



[2021] 3 F.C.R. D-22

## PRACTICE

### REPRESENTATION BY ATTORNEY OR SOLICITOR

Motion by defendant/plaintiff by counterclaim Farmers Edge Inc. (Farmers Edge) for order that Notice of Change and Appointment of Solicitor (Notice) filed by plaintiff Farmobile, LLC (Farmobile) be struck, for costs of motion at heightened scale in any event of cause, in event motion opposed — Since outset of underlying patent infringement action, Farmobile represented by four solicitors from law firm of Gowling Lafleur Henderson, successor Gowling WLG (Canada) LLP — Two of four solicitors leaving Gowling, forming Seastone IP LLP (Seastone) — In its notice Farmobile appointing Seastone as solicitor of record in addition to Gowling — Farmers Edge submitting that law requires Farmobile to elect single solicitor of record — That “irregular” Notice not contemplated by *Federal Courts Rules*, SOR/98-106 (Rules), not complying with any Federal Court form — Relying, *inter alia*, on fact that rr. 123–125 specifically referring to “the”, “a” solicitor of record in singular — Whether Rules allowing Farmobile to have two solicitors of record — If not, whether special circumstances existing that justify Farmobile having two solicitors of record — Farmobile not entitled, as of right, to have co-solicitors of record under Rules — When read as whole, Rules evincing contrary intention to application of *Interpretation Act*, R.S.C., 1985, c. I-21, s. 33(2)<sup>1</sup> to phrase “solicitor of record” — Rules, forms provide that court documents shall bear signature of “solicitor” — This interpretation of Rules, i.e. that “a solicitor” meaning just that, consistent with approach taken in *Housley v. Barrie (Police Services Board)*, 2002 CanLII 53247 (ONSC) — Interpretation of *Rules* advocated by Farmobile conflicting with well-established case law — General rule excluding separate representation of co-plaintiffs long recognized in English law — However, r. 55 expressly permitting Court to vary or dispense with compliance with rule “in special circumstances” — Here, Farmobile requested amendment to Amended Protective Agreement to add Seastone for its solicitors have access to confidential information— Concern regarding access by Seastone to confidential information avoided if leave granted to Farmobile to be represented by Gowling, Seastone — No evidence of inconsistent positions, duplication of efforts or otherwise any evidence of Farmobile’s counsel’s inability to co-operate — Special circumstances therefore existing in this case to justify granting leave to Farmobile to be represented by two solicitors of record — Motion dismissed.

FARMOBILE, LLC V. FARMERS EDGE INC. (T-449-17, 2021 FC 1200, Case Management

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<sup>1</sup> S. 33(2): “Words in the singular include the plural, and words in the plural include the singular.”

Judge Ring, reasons for order dated November 9, 2021, 10 pp.)