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Docket: CI 15-01-99336
(Winnipeg Centre)

Indexed as: Farmers Edge Inc. v. Precision Weather Solutions Inc.
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COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

FARMERS EDGE INC.,)
) Michael G. Finlayson
)
) Gabrielle C. Lisi
 plaintiff,) for the plaintiff/defendant by
) counterclaim
)
 - and -)
)
 PRECISION WEATHER SOLUTIONS INC.,) Alistair Crawley
) Kate McGrann
 defendant,) for the defendant/plaintiff by
) counterclaim
)
 AND BETWEEN:)
)
 PRECISION WEATHER SOLUTIONS INC.,)
)
 plaintiff by counterclaim,)
)
 -and-)
)
 FARMERS EDGE INC., WADE BARNES,)
 CURTIS MACKINNON and TREVOR ARMITAGE)
)
 defendants by counterclaim.)
)
) JUDGMENT DELIVERED:
) September 11, 2025

MARTIN, J.

INTRODUCTION

[1] Farmers Edge Inc. (“Farmers”) and Precision Weather Solutions Inc. (“Precision”), both Manitoba corporations, have been involved in uncompromising litigation in Manitoba since 2015, emanating from a July 2014 failed contractual arrangement (“this action” or “the Manitoba action”). The individual defendants-by-counterclaim are former employees of Farmers. This decision deals with Farmers’ motion to strike key aspects of the counterclaim or alternately to refuse to allow Precision to adduce certain evidence and expert evidence it has not produced to date.

[2] Some context is beneficial to frame the proceeding and this decision.

[3] First, Precision has at various times initiated other proceedings in other jurisdictions dealing with the same core issues as its counterclaim in this action. Notably, in 2021 Precision pursued a similar action in the State of Virginia in the United States of America, (“USA”) which failed for jurisdiction reasons in both the State District Court and on appeal. As a result, from about October 2021 until September 2023 this Manitoba action was stayed as the Court would not acquiesce to concurrent duplicate actions in two jurisdictions.

[4] When the stay was lifted in September 2023, at both parties’ urging, a five-week trial was set to be held slightly over two years hence, starting October 20, 2025. The parties committed to have the matter fully ready for trial.

[5] Second, in November 2022, Precision retained new counsel (“MLTA”), which was only formalized on the record in June 2023. By the Fall of 2023 Farmers also had new counsel.

[6] However, in February 2025, Precision’s counsel, MLTA, was allowed to withdraw due to a conflict and, what has only recently been revealed to be, Precision’s continuous inability to pay them.

[7] Then, in May 2025, when Precision obtained another private litigation funder, Precision’s current counsel became counsel of record for this trial. However, that counsel was already familiar with this matter. In 2023, they initiated an Ontario action against Farmers’ main shareholder and others. Later in 2024 Precision’s current counsel were in the background assisting Precision on this action.

[8] Third, the Ontario action is in abeyance pending this trial. Farmers is not named as a defendant because, the claim states, Farmers was “on the brink of insolvency” and controlled entirely by the Ontario defendants who are alleged to be vicariously liable for Farmers’ alleged misappropriation of Precision’s proprietary technology and confidential information. This foundational allegation in the Ontario claim, in which damages are quantified at \$450 million, is the key part of the Manitoba counterclaim. Also, in 2024, Precision commenced another action, in the State of Kansas, USA, against two of the Ontario corporate defendants’ subsidiaries. I am unaware of its status, but again the Manitoba counterclaim underpins it.

[9] Fourth, throughout, the prospects and fortunes of Farmers and Precision have substantially and badly changed. In the last years, Farmers’ business prospects and

corporate value precipitously declined. So too Precision. In January 2025, Precision's parent company was declared bankrupt (*The Bankruptcy of Galton Corporation*, 2025 MBKB 13 (the "*Galton* bankruptcy")). And, Precision's counsel now advises that after retaining MLTA counsel in 2022, until May 2025, Precision could not adequately fund this litigation, which effectively meant that its trial preparation and responsiveness to Farmers was hampered.

[10] Finally, two points about the Manitoba action.

[11] One, in September 2019, Farmers launched a second Manitoba action claiming unpaid accounts further to a 2016 consent court order that was in place to stabilize ongoing business claims between the parties (CI 19-01-23195). Again, Precision counterclaimed. Overtime that action notionally merged with this action. Now both parties are abandoning that action, although some evidentiary aspects overlap this action.

[12] Two, as to this action, relatively close to the *Galton* bankruptcy, in early 2025, Farmers advised it would no longer pursue its original claim. Thus, now, only the Precision counterclaim will be determined at trial. There are two core sets of allegations in the counterclaim:

- breach of contract for failing to pay accounts alleged at about \$1.2 million which, if proven, may be subject to setoffs

and, of much greater significance; and

- infringement of Precision's intellectual property (confidential information and trade secrets) and related breach of trust, by, particularly, Farmers creating in 2019 a digital platform product called FarmCommand (collectively "the infringement

claim”) and two peripheral allegations. For these allegations, Precision seeks damages, various declarations, an accounting and disgorgement of profits (para 28).

[13] This trial, 10 years in the making, starts seven and half weeks from August 26, 2025, when the subject matter of this judgment was argued.

[14] This judgment addresses Farmers’ long-standing discovery complaints, crystallized through a motion seeking to:

- i. confirm Precision is in contempt of an August 2020 and January 2025, court order with respect to disclosure and production of documents, delivery of responses to undertakings, answers to interrogatories, production of experts reports and quantification of its damages in the action;
- ii. strike the counterclaim or alternately strike allegations in specified paragraphs, including those dealing with the infringement claim, and peripheral common law “passing off” and s. 52 of the ***Competition Act***, R.S.C., 1985, c. C-34 allegations;
or
- iii. bar Precision from filing any or further expert reports in the action; and/or
- iv. bar Precision from adducing further documentary or expert evidence to support its allegations noted at item “ii” above; and
- v. amend its pleading.

[15] At para. 1 of its responding brief on the motion, Precision “acknowledges that it has failed to fully comply with discovery obligations and to meet Court-ordered deadlines” and “has work to do to cure the Noncompliance”, which it is doing. More specifically, they acknowledge that Precision has missed court ordered expert and evidentiary

deadlines. They also agree to Farmers' proposed pleading amendment, which is relatively minor.

[16] Further, during the motion hearing, Precision abandoned the peripheral passing off and ***Competition Act*** claims. In doing so, some outstanding answers and disclosure are eliminated and only the two core sets of claims, breach of contract for failing to pay accounts and the infringement claim, are left for trial.

[17] Precision's counsels' candor in its brief was further exhibited at the hearing. They conceded it would be difficult for Farmers to fulsomely address the anticipated expert evidence without their own expert's review, and failure to allow the expert report would hamper the Court's ability to effectively adjudicate key aspects of Precision's claim. To be clear, the expert report is for the damages claim. As things stand, Precision cannot obtain a liability expert to address the intellectual property evidence. I commend Precision's counsel for their professionalism and frankness.

[18] With this, I need not examine the granular detail of each complaint or point referred to in para. 14.i above as particularized in Farmers' materials. Rather, respecting both elements of liability and damages, notably for Precision's infringement claim, it is common ground that Precision has failed, contrary to civil procedure rules or Court directions, to properly and fulsomely provide disclosure of documents, answers to undertakings and interrogatories and, critically, expert evidence it intends to rely on. While I accept Precision's counsel continues to diligently work on this since it was formally retained about four months ago, Precision's compliance remains a work-in-progress with

no firm completion date except they anticipate receiving the final expert report on damages before September 12, 2025.

THE PARTIES' POSITIONS

[19] Farmers vigorously argues for an order striking particularly the infringement claim or alternatively restricting the evidence by not allowing new undisclosed evidence or material, expert or otherwise, into the trial. After all these years of litigation, it still cannot respond to this most significant part of Precision's claim; evidence of alleged proprietary or confidential information is beyond their grasp. It is prejudiced by Precision's failures, which are vital. Given how the proceedings have unfolded over the years, especially since the stay was lifted, and that the fortunes of each party have fallen, it says the toll of litigation is crippling; it cannot bear any adjournment. Instead, it would need to deal with the case however disclosure, answers and production unfolds over the next weeks, no matter how their ability to effectively put forward their defence would be compromised or how unjust.

[20] On the other hand, Precision says striking the infringement claim, or not receiving as yet undisclosed evidence respecting it, which Precision says would be tantamount to dismissing the infringement claim, would deny Precision a fair adjudication of a meritorious claim. Any such remedy is extreme and not warranted; Precision has good reasons for its noncompliance, particularly that (i) its principal (Ms. Bonk) suffered some hand related health problems in 2024, (ii) after the Virginia action was dismissed on Appeal, it lost its third-party litigation funder and, despite its diligence, it took 21 months to secure a new one, and (iii) it puts blame on Farmers for its conduct and noncompliance

with various required disclosure and responses. Further, Farmers has not shown it is specifically prejudiced by Precision's failures. All in, Precision proposes that a short adjournment of the trial may be warranted.

[21] To be clear, neither party has requested an adjournment, which, as I informed counsel, would not be a short delay but a two-year delay. Further, bifurcation of trial issues is neither acceptable nor, especially in this situation, practical. In the end, it would be hugely onerous and counterproductive for the parties and Court.

THE KEY ISSUE

[22] In sum, the issue before me reduces to the appropriate, just and proportionate remedy for Precision's failures to deliver answers and evidence central to Precision's infringement claim.

[23] Realistically, this means (i) striking the infringement claim as requested, or (ii) refusing to allow Precision to adduce key evidence, or (iii) adjourning the trial for two years or (iv) having the trial go-ahead in about five weeks, confident Farmers will be compromised by having to deal with Precision's deficient information because of its noncompliance, especially disclosure and answer failures (chiefly, as I frame it, precisely detailing the intellectual or confidential property at issue and the basis for claiming it is proprietary, confidential or secret) and a late breaking expert report that cannot meaningfully be responded to.

[24] Given the context as mentioned and for the reasons that follow, I am striking Precision's infringement claim. As such, I will not deal in any depth with the other relief

sought on the motion, notably contempt or refusing to allow certain evidence on the infringement claim to be adduced.

ANALYSIS

STRIKING A PLEADING FOR NONCOMPLIANCE WITH RULES OR ORDERS

Legal Principles

[25] Both parties remind the Court of the general principle of interpreting Manitoba's civil procedure Rules at Court of King's Bench Rule 1.04; that the "rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits."

[26] Farmers invokes numerous other Rules of civil procedure in support of their motion. Specifically, respecting motions to strike pleadings such as those at issue:

- Rule 25.11(1)(a) provides the court may strike out all or part of a pleading on the ground the pleading "may prejudice or delay the fair trial of the action";
- Rule 50.09(1) provides a court may strike out a pleading where a party, without reasonable excuse, fails to comply with a direction of a judge such as producing documents, answers or reports by a set date; and
- otherwise, the court may strike out pleading where the party fails to produce documents (Rule 30.08(2)) or fails to answer undertakings (Rule 34.14) or fails to answer interrogatories (Rule 35.04(3)).

[27] Precision also points to Rule 53.09, which sets out that where there has been a failure to serve an expert report (Rule 53.03(3)), leave to admit the report "shall be granted on such terms as are just and with an adjournment if necessary, unless to do so

will cause prejudice to the opposite party or will cause undue delay in the conduct of the trial." To be clear, Precision has not filed a motion for leave to admit late filed expert evidence (perhaps because the evidence is not yet available) or other evidence the Rule may apply to. As I understand it, they reference Rule 53.09 as part of their response to the Court's consideration of refusing to allow such evidence.

[28] Both parties rely on jurisprudence emanating from ***Cobbe's Plumbing & Heating Ltd. v. Westfair Properties Ltd.*** 2004 MBQB 31, as reiterated 10 years later in ***Biomedical Commercialization Canada Inc. v. Health Media Network Inc.*** 2018 MBQB 188, for the factors to be considered in weighing or balancing a decision to strike a pleading for noncompliance with civil procedure rules.

[29] In ***Cobbe***, after a thorough review of limited precedents, including several from the Ontario Court of Appeal, and analogous situations of striking a claim for delay, Greenberg J. summarized the applicable principles at para. 25:

[25] Having regard to the above cases and the wording of the Court of Queen's Bench Rules, I would summarize the applicable principles in determining the appropriate sanction under Rule 34.14 to be:

1. The application of Rule 34.14 must be consistent with the general principles of interpretation set out in the Rules, in particular Rule 1.04 which mandates that the Rules be interpreted "to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits."
2. The overarching consideration for the court is to strike an appropriate balance between the right of the respondent to have its action determined on the merits and the right of the applicant to insist on compliance with the Rules and court orders with a view to facilitating the "flow" of the case.
3. Striking a pleading is an exceptional remedy which should be reserved for the most extreme cases of non-compliance with the Rules. A review of the cases suggests that the sanction would rarely be used for an isolated incident of non-compliance but is more likely

where there has been a course of conduct which indicates that a court order giving the respondent a "second chance" is unlikely to be complied with.

4. The court should look at the explanation of the respondent for non-compliance. That explanation may indicate not only the seriousness of the default (for example, whether it was deliberate as opposed to inadvertent) but also whether the respondent is likely to comply with further court orders.

5. The court should look at the prejudice which the non-compliance has caused the applicant and whether that prejudice can be remedied in some other way, for example, through an award of costs.

6. There is some suggestion in the cases that the merit of the respondent's case is also a relevant factor. Although not relied on as a deciding factor in any case, there is a suggestion in some cases, where the court refused to strike a pleading, that the result might have been different if the respondent's case were completely without merit.

While **Cobbe** dealt with a different section of the Rules than here, these principles apply to almost any motion to strike a pleading for non-compliance with procedural rules.

[30] I also note the Ontario Court of Appeal decision of **Falcon Lumber Limited v. 2480375 Ontario Inc. (GN Mouldings and Doors)**, 2020 ONCA 310, where the Court struck a pleading for a party's non-compliance with documentary disclosure and production obligations. The Court observed at para. 55 that **Hryniak v. Mauldin**, 2014 SCC 7, "requires judges to actively manage the civil legal process in line with the principle of proportionality: ... Orders to strike out pleadings are one such means by which to ensure that the civil justice process delivers justice that is proportionate, timely and affordable."

[31] Also, in *Falcon Lumber*, the Court summarized the principles for striking pleadings in such situations:

[57] To summarize, several principles guide the exercise of a court's discretion to strike out a party's claim or defence under r. 30.08(2) for non-compliance with documentary disclosure and production obligations:

- The remedy is not restricted to "last resort" situations, in the sense that it must be preceded by a party breaching a series of earlier orders that compelled better disclosure or production. However, courts usually want to ensure that a party has a reasonable opportunity to cure its non-compliance before striking out its pleading;
- A court should consider a number of common sense factors including: (i) whether the party's failure is deliberate or inadvertent; (ii) whether the failure is clear and unequivocal; (iii) whether the defaulting party can provide a reasonable explanation for its default, coupled with a credible commitment to cure the default quickly; (iv) whether the substance of the default is material or minimal; (v) the extent to which the party remains in default at the time of the request to strike out its pleading; and (vi) the impact of the default on the ability of the court to do justice in the particular case;
- The merits of a party's claim or defence may play only a limited role where breaches of disclosure and production obligations are alleged as one would reasonably expect a party with a strong claim or defence to comply promptly with its disclosure and production obligations;
- In considering whether an order to strike out a pleading would constitute a proportional remedy in the circumstances, a court should consider:
 - the extent to which the defaulting party's conduct has increased the non-defaulting party's costs of litigating the action, including the proportionality of those increased costs to the amount actually in dispute in the proceeding; and
 - to what extent the defaulting party's failure to comply with its obligation to make automatic disclosure and production of documents has delayed the final adjudication of the case on its merits, taking into account the simplicity (or complexity) of the claim and the amount of money in dispute.

While expressed differently, and fleshing out a number of common-sense considerations in the second point, these principles are essentially similar to those set out in **Cobbe**.

[32] **Cobbe** was considered by the Manitoba Court of Appeal in **Hanson v Hildi Warkentin Tax Ltd et al**, 2017 MBCA 99, and **National Concrete Accessories Canada Inc v AAA-Zaid**, 2017 MBCA 28, both cases dealing with striking a pleading as a sanction for noncompliance of the expedited action rules. In each instance the Court of Appeal upheld the motion judges' exercise of discretion in striking the pleadings, whether for breaching directions once in **National Concrete**, or repeatedly not complying with disclosure obligations and directions in **Hanson**.

[33] Similar to the Ontario Court of Appeal in **Falcon Lumber**, the Manitoba Court of Appeal in **Hanson** expressed its views of the modern litigation environment at para. 20:

[20] In summary, we are of the view that it would be inappropriate to fetter the discretion of a case conference judge by either requiring a warning or setting out a range of circumstances required before striking a pleading. Both counsel and litigants have to understand that the litigation landscape is changing in all areas of the law. If litigation is allowed to drag on, the resolution of the case is delayed, wasting the resources of the parties and of the courts. This leads to a denial of access to justice for the parties to the specific litigation and for other parties waiting to have their matters heard. Counsel have been on notice for some time, both as a result of changes in court rules and practices and from the jurisprudence on this issue, that unnecessary and unexplained delays will not be tolerated.

[34] The **Cobbe** principles were noted in an Endorsement dated June 30, 2017, in **EllisDon Corporation v. Winnipeg Airports Authority Inc.**, File No. CI 11-01-74938, wherein Joyal C.J. struck out the entirety of a statement of claim shortly before trial. At para. 24 the Court also observed:

[24] In dealing with situations of noncompliance, while acknowledging that a court must carefully consider the effectiveness of alternate sanctions and the potential practicality and utility of "progressive discipline", there are some circumstances, like those in the present case, where the nature of the obligations

on the parties are so well-known given the nature of the proceedings (and, as here, and the nature of the case management order), that serious sanctions (in the event of noncompliance) should not take any party by surprise. ...

Application of the Principles

[35] I start by recognizing what is trite: striking a pleading wholly or partially, as in this situation, deprives the defaulting party of their day in court. It is an exceptional remedy, to be used cautiously. On the flipside, increasingly courts and the public recognize that the justice system is strained to do justice; the non-defaulting party, or access to justice more generally, cannot be straitjacketed by disinterested or distracted or disorganized or disingenuous litigants. Collectively, systemic issues including the high cost of litigation, the effort on parties and witnesses required to marshal a case, and psychological toll on them, demands no less.

[36] As Rule 1.04 demands, parties are expected to focus their case strategy, tactics and resources to “secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.” Precision has fallen significantly short of this mark. It, as distinct from its counsel, is the author of its own misfortune for what is a predictable or foreseeable outcome since the time it undertook the Virginia action in 2021, which was relatively concurrent to when it formally amended its pleading for the infringement claim.

[37] Bearing in mind the context set out in the Introduction herein, I turn to the interplay of the evidence on the motion and legal principles or factors in judiciously exercising discretion to strike part of a claim, knowing the defaulting party’s claim will not be adjudicated on its merits.

[38] First, noncompliance with the Rules by failure to appropriately respond with answers to undertaking from discoveries and interrogatories is conceded. Without detailing each instance, this noncompliance is repetitive, extensive and, most critically, material in that much of it deals with vital points central to the infringement claim. Without proper, fulsome and timely responses Farmers remains at a serious disadvantage in countering the specifics of the case it must meet.

[39] As well, it is conceded the Court's directions endorsing counsels' agreements imposing dates for specific outstanding items to be completed was breached by Precision. Notably the Court's January 2025 directions, when optimistically there remained time to salvage the trial. The Court's direction and involvement became necessary as previous dates agreed between counsel for various steps were not adhered to and became moving targets.

[40] Of note, Precision's principal, Ms. Bonk, was fully involved when I set the January 2025 directions during several case conference meetings. In my January 17 memorandum I stated:

Trial dates of October 20 - November 21, 2025, remained fixed.

I am very concerned with the litigation steps that have, or have not, taken place thus far. The substance of these claims dates back a decade, as does the initiation of litigation. Much has been done in the meantime, but by far the majority of that has not meaningfully advanced litigation of the core issues. This case must come to a conclusion.

I again implore [Precision] to ensure it has a realistic, objective assessment of liability and damages, along with a clear understanding of the necessary procedural steps that need be taken in preparation for trial, and its owners to prosecute the counterclaim now that that is the only claim for trial. A dispassionate and fact-based assessment of all of the parts is necessary so the case can proceed in as pragmatic a way as possible

One of the outstanding items was Precision's expert report, which I agreed to be due May 16 and then May 23, 2025. This left little time for Farmers to be able to respond with its expert but was likely doable, hence Farmers agreed to the date. To reiterate, the Precision report has not yet surfaced. Given the importance of the damage assessment and the anticipated complexity of it, realistically, now there is insufficient time before the trial for Farmers to tackle it with a responding expert. In early 2025, I expressly warned Ms. Bonk that Farmers might move to strike out pleadings.

[41] Two other points. One, a January 2020 Court disclosure order was also breached by Precision. As this order dealt with the second Manitoba action, which has now been abandoned by both parties, the breach is not significant to the trial. Yet, it is another demonstrated breach. Two, I would be remiss if I did not acknowledge that throughout the litigation, and partially in defence of this motion, Precision pointed to Farmers, with some degree of detail and possible merit, not living up to its disclosure obligations. However, that is not an issue on the motion before me. Moreover, Farmers' complaints on the motion involve what has, at least for almost the last five years since the infringement claim amendments, been a major if not defining legal and evidentiary issue of the trial.

[42] Second, Precision says it has valid explanations, or reasonable excuses, for its noncompliance. At para. 48 of their brief they state:

[Precision's] noncompliance is the product of certain circumstances outside of its control, mainly the loss of its prior litigation funding and the time it took to secure new litigation funding, certain medical issues that confronted PWS's principal Ms. Bonk in 2024, and [Farmers] failure to comply with its disclosure obligations in this matter.

I disagree these matters were beyond its control and do not find them to be reasonable excuses or explanations for their noncompliance.

[43] *Litigation Funder*. Precision had third-party private litigation funding from October 2021 until July 2023. The Virginia action had been finally dismissed in February 2023. A new external funder was secured in late April 2025, facilitating current counsel to assume conduct of the matter. Ms. Bonk now boldly deposes that in the 21 months between litigation funders, Precision “was not in a position to pay [counsel’s] fees and was therefore not in a position to instruct [counsel] to undertake all the work required to advance the litigation”. This is surprising and unacceptable:

- i. while I accept Precision did not have an external third-party litigation funder for about 21 months, it provided no other cogent evidence as to its financial wherewithal or inability to fund this action litigation since 2020-2021. I acknowledge Galton Corporation was put into bankruptcy but that has not changed Precision pursuing this litigation;
- ii. regardless, without question, after amending its counterclaim in early 2021 for the infringement claim, Precision devoted substantial funds provided by its first litigation funder to the Virginia action, a USA version of this action. Precision is being sued for the return of \$1.7 million (USD). Precision funding litigation in Virginia, rather than focusing their attention, energy and litigation funds to the original Manitoba action, was their tactical choice. It was clearly within their control. The Manitoba action was always the foundational action, the home

jurisdiction of the key players, activity and evidence, and Manitoba was the governing law and venue for dispute resolution.

Farmers pointed out an analogous situation in ***Canadian Star Development Corp. v. 0712276 B.C. Ltd.***, 2018 BCSC 871, at para. 59. I agree with the sentiments:

[59] In the absence of any specific financial disclosure about these other overseas ventures, the reasonable inference that arises is that Mr. Sial and Mr. Dhanoa had sufficient resources to pursue these business ventures, which they chose to prioritize in favour of pursuing this litigation. The circumstances before me are similar to those found in *Ed Bulley Ventures Ltd. v. The Pantry Hospitality Corporation*, 2014 BCCA 52. There, at paras. 42-43, 46-48, the court upheld the chambers judge's conclusion that, when a party chooses to pursue other ventures, both in terms of available time and money, that does not constitute a reasonable excuse. In that case, as here, the plaintiff argued that pursuing these other matters was financially necessary to fund the litigation: para. 25.

- iii. throughout the approximate five-year life of the infringement claim, in addition to the Virginia action Precision also devoted resources to initiating the Ontario suit and the Kansas suit. The Court had no knowledge of this critical funding issue until 2025. I understand opposing counsel also did not. When I held the first case management conference with then new counsel, MLTA, on September 7, 2023, by Ms. Bonk's evidence on this motion, obviously funding was already a live problem for Precision (although I am unaware what they may have revealed to their counsel at the time). And, counsel recognized there was significant work ahead to be trial ready by October 2025, roughly 25 plus months away, yet no such funding obstacles were disclosed then or after. In setting trial dates, the parties committed to each other, and to the Court, to be ready. I also directly alerted Precision to the damages expert issue when I wrote at that time: "I also

cautioned counsel to conduct a realistic damages assessment, preferably sooner than later, so the case can proceed in as pragmatic a way as possible.” While perhaps not disclosed in the record for this motion, this was not my first such caution.

[44] *The Medical Excuse*: The evidence of Ms. Bonk’s medical issues, three unspecified surgeries from February through October 2024 with unspecified complicated recoveries, is too generic to be critically assessed as a reasonable excuse for not attending to these matters. Against this, affidavit evidence (see Sparrow, June 10, 2025, Ex. H & T) detailed numerous other legal matters Ms. Bonk dealt with during this timeframe, that appear, on the surface, to require similar attention, research and focus as would responding to undertakings and other disclosure. All in, I am not satisfied Ms. Bonk put forth a reasonable effort to attend to this action.

[45] *Farmers Disclosure Failures*: I have already briefly addressed Precision foisting blame on Farmers as a basis for Precision’s noncompliance. I do not accept it as a sufficiently valid excuse.

[46] Since the stay, Precision has not taken any motions for better production or answers except to defend Farmers’ complaints. Nor have they availed themselves of my case management. In any event, clearly by September 2024, Farmers responded to many outstanding issues. Of note as well, Precision just served “a targeted set of 35 written interrogatories on Farmers Edge intended to streamline discovery” with the primary focus on “obtaining evidence relative to Farmers position that it developed FarmCommand independently and without copying any [Precision’s] technology and related claims”.

[47] Given all of this, I cannot fully judge the materiality Precision's remaining complaints of Farmers conduct, particularly the "chicken and egg" analogy raised by Precision's counsel in their brief except to say that it feeds into my concern that Precision (again, as distinct from its counsel) has been distracted by the other related actions and other unrelated litigation matters and is disorganized.

[48] All in, Ms. Bonk and Precision are sophisticated, or at least, experienced, litigants. To date they have had three different sets of counsel on the Manitoba action, and counsel for the other similar actions. Precision was not suitably transparent about either funding or medical issues, both of which strain credibility as reasonable explanations. None of the explanations stand scrutiny as matters outside their control as a reason for noncompliance. At best, the explanations may demonstrate Precision was not disingenuous about truly prosecuting the Manitoba action, but their conduct appears to be the result of forum shopping in the USA. Their conduct is not inadvertence but self-induced distraction and disorganization. Since succeeding in 2020 with its motion to re-amend to include the infringement claim, Precision had much more control over prosecuting this action than it posits. This leads to one incidental point.

[49] Precision prefaces much of its argument that of the total 10 years the Manitoba action has been litigated, only just over three years have been "active" litigation *vis-à-vis* the infringement claim. Implicitly then, along with its explanations as above noted, the noncompliance should be cast against a three-year litigation period, rather than anything beyond. I disagree.

[50] As Precision notes, it learned of Farmers conduct which forms the core of the infringement claim in 2019, and successfully moved to amend its counterclaim for this in 2020, over five years ago. While the stay of proceedings was in place for almost two years, that does not equate to Precision having time off rather than doing the legwork necessary to prove its claim in Manitoba, or Virginia, Ontario or Kansas for that matter (bearing in mind the basis of Farmers' liability and damages was all the same and would have to be disclosed in any of those actions). Yet, five years later, it wants leeway.

[51] Fourth, can Precision remedy the noncompliance? Maybe with more time but definitely not in a manner that will put Farmers in the trial-ready position it should now be in, or even, I infer, when the trial starts in about five weeks. Numerous critical answers to undertakings and interrogatories have yet to be answered, and others must be reworked so they are properly responsive. Whenever Precision's expert report is ready, even if in the next few days, it is not reasonable to believe Farmers will be able to properly respond to it in time for the trial. Further, despite the *bona fides* of current Precision counsel, and the considerable efforts they are expending to address the deficiencies and noncompliance, given how Precision has handled this claim and conducted itself since 2021, I have little faith it will produce to their counsel the detailed, precise information, data or work product that is needed.

[52] Further, as reviewed during the motion hearing, even more recent attempts to remedy these failures are, in part, seriously deficient. For example, recently Precision answered 42 undertakings and interrogatories by lumping them together in one 21-page, single spaced, narrative answer which still did not detail key items, such as software or

operating algorithms, in a way that Farmers could assess, for example whether such information or technology was proprietary or confidential to Precision or alternately, for example, openly available from public university research. As to any answers that may be buried in the 21-page narrative, Farmers would have to tease those out. Standard trial procedures such as focused cross-examination and read-ins would be utterly unwieldy, if not impossible. I appreciate Precision's counsel explanation for this approach, given its client and the state of the material it is working with. Yet, they also understand my assessment of how deficient the approach is and will have to redo the answers. I do however recognize that numerous other answers have been appropriately provided by Precision.

[53] Based on much of what I have outlined in this judgment, Precision itself has been too distracted or disorganized to credibly and reliably fulfill its litigation obligations to Farmers. They have not prioritized the Manitoba action with demonstrated, tangible, necessary deeds to advance this action. With Ms. Bonk's own admission Precision was not in a position to pay legal fees between July 2023 and April 2025 and "was therefore not in a position to instruct MLTA [counsel] to undertake all the work required to advance the litigation", along with the lack of transparency of this to opposing counsel or the Court, especially when I set the trial dates, it is not unfair to conclude Precision essentially ragged the puck for those 21 months.

[54] Fifth, as to prejudice, by the end of the oral hearing of the motion, it was relatively clear to everyone that I either had to grant Farmers the relief they seek or adjourn the trial, even though neither party actually requested an adjournment.

[55] In fact, Farmers was adamant that they could not sustain an adjournment. Rather, they insist on bringing this litigation to an end one way or the other. They waited nearly two years while related parties were sued in other jurisdictions. They have prepared over the last two years for the scheduled trial which Precision asked for and agreed to. In the meantime, as noted in the Ontario action, its fortunes have taken a material turn for the worse. They say Court directed trial dates must be taken seriously: I should grant their motion to strike the pleadings, or they will assume the risk of going to trial knowing their defence will be compromised, if not severely so.

[56] There are two types of prejudice at play:

- i. I am satisfied Farmers will suffer actual prejudice if the trial goes ahead as set, with either the current state of answers to undertakings and interrogatories, or whatever may be done to cure the noncompliance. Simply put, for core issues and evidence, it is too little, too late. To let the trial proceed and allow the contested evidence into the trial, whenever it may be produced, amounts to the same as trial by ambush. For both liability and damages, Farmers' defence will be compromised in repelling Precision's claims and in putting forward an affirmative defence position.
- ii. Farmers is also exposed to inherent prejudice at this point, and especially if an adjournment were ordered. I will not repeat the impacts of Precision's strategic or tactical litigation choices since the start of the Virginia action in 2021. Otherwise, the allegations generally, and on the specific facts pled, are serious. They are of the ilk that would negatively affect the reputation of any business or

individuals being sued. As to the evidence, my exposure to it on this motion and otherwise as the case management judge demonstrates it is dense, complicated and nuanced. After these years, and particularly if there were another two-year delay by an adjournment, it will be difficult for witnesses to coherently explain these events and the technical aspects of the proprietary or confidential information.

- iii. A final point, Precision suggests that Farmers requesting a stay in 2021 defeats its position; if it has been prejudiced by delay for example, it could have had an earlier adjudication if it had not asked for the stay. I disagree. The reasons for the stay are clear in two judgments, which are contrary to Precision's submission. The stay was imposed for good, clear reasons that Precision fully understood when it decided to continue to pursue reconsideration and then appeal the first judge's dismissal of the Virginia action instead of prosecuting the Manitoba action.

Thus, Farmers' prejudice is fairly clear no matter the outcome.

CONCLUSION

[57] In sum, the only appropriate and just course of action at this point for this proceeding is to either strike the infringement claim pleading as requested or adjourn the trial.

[58] The lesser step of not allowing Precision to adduce the evidence at issue is wholly unsatisfactory as I foresee it will result in: many skirmishes about specific pieces of evidence; an incomplete evidentiary foundation and record; prolonged and confusing testimony and evidence, and; ultimately leaving the Court at a significant disadvantage

to conduct a fulsome and proper adjudication of the claim and defence. It would be a mess. In any event, Precision says doing so “certainly” would not allow an adjudication on the merits of the claim.

[59] I find it would be unjust to Farmers to adjourn the trial for another two years. In this situation, they are entitled to the finality of the trial as scheduled.

[60] I have considered Rule 1.04, the other specific Rules at play in this situation and the overarching factor of an appropriate balance between the right of Precision to have its action determined on the merits and Farmers’ right to compliance with the Rules. I accept that striking a pleading is an exceptional remedy and that Precision’s infringement claim may have merit, in that I cannot say it is frivolous or without merit.

[61] Further, to summarize the relevant factors set out in ***Falcon Lumber*** and ***Cobbe’s***, I find Precision’s noncompliance on the whole, to be closer to deliberate than inadvertent, given its litigation choices; its failures are clear and unequivocal; it has not provided reasonable explanations, nor can I find a credible commitment by Precision, as opposed to its counsel, to appropriately cure the noncompliance quickly; especially as the substance of the noncompliance is material and extensive, dealing with key evidence. I am unimpressed with Precision’s conduct since the stay and their lack of candor. As well, I have found Farmers is prejudiced. Finally, the noncompliance will impact the Court’s ability to do justice in this action. Ultimately, all of this leads to only one conclusion.

[62] Precision’s infringement counterclaim against all defendants set out at paras. 28(i) to 28(k), paras. 37.1 to 37.14, paras. 47 through 53, and paras. 53.1 and 53.2 of Precision’s re-amended statement of defence and counterclaim is hereby struck out.

[63] Farmers shall have costs on the motion, which may be spoken to if not agreed.

[64] Another case management meeting should be scheduled forthwith to address the remaining trial issue of breach of contract for failing to pay accounts.

_____ J.