

Date: 20071217

Docket: T-1155-06

Citation: 2007 FC 1321

[ENGLISH TRANSLATION]

BOULET LEMELIN YACHT INC.

Applicant

and

PACESHIP YACHT WITH REGISTRATION # 13D 6732

and

**THE OWNER AND ANY OTHER PERSONS WITH
A CLAIM ON THE YACHT WITH REGISTRATION # 13D 6732**

and

JOHANNE CARON

Respondents

and

JOHANNE CARON

Plaintiff by Counterclaim

and

BOULET LEMELIN YACHT INC.

and

LOMBARD CANADA INSURANCE

Plaintiffs by Counterclaim

ASSESSMENT OF COASTS – REASONS

DIANE PERRIER, ASSESSMENT OFFICER

[1] On January 31, 2007, the respondent and plaintiff by counterclaim, Johanne Caron, discontinued her counterclaim. Therefore, under Rule 402 of the *Federal Courts Rules*, when a party discontinues, the other parties may claim costs.

[2] On March 12, 2007, the applicant submitted its bill of costs and requested that it be assessed without appearance of the parties. On May 14, 2007, we sent letters to the parties asking them to submit their written submissions. The parties have submitted their submissions and I am now ready to assess the bill of costs according to the documentation on record.

[3] Johanne Caron, the respondent, claims that assessing the applicant's bill of costs would be premature, as the discontinuance that Johanne Caron, the plaintiff by counterclaim, filed on January 31, 2007, is only partial with respect to the applicant's main action. The order by the Honourable Justice Blanchard dated October 23, 2006, allowed the motion by the respondent, Johanne Caron, in part, and set the total costs for that motion at \$500 following the outcome of the proceeding.

[4] The applicant claims that the costs granted in the order by the Honourable Justice Blanchard on October 23, 2006, which ought to have followed the outcome of the proceeding, are due, given that the respondent/plaintiff by counterclaim put an end to that proceeding by filing her discontinuance of the counterclaim. A counterclaim is a distinct action from the main application.

The applicant cites Rules 189 and 190 of the *Federal Courts Rules*. Furthermore, the applicant cites the following case law: *Ruhrkohle Handel Inter GmbH v. Federal Calumet* [1992] F.C.J. No. 473 (C.A.), *Innotech Pty. Ltd v. Phoenix Rotary Spike Harrows Ltd.* 74 C.P.R. (3d) 275 (C.A.) and *Cold Ocean Inc v. Gornostaevka* [1992] F.C.J. No. 935 (F.C.).

[5] Based on the research that I conducted, it is my view that the position of the respondent, Johanne Caron, appears to be correct. I agree with her that the Court order dated October 23, 2006, indicated that the costs amounted to \$500 and follow the outcome of the case. In my opinion, in the Court judgment, it is an issue of the main action and not the counterclaim.

[6] As per my reasons at paragraph 5, the bill of costs submitted by the applicant is premature. My position is that we must await the outcome of the case before assessing the applicant's bill of costs in this matter.

“Diane Perrier”

DIANE PERRIER
ASSESSMENT OFFICER

Québec City, Quebec
December 17, 2007

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1155-06

STYLE OF CAUSE: Boulet Lemelin Yacht inc. v. Paceship Yacht
with registration # 13D 6732 et al.

REASONS BY DIANE PERRIER, ASSESSMENT OFFICER

DATED: December 17, 2007

WRITTEN SUBMISSIONS:

Tatiana Debbas FOR THE APPLICANT

Johanne Caron FOR THE RESPONDENT/PLAINTIFF BY
COUNTERCLAIM

SOLICITORS OF RECORD:

Marc Lemaire FOR THE APPLICANT
Robinson, Sheppard, Shapiro
Montréal, Quebec

Tremblay, Bois, Mignault, Lemay FOR THE PLAINTIFF BY
Chicoutimi, Quebec COUNTERCLAIM
Lombard Canada Insurance