

Federal Court of Appeal



Cour d'appel fédérale

Date: 20120920

Docket: A-436-11

Citation: 2012 FCA 244

CORAM: NOËL J.A.  
PELLETIER J.A.  
TRUDEL J.A.

BETWEEN:

**CALOGERAS & MASTER SUPPLIES INC.**

**Appellants**

and

**CERES HELLENIC SHIPPING ENTERPRISES LTD.  
and THE OWNERS and ALL OTHERS INTERESTED IN  
THE SHIP "CAP LAURENT" and THE SHIP "CAP LAURENT"  
and THE OWNERS and ALL OTHERS INTERESTED IN  
THE SHIP "CAP ROMUALD" and THE SHIP "CAP ROMUALD"  
and THE OWNERS and ALL OTHERS INTERESTED IN  
THE SHIP "CAP GEORGES" and THE SHIP "CAP GEORGES"  
and THE OWNERS and ALL OTHERS INTERESTED IN  
THE SHIP "CAP LEON" and THE SHIP "CAP LEON"  
and ALL OWNERS and OTHERS INTERESTED IN  
THE SHIP "CAP JEAN" and THE SHIP "CAP JEAN"  
and THE OWNERS and ALL OTHERS INTERESTED IN  
THE SHIP "CAP DIAMANT" and THE SHIP "CAP DIAMANT"  
and THE OWNERS and ALL OTHERS INTERESTED IN  
THE SHIP "CAP PIERRE" and THE SHIP "CAP PIERRE"**

**Respondents**

Heard at Montréal, Quebec, on September 20, 2012.

Judgment delivered from the Bench at Montréal, Quebec, on September 20, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

PELLETIER J.A.

Federal Court of Appeal



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and THE OWNERS and ALL OTHERS INTERESTED IN  
THE SHIP "CAP PIERRE" and THE SHIP "CAP PIERRE"**

**Respondents**

**REASONS FOR JUDGMENT OF THE COURT**  
(Delivered from the Bench at Montréal, Quebec, on September 20, 2012)

**PELLETIER J.A.**

[1] This is an appeal from an order for costs made following a trial in an action for goods sold and delivered. Since the respondents had made an offer of settlement pursuant to Rule 420 of the Federal Courts Rules SOR/98-106, the trial judge took into account that offer of settlement in fixing costs. While the appellant (plaintiff) was successful at trial, the respondents (defendants) achieved a better result than their offer of settlement and, as a result, were entitled, pursuant to Rule 420(2)(a), to their costs from the date of their offer. The trial judge made an order for costs in which the appellants recovered their costs to the date of the offer and the respondents recovered their costs from the date of the offer. The difficulty which gives rise to this appeal is that, this Court, on appeal from the Federal Court's judgment on the claim, allowed the appeal in part, with the result that the respondents were no longer in the position of having done better than their offer of settlement. The appellant now seeks to set aside the trial judge's order of costs and to recover its costs to the end of trial.

[2] We agree that, as a result of this Court's decision allowing the appeal from the judgment rendered after trial, the respondent's offer of settlement no longer has any effect under Rule 420. As a result, the normal rules apply which means that, subject to the trial judge's exercise of her discretion, the appellant, as the successful party, would be entitled to its costs throughout.

[3] Notwithstanding her decision with respect to the respondents' offer, the trial judge considered the possibility that Rule 420 might not apply and held that, in that event, she would award the appellant costs of \$60,000 plus disbursements of \$2,290.21.

[4] The respondents argue that even if Rule 420 does not apply, the circumstances of the trial were such that the award of costs made by the judge should be maintained. It is true that the appellant's management of this litigation left much to be desired as evidenced by such conduct as the serial dismissals of counsel, including trial counsel in the middle of the trial and an unjustified re-calculation of the debt owing which increased it by over one million dollars. However, the trial judge took these factors into consideration when she addressed her mind to the quantum of costs in the event that Rule 420 did not apply. The appellants were claiming solicitor and client costs based on their contract with the respondents. At the hearing of the motion to fix costs, the amount claimed was approximately \$200,000. The trial judge would have reduced this amount to \$60,000 in recognition of the appellant's conduct, including the fact that appellant's mismanagement resulted in "costs thrown away" by the respondents, including unnecessary expert reports. In our view, we should give effect to the suggestion made by the trial judge.

[5] In the result, the appeal will be allowed with costs, the trial judge's order of costs will be set aside and the appellant will be awarded costs of the trial in the amount of \$60,000 plus disbursements of \$2,290.21.

"J.D. Denis Pelletier"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-436-11

**STYLE OF CAUSE:** Calogeras & Master Supplies Inc. v.  
Ceres Hellenic Shipping Enterprises  
Ltd. et al

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** September 20, 2012

**REASONS FOR JUDGMENT OF THE COURT BY:** NOËL J.A.  
PELLETIER J.A.  
TRUDEL J.A.

**DELIVERED FROM THE BENCH BY:** PELLETIER J.A.

**APPEARANCES:**

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