

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Harriss v. Keating Construction Company*, 2014 NSSC 106

**Date:** 2014-03-21

**Docket:** Syd No. 337036

**Registry:** Sydney

**Between:**

Patricia Harriss and Kevin Sutherland

Plaintiffs

v.

Keating Construction Company Limited and Allan R. Keating

Defendants

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**LIBRARY HEADING**

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**Judge:** The Honourable Justice Frank Edwards

**Heard:** February 17, 18, 19, 20, 21, 2014, in Sydney, Nova Scotia

**Supplementary** March 21, 2014

**Written Decision:**

**Subject:** Building contracts; home renovation; fixed price or cost plus contract.

Personal liability of owner/operator of the corporate Defendant

**Facts:** After receipt of my March 6, 2014 decision, Counsel for both the Plaintiffs and the Defendants requested supplementary reasons for items the Court “may not have addressed.” The Court agreed to do so.

**Issues:**

- (1) Were some queried incidental charges not specifically referenced in the March 6, 2014 decision, compensable?
- (2) Were there specific compensable charges overlooked in

the March 6, 2014 decision?

- (3) Were the Plaintiffs entitled to general damages?
- (4) Were the Plaintiffs entitled to prejudgment interest?
- (5) Did the Defendant make a fraudulent claim as alleged in paragraphs 16 and 17 of the Statement of Claim?

**Result:**

**Issue 1:** An extensive list of queried incidental charges was rejected by the Court. Most of the charges were incidental to alleged deficiencies for which the Court had specifically denied compensation. Other charges incidental to a compensable deficiency (beam replacement) were left with the Plaintiffs.

**Issue 2:** To the original award, the Court added the cost of replacing a pocket door (\$288.86), and the cost of a suspended ceiling in the basement laundry/utility room (\$461.54).

**Issue 3: General Damages:** The Court noted this claim had not been referenced in either the Plaintiffs' Pre-trial Brief nor in their post-trial submission. The Court declined to award general damages and limited the Plaintiffs' award to their entitlement under the contract. The Plaintiffs' had brought much of the stress and anxiety of this unfortunate experience upon themselves. They had ignored the recommendation of their own inspector to get building/renovation permits.

**Issue 4: Prejudgment Interest:** awarded at 2.5 percent for three years on the net award. (**\$1224.00**).

**Issue 5: Alleged fraudulent claim of \$71,848.97 by the Defendant:** Though unjustified and inflated, the Court found that the claim had more to do with managerial incompetence than fraudulent intent. Defendant Keating's conduct deplorable and high-handed, but Court not convinced it was fraudulent.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.  
QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***