CITATION: Keller Williams Realty v. VIP Realty Inc., 2025 ONSC 7152
COURT FILE NO.: CV-25-3285-0000
DATE: 2025-12-19

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Keller Williams Realty, LLC F/K/A Keller Williams Realty, Inc., Rellek Publishing Partners, Ltd., Plaintiffs

AND:

VIP Realty Inc., Alexander Integrity Realty, Marvin Alexander, Associates Realty Solutions Inc., Linus Holdings Inc., Sunil Daljit, Defendants

BEFORE: Kurz J.

COUNSEL: Hardeep Dhaliwal, Colin Pendrith, and Kate Byers, for the Plaintiffs

Idan Erez and Daniel Hamson, for the Defendants

HEARD: September 15 & 18, 2025

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ENDORSEMENT

Introduction

[1] The Plaintiffs, Keller Williams Realty, LLC f/k/a[1] Keller Williams Realty, Inc. (“KWR”) and KWR’s subsidiary, Rellek Publishing Partners, Ltd. (“Rellek”), move for injunctive relief against the Defendants, VIP Realty Inc. (“VIP”), Alexander Integrity Realty (“AIR”), Marvin Alexander (“Alexander”), Associates Realty Solutions Inc. (“ARS”), Linus Holdings Inc. (“Linus”), and Sunil Daljit (“Daljit”). The Plaintiffs seek an order enjoining the Defendants from operating competing real estate brokerages, breaching various terms of their franchise agreements (known within the KWR franchise system as “license agreements”), as well as breaching the Plaintiffs’ trademarks and copyrights.

[2] In essence, the Plaintiffs raise two sets of claims against the Defendants. KWR’s claims concern the Defendants’ alleged breach of the restrictive covenants contained in

[1] f/k/a is an abbreviation for “formerly known as”.

their license agreements with KWR, as set out below. When I refer to the allegations of breach of restrictive covenants, I am referring to claims raised by KWR.

[3] Rellek claims that the Defendants have breached its copyright and trademark rights. I do not engage in detail with those claims in this endorsement because the parties have agreed to terms regarding those claims, which are set out below.

[4] KWR argues that the operation of the Defendants' new brokerages under the aegis of a competing real estate franchisor breaches various contractual terms between the parties. KWR claims that the breached contractual terms include the restrictive covenants contained in their license agreements, as well as the Plaintiffs' common law and statutory rights under the *Trademarks Act*, R.S.C. 1985, c. T-13 and the C*opyright Act*, R.S.C. 1985, c. C-42.

[5] KWR states that the Defendants have opened competing Royal LePage ("RLP") franchises before the terms of their license agreements with KWR have expired. KWR claims that the Defendants are now directly competing with it in the areas covered by their KWR License Agreements.

[6] The Defendants, who operated as franchisees of KWR (or owners of those franchises), deny that they breached their license agreements with KWR. Rather, they say, it was KWR who repudiated and are in fundamental breach of those agreements. Among the concerns with KWR and its system which the Defendants raise in support of their claim of fundamental breach are allegations that:

1. KWR was "surreptitiously encroaching on the territories it had exclusively granted the defendant franchisees";
2. KWR refused to address their concerns that its franchise system violates Canadian tax laws, exposing the Defendants to potential tax liabilities; and
3. KWR allowed its franchise system to lose its value in Canada.

[7] KWR replies that these are pretextual responses to the Defendants' breach of their license agreements. The geographic boundaries of the Defendants' franchise

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territories are clearly spelled out in those agreements. They require that any expansion in the Defendants' exclusive franchise territories must be set out in writing in a further agreement between the parties. There is no such agreement here. In fact, the Defendants renewed their license agreements with KWR knowing of the geographical limitations of their exclusive territories, as set out in their respective license agreements.

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[8] KWR asserts that the actions of the Defendants as well as fellow KWR franchisees demonstrate the value of the KWR system. KWR adds that there is no meaningful evidence that its system violates Canadian tax law.

Background

The Parties

[9] KWR is a Texas limited liability corporation. It is the franchisor of a system of real estate brokerages known as "market centres". KWR has franchised a number of market centres in Ontario and other parts of Canada.

[10] Rellek is a Texas limited partnership and a subsidiary of KWR. It owns the copyright and trademark on certain works which are used in connection with the KWR system.

[11] The Defendant, VIP, is a corporation incorporated in Ontario, carrying on business as a real estate brokerage. Until on or about June 24, 2025, VIP carried on business as a KWR franchisee in Ottawa, Ontario in accord with a license agreement known as a Market Centre License Agreement (the "VIP License Agreement").

[12] The Defendant, AIR, is a corporation incorporated in Ontario, carrying on business as a real estate brokerage. Its principal and controlling mind is the Defendant, Alexander. AIR is a holding company for Alexander's interest in VIP.

[13] Alexander is a licensed real estate broker who resides in Ottawa. He is the sole officer and director of both VIP and AIR. Under the VIP License Agreement, he is a guarantor of VIP's obligations towards KWR.

[14] The Defendant, ARS, is a corporation incorporated in Ontario, carrying on business as a real estate brokerage. Until on or about June 24, 2025, ARS carried on business as a KWR franchisee in Mississauga, Ontario in accord with a Market Centre License Agreement (the "ARS License Agreement"). ARS's controlling mind is the Defendant, Daljit.

[15] The Defendant, Linus, is an Ontario corporation. Linus is the holding company for Daljit's interest in ARS. Linus also holds an interest in VIP.

[16] Daljit is a licensed real estate broker and the sole officer and director of both ARS and Linus. Under the ARS License Agreement, he is a guarantor of ARS's obligations towards KWR.

[17] Both Alexander and Daljit are long-time real estate agents who became brokers.

[18] Because of Linus's interest in VIP, Daljit is also a guarantor of VIP's obligations towards KWR under the VIP License Agreement.

[19] In this endorsement, I jointly describe the VIP License Agreement and the ARS License Agreement as the "License Agreements".

The License Agreements

[20] VIP entered into the VIP License Agreement with KWR on August 21, 2019. It runs until November 27, 2028. ARS entered into the ARS License Agreement with KWR on March 23, 2020. The ARS License Agreement runs until March 21, 2031.

[21] Each of the License Agreements is also a renewal of a previous license agreement between the relevant brokerage and KWR. VIP's original license agreement is dated February 1, 2004, while that of ARS is dated May 1, 2006.

[22] The License Agreements contain identical confidentiality and non-competition clauses. Because there is no issue regarding the confidentiality clauses (the Defendants have agreed to abide by them), I do not reproduce them in this endorsement.

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[23] The non-competition clauses in each of the License Agreements state as follows:

16.02 Non-Competition

(a) Licensee, each Controlling Principal and each Licensee's Principal specifically acknowledge that, pursuant to this Agreement, members of the Licensee's Group shall receive valuable specialized training, trade secrets and confidential information, including information regarding the operational, sales, promotional and marketing methods and techniques of Company and the System, which is beyond the present skills and experience of the Licensee's Group. Licensee, each controlling Principal and each Licensee's Principal acknowledge that such training, trade secrets and confidential information provide a competitive advantage and shall be valuable to them in the development and operation of the Market Center, and that gaining access to such training, trade secrets and confidential information is, therefore, a primary reason why they are entering into this Agreement. Licensee, each Controlling Principal and each Licensee's Principal specifically acknowledge that such training, trade secrets and confidential information is provided by Company for the benefit of the System, and each Market Center, and that the System and each Market Center individually and mutually benefits from all Licensees' compliance with the covenants described below. In consideration for such training, trade secrets, confidential information and benefits, Licensee, each Controlling Principal and each Licensee's Principal covenant as follows:

(1) With respect to Licensee, during the term of this Agreement, and with respect to each of the Controlling Principals and Licensee's Principals, during the term of this Agreement for so long as such individual or entity satisfies the definition of Controlling Principal or Licensee's Principal, neither Licensee, any Controlling Principal nor any Licensee's Principals or their respective immediate family members, spouses, significant others, life partners with whom they reside, parents, step-parents, in-laws, siblings, children and step-children, shall, directly or indirectly, for themselves, or through, on behalf of, or in conjunction with any member of the Licensee's Group or any other Person:

(A) Divert or attempt to divert any business or customer of the Market Center to any competitor of the Licensee or of Company by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with Company's Trademarks and the System;

(B) Own, maintain, operate, engage in, or have any interest in any real estate business that supports real estate agents that competes with Company, Company's Affiliates, and Licensees, including any real estate business that involves (i) the real estate brokerage business; or (ii) the offer, sale or operational support of businesses in the real estate brokerage business (whether as a franchisor,

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licensor, regional representative, area director, consultant, or other similar service provider capacity); or

(C) Establish in the Awarded Area assigned to any Keller Williams Licensee's Market Center an office or any other physical presence that is identified by or associated with any of the Trademarks.

(2) With respect to Licensee, for a continuous uninterrupted period commencing upon the termination, cancellation, expiration or transfer of Licensee's interest in this Agreement or, with respect to each of the Controlling Principals or Licensee's Principals, commencing upon the earlier of: (i) the termination, cancellation, expiration or transfer of all Licensee's interest in this Agreement or (ii) the time such Person ceases to satisfy the definition of a Controlling Principal or Licensee's Principal, and continuing for two years thereafter, neither Licensee, any Controlling Principal nor any Licensee's Principal shall, directly or indirectly, for themselves, or through, on behalf of or in conjunction with any member of the Licensee's Group or any other Person:

(A) Divert or attempt to divert any business or customer of the Market Center to any competitor of the Licensee or of Company, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with Company's Trademarks and the System;

(B) Employ or seek to employ any individual who is at that time employed by or retained as an Associate of Company, any Regional Representative or of any other Market Center Licensee, or otherwise directly or indirectly induce such an individual to leave his or her employment or to stop serving as an Associate for such party; or

(C) Own, maintain, operate, engage in, or have any interest in any real estate brokerage business that is located in the Awarded Area or within a 10-mile radius of any other Market Center in existence or under construction as of the earlier of: (i) the termination, cancellation, expiration or transfer of Licensee's interest in this Agreement; or (ii) the date the Controlling Principal or Licensee's Principal ceases to satisfy the definition of Controlling Principal or Licensee's Principal.

[24] Further, the License Agreements contain "entire agreement" clauses, which read as follows:

18.05 Entire Agreement

This Agreement, any amendments, any addenda and any other attachments hereto, and the Brand Standards Manuals constitute the entire, full and complete agreement between Company and Licensee concerning the subject matter

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> hereof, and supersede all prior or contemporaneous agreements between the parties with respect to such subject matter; provided that nothing contained in this Agreement shall be deemed a waiver of Licensee's reliance on any representations made by Company in the disclosure document provided to Licensee and referenced in Section 21.01(a) below.

The KWR System

[25] KWR asserts that its real estate brokerage system consists of "unique and tried-and-true methods" of sales. KWR claims to possess "unique methods, proprietary technology, distinctive methods and techniques for attracting associates [i.e. real estate agents] (including a unique profit-sharing model)". It contends that it "developed extensive training and support programs" for its franchisees and associates. KWR further claims that its system, including extensive training opportunities, limits on the commissions paid by associates to their market centres and "innovative profit-sharing model" has led it to enjoy "significant reputation, goodwill, and name brand recognition in the real estate industry".

[26] KWR says that the virtue of its system is demonstrated by a number of measurable gains which the Defendants have made while working under that system. They include:

- an increase in listings sold;
- profits from the sale of business centres;
- the fact that the Defendants have added to their holdings in their KWR franchises before leaving the KWR system;
- the Defendants' use of KWR promotional and training materials, even after joining RLP; and
- VIP's profits from its markup of the costs of providing KWR's technology suite to its agents.

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Alexander and VIP's Claim that KWR Violated Their Exclusive Territory in Ottawa

[27] Before opening a market centre in Ottawa through VIP, Alexander operated market centres in Newmarket, Aurora and Keswick. Until September 2017, he was the Canadian director of the KWR system in Canada.

[28] In 2016, the owner of one of the three KWR franchises in Ottawa announced that he was leaving KWR to join RE/MAX. With about 300 affiliated agents, that owner's Ottawa franchise was the largest KWR franchise in Canada at the time.

[29] Alexander asserts that this move led John Davis, then the senior-most KWR executive in Canada, to solicit him to "save" Ottawa. As Canadian director of KWR at the time, Alexander reported to Mr. Davis.

[30] In order to "save" Ottawa, Alexander says that he was charged with immediately flying there and persuading that city's two other KWR franchises to merge and join forces with him, under his direction. That would lead to a single Ottawa KWR market centre under Alexander's control. Alexander would also attempt to recruit back the agents who left with the previous franchisee's defection to RE/MAX.

[31] Alexander states that the *quid pro quo* which John Davis offered for this service was the right to operate as the exclusive KWR franchisee in all of Ottawa. Mr. Davis allegedly made this offer despite the fact that two other KWR franchisees were still validly operating in Ottawa.

[32] Alexander adds that he immediately set to work, at great risk and expense, to "save" Ottawa for KWR. He became president of VIP and recruited Daljit, who had previously led the abandoned Ottawa franchise. Alexander moved VIP's head office to downtown Ottawa, arranged for one of the two Ottawa franchisees to merge with VIP (the other left the system), and began to recruit VIP's agents back to the fold. A number rejoined VIP.

[33] Alexander was highly successful for himself, the Defendants he controls, and KWR. VIP grew from 114 agents in 2016 to 266 by December 31, 2024. Alexander

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expanded VIP's footprint to four offices: the downtown Ottawa "flagship", offices in Kanata and Orleans (both Ottawa suburbs), as well as Cornwall, Ontario.

[34] Despite Alexander's claims to KWR territorial exclusivity for all of Ottawa, as set out below, the franchisor denies that it ever granted him that broad level of exclusivity. KWR points out that such a grant would have to be set out in a written agreement between the parties, but that no such agreement exists.

[35] During a KWR conference between February 17 and 21, 2025, Alexander learned that a real estate agent, Ruby Xue, who had been a RLP broker in Ottawa, was in attendance. Alexander says that during that conference, he learned that Ms. Xue was approved for a KWR franchise in Ottawa. Not only that, but she was also recruiting some of his agents and was entitled to offer associates a more favourable rate of payment than VIP was paying (saving them $2,500 per year).

[36] In response, Alexander wrote to KWR to complain about Ms. Xue's entitlement to both open a market centre within his alleged exclusive territory and her recruitment of his agents. On March 25, 2025, Martin Enriquez, KWR's Senior Associate General Counsel responded. Mr. Enriquez denied VIP's claims to exclusivity for the entire city of Ottawa, citing the territorial boundaries in the VIP License Agreement. Mr. Enriquez also denied that KWR ever granted VIP the right to operate in Kanata or Orleans.

[37] On April 22, 2025, Alexander replied with a cease-and-desist letter. He demanded that KWR revoke any franchise offer to Ms. Xue for Ottawa and that it curtail her recruitment of VIP's agents.

[38] Mr. Enriquez's response of May 12, 2025 took things further. He stated that KWR had rejected VIP's application to operate in Kanata and Orleans (which does not appear to have been previously communicated to Alexander or VIP).

[39] Alexander deposes that the refusal to recognize VIP's exclusivity to the entire Ottawa area was the "straw that broke the camel's back", leading to his move to RLP.

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[40] However, Alexander adds that by that time, he already "had concluded that [KWR] was not living up to its end of the bargain by devaluing the brand I had invested so much of my time and money into." Alexander offers a list of further complaints about KWR, which he also cites as reasons which justify his departure from its franchise system. He describes those complaints in his affidavit of August 13, 2025 as follows:

1. Failing to adapt its U.S. based system to the Canadian market;

2. Fleecing me and other franchisees with ever-increasing fees in connection with mandatory technology and services that do not work as promised, and that are in my view, disguised royalties;

3. Failing to comply with Canadian regulatory and tax requirements;

4. Permitting vast revenues generated in royalties from Canadian franchisees to be diverted outside of the Canadian Keller Williams system…; and

5. Failure to provide corporate support or a sufficiently meaningful presence in the Canadian marketplace.

Daljit and ARS's Claim that KWR Violated the Exclusivity of ARS's Business Centre

[41] Daljit was originally an owner and chief executive officer of the market centre in Ottawa that was the predecessor to VIP. Daljit moved from Ottawa to Mississauga in 2013 and opened a market centre there. He ended up opening two market centres in Mississauga, which he ultimately merged in 2020 under the name, "Real Estate Associates".

[42] In 2016, Alexander recruited Daljit to assist with his Ottawa franchise. He did so because of Daljit's knowledge of the Ottawa real estate market.

[43] In 2020, Daljit also wanted to open a satellite office, known as a "Business Centre", outside his Awarded Area in Mississauga. On March 23, 2020, Daljit and KWR signed an Addendum to the ARS License Agreement, permitting him to open a KWR

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Business Centre outside of the Awarded Area set out in the ARS License Agreement (the "Addendum").

[44] The Addendum particularized a further area of exclusivity for ARS's Business Centre. But that exclusivity was conditional upon ARS meeting certain performance standards. Those standards consisted of three requirements: 1) minimum agent counts; 2) minimum real estate units sold; and 3) minimum owner profit targets. All of those standards were to increase annually. So long as those standards were met, ARS would continue to maintain its exclusivity in its defined Business Centre Awarded Area.

[45] Daljit claims that, notwithstanding the wording of the Addendum, KWR allowed another KWR business centre to impinge on ARS's exclusive Business Centre Awarded Area.

[46] KWR answers that ARS failed to meet at least one of its three targets each year and in the last year it missed all three. It points to a table in Daljit's own affidavit in support of that claim.

[47] Further, as KWR points out and as Daljit himself admitted in cross-examination, he ended up closing the Business Centre location and was using it for storage for the remainder of its lease term.

The Defendants' Termination of the License Agreements and Move to RLP

[48] On June 24, 2025, counsel for both sets of Defendants wrote to Martin Enriquez, stating that his clients considered their respective License Agreements to have been terminated effective immediately (the "Termination Notice").

[49] At that time, VIP changed its business name to "Royal LePage Integrity Reality", while ARS adopted the name "Royal LePage Real Estate Associates". They announced those changes over social media and had their KWR websites redirect visitors to their new RLP websites.

[50] The Plaintiffs claim that the Defendants violated other terms of their License Agreements, including Alexander using KWR trademarks on his website and Daljit

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downloading files containing KWR proprietary materials. The Plaintiffs also claim that Daljit and Alexander "are transferring the knowledge and value they have derived from the KWR system". While the Defendants proclaim their innocence regarding those allegations, they are willing to agree to an order that they abstain from using any KWR branded materials or information.

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[51] It is not disputed that the two sets of Defendants have received some form of payment from RLP to join its franchise system. However, the Defendants have refused to name the amount or produce unredacted copies of the agreements with RLP that they signed.

Issues

[52] This motion raises the following issues:

1. What is the proper first step of the test for granting an injunction in this case?
2. Has KWR met the first part of the applicable test?
3. Would KWR suffer irreparable harm if the requested injunction is not granted?
4. Does the balance of convenience favour the granting of an interim injunction?
5. Does the "clean hands doctrine" prevent KWR from obtaining the requested injunction?

Issue No. 1: What is the proper first step of the test for granting an injunction in this case?

[53] The ordinary test for the granting of an interim injunction is the well-known three-part test found in *RJR-MacDonald Inc. v. Canada (Attorney General*), [1994] 1 S.C.R. 311, at p. 334 as follows:

1. Serious issue to be tried;
2. Irreparable harm to the applicant if the request is denied; and

3. Balance of convenience between the parties: "which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits."

[54] However, the Defendants argue that because the relief requested amounts to a mandatory injunction, the first arm of the *RJR-MacDonald* test should require a higher standard of proof than a serious issue to be tried. It should require proof of a strong *prima facie* case.

[55] In *1711811 Ontario Ltd. (AdLine) v. Buckley Insurance Brokers Ltd.*, 2014 ONCA 125, 371 D.L.R. (4th) 643, at para. 57, Gillese J.A. described, on behalf of the Ontario Court of Appeal, the effect of a mandatory injunction, which she distinguished from the usual prohibitory injunction:

> A mandatory injunction is one that requires the defendant to act positively. It may require the defendant to take certain steps to repair the situation consistent with the plaintiff's rights, or it may require the defendant to carry out an unperformed duty to act in the future: see Sharpe, at para. 1.10[2]. Mandatory injunctions are rarely ordered and must be contrasted with the usual type of injunctive relief, which prohibits certain specified acts. [Footnote added.]

[56] Gillese J.A. added at para. 58, that “[b]ecause of their very nature, mandatory injunctions are often permanent.”

[57] At p. 339 of *RJR-MacDonald,* the court stated that when the strong *prima facie* case test applies, the court must undertake "a more extensive review of the merits of the case" than it would when the test is merely a serious issue to be tried.

[58] In that review of the merits, the moving party must prove that there is "a strong likelihood on the law and evidence presented that the [moving party will] succeed [in] the [proceeding]": *Ali v. New Spadina Garment Industry Corp.*, 2020 ONSC 3244 (Div. Ct.), at para. 38.

[2] This pinpoint relied on by the court is to Robert J. Sharpe, *Injunctions and Specific Performance*, loose-leaf (Toronto: Canada Law Book, 2013).

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[59] The difference between the tests of a serious issue to be tried and a strong *prima facie* case was discussed by the Divisional Court in *Loops L.L.C. v. Maxill Inc.,* 2020 ONSC 5438, 179 C.P.R. (4th) 323 (Div. Ct.), at para. 44. There, the court described the difference as follows:

> A serious issue to be tried is a flexible standard. There are no specific requirements to be satisfied. The judge is to make only a preliminary assessment of the merits. The threshold to be met is low. The judge must be satisfied that that the application is neither frivolous or vexatious. Conversely, a strong *prima facie* case is a high standard, said, in one case to be "a strong case with a high although not absolutely assured likelihood of success based on the material presently before the court."[3] [Footnote added; original footnotes omitted.]

[60] In *Loops,* the Divisional Court added that when the moving party is held to the "strong *prima facie* case" requirement, "the weight to be given to the second and third parts of the test may be reduced. They may become less of a concern depending on the strength of the plaintiff's case": at para. 15.

[61] In *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5, [2018] 1 S.C.R. 196 ("*R. v. CBC*"), Brown J., writing for the Supreme Court of Canada, stated at para. 13 that the general framework of the *RJR-MacDonald* test "is, however, just that - general". He pointed out that the court in *RJR-MacDonald* itself "identified two exceptions which may call for 'an extensive review of the merits' at the first stage of the analysis".

[62] Brown J. stated at para. 15 that one such exception[4] occurs when a party seeks a mandatory, as opposed to a prohibitory injunction. In those cases, the strong *prima facie* case test must apply at the first stage of the test for an injunction. This is because:

> A mandatory injunction directs the defendant to undertake a positive course of action, such as taking steps to restore the *status quo*, or to otherwise 'put the situation back to what it should be', which is often costly or burdensome for the defendant and which equity has long been reluctant to compel.

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[3] citing *Quizno's Canada Restaurant Corporation v. 1450987 Ontario Corp*., 2009 CanLII 20708 (Ont. S.C.), at para. 42, leave to appeal refused, 2009 CarswellOnt 3455 (Div. Ct.).

[4] The second exception, which is inapplicable to this case, occurs when the question of constitutionality before the court presents itself as a simple question of law alone.

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[63] Brown J. added that:

> The potentially severe consequences for a defendant which can result from a mandatory interlocutory injunction, including the effective final determination of the action in favour of the plaintiff, further demand what the Court described in *RJR - MacDonald* as "extensive review of the merits" at the interlocutory stage.

[64] The Plaintiffs state that they do not seek a mandatory injunction here. They are simply requesting that the Defendants desist from breaching the restrictive covenants in their License Agreements. However, they couch their arguments in both potential interpretations of the first arm of the *RJR-MacDonald* test. They argue that whatever the test, they have met it. They claim that the Defendants' breach is so clear that they will almost certainly succeed at trial.

[65] The Defendants have signed new License Agreements with RLP. While the Defendants have refused to produce anything but heavily redacted copies of those License Agreements, it is reasonable to infer that those License Agreements contain restrictive covenants prohibiting competition with other RLP franchises. Thus, if the requested injunction is granted, the Defendants may well be out of business. That is because whatever they do, they will be in jeopardy of breaching a restrictive covenant, either with KWR or RLP. Further, the Defendants have made it clear that they have no intention of working again under the KWR system.

[66] In *Liberty Tax Service, Inc. v. Pinto,* 2025 ONSC 2429, Charney J. pointed out that the strong *prima facie* case test applies when an employer seeks to enforce a restrictive covenant against an employee. But the case before him was a request for injunctive relief by a franchisor against a former franchisee who was bound by a non-competition term of their franchise agreement. Nonetheless, he found that the strong *prima facie* standard applies: at paras. 31-33.

[67] In *Chatters Limited Partnership v. Chatters Deerfoot Meadows Limited*, 2025 ABKB 536, at para. 32, Marion J. cites numerous cases in which the "strong *prima facie* case" standard was adopted by Canadian courts for injunctions seeking to enforce restrictive covenants, including non-compete clauses, in franchise agreements. I agree that the “strong *prima facie* case" standard applies here.

[68] However the Plaintiffs describe it, the injunction sought here, if granted, will require what Brown J. described in *R. v. CBC*: that the Defendants undertake a positive course of action to restore the *status quo* (i.e. compliance with the parties' License Agreements) or to otherwise put the franchise situation between the parties "back to what it should be". That decision may well determine the outcome of this case. For those reasons, I treat it as a request for a mandatory injunction.

[69] Accordingly, I find that the proper first arm of the applicable test is the requirement of a strong *prima facie* case.

<u>Issue No 2:</u> Has KWR met the first part of the applicable test?

[70] There is no question that each of the Defendants has established a real estate brokerage through RLP which competes with KWR during the course of the License Agreements. Absent a proper justification, that state of affairs violates the restrictive covenants contained in the License Agreements. The question for the court is whether the Plaintiffs have offered a strong *prima facie* case that the Defendants were not entitled to do so.

[71] As set out above, the Defendants have offered a number of reasons for saying that they were entitled to walk away from the License Agreements. However, they boil down to a common theme of repudiation of those License Agreements by KWR. That is another way of saying that KWR fundamentally breached the License Agreements.

[72] In oral argument, counsel for the Defendants asserted that KWR repudiated the License Agreements in the four following ways:

1. Encroachment;
2. When caught, KWR refused to restrain encroaching agents from soliciting the Defendants' agents;
3. The illegality of the KWR profit sharing system; and
4. KWR permitted its system to lose all of its value.

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[73] The first two arguments are related. There is no need to consider the second argument unless the first one is made out. For that reason, I will consider them together.

[74] The Defendants further argue that the restrictive covenants in the License Agreements are unenforceable because of vagueness and overbreadth.

[75] But before I consider those arguments, I will review the law regarding repudiation or fundamental breach. I will then review the evidence which the Defendants rely upon to assert that KWR breached the License Agreements and the Addendum to the ARS License Agreement (which, entitled ARS to open a satellite office in Mississauga). I will then consider whether the Plaintiffs have made out a strong *prima facie* case in favour of an injunction, in light of the Defendants' assertion that KWR repudiated or fundamentally breached the License Agreements.

The Law of Fundamental Breach

[76] In *Shelanu Inc. v. Print Three Franchising Corp.* (2003), 64 O.R. (3d) 533 (C.A.), at paras. 115-116, the Ontario Court of Appeal cited the following definition of the doctrine of fundamental breach offered by Gonthier J. in *Farber v. Royal Trust Co*., [1997] 1 S.C.R. 846, at para. 33: "where one party to a contract demonstrates an intention no longer to be bound by it, that party is committing a fundamental breach of the contract that results in its termination." But as the court noted, that definition, which was applied in the employment law context, may not be the most appropriate in the context of a License Agreement.

[77] The court further cited another, similar definition for fundamental breach, namely, the deprivation of "substantially the whole benefit of the contract", which it had previously adopted.[5] It then cited Professor Waddams, to the effect that "behind all of these expressions lies a single notion, that of substantial failure of performance".[6]

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[5] in *Robson v. Thorne, Ernst & Whinney* (1999), 127 O.A.C. 215 (C.A.), at paras. 18-19, *Bayer Aktiengesellschaft v. Apotex Inc.* (1998), 113 O.A.C. 1 (C.A.), at para. 34, leave to appeal refused, [1998] S.C.C.A. No. 563, and *Majdpour v. M & B Acquisition Corp.* (2001), 56 O.R. (3d) 481 (C.A.)
[6] S.M. Waddams, The Law of Contracts, 3rd ed. (Toronto: Canada Law Book, 1993), at para. 583.

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[78] At para. 118, the court in *Shelanu* further cited Waddams in setting out the five following factors which a court must consider in determining whether there has been a fundamental breach of the contract between the parties:

(a) the ratio of the party's obligation not performed to the obligation as a whole;

(b) the seriousness of the breach to the innocent party;

(c) the likelihood of repetition of such breach;

(d) the seriousness of the consequences of the breach; and

(e) the relationship of the part of the obligation performed to the whole obligation.

[79] The court explained at paras. 119-120 that:

> The first and fifth factors appear to be aimed at helping a court to ascertain whether the contract was substantially performed … [t]he second and fourth factors are aimed at measuring the effect of the breach on the innocent party while the third factor, the likelihood of repetition of the breach, is aimed specifically at whether the aggrieved party should be released because continued performance would be intolerable due to repetition of the breaches.

[80] In *Greco Franchising Inc. v. Franco Milito et al.*, 2021 ONSC 3950, at para. 25, leave to appeal refused, 2021 ONSC 6719 (Div. Ct.), Hackland J. set out the issue as follows: whether the franchisor's alleged fundamental breach of a franchise agreement "undermines the fundamental underpinning of the franchise arrangement."

[81] A high evidentiary bar must be met in order to establish a claim of fundamental breach: *Greco*, at para. 24, citing *Shelanu.* Weiler J.A. made this point at para. 116 of *Shelanu*, when she quoted G.C. Cheshire and C.H.S. Fifoot for the proposition that:

> A breach of contract is a cause of discharge only if its effect is to render it purposeless for the innocent to proceed further with performance. Further performance is rendered purposeless if one party either shows an intention no longer to be bound by the contract or breaks a stipulation of major importance to the contract.[7]

[7] *The Law of Contract*, 5th ed. (London: Butterworths, 1960) at p. 488.

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[82] The court in *Shelanu* differentiated between a franchisor's "undoubtedly serious" breaches of its franchise agreement and whether those breaches make it "intolerable for [the franchisee] to continue to operate the franchise": at para. 120. Only the latter entitles the franchisee to claim fundamental breach of the franchise agreement.[8]

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[83] In *Brown v. Belleville (City)*, 2013 ONCA 148, 359 D.L.R. (4th) 658, the Court of Appeal for Ontario pointed out that the repudiation of the contract by one party does not automatically discharge the innocent party from their obligations under that contract: at para. 42, citing *Guarantee Co. of North America v. Gordon Capital Corp.*, [1999] 3 S.C.R. 423, at para. 40.

[84] Rather, the innocent party has an election as to whether they wish to be discharged from the contract. If they wish to be discharged, they must clearly and unequivocally communicate their disaffirmation of the contract to the repudiating party within a reasonable time. This election may be communicated "directly, by either oral or written words, or may be inferred from the conduct of the innocent party in the particular circumstances of the case": *Belleville*, at para. 45, citing John D. McCamus, *The Law of Contracts* (Toronto: Irwin Law, 2005), at pp. 659-61.

[85] However, if the innocent party treats the contract as if it remains in full force and effect, it remains in effect. Either party is free to sue the other for any past or future breaches: *Belleville*, at para. 42, citing *Gordon Capital*, at para. 40.

[86] At para. 48 of *Belleville,* the Court of Appeal for Ontario adopted the following description of what constitutes acceptance of repudiation, offered by Saunders J.A. of the Nova Scotia Court of Appeal in *White v. E.B.F. Manufacturing Ltd.*, 2005 NSCA 167, 239 N.S.R. (2d) 270, at para. 91:[9]

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[8] The court in *Shelanu* described the "undoubtedly serious" breaches in the case before it as "the delay in payment of royalty rebates on three occasions, the failure to pay the rebate based on there being a single franchise and the abuse of discretion respecting the advertising program".

[9] Saunders J. in turn adopted that definition from Joseph D. Chitty, *Chitty on Contracts*, 28th ed., Vol. 1 (London: Sweet & Maxwell, 1999), at p. 25-012.

> Where there is an anticipatory breach, or the breach of an executory contract, and the innocent party wishes to treat himself as discharged, he must "accept the repudiation." It is usually done by communicating the decision to terminate [to] the party in default although it may be sufficient to lead evidence of an "unequivocal overt act which is inconsistent with the subsistence of the contract . . . without any concurrent manifestation of intent directed to the other party." . . . Acceptance of a repudiation must be clear and unequivocal and mere inactivity or acquiescence will generally not be regarded as acceptance for this purpose. But there may be circumstances in which a continuing failure to perform will be sufficiently unequivocal to constitute acceptance of a repudiation. It all depends on "the particular contractual relationship and the particular circumstances of the case."

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Alleged Breach of Exclusivity

Alexander/VIP

[87] Alexander is an experienced real estate broker. As KWR's past Canadian director, he can be assumed to have known and understood its system. Yet, he and VIP never obtained a formal agreement confirming VIP's alleged exclusive territorial rights to all of Ottawa.

[88] The VIP License Agreement explicitly describes VIP's exclusive KWR territory (described as its "Awarded Area"). That territory is not set out as all of the City of Ottawa. Rather, it is described as "[s]tarting at Carling Avenue … to Richmond Road. Richmond Road to Kirkwood Avenue." No argument has been offered that this description is vague.

[89] In a January 31, 2017 email exchange with KWR's former Canadian Director of Compliance, Alexander articulated his understanding, which he said was provided by Debbie Gardner, Commitment Director of Keller Williams Realty International[10], that an amending agreement would be required to "clarify what is going on in Ottawa". In her response of February 2, 2017, Ms. Gardner did not indicate any disagreement with that statement.

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[10] In her cross-examination, Ms. Gardner stated that her Commitment Director role at the time was "essentially the same role" as her current role as Senior Director of Franchise Systems for KWR.

[90] No such amending agreement to “clarify what is going on in Ottawa” has been produced in this proceeding.

[91] Nonetheless, VIP renewed its License Agreement with KWR on August 21, 2019, more than 2 ½ years after the email exchange set out above.

[92] Alexander complains that, following John Davis’s departure from KWR, the franchisor denied the existence of an agreement awarding him and VIP exclusivity to all of Ottawa. Yet Alexander also claims that KWR acknowledged such an agreement. He relies on the following factors:

1. In September 2016, Debbie Gardner wrote to Wendy Bell, the principal of the Ottawa KWR franchise which ultimately merged with VIP, stating:

   > We understand that Marvin Alexander, Regional Director for Canada, has engaged with you in discussions regarding a proposed merger of your Market Centre #392 into the new, proposed Market Centre for greater Ottawa. We acknowledge that these discussions are underway and have no concerns regarding them taking place.

2. Ms. Gardner acknowledged in cross-examination that she received an email from Alexander dated January 31, 2017 that included the following statement:

   > Ottawa is alive and well. It is the MC [Market Centre] that was formerly a KW Ottawa MC that flipped to a Re/Max office while under extended contract with us, whereby I have stepped in as the [Operating Principal] of the new emerging MC (with John Davis’ blessing to do so), which is being merged with the former KW VIP Market Centre (#392), which has since been officially renamed to [sic] KW Integrity Realty, with a merger of the 2 territories in the works as well as the construction of new office premises to accommodate the amalgamation of the 2 territories’ agent count well underway, with anticipated April occupancy of the new space.
   >
   > All of the abovementioned has been discussed with Debbie [Gardner] when I was in Austin last week, albeit in an overview, and John Davis is also aware of the situation. I believe that Debbie said

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> that we would basically require an amending agreement to clarify what is going on in Ottawa, as opposed to a new MC application, which is what we were basically anticipating.

3. In August 2019, about 2 ½ years after Ms. Gardner's February 2, 2017 email, KWR approved Alexander as the new owner of VIP.

4. KWR was aware that VIP had applied in 2022 to open VIP offices in Kanata and Orleans and was aware of the Cornwall office as well.

[93] All of that being said, the Defendants were unable to produce one document in which KWR agreed to or acknowledged a claim by Alexander or VIP to the entire territory of the City of Ottawa. Further:

1. As set out above, the VIP License Agreement clearly defines VIP's exclusive territory within Ottawa, not all of Ottawa.

2. There is no evidence before me which comes directly from John Davis, who is no longer with KWR.

3. Alexander's own email to Ms. Gardner of January 31, 2017, cited above, inferred that he conceded the need for written approval for any change in VIP's arrangements with KWR.

4. In his cross-examination for this motion, Alexander admitted that there is no written agreement granting VIP a larger section of Ottawa than its Awarded Area set out in the VIP License Agreement.

5. On November 16, 2022, Ian Davies, the KWR Regional Development Director, informed Alexander, as a courtesy, that another party wished to open a KW franchise in Ottawa. Alexander deposes that he protested that he was entitled to the entire Ottawa area as a result of the grant by John Davis for "saving" Ottawa. Alexander adds that Ian Davies responded that KWR "does not recognize [John] Davis's authority to have granted me [sic] the Ottawa territory". While that claim implies that Ian Davies accepted that

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John Davis had made the offer, the Defendants have failed to produce a copy of any correspondence from John Davies containing that statement.

6. In further correspondence and conversations between Alexander and KWR executives, Alexander was informed that KWR does not recognize him holding the exclusive Ottawa territory.

7. Even after these exchanges, Alexander and VIP did not take any legal steps to assert his claim to an exclusive Ottawa territory before leaving KWR.

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[94] It is common ground, as set out above, that there is no written agreement which grants VIP any greater territorial exclusivity than the Awarded Area explicitly set out in the VIP License Agreement. Alexander's 2016 – 17 correspondence exchange with Debbie Gardner of KWR confirms that Alexander understood the necessity of an amending agreement before there could be any change in VIP's arrangements with KWR. Further, the subject of that correspondence was not about the grant of exclusivity over all of Ottawa to Alexander/VIP. It was about a merger of his business centre with another one in Ottawa, controlled by Wendy Bell.

[95] In addition, Alexander, a former KWR Canadian director, was highly aware of the KWR system. He could reasonably be described as an insider in the system. Yet, he chose to sign a renewal of the VIP License Agreement in 2019, after operating it for about two years. That renewal did not contain a term granting Alexander/VIP exclusivity to all of Ottawa.

[96] Thus, there is no independent evidence of any agreement between KWR and Alexander/VIP to grant them all of Ottawa as their exclusive territory.

[97] Further, as set out above, the License Agreements contain "entire agreement" clauses, which clearly state that those License Agreements represent "the entire, full and complete agreement between" their parties.

[98] To the extent that there was any ambiguity about KWR's position regarding Alexander/VIP's exclusivity over all of Ottawa, it was dispelled in Alexander's November

16, 2022 correspondence with Ian Davies, the KWR Regional Development Director, cited above. At that time, Mr. Davies stated that KWR did not recognize the claim that John Davis granted Alexander/VIP exclusivity for all of Ottawa.

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[99] But Alexander and VIP took no steps to enforce their alleged Ottawa exclusivity from the time of this correspondence until June 24, 2025, when the Defendants declared that KWR had repudiated the License Agreements. That was over 2 ½ years after Ian Davies informed them of KWR's denial of VIP's exclusivity to all of Ottawa.

[100] For those reasons, I cannot find that there was any agreement with KWR granting Alexander or VIP the exclusive territorial jurisdiction over the City of Ottawa. Even if there were such an agreement and its breach represented repudiation or fundamental breach of the VIP License Agreement, Alexander and VIP did not accept that repudiation in over 2 ½ years after Ian Davies's November 16, 2022 correspondence.

Daljit/ARS

[101] Daljit and ARS's argument that KWR violated the exclusivity granted to their Business Centre in the Addendum to the ARS License Agreement is not based on the wording of that Addendum. Rather, they claim that KWR violated an alleged side agreement.

[102] While there is no question that the ARS Business Centre was entitled to an exclusive territory, the question is whether it was entitled to continue that exclusivity after it failed to meet the three requirements set out in the Addendum for three years.

[103] Daljit does not dispute the evidence of KWR's Debbie Gardner, now Senior Director of Franchise Systems, that ARS failed to meet at least one of its three targets each year, and that in the last year, it missed all three targets. Ms. Gardner actually cited the confirmation of those facts found in a table in Daljit's own affidavit. Daljit and ARS are also faced with Daljit's own admission that he closed the Business Centre location and was using it for storage for the remainder of its lease term.

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[104] Nonetheless, Daljit asserts that David Brousseau ("Brousseau"), the KWR Canadian director, had assured him in writing that he would not be bound by the terms of the Addendum. Rather, Daljit and ARS would be entitled to retain the exclusivity of their Business Centre Awarded Area so long as ARS remained within the top 20 percent of market centre rankings for the first three years of the Addendum. In support of that claim, Daljit attached an email to him from Brousseau, dated October 10, 2019.

[105] I do not accept Daljit's claims about that email. Brousseau wrote:

> Marc and I have discussed your proposal. We want to give you the opportunity to review it again before moving forward. **This would only be monitored for the first 3 years and as long as you remain in the top 20% of MC [market centre] rankings then we are good with that.** This represents an average of net 3 per month. We have one MC last year and two this year that are exceeding 4 net a month already. You are right, the metrics agreed upon should far exceed the performance of what's already being done. [Emphasis added.]

[106] This term is not an amendment to the Addendum or the ARS License Agreement. Rather, Brousseau proposes that as long as certain, different metrics are met, KWR will not <u>monitor</u> the business centre's performance. That strikes me as an offer by KWR with regard to the manner in which it will enforce certain of ARS's legal obligations set out in the Addendum.

[107] But Daljit's response the next day is not an agreement to that proposal. It is a boast about his sales and recruitment proficiency. Daljit did not say that he accepted or relied on Brousseau's offer. Nor does he say that as a result of that offer he and/or ARS would act in any different or particular manner.

[108] Accordingly, I do not accept that Brousseau's email proves the existence of a binding agreement to vary the terms of the Addendum or the ARS License Agreement.

[109] Daljit argues that in light of Covid and the ARS Business Centre's other accomplishments, its exclusivity should not have been withdrawn, even if it did not meet its targets. However, he further admitted that he understood that meeting the criteria set

out in the Addendum was a condition precedent to maintaining that Business Centre's exclusivity.

[110] Daljit and ARS's argument regarding the Addendum is further diminished by the fact that ARS ultimately used the Business Centre location for storage until its lease had expired.

[111] Thus, Daljit and ARS can claim no loss from the withdrawal of the ARS Business Centre's exclusivity. As KWR points out in its factum, the lack of exclusivity did not prevent ARS from continuing to operate its Market Centre within the Conditional Awarded Area set out in the Addendum. It just could not do so under the umbrella of exclusivity.

[112] In conclusion on this point, it is most likely that KWR will be able to prove at trial that it did not breach the Addendum or any other agreement regarding exclusivity for the ARS Business Centre.

KWR's Refusal to Restrain Encroaching Agents from Soliciting the Defendants' Agents

[113] Because I do not find that the Defendants were entitled to the exclusive territories they claim, and there is no evidence that any competitors, including Ruby Xue, had opened market centres within the Defendant's contractual Awarded Areas, I need not consider this issue any further.

Alleged Illegality of the KWR System

[114] The Defendants' arguments regarding the alleged illegality of the KWR system arises from the KWR profit-sharing system. The Defendants allege that they recently discovered from others that the KWR profit-sharing model appears to be unlawful because it does not comply with Canadian tax law. They assert that they have been advised that some KWR brokerages were audited by Revenue Canada in regard to that profit-sharing system. They add that the Canada Revenue Agency ("CRA") found that such payments were subject to the Harmonized Sales Tax ("HST"). They blame KWR for failing to advise them to collect HST when making profit-sharing payments to their associates.

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[115] The Defendants have not been audited by the CRA. But Alexander claims that he has calculated the HST liability of VIP for the period from January 1, 2018 to November 30, 2024 to be $157,780 and that of ARS to be $413,703. The Defendants offer no expert opinion or CRA documentation as to the propriety of the potential CRA claim against the Defendants for HST arrears.

[116] The Defendants have failed to offer any concrete evidence of any potential HST tax liability to the CRA. They complain that KWR has taken a hands-off approach to the issue but fail to provide any authorities for the proposition that KWR is responsible for any potential tax liability they may incur. Nothing prevented the Defendants, who are sophisticated businesspersons, and their businesses from obtaining accounting/legal advice as to the tax position of their profit-sharing payments.

[117] The issue of any unpaid tax liability is one between the Defendants, their agents/associates and the CRA.

[118] In the circumstances, I do not accept the Defendants' argument that the KWR profit-sharing system is "illegal" or that KWR acted improperly in regard to that system. That claim is based on hearsay and speculation. It lacks both evidence and authority to substantiate the claim.

KWR Allegedly Permitted its System to Lose all of its Value

[119] The Defendants assert that KWR allowed its system to lose all of its value. They submit that it once was a valuable system. But because KWR does not understand the Canadian market and because it failed to reinvest in that market, the KWR system had no value when they walked away from it. I do not accept that claim.

[120] Each of the License Agreements have clauses in which the Licensees, controlling principals and Licensees' principals acknowledge the value of the KWR system as follows:

> …pursuant to this Agreement, members of the Licensee's Group shall receive **valuable** specialized training, trade secrets and confidential information, including information regarding the operational, sales, promotional and marketing methods

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> and techniques of Company and the System, which is beyond the present skills and experience of the Licensee's Group. Licensee, each Controlling Principal and each Licensee's Principal acknowledge that such training, trade secrets and confidential information provide a competitive advantage and shall be valuable to them in the development and operation of the Market Center, and that gaining access to such training, trade secrets and confidential information is, therefore, a primary reason why they are entering into this Agreement. Licensee, each Controlling Principal and each Licensee's Principal specifically acknowledge that such training, trade secrets and confidential information is provided by Company for the benefit of the System, and each Market Center, and that the System and each Market Center individually and mutually benefits from all Licensees' compliance with the covenants described below. [Emphasis added.]

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[121] Further indicia of the value of the KWR system to the Defendants include the following:

1. One potential measure of the value of the KWR system is the measure of listings sold. Each of VIP and ARS have shown a sharp increase in listings sold since 2010. In particular:

   VIP

   - In 2010, VIP's Ottawa Market Centre had sold 275 listings.
   - By 2024, the listing figure was 1,346, a 389.455 percent increase.
   - From April 2024 to April 2025, VIP's Ottawa listings increased by a further 3.37 percent.

   ARS

   - In 2010, ARS's Mississauga Market Centre had sold 174 listings.
   - By 2024, the figure was 1,130, a 549.425 percent increase.
   - ARS's listings increased by a further 24.7 percent from April 2024 to April 2025.

2. In early 2025, despite their valuation at $200,000, Alexander paid $300,000 for an additional 30 percent interest in VIP shares.

3. In 2021, Alexander sold another KWR market centre, which he owned in Newmarket, for $2.2 million. He agreed, on cross-examination, that the centre he sold was “successful”.

4. Up until June 24, 2025, VIP was using KWR trademarks, continuing to recruit associates to join a KWR-branded brokerage.

5. Each of Alexander, VIP, Daljit and ARS utilized KWR training and promotional materials in the course of their business as KWR franchisees.

6. In fact, VIP copied and pasted from KWR promotional materials in its own materials promoting itself to prospective agents. In his cross-examination, Alexander claimed that those materials were misleading, but he and VIP used them anyway. Alexander explained that “[w]e were willing to do, within the confines of the law, anything that we needed to do to survive in this [KWR] system.” When asked whether that included “being misleading to associates”, Alexander answered “[t]o a degree, yes”. That statement does not enhance his credibility.

7. Alexander complained about the quality of the technical systems offered by KWR for training and streamlining the management of market centres, including promotional materials. Yet VIP charged its agents $66/mo. for the suite of KWR technical systems even though KWR was charging VIP only $45/mo./agent. This meant that VIP was able to earn a mark-up of $21/mo./agent. As set out below, VIP had 266 agents as of December 31, 2024. Assuming all paid the technology fee, VIP earned a mark-up on KWR technology of $5,586/mo. or $67,032/year.

8. Some of VIP’s promotional materials for RLP closely mirror its KWR promotional materials. One such document, regarding the virtues of RLP’s training, is a virtual mirror image of a document VIP used to extoll KWR’s training. It even included a list of the same training resources, listed in the

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same order, preceded by near-identical checkmarks for each of those resources.

9. Both Alexander and Daljit were regular attendees of KWR's annual training and networking programs. Daljit served on the KWR Operating Principal Leadership Council, a leadership body which KWR describes as providing "formal channels for Operating Principals to provide input into the KW System."

10. Alexander further admitted in cross-examination that VIP was recruiting agents using Keller Williams's "Unparalleled Real Estate Training" as a selling feature. He also admitted that VIP recruited real estate agents based on the premise the KWR is the "number one" training company.

11. Similarly, Daljit admitted on cross-examination that he and ARS extolled KWS's system, including its technology to potential agents. ARS stated in its advertising: "KW Tech and Training continues to separate us from other brokerages". While both Alexander and Daljit complained about the quality of KWR's technology suite, Daljit admitted both that Command (KWR's primary technology offering) was already in use when he extolled its value and that he believed his own representations at the time he made them.

12. Daljit further admitted that his praise of the KWR system assisted in both recruiting agents to ARS and building goodwill with agents. While Daljit felt that he and Alexander had their own goodwill, he conceded that the recruitment and building of goodwill was under the KWR brand.

13. During his cross-examination, Daljit stated that ''approximately between 2021 and 2025, [he] purchased out all of [his] other partners [in ARS]". Two of those purchases were in 2025. Obviously, he saw a value in doing so.

14. In addition, Alexander admitted in cross-examination that at the beginning of 2025, he purchased the 30 percent interest of Wendy Bell in VIP for

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$300,000, even though he claimed to believe that it was only worth $200,000.

15. Nowhere in the License Agreements is there a guarantee as to the profits which licensees can expect to earn. In any event, the franchises run by the Defendants were clearly profitable. The Defendants have offered no evidence to the contrary. Rather, they point to the profits they made and the substantial royalties which they paid to KWR.

16. Whether the Defendants could have earned more money or gained even more agents or further increased the value of their franchises under another franchise banner is irrelevant. They did earn substantial income, recruited between themselves some 600 agents and increased the value of their franchises under the KWR banner. Those facts are, as the Plaintiffs state in their reply factum, inconsistent with the position that the KWR system has no value.

17. The fact that a real estate corporation such as RLP was willing to pay the Defendants to jump ship, as it were, was further proof of the value of the franchises which the Defendants built in their time with KWR. The fact that the Defendants were unwilling to say exactly what they were paid by RLP to join that franchise allows the inference that the payment was substantial.

18. Finally, VIP's standard form employment contracts required its employees to acknowledge KWR's proprietary interest in its system. During his cross-examination, Alexander explained the inclusion of this term in VIP's employment contracts: "because we felt it was important, and we…yes, I feel it is true." As the Plaintiffs write in their factum: "[t]hat admission is fatal to any assertion that the KW System is unworthy of protection."

[122] I add that the restrictive covenants in this case were all *in-term* covenants. That is, they all applied within the term of the License Agreements that remained in force. They were not even terms which applied after the term of the agreement had run its course.

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That is another factor in favour of upholding those terms in this case. In *Invescor Restaurants Inc. v. 3574423 Canada Inc.*, 2011 ONSC 1609, 85 B.L.R. (4th) 12, aff'd 2012 ONCA 387, 100 B.L.R. (4th) 173, a franchisee sought summary judgment against a franchisor attempting to enforce a non-competition restrictive covenant during the term of the relevant License Agreement. Wilton-Siegal J. dismissed the request, stating at para. 93 that "[s]o long as the franchisee is receiving the benefit of the Franchise Agreement, the franchisee should not be able to undermine the value of the franchise unless special circumstances can be demonstrated." Wilton-Siegal J.'s statement in *Invescor* was adopted by Hackland J. in *Greco*, at para. 23.

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[123] As the points cited above demonstrate, the Defendants in this case were receiving the benefit of their License Agreements. Absent special circumstances, they should not be able to undermine the value of the KWR franchise.

Ambiguity, Overbreadth and Reasonableness

Ambiguity and Overbreadth

[124] There is no issue between the parties that a restrictive covenant must be reasonable in order to be enforceable. The Defendants raise a number of arguments in support of their claim that the restrictive covenant in the License Agreements is unreasonable.

[125] The Defendants' first argument is that the License Agreements' non-competition clause is so ambiguous and overbroad as to be unreasonable and thus unenforceable. The Defendants do not take issue with the temporal or geographic limits of those terms. They only extend two years past the end of the License Agreement. The geographic limits of the post-term non-compete clause is limited to only the Licensee's Awarded Area and a ten-mile radius of any other physical Market Centre in existence at the end of the agreement (with Business Centres and other ancillary locations excluded).

[126] However, the Defendants say that the following language found at para. 16.02(1)(B) of the License Agreements is ambiguous and overbroad. That term prohibits franchisees from the following conduct:

> (B) Own, maintain, operate, **engage in,** or have any interest in any real estate business that supports real estate agents that competes with Company, Company's Affiliates, and Licensees, including any real estate business that involves (i) the real estate brokerage business; or (ii) the offer, sale or operational support of businesses in the real estate brokerage business (whether as a franchisor, licensor, regional representative, area director, consultant, or other similar service provider capacity). [Emphasis added.]

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[127] The Defendants argue that the expression "engage in" is so vague that it can cover any range of employment, including working as a janitor at a competing real estate agency.

[128] The Plaintiffs respond that "engage in" is not vague if examined within the context of the entire clause, which refers to *actively* engaging in a real estate business rather than simply working for one. That should be contrasted with the *passive* phrase, "be engaged in", which has been found to be part of an overbroad restrictive covenant in *M & P Drug Mart Inc. v. Norton,* 2022 ONCA 398, 79 C.C.E.L. (4th) 171.

[129] I agree. The restrictive covenant in the License Agreements is similar to that in *MEDIchair LP v. DME Medequip Inc.* 2016 ONCA 168, 129 O.R. (3d) 161. In that case, the restrictive covenant used the same "engage in" wording found here as part of an even broader covenant than the one in this case. It stated:

> For a period of eighteen (18) months after the termination of this Agreement, Franchisee, its principals, officers, shareholders, directors, guarantors, personal covenantors, and the spouses and/or children thereof shall not either individually or in partnership, in conjunction with any person or persons, firm, association, syndicate, company or corporation as principal, agent, shareholder or in any manner whatsoever, **carry on, or engage in, or be concerned with, or be interested in, or advise, lend money to, guarantee the debts or obligations of, or permit its name or any part thereof to be used or employed by, any person or persons, firm, association, syndicate, company or corporation engaged in any business similar to the business carried on by MEDIchair** or any of its authorized Franchisees within an area of 30 miles of the nearest MEDIchair Store business in Canada or the MEDIchair Store business operated by Franchisee prior to termination of this Agreement. [Emphasis added.]

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[130] At para. 52, Feldman J.A., writing for the court, found that the provision set out above "is not ambiguous, nor are the temporal or territorial boundaries unreasonably broad." As set out below, the Court of Appeal refused to enforce that term for reasons unique to that case.

Reasonableness

[131] As in *MEDIchair*, the focus of the inquiry regarding the reasonableness of the restrictive covenants in the License Agreements does not centre on the extent of the temporal or territorial restrictions. Rather, it looks to whether KWR possesses a legitimate interest which is entitled to the protection of the restrictive covenant: at para. 37.

[132] Citing Wagner J., as he then was, in *Payette v. Guay Inc.*, 2013 SCC 45, [2013] 3 S.C.R. 95, Feldman J.A. found at para. 38 of *MEDIchair* that "the test for reasonableness is whether the clause is 'limited, as to its term and to the territory and activities to which it applies, <u>to whatever is necessary for the protection of the legitimate interests of the party in whose favour it was granted</u>': para. 61 (citation omitted; emphasis added)."

[133] Feldman J.A. also cited *Tank Lining Corp. v. Dunlop Industrial Ltd*. (1982), 40 O.R. (2d) 219 (C.A.), at p. 224, where Blair J.A. wrote for the Ontario Court of Appeal:

> In all the cases the entitlement of a party to a contract to enforce a restrictive covenant is based in the protection of a legitimate or proprietary interest such as the goodwill of a business which has been purchased or the confidential information peculiar to employment.

[134] In *MEDIchair*, the Court of Appeal found, at para. 39, that the franchisor had "a legitimate or proprietary interest to protect in the goodwill in its MEDIchair system, including the trade secrets, method of operation, contacts and other benefits that are obtained by a franchisee." However, the court denied the requested injunction because the franchisor had no plans to open its own franchise in the territory protected by the restrictive covenant. Thus, the restrictive covenant in question, which on its face was reasonable, was nonetheless unreasonable between the two parties before the court in the particular circumstances of the case. That was because of the franchisor's lack of "a

legitimate or proprietary interest to protect within the territorial scope of the covenant": at para. 52.

[135] The willingness to be subject to, or to subject others to, restrictive covenants is relevant to the determination of the reasonableness of the restrictive covenants in issue in this case: *OPA! Souvlaki Franchise Group Inc. v. Tiginagas*, 2024 BCSC 1318, at para. 30. Thus, the court may consider the fact that VIP required its own employees to sign a non-competition clause in their employment contracts similar to those in the License Agreements. Those restrictive covenants, in an employment context, were actually broader than those in the License Agreements. They broadly prohibited any employee, "without the prior written consent of the Company, [to] either directly or indirectly, compete with the business interests of the Company."

[136] Furthermore, in 2021, Alexander sold his interest in a Newmarket market centre to Colin Campbell for $2.2 million. In that transaction, he agreed to be bound by a restrictive covenant which appears to be broader than the covenant contained in the License Agreements. Among the terms that are included in that restrictive covenant, Alexander agreed that he would not:

> invest in, undertake, carry on **or be engaged in or concerned with** or have a financial interest in or advise, lend money to, guarantee the debts or obligations of, or permit [his] name or any part thereof to be used or employed by or associated with, any Person which is, directly or indirectly, in any manner whatsoever, engaged in, concerned with or interested in a business in competition with the Business in the Territory... [Emphasis added.]

[137] This language is at least as broad, if not broader, than the "engage in" prohibition found in the License Agreements.

[138] Finally, as set out above, the Defendants refused to produce anything but heavily redacted copies of the franchise agreements which VIP and ARS signed with RLP. That refusal prevents the court from engaging in the exercise of comparing the restrictive covenant in those franchise agreements with the covenant in the License Agreements. However, this court is entitled to infer that if those agreements contained a

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restrictive covenant that is narrower than the terms of the covenant in the License Agreements, the Defendants would have produced them.

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[139] At para. 34 of *MEDIchair*, Feldman J.A. cites the comments of Dickson J., as he then was, in *Elsley Estate v. J.G. Collins Insurance Agencies Ltd*., [1978] 2 S.C.R. 916, at pp. 923-24, that "the courts have been disinclined to restrict the right to contract, particularly when that right has been exercised by knowledgeable persons of equal bargaining power." That is the case here, where the individual Defendants were sophisticated businessmen when they signed the License Agreements with KWR.

[140] Further, at para. 35 of *MEDIchair*, Feldman J.A. cites the conclusion of Wagner J. at para. 38 of *Payette*, "that in the commercial context -- *i.e.*, the sale of a business -- the courts will treat a restrictive covenant as lawful unless it is shown on a balance of probabilities to be unreasonable." By any measure, the parties in this case entered into the License Agreements within a commercial context.

[141] Thus, and for the reasons set out above, I find that there is a strong *prima facie* case that the restrictive covenants in the License Agreements are both reasonable and enforceable against the Defendants. Further, the Defendants have breached those terms by joining a competing real estate franchise during the term of the License Agreements. Accordingly, there is a strong likelihood that the Plaintiffs will succeed in this proceeding following trial.

Issue No 3: Would KWR suffer irreparable harm if the requested injunction is not granted?

[142] In *Liberty Tax Service, Inc.*, Charney J. defined the issue of irreparable harm within the context of a franchise agreement's restrictive covenant. He wrote at paras. 59-60:

> [59] Irreparable harm is harm which either cannot be quantified in monetary terms or which cannot be cured. It may include permanent market loss and irrevocable damage to business reputation*: RJR MacDonald*, at p. 341.

> [60] "The law is less demanding of proof of irreparable harm when an injunction is sought to enforce negative covenants": *Parkland Corporation v. SRAA Inc.*, 2021 ONSC 2874, at para. 88; *Canpark Services Ltd. v. Imperial Parking Canada Corp*, 2001 CanLII 28004 (ON SC), at paras. 10 – 15.

[143] The determination of irreparable harm refers to the nature of the harm suffered rather than its magnitude. It is harm which cannot be quantified in monetary terms or cured: *RJR-MacDonald*, at p. 341. One example offered in *RJR-MacDonald* occurs when a party will suffer permanent market loss or damage to its business reputation: at p. 341.

[144] The Plaintiffs set out their rationale for arguing irreparable harm in their factum, as follows:

> If a franchisee is permitted to take the benefit of the KW System, only to jump ship to a competitor while the term of their franchise agreement is ongoing, it will be impossible for KWR to protect its rights, leading to an erosion in value not only for KWR but for all franchisees that rely on that system and its protections. Where an entire network or system of franchisees is impacted by a single bad actor (or pair of them, in this case), the franchisor must be permitted to protect its methods and goodwill …

[145] The Plaintiffs argue that the fact that the Defendants took about six hundred agents with them when they left KWR for RLP is further proof of irreparable harm. They argue that the harm includes a loss of market share in both Ottawa and Mississauga, where a competing franchisor is able to immediately expand its market share by absorbing two successful businesses built on the KWR system.

[146] The Plaintiffs add that if other franchisees know that they can jump to another franchise, taking all of their agents with them without any consequences, there will be little value left in the franchise. In this regard, the Plaintiffs also rely on the evidence of two of its largest franchisees to support its position. Those franchisees feel that the conduct of the Defendants diminishes the value of their franchises by diminishing the value of KWR itself, a franchise system for which they pay substantial amounts. They fear the loss of the value of their bargain with KWR.

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[147] Perhaps hyperbolically, the Plaintiffs argue that allowing the Defendants to walk away from the License Agreements would open the floodgates to the irreparable harm to every franchise system in our province.

[148] For their part, the Defendants argue that any evidence of irreparable harm is merely speculative and a series of bald representations regarding market share. They assert that the Plaintiffs have failed to offer concrete evidence of market loss. Losing agents and even franchisees is a normal part of the real estate business. Many have left the KWR system over the years without irreparable loss or even a lawsuit such as this. Any loss that KWR may suffer is not irreparable.

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[149] From the law and the evidence before me, I find that KWR will suffer irreparable harm if an injunction were not granted. I say this because:

1. The loss of two major franchises in two major markets, with the loss of about six hundred agents, all to a larger direct competitor, causes great harm to KWR.

2. That harm would be compounded by the anticipated reaction of other KWR franchisees if this motion were denied. Those franchisees would learn that the restrictive covenants in their license agreements, which both bind them to KWR and protect them from KWR competitors, are of little value. That would most likely shrink the goodwill and ultimately, the value of the KWR system in Canada.

3. Moreover, the Defendants' breaches of the License Agreements would likely significantly set back any KWR replacement franchises in the applicable Ottawa and Mississauga territories. In addition to lost goodwill and market share, those replacement franchises would be faced with having to compete with former KWR franchises in those same territories.

[150] In *Quizno's Canada Restaurant Corporation v. 1450987 Ontario Corp.*, 2009 CanLII 20708 (Ont. S.C.), at para. 93, Perell J. noted that: "…the irreparable harm suffered by the franchisor goes to its goodwill, its reputation, and its responsibility to the

franchisees of the chain to maintain the integrity of the franchise system. Damages would not adequately address these harms.” For the reasons cited above, that statement is particularly applicable to the facts of this case.

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[151] Accordingly, I find that the test of irreparable harm is met.

<u>Issue No 4:</u> Does the balance of convenience favour the granting of an interim injunction?

[152] In *Opa!*, Jackson J. set out the factors to be considered regarding the balance of convenience as follows at para. 43:

> The factors to be considered when considering the balance of convenience include the adequacy of damages as a remedy for the plaintiff if the injunction is not granted, and for the respondent if an injunction is granted, the likelihood that if damages are finally awarded they will be paid, which of the parties has acted to alter the balance of their relationship and so affect the status quo, the strength of the plaintiff's case, any factors affecting the public interest, and any other factors affecting the balance of justice and convenience: *Canadian Broadcasting Corp. v. CKPG Television Ltd.*, 64 B.C.L.R. (2d) 96, 1992 CanLII 560 (C.A.). These factors, again, are not to [be] regarded as a checklist, but rather are to be considered in a unified context: *CKPG Television*.

[153] The Plaintiffs argue that the balance of convenience favours the granting of an injunction. They say that it was the Defendants who altered the status quo and that they have a strong *prima facie* case. Moreover, they are willing to take the Defendants back into the KWR system, even after a breach of the License Agreements. On the other hand, the Defendants should not be allowed to unilaterally alter the terms of the License Agreements. That is particularly the case after they had renewed those agreements (VIP in 2019 and ARS in 2020). Any harm which the Defendants may suffer if an injunction were granted would be more than balanced by the irreparable harm that the Plaintiffs would suffer if an injunction were not granted. In any event, the Defendants are the authors of whatever may befall them if an injunction were granted because they chose to breach the License Agreements.

[154] The Defendants counter that the balance of convenience strongly favours them. They say that granting an injunction would:

- Consign them to what they believe to be an unlawfully administered system regarding HST;
- Place them in a position where they would be unable to meet their financial obligations to KWR because their agents would not follow them back;
- Place them in breach of their agreements with RLP; and
- Deprive them of their ability to earn a living.

[155] The Defendants cite *Revel Realty Inc. v. Costabile et al.*, 2022 ONSC 3372. There, Harper J. dismissed a motion for an interlocutory injunction brought by a non-franchisor realty firm against a former employee real estate agent. The employer alleged that the agent breached restrictive covenants by opening a competing real estate brokerage. Harper J. found that the restrictive covenant was ambiguous and presumptively unenforceable. He further found that the restrictive covenant's temporal restriction was overbroad. He added that the balance between the public interest in maintaining open competition and the employer's interests in the protection of its trade secrets, confidential information and trade connections in that particular case weighed in favour of the public interest: at para. 80.

[156] The Defendants also raise the issue of the impracticality of forcing the two sides to work together again when there is such a lack of trust between them. They cite the comments of Mesbur J. in *Barton-Reid Canada Ltd. v. Alfresh Beverages Canada Corp.*, [2002] O.T.C. 799 (S.C.). At para. 10, she noted that "courts are generally reluctant to order mandatory interlocutory injunctions when to do so will force parties to continue in business together when there is a complete lack of trust between them. The court must address the practical feasibility of such a judicially imposed arrangement."

[157] The Defendants add that none of the six hundred agents that came with them to RLP would return to KWR, even if the requested injunction is granted.

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[158] The Plaintiffs reply that *Revel* dealt with an employment rather than a commercial franchise context. The Plaintiffs add that unlike this case, the employer led no evidence regarding the value of the proprietary interest it was protecting. Both points are valid.

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[159] Regarding *Barton-Reid*, the Plaintiffs point out that the court was dealing with a different factual matrix than that of this case. In *Barton-Reid*, the court dealt with a request for a mandatory injunction requiring the defendant, a manufacturer of fruit beverages, to continue to honour a distribution agreement with the plaintiff until trial. Mesbur J. denied the injunction, finding that the plaintiff had failed to meet both the strong *prima facie* case test and that of irreparable harm. That is not the case here.

[160] The Plaintiffs add that the Defendants should not be able to deliberately breach a contract and then throw themselves at the mercy of the court because of the consequences of their breach. They cite the comments of Reid J. in *Indal Ltd. et al. v. Halko et al.* (1976), 28 C.P.R. (2d) 230 (Ont. H.C.), at p. 235:

> 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 seek, by this cynical act, to place the other party at a disadvantage… Inequity must not be used to avoid equity.

[161] That comment was cited with approval by Métivier J. in *Chem-Dry Canada Ltd. v. Groulx* (1999), 94 O.T.C. 157 (H.C.), at para. 21.

[162] The Plaintiffs’ points are well-taken. The facts of this case are quite different than those of *Revel* and *Barton-Reid.* This is not an employment case. That difference is relevant. As Jackson J. pointed out in *OPA!*, at para. 28: “[t]he Court will more readily enforce a restrictive covenant in a commercial contract than in an employment contract given the inequality of bargaining power often present between the contracting parties in the employment context.”

[163] Furthermore, KWR has provided evidence of the value of its proprietary interest in its system and the loss that occurred when the Defendants took their approximately six hundred agents to a larger direct competitor in two important Ontario markets.

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[164] The Defendants are sophisticated businessmen who knew what they were doing when they chose to leave KWR in favour of RLP. In fact, they were paid by RLP to do so. The fact that they refuse to say what they were paid to jump franchises does not help their case. As set out above, it would be a fair inference to find that the payments were, at the very least, significant.

[165] The Defendants' claim that none of the agents who accompanied them to RLP would return to KWR is belied by Daljit's own words at his cross-examination. There, Daljit spoke about his and Alexander's ability to determine where their agents will work. He stated that their agents "come because of me … Marvin [Alexander] and I are two of the top twenty-five most influential people in Canada. So, wherever we go, people come. With Keller Williams, no Keller Williams, people will come."

[166] I agree with the Plaintiffs that it was the Defendants who unilaterally changed the status quo. Furthermore, my finding that the Plaintiffs present a strong *prima facie* case is relevant to my determination of the balance of convenience.

[167] The question which could make the issue of balance of convenience a closer one is one which garnered little evidence and few submissions from either party: the adequacy of damages as a remedy. As set out above, the Defendants do say that if an injunction were granted, they would not be able to continue to carry on their business, which presumably would affect their ability to pay any damages. But that does not speak to the harm which would befall the Plaintiffs should the injunction not be granted.

[168] In addition, I cannot ignore the fact that the Defendants, by breaching the License Agreements, have placed themselves in the position which they decry.

[169] In sum, I am not in a position to say that damages are an adequate remedy in the facts of this case.

[170] In considering the factors cited above, I find that the balance of convenience tilts towards the Plaintiffs. Even if that were not the case, the other two parts of the *RJR-MacDonald* test strongly incline towards the Plaintiffs. In addition, as set out in *Loops*, above, at para. 15, a finding of a strong *prima facie* case may, in the circumstances, lessen the weight to be given to the second and third parts of the *RJR-MacDonald* test.

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<u>Issue No. 5:</u> Does the "clean hands doctrine" prevent KWR from obtaining the requested injunction?

[171] The Defendants' final argument is that this motion should be dismissed because KWR fails to come to court with clean hands. It is trite law that a party seeking an equitable remedy such as an injunction must come to the court with clean hands: *Canadian Tire Corporation, Limited v. Eaton Equipment Ltd.*, 2025 ONCA 543, at para. 15, citing *City of Toronto v. Polai*, [1970] 1 O.R. 483 (C.A.), aff'd [1973] S.C.R. 38.

[172] Here, the Defendants cite *Diversey Inc. v. Virox Holding Inc. et al.*, 2012 ONSC 6822, at para. 61 and *Revel*, at paras. 48-51 to say that the Plaintiffs have breached the very contracts they seek to enforce. Neither case applies.

[173] In *Virox*, a small manufacturer of cleaning products sought an injunction against a larger investor and distributor, with whom it had signed a technology and trademark licensing agreement. The moving parties/defendants sought to enjoin the plaintiff from distributing its products any longer. However, Brown J. refused to grant an injunction because it was the defendants who had "breached the very Agreement upon which they rely by purporting to terminate it contrary to the provisions of the contract": at para. 61. In doing so, Brown J. invoked the clean hands doctrine. The facts of that case have little to do with those of the instant case.

[174] In *Revel,* Harper J. found that the moving party/broker had already encroached on the employee/agent's territory even as it was attempting to enforce a restrictive covenant on that employee/agent. As Harper J. put it, the Plaintiff was improperly "… expanding their market share while, at the same time, insisting that the Defendants were not allowed to compete with them": at para. 51. That factor contributed to Harper J.'s

invocation of the clean hands doctrine to refuse to enforce the restrictive covenant between the parties. That factor does not apply here.

[175] Undoubtedly, inasmuch as the Plaintiffs seek to obtain equitable relief in the form of an injunction, the clean hands doctrine applies. But I have not found that KWR engaged in any improprieties regarding the Defendants which would cause me to invoke the clean hands doctrine to deny to the Plaintiffs the relief they seek.

Conclusion

[176] For the reasons cited above, I grant an interlocutory injunction against the Defendants upon the terms set out in para. 1 (a) and (b) of the Plaintiffs' notice of motion.

[177] As set out above, without conceding any breach, the Defendants consent to the injunctive relief regarding copyright and trademark issues, set out in para. 1(c) – (g) of the Plaintiff's notice of motion. Order to go accordingly.

[178] There is also a motion before me regarding a sealing order. I understand that there is an agreement regarding its terms. But neither the parties nor I have turned our minds towards it within the context of the motion argued before me. If the Plaintiffs wish to proceed further regarding that motion, they shall make an appointment to arrange a conference before me to deal with the manner in which that motion shall be heard.

Costs

[179] The parties should attempt to resolve the issue of costs on their own. If they are unable to do so, the Plaintiffs may submit their costs submissions of up to three pages, double spaced, one-inch margins, plus a bill of costs/costs outline and offer(s) to settle, if any, by January 5, 2026. They need not include the authorities upon which they rely so long as they are found in the commonly referenced reporting services (i.e. CanLII, LexisNexis Quicklaw, or WestlawNext) and the relevant paragraph references are included. The Defendant may respond in kind within a further 21 days of service of the Plaintiffs' costs materials. No reply submission will be accepted unless I request it. If I have not received any submissions within the time frames set out above, I will assume that the parties have resolved the issue and will make no costs order.

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Kurz J.

Date: December 19, 2025

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