

Citation: *Vinayak et al. v Zafeiriadou et al.*, 2026 NBKB 36

Court File No.: MC-8-2026

IN THE COURT OF KING’S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF MONCTON

BETWEEN:

**PUNEET VINAYAK, 752335 N.B. INC.
AND BRAVO PIZZA RESTAURANT LTD.**

PLAINTIFFS
(Applicants on the Motion)

- and -

**ELIENI ZAFEIRIADOU, OPERATING UNDER THE NAME
“PIZZA MIKE’S”, AVRAAM STEFANIDIS (AKA “MIKE
STEFANIDIS”) AND ELIENI ZAFEIRIADOU (AKA
“HELENE ZAFEIRIADOU”)**

DEFENDANTS
(Respondents on the Motion)

DECISION

BEFORE: Justice Maya Hamou

AT: Moncton, New Brunswick

DATE OF HEARING: January 28, 2026, and February 9, 2026

DATE OF DECISION: February 26, 2026

APPEARANCES: Françoise Aubin and Thierno Diop, counsel for the Plaintiffs
Vincent Charest, counsel for the Defendants

OVERVIEW

1. The dispute in this matter arises from the sale of an established pizza restaurant and the subsequent opening of a competing pizza restaurant by its former owners.

Sale of Bravo Pizza

2. Bravo Pizza Restaurant Ltd. (“Bravo Pizza”) is a pizza restaurant established in Riverview, New Brunswick in 1988. In late 2023, Elieni Zafeiriadou and Avraam Stefanidis, the Defendants, decided to sell Bravo Pizza to Puneet Vinayak and his company 752335 N.B. Inc., the Plaintiffs, for \$115,000. During the negotiations, the Defendants stated they were retiring from the food industry due to health and age-related reasons.
3. The transaction closed in January of 2024 and provided for the transfer of the business, a restaurant, located at 567 Coverdale Road in Riverview, New Brunswick. The transaction also included the assets of the business listed as:
 - a. All equipment used in carrying on the business of the company (Schedule “B”);
 - b. All outstanding and confirmed sales orders;
 - c. All interests of the seller under contracts or agreements relating to Bravo Pizza Restaurant Ltd.;
 - d. All books, records, and files, relevant to carrying on Bravo Pizza Restaurant Ltd.;
 - e. Title to registered and unregistered trademarks and trade names;
 - f. The goodwill of Bravo Pizza Restaurant Ltd. including the business name; and
 - g. All recipes required and currently used by Bravo Pizza Restaurant Ltd.
4. Another condition on closing required the current owners to remain and provide a training period of 30 days or until the buyers were satisfied with the processes, operations and recipes of Bravo Pizza. Of note, the agreement does not contain a non-competition or restrictive covenant with respect to the operation of business by the sellers.
5. The sale of the business appears to have been reached through the assistance of real estate agents and memorialized in an agreement of purchase and sale form usually used for the purchase of real property. The form appears inadequate ; it addresses issues which are not relevant to the sale of a business and does not include items that would be required.

Opening of Pizza Mike's

6. By January of 2025, the Defendants felt better physically and considered returning to the restaurant business on a more limited basis. According to the Defendants, after confirming that the sales agreement for Bravo Pizza contained no restrictive covenant or explicit non-compete clause, they opened a new restaurant named "Pizza Mike's" in May of 2025, located 700 metres away from Bravo Pizza at 708 Coverdale Road in Riverview, New Brunswick.

Procedural Background

7. The Plaintiffs filed an action against the Defendants on January 12, 2026 (and an amended action on February 6, 2026). The Plaintiffs' claims can be summarized as follows:
 - a. The Defendants' action, by opening and promoting Pizza Mike's, constitutes a breach of contract by breaching an implied covenant not to compete.
 - b. The Defendants' action, by using identical recipes, menus and promotional photographs taken inside Bravo Pizza prior to the sale to promote Pizza Mike's, are undermining the goodwill the Plaintiffs purchased from the Defendants, confusing customers and disrupting customer loyalty.
 - c. The Defendants fraudulently or negligently misrepresented to the Plaintiffs that the Defendants were retiring for health reasons, inducing the Plaintiffs to enter a contract to purchase Bravo Pizza.
8. The Plaintiffs seek an Order requiring the Defendants to immediately cease operating Pizza Mike's and refrain from competing with Bravo Pizza. They also seek damages for the loss of goodwill and profits along with general damages, special damages, and punitive damages.
9. The Defendants, while they have not yet filed a statement of defence, maintain they are legally permitted to compete because the Plaintiffs chose not to include a non-compete clause in the purchase of the business.
10. In the Motion currently before the Court, the Plaintiffs filed a Motion to obtain an Interlocutory Injunction, seeking an Order requiring the Defendants to immediately cease operating Pizza Mike's within a 100-kilometre radius of Bravo Pizza.

PRELIMINARY ISSUES

Record and Plaintiffs Request for Adjournment

11. The Court received Briefs and the Affidavit of the Plaintiff, Puneet Vinayak, as well as the Affidavits of the Defendants, Avraam Stefanidis and Elieni Zafeiriadou.
12. At the date originally scheduled for the hearing of the Motion, on January 28, 2026, the Plaintiffs sought a determination as to the composition of the Record on Motion. Specifically, the Plaintiffs opposed the inclusion of the Affidavits of the Defendants which were filed outside the timelines prescribed by the *Rules of Court* (Rules 39.04 and 3.01(b) of the *Rules of Court*). The Court considered the abridged timelines within which the hearing was scheduled and considered the importance of having a fulsome Record on the Motion and allowed the Defendants' Affidavits to form part of the Record.
13. Faced with the inclusion of the Defendants' Affidavits in the Record, the Plaintiffs sought an adjournment to adjust their argument and respond. The Court, with the consent of the Defendants, granted the adjournment requested by the Plaintiffs. The Court adjourned the hearing to February 9, 2026. Subsequently, the Plaintiffs filed the Supplemental Affidavit of Puneet Vinayak for consideration at the February 9, 2026, hearing.

Admissibility of Second Affidavit of Plaintiffs

14. At the January 28, 2026, hearing, the Defendants expressed some reluctance with the potential filing of an additional affidavit by the Plaintiffs.
15. Rule 39.01(2) of the *Rules of Court* requires the moving party to serve its motion with the affidavits it intends to use at the hearing. However, this Rule does not bar the consideration of further affidavits. Rule 1.03(2) of the *Rules of Court* requires the Rules be liberally construed to secure the just, least expensive and most expeditious determination of every proceeding on its merits. Further, Rule 2.01 of the *Rules of Court* also allows the Court to dispense with the compliance of any Rule unless that Rule expressly or implicitly provides otherwise (*Coates v Downing et al.*, 2019 NBQB 145, paras 9-13, *Chiasson v Thébeau*, 2009 NBCA 64, paras 9-12).

12. [...] In the event that the respondent party feels that he or she is at a disadvantage due to the late service of the additional affidavits, there is an array of ways the judge can remedy the situation, including (1) adjourning the hearing with or without costs; (2) admitting additional affidavits from the respondent party; (3) allowing the respondent party to present testimony at

the hearing; or (4) where the judge is satisfied that there is a substantial dispute of fact, directing that the application proceed to trial and be treated as an action (Rule 38.09(b)).

Chiasson v Thébeau, 2009 NBCA 64, para 12

16. In this case, the Affidavits were presented to respond to assertions made in the Affidavits of the Defendants and to address deficiencies in the evidentiary support for the Plaintiffs' prior Affidavits.
17. It is on this basis the Court allowed the Plaintiffs' Supplemental Affidavit, not served with the initial Motion, to be admitted. The admissibility of this Affidavit serves the interests of justice and procedural fairness. The Court deems the Supplemental Affidavit of the Plaintiffs admissible on the Motion.

Admissibility of Paragraphs in First Affidavit of Plaintiffs

18. The Defendants raise, as a preliminary issue, the admissibility of certain statements made in the Affidavit of Puneet Vinayak, one of the Plaintiffs. The Defendants argue the paragraphs in question in the Affidavit of Puneet Vinayak should be struck for failing to comply with the *Rules of Court* (Rule 27.09 of the *Rules of Court*).

27.09 Striking Out a Pleading or Other Document

The court may strike out any pleading, or other document, or any part thereof, at any time, with or without leave to amend, upon such terms as may be just, on the ground that it

- (a) may prejudice, embarrass or delay the fair trial of the action,
- (b) is scandalous, frivolous or vexatious,
- (c) is an abuse of the process of the court,
- (d) is a contempt of court, or
- (e) is not in conformity with the Rules of Court.**

[Emphasis added]

19. More particularly, the Defendants suggest the referenced paragraphs in the Affidavit of Puneet Vinayak fail to comply with Rule 4.05(2) and Rule 39.01(4) of the *Rules of Court*.

4.05(2) Every affidavit shall be confined to a statement of facts within the personal knowledge of the deponent, except as provided otherwise in these rules.

39.01(4) Subject to section 34 of the Judicature Act, an affidavit for use on a motion need not be confined to statements of fact within the personal knowledge of the deponent, but may contain statements as to the deponent's information and belief, if the source of the deponent's information and the deponent's belief in the statements are specified in the affidavit.

20. Additionally, the Defendants relied upon the overview of Chief Justice DeWare as it relates to striking out portions of affidavits. Chief Justice DeWare reiterated that in affidavits containing hearsay, argument, innuendo, legal opinions and non-sourced information, the offending portion of the affidavit should be struck to allow for a fair hearing on the merits of the motion (*Stevens v Associated Lodges of the Village of Douglastown Trust*, 2018 NBQB 82, paras 12 to 13).
21. The Plaintiffs argued that several of the paragraphs in the Affidavit should be retained, primarily based on personal knowledge and the lack of a need for corroboration.
22. Upon hearing the arguments of both parties on the question of this preliminary issue, the Court ruled prior to addressing the merits of the Motion. The Court struck paragraphs 26 and 29 from the Affidavit of Puneet Vinayak as the statements contained speculative information which was unsubstantiated. One paragraph states "the actions of the defendants have caused and continue to cause significant financial and reputational harm" to Bravo Pizza and the second paragraph states the "actions of the Defendant compromise the short and long term profitability" of Bravo Pizza. However, there is no factual basis or context for these statements which are, by their nature, conclusions. This information is of limited use to the Court in determining the merits of the Motion and must be struck.
23. As for the other paragraphs sought to be struck by the Defendants, the Court declined the Defendants' request for the following reasons:
 - a. The Defendants requested to strike paragraphs 22 and 23 as a whole or partially with respect to the statement that the Plaintiffs were "thereby reassured" that the Defendants "would not compete" and that the Plaintiffs "would not face direct competition." The Defendants request the paragraph be struck as the statements are speculative as to legal effect and future intent. The Court found these paragraphs reflect the Plaintiffs' understanding of their conversations with the Defendants and explains the basis for the Plaintiffs' actions.
 - b. The Defendants requested to strike paragraph 28 as the statements, that "since May 2025, the restaurant's revenue had declined every month" and "the sale of

the restaurant remains impossible due to the landlord's refusal [...] leaving the future of Bravo Pizza uncertain" are unsupported by attached business records for the relevant months and unsupported by admissible landlord evidence. The Defendants also requested to strike paragraph 30 as the statement "explored options" to reduce the Plaintiffs' burden but provides no particulars, documents, dates, or outcomes capable of assisting the Court on the interlocutory test and are vague conclusions. The Court concluded the alleged lack of supporting information and narrow date scope do not render the statements inadmissible in these cases, considering the affiant, the president and operator of Bravo Pizza, is in a position to speak to those issues. The sufficiency of the evidence presented is a question to be addressed on the merits of the Motion but is not a basis to strike the paragraph.

- c. The Defendants sought to strike paragraph 31 as the Plaintiffs have not provided expert medical opinion evidence to support the claims they are suffering from stress, anxiety, loss of sleep. The Defendants also argue the paragraph should be struck as the statement that Pizza Mike's has recovered a significant portion of Pizza Bravo's customers by reproducing their recipes is speculative. The Court concluded that expert medical evidence was not required to support a claim of stress, anxiety and loss of sleep by the affiants. Further, the Court concluded that evidence supporting the assertion that the Defendants have recovered Bravo Pizza customers by using their recipes and menus is addressed in other paragraphs and supporting exhibits in the Affidavit.

Plaintiffs Second Request for Adjournment

24. Following the Court's ruling on the request to strike portions of the Plaintiffs' Affidavit, Counsel for the Plaintiffs expressed concerns with the sufficiency of its financial evidence in support of the injunctive relief sought on the Motion and requested an adjournment of a few months to produce further financial statements once their accountant finished the assessment for the year 2025.
25. The Court declined to grant the second adjournment sought by the Plaintiffs for three reasons. First, the Court noted it is the moving party's responsibility to file the materials it intends to rely on in seeking injunctive relief, particularly considering the Plaintiffs requested the matter be heard on abridged timelines. Second, the issue of the sufficiency of financial records

supporting the Plaintiffs' claims was raised in the Defendants brief filed prior to the first scheduled hearing. Third, the Plaintiffs had previously sought, and been granted, an adjournment to allow them to review the arguments and evidence of the Defendants and possibly respond. The issue raised by the Plaintiffs as the basis for the adjournment request is not new. Delaying the hearing of the Motion further to allow the Plaintiffs to further cure perceived gaps in its evidence does not serve the interests of justice, particularly not in the context of the injunctive relief sought.

ISSUES

26. Should the Court grant an injunction prohibiting the operation of Pizza Mike's within a 100-kilometre radius of Bravo Pizza? More specifically,
- a. Does the Claim give rise to a serious issue to be tried?
 - b. Did the Plaintiffs establish that irreparable harm will flow from the refusal to grant the injunction?
 - c. Does the balance of convenience favour the granting of an injunction?
27. What costs should the unsuccessful party on the injunction request bear?

ANALYSIS

28. The Court's authority to grant injunctive relief is derived from section 33 of the *Judicature Act*, RSNB 1973, c J-2 and from Rule 40.05 of the *Rules of Court*. Under this authority, the Court may make an order it deems just or convenient to make, upon terms and conditions it considers just.
29. The Supreme Court of Canada established a three-part framework for determining whether to grant an interlocutory injunction. This test was primarily set out in *RJR-MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311, and later refined for specific circumstances in *R. v Canadian Broadcasting Corp.*, 2018 SCC 5 (see also *New Brunswick Federation of Snowmobile Clubs et al. v New Brunswick All-Terrain Vehicle Federation et al.*, 2006 NBQB 136).
30. The test involves an assessment of: (1) the merits of the case, (2) irreparable harm, and (3) the balance of convenience.

Merits of the Case

Analytical Framework

31. The first stage of the test involves a preliminary assessment of the legal merits of the Plaintiffs' Claim. The standard applied depends on the nature of the injunction sought:
- a. For prohibitory injunctions, which seek to prevent a party from doing something, the threshold is low. The Court must only be satisfied there is a *serious question* to be tried and that the claim is neither frivolous nor vexatious.
 - b. For mandatory injunctions, which require a party to act rather than refrain from acting, the plaintiff must show a strong *prima facie* case and a strong likelihood the plaintiff will ultimately be successful at trial based on the law and the evidence presented (*R v Canadian Broadcasting Corp.*, 2018 SCC 5, para 15).
32. In this case, the Plaintiffs seek to prevent the Defendants from operating Pizza Mike's within a 100-kilometer radius of Bravo Pizza. The Supreme Court of Canada in *R. v Canadian Broadcasting Corp.* stated that if the injunction would require a defendant to take positive action, the injunction will be deemed to be mandatory rather than prohibitive. In this case, Pizza Mike's would be required to close its current business and, possibly, move its operation; making the injunctive relief sought mandatory in nature. Consequently, the Plaintiffs must show a strong *prima facie* case to obtain the injunctive relief sought.

Position of the Parties on the Merits

33. On the merits, the parties present two opposing theories on the state of the law in support of their position.
34. The Plaintiffs' arguments on the merits outlined in their Brief and Supplemental Brief and in their oral arguments are broad and multi-faceted. As the pleadings, namely the Amended Claim, guide the Court in its assessment of the merits of the Claim, the Court is required to examine the discernable causes of action outlined in the Amended Claim. The pleadings include a claim for breach of an implied non-competition covenant, the breach of an implied covenant not to undermine the transferred goodwill, including the use of the transferred recipes, and fraudulent or negligent misrepresentations made by the Defendants.
35. The Defendants maintain that a non-competition covenant cannot be implied where the parties were represented by counsel and chose not to include a non-competition covenant in

their written agreement. They argue there is no general non-competition prohibition and suggest non-solicitation is the only implied duty. The Defendants also argue Mike Stefanidis was not the corporate vendor of Bravo Pizza and as such he did not convey the goodwill and has no implied obligation attached to him.

36. As a starting point, at the request of the Court, both parties addressed the case of *Sattva Capital Corp. v Creston Moly Corp.*, 2014 SCC 53, in their arguments. This decision from the Supreme Court of Canada addresses contractual interpretation and allows Courts to consider objective evidence of background facts or knowledge of the parties at the time the contract was entered into. These surrounding circumstances may only be used to interpret the terms found in the contract and not to deviate from them. In accordance with the parol evidence rule, Courts may not consider outside evidence to add to, subtract from, vary or contradict the contract reduced to writing. This case from the Supreme Court of Canada guides the interpretation of concepts outlined in older cases.

Implied Non-Compete Covenant

37. The Plaintiffs rely on several cases to suggest that under the common law, the sale of a business' goodwill creates an implied non-competition covenant.
38. In *Trego v Hunt (1895)*, [1896] AC 7 (UKHL), following the sale of a business including the goodwill of the business, the seller made a list of former customers from which to solicit business. The purchaser sought an injunction to restrain the use of the list for that purpose. The House of Lords granted the injunction stating that on the sale of goodwill, the seller must refrain from soliciting business from former customers.

...It is not material to consider whether, on the sale of a goodwill, the obligation on the part of the vendor to refrain from canvassing the customer is to be regarded as based on the principle that he is not entitled to depreciate that which he has sold, or as arising from an implied contract to abstain from any act intended to deprive the purchaser of that which has been sold to him and to restore it to the vendor. I am satisfied that the obligation exists, and ought to be enforced by a court of equity.

39. The Defendants reference *Read v Wright*, 1963 CanLII 864 (BCSC). In this case, the Court addressed whether an implied restrictive covenant arose from the sale of a retail shoe business in British Columbia. Similar to the current case, the owner of the business intended to retire and the written agreement contained no non-competition restrictive covenant. The seller subsequently opened a shoe store one and a half blocks away. The Court concluded

that no express or implied covenant existed restraining the seller from operating a shoe business, citing the difficulties in circumscribing such a condition in time and location rendering it too vague and void for uncertainty. However, the Court found that there was a non-solicitation covenant implied in the sale of the goodwill.

40. In addressing the scope of the implied non-solicitation covenant associated with the sale of the goodwill, the Defendants rely on *Mid Island Truck and Crane Ltd. v Simian Cartage Inc.*, 2011 BCSC 677, to suggest that the implied non-solicitation covenant in the sale of goodwill does not prohibit passive dealings with former customers. The case turned on the evidence provided to prove the seller was soliciting former customers.
41. The Plaintiffs cited a number of cases which the Court finds to be of limited application to the facts of this case: *Elsley v J.G. Collins Ins. Agencies*, [1978] 2 SCR 916 (arises in the context of a restrictive covenant applying to an employee and examines the parameters of such a covenant), *Mohawk Maintenance Co. v Kessler*, 419 NE 2d 324 (a case addressing the sale of goodwill; a U.S. case which is not binding or persuasive to this Court), *Payette v Guay Inc.*, 2013 SCC 45 (addressing the scope of explicit non-competition and non-solicitation covenants), and *A&W Food Services of Canada Inc. v McDonald's Restaurants of Canada Ltd.*, 2005 FC 406 (a case from the Federal Court addressing trademark protections, however, there are no registered trademarks at play in this case).
42. The Plaintiffs' interpretation of *Trego v Hunt (1895)*, goes much further than the interpretation of the case given by the Court in *Mid Island Truck & Crane Ltd. v Simian Cartage Inc.*, 2011 BCSC 677, *The Jiffy People Sales (1966) Ltd. et al. v Eliason et al.*, 75 CanLII 1038 (BSCS) 58 DLR (3d) 439, 1975 CarswellBC 313, 58 DLR (3d) 439, and *Unisource Canada Inc. v Enterprise Paper Co. Ltd.*, 1999 CanLII 6553 (BCSC), [1999] BCJ No. 753. The Court does not accept the Plaintiffs' suggestion that an implied non-competition covenant is present in the circumstances of this case. However, the Court does accept that an implied non-solicitation covenant may be present in the circumstances of this case considering the sale of the recipes and the sale of the goodwill.
43. The Court is not satisfied based on the caselaw presented by the parties that a non-competition covenant is implied in the sale of the business.

Goodwill and Recipes

44. The Plaintiffs assert that the Defendants' reentry into the pizza industry constitutes an unlawful appropriation of the recipes the Plaintiffs purchased from the Defendants. These recipes were conveyed to the new owners of Bravo Pizza during the transition period and were a term of the contract between the parties. The Court concludes, by relying on the caselaw mentioned in the previous section, that the purchase of the recipes together with the goodwill suggests the existence of an implied covenant not to use the recipes to solicit former clients. As the Court may use surrounding circumstances to interpret contractual terms, the conclusion that an implied covenant not to use the recipes and goodwill to solicit former clients is supported by the Defendants' representations that they were retiring (*Sattva Capital Corp. v Creston Moly Corp.*, 2014 SCC 53).
45. The evidence filed in support of the Motion shows that customers not only recognized the former Bravo Pizza owners but also recognized the former Bravo Pizza products. In addition, the evidence includes a Facebook post from the Defendants promoting Pizza Mike's opening stating "coming soon, we look forward to serving you again" accompanied with photographs of Mike Stefanidis and Elieni Zafeiriadou standing in the kitchen of Bravo Pizza. Based on several Facebook posts provided it appears to be common knowledge that Pizza Mike's is operated by the former owners of Bravo Pizza. A strong inference may be drawn from this evidence that Pizza Mike's is using the recipes sold to Bravo Pizza and soliciting former clients.
46. The Court concludes a strong *prima facie* case is present on the breach of the implied covenant not to undermine the transferred goodwill and recipes.

Fraudulent or Negligent Misrepresentation

47. Beyond the claims relating to the alleged breach of contract, the Plaintiffs also claim the Defendants are liable in tort for fraudulent or negligent misrepresentation. The Plaintiffs allege the Defendants' inaccurate statements regarding their permanent retirement induced the Plaintiffs to enter into the contract for the purchase of Bravo Pizza. On this point, the Defendants simply state that a change of mind as to their retirement status does not equate a misrepresentation; and certainly not a misrepresentation creating an enforceable non-competition obligation.

48. Of note, on the question of misrepresentation, the Plaintiffs also relied on the concepts set out in *Bhasin v Hrynew*, 2014 SCC 71, outlining the standard for honest contractual performance. However, the facts argued by the Plaintiffs raise the concepts of fraudulent or negligent misrepresentation rather than honest contractual performance.
49. Liability for negligent misrepresentation, as outlined by the Supreme Court of Canada in *Queen v Cognos Inc.*, [1993] 1 SCR 87, requires the presence of several elements, namely:
- (1) there must be a duty of care based on a "special relationship" between the representor and the representee;
 - (2) the representation in question must be untrue, inaccurate or misleading;
 - (3) the representor must have acted negligently in making said representation;
 - (4) the representee must have relied, in a reasonable manner, on said negligent misrepresentation; and
 - (5) the reliance must have been detrimental to the representee in the sense that damages resulted.
50. Additionally, "[f]raudulent misrepresentation requires evidence of '... a deliberate, willful, conscious distortion of the truth.'" (*Vallis v MacKenzie*, 2008 NBQB 394, para. 20).
51. In the evidence presented in support of the Motion, there is no indication the Defendants provided "untrue, inaccurate or misleading information" or that they "deliberately, willfully or consciously distorted the truth". The Defendants represented that they intended to retire and the Defendants in fact retired. The news coverage surrounding the transfer of the business does not support the suggestion that the Defendants were misrepresenting their intended employment status. As suggested by the Defendants, the Defendants changing their mind about retiring does not render their previous statements about retiring a fraudulent or negligent misrepresentation.
52. The Court finds there is no strong *prima facie* case established on the question of fraudulent or negligent misrepresentation.

Conclusion on Merits

53. Considering the above-mentioned claims, the Court is satisfied on the evidence presented that a strong *prima facie* case is present on the issue of breach of an implied covenant of the

contract through the undermining of goodwill and the use of the recipes. The first step of the injunctive relief test is met as it relates to these issues.

54. The Court does not find a strong *prima facie* case is present on the questions of the implied non-competition covenant or on the question of fraudulent or negligent misrepresentation. The parties must be reminded that in the context of this Motion, the Court assesses the strengths of the case on the limited evidence provided; it is possible that the trial evidence of one party or the other may shift the liability landscape observed on this Motion for injunctive relief.

Irreparable Harm

55. The second stage of the analysis requires the Plaintiffs to convince the Court that they will suffer irreparable harm if the injunction is refused.
56. "Irreparable" refers to the nature of the harm rather than its magnitude. Harm is considered irreparable if it cannot be quantified in monetary terms, cannot be cured (for example, a business is put out of operation), or if the damages cannot be collected from the other party (*RJR-MacDonald*, page 341).
57. The New Brunswick Court of Appeal in *Gallant v Murray*, 2017 CanLII 39279 (NBCA), reiterated the focus of irreparable harm is on the nature of the harm and the importance of grounding irreparable harm in an evidentiary foundation.

[8] The Court has considered the meaning of "irreparable harm" *Martin (M.R.) Construction Inc. v. Doaktown Transport Ltd. et al.* (2006), 2006 CanLII 6748 (NB CA), 304 N.B.R. (2d) 236, [2006] N.B.J. No. 93 (C.A.) (QL). In the decision, Richard J.A. recognized **the nature of the harm must be the focal point of the analysis, rather than the magnitude. Irreparable harm is understood as something that "either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other"**: *RJR-MacDonald* at para. 59, cited by Richard J.A. in *Doaktown Transport* at para. 8.

[9] **Submissions of irreparable harm must also be grounded by an evidential foundation. [...]**

[Emphasis added]

58. The Plaintiffs argued the multiple levels of continuous harm threatens the survival of their business. The Defendants maintain the Plaintiffs have not met the burden of proving the alleged harm is irreparable.

59. First, the Plaintiffs argue a continuous decline in revenue since Pizza Mike's opened, place it in a precarious financial situation. The Defendants argue the Plaintiffs waited eight months after the opening of Pizza Mike's to start their legal action; arguing the delay is irreconcilable with the argument of immediate and irreparable harm. Additionally, the Defendants suggest the expansion of Bravo Pizza, in opening a second location in Moncton in September of 2025, is similarly irreconcilable with the alleged precarious situation faced by the business. A delay in pursuing justice and an expansion of the business do not equate to a business thriving and not suffering harm.
60. However, on this first point, the Defendants also argued that the Plaintiffs provided only a 19-day window of financial information. The Court is not satisfied on the evidence presented that the business is suffering financially to the point that the restaurant may be out of business if the injunctive relief is not granted. Further, the Court is not satisfied that the opening of Pizza Mike's is the basis for Bravo Pizza's current financial situation considering that several external market factors may impact the financial viability of a restaurant.
61. Second, the Plaintiffs argue the continued operation of Pizza Mike's contributes to the destruction of the Bravo Pizza goodwill and business reputation, the loss of exclusivity and leads to customer confusion. The Plaintiffs assert this occurred through the Defendants "unauthorized use" of the sold recipes and confusion for customers arising from the Defendants opening a similar business 700 metres away as well as the Defendants use of promotional photos taken inside Bravo Pizza prior to the sale of the business.
62. The Defendants suggest that Mike Stefanidis was not the vendor in the sale of the business and that restricting his livelihood by granting injunctive relief would harm an "innocent party". At this stage of the proceeding, on a motion for injunctive relief, and with the evidence provided, the Court is not prepared to deem Mike Stefanidis an innocent and uninvolved party. It remains to be determined whether Mike Stefanidis is an innocent party in the business transaction and in the opening of the new pizza restaurant.
63. On the irreparable harm component of the assessment, the Court finds the Plaintiffs have not established irreparable harm will occur if the injunctive relief is not granted. There is insufficient evidence to conclude Bravo Pizza will close if injunctive relief is not granted and insufficient evidence to support the claim that Pizza Mike's is the cause of the alleged imminent closure.

64. However, while the Court is not prepared to find irreparable harm warranting injunctive relief, there is evidence in the Record to suggest the opening of Pizza Mike's is contributing to the destruction of the goodwill and business reputation of Bravo Pizza. The anecdotal evidence provided shows some former customers of Bravo Pizza are aware the former owners are operating under Pizza Mike's and the customers note the same taste and products at the new location. Further, the photographs used to promote Pizza Mike's were taken inside Bravo Pizza. Should the Plaintiffs establish a breach of contract claim arising from the destruction or diminution of Bravo Pizza's goodwill through the actions of the Defendants, such conduct is compensable. The Defendants will be responsible for indemnifying the Plaintiffs for damages arising from the established harm.

Balance of Convenience

65. If the Court had been satisfied that irreparable harm would flow if the injunction was not granted, it would have examined the balance of convenience. Out of an abundance of caution, should the Court have erred in its assessment of the irreparable harm, the Court will examine the issue of balance of convenience.

66. The final stage is a comparative assessment to determine which party will suffer greater harm from the granting or refusal of the injunction. The question to be posed is, which of the two parties will suffer the greater harm from the granting or the refusal of an interlocutory injunction pending a decision on the merits (*Holland v Neqotkuk Maliseet Nation*, 2022 NBQB 104, paras 81-82).

67. On the balance of convenience, the Plaintiffs argue their business is at risk of failure if the injunction is not granted. The Plaintiffs argue the Defendants will continue to divert their clientele and destroy the goodwill of Bravo Pizza. The Plaintiffs state the Defendants were warned not to start a new pizza restaurant in March of 2025, and proceeded nonetheless. The Plaintiffs additionally argue the Defendants were compensated for the sale of Bravo Pizza, suggesting they were paid to close; the legacy of Bravo Pizza being carried on by the new owners.

68. The Defendants counter the Plaintiffs' arguments by stating the granting of the injunctive relief sought would have the impact of an immediate operational collapse, effectively shutting down Pizza Mike's and jeopardizing the employment of their staff, the business' financial liabilities and would undermine relationships with suppliers and customers.

69. Weighing the positions of both parties, the balance of convenience would appear to favour the granting of injunctive relief sought by the Plaintiffs, however, as noted by the Defendants, the granting of the injunctive relief sought in the circumstances of this case, would have the effect of “drafting a restrictive covenant,” effectively rewriting the agreement originally made between the parties.
70. The Court agrees with the Defendants' suggestion that the non-competition injunction sought is improper at law and that a non-solicitation injunction may be more appropriate. In *Foodies Curry & Shawarma Inc. v Royal Paan Leasing Ltd.*, 2026 ONCA 26, the Ontario Court of Appeal set aside a judgment awarding restitution for unjust enrichment where the relief was not pled in the Application, the Record was found to be insufficient, and the Respondent did not have an opportunity to respond to the relief as it was not pled by the Applicant but granted by the Court. This Court heeds the caution of the Ontario Court of Appeal not to grant relief which is not expressly pled. In this case, the Plaintiffs sought a non-competition injunction, and while a non-solicitation injunction may have been warranted in the circumstances, it was not expressly sought and thus may not be granted by the Court.
71. The injunctive relief sought in this case does not seek to prevent the Defendants from using the recipes, nor does it seek the removal of promotional pictures used by Pizza Mike's on his website and taken inside the Bravo Pizza premises.
72. The Court agrees with the Defendants' last point on the balance of convenience. Granting the injunctive relief sought by the Plaintiffs effectively inserts a non-competition clause into the contract between the parties. If the parties wished for such a condition to form part of their agreement, such a condition should have been written into the contract. The Court granting such a remedy would go far beyond the balance of convenience.

Costs

73. As outlined in this decision, the Plaintiffs were unsuccessful in their Motion seeking injunctive relief.
74. The *Rules of Court* provide that on the hearing of a contested motion, the Court shall fix costs and may order them to be paid forthwith if satisfied the motion ought not have been brought or opposed (see Rule 59.03 of the *Rules of Court*).
75. Costs typically follow the cause; in this case, considering the establishment of a strong *prima facie* case as it relates to the undermining of the transferred goodwill and the use of the

transferred recipes, the Court is not satisfied the Plaintiffs should have to bear costs. The Court was not satisfied that the threshold was reached to warrant injunctive relief, however, the Court was satisfied the Defendants exhibited some reproachable conduct.

76. Justice Robichaud, as he then was, in *New Brunswick Council of School District Unions, CUPE, Local 1253 v New Brunswick (Province)*, 2024 NBKB 185, adopted a similar approach after declining injunctive relief and awarding costs in the cause. Justice Robichaud was satisfied of the presence of a serious question for trial and that irreparable harm had occurred but was not satisfied that the balance of convenience favored the granting of injunctive relief.

77. As such, each party shall bear its costs on the Motion.

DISPOSITION

78. For the preceding reasons, the Plaintiffs' Motion seeking injunctive relief is denied. Each party shall bear its costs.

Justice Maya Hamou
Court of King's Bench of New Brunswick