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Scissors Out: Court Snips Non-Compete Untethered to Legitimate Business Interests

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A recent decision from the Court of King's Bench of Alberta offers important guidance on the enforceability of non-competition covenants' in franchise agreements. In *Chatters Limited Partnership v Chatters Deerfoot Meadows Limited*,[1] the Court dismissed an application for an interlocutory injunction aimed at restraining a former franchisee from operating a new hair salon in Calgary's Seton area. In dismissing the application, the Court held that non-competition clauses must protect a legitimate or proprietary interest. A desire to solely eliminate or control competition in the area is likely not enough to justify granting injunctive relief.[2]

Background

In 2019, Chatters Deerfoot Meadows Limited (CDML) and its principal, Tania Larko (Larko), entered into a franchise agreement with Chatters Limited Partnership (Chatters) to operate a hair salon in Calgary's Deerfoot Meadows shopping center. The franchise agreement contained a post-termination non-competition provision, which prohibited the franchisee from operating any business "which is the same as or similar to or directly competitive" with the original salon within a 10-mile radius and for a period of two years.

Beginning in April of 2024, Larko began taking steps to sell her franchise with Chatters and start an independent hair salon in Calgary's Seton neighbourhood. In July, Larko sold the Chatters franchise in Deerfoot Meadows and terminated the franchise agreement. Larko incorporated White Rabbit Beauty & Blowout Bar Limited (White Rabbit) to operate the new salon and leased a premises for the business.

In September of 2024, Larko advised Chatters of her plans to open her own salon in the Seton area. In response, Chatters brought an injunction to enforce the non-competition clause to restrain Larko, CDML and White Rabbit from operating a competing business.

The Court's Decision

Applying the general test for injunctive relief set out by the Supreme Court of Canada in *RJR-MacDonald Inc. v Canada (Attorney General)*,[3] the Court began with a preliminary assessment of the enforceability of the non-compete provision to determine whether Chatters had established a "strong *prima facie* case." The Court considered four factors in its assessment:

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(1) Whether the non-compete clause was unambiguous;

(2) Whether the non-compete clause was engaged on the facts of the case;

(3) Whether the applicant had a legitimate or proprietary interest that is entitled to the protection of the restrictive covenant; and

(4) Even if the clause was unambiguous, whether the clause was reasonable and enforceable.[4]

Although the Court concluded that the clause was both unambiguous and engaged on the facts of the case, it determined that the clause did not protect a legitimate or proprietary interest. Relying on the Court of Appeal for Ontario's decision in *MEDIchair LP v DME Medequip Inc.*,[5] the Court held that the non-compete only covered the location of the original salon and did not extend to other locations. Moreover, the Court found that there was insufficient evidence to conclude that Chatters had any intention of opening a franchise location in the Seton Area. Instead, the provision appeared to be an attempt to restrain competition in a geographic area which Chatters did not have any current or foreseeable business interests in. The Court similarly held that the 10-mile geographic radius of the provision was unreasonable because it covered most of the City of Calgary and encompassed several existing Chatters locations. Accordingly, the Court concluded that Chatters had not established a strong *prima facie* case that the non-competition clause was likely unenforceable.

Turning to irreparable harm, the Court determined that there was insufficient evidence that the competing business would result in confusion in the marketplace or cause harm to Chatters' franchise system. In the Court's estimation, any losses sustained by Chatters could be compensated with damages. The Court declined to assess the balance of convenience and refused to grant the injunction.

Key Takeaways

Franchisors should exercise caution when drafting or seeking to enforce non-competition provisions in their franchise agreements. These provisions should clearly align with an identifiable legitimate or proprietary interest - such as protecting the goodwill, customer base, or confidential business connections of a specific franchised business. Where a non?compete is framed too broadly or is used primarily to control competition or preserve optional future expansion, courts may prove reluctant to intervene.

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[1] 2025 ABKB 536 [*Chatters*].

[2] *Chatters* at para 42.

[3] 1994 1 SCR 311 at p 334.

[4] *Chatters* at paras 38-44.

[5] 2016 ONCA 168.

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