

Vero UK Limited v. Sherwood Innovations Inc., 2026 FC 876 (CanLII)

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Docket: T-84-24

Citation: 2026 FC 876

Toronto, Ontario, June 29, 2026

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

**VERO UK LIMITED, PLANIT SOFTWARE LIMITED, AND HE
XAGON MANUFACTURING INTELLIGENCE, INC.**

Plaintiffs

and

SHERWOOD INNOVATIONS INC.

Defendant

REASONS AND ORDER

I. Overview

[1] The Defendant, Sherwood Innovations Inc. [Defendant], brings this motion for summary judgment, or alternatively, for an order striking the claims brought against it for copyright infringement by the Plaintiffs, Vero UK Limited and Hexagon Manufacturing Intelligence, Inc. [Hexagon]. Vero UK, Hexagon and a third plaintiff, Planit Software Limited [Planit] [collectively, the Plaintiffs], allege that the Defendant has copied the source code and object code of version 2021 of their VISI software [collectively, the Works] without their consent or authorization. The Defendant denies infringement.

[2] Since the issuance of the original statement of claim, the Plaintiffs' corporate structure has evolved, and agreements related to the Plaintiffs' ownership and licencing rights in the Works have been disclosed on discovery. Based on these developments, the Defendant now alleges that Vero UK as a dissolved UK company lacks standing to bring the action and Hexagon lacks the capacity to make a claim against the Defendant by reason that its assignment of interest in the Works does not comply with [subsection 13\(4\)](#) of the *Copyright Act*, RSC 1985, c C-42 [*Copyright Act*] as it is not in writing.

[3] For the following reasons, I am dismissing the Defendant's motion. The Defendant has not shown that the relief sought is necessary or appropriate. The Plaintiffs have agreed to remove Vero UK as a plaintiff and they have raised a novel issue concerning Hexagon's standing as a licensee that is best determined at trial.

II. Facts

[4] The Plaintiffs served the original Statement of Claim on January 24, 2024. The named plaintiffs were Vero UK Limited [Vero UK] as owner of the Works and Vero Software, Inc. [Vero USA] as Vero UK's distributor and licensee.

[5] On April 24, 2024, the Plaintiffs served an Amended Statement of Claim, naming Vero UK and Hexagon as plaintiffs. The Amended Statement of Claim stated that Vero USA merged with

Hexagon on or about June 30, 2021, on which date Hexagon became Vero UK's exclusive distributor and licensee of the Works in the United States and Canada. The Defendant consented to this amendment. It now says that it did so not knowing that the written distribution agreement dated January 1, 2017 [Distribution Agreement] under which Hexagon obtained its licencing rights in the Works, provides for rights in the "Territory" which is defined to be the United States with no mention of Canada.

[6] Further corporate developments necessitated further pleadings amendments. On November 25, 2024, Vero UK entered into a Business Transfer Agreement with Planit whereby Planit acquired the Works and other assets of Vero UK as well as the accompanying intellectual property rights under an IP Assignment Agreement. On March 25, 2025, Vero UK was dissolved. The Plaintiffs brought a motion for leave to file a Further Amended Statement of Claim which reflects these changes and adds Planit as a named plaintiff.

[7] At the same time, the Defendant filed this motion arguing that it should be heard ahead of the Plaintiffs' pleadings motion. It submitted that because Vero UK was dissolved and Hexagon lacked standing, the action should be dismissed as there was no plaintiff capable of bringing the action.

[8] By Order dated June 11, 2026, Associate Judge Moore [Motions Judge] determined that the Plaintiffs' pleading motion should be heard first, and the Defendant's motion needed to be heard by a judge of the Federal Court. The Motions Judge granted the Plaintiffs' motion and allowed the Further Amended Statement of Claim. The current pleading therefore names Vero UK, Hexagon and Planit as Plaintiffs.

[9] Attached to the Plaintiffs' responding written representations on this motion is a proposed Further Amended Statement of Claim which removes Vero UK as a plaintiff and amends the name of Hexagon to Hexagon Manufacturing Intelligence LLC [Hexagon LLC] to reflect its conversion to a limited liability company on February 19, 2026.

III. Preliminary Issues

[10] Both parties have raised an issue with the other's affidavit evidence filed on this motion.

[11] The Plaintiffs submit that the Defendant's affidavit from an associate, David Lee [Lee Affidavit], includes paragraphs that are inadmissible.

[12] First, at paragraphs 20 and 21, Mr. Lee purports to provide evidence of United Kingdom company law based on information and belief from Counsel for the Defendant. I agree that this evidence is inadmissible as the foreign law of the United Kingdom is a question of fact that should have been proved through expert evidence (*International Air Transport Association v Canada (Transportation Agency)*, 2024 SCC 30 at para 65).

[13] Second, the Plaintiffs submit that portions of the Lee Affidavit offend [Rules 81\(1\) and \(2\)](#) of the *Federal Courts Rules*, SOR 98/106 [*Federal Courts Rules*]. I agree and will read the Lee Affidavit as excluding the following improper paragraphs:

- (i) Paragraphs 2, 3 and 22, which provide facts regarding the Plaintiffs for which Mr. Lee has no personal knowledge and his source of knowledge is stated to be Counsel for the Defendant who also has no personal knowledge of these facts;
- (ii) Paragraphs 4 (save for Exhibit A which is allowed), 15 (save for Exhibit E which is allowed), 16, 19 (save for Exhibit G which is allowed), 24, 25, 26, 27, 28 and 29, in which Mr. Lee provides either a factual or legal characterization of an attached document as it relates to a contested issue on the motion, which constitutes argument (*Canada (Attorney General) v Quadrini*, 2010 FCA 47 at para 18); and
- (iii) Paragraphs 18 (save for Exhibit F which is allowed), 37, 38, 39 and 43, which constitute improper hearsay evidence from Counsel for the Defendant on a contested issue.

[14] The Plaintiffs for their part, filed the affidavit of Andrew Harris, a current Director of Planit and a former Director of Vero UK, before its dissolution [Harris Affidavit]. The Harris Affidavit provides the background to the ownership and licensing of the Works. Critically, Mr. Harris advises that in addition to the Distribution Agreement, Vero UK and Vero USA also had an unwritten agreement entered into on or about the same day that effectively extended the

Distribution Agreement for the territory of Canada. He advises that Vero USA, Hexagon, Planit and Hexagon LLC have all operated under the same distribution arrangements in connection with the sale and distribution of software licences to customers in the United States and Canada.

[15] The Defendant takes issue with the Harris Affidavit and his omission of the dates upon which he was a Director at Vero UK, which the Defendant argues leaves the Court with no basis to find that he has personal knowledge of the matters to which he deposes. The Defendant suggests that this was a deliberate omission which was intended to defeat the motion by creating a genuine issue. This allegation is hard to reconcile with the Defendant's submission to the Court that the Defendant is not challenging Mr. Harris' credibility and the fact that the Defendant elected not to cross-examine Mr. Harris.

[16] I find that Mr. Harris' statement that he has personal knowledge of the facts to which he deposed, to be supported. Mr. Harris is well positioned to speak to the corporate history of the Plaintiffs as a director of two of the named plaintiffs spanning both before and after the dissolution of Vero UK, who is identified as the original owner of the Works.

IV. Issues

[17] The issues for determination as stated in the Defendant's Notice of Motion are:

- A. Whether summary judgment should be granted dismissing the claims of Vero UK and Hexagon by reason that Vero UK lacks legal capacity and Hexagon lacks standing to bring the action; and
- B. Alternatively, whether the claims of Vero UK and Hexagon should be struck pursuant to Rule 221(a) and/or (c) of the *Federal Courts Rules*.

V. Analysis

A. Should the Court grant summary judgment?

[18] The Defendant bears a heavy burden to show that there is no genuine issue for trial related to the Plaintiffs' standing or capacity in this action to assert copyright in the Works. Novel issues and

questions of law are not a bar to the granting of summary judgment where they can be dealt with as easily as they would be after a full trial (*0871768 B.C. Ltd v Aestival (Vessel)*, [2014 FC 1047](#) at para [58](#)).

[19] The Plaintiffs, for their part, do not need to show that they will succeed on the merits; rather, they must put their best foot forward and present evidence that demonstrates that there is a genuine issue for trial (*Cavan Speciality Advertising Ltd v Promotions Universelles inc (Universal Promotions)*, [2025 FC 205](#) at para [53](#)).

(1) Vero UK's status as a plaintiff has been resolved

[20] The Defendant's motion when originally drafted, sought dismissal of the action on the basis that the only two named plaintiffs lacked legal capacity and standing. However, before the motion was heard, the Plaintiffs' pleading motion was granted by the Motions Judge, and Planit was added as a named plaintiff. Not only is the proverbial "knock out punch" dismissing the action not possible, but the Plaintiffs have proposed to voluntarily remove Vero UK as a plaintiff. A proposed Further Amended Statement of Claim attached to the Plaintiffs' written representations, confirms its removal. When asked at the hearing why the Defendant was continuing to pursue the motion as against Vero UK in the face of this concession, Counsel for the Defendant asked that the Court issue a ruling to the effect that at the time that Vero UK brought the Plaintiffs' motion to amend its pleading, it was dissolved and therefore lacked legal existence and the capacity to have brought the motion.

[21] I decline to grant this relief. First, no such relief was sought in the Defendant's Notice of Motion. Second, Counsel for the Defendant was unable to articulate what practical effect such a declaration would have in circumstances where the time to appeal the Order of the Motions Judge has expired (*Shot Both Sides v Canada*, [2024 SCC 12](#) at para [68](#)). Finally, the relief sought would require the interpretation of the United Kingdom's *Companies Act 2006* (UK), 2006, c 46, in order to find that it does not contain any provision permitting a dissolved corporation to continue legal

proceedings following its dissolution. As I have indicated, I consider the effect of Vero UK's dissolution to be a question of fact that had to be proved by way of expert evidence.

(2) A novel issue has been raised with respect to Hexagon's status as a plaintiff

[22] The Defendant submits that Hexagon lacks standing as it has not established any interest in the Works in Canada given that there is no written assignment agreement pertaining to Canada, which is required by [subsection 13\(4\)](#) of the *Copyright Act*.

[23] The Plaintiffs rely on the decision in *Tremblay v Orio Canada Inc*, [2013 FCA 225](#) [*Tremblay*], in which the Federal Court of Appeal promoted a less formalistic approach to the strict requirement for a written assignment of copyright where the copyright owner had recognized the governing relationship with an assignee, though the relevant document had not been signed by the owner (*Tremblay* at paras [21-22](#)).

[24] The Federal Court of Appeal acknowledged that the case law has consistently held that an assignment or a grant of an exclusive licence cannot be set up against the owner of a copyrighted work unless it is in writing and signed by the copyright owner, but held in *obiter*:

However, those cases do not involve copyright owners who have admitted before the court that they have consented to the transfer of ownership of the right in question. It strikes me as excessively formalistic not to set up against an assignor a copyright assignment clause that he himself has drafted and that he has recognized before the court as governing his relationship with the assignee, merely because the clause is unsigned. As I noted above, the purpose of [subsections 13\(4\) and \(7\)](#) of the *Copyright Act* is to protect copyright owners against assignments of copyright to which they have not clearly consented. When the assignor himself recognizes before the court the assignment clause governing the relationship, the objective of the act, in my view, is met (*Tremblay* at para [22](#)).

[25] Based on this proposed interpretation of [subsection 13\(4\)](#) and the uncontested evidence of Mr. Harris, I am of the view that there is a novel issue that should be resolved at trial as to whether the objective of [subsection 13\(4\)](#) of the *Copyright Act* is satisfied in circumstances where Hexagon has acted as though the written Distribution Agreement governs Canada and the owner of the Works

has not objected. This question is not a pure question of law and will require the Court to consider and assess the credibility of witnesses.

B. Should the Court strike the action in whole or in part?

[26] The Defendant acknowledges that taking the pleadings in the Amended Statement of Claim as true, as of June 30, 2021, Hexagon became Vero UK's exclusive distributor, licensee and re-seller of Vero UK's copyright in the Works in the United States and Canada and Hexagon has licensed copies of the Works for use by others in Canada and the United States and earns revenue from such licensing.

[27] However, the Defendant submits that the Distribution Agreement is incorporated by reference into the pleading (citing *McQuaig v Enbridge Gas Inc*, 2025 FC 1439 at para 16) and this document shows that Hexagon in fact has no written licensing rights in Canada as required by subsection 13(4) of the *Copyright Act*. The Defendant argues that Hexagon never had standing to bring its claim and the proceeding was *void ab initio* and cannot be cured through amendments.

[28] The Defendant has not met its onus of showing that it is plain and obvious that the pleading as a whole, or as it relates to Hexagon, has no reasonable prospect of success (*La Rose v Canada*, 2023 FCA 241 at paras 18-20).

[29] First of all, the Defendant acknowledges that Vero UK had standing to bring the action at the time of the filing of the original statement of claim and there is no argument related to Planit's current standing or capacity. There is no basis therefore for striking the action as a whole.

[30] Second, Hexagon's status as an assignee is "open for consideration" based on the Federal Court of Appeal's suggested interpretation of subsection 13(4) in *Tremblay (Salna v Voltage Pictures, LLC)*, 2021 FCA 176 at para 77). In these circumstances, I find that the Plaintiffs should not be precluded from advancing the novel argument related to Hexagon's standing at trial with the benefit of testimony from live witnesses and full legal argument.

[31] It follows that neither the action nor Hexagon’s status as a plaintiff can be considered to be scandalous, frivolous or vexatious under [Rule 221\(1\)\(c\)](#) of the *Federal Courts Rules* especially in light of the evidence from Mr. Harris that the Plaintiffs have in fact been operating in Canada under a written agreement irrespective of its technical terms.

VI. Conclusion

[32] There is no basis for the grant of summary judgment or for striking all or part of the action. Accordingly, both motions are dismissed.

VII. Costs

[33] In my discretion, I have decided not to award costs to either party despite the Plaintiffs’ success on the motion. Not only did the motion raise a novel issue, but the conduct of both parties caused the other to incur unnecessary costs in connection with this motion. For the Plaintiffs, this includes their delayed offer to remove Vero UK despite its dissolution in March 2025. The Defendant for its part, persisted with its motion unchanged despite the Plaintiffs’ concession and the addition of Planit as a named Plaintiff as of June 11, 2026.

ORDER in T-84-24

THIS COURT ORDERS that:

1. The Defendant’s motion for summary judgment or alternatively, to strike the Plaintiffs’ Amended Statement of Claim is dismissed; and
2. There is no order as to costs.

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“Allyson Whyte Nowak”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-84-24

STYLE OF CAUSE: VERO UK LIMITED, PLANIT SOFTWARE LIMITED,
AND HEXAGON MANUFACTURING INTELLIGENCE, INC. v SHERWOOD INNOVATIONS INC.

PLACE OF HEARING: HELD BY WAY OF ZOOM VIDEOCONFERENCE

DATE OF HEARING: JUNE 23, 2026

REASONS AND ORDER: WHYTE NOWAK J.

DATED: JUNE 29, 2026

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