

Federal Court



Cour fédérale

Date: 20130121

Docket: T-1710-12

Citation: 2013 FC 50

Toronto, Ontario, January 21, 2013

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

**MONSANTO CANADA INC. AND
MONSANTO COMPANY**

Plaintiffs

and

**DOUG VAN VERDEGEM
AND BAR V FARMS LTD.**

Defendants

REASONS FOR ORDER AND ORDER

[1] The Plaintiffs have brought a motion for default judgment. The evidence before me indicates that the Defendants have been properly served and that no Defence or other document has been filed by the Defendants. It is therefore appropriate that the Plaintiffs may move for default judgment under Rule 210.

[2] Rule 210(3) requires that a motion for default judgment be supported by affidavit evidence. In this case, the Plaintiffs have provided only affidavits of service. No affidavit directed to the

substance of the claim has been filed. Instead, the Plaintiffs served a Request to Admit on the Defendants under Rule 255. Such a Request may be served after pleadings are closed. Rule 202(a) provides that pleadings are closed if no Defence has been filed within the time limits provided. That is the case here; pleadings are closed, thus a Request to Admit may be served.

[3] The Defendants have provided no response to the Request to Admit. Rule 256 provides that if no response to the Request has been made within the time limits provided, the party upon whom the Request has been served is deemed to have admitted the facts set out in the Request. Here the Defendants were properly served; the time limits have passed. No answer has been provided; thus, the Defendants are deemed to have admitted the facts set out in the Request.

[4] The action is for patent infringement. The patent is directed to genetic material found in plant seeds. The Defendants are alleged to have signed a licence with and obtained patented seeds from the Plaintiffs. It is alleged that the licence permits the Defendants to grow one crop, not to save seeds, and not to replant a new crop from those seeds. It is alleged that the Defendants, notwithstanding the terms of the licence, saved seeds and planted a crop containing the patented gene. The Plaintiffs want an injunction, damages, and punitive damages.

[5] The Plaintiffs argue that while on a motion for default the Court cannot simply accept the allegations made in the Statement of Claim as true, the unanswered Request to Admit contains the facts necessary to support the allegations made in the Statement of Claim and are deemed to have been admitted by the Defendants.

[6] I am sceptical of such an attempt to “bootstrap” the requirement to provide the necessary evidence to support a default judgment by procedural manoeuvring. While it is true that, particularly in contested proceedings, the Request to Admit process is useful in eliminating the need to prove certain facts, I am satisfied that such a Request cannot be a substitute for affidavit evidence required on a motion for default judgment. Rule 210(3) states that a motion for default judgment shall be supported by affidavit evidence which evidence, in the context of the Rules, I take to be directed to the substance of the claim and not just an affidavit of service. I agree that the Court might even have discretion in respect of certain of the practice and procedural provisions of the Rules. In this case, because there is no affidavit evidence, whatsoever, to support the allegations in the Statement of Claim, I will not exercise any discretion, even if I have it, to accept the unanswered Request to Admit in lieu of such affidavit evidence.

[7] I will, therefore, dismiss the motion for default judgment without prejudice to a further motion based on proper affidavit evidence given that the Defendants are in default of filing a Defence.

ORDER

FOR THE REASONS THAT FOLLOW:

THIS COURT ORDERS that:

1. The motion is dismissed without prejudice to a further motion supported by proper affidavit evidence; and

2. No Order as to costs.

“Roger T. Hughes”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1710-12

STYLE OF CAUSE: MONSANTO CANADA INC. AND MONSANTO
COMPANY v DOUG VAN VERDEGEM AND BAR V
FARMS LTD.

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 21, 2013

**REASONS FOR ORDER
AND ORDER:** HUGHES J.

DATED: January 21, 2013

APPEARANCES:

L.E. TRENT HORNE

FOR THE PLAINTIFFS

NO APPEARANCE

FOR THE DEFENDANTS

SOLICITORS OF RECORD:

BENNETT JONES LLP

FOR THE PLAINTIFFS

Toronto, Ontario

TO BE DETERMINED

FOR THE DEFENDANTS