IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *OPA! Souvlaki Franchise Group Inc. v. Tiginagas,* 2024 BCSC 1318

Date: 20240606
Docket: S-244550
Registry: Victoria

Between:

OPA! Souvlaki Franchise Group Inc.

Plaintiff

And:

Evangelos Nicolas Tiginagas, Amber Dawn Tiginagas, Adrian Lawrence Bears, and Van Isle Foods Corp.

Defendants

Before: The Honourable Madam Justice V. Jackson

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:	S.C. Evans
Counsel for the Defendants (appearing by videoconference):	G. Allen
Place and Date of Trial/Hearing:	Victoria, B.C. June 3-4, 2024
Place and Date of Judgment:	Victoria, B.C. June 6, 2024

[1] **THE COURT:** These are my reasons for judgment in this matter. If a transcript is ordered, I may make changes for style or grammar or to add further references to the parties' cases, but the substance of these reasons will not change.

Introduction

[2] The plaintiff filed a notice of civil claim on January 22, 2024, alleging that the defendants established and are operating the Gyrosa restaurant in violation of the post-term non-competition covenant (the "Restrictive Covenant") set out in a 2022 franchise agreement (the “2022 Franchise Agreement”), signed by a company of which the three individual defendants were shareholders. The plaintiff alleged Gyrosa is a restaurant of a type and in a location that is covered by the Restrictive Covenant.

[3] The plaintiff demanded a response to the notice of civil claim be filed. However, no response to the notice of civil claim was initially forthcoming. On February 1, 2024, the plaintiff filed a notice of application seeking an injunction against the defendants prohibiting them from carrying on, being engaged in, or being concerned with, and various other forms of involvement, any quick service or fast casual restaurant serving Greek-style and/or Mediterranean food as the primary menu item located within a five-kilometre radius of the OPA! of Greece restaurant until November 1, 2024, or until further order of the Court or the end of trial, I infer, whichever occurred first. Essentially, it is seeking the injunction to enforce the Restrictive Covenant.

Facts

[4] The plaintiff is an Alberta company which operates a franchise system in British Columbia and throughout Canada by which franchisees receive proprietary training, products, and methods of design, marketing, and operation of quick service restaurants serving Greek-style food under the trademark "OPA! of Greece", which the plaintiff refers to as the "OPA! System."

[5] The defendant, Van Isle Foods Corp. ("Van Isle") is a British Columbia company incorporated on February 3, 2015. The individual defendants are principals and registered directors of Van Isle. Mr. Tiginagas and Mrs. Tiginagas are spouses. Mr. Tiginagas has worked in and indirectly owned several OPA! restaurant locations since 1998. In 2008, Mr. Tiginagas and his brother, as 50-50 shareholders, incorporated a company called TIGI Enterprises ("TIGIE"), which purchased an OPA! franchise located at the Bay Centre in Victoria, B.C. In July 2010, TIGIE purchased a second OPA! franchise located in the food court at Mayfair Shopping Centre (the "Mayfair Restaurant") and entered in a franchise agreement with the plaintiff pursuant to the franchise agreement with the plaintiff being the franchisor, TIGIE as franchisee and Mr. Tiginagas as guarantor. In August 2010, Mr. Tiginagas incorporated TIGI Investments Inc. ("TIGIII").

[6] The defendant, Mr. Bears, began working at the Mayfair Restaurant as an employee in 2010. On February 15, 2013, Mr. Bears became a five percent shareholder in TIGIII by purchasing five of Mr. Tiginagas' Class A voting shares in that company. On April 24, 2014, the Mayfair Restaurant franchise and lease agreements were renewed, but with TIGIII (the "2014 Franchise Agreement"). Mr. Tiginagas was the sole director of TIGIII at the time and provided a personal guarantee as part of the 2014 Franchise Agreement. From 2014 until October 2022, Mrs. Tiginagas also worked for TIGIII doing bookkeeping work related to the Mayfair Restaurant. In June 2015, Mrs. Tiginagas was issued 95 Class E shares in TIGIII. Also, in June 2015, Mr. Bears was issued five Class E shares in TIGIII to maintain his five percent overall ownership of the company.

[7] On or about October 25, 2022, the plaintiff as franchisor and TIGIII as franchisee entered into a second renewal of the franchise agreement for the Mayfair Restaurant (that being the 2022 Franchise Agreement). On October 24, 2022, Mr. Tiginagas signed a personal guarantee whereby he guaranteed the performance of the franchisee's obligations under the 2022 Franchise Agreement and agreed to be personally subject to all of the covenants, conditions, and obligations in the 2022 Franchise Agreement (the "2022 Guarantee").

[8] The plaintiff alleges the defendants have extensive knowledge of the OPA! System. Mr. Tiginagas denies he has such knowledge. However, I have no information with respect to Mrs. Tiginagas' information from her, that is to say, whether she has, in fact, received additional information in her role as bookkeeper of the franchisee under the OPA! System. Further, it would surprise me if Mr. Tiginagas did not have some, if not extensive, knowledge of the OPA! System given how long he was operating a franchisee corporation within the OPA! System.

[9] As of October 24, 2022, the individual defendants held the following equity shares in TIGIII:

a) Mr. Tiginagas, 47.5 percent;

b) Mrs. Tiginagas, 47.5 percent; and

c) Mr. Bears, five percent.

[10] Although the 2022 Guarantee that Mr. Tiginagas signed included a representation that he was “all of the shareholders, partners, holders of any beneficial interest, officers, or directors of [TIGIII]”, which was not true, the plaintiff advised it is not relying on that representation at this application.

[11] The plaintiff requires all franchisees to provide non-competition covenants to prevent former franchisees from misusing its trade secrets, confidential and proprietary information, and/or trade connections for the benefit of competing businesses. The 2022 Franchise Agreement includes a post-term non-competition covenant (again the "Restrictive Covenant") which provides:

> **18.2 Post-term Non-competition:** Upon the expiry or termination of this Agreement for any reason whatsoever, or if the Franchisee effects a Transfer, then for a period of two (2) years following such expiry, termination or Transfer, the Franchisee, its officers, directors, shareholders, and the Operator covenant personally, jointly and severally, on behalf of or in association with any other Person, partnership, association or corporation, not to directly or indirectly operate, license, franchise, possess, maintain, become involved with, carry on, engaged in or be concerned with, or have an interest or advise, of any nature whatsoever, or permit their names or any part thereof to be used or employed in any business in connection with the

> operation of a Competing Business and which is located at the Premises or anywhere within a radius of five (5) kilometres of the Premises or the premises of any other Franchisor owned or franchised "OPA! of Greece" location;

[12] The 2014 Franchise Agreement contained a similar post term non-competition covenant with a ten-kilometre radius. The 2022 Franchise Agreement defines a "competing business" as:

> … any business in connection with the operation of a quick-service or fast-casual restaurant having Mediterranean and/or Greek-style food items as primary menu items ... other than a "OPA! of Greece" restaurant ...

[13] The 2022 Franchise Agreement includes the following provision in s. 18 (which is the Restrictive Covenant section):

> **18.7 Reasonability** - The Franchisee expressly agrees that the provisions of this section are reasonable in duration, scope and extent and are necessary to protect the legitimate interests of the Franchisor.

[14] The Restrictive Covenant section also includes a penalty provision which provides:

> **18.6** ... Subject to all other rights and remedies of the Franchisor, in the event of any contravention of the provisions of this section, the Franchisee will pay to the Franchisor the greater of:
>
> a. Five percent (5%) of Gross Revenue generated during the year during which the contravention was committed; or
>
> b. The sum of two hundred dollars ($200) per day of contravention.
>
> The present penalty provision shall not have the effect of preventing the Franchisor from availing himself of his remedies to enforce its rights arising from this Agreement.

[15] On or about October 31, 2022, Mr. Anish Gill signed a share sale and purchase agreement with the individual defendants to acquire all the shares of TIGIII

(the "Purchase Agreement") with the consent of the plaintiff. The Purchase Agreement contains a restrictive covenant which provides:

> Except as an associate, employee, or consultant of the Company [TGIII], the Vendors [the individual defendants] covenant and agree that for a period ending two (2) years after the Closing Date [October 31, 2022], they will not, either directly or indirectly, or whether as proprietor, partner, shareholder, employee, associate, or otherwise, carry on or be engaged in a business or undertaking that is a Greek restaurant that is within a 5-kilometre radius of the Business [the Mayfair Restaurant].

[16] The Purchase Agreement is not the agreement which is being sued on in the claim that is before me. However, the parties agree that it has some relevance with respect to the non-competition clause which is a term of that agreement and to which the individual defendants agreed. Mr. Tiginagas was the sole director of TIGIII until Mr. Gill purchased all of the shares of TIGIII effective October 31, 2022.

[17] On January 17, 2023, the individual defendants incorporated 1396489 B.C. Ltd. (“139”). This was disclosed to the plaintiff for the first time on May 28, 2024, via the filing of their collective application response and the affidavit of Mr. Tiginagas. It is not referred to in the response to the notice of civil claim. Van Isle owns all of the issued and outstanding shares in 139.

[18] 139 is not a party to this action nor was it served with the plaintiff's application. Given that the plaintiff was not advised of the existence of 139 until after it had been required to file its application record, that is not surprising.

[19] However, given that the evidence establishes that Van Isle owns all the outstanding shares of 139 and that the individual defendants are the shareholders and directors of Van Isle, I find that 139 had effective notice of the application and the action and that 139 has not been prejudiced by the lack of formal notice of the application. In my view, it is appropriate in these unusual circumstances to permit the plaintiff to seek injunctive relief against 139 in addition to the named defendants and, insofar as any amendment of the plaintiff's application is required, I would and do order such amendment. At the hearing before me, the plaintiff made clear it intends to amend its notice of civil claim to seek relief against 139.

[20] On or about February 6, 2023, Van Isle registered a trademark for the name, "Gyrosa". The following is the information provided regarding the Gyrosa trademark registered by Van Isle:

> 29 (1) Tzatziki
>
> 30 (2) Cheese sauce; garlic sauce; hot sauce; marinades; pita bread; sauces for meat; wrapped sandwiches
>
> 35 (1) Franchising services, namely, offering business advice and assistance in the establishment and operation of restaurants; offering technical assistance in the establishment and operation of restaurant franchises; providing marketing assistance relating to the operate of franchises
>
> 43 (2) Carry-out restaurants; fast food and non-stop restaurant services; fast food restaurants; restaurant services; restaurant services featuring take-out services; restaurants

[21] On March 13, 2023, 139 entered in a lease agreement for a unit in a strip mall, being 102-1517 Admirals Road in Victoria, B.C. (the "Admirals Road Location"). The individual defendants are all indemnifiers of 139's obligations under the lease which appears to have been a lease they took over from another tenant and which was assigned to them. On October 2, 2023, the individual defendants and Van Isle, through its wholly-owned subsidiary 139, began operating the Gyrosa restaurant at the Admirals Road Location.

[22] The Admirals Road Location is located within a five-kilometre radius of the Mayfair Restaurant. I am satisfied based on the evidence and find the Admirals Road Location is located 4.22 kilometres from the Mayfair Restaurant. Mr. Tiginagas deposes he understood the non-competition covenants both in the 2022 Franchise Agreement and the Purchase Agreement applied within a five-kilometre radius of the Mayfair Restaurant as measured by road. On the face of the agreements, that is not what is stated.

[23] The menus of the Gyrosa restaurant and the Mayfair Restaurant are very similar. In the affidavit of Mr. Tiginagas, he deposes that the meals are comparable

and include items that are traditionally associated with Greek cuisine. The plaintiff's evidence is that the Gyrosa restaurant is competitive to the Mayfair Restaurant and has caused Mayfair Restaurant a loss of customers and sales. The defendant's evidence is that the Gyrosa restaurant is not a direct competitor and that success of a quick service restaurant—which the defendants admit that the Gyrosa restaurant and the Mayfair Restaurant are—is impacted by a number of factors. The defendants say the Restrictive Covenant in the 2022 Franchise Agreement expires October 31, 2024. My understanding is that the plaintiff agrees with that position.

Legal Framework

[24] The Court's inherent jurisdiction to grant injunctive relief is recognized in the *Law and Equity Act*, R.S.B.C. 1996, c. 253, s. 39; *Supreme Court Civil Rules,* R. 10-4. The applicable legal framework is the commonly applied three-stage approach described in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, 1994 CanLII 117, a decision of the Supreme Court of Canada. In particular, at 334, it includes the following:

> First, a preliminary assessment must be made as to the merits of the case to ensure that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits. …

[25] The three factors are not to be treated like a checklist of separate watertight compartments, but instead are interrelated and strength in one part of the test can compensate for weakness in another: *British Columbia (Attorney General) v. Wale*, 9 B.C.L.R. (2d) 333 at 346–47 1986 CanLII 171 (B.C.C.A), aff’d [1991] 1 S.C.R. 62; *Cambie Surgeries Corporation v. British Columbia (Attorney General)*, 2019 BCCA 29 (Chambers) at para. 19.

[26] The *RJR-MacDonald* test is one of "general application" and applies even where an applicant establishes a strong prima facie case of breach of a negative covenant such as a non-competition or restrictive covenant as is at issue in this case: *Belron Canada Inc. v. TCG International Inc.*, 2009 BCCA 577 at paras. 19,

22, and 23. However, although irreparable harm remains a relevant consideration where a breach of a negative covenant is pleaded, its relative importance may be diminished in certain circumstances including where a strong *prima facie* case of a breach of a negative covenant has been established: *Wizedemy Inc. v. Karras*, 2024 BCSC 630 [*Wizedemy BCSC*] at para. 43, leave to appeal to BCCA granted, 2024 BCCA 216; *Wizedemy BCSC* citing *Li v. Rao*, 2019 BCCA 264 at paras. 62–67.

[27] The fundamental question is whether the injunction is equitable in the circumstances: *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34 at para. 25.

[28] The 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.

Analysis

Has the plaintiff established there is either a serious question to be tried or even a strong prima face case?

[29] The defendants concede the claim raises a serious question to be tried with respect to the application of the Restrictive Covenant as against Mr. Tiginagas. Based on consideration of the evidence presented, I am satisfied that the plaintiff has established a strong *prima facie* case with respect to the breach of the Restrictive Covenant. In a commercial context, a non-competition covenant will be found to be reasonable and lawful where it is limited as to its term and to the territory and activities to which it applies: *Payette v. Guay inc.*, 2013 SCC 45 at para. 61.

[30] The Restrictive Covenant is not ambiguous; it is both clear and narrow in scope in terms of the nature of the activity precluded and the limited five-kilometre radius to which it applies. The reasonability clause in the 2022 Franchise Agreement and the fact that the individual defendants agreed to a non-competition clause with Mr. Gill in substantially the same terms both lend support for my view that the plaintiff has made out a strong *prima facie* case that the non-competition clause is not unreasonable.

[31] The defendants argue greater scrutiny is to be applied to examining whether there is a serious question to be tried where the enforcement of a restrictive covenant will restrain the defendants' ability to make a living and where the granting of an injunction would be tantamount to a final disposition of the claim, *Kwantlen Pizza Ltd. v. 1253923 BC Ltd.*, 2021 BCSC 2510 at para. 30; *BMR Bath Master Reglazing Ltd. v. Watson*, 2010 BCSC 1170, at paras. 10–12.

[32] While that may be, I am not satisfied based on the evidence presented that enforcement of the Restrictive Covenant would restrain the defendants' ability to make a living or that granting the injunction would be tantamount to a final disposition of the claim. Further, in *BMR Bath Master*, Justice Harris, then of this Court, was satisfied on the evidence that if the injunction were granted, the defendants would be forced out of business and most likely into bankruptcy. Again, the evidence in this case is different. First, there is no evidence with respect to the financial circumstances of Mr. Bears. Further, Mr. Tiginagas does not depose that if the injunction is granted that the Gyrosa restaurant will have to close. And third, Mr. Tiginagas has deposed in support of the defendants' position that they have the ability to pay a damages award should the plaintiff succeed at trial and that he and his wife have almost $600,000 of equity in their home.

[33] The affidavit evidence does not explain why the individual defendants would not be able to cover any fixed costs of the Gyrosa restaurant should the injunction be granted. Further, while the Gyrosa restaurant may incur fixed costs, even if it is not able to either deliver a different type of cuisine or the same type of cuisine but through a different format of restaurant or operate outside of a different location that is outside of the five-kilometre radius, the plaintiff has undertaken to pay damages in the event that it is unsuccessful in this action.

[34] Justice Kirchner rejected the suggestion that the restrictive covenant in the case before him, which he observed could have been drafted with more precision, meant that a strong *prima facie* case by the applicant was not made out: *Kwantlen Pizza* at para. 33.

[35] Further, the restrictive covenant at issue in *Bath Master* was markedly different from the restrictive covenant at issue in this case. The restrictive covenant in *BMR Bath Master* prohibited the defendants from operating their business in the entire City of Victoria for two years and from competing with any BMR franchise in the entire province of British Columbia for two years. As I have noted, the restrictive covenant in this case is much narrower. The Restrictive Covenant was for a period of two years, but only precluded operation of a competing business which is limited to a specific format of restaurant providing a limited type of cuisine and within a limited five-kilometre radius of the Mayfair Restaurant.

[36] The defendants argue that the claim does not raise a serious question to be tried vis-à-vis the other defendants on the basis that there is no privity of contract between those defendants and the plaintiff. The defendants point to para. 62 of Justice Grauer's judgment in *Garcha Brothers Meat Shop Ltd. v. Singh*, 2022 BCCA 36. In that passage, Grauer J. observed that the defendants/appellants' position that a restrictive covenant can only be enforced against non-signatories where those non-signatories have been found to be alter-egos of the signatories was an arguable point. However, he did not determine the matter.

[37] On its face, the Restrictive Covenant entered into by TIGIII, of which all three individual defendants were shareholders, guaranteed by Mr. Tiginagas, prohibited shareholders of TIGIII from undertaking the activities covered by the Restrictive Covenant. Although the defendants argue that it is trite law that a corporation cannot bind its shareholder, in the circumstances of a franchise or a franchisee relationship, in my view, it is at least a serious question to be tried as to whether privity of contract in the context of the 2022 Franchise Agreement should be relaxed to permit the franchisor to obtain the benefit of the Restrictive Covenant against the individual defendants as shareholders of the corporate franchisee and subsequent corporations which those shareholders incorporated and/or used to breach the Restrictive Covenant.

[38] Further, I am satisfied that the claims of unjust enrichment and conspiracy are properly pled against the individual defendants and Van Isle. Although the defendants argue the evidence of Mr. Tiginagas that the individual defendants did not intend to breach the Restrictive Covenant precludes any chance of a claim in conspiracy succeeding, I am satisfied that the facts pled put forward a serious question to be tried as against the defendants for those civil causes of action.

[39] I find that the plaintiff established a strong *prima facie* case as against Mr. Tiginagas and Van Isle as well as 139 for breach of contract and a serious question to be tried as against the other two individual defendants for breach of contract, as well as a serious question to be tried against all of the defendants for unjust enrichment and civil conspiracy, as well as against 139 based on the plaintiff's advice it anticipates amending its notice of civil claim to allege causes of action against that entity.

Has the plaintiff established it will suffer irreparable harm if the injunction is not granted?

[40] Irreparable harm refers to the nature of the harm rather than its magnitude: *RJR-MacDonald* at 341. Irreparable harm includes harm that cannot be quantified in monetary terms or where it will be difficult to obtain monetary redress: *RJR-MacDonald* at 341. As noted earlier in these reasons, irreparable harm may take on a lesser importance in the *RJR-MacDonald* analysis where a plaintiff has established a strong *prima facie* case.

[41] I am satisfied the nature of the harm alleged constitutes irreparable harm. The plaintiff alleges damage to the integrity of its franchise system. The confidence which its current franchisees—including Mr. Gill, who filed an affidavit in support of the plaintiff's application—and potential future franchisees can have in relying on the restrictive covenant which the plaintiff requires in its franchise agreements.

[42] Further, I am satisfied based on the evidence that the Mayfair Restaurant currently operated by one of the plaintiff's franchisees is incurring damage that cannot be quantified in monetary terms and which potentially cannot be cured. This

includes the loss of customers which may very well be difficult to gain back in terms of being able to regain their favour once their loyalty to the Opa! brand has been lost.

Where does the balance of convenience lie?

[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 regarded as a checklist, but rather are to be considered in a unified context: *CKPG Television*.

[44] In my view, given the nature of the irreparable harm the plaintiff has alleged, damages may not be an adequate remedy for the plaintiff if the injunction is not granted. The same cannot be said of the defendants, whose main concern is the financial consequences of an injunction. The plaintiff has undertaken to pay any damages sustained by the defendants if it is unsuccessful in its action, whereas it would be difficult for the plaintiff to collect damages from the defendants if the plaintiff's action succeeds. I say that not because there may not be money available, but because Mr. Tiginagas has deposed that the money available is nested in equity in the family home. It is the defendants who acted to alter the balance of their relationship and so affect the status quo. Further, I view the plaintiff's case as being very strong. The plaintiff argues no additional factors need to be considered.

[45] The defendants argue the potential impact on the defendants as well as the impact on their employees should be considered, and I have considered those factors in my analysis. As I have already noted, while the defendants argue that if the Gyrosa restaurant closes it will have significant consequences for the individual

defendants as well as the employees, the defendants are using in the operation of the Gyrosa restaurant, which I understand includes some employees of the former Mayfair Restaurant, Mr. Tiginagas does not depose that if the injunction is granted it will have to close. He only deposes about the consequences of closure should that happen. While it may be difficult to change the location where the Gyrosa restaurant is operating or change the type of cuisine being offered or the service format of the business, the evidence does not establish that cannot be done and I will not infer that is the case.

[46] In essence, the defendants have asked this Court to deny injunctive relief on the basis that they would suffer financial loss because they have become entrenched in their business, but I have found that the plaintiff has established that there is a strong *prima facie* case, or at least a serious question to be tried, that they established that business in breach of the Restrictive Covenant which precluded them from beginning that business before November 1, 2024. In *Belron*, Justice Low observed that:

> [22] It is probably correct to say that in most commercial cases involving sophisticated and solvent litigants in which a strong *prima facie* case is made out that there has been or will be breach of a negative covenant, an interim injunction will be granted….

Justice Savage made a similar observation in the *Li* case at para. 67.

[47] In making those observations, I am mindful that an injunction does not follow the breach of a negative covenant as a matter of course as a general rule. As I have said, the three-part test from *RJR-MacDonald* is to be considered. In my view, I have considered the balance of convenience and it favours the plaintiff. I have considered the three-part test from *RJR-MacDonald* and I am satisfied applying that test that there is a basis for injunctive relief which the plaintiff seeks and that the plaintiff has made out that case.

Should injunctive relief be withheld?

[48] Even where an applicant established a basis for injunctive relief, an equitable remedy may still be withheld. The defendants argue that in this case the injunction

should not be granted because there has been a lack of diligence in pursuing relief, and because there are only five months left in the Restrictive Covenant.

[49] I was advised during the course of this hearing that the plaintiff made demands to the defendants in November 2023. When the matter was not resolved, it filed its notice of civil claim on January 22, 2024 and its notice of application seeking injunctive relief on February 1, 2024. The plaintiff scheduled its application for a two-hour hearing on February 14, 2024, which likely would have been sufficient, but the hearing was adjourned to this week's assize when the defendants insisted that a two-day hearing was necessary without having filed any response to the application at that time. The plaintiff continued to request that a response to the notice of civil claim be filed and demanded a response to the notice of application be provided. It was not until the plaintiff threatened default judgment that the response to the notice of civil claim was finally filed on April 9, 2024.

[50] The defendants did not file their application response or any responding affidavit evidence until May 28, 2024, which, as I have already noted, is after the deadline for the application record to have been filed and, in fact, after it was filed. The timing of the filing of the defendants' material meant that the plaintiff was without an opportunity to seek to cross-examine Mr. Tiginagas on his affidavit or indeed provide any evidence in response to it without seeking an adjournment of the hearing for which it had waited over three months at the request of the defendants. The defendants have been on notice since at least November 2023 that the plaintiff was seeking to enforce its Restrictive Covenant. In my view, the plaintiff's willingness to accommodate the delay requested by the defendants is not a basis to find that the plaintiff did not act diligently in seeking injunctive relief and I would not withhold injunctive relief on that basis.

[51] In summary, I am satisfied that the interim injunction is just and equitable in all of the circumstances.

Conclusion

[52] The plaintiff's application is granted. I make the injunctive order sought by the plaintiff at part 1, paragraph 1 of its notice of application with the exception that I include 139 in that order, such that all of the defendants and 139 are enjoined and prohibited as sought by the plaintiff in part 1, paragraph 1.

[53] The order will include the plaintiff's undertaking to abide by any order which this Court may make as to damages in case this Court shall be of the opinion that the defendants shall have sustained any by reason of this order which the plaintiff ought to pay.

[54] The plaintiff is entitled to their costs of this application in any event of the case.

[55] Those are my reasons.

[56] CNSL G. ALLEN: Justice, it's Mr. Allen.

[57] THE COURT: Yes.

> [SUBMISSIONS AND DISCUSSION RE STAYING INJUNCTION FOR PERIOD OF ONE WEEK]
> (PROCEEDINGS ADJOURNED)
> (PROCEEDINGS RECONVENED)

[58] THE CLERK: Justice, recalling the matter from this morning, calling the matter of *OPA! Souvlaki v. Tiginagas*.

[59] THE COURT: Thank you. Yes, good afternoon.

[60] CNSL S. EVANS: I think my friend --

[61] CNSL G. ALLEN: Good afternoon, Justice, it's Mr. Allen for the defendants.

[62] THE COURT: Yes.

[63] CNSL G. ALLEN: By way of a quick report, I know you have other things on your docket, my friend and I have connected and the parties are amenable to a one-week stay of the injunction if, of course, you are amenable to it, as well.

[64] THE COURT: Is that correct, Mr. Evans?

[65] CNSL S. EVANS: Yes, Justice.

[66] THE COURT: Thank you. Yes, based on that consent, I will stay the interim injunction which I have ordered until—would that be Thursday, June 13th?

[67] CNSL G. ALLEN: Yes.

[68] THE COURT: All right, until Thursday, June 13, 2024, at the request of the defendants.

"V. Jackson J."