

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice James G. Edmond
Mr. Justice David J. Kroft
Madam Justice Anne M. E. Turner

B E T W E E N :

FARMERS EDGE INC.

(Plaintiff) Respondent

- and -

PRECISION WEATHER SOLUTIONS INC.

(Defendant) Appellant

(by original action)

A N D B E T W E E N :

PRECISION WEATHER SOLUTIONS INC.

(Plaintiff by Counterclaim) Appellant

- and -

***FARMERS EDGE INC., WADE BARNES,
CURTIS MACKINNON and
TREVOR ARMITAGE***

(Defendants by Counterclaim) Respondents

***A. Crawley,
G. M. Fleetwood,
K. McGrann and
A. W. Boumford
for the Appellant***

***M. G. Finlayson and
G. C. Lisi
for the Respondents***

***Appeal heard and
Decision pronounced:
June 12, 2026***

***Written reasons:
June 29, 2026***

TURNER JA (for the Court):

[1] This appeal turns on whether the motion judge (who was also the case management judge) committed a reviewable error in striking Precision Weather Solutions Inc.'s (PWS) intellectual property counterclaim for non-compliance with its disclosure obligations. The claim includes allegations of misappropriation of intellectual property, passing off and breach of trust (the intellectual property claim). The events at issue date back twelve years to 2014. In September 2023, at the urging of the parties, the action was set down for trial in October 2025.

[2] After hearing oral arguments, we dismissed the appeal with reasons to follow. These are those reasons.

[3] The motion judge made clear findings of fact that PWS failed, over the course of five years, to comply with fundamental disclosure obligations. This non-disclosure was despite the fact that Farmers Edge Inc. (FE) had been requesting information for years through discoveries, undertakings and interrogatories. The non-disclosure was also in the face of two court orders regarding disclosure, production of documents, delivery of responses to undertakings, answers to interrogatories, production of expert reports and quantification of PWS' damages claim.

[4] For the purpose of this appeal, these factual findings are not disputed by PWS, nor is there disagreement between PWS and FE that the legal principles applicable to this case are as set out in *Cobbe's Plumbing & Heating Ltd v Westfair Properties Ltd*, 2004 MBQB 31 and *Falcon Lumber Limited v 2480375 Ontario Inc (GN Mouldings and Doors)*, 2020 ONCA 310.

[5] PWS' central argument is that the motion judge erred by misapplying those principles to the facts, effectively setting an unduly low threshold for striking the intellectual property claim and failing to consider less draconian remedies, such as an adjournment of the trial. PWS also submits the motion judge erred in finding that PWS' conduct resulted in both actual and inherent (litigation and non-litigation) prejudice to FE and its ability to defend against PWS' serious allegations.

[6] FE submits that the motion judge appropriately characterized PWS' non-compliance as persistent, inadequately explained and fundamentally incompatible with a fair trial, especially given that the scheduled trial dates were imminent. It also submits that the motion judge's findings regarding prejudice were correct and appropriately taken into account when balancing the overall interests of the parties.

[7] At the time the motion to strike was argued, neither party had formally moved to adjourn the trial. Although PWS provided some additional responses to undertakings and interrogatories shortly before the motion, key information necessary to prove its liability and damages claims—including expert reports—remained outstanding. As a result, even if this information were produced before trial, FE would not have had sufficient time to respond.

[8] The decision to strike PWS' intellectual property claim was a discretionary one made in the exercise of the motion judge's case management authority. As such, both the weight he assigned to the relevant factors and his ultimate determination are entitled to significant deference on appeal, absent a legal error, a palpable and overriding error of fact, or a failure to exercise

his discretion judicially (see “*Iglesia Ni Cristo*” *Church of Christ v Canadian Broadcasting Corporation*, 2026 MBCA 45 at para 4).

[9] The motion judge recognized that striking a pleading would deprive PWS (the defaulting party) of its day in court and that such a remedy should be used cautiously. He further recognized that FE (the non-defaulting party) should not be unfairly constrained by the non-compliance of the opposing party.

[10] In balancing the interests of both PWS and FE, the motion judge found, among other things, that PWS’ conduct was closer to deliberate than inadvertent, its failures were clear and unequivocal, it had not provided a reasonable explanation, the non-compliance was material and extensive, and FE had suffered actual and inherent (litigation and non-litigation) prejudice. In addition, the motion judge found that PWS had not made a credible commitment to cure the non-compliance quickly. Once again, these findings were discretionary but they were also reasonably available based on the evidence before him. PWS has established no palpable and overriding error.

[11] We see no reason to interfere with the motion judge’s decision to strike PWS’ intellectual property claim.

Conclusion

[12] In the result, the appeal was dismissed with costs.

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