

FEDERAL COURT OF APPEAL

B E T W E E N:

AGRACITY CROP & NUTRITION LTD.

- and -

UPL NA INC., ARYSTA LIFESCIENCE NORTH AMERICA, LLC and
UPL AGROSOLUTIONS CANADA INC.

Respondents

NOTICE OF APPEAL

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears below.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor, or, if the appellant is self-represented, on the appellant, WITHIN 10 DAYS after being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

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FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE		
F I L E D	Feb. 13, 2023	D E P O S E
	13 févr. 2023	
Appellants Josephine Chan		
Toronto, ON	1	

February 13, 2023

Issued by: "Taina Wong"
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Counsel for the Respondents

APPEAL

THE APPELLANT APPEALS to the Federal Court of Appeal from the order of the Honorable Justice Ayles (the “Judge”) dated February 3, 2023 in Federal Court file no. T-604-19 by which the respondents’ costs were fixed in the sum of \$800,000 for costs of that action (the “Costs Order”).

THE APPELLANT ASKS that:

1. Should this court allow the appellant’s appeal in court file A-248-22:
 - a. the Costs Order be set aside;
 - b. all sums paid by the appellant in respect of the Costs Order be returned, with interest at a rate to be determined; and
 - c. this court order that the respondents pay to the appellant its costs of the proceeding below, in an amount to be determined;
2. Should this court dismiss the appellant’s appeal in court file A-248-22:
 - a. the Costs Order be set aside;
 - b. this court order that the costs of the proceeding below be fixed in the amount of \$250,000 for counsel fees and \$200,000 for disbursements;
 - c. any amounts paid by the appellant in respect of the Costs Order in excess of any amount fixed by this court be returned, with interest at a rate to be determined;
3. the appellant be awarded its costs of this appeal; and
4. This court grant such further and other relief as deemed just.

THE GROUNDS OF APPEAL are as follows:

5. The Judge erred in law and or in fact and/or mixed fact and law by:
 - (a) failing to make a material reduction in the costs to be recovered as a result of the respondents (plaintiffs below) unsuccessfully pursuing a claim against NewAgco Inc., up to and including at trial;
 - (b) failing to make a material reduction in the percentage of costs to be recovered as a result of the respondents (plaintiffs below) pursuing two additional patents (the “process patents”) up to and through the discovery phase of the action below;
 - (c) in determining that the reasonable legal fees of the respondents should be fixed at \$1,500,000, given the duplication and excessive time incurred by the lawyers for the respondents, and the insufficient evidence presented for time incurred;
 - (d) taking into account the offer to settle made by the respondents in assessing the appropriate percentage of costs recovery;
 - (e) in assessing the amounts claimed and the amounts recovered, improperly considered the amount that “could have” been recovered had the Federal Court not issued an interim injunction;
 - (f) failing to reduce the amount to be recovered in respect of the economic expert’s fees from the injunction motion, given the duplicative and excessive amounts of work apparently incurred and the paucity of information regarding any work actually performed;
 - (g) seemingly including recovery for the respondents’ accounting expert for activities carried out post-trial and for which no invoice was presented;
 - (h) seemingly allowing recovery for a “currency administrative surcharge” on US dollar disbursements, charged by the respondents’ law firm, especially

as no detail was provided on how this charge was calculated or any other fact that would allow the assessment of any reasonableness of any such charge (if permitted at all).

6. Such further and other grounds as counsel may advise and to this court appears just.

7. The appellant will rely on the provisions of the *Federal Courts Rules*, including rules 400, 403 and 405.

February 13, 2023



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