

PRACTICE

JUDGMENTS AND ORDERS

Summary Judgment

Timing condition — Defendant/plaintiff by counterclaim (Farmers Edge Inc.) submitting notice of motion for summary judgment dismissing patent infringement action brought by plaintiff/defendant by counterclaim (Farmobile, LLC) — Notice of motion referred to Court for directions as to filing pursuant to *Federal Courts Rules*, SOR/98-106, r. 72 because notice potentially not complying with r. 213(1) — R. 213(1) requiring party bringing motion for summary judgment to do so any time “before the time and place for trial have been fixed” (timing condition) — Trial date set down in this matter on three separate occasions — Trial adjourned *sine die* as result of COVID-19 pandemic — Farmers Edge arguing, *inter alia*, timing condition not engaged because no trial date currently scheduled — Farmobile submitting that timing condition triggered because trial set down on three occasions — Also arguing Farmers Edge’s motion for summary judgment should not be permitted to proceed under *Federal Courts Rules*, r. 55 because it will not save resources or dismiss its claim — Whether timing condition engaged — If timing condition engaged, whether Court should allow summary judgment motion to proceed under r. 55 (whereby Court may vary rule or dispense with compliance with the *Federal Courts Rules* in special circumstances) — R. 213(1) stating that “[a] party may bring a motion for summary judgment or summary trial on all or some of the issues raised in a pleading at any time after the defendant has filed a defence but before the time and place for trial have been fixed” — Timing condition, properly interpreted, preventing Farmers Edge from filing motion for summary judgment at this stage, as of right, because trial date previously fixed (three times) in proceeding — Requirement on each party to continue advancing their case to trial not suddenly disappearing or changing simply because trial date temporarily adjourned *sine die* due to exceptional, unforeseen circumstances — Parties expected to maintain their focus on trial preparation — Preparation of evidence for, hearing of, summary judgment motion running contrary to *Federal Courts Rules*, r. 3 objective to bring trial on as quickly as possible — R. 213(1) intended to preclude party from bringing motion for summary judgment, without leave of Court (r. 55), after first trial date fixed, even if later adjourned — Open to Court under r. 55 to permit motion for summary judgment to proceed notwithstanding that trial date already fixed — Factors in *Hoffmann-La Roche Limited v. Pfizer Canada Inc.*, 2018 FC 932 considered — Farmers Edge not discharging its burden of satisfying Court that significant savings of costs, time, and efficiencies made by permitting motion to proceed — Even if motion succeeding, not resulting in full adjudication of every issue in litigation — Farmobile suffering prejudice if summary judgment motion allowed to proceed — Farmers Edge not bringing its summary judgment motion in timely manner — Farmers Edge’s request to proceed with motion for summary judgment dismissed.

FARMOBILE, LLC V. FARMERS EDGE INC. (T-449-17, 2020 FC 688, Case Management Judge Kathleen M. Ring, reasons for order dated June 15, 2020, 13 pp.)