2025 NBKB 261

COURT FILE NO: FC-359-2025

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF FREDERICTON

BETWEEN:

INSTANT IMPRINTS CANADA INC.

Plaintiff,

- and –

738806 NB INC., ROBERT REED, KEITH REED,

ELEVATE PROMO & APPAREL INC. and

KRISTA LEE REED

Defendants,

DECISION

Date of Hearing: November 6, 2025

Date of Decision: November 14, 2025

Before: Justice Richard G. Petrie

Representation of Parties at Hearing:

Hugh Cameron, K.C., Counsel for the Plaintiff

Nicholas O'Toole, Counsel for Defendants.

Petrie, J.

I. INTRODUCTION

[1.] The Plaintiff, Instant Imprints Canada Inc. ("Instant Imprints") brings a motion for an interim injunction under Rule 40 and Section 33 of the *Judicature Act*, RSNB 1973, c. J-2 against the Defendants, restraining them from engaging in activities allegedly in violation of post-termination obligations set out in a Franchise Agreement between the Plaintiff and certain of the Defendants (i.e. Robert Reed, Keith Reed and 738806 NB Inc., collectively referred to as "Franchise Defendants").

[2.] More generally, the focus of the Plaintiff's motion is to restrain *all* of the Defendants from engaging, or assisting to engage, in a competitive business to the Plaintiff within an identified territory, roughly the City of Moncton, including restraining them from attempting to divert business of customers or suppliers of the Plaintiff, along with using confidential and proprietary information of the Plaintiff.

[3.] As noted, the requested injunctive relief looks to restrain not only the Franchise Defendants, but also the Defendants, Elevate Promo and Apparel Inc. ("Elevate") and Ms. Krista Reed, who were not privy to the Franchise Agreement. The Plaintiff alleges that these two Defendants have acted intentionally, in cooperation with the Franchise Defendants and with knowledge of the restricted covenants found in the Franchise Agreement all in a joint effort to avoid those restrictions and to the benefit of Elevate and Ms. Reed.

[4.] The Plaintiff argues that it has a strong *prima facie* case of a breach of the confidential information and non-compete covenants found in the Franchise Agreement. It asserts those

clauses are both lawful and reasonable. It argues it will suffer irreparable harm to its franchise system if an injunction is not granted, and that the balance of convenience is in its favour.

[5.] The Defendants argue that the Plaintiff does not have a strong *prima facie* case because both the confidential information and the non-compete clauses in the Franchise Agreement are unreasonable and unenforceable. They further assert there to be a lack of evidence provided by the Plaintiff to establish irreparable harm if the injunction is not granted, and they argue the balance of convenience clearly favours the Defendants in the circumstances.

[6.] For the reasons set out below, the motion for injunction is granted.

II. FACTS & FINDINGS

The Parties

[7.] Instant Imprints is a corporation with a registered office in Oakville, Ontario. The Plaintiff operates a franchise system for decorated apparel, signage, and promotional advertising businesses at numerous locations across the country under the trade name Instant Imprints.

[8.] The Defendant, 738806 NB Inc. (the "Franchisee"), entered into a Franchise Agreement with Instant Imprints on March 10, 2023.

[9.] The Defendant, Robert Reed, is the Franchisee's CEO, and was signatory to the Franchise Agreement as a principal.

[10.] The Defendant, Keith Reed, is also a principal of the Franchisee and signatory to the Franchise Agreement.

[11.] Under the Franchise Agreement, each principal is made full liable and similarly obligated as the Franchisee (Article 18).

[12.] Elevate is a body corporate with a registered office at 259 Indian Mountain Road, Indian Mountain, New Brunswick, E1G 3B9.

[13.] The Defendant, Krista Reed, is the sole Director, Officer, and Shareholder of Elevate. She is the spouse of Robert Reed.

[14.] Elevate was incorporated on August 7, 2025 and is in a similar, if not identical business to the Plaintiff, creating custom branded merchandise and apparel for businesses and events. It operates out of the 259 Indian Road address but, as well, maintains a mobile service.

[15.] All of the Defendants share the same address of 259 Indian Road, Indian Mountain, New Brunswick.

[16.] On March 10, 2023, Instant Imprints and the Franchise Defendants entered into a written Franchise Agreement.

[17.] The Franchise Agreement is detailed and extensive.

[18.] It granted the Franchise Defendants the right to operate a retail store in Moncton, New Brunswick under the Instant Imprints name and trademark with use of the Instant Imprints system.

[19.] The Franchise Agreement spells out numerous obligations on both Instant Imprints as "franchisor", and the Franchise Defendants as "franchisee".

[20.] Both principals have attested to there having been virtually no opportunity to negotiate the Franchise Agreement and state it was provided on a "take it or leave it" basis. At the same time, the Franchise Agreement makes it plain that the Franchise Defendants had an opportunity to review its terms, and to seek legal or other advice before signing (Article 22.5). The Franchise Defendants have not denied this to be the case.

[21.] Article 7.1 and 7.2 of the Franchise Agreement, obligated the Franchise Defendants to pay to the Plaintiff both royalty and brand fees on a monthly basis. These fees are largely determined as a percentage of monthly sales.

[22.] In addition, the Franchise Agreement incorporated a promissory note for $20,000.00 payable to the Plaintiff by the Franchise Defendants on a monthly installment basis.

[23.] The Franchise Defendants operated the Instant Imprints franchise from a retail store location in Moncton, New Brunswick which it had the opportunity to select. It began operation in or around August 2023.

[24.] In the months following, it is evident that the Franchise Defendants failed to fulfill all of their obligations under the Franchise Agreement. This included failing to remit fees owing; failing

to make all promissory note payments; and failing to make the store's monthly commercial lease payments in order to keep the lease in good standing.

[25.] Despite notice from the Plaintiff, the Franchise Defendants were unable to cure the above breaches.

[26.] On or about August 6, 2025, the Plaintiff became aware of a formal Notice to Pay outstanding monthly commercial lease payments Or to Vacate the store's premises, sent to the Defendant, 738806 NB Ltd. by its Landlord.

[27.] The Plaintiff took steps to immediately terminate the Franchise Agreement as of August 13, 2025 relying upon the breaches by the Franchise Defendants and Articles 13.1 and 13.2 of the Franchise Agreement.

[28.] The Plaintiff also made demands for outstanding monies owed to it by the Franchise Defendants in the approximate amount of $36,000.00, to no avail.

[29.] There is evidence in the Record before me to establish that during this same period, the Franchise Defendants decided to abandon the premises and did vacate and remove equipment and other materials from the store. This was done without notice to the Plaintiff.

[30.] It was also during this time that the Plaintiff learned of a new company, the Defendant, Elevate which had just been incorporated by Mr. Reed's spouse, and had begun to operate.

[31.] Elevate operates from the 259 Indian Road location (the same address for all Defendants) and is within the restricted territory outlined in the non-compete restrictive covenant found in Article 15.4 of the Franchise Agreement.

[32.] Ms. Reed acknowledges that Elevate conducts the same or similar business to Instant Imprints and operates and has sales within the Moncton area. i.e. within the restricted territory.

Post Termination Obligations Under the Franchise Agreement.

[33.] The Franchise Agreement spells out a number of post-termination obligations of the parties to the agreement. The key ones in issue before me include (a) non-use or disclosure of confidential information; and (b) restrictive covenants on competition.

A. Confidential Information

[34.] Article 14 of the Franchise Agreement sets out the confidential information covenants made expressly applicable to the Franchise Defendants, (in most pertinent part):

> 14.1 Disclosure of Confidential Information - Neither Franchisee nor any director, Principal, officer, or other person involved in the management or operation of Franchise, who has received confidential information ("**Confidential Information**") in the course of such involvement, shall communicate, disclose, or use any Confidential Information except:
>
> a) as permitted in this Agreement, or
>
> b) as required by law.
>
> Confidential Information shall be disclosed only to such employees of Franchisee as must have access to such Confidential Information in order to operate an Instant Imprints Store. Franchisee shall not, without ICA's prior consent, copy, duplicate, summarize, record, or otherwise reproduce any Confidential Information, including, without limitation, the Operations Manual.

Confidential Information may be provided to consultants and contractors only to the extent necessary for such parties to provide services to Franchisee.

…

14.5 Return of Confidential Information - Immediately upon termination or expiration of this Agreement for any reason, Franchisee and each Principal shall return all copies of the Confidential Information to IICA, including, the Operations Manual, all analyses, compilations, studies, or other documents containing or referring to any part of the Confidential Information that were prepared by Franchisee, any Principal, or their agents, representatives, or employees. Any and all Confidential Information in electronic form shall be deleted from Franchisee's computer systems and all copies thereof shall be returned to IICA.

…

14.7 Confidential Information: Exclusions - Confidential Information shall not include any information of IICA that:

(a) is already known to Franchisee at time of its disclosure (except for information that is under a pre-existing confidentiality obligation to lICA);

(b) is or becomes publicly known through no wrongful act of Franchisee;

(c) is communicated to a third party with express written consent of IICA; or

(d) is lawfully required to be disclosed to any governmental agency or is otherwise required to be disclosed by law, provided that before making such disclosure Franchisee shall give lICA written notice and an adequate opportunity to raise an objection or take action to assure confidential handling of such information.

[35.] In addition, the Agreement recitals state:

(a) Article 1, Recital 2: The methods and know-how of design, production, distribution, promotion, and marketing used in connection with the sale of the Products under the Trade Name (the "Instant Imprints System") are secret and confidential and are the exclusive property of IICA;

(b) Article 1, Recital 3: The Instant Imprints System includes methods of creation, production and sale of embroidered and screen-printed apparel, advertising specialty products, signs and banners, uniforms, team wear, logos designed by computers and other means for design using specialized and highly developed techniques. These techniques are used in connection with the operation of the Business and as a recognized design decor and colour scheme for the Premises. The Instant Imprints System also includes inter alia, the training, equipment, furniture, standards of quality and uniformity of products and services offered;

[36.] Article 15.1, Restrictive Covenants is also relevant to the issue of confidential information:

> 15.1 Secrecy - During the Term of this Agreement or thereafter, Franchisee and the Principals shall not do anything that in any way utilizes, makes use of, or otherwise draws upon the Instant Imprints System, the Trademarks, operating procedures, merchandising concepts, or any other idea, concept, or program that is a part of the Instant Imprints System, other than for the operation of the Franchise, unless such operating procedures are in the public domain.
>
> …

(B) Restrictive Covenants on Competition

> 15.4 Competition Following Termination or Expiration - Upon the termination or expiration of this Agreement for any reason whatsoever, or if the Franchisee effects a Transfer, then for a period of two (2) years following such termination, expiration or Transfer, neither the Franchisee nor Principals shall, either directly or indirectly, individually or jointly (with any other person, corporation or other entity, as a director, officer, employee, shareholder, trustee, proprietor, partner, agent, principal, owner, part-owner, co-venturer, manager, operator, financier, guarantor, salesperson, participant or in any other capacity whatsoever:
>
> > (a) Engage in, associate with, franchise, be concerned with or interested in, advise, consult, lend money to, guarantee the debts or obligations of, or permit the Franchisee's name or any part thereof to be used or employed in the development, franchising or operation of any business service centre providing embroidery, screen printing, signs and banners, promotional products, personalization of products and heat transfers and related goods and services or in any business which is the same or similar to the business conducted by a franchisee of IICA and which is located:
> >
> > (i) at the Premises;
> > (ii) anywhere within the Territory;
> > (iii) anywhere within an eight (8) kilometre radius of the Territory; or
> > (iv) anywhere within a five (5) kilometre radius of any location at which a business is being operated using the Instant Imprints System and, in association therewith, the Trademarks. For the purpose of this Sub-section the term "location" shall mean any Franchisee existing as of a date that is sixty (60) days prior to the date of termination or expiration of this Agreement or a Transfer and as listed on IICA website, www.instantimprints.com, or any successor website;

(b) Divert or attempt to divert any business of, or any customer or supplier of lICA or of any Instant Imprints Store to any competitive business or undertaking by direct or indirect inducement or other means;

…

(d) Undertake any action as a result of which the relations between lICA or any other franchisee of the Instant Imprints System and their customers, suppliers and others may be impaired or detrimentally affected or which would otherwise damage the goodwill and reputation of the Instant Imprints System; or

(e) Advertise, anywhere within five (5) kilometres of any then existing Instant Imprints Store any business which may be similar to or competitive with that of an Instant Imprints Store.

15.5 Severability - Without limiting any other provisions of this Agreement, if any provision of Article 15 is deemed to be void, voidable or unenforceable, in whole or in part, such provision shall not be deemed to affect or impair the validity of any other provision of Section 15.4 and Sub-sections (a) (i, (ii, i) and (iv) of Section 15.4 are hereby declared to be separate and distinct covenants. The Franchisee and the Principals agree that the restrictions of Sub-section 15.4(a) are reasonable as between each of them and lICA, not against the public interest, and valid, having regard to, among other things, the protection required for lICA to protect the value of the Instant Imprints System, the value of the Trademarks and the legitimate business interests of the Franchisees. All defences to the strict enforcement of the provisions of this Section 15.2 are hereby irrevocably waived and renounced by the Franchisee and the Principals. If a court of competent jurisdiction shall limit, restrict or otherwise change the geographical area or time period referred to in Sub-section 15.4(a), the limited, restricted or changed geographical area or time period determined by the said court shall, for the purposes of the said Sub-section 15.4(a) be deemed to be the geographical area and time period referred to in Sub-section 15.4(a) as if they were the original geographical area and time period set out therein existing as at the date of termination, expiration or Transfer of this Agreement.

[37.] The Article 15.4 Competition Covenant is to be in place for a period of two years following the termination of the Franchise Agreement. The Restrictive Covenant is mostly made applicable within an eight (8) kilometer radius of the described territory; identified with a map and designated postal codes including generally the City of Moncton.

[38.] Additionally, Article 13.2(a) states that the obligations of the Franchisee and Principals, upon termination of the Franchise Agreement, require them to “immediately cease representing themselves as a Franchisee of IICA and discontinue the use of the Trademarks, in any form or variation, and refrain from identifying themselves in name by the words "Instant Imprints" in any form or manner”.

[39.] Article 13.2(a)(vii) states that, upon termination of the Franchise Agreement, the Franchisee is to "transfer and assign the business telephone number, fax number, Internet domain name, and business Internet e-mail address for the Franchise to lICA or its transferee as directed by lICA and agree to execute any and all documentation necessary to assign any such telephone and fax numbers and e-mail address to IICA."

[40.] The Plaintiff commenced an Action with Statement of Claim Attached against the Defendants on September 16, 2025. The Defendants filed their Statement of Defense. No discoveries have yet been held.

Findings

[41.] In total, the Record on Motion allows me to reasonably make some material findings for the purposes of determining a strong case for this *interim* motion. Any final determination on the issues discussed herein await a full trial.

[42.] The Franchise Defendants were in breach of their obligations under the Franchise Agreement at the time the Plaintiff opted to terminate the Agreement. Importantly, there is no allegation that the Plaintiff had, at any time, failed to fulfill its obligations under the Franchise Agreement.

The Franchise Agreement was, in this sense, properly terminated and the termination obligations on the Franchise Defendants were triggered.

[43.] The Franchise Defendants vacated and emptied the franchise store premises on or just before August 12th at a time when it was evident their store was about to cease. In fact, Mr. Reed told Mr. Eustace, of Instant Imprints, just prior to August 12th that "he was pulling up stakes on everyone" and that this was in order to continue to operate under another company. Mr. Reed, largely accepted this statement while disagreeing as to the exact date and, he was unsure if he had stated the portion of operating through another company.

[44.] Elevate was incorporated during the early part of August when it became evident to the Franchise Defendants that they were going to cease to operate the franchise store.

[45.] Elevate opted to use the same phone number and, at least initially, the same website/Facebook page as was utilized by the Instant Imprints store.

[46.] In the very least, the Defendant, Robert Reed, with or without the assistance of others, removed equipment and material used in the operation of the franchise. This almost certainly included the equipment covered by the security agreement under the Franchise Agreement along with confidential information (for instance, the Instant Imprints Operations Manual) and other materials provided to it from Instant Imprints in order to operate.

[47.] While the Plaintiff asserted in its motion materials, that equipment and materials are now being utilized by Elevate to operate the same business in competition, the Defendants have chosen not to explain what was taken from the franchise store and/or if Elevate is using same. In the circumstances I can reasonably infer that it is.

[48.] Elevate is in the same business as the Plaintiff and it operates out of a location within the restricted territory under the Franchise Agreement. Indeed all of the Defendants' live/operate at this location.

[49.] While Ms. Reed attests to providing a more innocent explanation, there is evidence to support that Elevate has contacted at least three vendors/supplies of the Plaintiff seeking similar services/pricing benefits that were obtained through the Instant Imprints franchise system.

[50.] To some degree, Elevate, with the assistance of Robert Reed, converted/utilized the Facebook and/or webpage belonging to Instant Imprints. While they attempted to rebrand it to Elevate, there is some evidence to suggest that the identification marks of Instant Imprints brand remains.

[51.] Shortly after Elevate began to operate, it made a social media posting on Facebook (Record, pg. 144) declaring:

> As the seasons change, we at Elevate Promo & Apparel would like to re-introduce ourselves. While our look may be a little different, we are still committed to providing both our new and returning customers with the same quick turnaround and high-quality products you've come to expect.
>
> …

[52.] By virtue of the Franchise Agreement, the Franchise Defendants acknowledge the Plaintiff's right to seek injunctive relief and that the Plaintiff could suffer irreparable harm should the Franchise Defendants breach.

[53.] Ms. Reed acknowledges to having, at times, assisted her husband with some aspects of the Instant Imprints franchise when it operated. This included learning how to use the equipment

and making deliveries to customers. Mr. Reed has, likewise acknowledged to have, at times, assisted Elevate/Ms. Reed in operating equipment, as well as preparing sales quotes for Elevate.

[54.] The Franchise Defendants have not returned any confidential information of the Plaintiff.

Position of the Parties

[55.] In brief, the Plaintiff maintains that the Franchise Defendants, through Robert Reed or otherwise, along with his spouse, Krista Reed, are operating Elevate; the same, competing business within the restricted territory in contravention of article 15.4. Further, the Defendants are using confidential information and equipment obtained from, or through, the Plaintiff and its franchise. The Plaintiff says in essence the Defendants have together, done a purposeful "end-run" around the Franchise Defendants' post-termination obligations under the Franchise Agreement and that this greatly impacts the Plaintiff's franchise system and business goodwill/reputation.

[56.] The Plaintiff alleges Elevate and Krista Reed to be a "front" to allow the Franchise Defendants to engage in competitive activities which are prohibited by the restrictive covenant.

[57.] Mr. Cameron provided the Court a number of authorities to support the Plaintiff's position while emphasizing the British Columbia Court of Appeal decision in *Garcha Bros Meat Shop Ltd. v. Singh*, 2022 BCCA 36.

[58.] The Defendants' position is that no relief is warranted in the circumstance with respect to the Franchise Defendants. They argue the various covenants on confidential information and

competition are unenforceable as vague and unreasonable. With respect to the remaining defendants, they are not privy to the Franchise Agreement and are thus not captured by its provisions in any event.

[59.] The Defendants argue the Plaintiff's have not provided a sufficient evidentiary basis to establish a proprietary competitive interest in order to obtain the injunctive relief. While the Defendants do not deny Elevate to be in the same business and operating within the restricted territory of the Franchise Agreement, they maintain there is little, if any, business connection between Elevate and Ms. Reed beginning its operations, and the Franchise Defendants operation being terminated by the Plaintiff. They also emphasize that all of the Defendants deny *using* any confidential information of the Plaintiff.

[60.] Mr. O'Toole has put forward a number of authorities to support his client's position. He particularly emphasizes *Chatters Limited Partnership v. Chatters Deerfoot Meadow Limited*, 2025 ABKB 536.

III. LAW & ANALYSIS

[61.] The plaintiffs assert that the covenant was mutually agreed upon, reflects the parties' reasonable expectations, and is necessary to protect the Plaintiff's franchise system and goodwill. Conversely, the defendants challenge the covenant as ambiguous and excessive, arguing that it fails to clearly define prohibited activities and imposes undue restrictions without evidence of a proprietary interest. These competing arguments highlight the genuine and significant questions surrounding the covenant's enforceability, warranting judicial examination at trial.

[62.] Standing alone or in combination, s. 33 of the *Judicature Act* and Rule 40 of the *Rules of Court* provide authority to this Court to grant, or not, an interlocutory injunction.

[63.] There is no shortage of jurisprudence on the applicable issues before this Court. As I stated during the hearing, one can find a decision on just about any issue or argument to be made by either party. It is always fact specific, and context driven.

[64.] I would also note that neither *Chatters*, nor *Garcha Bros* are controlling on this Court. At the same time, I recognize both contain any number of relevant principles which I have, in fact, considered.

[65.] With respect to interim injunctions, the Supreme Court of Canada seminal decision in *RJR McDonald v. Canada (Attorney General),* [1994] 1 SCR 311, is controlling.

[66.] The well known three-part test for an interim injunction includes:

1. A serious question to be tried or a strong *prima facie* case;
2. That irreparable harm will be suffered if the injunction is not granted; and
3. The relative balance of convenience favours the granting of the injunction.

[67.] An interlocutory injunction is an extraordinary and highly discretionary remedy. The fundamental question will be whether the injunction is ultimately equitable in all of the circumstances of the case. (*Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34 at para. 25)

[68.] In *Yule Inc. v. Atlantic Pizza Delight Franchise* (1968) Ltd., supra, Justice Cory writes at page 512:

> Injunction is a vitally important remedy that must be invoked to protect rights that are considered basic and essential. As a remedy it should remain flexible so as to be applicable to changing times and circumstances.

[69.] Courts are more inclined to enforce restrictive covenants in commercial contracts rather than in the employment context. (*Dr. Daniel et al. v. Dr. Larry Trites et al.*, 2024 NBKB 108) Caselaw supports the view that restrictive covenants contained in commercial agreements are presumed lawful unless defendants can show them to be unreasonable. (*Payette v. Guay*, 2013 SCC 45)

[70.] The Plaintiff's case is based on a restrictive covenant. Such covenants are only enforceable if they are reasonable between the parties and reasonable with reference to the public interest. At times, courts are hesitant to enforce restrictive covenants on the basis that there is a public interest in discouraging restraints on trade and encouraging free competition. On the other hand, courts have recognized the need to protect freedom of contract. The law requires a balancing of these principles in determining whether particular covenants are reasonable or too broad.

(A) A Serious Question to be Tried or a Strong Prima Facie Case

[71.] There is an initial issue of whether the applicable standard to be applied by the Court in the circumstances is a "serious issue" an admittedly low threshold, or the more demanding "strong *prima facie* case".

[72.] I accept the Defendants' position, as does the Plaintiff, that the more rigorous and onerous strong *prima facie* standard applies in this context. It is not contested.

[73.] In the specific circumstances before me, the interim injunction, to a great degree will be tantamount to a final position of the claim. See *Kwantlen Pizza Ltd. v. 1253923 BC Ltd*., 2021 BCSC 2510, at para. 10; *Garcha Bros*; *Chatters*; and *National Hearing Services Inc. v. Chiasson*, 2024 NBKB 18).

[74.] This finding is a significant one. In *Chatters*, the Court stated at paragraph 36:

> [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 "s*trong 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.

[75.] At the same time, this is not to say that the Plaintiff must establish absolute assuredness of the likelihood of success on its claim. At this stage, the Court cannot reasonably determine whether the covenants in question will be found ultimately valid or binding. The full import of the Franchise Agreement and its enforceability can only be determined at trial.

Enforceability of the Restrictive Covenant (Article 15.4)

[76.] The Defendants strongly urge the Court to find the Plaintiff has not established a strong *prima facie* case. The Defendants (mainly) challenge the enforceability of the restrictive covenant (Article 15.4) and the sufficiency of the plaintiffs' evidence.

[77.] Mr. O'Toole has attempted to convince the Court of the relative inequality of bargaining power between the parties in order to compel me to reject the *prima facie* validity of the restrictive covenants. He refers the Court to a number of precedents for such a principle in the specific context of franchise agreements where some courts have equated franchise agreements to the

employment context, with the result the Court will be more likely to intervene, given concerns over relative bargaining strength.

[78.] This very issue has been the subject of much debate in other provinces. For example, see the British Columbia Court of Appeal in *Garcha Bros* and the Ontario Court of Appeal in *MEDIchair*.

[79.] The parties did not provide any controlling authority on this point from New Brunswick. In any event, I am not satisfied there to be a clear consensus in Canada on the point.

[80.] While I certainly recognize the compelling arguments Mr. O'Toole presents, I prefer to approach the issue from the perspective, in this case, that the Franchise Agreement is to be considered a commercial transaction with a presumption of validity unless shown unreasonable or ambiguous.

[81.] As recognized at paragraph 43 in *Chatters*:

> **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)43:4AdvocQ448 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.
>
> (**Emphasis Added**)

[82.] In the commercial context, a restrictive covenant will be deemed reasonable and lawful if it is appropriately limited in its duration, territorial scope, and the activities it restricts. (See *Payette v. Guay*, at para. 61)

[83.] The Defendants argue the non-compete covenant to be ambiguous and vague in parts. They focus on what they characterize as overly broad terms in Article 15.4 such as "associate with" or "be concerned with" "any business which is the same or similar". They also refer to vagueness with respect to the geographic scope of the restricted territory and, in particular, highlight Article 15.4(iv). The Defendants' acknowledge the provisions in subsections 15.4(i)(ii) and (iii) are understood.

[84.] "Business" is defined in the recitals to the Franchise Agreement. In my view, Elevate's business and persons involved, are captured by this clause. All of the Defendants acknowledge that Elevate is operating the same or similar business to the Plaintiff. There is no merit, nor frankly benefit to further discuss Mr. O'Toole's examples in argument which I do not find persuasive or realistic.

[85.] The geographic scope of the clause is also sufficiently clear. Article 15.4(iv), as I indicated during the hearing, concerns any other area outside the territory where a franchise of the Plaintiff is operating. This suggests a reasonable and justified restraint in order to protect *all* franchises from "unfair" competition including, for instance, even the Franchise Defendants in the case that they had continued in operation. Further, Elevate is clearly operating within the restrictive territory.

[86.] In summary, I find the Plaintiff's to have sufficiently established the non-compete to be unambiguous. I am satisfied that a holistic review of the restrictive covenant along with the

broader context and surrounding circumstances being a franchise, help explain the Agreement's function and assists me in reasonably interpreting it. (See *Directcash ATM Mgt. Partnership v. Maurice Gas Inc.*, 2015 NBCA 36.

[87.] The Defendants also argued that the restrictive covenant is not reasonable nor enforceable because the Plaintiff has not established any current legitimate competitive interest to protect, given that they are allegedly not operating within the territory, nor have they provided evidence to support their intention to do so. Mr. O'Toole expressly relies on para. 97 from *Chatters* in support.

[88.] In my view, it is not so straightforward. Justice Marion, in *Chatters*, relies upon the Ontario Court of Appeal decision in *MEDIchair v. DME Mediquip Inc.*, 2016 ONCA 168 for the general principle that the absence of any legitimate or proprietary interest to protect within the defined restricted territory of a covenant, defeats any ability to enforce it. Largely, this seems a common-sense conclusion.

[89.] However, a closer review of *MEDIchair* reminds me of just how fact specific these precedents can be and the risk of overgeneralizing.

[90.] The facts in *MEDIchair* included specific evidence that the Franchisor in that case, had made a prior decision to abandon any intention to operate franchises within that territory. The Ontario Court of Appeal found that, while the restrictive covenant in that case would have been reasonable on the assumption and understanding that the Franchisor would want to continue to operate in the protected area, in that case, there was specific evidence that it did not intend to. The Ontario Court of Appeal found there to be, in that instance, no legitimate interest to protect.

It found that otherwise, the restrictive covenant was reasonable and would have been enforceable.

[91.] In the case at hand, while Mr. O'Toole understandably urges the Court to follow *Chatters* and points to the failure by the Plaintiff to put forth specific evidence of an intention to operate another franchise within the territory, that argument is not compelling.

[92.] The evidence before me does *not* reflect the Plaintiff to have abandoned any intention to operate a franchise within the restricted territory. From a practical perspective, I agree with Mr. Cameron's contention that as long as the enforceability of the Franchise Agreement and the ability of Elevate to operate in these circumstances remains in question, (pending the injunction) a common-sense conclusion is that no franchisee would wish to proceed in business with the Plaintiff until that is determined.

[93.] I am satisfied on the Record before me that the Plaintiff has a legitimate and proprietary interest in obtaining injunctive relief in order to protect the fundamental character and essence of its business, including its franchise system; its traditional method of operation; and other benefits understood to be made available to franchisees.

[94.] In the Ontario decision, *Quizno's Canada Restaurant Corporation et al. v. 1450987 Ontario Corp. et al.*, 2009 CanLII 20708 (ONSC) the Court addressed a franchisor's "interests" in the context of a franchise agreement, in part:

> [101] …These are matters fundamental to the integrity of the franchise system, and as noted in Kentucky Fried Chicken of Canada v. Scott's Food Services Inc., [1977] O.J. No. 3773 (Gen. Div.) at p. 15, rev'd on other grounds, [1998] O.J. No. 4368 (C.A.); 1017933 Ontario Ltd. v. Robin's Foods Inc., [1988] O.J. No. 1110 (Gen. Div.) at para. 43:

> The most precious possession of a franchisor is its trademark and systems.
>
> The practice is to protect those interests in the terms of contracts with the franchisees for the benefit of the franchisor and other franchisees.

[102] In Second Cup Ltd. v. Ahsan, [2001] Q.J. No. 1763 (Q.S.C.), Justice Zerbisias stated at para. 60:

> 60. Where a member of the franchise chain fails to uphold the policies,
> standards, and operating methods and system to which all of the franchisees have subscribed by executing their Franchise Agreement, and upon which they rely to advance their mutual interests, it is incumbent upon the franchisor to take measures against the infringing party to force it to cease from tarnishing the reputation of the chain and from diminishing the value of the trademark and the banner. The franchisor must act to protect the integrity of the chain.

[95.] The Defendants have argued that neither Elevate, nor Ms. Reed, were involved in, nor bound by the Franchise Agreement, as they were not parties to the Agreement. However, in *Garcha Bros*, Grauer J.A. observed that a restrictive covenant may, in certain circumstances, be enforced against non-signatories if those non-signatories are found to be *alter egos* of the signatories: at para. 62. I agree.

[96.] The Plaintiff has established a strong *prima facie* case for breach of contract by the Franchise Defendants, i.e. breach of the restrictive covenant.

[97.] The Record before me establishes, in the very least, a strong case for that the Defendant, Robert Reed, along with or through his spouse, Krista Reed, and Elevate, knowingly and purposefully attempted an “end-run” around the contractual restrictions on post-termination non-competition arising out of the Franchise Agreement for the Franchise Defendants.

[98.] While the Defendant, Krista Reed, and Elevate are not privy to the Franchise Agreement, I find the Plaintiff's to have made a strong case to support the inference that both have acted in coordination in order to achieve and assist the Franchise Defendants to avoid their obligations and to the benefit of Krista Reed and Elevate and to the harm of the Plaintiff. Certainly the timing alone of the commencement of Elevate's operation is suspicious.

[99.] Ms. Reed's attempt to explain away her involvement in Elevate and that she was simply interested in operating such a business, given all of the surrounding circumstances and in particular the timing of this, is overly convenient and lacks credibility.

[100.] Ms. Reed also acknowledges to having been introduced into the business and operating equipment at the Instant Imprint franchise. She acknowledged her husband to have assisted her in operating equipment and in preparing quotes for Elevate. Elevate was incorporated at the very time the Franchise Defendants appreciated they were about to lose their franchise due to their failure to meet obligations.

[101.] All of this supports the Plaintiff's view that Ms. Reed and Elevate are likely a front to facilitate the Franchise Defendants purposeful and evasive defiance of their contractual obligations on non-competition and use of confidential information. In this way, there is a strong case in establishing that the interference by Elevate and Krista Reed with the contractual obligations between the Plaintiff and Franchise Defendants, was by unlawful means.

B. Irreparable Harm

[102.] At the second stage the applicant must convince the court that it will suffer irreparable harm if the relief is not granted. 'Irreparable' refers to the nature of the harm rather than its magnitude. Irreparable harm refers to harm that cannot be adequately compensated by damages or remedied through monetary compensation. It must be harm that is either impossible or impractical to quantify, making it irreversible. (See *RJR MacDonald*)

[103.] In *RJR MacDonald*, the Supreme Court gave, as an example of "irreparable harm", the irrevocable damage to a party's business reputation.

[104.] The Plaintiff alleges damage to the loss of integrity of its franchise system. They say the issue goes to the heart of the confidence which current franchisees and potential future franchisees can have in relying on the restrictive covenants which the plaintiff requires in its Franchise Agreements.

[105.] In my opinion, if an injunction does not issue, the Plaintiff would suffer irreparable harm.

[106.] First, given the Record before me, I would have little confidence in the Defendants' ability to pay any damages owed following a trial. The impecuniosity of a party is, at least, a relevant consideration.

[107.] Second, there is authority for the proposition that the law is less demanding of proof of a irreparable harm when the injunction is seeking to enforce a negative covenant (see *Canpark Services Ltd. v. Imperial Parking Canada Corp.*, 2001 CanLII 28004 (ONSC):

[108.] In *Chatters*, the Court states that,

> 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

[109.] Third, I would adopt Justice Lavigne's comments, while she was in Trial Division, in *Saint Cinnamon Bakery Ltd. v. Cimat Recycle Inc.*, 2006 NBQB 420, concerning irreparable harm in the context of a franchise system:

> [71] **SCBL is an international franchising company and relies on its agreements to maintain and protect its system. It argues that if a party is able to gain the benefits afforded to it under a Franchise Agreement and then simply disregard its own obligations, the whole SCBL franchising system will be negatively affected.** The strength of its franchise contracts would become seriously weakened. It argues that if the Court did not enforce restrictive clauses such as section 20.01, there is a real fear that other franchisees will view such a precedent as an opportunity to follow the actions taken by the defendants in this case, and SCBL would be placed in a very precarious financial position. **SCBL submits that such a negative effect on the SCBL company would continue into the future and that the damage suffered would not be quantifiable and that monetary compensation would not satisfy the damages suffered.**
>
> …
>
> [73] **I agree with these arguments as far as the defendants are concerned**. However, this does not apply to the third parties. They are not franchisees of SCBL."
>
> (**Emphasis Added**)

[110.] More recently in *Bilomba Inc. (Fully Protected Canada) v. Barrett*, 2025 NSSC 124, Justice Coughlan found, with respect to irreparable harm in a franchise context, at para. 43:

> [43] …Bilomba is a franchising company and if its franchisees are able to obtain the benefit of the franchise and then disregard their obligations that would have a serious negative effect on its business reputation and the value of its franchise. Franchisees and third parties who knowingly assist the franchisers circumvent their contractual obligations should be enjoined from competing with the franchisor. I find Bilomba would suffer irreparable harm if its injunction was not granted.

[111.] There are several negative covenants found within the Franchise Agreement before me including with respect to non-use and non-disclosure of confidential information and non-

competition. Article 23.3 of the Franchise Agreement includes an acknowledgment by the Franchise Defendants that failure to comply with their obligations and use of confidential information or trademarks would constitute irreparable harm. Injunctive relief is clearly contemplated by virtue of the express provisions found in Article 23.2.

[112.] The Franchise Defendants contractually agreed to be bound by the non-competition provisions of the Franchise Agreements. The Plaintiff as the franchisor, is seeking to enforce the terms of its Franchise Agreements. Elevate was likely incorporated at least in some measure, for the purpose of defeating the Franchise Defendants' post-termination contractual obligations or non-compete.

[113.] Instant Imprints is a franchising company and if its franchisees are able to obtain the benefit of the franchise and then disregard their obligations that would have a serious negative effect on its business reputation and the value of its franchise system. Franchisees and third parties who knowingly assist the franchisors circumvent their contractual obligations should be enjoined from competing with the franchisor.

[114.] Mr. Colucci, for the Plaintiff states, at paragraph 43 of his affidavit:

> The wrongful and improper operation of Elevate and its use of IICA's confidential information, has caused harm to the IICA trademark and system and detrimentally effected the development of the IICA brand in the Atlantic Canada provinces of New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador. This harm is ongoing and will continue to occur unless IICA is able to obtain injunctive relief from the Court.

[115.] I accept Instant Imprints is a franchising company and if its franchisees are able to obtain the benefit of the franchise and then disregard their obligations that would have a serious negative effect on its goodwill, business reputation, and the value of its franchise. Franchisees and third parties who knowingly assist the franchisees to circumvent their contractual obligations, should

be enjoined from competing with the franchisor. I find the Plaintiff would suffer irreparable harm if its injunction was not granted.

C. Balance of Convenience

[116.] The third step in the test is the "balance of convenience". Here the Court must consider which party would suffer the greatest harm from granting, or not, the injunction.

[117.] While I recognize an injunction, in the form requested, would have serious financial consequences for the Defendants, the Franchise Defendants deliberately acted contrary to the negative covenants they expressly agreed to in the Franchise Agreement. On the facts of this case the balance of convenience is in favour of an injunction against them.

[118.] It would seem that Elevate was incorporated for the purpose of assisting the Franchise Defendants to avoid their contractual obligations to the benefit of those persons and knowingly harming the Plaintiff. On the facts, the balance of convenience is also in favour of an injunction against Elevate and Ms. Reed being granted.

[119.] At its core, this is a commercial transaction. The Franchise Defendants had every opportunity to engage legal or other advice prior to signing. While they have not indicated whether they did or did not obtain legal advice, they now maintain themselves to be "unsure" of some terms of the Franchise Agreement and they assert that they were unable to negotiate terms. I find these statements to be convenient and simply self-serving.

[120.] The Franchise Defendants were not "forced" to enter into business with Instant Imprints. Nowhere do the Franchise Defendants suggest that they had made any request to negotiate any

particular term, nor inquire into the meanings of certain terms of the Franchise Agreement. They are silent as to whether they chose to obtain legal advice yet that was expressly made clear to them in Article 23 of the Franchise Agreement and in **bold** letters.

[121.] There is no evidence that the Franchise Defendants took any steps to obtain an understanding of the impact of the restrictive covenants or the confidentiality covenant. Yet there is affidavit evidence from both Robert Reed and Krista Reed to acknowledge that Mr. Reed was at least aware or concerned about his obligations not to compete. I note that Ms. Reed acknowledges having been informed by her husband that the Franchise Agreement contractual provisions expressly prohibited him from being involved in the same or similar business as Instant Imprints.

[122.] I am left with the clear impression that Mr. Reed, and as a result all of the Franchise Defendants in effect, chose to obtain all of the benefits they could from the Plaintiff's franchise system and then when it was (likely) properly terminated, attempted to "duplicate" the same business in the very same area and using information and knowhow and other advantages provided to it by the Plaintiff, under the mutual expectation of the governing restrictions under the Franchise Agreement.

[123.] People who knowingly breach contracts and non-competition provisions should not be able to flout them pending trial. (See *Bilomba*, para. 40).

[124.] I am in full agreement with Justice Reid in *Indal Ltd. et al. v. Halko et al.*, (1976), 28 C.P.R. (2d) 230 at page 235, 1 C.P.C. 121 (Ont. H.C.J.):

> .... If the governing factor were the balance of convenience, a person who is prima facie in breach of a contractual obligation could place an apparently innocent party at an irretrievable disadvantage by claiming that he, the ostensible wrongdoer, will

> be the more hurt by an interlocutory injunction wrongly granted. This would be an invitation to persons to sign solemn documents without any intention of honouring them and to see, by this cynical act to place the other party at a disadvantage. … Inequity must not be used to avoid equity.

[125.] When a party deliberately breaches its contractual obligations, equity and justice compels intervention more readily.

Confidential Information

[126.] Confidential information is addressed in Articles 14.1 and 14.5 plus the recitals to the Franchise Agreement.

[127.] The Defendants also take issue with respect to the enforceability of those provisions maintaining them to be unclear as they are not "defined" terms under the Franchise Agreement. The Franchise Defendants also maintain they have not disclosed any confidential information to Elevate and Krista Reed. In turn, Ms. Reed maintains that she has not received any such confidential information.

[128.] While it is accurate to say that there is no discrete definition for "confidential information" under the Franchise Agreement, a more contextual reading supports the Plaintiff's position that confidential information is adequately identified within the Agreement. Reference should be made to Article 1, Recital 2 and 3.

[129.] Furthermore, Article 14.1 also states, in part:

> the Franchisee shall not, without IICA's prior consent, copy, duplicate, summarize, record, or otherwise reproduce any Confidential Information, including, without limitation, the Operations Manual.
>
> [See also Article 22.2 of the Franchise Agreement]

[130.] I also wish to note, from paragraph 8 of the Statement of Defense, an important acknowledgment by the Defendants:

> With respect to paragraph 37 of the Plaintiff's Statement of Claim, **the Defendants admit having access to the Plaintiff's confidential and proprietary information** but deny that access was unfettered. Furthermore, and by way of example, the Defendants have no way of knowing whether or not they had access to all of the enumerated confidential and proprietary information.
>
> [**Emphasis Added**]

[131.] The Record before me establishes that the Franchise Defendants vacated the franchise premises in early August and they removed virtually all equipment and materials from the store. This would have included written and electronic material provided to them by the Plaintiff and, at a minimum, included, for instance the Operations Manual. The Defendants have chosen not to explain the whereabouts of this material. The Court is left with no other reasonable conclusion then that the Franchise Defendants took and are in possession of this confidential information. It is quite possible that Elevate and Krista Reed may be operating using that information.

[132.] The Franchise Defendants have wrongfully retained and possibly transferred the confidential information to Elevate without the Plaintiff's consent.

[133.] In appropriate circumstances such as before me, courts will often protect trade secrets, confidential information or trade connections. Courts have recognized proprietary interest in confidential information clauses such as the ones before me needing to be enforced. (See *BMR*

Bath Master Reglazing Ltd. v. Watson, 2010 BCSC 1170 at para. 15) I also note that all defendants have stated that they will refrain from using confidential information.

[134.] Irreparable harm is presumed in cases involving the misuse of confidential information (*Carecor Health Services Ltd. v. HealthTrans Services Inc.*, 2006 CanLii 21049 at para. 20). In these type cases the owner of the confidential information has no real way of knowing the extent to which the breaching party is using the confidential information to compete and therefore can not easily quantify its damages. See *Arc Compute v. Anton Allen, Michael Buchel et al.*, 2025 ONSC 1745.

[135.] To repeat, it has also been held that it would be incongruous to permit a party in breach of a restrictive covenant to be granted a holiday until trial. (See *Arc Compute*, para. 61)

[136.] For purposes of this interim injunction, I have also determined the Franchise Defendants to be in breach of their contractual obligations regarding the Plaintiff's confidential information.

[137.] As part of my order, I will order that the Franchise Defendants forthwith return any and all confidential information, in written or electronic format, obtained by or through their operation of Instant Imprints franchise including but not limited to the Plaintiff's Operations Manual.

[138.] All of the Defendants are enjoined from any use of this confidential information.

IV. CONCLUSION

[139.] While I have sincere sympathy for the predicament the Defendants find themselves, it is one of their own making. In essence, the Defendants ask me to deny injunctive relief on the basis

that they will suffer significant financial harm because they are a sole source income family and need to be able to operate Elevate in order to make a livelihood. Yet I have found the Plaintiff to have established a strong *prima facie* case that these Defendants have done all of this in direct contravention of the Franchise Agreement and of the restrictive covenants including as extended to all defendants.

[140.] I am not prepared, in the circumstances, to simply ignore the presumption of the freedom of contract and the importance of commercial certainty by overlooking these breaches of terms freely entered into. These are unfortunate consequences, but they are a result of the Defendants choices.

[141.] Given my finding of a strong case to be tried with respect to the Franchise Defendants, the Defendants, Elevate and Krista Reed are also to be enjoined on an interim basis because they have acted in coordination with the Franchise Defendants to circumvent the Franchise Defendants' obligations under the Franchise Agreement.

V. DISPOSITION

[142.] For all of the foregoing reasons, I will make an order consistent with the terms of the Franchise Agreement, granting an interlocutory injunction enjoining, restraining and prohibiting all of the Defendants from:

1. either directly or indirectly, individually or jointly (with any other person, corporation or other entity), as a director, officer, employee, shareholder, trustee, proprietor, partner, agent, principal, owner, part-owner, co-venturer, manager, operator, financier, guarantor, salesperson, participant or in any other capacity whatsoever:

a. engaging in, associating with, franchising, being concerned with or interested in, advising, consulting, lending money to, guaranteeing the debts or obligations of, or permitting the Defendants' name or any part thereof to be used or employed in the development, franchising or operation of any business service centre providing embroidery, screen printing, signs and banners, promotional products, personalization of products and heat transfers and related goods and services or in any business which is the same or similar to the business conducted by a franchisee of the Plaintiff and which is located:

i. at the Premises, as defined in the Franchise Agreement,

ii. anywhere within the Territory, as defined in the Franchise Agreement,

iii. anywhere within an eight (8) kilometer radius of the Territory,

iv. anywhere within a five (5) kilometer radius of any location at which a business is being operated using the Instant Imprints System and, in association therewith, the Trademarks, as defined in the Franchise Agreement,

i. For clarity, the “territory” includes any geographic area with a postal code beginning with the following prefixes: E4W, E4T, E4S, E4V, E4R, E4P, E4K, E4H, E4Z, E4J, E1G, E1A, E1B, E1E and E1J and as further shown in the map attached to this Decision as Schedule ‘A’;

2. diverting or attempting to divert any business of, or any customer or supplier of the Plaintiff or of any Instant Imprints Store, as defined in the Franchise Agreement, to any competitive business or undertaking by direct inducement or other means;

3. employing or seeking to employ any person, in any capacity, or arrangement whatsoever, who is at the time employed by the Plaintiff or at any Instant Imprints Store or to directly or indirectly inducing such person to leave his or her employment thereat;
4. undertaking any action as a result of which the relations between the Plaintiff or any other franchisee of the Instant Imprints System and their customers, suppliers and others may be impaired or detrimentally affected or which would otherwise damage the goodwill and reputation of the Instant Imprints System;
5. advertising, anywhere within five (5) kilometers of any then-existing Instant Imprints Store or any business which may be similar to or competitive with that of an Instant Imprints Store; and
6. using or disclosing in any way the Plaintiff's Confidential Information.

[143.] This injunction order remains in effect pending trial but not longer than two (2) years following termination of the Franchise Agreement, i.e. August 13, 2025.

[144.] In the circumstances, I will further order the Defendants to forthwith return to the Plaintiff any and all of the Plaintiff's confidential information (as expressly identified in Article 14.5 of the Franchise Agreement).

VI. COSTS

[145.] In the circumstances, I will award to the Plaintiff, one set of costs, payable by the Defendants, jointly or severally in the total amount of $2,500.00 plus reasonable disbursements.

DATED at Burton, N.B. this ___ day of November, 2025.

_____

Richard G. Petrie, J.C.K.B.

Schedule "A"

TERRITORY