

Date: 20071210

Docket: A-62-07

Citation: 2007 FCA 394

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

BETWEEN:

QAD INC.

Appellant

and

**STRATFORD HOLDINGS CORPORATION previously known as CRANE
PLUMBING CORPORATION, and CRANE PLUMBING CANADA CORP.**

Respondents

Heard at Toronto, Ontario, on December 10, 2007.

Judgment delivered from the Bench at Toronto, Ontario, on December 10, 2007.

REASONS FOR ORDER OF THE COURT BY:

PELLETIER J.A.

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REASONS FOR ORDER OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on December 10, 2007)

PELLETIER J.A.

[1] This is an appeal from the decision of Mr. Justice O'Reilly dismissing the Appellant's motion for summary judgment.

[2] To its credit, the Respondent Crane Canada Plumbing Corp. admitted that the software in question was subject to copyright and that its use of that software was an infringement of that copyright. Nonetheless, the Motions Judge dismissed the motion without indicating why the Appellant was not entitled to an injunction restraining the admitted infringement of its statutory

monopoly. Had the Motions Judge given reasons for failing to grant a discretionary remedy, we would be bound to respect the exercise of his discretion unless it was exercised on a wrong principle.

[3] But where the Motions Judge gives no reason for exercising or failing to exercise his discretion in the face of an admitted breach of the Appellant's rights, this Court has no basis upon which it can defer to the motion Judge's decision.

[4] We will therefore grant the Appellant the following relief.

[5] The motion for summary judgment is granted in part. There will be a declaration that the Appellant's rights have been infringed as set out in paragraph 2(a) (i) to (v) of the Notice of Appeal.

[6] There will be an Order enjoining the respondent Crane Plumbing Canada Corp. from carrying on the activities set out at paragraphs 1(b) (i) and (ii) of the Appellant's Statement of Claim.

[7] This matter is returned to the Federal Court for trial of all other outstanding issues.

[8] The Appellant is entitled to its costs here and below.

“J. D. Denis Pelletier”

J.A.

FEDERAL COURT OF APPEAL
NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-62-07

(AN APPEAL FROM THE ORDER OF JUSTICE O'REILLY DATED JANUARY 18, 2007, FEDERAL COURT, T-514-06.)

STYLE OF CAUSE: QAD INC. Appellant
and
STRATFORD HOLDINGS CORPORATION previously known as
CRANE PLUMBING CORPORATION, and CRANE
PLUMBING CANADA CORP. Respondents

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 10, 2007

REASONS FOR ORDER OF THE COURT BY: (NADON, SEXTON, PELLETIER J.J.A.)

DELIVERED FROM THE BENCH BY: PELLETIER J.A.

APPEARANCES:

Jonathan G. Colombo FOR THE APPELLANT/
APPLICANT

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SOLICITORS OF RECORD:

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