

CANADA / JUDGMENT

Valmet Paper Machinery Inc. v. Hapag-Lloyd AG

2004 BCCA 637

COURT

British Columbia Court of Appeal

DECIDED

10 December 2004

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2004 BCCA 637 Valmet Paper Machinery Inc. v. Hapag-Lloyd AG COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Valmet Paper Machinery Inc. v. Hapag-Lloyd AG, 2004 BCCA 637 Date: 20041210 Docket: CA029881 Between: Valmet Paper Machinery Inc. and Valmet-Montreal Inc. Appellants (Plaintiffs) And Hapag-Lloyd AG, Hapag-Lloyd (America) Inc., H.A. Davis Transport Ltd., and John Lawrence Gilmour Respondents (Defendants) Before: The Honourable Madam Justice Southin The Honourable Mr. Justice Thackray The Honourable Mr. Justice Oppal A. B. Oland Counsel for the Appellants I. S. Nossal Counsel for the Respondents, Hapag-Lloyd AG and Hapag-Lloyd (America) Inc. R. P. Saul and M. Heemskerk Counsel for the Respondents, H.A. Davis Transport Ltd. and John Lawrence Gilmour Place and Date of Hearing: Vancouver, British Columbia 13th and 14th September, 2004 Place and Date of Judgment: Vancouver, British Columbia 12th October, 2004 Written submissions received: 12th, 25th and 29th November, 2004 Place and Date of Supplementary Judgment: Vancouver, British Columbia 10th December, 2004 Supplementary Reasons as to costs by: The Honourable Madam Justice Southin Concurred in by: The Honourable Mr. Justice Thackray The Honourable Mr. Justice Oppal Reasons for Judgment of the Honourable Madam Justice Southin:

- [1] At issue now are the costs of this appeal by Valmet Paper Machinery Inc. and Valmet Montreal Inc. from the judgment below dismissing their action against the respondents, Hapag-Lloyd AG and Hapag-Lloyd (America) Inc.
- [2] The principal appeal was that of H.A. Davis Transport Ltd. and John Lawrence Gilmour (CA029869) against the judgment against them in favour of the Valmet companies. That appeal (the Davis appeal) was dismissed.
- [3] The first mentioned appeal, which was treated as a cross-appeal, although set down to be heard with the Davis appeal, was barely mentioned at the hearing. It was dismissed essentially because, the Davis appeal having failed, there was no point to it.
- [4] The Hapag-Lloyd respondents want their costs in this Court. Contrary to my previous opinion, I conclude that they are so entitled.

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- [5] For their part, the Valmet companies, as respondents in the Davis appeal, want an order that they may add those costs as a disbursement to their own costs against Davis.
- [6] In the court below, an order was made pursuant to Supreme Court Rule 57(18) to that effect.
- [7] This Court has no analogous rule. But assuming, without deciding, that this Court has the power to order an unsuccessful appellant (Davis) to indemnify the respondent in its appeal against the costs which that respondent, as an unsuccessful cross-appellant, ought to pay to the respondent in the cross-appeal, this is not an appeal in which to exercise the power.
- [8] Valmet's appeal, in light of the learned judge's reasons, might better not have been brought.
- [9] Thus, the Hapag-Lloyd respondents shall have their costs against the Valmet appellants on scale 1. "The Honourable Madam Justice Southin" I agree: "The Honourable Mr. Justice Thackray" I agree: "The Honourable Mr. Justice Oppal"
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Prepared on 28 October 2026 · Esheria