Dr. Ciammaichella respond to anyone asking to be treated by either Dr. Ciammaichella or Dr. Saunders at ADC, by stating that they both work at LDC exclusively.

[6] Dr. Ciammaichella opposes the application, arguing that, for a variety of reasons, the test for injunctive relief has not been met.

[7] For the reasons that follow, I have concluded that the application should be allowed in part.

II. THE DISPUTE AND ITS ORIGINS

[8] In 1989, soon after Dr. Ciammaichella graduated from dental school, he purchased what would eventually become LDC through his company, the defendant, Dr. Anthony Ciammaichella Inc. ("Ciammaichella Inc."). After building the new facility, he began seeing patients there in 1994. Until the events giving rise to this action, LDC was the only dental clinic in Lantzville.

[9] Dr. Saunders joined Dr. Ciammaichella at LDC as an associate in 1996. In late 1999, they agreed that Dr. Saunders would purchase a half interest in LDC from Dr. Ciammaichella. To that end, on November 24, 1999, they and their respective professional corporations entered into two agreements, as follows:

a) a Purchase and Sale Agreement (the "PSA") between Ciammaichella Inc., as Vendor, and the corporate plaintiff, Drs. Sean and Aileen Saunders Inc. ("Saunders Inc."), as Purchaser, pursuant to which Saunders Inc. acquired a half interest in most of LDC's assets from Ciammaichella Inc., including its goodwill, to which was allocated 40% of the total purchase price of $245,000; and

b) a Cost Sharing and Buy/Sell Agreement (the "CSBSA") among Dr. Ciammaichella, Dr. Saunders, Ciammaichella Inc. and Saunders Inc., pursuant to which the parties set out, as explained in the recitals, various

> terms to govern, “expenditures incurred in respect of the independent practices carried on by the Parties”, and “the rights and obligations of the Parties in connection with any dispositions of a Party’s Practice”.

[10] The arrangement appears to have worked well for many years. More recently, however, the parties have found themselves at cross purposes on various issues.

[11] One of those disagreements arose after Dr. Ciammaichella took a medical leave of absence between 2003 and 2009. When his disability insurance ran out, he needed to take money from LDC to help make ends meet. He says that Dr. Saunders refused to permit him to draw more than $200,000 for that purpose, although this is disputed by Dr. Saunders. In addition, in order to ease his financial burden, Dr. Ciammaichella agreed, in November 2008, to sell Dr. Saunders a one-half interest in the building where LDC is located (Saunders Inc. had not acquired any interest in that real property pursuant to the PSA).

[12] The parties also disagreed about their respective management styles and equipment purchases. Dr. Saunders frequently objected to the amount of money that Dr. Ciammaichella was drawing from LDC’s line of credit and later its joint bank account. In his affidavit, Dr. Ciammaichella has deposed that Dr. Saunders closed the line of credit despite Dr. Ciammaichella’s desire to continue using it. Dr. Saunders disagrees, asserting that it was the bank that closed the line of credit and refused to re-open it. According to Dr. Saunders, Dr. Ciammaichella has at times drawn so much money from the joint account for his own use that LDC was almost unable to make payroll.

[13] As a result of these disagreements, their relationship gradually deteriorated.

[14] In 2017, Dr. Ciammaichella began exploring a possible sale of LDC to a third party. He had discussions to that end with a number of dental practice aggregators and received several offers. However, Dr. Saunders was not prepared to sell his practice and so nothing came of it. Later, the parties came close to an agreement on terms by which Dr. Saunders would purchase Dr. Ciammaichella’s half interest in

LDC. In the end, however, they were unable to reach an agreement on that prospect either. Dr. Ciammaichella decided that he did not want to sell his interest after all, because, he says, he was not yet ready to retire.

[15] Although he may not have been ready to retire, Dr. Ciammaichella was no longer content with the existing arrangement. He has deposed that the ongoing friction with Dr. Saunders was taking a toll on his mental health. In 2019, he purchased the adjacent building at 7184 Lantzville Road as an investment, through another wholly owned company, the defendant 0428962 B.C. Ltd. The building was tenanted at the time. Later, when the leases expired and the tenants left, Dr. Ciammaichella decided to renovate the building to create ADC. In the end, he spent about $397,500 in doing so. He now operates ADC through yet another wholly owned company, Anthony Ciammaichella Dental Corp. (“ACDC”), without any involvement of Dr. Saunders.

[16] ADC began operating in March 2025. Dr. Ciammaichella hired several other associate dentists to staff it. He began working there himself in June 2025. Until then, he had been working four days a week at LDC. Now he divides his times equally between the two clinics, seeing patients for two days a week at LDC and two days a week at ADC.

[17] Dr. Saunders has deposed that, since then, LDC has been losing patients to ADC and that LDC’s patients are confused by the situation. He complains further that Dr. Ciammaichella has been using LDC’s equipment at ADC and has drawn on LDC’s joint bank account for the benefit of ADC. He alleges that by practicing dentistry part-time at ADC, Dr. Ciammaichella is eroding their shared goodwill in LDC, in breach of the CSBSA. He believes that Dr. Ciammaichella’s real motive in setting up ADC is to avoid having to transfer his practice to Dr. Saunders at a discount when he comes to sell it or retires, as the CSBSA requires.

[18] Dr. Ciammaichella denies any breach of the CSBSA. He has deposed that the parties have always kept their respective practices and patient lists separate, in accordance with the CSBSA, and that he has no intention of bringing any of

Dr. Saunders' patients to ADC or hiring any staff who are currently working at LDC. His view is that Lantzville will benefit from having a second dental clinic and that both dentists can profit from the situation by hiring more associates to meet the added demand. He says that he has long ceased drawing on LDC's joint account for his personal needs and denies ever drawing on LDC's joint account to fund ADC.

[19] Dr. Saunders commenced this action on August 21, 2024, before Dr. Ciammaichella began seeing patients at ADC. He brought this application on June 10, 2025, soon after that occurred.

III. THE LEGAL TEST

[20] The test to be applied on an application for an interlocutory injunction was reiterated in *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5. That test requires that the applicant establish the following three elements:

a) there is a serious question to be tried (in the case of a prohibitive injunction) or a strong *prima facie* case (in the case of a mandatory injunction);

b) there is a risk of irreparable harm; and

c) the balance of convenience supports granting an injunction.

[21] Dr. Ciammaichella argues that the plaintiffs are seeking mandatory relief, at least in part, and must therefore meet the higher burden of showing a strong *prima facie* case. I disagree. I am satisfied that what is sought here is, in essence, a prohibitive injunction. Although one of the proposed terms of the order sought (namely, how Dr. Ciammaichella should respond if asked about where he works) is framed in mandatory terms, it is only incidental to the main relief being sought and is unnecessary in any event. If Dr. Saunders is successful in the application and Dr. Ciammaichella is prohibited by court order from practicing dentistry at ADC, he will have no choice but to advise his patients where he works. Accordingly, I have

concluded that the only question to be asked on the first branch of the test is whether the claim raises a serious question to be tried.

[22] Dr. Ciammaichella also argues, citing *British Columbia (Attorney General) v. Reece*, 2023 BCCA 257, that Dr. Saunders is really seeking a "*quia timet*" injunction, insofar as he seeks relief to protect himself and Saunders Inc. from harm that has not yet occurred. That being so, it is argued, he must meet a higher evidentiary standard by showing a "strong probability" of harm that will occur "imminently" or in the near future. In general, I disagree that the relief sought on this application can properly be characterised in that manner. Rather, the applicants seek an order to prohibit Dr. Ciammaichella from continuing to engage in conduct (namely, practicing dentistry part-time at ADC, overdrawing on the LDC joint account and otherwise using LDC's property at ADC) that is alleged to be already underway and causing harm. It is therefore the ordinary test described above that applies. There is one exception, however, and I will address it at the conclusion of these reasons for judgment.

IV. DISCUSSION

A. Serious Question to be Tried

[23] As the Court of Appeal reiterated in *Vancouver Aquarium Marine Science Centre v. Charbonneau*, 2017 BCCA 395, this first branch of the test is not particularly onerous. Dr. Saunders need only show that his claim is not a frivolous or vexatious one: *Vancouver Aquarium* at para. 39.

[24] Dr. Saunders advances the following causes of action:

a) a breach of ss. 2.01, 6.09 and 6.10 of the CSBSA;

b) a breach of the implied duty of good faith and honest performance; and

c) a breach of fiduciary duty.

[25] Dr. Ciammaichella disputes that any of these claims raise a serious question to be tried.

[26] I will consider the merits of each of them in turn.

Breach of Contract (Practice at ADC)

[27] Dr. Saunders alleges that Dr. Ciammaichella has breached various terms of the CSBSA by:

a) transferring the goodwill of LDC, including that associated with his own practice and that shared between the parties' two practices;

b) causing patients of LDC to transfer to ADC;

c) using tools belonging to LDC at ADC; and

d) failing to use "best efforts" to ensure patient referrals are shared equally.

[28] The first provision of the CSBSA that is alleged to have been breached in that manner is s. 2.01, which states as follows:

> 2.01 General Transfer Restrictions – Except as otherwise expressly permitted herein, no Party shall sell, transfer, assign, or otherwise dispose of such Party's Practice or any portion thereof unless such Party has first offered to sell such Practice to the other Party in accordance with the provisions of this Article 2.

[29] The term "Practice" is defined in s. 1.01(h) as follows:

> "Practice" means all right, title and interest of a Party in and to such Party's dentistry practice, all goodwill associated therewith, all equipment, furniture, fixtures, leasehold improvements, chattels, supplies, inventory and materials used in connection therewith and all other assets and undertaking comprising such business …

[30] Dr. Saunders alleges that Dr. Ciammaichella is in breach of s. 2.01 for having transferred a portion of his practice to ADC, namely, a portion of the goodwill of LDC that he shares with Dr. Saunders.

[31] Dr. Ciammaichella denies that he is in breach of that provision. He says that the CSBSA contemplates that the parties will keep their respective practices as

separate and discrete entities. This intention is expressly set out in s. 6.06, which states as follows:

> 6.06 SCOPE OF RELATIONSHIP - Each of Saunders lnc. and Ciammaichella lnc. carries on the independent practice of dentistry and owns, as its own property, a one-half interest in and to the assets and undertaking. While the Parties share limited expenses, they do not share revenue. Nothing herein contained creates, nor will the relationship of the Parties constitute or be deemed to constitute, a partnership, joint venture or employment arrangement and the Parties agree that they are should at all times be independent contractors. Neither Party should have the authority to make statements or commitments of any kind or take action which should be binding upon the other Party.

[32] Dr. Ciammaichella relies on that provision and others in arguing that the parties did not intend for there to be any shared goodwill in LDC. To the extent there has been a transfer of goodwill, he says, it can only have been the goodwill associated with his practice alone. Such a transfer is expressly exempted from the operation of Article 2 by s. 2.04, which creates an exception for transfers between affiliates. The transfer in issue here was, he says, solely between two affiliates, namely, from Ciammaichella Inc. to ACDC, and is therefore exempt.

[33] Another difficulty with the claim in relation to s. 2.01 is that the provision could be interpreted to be directed only at transfers that trigger the right of first refusal in s. 2.02. That is because s. 2.01 does not prohibit transfers generally, but only those carried out without first offering to sell the practice to the other party in accordance with the provisions of Article 2. This can only be a reference to s. 2.02, which sets out a right of first refusal that arises in certain circumstances, beginning with the following preamble:

> 2.02 RIGHT OF FIRST REFUSAL - In the event that a Party (the "Offeror") receives and desires to accept a bona fide offer in writing from a third party (the "Third Party") dealing at arm's length with the Offeror to purchase all and not less than all of the Offeror's Practice (the "Third Party Offer"), the following provisions shall apply …

[34] Section. 2.02 was never triggered in this case because Dr. Ciammaichella did not receive an offer from an arm’s-length third party to purchase his entire practice.

[35] However, it is at least arguable that the combined effect of these provisions is that partial transfers of a party's practice are never permitted, unless they occur solely between affiliates. Whether this was a transfer of goodwill solely between affiliates, as Dr. Ciammaichella argues, or a transfer of part of LDC's shared goodwill, as Dr. Saunders argues, is a question for trial that cannot be answered on this application. The parties have adduced conflicting expert opinion evidence on the point. I am satisfied that this aspect of the claim, although problematic, gives rise at least to a serious question to be tried.

[36] The second provision alleged to have been breached is s. 6.09, which states as follows:

> 6.09 REFERRALS - All referrals shall be shared equally to the intent and effect that the patient load between the Parties will be allocated, as nearly as circumstances allow, on a fifty/fifty basis and the Parties shall use their best efforts to achieve this result. It is further acknowledged that the Parties will cooperate with each other to maximize revenues and minimize costs of their respective dental practices. Notwithstanding the foregoing, the Parties do agree that patients will be booked for the first available appointment with either Party unless otherwise agreed upon.

[37] Dr. Saunders alleges that Dr. Ciammaichella is in breach of this provision by failing to:

a) use best efforts to ensure referrals are shared equally; and

b) cooperate with him to maximize revenues and minimize costs of their respective dental practices.

[38] The evidence does not support the allegation that Dr. Ciammaichella has failed, merely by setting up ADC and moving part of his practice to that location, to share referrals equally with Dr. Saunders, nor is that conduct that Dr. Saunders is directly seeking to enjoin.

[39] However, the claim flowing from the alleged breach of the covenant to "maximize revenues and minimize costs" for both parties is at least arguable and could form a valid basis for the relief sought. It is similar to the claim advanced in relation to s. 6.10, which states as follows:

> 6.10 NO INTERFERENCE - No Party shall do, say or cause to be done or said, whether expressly or implicitly, anything which has or could reasonably be expected to have an adverse effect on the Practice of another Party.

[40] I accept that these last two alleged breaches contribute to the strength of the plaintiffs' claim. Although Dr. Ciammaichella argues that his impugned conduct will only benefit Dr. Saunders by freeing up capacity that can be filled by hiring new associates, Dr. Saunders responds that the effect of the impugned conduct is indeed detrimental to his practice, because he is now required, with Dr. Ciammaichella's reduced involvement at LDC, to bear a greater share of LDC's overhead costs.

Breach of Implied Duty of Good Faith and Honest Performance (Practice at ADC)

[41] As noted earlier, Dr. Saunders alleges that even if Dr. Ciammaichella is technically in compliance with the CSBSA, he is not performing his obligations thereunder honestly and in good faith, as the law requires.

[42] In particular, Dr. Saunders says that by moving half of his practice to ADC, Dr. Ciammaichella is really seeking to avoid the provisions of Articles 2, 3 and 5 of the CSBSA, insofar they give Dr. Saunders the right to purchase Dr. Ciammaichella's practice (or require – or in some cases, allow – Dr. Ciammaichella to sell his practice to Dr. Saunders) at a discounted rate in certain circumstances. He places particular emphasis on the right of first refusal set out in s. 2.02, which arises when one of the parties proposes to sell his practice to an arm's-length third party. He notes that Dr. Ciammaichella decided to move half of his practice to ADC only after many unsuccessful attempts to sell his practice either to a third party or to Dr. Saunders.

[43] In support of that allegation, Dr. Saunders relies on a number of authorities holding that the grantor of a right of first refusal cannot properly avoid the associated obligations "by conveying the property in such a way as to avoid having to give the right in the first place": *GATX Corp. v. Hawker Siddeley Canada Inc*., 1996 B.L.R. (2d) 251 (Ont. C.J. (Gen. Div.)), CanLII 8286 (S.C.) at para. 71; *Northrock*

Resources v. ExxonMobil Canada Energy, 2017 SKCA 60 at para. 31; *Pacific Centre Limited v. Creative Energy Vancouver Platforms Inc.*, 2020 BCSC 676 at paras. 118–122.

[44] Dr. Ciammaichella responds, relying on some of those same authorities, that such a claim cannot succeed where the grantor had a legitimate reason to convey the affected property in that manner, and therefore was not doing so to avoid having to honour the right of first refusal. He says that in moving half of his practice to ADC, he was not seeking to undermine Dr. Saunders' possible future right of first refusal, but merely exercising his own right to engage in other businesses, as specifically contemplated by s. 6.08 of the CSBSA, which states as follows:

> 6.08 OTHER INTERESTS OF PARTIES - Except as expressly provided in section 6.07 [which has no application here], any Party may engage in and possess any interests in any other business or venture of any nature or description, independently or with others and no Party by reason of this Agreement will have any right or interest in or to such independent activities or businesses or the income or profits derived therefrom.

[45] The question of Dr. Ciammaichella's good faith cannot be resolved on this application. I am satisfied, however, that Dr. Saunders has at least raised a serious question to be tried in this respect.

Breach of Fiduciary Duty (Practice at ADC)

[46] Dr. Saunders alleges that Dr. Ciammaichella has also breached a fiduciary duty that arises by necessary implication from provisions such as ss. 6.09 and 6.10 in the CSBSA, insofar as they connote obligations of loyalty and good faith. He argues that the circumstances present here meet the test for the recognition of such a duty, as set out in *Alberta v. Elder Advocates of Alberta Society*, 2011 SCC 24, as follows:

> [36] In summary, for an *ad hoc* fiduciary duty to arise, the claimant must show, in addition to the vulnerability arising from the relationship as described by Wilson J. in *Frame*: (1) an undertaking by the alleged fiduciary to act in the best interests of the alleged beneficiary or beneficiaries; (2) a defined person or class of persons vulnerable to a fiduciary's control (the beneficiary or beneficiaries); and (3) a legal or substantial practical interest of the

> beneficiary or beneficiaries that stands to be adversely affected by the alleged fiduciary's exercise of discretion or control.

[47] Dr. Ciammaichella disputes that the terms of the CSBSA leave room for the recognition of a fiduciary duty. He relies on the principle that such a duty will rarely be imposed between arm's-length commercial parties, citing *Cadbury Schweppes Inc. v. FBI Foods Ltd.*, [1999] 1 S.C.R. 142, 1999 CanLII 705 at para. 30. He also relies on *Jirna v. Mister Donut of Canada*, [1975] 1 S.C.R. 2, 1973 CanLII 31 for the proposition that where parties have stipulated, as these parties have in s. 6.06 of the CSBSA, that they are independent contractors, with no partnership, joint venture, or relationship of principal and agent between them, a fiduciary relationship is not appropriately recognised. In any event, he says, the nature of the relationship in issue here does not otherwise meet the test set out in *Elder Advocates*.

[48] I agree with Dr. Ciammaichella that this aspect of the claim is problematic. Although, as Dr. Saunders argues, *Jirna* must be read in light of more recent authority, nothing in the more recent cases cited by Dr. Saunders casts doubt on the Court's finding in *Jirna* that language of the kind chosen by the parties in the CSBSA weighs against the recognition of a fiduciary relationship between them.

Overdrawing from the Joint Account

[49] Dr. Saunders also advances various causes of action in relation to Dr. Ciammaichella's draws from the LDC joint account. In particular, Dr. Saunders alleges that, by drawing on the joint account in amounts and for purposes not contemplated by the CSBSA, Dr. Ciammaichella is in breach of:

a) an implied term that he must not exercise a discretion conferred by the CSBSA for a purpose other than that for which it was granted (citing *Wastech Services Ltd. v. Greater Vancouver Sewerage and Drainage District*, 2021 SCC 7 at para. 70);

b) the implied duty of good faith and honest performance; and

c) a fiduciary duty, as described above.

[50] Dr. Ciammaichella disputes that he is in breach of any such duties or implied terms. He asserts that the CSBSA contains no express formula to restrict the amounts that may be drawn from time to time. In any event, he denies that he has drawn any funds in bad faith or for the benefit of ADC.

[51] Section 6.05 of the CSBSA governs the operation of the joint account. It states as follows:

> 6.05 BANK ACCOUNT - The Parties will open and maintain a joint bank account from which all operating office expenses will be paid. The Parties shall maintain in the account sufficient monies from which these expenses are to be paid on a monthly or semi-monthly basis. At the outset, each Party will deposit to the bank account the sum of Five Thousand Dollars ($5,000.00) and will replenish the bank account at the end of each month to ensure a cash float of Ten Thousand Dollars ($10,000.00) is maintained or such other amount as may be agreed upon by the parties from time to time.

[52] Although Dr. Saunders advances several complaints in relation to Dr. Ciammaichella's historical withdrawals from the joint account, the specific conduct he seeks to enjoin on this application is the withdrawal of funds in excess of Dr. Ciammaichella's "entitlement". I agree with Dr. Ciammaichella that the parties' respective "entitlement" is not expressly set out in the CSBSA, making an injunction in those terms too vague to be enforceable.

[53] However, s. 6.05 expressly requires the parties to maintain sufficient funds in the joint account to allow for LDC's expenses to be paid in any given month, and in any event, to maintain a balance of at least $10,000. To the extent Dr. Ciammaichella has withdrawn funds in amounts that exceed those thresholds, he has breached that covenant.

[54] I also accept that Dr. Saunders has an arguable case that the CBCSA contains an implied term that the funds in the joint account will not be used to pay the expenses of a different clinic, to the extent that has occurred. Although Dr. Ciammaichella denies that he has done this, he has not explained where the funds to set up ADC came from. This is problematic because he has, at least since

2021, frequently maintained a sizeable negative balance in the joint account, while Dr. Saunders never has.

[55] Dr. Saunders has deposed that the balances owing to or from each of them during the period from January 2021 to December 2024 were as follows:

Date	**Cumulative Balance payable to Dr. Ciammaichella or overdrawn by him ($CAD)**	**Cumulative Balance payable to Dr. Saunders or overdrawn by him ($CAD)**
January 2021	**-122,399.47**	17,066.34
February 2021	**-119,962.85**	15,883.05
March 2021	**-82,011.89**	46,584.40
April 2021	**-48,812.00**	72,671.20
May 2021	13,412.49	78,258.95
June 2021	81,300.24	118,815.15
July 2021	49,113.77	90,684.74
August 2021	51,344.70	78,525.80
September 2021	25,224.38	52,869.94
October 2021	53,323.24	105,659.29
November 2021	75,061.38	94,178.67
December 2021	34,397.79	26,443.03
January 2022	24,156.49	115,087.71
February 2022	55,564.34	158,506.93
March 2022	42,598.75	147,444.24
April 2022	**-2,463.87**	153,776.38
May 2022	13,812.63	151,699.10
June 2022	34,782.91	129,685.77
July 2022	60,005.87	66,740.68
August 2022	**-20,418,90**	85,444.95
September 2022	**-3,151.71**	98,836.18

October 2022	4,948.19	69,439.65
November 2022	**-20,574.07**	53,530.52
December 2022	8,203.10	68,523.16
January 2023	8,736.94	85,774.31
February 2023	59,093.75	148,009.74
March 2023	**-19,554.63**	133,820.46
April 2023	16,523.12	115,146.80
May 2023	**-6,756.01**	137,855.04
June 2023	**-9,773.62**	152,996.58
July 2023	**-13,402.52**	132,092.27
August 2023	**-56,184.16**	127,666.76
September 2023	**-36,041.72**	152,597.26
October 2023	**-61,736.90**	136,963.82
Nov 2023	**-5,004.09**	128,137.41
December 2023	**-16,322.79**	92,389.93
January 2024	4,116.06	71,569.08
February 2024	33,661.67	98,700.90
March 2024	4,697.46	78,555.11
April 2024	**-8,799.26**	125,210.31
May 2024	4,771.16	117,426.22
June 2024	**-14,400.34**	100,271.51
July 2024	-7,530.32	96,930.65
August 2024	**-39,464.03**	104,900.57
September 2024	**-59,963.16**	90,155.11
October 2024	**-31,016.52**	92,914.11
November 2024	**-29,332.30**	89,849.65
December 2024	**-41,196.82**	88,008.95

[56] As of June 2025, Dr. Ciammaichella was indebted to the joint account in the amount of $31,138.49 and withdrew an additional $60,000 in July and August of 2025.

[57] Although I have concluded, for the reasons set out above, that Dr. Saunders has not made out a serious question to be tried with respect to the claim alleging a breach of fiduciary duty, I am satisfied that he has made out a viable claim, in relation to the joint account, that Dr. Ciammaichella is in breach of:

a) the express terms of s. 6.05 of the CSBSA;

b) an implied terms not to abuse the discretion conferred by that provision; and

c) an implied term of honesty and good faith performance in relation to the joint account.

Conclusion on Serious Question to be Tried

[58] In summary, I have found that Dr. Saunders has established at least a serious question to be tried in respect of all of the causes of action advanced, other than:

a) the alleged breach of the covenant to divide referrals equally; and

b) the alleged breaches of fiduciary duty.

[59] Although I have found that the remaining claims meet the requisite threshold on this first branch of the test, the prospect of success at trial remains, in each case, uncertain in varying degrees. This is a factor to be considered in assessing the balance of convenience.

B. Irreparable Harm

Practice at ADC

[60] Dr. Saunders contends that if the relief sought in relation to ADC is not granted, he and Saunders Inc. will suffer the following categories of irreparable harm:

a) the siphoning of goodwill from Dr. Ciammaichella's practice at LDC to his practice at ADC, thereby "hollowing out" Dr. Ciammaichella's share of LDC that could ultimately be acquired by Dr. Saunders;

b) the loss of the goodwill of LDC that is shared between Dr. Saunders and Dr. Ciammaichella; and

c) the loss of goodwill of Dr. Saunders' at LDC, including a potentially steep loss in profitability.

[61] Dr. Saunders says that such a loss of goodwill is irreparable, in the sense that it will be impossible to repair by way of a later award of damages, citing *Landmark Solutions Ltd. v. 1082532 B.C. Ltd*., 2021 BCCA 29 at paras. 64-66 and *EnWave Corporation v. Dehydration Research, LLC*, 2022 BCSC 637 at para. 106.

[62] Dr. Ciammaichella disputes that any of these alleged losses amount to irreparable harm. He cites various authorities holding that a loss of goodwill is compensable in damages and therefore not irreparable harm: *Dentalcorp Health Services v. Poorsina*, 2023 ONSC 3531; *Capital Direct Lending Corp. v. Blanchette*, 2019 BCSC 1068 at para. 71. He also notes that the parties have, in the CSBSA, specifically made provision for the parties to be compensated in certain circumstances for similar kinds of losses, including a loss of goodwill, according to a mathematical formula, thereby negating Dr. Saunders' argument that such harm would be irreparable merely because the associated damages may be difficult to calculate.

[63] In *Landmark Solutions*, Voith J.A., writing for the Court, noted that there is conflicting case law on this question. He also observed, at para. 60, that at times the difficulty lies in a conflation by judges of "loss of goodwill" with "loss of reputation". He offered the following guidance in resolving the conflict:

> [64] In this vein, a loss of goodwill may constitute irreparable harm if that harm is not calculable. Whether this is so, however, depends on the circumstances of the case. The Court's comments in *Edward Jones* reflect the fact-specific nature of this enquiry. For example, a loss of goodwill was found to be unquantifiable, and irreparable in nature, in *Hayden v. Hayden*, 2005 BCSC 983 at para. 22; *Jardine Lloyd Thompson v. Fogal et al.*, 2007 BCSC 271 at para. 36; *Emerald Passport Inc. v. MacIntosh*, 2008 BCSC 1289 at para. 45; and *AllWest Insurance Services Ltd. v. Meredith Phendler*, 2009 BCSC 2 at para. 59.
>
> [65] Conversely, there are a number of decisions where courts have determined, on the facts before them, that the loss of goodwill could be calculated and did not constitute irreparable harm: see e.g., *472448 B.C. Ltd. v. 343554 B.C. Ltd.*, 2006 BCSC 1075 at para. 22; *Capital Direct Lending Corp. v. Blanchette*, 2019 BCSC 1068 at para. 71.

[64] In this case, I agree with Dr. Saunders that the loss of goodwill in issue, and its impact, would be impossible, rather than merely difficult, to calculate.

[65] Dr. Saunders is seeking to preserve his right to purchase Dr. Ciammaichella's practice pursuant to the CSBSA, assuming Dr. Ciammaichella continues to work four days a week at LDC. It will be impossible to determine how the price to be paid for that practice will be different at some unknown time in the future, in unknown circumstances, as a result of the division of Dr. Ciammaichella's practice between LDC and ADC if it is allowed to continue, assuming such a buyout occurs at all.

[66] Another impediment to the calculation of damages is the interplay that exists in this case between legitimate and wrongful competition. Dr. Saunders accepts that Dr. Ciammaichella was within his rights under the CSBSA to open ADC, even though it competes with LDC, as long as he staffs it with dentists other than Dr. Ciammaichella himself. In that sense, this case resembles *Edward Jones v. Voldeng*, 2012 BCCA 295, in which harm from the breach of a non-competition agreement was found to be irreparable because it may be impossible to identify which portion of the loss is attributable to prohibited as opposed to legitimate

competition. As in *Dentalcorp Health Services Ltd. v. Dr. J.S. Minhas Dental Corp*., 2024 BCSC 2006 and *MD Management Ltd. v. Dhut*, 2004 BCSC 513, it will be impossible in such a scenario to "unscramble the egg".

[67] I have therefore concluded that the potential harm that would be caused to Dr. Saunders and Saunders Inc. as a result of the shift of half of Dr. Ciammaichella's practice to ADC would, in the absence of an injunction, be irreparable.

Joint Account

[68] Dr. Saunders contends that he and Saunders Inc. will also suffer irreparable harm if Dr. Ciammaichella is not enjoined from making further improper withdrawals from the joint account. He argues that the resulting harm would be irreparable for the following reasons:

a) such withdrawals could deplete the joint account to the point that LDC will be unable to pay its employees, which would damage its reputation as an employer, lead to the loss of employees and otherwise impinge on its ability to compete with ADC; and

b) it will be impossible to determine to what extent LDC's loss of market share to ADC might be attributable to that factor.

[69] I agree with Dr. Saunders that both of these possibilities could amount to irreparable harm. Dr. Ciammaichella does not argue otherwise.

C. Balance of Convenience

[70] The third and final branch of the injunction test concerns itself with balancing the risk of irreparable harm to the plaintiffs if the injunction is refused with the risk of harm to the defendant and others if it is granted. The factors to be considered in that balancing of competing interests were conveniently set out in *Wizedemy Inc. v. Karras,* 2024 BCSC 630, aff'd 2024 BCCA 301, as follows:

a) which of the parties has acted to alter the balance of their relationship and so affect the *status quo*;

b) any factors affecting the public interest;

c) 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;

d) other factors affecting whether harm from granting or refusing the injunction would be irreparable;

e) the likelihood that if damages are finally awarded, they will be paid;

f) the strength of the applicant's case; and

g) any other factors affecting the balance of justice and convenience.

Practice at ADC

[71] Dr. Saunders argues that the balance of convenience favours an injunction in relation to ADC for the following reasons:

a) it is Dr. Ciammaichella who has altered the *status quo* by setting up ADC and moving half of his practice there;

b) there will be no harm to Dr. Ciammaichella or ADC's other stakeholders because other dentists can fill in for Dr. Ciammaichella at ADC and Dr. Ciammaichella can return to his former schedule working four days a week at LDC; and

c) the plaintiffs have a strong case on the merits.

[72] Dr. Ciammaichella argues that the balance of convenience lies in the respondents' favour, for the following reasons:

a) the proposed order would cause irreparable harm to the employees and patients of ADC;

b) forcing Dr. Ciammaichella to return to practicing only at LDC will be detrimental to his own mental health; and

c) the claim is unlikely to succeed at trial on the merits.

[73] I agree with Dr. Ciammaichella that the proposed injunction would cause harm, largely as he describes it, to him personally and the patients and staff at ADC, and that this factor weighs against the relief sought. The same considerations that led me to find that the applicants would suffer irreparable harm if an injunction is not granted, in the form of erosion of goodwill and the imposition of higher overhead costs, pose a similar risk to Dr. Ciammaichella and ADC if it is. I place only limited weight on the detrimental effect that an injunction would have on the community in Lantzville generally. There would still be two clinics available for members of that community to choose from. Dr. Ciammaichella himself would still be available to his patients for the same number of working hours every week.

[74] On the other hand, the fact that it is Dr. Ciammaichella who has altered the *status quo* by setting up ADC and moving half of his practice there weighs in favour of an injunction. So too does my assessment of the merits of the underlying claim – although I have found Dr. Saunders' prospects of success to be questionable in several respects and in varying degrees, I have concluded that the claim is sufficiently meritorious overall to tip the scales in favour of an injunction.

Joint Account

[75] Dr. Ciammaichella argues that the balance of convenience lies in his favour in relation to the joint account because Dr. Saunders' allegations are, in his submission, speculative in nature. In particular, he says that he is no longer drawing funds from the joint account for his personal use and that he has not directed any funds from the joint account for the benefit of ADC.

[76] I agree with Dr. Saunders that the claim advanced in relation to the joint account is a particularly strong one. It is Dr. Ciammaichella who has altered the *status quo* by drawing funds from the joint account as he has. Moreover, there is a compelling inference to be drawn that Dr. Ciammaichella's excessive draws have been used to fund ADC's operations, at least indirectly. Provided the terms of the proposed injunction are reformulated so as to require Dr. Ciammaichella merely to

comply with his obligations under the CSBSA, they will cause him no unwarranted prejudice.

[77] Overall, I have concluded that the balance of convenience lies in favour of an injunction in relation to the joint account, although on terms more limited than those sought.

V. DISPOSITION

[78] Having found all three branches of the applicable test to have been met, I am granting an injunction on the terms sought, but with some exceptions.

[79] First, Dr. Saunders has not shown that Dr. Ciammaichella has been hiring or inducing LDC staff to join him at ADC. An order to prohibit such conduct would therefore be in the nature of a "*quia timet*" injunction. I am not persuaded that there is a "strong probability" of that conduct occurring imminently or in the near future, so as to justify relief of that kind. That prospect seems even less likely now, in view of the other orders I am making. I am therefore refusing to grant that relief.

[80] Second, for the reasons set out above, the relief I am granting in relation to the joint account is more limited than that sought.

[81] To summarise my conclusions, I am ordering that, pending the trial of this action, Dr. Ciammaichella will be restrained, in his personal capacity, or through any other person, corporation, or other name or entity, from:

a) providing dental services at ADC;

b) allowing himself to be publicly associated with ADC, including on ADC's website, social media, public advertisements or signage at ADC's premises;

c) using LDC's tools or equipment at ADC;

d) withdrawing funds from LDC's joint bank account if the withdrawal will cause the balance in the account to fall below $10,000 after payment of LDC's operating expenses; and

e) using any funds drawn from LDC's joint bank account for the benefit of ADC.

[82] As the successful party, the plaintiffs are entitled to their costs of the application in the cause.

"Milman J."