

Federal Court of Appeal



CANADA

Cour d'appel fédérale

**Date: 20091112**

**Docket: A-103-09**

**Citation: 2009 FCA 327**

**CORAM: NADON J.A.  
PELLETIER J.A.  
TRUDEL J.A.**

**BETWEEN:**

**VALON KONE BRUNETTE LTD. and  
BDR MACHINERY LTD.**

**Appellants**

**and**

**REALSEARCH INC. and  
DINGWELL'S MACHINERY & SUPPLY LTD.**

**Respondents**

Heard at Toronto, Ontario, on November 12, 2009.

Judgment delivered from the Bench at Toronto, Ontario, on November 12, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

PELLETIER J.A.

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the Bench at Toronto, Ontario, on November 12, 2009)

**PELLETIER J.A.**

[1] We are all of the view that the appellants have not met the burden of showing that the order under appeal is the product of “the clearest case of the misuse of judicial discretion” as was said in *L’Hirondelle v. Canada*, 2001 FCA 399 at paragraph 4.

[2] There was evidence to support the judge’s conclusion that Realsearch Inc. had assets available to satisfy the amount of costs claimed. We are also satisfied that the judge did not take into account any assets owned by Dingwall’s Machinery and Supply Ltd.

[3] As a result, there is no basis for our intervention. The appeal should be dismissed with costs.

“J.D. Denis Pelletier”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-103-09

**(APPEAL FROM AN AMENDED ORDER OF THE HONOURABLE MR. JUSTICE  
SIMON NOËL DATED FEBRUARY 16, 2009, DOCKET NO. T-1300-02)**

**STYLE OF CAUSE:** VALON KONE BRUNETTE LTD.  
and BDR MACHINERY LTD. v.  
REALSEARCH INC. and  
DINGWELL'S MACHINERY &  
SUPPLY LTD.

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** November 12, 2009

**REASONS FOR JUDGMENT OF THE COURT BY:** (NADON, PELLETIER & TRUDEL  
J.J.A.)

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

**APPEARANCES:**

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