

Court denies injunctive relief in overstated business dispute (Home Coffee Solutions Ltd. v. Amarshi)

Interlocutory Injunction | Litigation | Litigation & Dispute Resolution | Partnership

15 January 2024

Courts are sometimes asked to grant an injunction to protect the misuse of confidential business information and other proprietary rights by competitors. However, before seeking an injunction, a plaintiff should be satisfied that they have sufficient evidence of the confidential or proprietary nature of the business interests that are sought to be protected, as well as persuasive evidence of the harm that would result if the injunction is not granted.

In *Home Coffee Solutions Ltd. v. Amarshi*, 2023 ONSC 6772 (CanLII), the plaintiffs sought an interlocutory injunction to protect the alleged confidentiality and proprietary elements of their e-commerce “home coffee solutions” business. Essentially, the business involved the sale of coffee makers and packaged coffee for home use, primarily through Amazon.

The parties had started doing business together in 2017. The plaintiffs provided the financing and the defendants ran the business. The defendants viewed their contribution as a form of “sweat equity,” investing otherwise unpaid labour into a business in which they were a 50% partner. In contrast, the plaintiffs viewed the relationship as more arm’s length, with the defendants being contractors or consultants or, at most, a form of joint venturer.

While no formal written agreement defined their relationship, the motion judge determined that the parties acted like they were partners as the defendants shared profits and expenses with the plaintiffs on a 50-50 basis. In addition, the parties were equal guarantors of the lease from which the business operated and shared equally in paying employees’ salaries.

In March 2023, the plaintiffs announced an intention to dissolve the business. Negotiations for a dissolution agreement ensued. Even though the parties did not finalize the agreement, the motion judge considered this as supporting the defendants’ claim that there was a full partnership between the parties.

After the business was terminated, the defendants started doing business under a new company with their former re-sellers. The defendants used a new website that was remarkably similar to the previous one.

Litigation ensued. The plaintiffs accused the defendants of “cloning” their work product, scooping their customers, and causing irreparable harm to their business. The plaintiffs sought an injunction to effectively shut down the defendants’ business.

The traditional test for granting an injunction is comprised of three elements. Depending on the circumstances of the case, the first element requires a plaintiff to establish either that it has a strong *prima facie* case or that there is a serious question to be tried. In most cases, a plaintiff is only required to meet the lower threshold of whether there is a serious question to be tried. The second and third elements require the plaintiff to establish that it will, respectively, suffer irreparable harm in the absence of an injunction and that the balance of convenience favours granting the injunction: *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 311, at page 334.

The motion judge held that the plaintiffs did not meet any of the three branches of the test.

With respect to the first element, the plaintiffs had what looked more like a bald assertion than a *prima facie* case or a serious claim to the property which they sought to enjoin. The evidence did not reveal that the plaintiffs were the sole owner of anything allegedly misappropriated by the defendants.

With regard to the potential for irreparable harm, the motion judge held that the plaintiffs had no evidence of any harm whatsoever, let alone irreparable harm. The only thing they had demonstrated was that they were suspicious that harm might occur at an indeterminate time in the future.

Lastly, the balance of convenience favoured the defendants. Granting an injunction would either close or significantly curtail the defendants' operations. On the other hand, the plaintiffs had not shown that they had thus far suffered any harm at all.

Overall, the motion judge was not persuaded that there were any valuable interests to protect, commenting that the subject matter of the lawsuit appeared to be exaggerated in the minds of the parties. Succinctly put: "Although the dispute has been percolating for some time, and the parties have now whipped themselves into a froth, the disagreement strikes me as a tempest in a coffee pot."

Of note, the business at issue did not design or make any of its own products. Instead, it sold products to a handful of re-sellers who did not use the company's website. Another large share of products were sold to consumers through Amazon. Sales from the company's own website were minimal.

Further, the motion judge concluded that the defendants did nothing wrong in selling goods to the re-sellers who they knew from their time while working with the plaintiffs.

In the motion judge's view, the plaintiffs' motion for injunctive relief was based on the unfounded premise that the defendants were unfairly competing with them. The defendants did not have a non-competition or non-solicitation agreement with the plaintiffs and were not bound by any non-competition or non-solicitation obligations: *King v. Merrill Lynch Canada Inc.*, 2005 CanLII 43679 (SCJ); *South Side Manufacturing Ltd v. SS Decking Ltd.*, 2022 ABCA 103.

The motion judge referenced the recent case of *Nativelands Specific Claims Group v. Justice Risk Solutions*, 2023 ONSC 4305, where the court held that nothing in the law prohibits former employees, associates, consultants, or contractors from competing with their former employer or contractor from using the knowledge of business that they gained from their former employment.

The plaintiffs also requested the return, deletion, or both, of "customer lists" that they alleged the defendants were using. While the misuse of a customer list can form the basis of an injunction in some cases, there was no customer list filed in the court record or any indication that the plaintiffs had lost any revenue from their web business since the defendants' departure. There was also no evidence indicating that the defendants misused any customer data.

Furthermore, any customer list from the former business would be at least as much the property of the defendants as former partners of the business as it would be that of the plaintiffs.

Overall, the plaintiffs were seeking an anticipatory remedy – a so-called *quia timet* injunction. This type of injunction is generally not available against former employees or business associates who had access to confidential information, including databases and customer lists, particularly where there is no evidence that the former employees were using or were going to imminently use the allegedly confidential information. Suspicion or worry is not enough: *Orpheus Medica v. Deep Biologics Inc.*, 2020 ONSC 4974, at para. 68.

In the result, the court dismissed the plaintiffs' motion for an interlocutory injunction and stated that an interlocutory injunction would "add cream and, perhaps, a sweetener to the plaintiffs' business, but its absence will make little difference to them." The ultimate dispute between the parties will be determined at trial.

The case underscores the evidentiary requirements necessary to support a claim for an injunction in a business dispute. In the case at hand, the plaintiffs' concerns were "based on suspicion, not hard evidence," and there were no grounds to order the injunctive relief being sought. The plaintiffs were subsequently ordered to pay costs to the defendants for the motion of \$120,000: *Home Coffee Solutions Ltd. v. Amarshi*, 2024 ONSC 251 (CanLII). A PDF version is available for download [here](#).

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