IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *AFX Mixing & Pumping Technologies Inc. v. McKinon,* 2025 BCSC 2573

Date: 20251231
Docket: S253992
Registry: Vancouver

Between:

AFX Mixing & Pumping Technologies Inc.

Plaintiff

And

Shaune McKinon, Vanessa McKinon, Kirsty McKinon and Macworx Inc.

Defendants

Before: The Honourable Mr. Justice Coval

Reasons for Judgment
Re: Second Injunction Application

Counsel for the Plaintiff:	S.H. Coulson
Counsel for the Defendants:	S.K. Patro
Place and Dates of Hearing:	Vancouver, B.C. December 10-12 and 18, 2025
Place and Date of Judgment:	Vancouver, B.C. December 31, 2025

Table of Contents

Introduction

[1] AFX seeks a temporary injunction preventing Shaune McKinon, its former managing director and senior representative in Canada, and his family company Macworx, from doing business with its clients pending the trial of this matter.

[2] AFX alleges that, before his departure in April 2025, Mr. McKinon secretly went into business with its primary competitor, took copies of AFX's confidential customer information and, through Macworx, is now competing against AFX in breach of his fiduciary duties.

[3] In August 2025, I granted AFX a temporary injunction, pending trial, restraining the defendants from possessing or using specific categories of AFX data and documents, and requiring them to return all copies of such information within 10 days. This was based on AFX's strong initial case that Mr. McKinon had departed AFX with confidential information which threatened irreparable market harm. The decision is indexed at 2025 BCSC 1717.

[4] AFX submits that the further injunction is justified given Mr. McKinon's pattern of concealment of his breaches of fiduciary duty both before his departure and in these proceedings. AFX says he is therefore likely suppressing additional inculpatory evidence including ongoing misuse of its confidential business information.

[5] In opposing the injunction, Mr. McKinon submits that the evidence does not show him to be soliciting AFX clients or using its confidential information in the marketplace. He submits that he is no longer an AFX fiduciary and so is free to compete, that AFX has shown no risk of irreparable harm, and that granting the injunction would inflict more harm on the defendants and third parties than denying it would inflict on AFX.

[6] In my view, AFX has demonstrated a strong initial case that Mr. McKinon has breached his fiduciary duty by acting against its interests in service of his own. There is a strong initial case that, before his departure, he secretly negotiated a services

agreement with AFX's primary global competitor and appropriated AFX's confidential information. Before and after his departure, he diverted to himself and the competitor business opportunities which AFX might have taken up. There is also evidence of concealment of these actions in his affidavits and document production.

[7] What is less clear, however, is whether Mr. McKinon is continuing to breach fiduciary duties such that the injunction sought should be granted pending the trial scheduled to occur in April 2027.

[8] Mr. McKinon ceased being a director of AFX almost nine months ago. Our courts are reluctant to extend a fiduciary duty of non-competition for more than 12 months after departure, even for a key executive. Thus, in my view, his prior position as a director does not justify restraining him from doing business with AFX's clients until trial.

[9] Nor, in my view, does the potential misuse of confidential information justify the injunction sought. The first injunction remains in place, restraining the defendants' possession or use of such information. Also of importance are two affidavits, submitted by the defendants, from senior representatives of AFX's clients. The executives describe no use of AFX confidential information in their post-departure business dealings with Mr. McKinon and Macworx. The actual evidence in the record of potential misuse of such information is too dated and circumstantial to justify the injunction sought.

[10] Thus, despite Mr. Coulson's able submissions, in my view the overall balancing of interests does not support further enjoining the defendants from doing business with AFX's clients pending trial. The application for this additional injunction is therefore dismissed.

[11] AFX also applied for production of additional categories of documents, which is addressed in the final section below.

Background Facts

Parties

[12] AFX is incorporated under the laws of British Columbia. It is owned 80% by AFX Holdings (Pty) Ltd. (“AFX Holdings”), a South African company, and 20% by the defendant Shaune McKinon.

[13] AFX sells and distributes in North America sophisticated industrial mixing and pumping equipment produced by its affiliated South African companies AFX Holdings and Afromix Technologies (Pty) Ltd. (“Afromix”).

[14] From AFX’s Canadian incorporation in January 2014, Shaune McKinon was its managing director and only director located in Canada. His employment ended on March 8, 2025, and he was removed as a director on April 8, 2025.

[15] Vanessa McKinon, Shaun’s wife, was AFX’s administration manager from 2015 until March 2025. Their daughter, Kristy McKinon, was employed from 2019-2024 in marketing and administrative support. Their son, Kent McKinon, was a project coordinator from around April-November 2020.

[16] Macworx is a BC company. The evidence of its ownership and management is incomplete. It appears that Shaune and Kirsty are its shareholders, and Kirsty and Kent its directors.

[17] The defendants acknowledge that, in 2025, Macworx entered into an agreement to promote and distribute in Canada the products of Mixtec North America, Inc. (“Mixtec”), which is a global competitor of AFX and its related companies.

AFX Group

[18] Mr. Eugene Els provided most of the evidence on behalf of AFX. He is a trained mechanical engineer and the founder of the AFX group of companies. He is a director of AFX.

[19] Mr. Els' evidence is that Afromix and AFX Holdings produce and sell sophisticated industrial mixing and pumping equipment – more specifically, agitators and peristaltic pumps – and hoses and related parts. They do so by using a specialized software system to analyze and create technical specifications for client projects.

[20] Mr. Els describes the business as including: technical and engineering expertise; analysis and modelling for customer projects by its proprietary software; manufacturing; project management; supply and logistics; and repair and maintenance.

[21] AFX supplies and services these agitators and pumps for Canadian clients, using outputs from the Afromix software. It pays for the rights to use the outputs of the Afromix designs and technical drawings and specifications. The output which AFX receives from Afromix, including technical drawings, allows it to connect the specific agitator or peristaltic pumps with the appropriate parts.

AFX's Confidential Business Information

[22] Mr. Els alleges that Shaune McKinon and the other defendants had access to confidential and proprietary information, communicated to them in confidence, that was the property of AFX, the disclosure of which would cause harm to AFX and its group of companies.

[23] Mr. Els' evidence is that AFX is extremely vulnerable to competition from Mr. McKinon. For over a decade, he had complete control over day-to-day running of the business and unique knowledge of the client base, pricing strategy, global pricing and expansion strategies, costing practises, and mark-ups. He had access to hundreds of outputs from the AFX software and hundreds of proprietary designs developed for client projects and applications, price lists and client lists. Mr. Els' evidence is that AFX and the AFX Group never share these outputs outside of required employees or contractors and clients.

[24] The confidential information available to Mr. McKinon which was the subject matter of Injunction #1 was:

a. the outputs of the AFX Software;
b. details of AFX's contracts with suppliers, manufacturers and customers;
c. AFX product specifications, including the specifications generated by AFX's proprietary software program;
d. Information regarding AFX's prospective customers;
e. bids, proposals and/or other cost calculations AFX had prepared for customers, suppliers and/or manufacturers;
f. AFX's financial information, including but not limited to pricing, margins, budgets and revenues;
g. Technical, manufacturing and general arrangement drawings;
h. marketing material and strategies; and
i. business document templates.

[25] Mr. Els's evidence is that this information enabled Mr. McKinon to compete for specific AFX clients, as he had all the technical information needed to design support structures or supply spare parts. Such services require the specific engineering parameters and recommended components generated by the Afromix software. It was also theoretically possible for a person, with enough outputs from the Afromix software for particular client projects and the technical expertise, to reverse engineer the AFX Holdings' proprietary models and calculations used in the Afromix software.

Mr. McKinon's Departure

[26] In January 2025, Mr. McKinon advised Mr. Els of his desire to leave AFX. The parties tried in vain to negotiate a buyout of his shares. Mr. McKinon resigned from AFX on March 8, 2025. He alleges that he was constructively dismissed. He was removed as a director on April 8.

[27] There was a written employment contract prepared for Mr. McKinon in 2014, which he never signed and denies agreeing to. AFX submits that the

contemporaneous correspondence indicates he did agree. It contains no express confidentiality obligations.

[28] Kirsty McKinon had a written employment agreement, effective September 3, 2019, which contained a confidentiality clause:

> **Duty of Confidence**: All confidential information pertaining to the business must be kept confidential and may not be disclosed by you or used by you for your own purposes. This duty shall survive the termination of your employment.

[29] Vanessa and Kent McKinon did not have employment contracts.

AFX's Investigation

[30] In January 2025, the AFX board hired Mr. John Stapelberg as a new AFX employee in Canada. He is now a director of AFX and its general manager.

[31] After Mr. McKinon's departure, Mr. Stapelberg discovered Mr. McKinon's participation in Macworx while still at AFX, including sending information such as AFX copyrighted customer equipment designs and drawings to Macworx by email as long ago as September 2019.

[32] On March 26, 2025, Mr. Stapelberg informed Mr. Els of his conclusion that Mr. McKinon instructed AFX's IT contractor, Jeremy Bartel, to export his entire email account database and a copy of AFX's entire server to him for departure. Mr. Bartel swore an affidavit for AFX. He is an independent contractor who provided computer and other tech support to AFX starting in late 2021. Before this litigation, Mr. Bartel understood from Mr. McKinon that he was the sole owner of AFX. In 2025, Mr. McKinon asked him to export a copy of his entire AFX email account and AFX's entire server, together with passwords, so Mr. McKinon would have these after he left the company. Mr. Bartel's evidence is that, in March 2025, Mr. McKinon asked if they were ready because his departure was approaching. Mr. Bartel attached texts between them in February-March 2025 which support Mr. Bartel's evidence.

[33] Mr. McKinon's evidence in response is that his requests for his email account occurred before he left AFX and were for AFX business purposes. He says he does not know why Mr. Bartel waited until his departure to provide him with the archive of his AFX emails, and that he has not accessed the link. His evidence regarding the AFX server is that any such requests were to ensure it was backed up. He admits taking a hard drive when he left but says it was by mistake and that he has returned it to AFX without using it.

Macworx

[34] In his evidence, Mr. McKinon denies involvement in Macworx's business apart from "technical communications". He and Kent both say that Kent has been operating the business.

[35] There is evidence, however, that Mr. McKinon has a mac-worx.com email address, active from 2019 to 2025. Kirsty also has such an account. Mr. McKinon's affidavit also contains much detail about Macworx's business, including about its advertising, responses to requests for proposals, and its various services for clients. He describes the latter as follows:

> 100. … Macworx:
>
> (a) does not advertise Mixtec's products on its website;
>
> (b) responds to requests for proposals, public tenders and clients that contact it directly with requests about agitators;
>
> (c) works with clients or prospective clients to determine the specifications for an agitator suited to their needs using tools provided by Mixtec;
>
> (d) works with its clients and Mixtec to finalize the technical specifications for agitators' orders;
>
> (e) assists clients with support and services after a Mixtec agitator has been ordered, delivered and installed;
>
> (f) attends to customer requests for equipment assessment and optimization; and
>
> (g) reviews clients' existing equipment coupled with process details and requirements with regard to equipment replacement.

[36] Mr. Els' evidence is that Macworx engages in the following business:

a. Supplying parts such as tanks, valves, and peristaltic pumps to AFX clients as part of AFX projects for those clients;

b. Supplying and installing pumps from AFX competitors to AFX clients while AFX was not aware of this; and

c. Supplying sourcing, project management and coordination, installation and design services to AFX clients.

Litigation

[37] AFX's NoCC was filed on May 30, 2025. The trial is scheduled for April 2027.

[38] The claim alleges breaches of fiduciary duty, trust, confidence and contract against Mr. McKinon, and conspiracy, unjust enrichment, and knowing assistance and receipt against all defendants.

[39] AFX's evidence is that its revenue has steeply declined since Mr. McKinon's departure from: $2,198,575 (March 1, 2023-February 28, 2024) to $1,032,622 (March 1, 2024-February 28, 2025. Its records show 277 customer quotes in the former year and only 85 in the latter.

[40] Mr. McKinon has counterclaimed for constructive dismissal and shareholder oppression. He alleges that, beginning in January 2025, AFX stripped him of his role, authority, and responsibilities. Thus, by March 7, 2025, he had no income or role within AFX. At the same time, because AFX refused to offer fair value for his shares, he could not access his equity to mitigate the consequences of AFX's conduct. He further alleges that AFX Holdings began taking over AFX business in North America, thereby bypassing AFX at his expense as an AFX minority shareholder.

[41] By letter of June 9, 2025, counsel for AFX sent to defence counsel a demand for preservation of documents and identification of any confidential information (as defined in the NoCC) in the defendants' possession or control. By response of July 4, 2025, counsel for the defendants advised that the defendants denied possession or control of any such confidential information.

[42] As mentioned above, on August 28, 2025, I granted a temporary injunction, pending trial, restraining the defendants from possessing, using, selling or distributing 10 specific categories of AFX data and documents, and requiring them to return all copies of such information within 10 days ("Injunction #1"). This was based on AFX's strong initial case that Mr. McKinon had departed with confidential AFX information which threatened irreparable harm to AFX.

[43] In this application, AFX seeks to restrain the defendants – primarily Mr. McKinon and Macworx – from directly or indirectly competing with AFX in North America, until a final order is made in this action. Specifically, they seek to restrain: (i) contacting AFX clients; (ii) promoting or selling agitators or peristaltic pumps to AFX clients; and (iii) promoting or selling services ancillary to the manufacture, supply and installation of agitators and peristaltic pumps to AFX clients.

Developments Since Injunction #1

Return of AFX Confidential Documents and Document Production

[44] In response to Injunction #1, the defendants have produced three lists of Confidential Documents, the copies of which have been returned to counsel for AFX.

[45] They also produced their own list of documents on October 2, 2025. This was after AFX had filed this application and supporting evidence. AFX therefore decided to adjourn the initial hearing of this application to incorporate the new documents and obtain further disclosure. On October 14, 2025, instead of applying for the injunction, AFX obtained a document production order, opposed by the defendants, which included:

- Negotiations and agreements between Mr. McKinon, Macworx and Mixtec;
- Macworx's financial statements, balance sheets, and ledgers, since incorporation; and
- Mr. McKinon's RBC Visa credit card statements for expenses paid by AFX.

Mr. McKinon and Mixtec

[46] Mr. McKinon's evidence for Injunction #1 was that Mixtec contacted him approximately a month after he left AFX, and they negotiated their agreement in May 2025. The defendants produced the agreement ("Mixtec Agreement") on November 10, 2025. It was in fact signed by Mr. McKinon, not in May 2025 as he had deposed, but on March 20, 2025 while he was still a director of AFX.

[47] During the hearing, the defendants did not dispute that the Mixtec Agreement contemplates Macworx providing Mixtec with the same services, for the same products, in the same territory as Mr. McKinon's role with AFX. Macworx is to be paid a monthly retainer of US$6,000 plus commissions.

Macworx Financial Evidence

[48] Pursuant to the October 14, 2025 production order, Macworx produced a copy of its sales ledger, listing invoices and dates but without the associated customer names and invoice descriptions. The ledger showed approximately $814,000 of gross sales revenue from January 2023-October 2025, broken down as follows:

- January 1, 2023 to December 31, 2023: $276,121.08
- January 1, 2024 to December 31, 2024: $216,648.69
- January 1, 2025 to March 8, 2025: $38,016.41
- March 9, 2025 to October 14, 2025: $229,638.22.

[49] During the hearing, I directed the defendants to produce a copy of the ledger with customer names and invoice descriptions included. On December 12, the last day of the hearing, defence counsel advised he had received the unredacted ledger that morning but had not yet reviewed or produced it. He provided it to counsel for AFX on December 15, who then applied to re-open the hearing to submit the unredacted ledger together with Mr. Els' evidence about what it showed. I allowed this over the defendants' objection.

[50] The unredacted customer information showed:

a) Macworx selling products to current AFX clients twice in 2019, once in 2023 and 2024, and twice in May 2025;

b) Macworx selling products to customers who were AFX clients before Mr. McKinon's departure numerous times in 2023 and 2024, and a few times in February 2025; and

c) Macworx using two AFX suppliers to supply parts directly to AFX clients.

Mixtec Document Production

[51] As this application approached, AFX was pursuing Mixtec for documents showing its dealings with Mr. McKinon.

[52] On December 3, 2025, Mixtec produced documents not yet produced by the defendants, despite the October 14, 2025 order. They showed the parties' negotiations began as early as mid-December 2024, and included two trips by Mr. McKinon to Salt Lake City for meetings (January and March 2025). They also showed Mr. McKinon's Mixtec email account being activated on March 26, 2025 and Macworx receiving its initial retainer payment on April 3, 2025. They showed Mr. McKinon introducing Vanessa and Kent as part of the Macworx administration and sales and marketing team on April 11, 2025.

[53] The Mixtec documents also disclosed:

- February 16, 2025: Emails between Mr. McKinon and AFX executives, regarding his intention to leave AFX and work with Mixtec. This included his statement:

  > I will take on the responsibility to call on all engineering (EPC) houses across Canada, of which many I currently have relationships with, in order to ensure your product is included in any current and upcoming RFQs for mixing equipment in all industries, coupled with this, call on and develop capable and established resellers across Canada to penetrate more localized markets and industries in their respective territories. This will include onsite end user calls for technical support, equipment assessment, sales and marketing visits/opportunities … I believe we require 4-6 weeks before advertising our association, however there may very well be a need to direct some clients to you during this period.

- March 23, 2025: Mr. McKinon's email to Mixtec, attaching AFX copyrighted technical plans for an AFX client Cru Brewing Systems, for which he orders a replacement part from Mixtec.
- April 3, 2025: Mr. McKinon orders an impeller part from Mixtec, similar to those of AFX clients.

Two Customer Affidavits

[54] As mentioned, the defendants submitted two affidavits from senior representatives of AFX customers. These were served just before the hearing commenced.

[55] Both affiants deposed that Mr. McKinon did not reach out to them after leaving AFX. Rather, after hearing of his departure, they contacted him to see if he could provide quotes for products they wished to purchase. Their evidence is that he did so without criticism of AFX or solicitation of further business. One of the managers deposed that he typically requested competitive bids from different suppliers as part of the standard procurement process and would attach the company's original specification drawings when doing so.

Governing Law

Strong Initial Case

[56] The parties agreed that, since the injunction would restrain the defendants' ability to earn a living, AFX must demonstrate a strong initial case, rather than the standard arguable case. (See, for example, *0777792 B.C. Ltd. v. Da Costa*, 2019 BCSC 1839, para. 18.)

[57] It must also of course show a real risk of irreparable harm and the better of the balance of convenience, meaning that less overall harm is likely to result with the injunction than without it.

Fiduciary Duty

[58] Directors owe their corporation a fiduciary duty of utmost good faith, loyalty and avoidance of a conflict of duty and self-interest. The scope of the duty includes:

a) acting only in the best interests of the corporation;

b) avoiding all conflicts of interest;

c) keeping confidences, and

d) fully disclosing all material information that may affect the corporation's decisions.

(*BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, paras. 36-38, 89.)

[59] Strict application of these duties against directors and senior management officials reflects the extent of their control over corporate operations (*Can. Aero v. O'Malley*, 1973 CanLII 23, [1974] S.C.R. 592).

[60] Fiduciary obligations can continue for a reasonable period after termination of the relationship. *Can. Aero* tells us the factors to consider in determining the extent of such continuation (at 620):

> In holding that on the facts found by the trial judge, there was a breach of fiduciary duty by O'Malley and Zarzycki which survived their resignations I am not to be taken as laying down any rule of liability to be read as if it were a statute. The general standards of loyalty, good faith and avoidance of a conflict of duty and self-interest to which the conduct of a director or senior officer must conform, must be tested in each case by many factors which it would be reckless to attempt to enumerate exhaustively. Among them are the factor of position or office held, the nature of the corporate opportunity, its ripeness, its specificness and the director's or managerial officer's relation to it, the amount of knowledge possessed, the circumstances in which it was obtained and whether it was special or, indeed, even private, the factor of time in the continuation of fiduciary duty where the alleged breach occurs after termination of the relationship with the company, and the circumstances under which the relationship was terminated, that is whether by retirement or resignation or discharge.
>
> [Emphasis added.]

[61] Post-departure fiduciary duties have supported temporary injunctions pending trial in recent cases such as *EnWave Corporation v. Dehydration Research, LLC,* 2022 BCSC 637 and *Ignite International Brands, Ltd. v. Bilzerian*, 2025 BCSC 566, para. 52.

[62] Concealment by a fiduciary can be considered equitable fraud because it is "conduct which, having regard to the social relationship between the two parties concerned, is an unconscionable thing for one to do towards the other": *WestCorp Solutions Ltd. v. Lancaster*, 2018 BCSC 789, para. 81.

[63] The statutory duties of a director of a British Columbia company are set out in the *Business Corporations Act*, S.B.C. 2002, c. 57. They include acting honestly and in good faith with a view to the best interests of the company and disclosure of any possible conflicts of interest (ss. 142 and 153).

[64] Absent extraordinary circumstances, the maximum length of post-departure fiduciary obligations is around 12 months. In *TCT Logistics Inc. v. Nordeen*, 1999 BCCA 597 (followed recently in *Powertech Labs Inc. v. Das*, 2023 BCSC 1187, para. 217), the Court of Appeal overturned a non-competition interlocutory injunction against a fiduciary ex-employee in place for 17 months post-employment, saying:

> [27] … courts ought to be careful to limit the grant of equitable relief to that reasonably necessary to protect the interests threatened. In such circumstances, I believe that generally any injunctive relief should be time limited, perhaps with liberty to the moving party to seek to extend the duration of any such relief granted. Each case will, of course, fall to be decided on its particular circumstances but generally, save in exceptional circumstances, I doubt if it would be easy to persuade a court to initially grant an order extending this sort of equitable relief beyond approximately one year from the date of termination of employment and in many cases, a shorter period may be deemed adequate.

(See also *WJ Packaging Solutions Corp. v. Park*, 2021 BCSC 316, para. 76.)

Analysis

Strong Initial Case

[65] In my view, AFX has demonstrated a strong initial case of Mr. McKinon's breaches of fiduciary duty by acting against its interests in service of his own.

[66] The current record appears to indicate that, while still a director, he: (a) negotiated and signed the Mixtec Agreement to go into business with AFX's primary competitor; (b) sent AFX's software output containing technical client

information to Mixtec (March 23, 2025); (c) ordered parts for a client from Mixtec rather than AFX; and (d) departed with copies of his AFX email account and the company hard drive; and (e) concealed all of this from AFX until revealed in this litigation.

[67] There is also strong initial evidence of a pattern of ongoing concealment:

a) Mr. McKinon's initial affidavits were not forthright about his dealings with Mixtec;

b) the Mixtec Agreement was not disclosed until November 10, 2025;

c) his negotiations and disclosure of client information to Mixtec were not disclosed until Mixtec's production on December 3; and

d) the sales ledgers, ordered to be produced on October 14, were redacted so as not to reveal that many of the sales were to AFX clients.

[68] I agree with AFX that this pattern of breaches of duty and concealment creates concerns of ongoing non-disclosure and misuse of AFX confidential information.

[69] What is less clear, however, is whether the evidence, considered as a whole, demonstrates a strong initial case of competing with AFX while this fiduciary duty still exists or continuing to misuse AFX confidential information.

[70] During the hearing, AFX submitted that of utmost importance was that the injunction continues until final disposition of this action at trial. It pointed to the evidence of Mr. McKinon's willingness to breach his obligations and conceal his actions, his relationship with its primary competitor, and its own vulnerability to his intimate knowledge of all aspects of its business and his personal relationship with its customers. It submitted that this lengthy restraint was especially fitting given it only recently learned the extent of his actions and the need to respond to them.

[71] In my view, as a matter of law, AFX does not have a strong case that Mr. McKinon's fiduciary duty of non-competition will continue until trial in April 2027. The actual duration of this obligation can only be determined at trial. On the current

evidence, it will likely be towards the longer end of the range, for the reasons relied on by AFX in the previous paragraph. If Mr. McKinon's allegations of constructive dismissal and oppression are established, this would likely pull in the opposite direction.

[72] The case law summarized above indicates that 12 months is generally the maximum post-departure duration, and in many circumstances it will be shorter. Nine months having already passed since Mr. McKinon ceased being a director, in my view justice would not be served by finding a strong case at this stage that his duty of non-competition continues materially beyond nine months, let alone until trial in April 2027.

[73] In my view, the two cases AFX relies on for non-competition injunctions granted up until trial are distinguishable. In *Ignite* (para. 69), the injunction extended until trial because the defendant sought to invalidate his termination as a director and so the court found his fiduciary obligations should continue. In *EnWave* (paras. 90-91, 104, 109), the defendants were found likely to be producing competing products by misuse of the plaintiff's confidential information, thereby causing irreparable market harm, and their employment agreements specifically prohibited this and entitled the plaintiff to an injunction to restrain it.

[74] AFX argues that, even if Mr. McKinon's obligation not to compete has expired, the injunction is justified based on the evidence of his misuse of its confidential information. In my view, AFX does not have a strong case for such relief for the following reasons.

[75] First, AFX already has Injunction #1, restraining the defendants from possessing or using AFX's confidential information.

[76] Second, the evidence of the two senior customer representatives, summarized above, indicates that the defendants have not been misusing confidential information when dealing with these AFX clients. Their evidence also indicates the market benefits for third parties of Macworx as an additional supplier.

[77] Third, in my view there is insufficient evidence of the defendants' current or ongoing misuse of confidential information or other unlawful undermining of AFX's customer relationships. The evidence of possible misuse of such information is dated and not clearly consequential. While there is evidence of AFX's declining revenues, much of this may reflect the loss of its key employee, and perhaps, as alleged by Mr. McKinon, pursuing business through a related company.

Irreparable Harm

[78] Irreparable harm is harm that either cannot be quantified in monetary terms or cannot be remedied in damages usually because one party cannot collect damages from the other (*RJR -- MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at 341).

[79] In cases such as this, typical harms are permanent loss of market share, goodwill or customers, or protection of confidential business information.

[80] AFX already has the protection of Injunction #1. Despite the evidence of Mr. McKinon's problematic conduct before and after his departure, it has not been established that protection from misuse of its confidential information requires the additional and more intrusive injunction now sought.

[81] The order restraining the defendants from possessing or using AFX's confidential information was a reasonable and necessary step in attempting to prevent irreparable harm to AFX. An order requiring them not to do business with AFX's customers pending trial would be excessive judicial interference at this stage.

[82] AFX also argued for the defendants' questionable ability to pay damages. I do not give this consideration significant weight however. Macworx had approximately $230,000 of revenue over seven months in 2025 and there are also a number of personal defendants.

Balancing of Harm

[83] Given my findings about AFX's confidential information, in my view the balancing of potential harm favours not granting the injunction.

[84] The injunction would bar the defendants from doing business with any "clients" of AFX until April 2027. Shaune and Vanessa McKinon are both around 60 years old. The injunction would constrain their ability to work in the niche industry they have been in since arriving in Canada in 2010. AFX's analysis of the customers listed on the Macworx sales ledger indicates the constraint on their business would be significant.

[85] Conversely, AFX's new senior representative has been in place for a year, and so has had reasonable opportunity to solidify its client and market relationships after Mr. McKinon's departure.

[86] The affidavits from the two customer representatives also weigh against the injunction, as their businesses and others will benefit from Macworx being an additional option for supply of products.

Document Production Application

[87] Under Rules 7-1(1), (10), (13), (17), AFX seeks the following documents (using the numbering from paragraph 3 of the AFX written argument; application for the other categories in the notice of application having been adjourned):

> (i) The contents of the google account "Gmail - AFX" from which Item 17 of the Confidential Information list attached as Exhibit "A" to the second affidavit of Shaune McKinon was accessed and printed.
>
> …
>
> (vi) All correspondence between AFX client Ph7 and any of the defendants from January 1, 2025 to the present.
>
> (vii) All correspondence between AFX's client Cru Brewing Systems and any of the defendants from January 1, 2025 to the present.

> (viii) Mr. McKinon's RBC Visa credit card statements that correlate to all of the expenses and payments made by AFX to that credit card for every single payment made by AFX to that card for each payment set out …

[88] I do not order production of item (i). Mr. McKinon denies having any such account and the evidence that he might is thin. If that account does exist, the current orders and interrogatories already require production from it.

[89] I order production of items (vi) and (vii), as they may provide evidence relevant to alleged breaches of fiduciary duty.

[90] I do not order production of item (viii). The defendants' evidence is that these records are with AFX, and they do not have them. They also say RBC has advised the statements are too old to be available. I have directed Mr. Patro to provide Mr. Coulson with any written communications with RBC in that regard.

Conclusion

[91] AFX's application for this second injunction against the defendants is dismissed.

[92] The defendants are ordered to produce all documents in their possession or control in categories (vi) and (vii) above.

[93] Subject to the parties wishing to make submissions on costs, costs of the applications are in the cause.

[94] In my view, subject to hearing submissions to the contrary, although the defendants have been successful, costs should be in the cause because of the evidence of Mr. McKinon's breaches of fiduciary duty and concealment of same both from AFX and this Court, all of which justified this application.

[95] At the end of the hearing, Mr. Coulson advised that AFX may wish to seek special costs of this application. In my view, that issue should be left to the trial judge.

[96] If any party wishes to argue that costs of this application should be other than in the cause, they should arrange a brief conference, by video, to discuss materials and scheduling.

"Coval J."