

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** Harris v. Keating Construction Company Ltd., 2012 NSSC 425

**Date:** 21021121

**Docket:** SN. No. 337036

**Registry:** Sydney, N.S.

**Between:**

Patricia Harris and Kevin Sutherland

Plaintiffs

v.

Keating Construction Company Limited and Allan R. Keating

Defendants

**Judge:** The Honourable Justice Patrick J. Murray

**Heard:** November 13, 2012

**Written Decision:** November 21, 2012

**Counsel:** Robert Pineo, Counsel for the Plaintiffs  
Hugh R. McLeod, Counsel for the Defendants

**By the Court:**

[1] The following is my decision in regard to the Defendants' motion for disclosure of documents pursuant to Civil Procedure *Rule 15.02*. The Motion had been scheduled for October 1st, 2012, and came before me on October 29th. At that time, the parties did not appear. Ultimately, the Motion was heard before me on November 13th, 2012.

[2] In the Motion, the Defendants seek disclosure of the following documentation:

- (1) Kevin Sutherland's Income Tax Returns for 2009, 2010, 2011;
- (2) Loan Applications, which would include the years 2009, 2010 and 2011, which failed as a result of the Defendant company, Keating Construction Company Limited, reporting Harriss and Sutherland to the Credit Bureau and, in particular, any evidence to show how Sutherland's credit was in any way affected or damaged by the report to the Credit Bureau; and,
- (3) All cancelled cheques and invoices for all work done or claimed to be needed to be done for labour and materials over and above which was already done by Keating Construction Company Limited.

[3] The Motion was part of an earlier Motion by the Defendants seeking an inspection of the property which Motion had been earlier resolved. In support of the Motion, the Defendants' Solicitor, Hugh R. McLeod, filed an Affidavit, containing letters by the Plaintiffs' counsel to the Defendants' counsel. The letters outline Mr. McLeod's request for the documentation, but provide little else in terms of evidence to support the Motion. The Defendants' arguments are predicated upon the Plaintiff, Kevin Sutherland, being an improper Plaintiff. I note, however, that this is not a Motion to remove him as a party. I note also that a counter-claim was filed on behalf of the Defendants. While the counter-claim does not specifically name the Plaintiffs, it appears that the Plaintiffs are intended as Defendants by the counter-claim.

[4] I have considered the Brief filed by Mr. McLeod in support of the Motion, as well as the letter Brief filed by Mr. Pineo and the oral submissions made by both counsel. In his Brief, Mr. McLeod submits the relevancy of these documents concerns two issues: Firstly, the validity of the claim of Kevin Sutherland to have his credit damaged in any way by being reported to the Credit Bureau. In Discovery evidence, Kevin Sutherland by his own admission, submitted that he paid nothing towards the work performed by the Defendant company and that his source of income is Social Assistance. In this regard, the Defendants seek all documentary evidence supporting such a claim.

[5] The second issue is related to deficiencies. The Defendants' position is: if they were true deficiencies, money would be spent in correcting them, if they were of substance. The Defendants require production/proof of the money spent for labour and/or materials. This second issue would pertain to items two (2) and three (3) referred to above and not item (1) the Income Tax Returns.

[6] The Plaintiffs' position is that items two (2) and three (3) are relevant documentation, but it has provided the Defendants with all information available to it. At present, there are no loan applications which can be provided, nor are there any cancelled cheques or invoices that can be provided in satisfaction of items two (2) and three (3). I will make these items part of an Order. This Decision then will focus only on item one (1), disclosure of the Plaintiff, Kevin Sutherland's Income Tax Returns for three (3) years for 2009, 2010, and 2011.

[7] The Defendants' counsel, Mr. McLeod, was questioned as to the relevancy of these Returns, insofar as the Plaintiff's claim that his credit was damaged by the Defendant. The Defendant argues that if the Plaintiff has a high income than it would be difficult for him to demonstrate that his Credit was damaged. If his income was less, that may be relevant in determining whether or not his credit was damaged.

[8] *Rule 14.08* creates a presumption that relevant documents will be disclosed. Under *Rule 15.02(1)(b)*, a party is required to search for and provide documents relevant to the proceeding. Further, *Rule 15.07(2)* states:

[9] A judge may not give directions limiting the disclosure of production of a relevant document unless the presumption in *Rule 14.08* disclosure and discovery in general is rebutted.

[10] There is a definition of relevancy contained in *Rule 14.01* which states the test to be "whether a judge presiding at a trial or a hearing of the proceeding would find the information relevant or irrelevant".

[11] I have considered the submissions of both parties in this matter. I am not persuaded that the documents which are being requested by Mr. McLeod on behalf of the Defendants would be relevant to the proceeding in question. I have difficulty making a connection between the amount of income or the source of income and whether or not the Plaintiff's credit rating was affected by the actions of the Defendants. Further, the Plaintiff's income would have no bearing necessarily his credit rating having been affected, and no bearing on his inability to obtain a loan due to his credit rating. If a credit rating is affected, it would not necessarily have any effect on the income which would be shown on a T4 Return. Otherwise, these matters would be considered private.

[12] I am, therefore, of the view that the Returns are not relevant to a matter in the proceeding. Further, I am satisfied that the Plaintiff in this matter has rebutted the presumption in *Rule 14.08* and that the Court is justified in exercising its' discretion by limiting the disclosure of production in this matter.

[13] In consequence, the Motion made by the Defendants for disclosure is denied in respect of item (1), the Income Tax Returns. An Order will issue requiring the Defendant to disclose items two (2) and three (3) as requested by part of the Motion, if they exist. Costs in regard to the Motion shall be in the cause.

[14] Order accordingly.



