

CITATION: The Fitness Factory (Whitby) Inc. v. MNG International Inc., 2025 ONSC 6053
OSHAWA COURT FILE NO.: CV-25-00002382-0000
DATE: 20251027

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)	
)	
THE FITNESS FACTORY (WHITBY))	
INC.)	Neil G. Wilson and Tahir A. Khalid,
)	Counsel for the Plaintiff
)	
Plaintiff)	
)	
– and –)	
)	
MNG INTERNATIONAL INC., 15591783)	
CANADA INC., 16472257 CANADA INC.)	VinayKumar M. Thapliyal, Counsel for the
and YASH MALANI)	Defendants
)	
Defendants)	
)	
)	
)	HEARD: October 24, 2025

2025 ONSC 6053 (CanLII)

REASONS FOR DECISION

S.E. FRASER J.:

I. Overview

- [1] The Plaintiff claims in nuisance and brings this is a motion for an interim injunction requiring the Defendants to stop the transmission of odours from one business condominium unit to another.
- [2] In 2024, the Plaintiff and the Defendants purchased business condominiums in Whitby, Ontario. The units and their businesses are side by side.
- [3] The Plaintiff is a fitness equipment retail store and owner of condominium Unit 6. The Defendants operate a licensed, food-grade spice import, storage and distribution business out of Units 4 and 5 of the condominium. The Defendants’ business is to store, package and label spices on a scale of three to four shipping containers monthly which contain, approximately, 14 to 25 metric tonnes of spice. The Defendants have 1,500 to 2,000 pallets of spices on the premises at a time. One of the products stored is dehydrated onions. The Defendants acknowledge that spice smells.

- [4] The Plaintiff claims that the Defendants are causing and transmitting extreme foul odours and that they have failed to address the issue despite it having been raised with them. The Plaintiff argues that the rules of the condominium prohibit the transmission of odours between units.
- [5] The Plaintiff seeks an order that the Defendants, within five days, cease creating odours that enter the Plaintiff's premises, cease storing or mixing spices without the appropriate sealing of its premises, cease storing or mixing spices without the installation of appropriate exhaust and air filtration systems, and cease conduct as is creating the odours at the Plaintiff's premises.
- [6] In support of its motion, the Plaintiff argues that the Defendants have not adequately ventilated their unit. It asserts that presently, the Defendants' premises have an air exchange capable only of 2,000 cubic feet per minute and that the Defendants' own engineer has opined this unit requires 44,800 cubic feet per minute (CPM) for typical food storage.
- [7] The Plaintiff asserts that because of the transmission of odours, its employees have suffered health effects including burning eyes, nausea, headaches and other ill-effects. There has also been an impact on its operations. The Plaintiff claims that it has suffered business losses, with customers turning away. The smell damaged inventory and customers have returned it. It claims a loss of goodwill and that its reputation has been damaged and will continue to be damaged, irreparably.
- [8] The Defendants made five principal arguments in response to the motion, arguing that an injunction is neither warranted by the evidence nor justified in law.
- [9] First, the Defendants argue that Plaintiff is in the wrong forum because the Condominium Authority Tribunal ("CAT") has exclusive jurisdiction over odours and nuisance under the *Condominium Act, 1998*.
- [10] Second, the Defendants argue that the problems are not of its making but are the result of building deficiencies beyond its control.
- [11] Third, it states that the Plaintiff is seeking a mandatory injunction such that on the first branch of the legal framework for injunctions, the Plaintiff must show a strong *prima facie* case.
- [12] Fourth, it argues that the Plaintiff has failed to demonstrate irreparable harm arguing that there is a lack of probative evidence on the health impacts and that any business losses are compensable and therefore not irreparable.
- [13] Last, the Defendants argue that if granted, the order sought would cause devastating and irreversible harm to the Defendants, their employees, and the broader community.
- [14] For reasons that follow, I grant the Order sought as I find that the Plaintiff has met its burden on this motion.

II. Issues

[15] The issues I must decide are:

- a. Is this motion brought in the wrong forum? In other words, does the Condominium Authority Tribunal govern the issues of nuisance and odour?
- b. What is a nuisance in law?
- c. What is the applicable framework for the granting of an interim injunction? In assessing this issue, it will be necessary to examine whether the Plaintiff seeks a mandatory injunction.
- d. Should an injunction be issued?

[16] To examine these issues, I will examine the facts of this case and then turn to the issues set out above.

III. Analysis

A. *Facts*

(i) *The Parties and Premises*

[17] The Plaintiff is owned by 100839168 Ontario Inc. (100 Ontario). Victor Proudian is the President of both the Plaintiff and 100 Ontario. 100 Ontario owns Unit 6, 1450 Victoria Street in Whitby, Ontario (“the Plaintiff’s premises”), which is leased to the Plaintiff. 100 Ontario Inc. undertakes to abide by and satisfy damages to the responding party.

[18] The Plaintiff sells fitness equipment for persons setting up both home gyms and commercial fitness centres. The Plaintiff’s premises are large. The Plaintiff has multiple locations in Ontario including a Markham location.

[19] The Defendants MNG International Inc. (“MNG”), 15591783 Canada Inc. (“155 Canada”), 16472257 Canada Inc. (“164 Canada”) are engaged in the importation, storage and distribution of spice. The Defendant Yash Malani is the sole director of MNG, 155 Canada and 164 Canada.

[20] The units are commercial and industrial units with a steel frame. Concrete walls separate the units. 100 Ontario purchased and leased Unit 6, an end unit, to the Plaintiff in June 2024 and the Plaintiff opened for business in May, 2025 after outfitting the store. The Defendants purchased Units 4 and 5 in September 2024 for approximately \$4.11 million each

[21] The condominium’s rules entitle owners and occupants to the quiet enjoyment of their unit. The rules provide that:

Owners and occupants, employees, guests, visitors, servants or agents of owners and/or occupants shall not create nor permit the creation or continuation of any noise or nuisance which, in the opinion of the Board or the Manager, may or does disturb the comfort or quiet enjoyment of the Units or Common Elements by other Owners or their respective employees, guests, visitors and persons having business with them.

No noise or odours shall be permitted to be transmitted from one Unit to another. If the Board determines that any noise or odours is being transmitted to another Unit and that such noise or odours is an annoyance or a nuisance or disruptive, then the Owner of such Unit shall at his or her expense take such steps as shall be necessary to abate such noise or odours to the satisfaction of the Board. If the Owner of such Unit fails to abate the noise or odours, the Board shall take such steps as it deems necessary to abate the noise or odours and the Owner shall be liable to the Corporation for all expenses hereby incurred in abating the noise or odours (including reasonable solicitor's fees).

[22] Mr. Malani acknowledged in his cross-examination that he read the rules, which prohibit the transmission of odours and noise, before purchasing Units 4 and 5.

(ii) *The Dispute*

[23] Below I set out how the dispute unfolded. This is important when considering whether I should grant an injunction.

[24] Mr. Malani, on behalf of the Defendants, initially disputed the existence of the odour. That is no longer in dispute. I find that it is the uncontroverted evidence that there is an odour transmitted from the Defendants' premises to the Plaintiff's. I can easily reach this conclusion based on the affidavit evidence supplied by the Plaintiff, the CWD engineering report procured by the condominium corporation, and the customer complaints as evidenced through email, recorded complaints and the petition.

[25] The Plaintiff's CEO Mark Jeffrey claims that from the commencement of their operations, that there have been persistent, noxious odours transmitted from the Defendants' premises to the Plaintiff's premises. He describes the smells as overpowering, pungent, and stifling, so concentrated that it smells like chemicals.

[26] Mr. Jeffrey and other employees describe feeling unwell. Mr. Blair Dickson, a salesperson, chooses to work out of the Markham location of the Plaintiff, even though he lives to the east of the Whitby location, because he is unable to tolerate the smell and environment. When he was in his office at the Whitby location, he experienced coughing and a significant eye irritation that persisted for a week following his exposure. He has refused to work at the Plaintiff's Whitby premises until the problem is resolved. This has impacted his ability to do his job.

- [27] Mr. Jeffrey details the customer complaints, one negative Google review, that customers have turned away at the door and that customers have requested full refunds as the odour from the Defendants' premises has permeated inventory. One customer purchased 100 floor mats that had to be returned because of the smell which could not be remedied when he tried to air them out.
- [28] Mr. Jeffrey sets out that he had telephone calls with Mr. Malani in April 2025. Mr. Malani told him that he would take steps to mitigate the odours. This did not help. On April 30, 2025, he wrote to Mr. Malani asking him to act, citing negative impacts on the business and health and safety risks arising from exposure.
- [29] On May 3, 2025, Mr. Malani responded by email stating:
- Your accusations are not only **misdirected**, but **factually baseless** and demonstrate a fundamental lack of understanding of how industrial condo ownership and liability functions under the **Ontario Condominium Act** and **City of Whitby building regulations**. [Emphasis in original.]
- [30] Mr. Malani told Mr. Jeffrey that it was the builder and condominium corporation's responsibility, a position which the Defendants maintain. Mr. Malani informed Mr. Jeffrey that any further attempt to place legal responsibility on the Defendants would result in legal escalation and Mr. Malani called the accusations defamatory, threatened legal action and stated that the matter was "formally closed" from their side.
- [31] The odours persisted. Staff complained of ill health effects. Customers complained. The Plaintiff recorded customer complaints in a spreadsheet. The Plaintiff started a petition which called upon the city to intervene. Many customers signed the petition.
- [32] The condominium is managed by Armadale Properties which sought an engineering report from CDW Engineering. In its report of July 21, 2025 ("the CDW report") acknowledged the complaints of intense spice odours emanating from Unit 6 and notes that the complaints were made by a number of unit occupants. The CDW report noted a noticeable and intense smell within Units 4 and 5, the Defendants' units, and that the spices were the obvious source.
- [33] The CDW report noted that the smell can travel through the permeable concrete block walls and they were neither painted nor sealed and that the smell would also travel up through the block hollows into the adjacent units. It also noted openings at the top of the concrete block wall and the steel roof beams which needed to be sealed to stop odour migration.
- [34] The CDW report also recommended HVAC changes.
- [35] On August 20, 2025, Armadale Properties advised that the condominium board was pushing ahead with a condo lawyer and that further action would be taken.
- [36] On August 22, 2025, the Plaintiff sent a demand letter to the Defendants asking them to cease operations until the units are no longer emitting odours and to remove stored

inventory and threatening a legal proceeding for injunctive relief if the situation was not remedied.

- [37] By email sent August 28, 2025, the Defendants' lawyers responded denying the allegations and stating that the Plaintiff's assertions that the business had been impacted were baseless, that if there was an issue with the spice odours, it was for the condominium and the builder to resolve them.
- [38] The Defendants have since undertaken to seal the walls and close the gaps between the demising walls and the roof, but the odour persists. The Defendants have retained an engineer for renovations to improve the air exchange. The existing rooftop air exchange unit provides only 2,000 cubic feet per minute. The engineer is proposing four units that provide 11,200 CFM meaning 44,800 CFM is what is recommended for air exchange, based on what is required for typical food storage. The Plaintiff asserts both that this is not typical food storage but that these numbers alone argues that this demonstrates that the current HVAC is inadequate.

(iii) *Findings*

- [39] I find from a review of the evidence and the engineering report and the Defendants' HVAC plans demonstrate that there is a foul, pungent and overwhelming smell emanating from the Defendants' operations resulting in an odour being transmitted from its units to the other units. It has not been remedied.
- [40] I also find that the Plaintiff has attempted to resolve the matter before bringing this motion without success. I accept that the building design may have contributed to the passing of odours from one unit to another, however, the inadequate HVAC system appears to be the major contributing factor.
- [41] I also find on the evidence that the condominium owners and occupants are entitled by virtue of the condominium rules to the quiet enjoyment of their units and that the rules provide that no noise or odours be transmitted from one unit to another.
- [42] The Defendants argue that the Plaintiff has been quick to litigate, rather than allow the solutions pursued by the Defendants to come to fruition. This is not borne out by the evidence which proves that the Plaintiff attempted to resolve the matter but was shut down quickly by the Defendants.

B. Does the CAT govern the issue of odour and the relief sought?

- [43] The Defendants argue that the Plaintiff is in the wrong forum. I do not agree.
- [44] The CAT is created by regulation under the *Condominium Act, 1998*, S.O. 1998, c.19 (the Act). Section 117(2) of the Act prohibits nuisances. The Act provides in s. 1.36 that, subject to s. 1.36(4), an owner may apply to the CAT for a resolution of a dispute with the corporation, another owner or an occupier of a unit.

[45] Section 1.42 provides that the CAT has exclusive jurisdiction to exercise powers conferred on it under this act and to determine any question before it, except one which concerns the constitutional validity of a provision of an Act or regulation.

[46] However, s. 1.36(4) provides that an application may not be made to the CAT with respect to a dispute a dispute with respect to subsection 117 (1). Section 117(1) provides:

No person shall, through an act or omission, cause a condition to exist or an activity to take place in a unit, the common elements or the assets, if any, of the corporation if the condition or the activity, as the case may be, is likely to damage the property or the assets or to cause an injury or an illness to an individual.

[47] I find that because of the health and damage to property issues raised by this action, this dispute falls within s. 117(1), such that the CAT does not have jurisdiction. I also find that the quantum of this dispute exceeds the \$25,000 CAT limit.

C. Nuisance

[48] In law, a nuisance is a substantial and unreasonable interference with the enjoyment of land. The interference may be with the health, comfort or convenience of the owner or occupier. Unreasonableness can be determined by the severity of the interference: its nature, duration and effect, the character of the locale, the utility of the defendant's conduct and the sensitivity of the use interfered with. See *Antrim Truck Centre Ltd. v. Ontario (Ministry of Transportation)*, 2013 SCC 13, [2013] 1 S.C.R. 594; *Alchuk v. 44 Toronto*, 2024 ONSC 4174, at para. 81; *Balmain Hotel Group v. 1547648 Ontario Ltd. (Ménage)*, 2009 CanLII 28199 (ON SC).

D. Criteria for an Interim Injunction

[49] The authority to make an interlocutory injunction is found in s. 101 of the *Courts of Justice Act*. It provides that an interlocutory injunction or mandatory order may be granted where it appears to a judge of the court to be just or convenient to do so.

[50] The test for an interim injunction is clearly set out by the Supreme Court of Canada in *RJR MacDonald Inc. v. Canada (Attorney-General)*, 1994 CanLII 117 (SCC), [1994] 1 SCR 311, at paras. 77-80. The moving party must demonstrate that:

- a. there is a serious issue to be tried;
- b. irreparable harm will result if the relief is not granted; and
- c. the balance of convenience favours the moving party. (See paras. 77-80).

[51] These factors are interrelated and not watertight compartments such that the strength of one can compensate for the weakness of another.

- [52] Where a mandatory interlocutory injunction is sought, the moving party must show that there is a strong *prima facie* case, *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5, [2018] 1 S.C.R. 196, at para 18.
- [53] A mandatory injunction is one which requires a defendant to take positive action, which can be burdensome and costly. The Supreme Court acknowledged that distinguishing between the two can be difficult. The application judge must examine “whether, in substance, the overall effect of the injunction would be to require the defendant to *do* something, or to *refrain from doing* something.” See *R. v. CBC*, *supra*, at para. 16.
- [54] In my view, the Plaintiff seeks an order requiring the Defendants to take positive steps. While the proposed order would refrain the Defendants from causing the transmission of odours, requiring them to do so will force them to take positive steps: install appropriate HVAC and remove inventory until the odour transmission is remedied. In my view, this is positive action such that the order sought is a mandatory interim injunction.

E. Application

- [55] I now turn to whether the Plaintiff has satisfied the criteria for injunctive relief.

(i) Strong Prima Facie Case

- [56] The Plaintiff has demonstrated a strong *prima facie* case. I find this because it is the uncontroverted evidence that there is an odour transmitted from the Defendants’ premises to the Plaintiff’s. The evidence also persuades me that the interference with the Plaintiff’s operations is both substantial and unreasonable.
- [57] The negative impacts of this odour both to the health of the Plaintiff’s employees (including nausea, headaches, and burning eyes) and its business have also been made out. I acknowledge a lack of medical evidence but I find that it is not necessary to demonstrate the negative health impacts in this case.
- [58] I am not persuaded by the medical note tendered by the Defendants in respect of one employee as it contains no probative evidence about the daily impacts of working at their premises. It only speaks to her good health generally.

(ii) Irreparable Harm

- [59] Irreparable harm is harm that cannot be quantified in monetary terms or cured by an award of damages. It is not established simply if it is difficult to quantify the loss. See 2659953 *Ontario Inc. v. Druxy’s Franchising Inc. et al*, 2022 ONSC 6356, at para. 51.
- [60] I find that the Plaintiff will suffer irreparable harm.
- [61] I reach this finding because the Plaintiff has demonstrated losses which cannot be quantified. These include impacts to health, reputational and loss of goodwill. This is made out on the evidence by the customer complaints, the return of product, and the evidence that customers are being turned away at the door.

[62] I am also persuaded by the Plaintiff's evidence that there are reputational and business losses which are ongoing. This includes customers arriving at the premises and turning around without entering because of the overpowering smell.

[63] I find here demonstrable losses that cannot be quantified and therefore find the Plaintiff has made out irreparable harm.

(iii) *Balance of Convenience*

[64] This aspect of the test concerns who will suffer the greater harm. Factors to be considered include the nature of the harm and the type of losses.

[65] The Defendants have opened their premises with wholly inadequate HVAC for the nature of its business to the detriment of the Plaintiff and the other surrounding business owners. It is operating in breach of the condominium rules and is creating an obvious nuisance to the Plaintiff and others which causes harm.

[66] The Defendants claim that the relief sought would be devastating to its business and that they should be permitted to undertake the necessary upgrades to their HVAC without shutting down. Essentially, they argue that the Plaintiff should just wait it out.

[67] My analysis of the harm to the Defendants is hindered by the Defendants' refusal to answer questions about the previous space they rented and its availability at present as an alternative to their premises while the upgrades are pursued. I can infer from their refusal to answer numerous relevant questions that the answers would not be helpful.

[68] The Plaintiff is suffering ongoing harm as a direct result of the Defendants' operations. In the circumstances, I find the balance of convenience lies with the Plaintiff.

(iv) *Final analysis*

[69] When considering the *RJR* criteria separately and their interrelationship, I find that the Plaintiff has met its burden.

IV. Conclusion

[70] As I find that the Plaintiff has met its burden, I find that the injunction should issue. An order will issue in accordance with the draft filed.

[71] The parties are urged to resolve the issue of costs. If they cannot, the Plaintiff may file written costs submissions, no more than two double-spaced pages, exclusive of supporting material, by November 3, 2025. The Defendants may file cost submissions of similar length by November 10, 2025. There shall be no reply without leave.

[72] I thank counsel for their assistance.

Date: October 27, 2025

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THE FITNESS FACTORY (WHITBY) INC.

Plaintiff

– and –

MNG INTERNATIONAL INC., 15591783 CANADA
INC., 16472257 CANADA INC. and YASH MALANI

Defendants

REASONS FOR DECISION

Justice S.E. Fraser

Released: October 27, 2025