

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Harris v. Keating Construction Company*, 2014 NSSC 135

**Date:** 20140410

**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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**Judge:** The Honourable Justice Frank Edwards

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

**Written Decision:** April 10, 2014

**Subject:** Assessing Costs after 4.5 day trial – increasing tariff amount; awarding lump sum instead of tariff costs CPR’s 77.02, 77.06, 77.07, 77.08, 77.10.

**Facts:** Plaintiffs sued contractor regarding renovation of older home – issues; fixed price with cost plus contract; quality of work; counterclaim by contractor; contractor sending inflated and unjustified claim to collection agency **before** invoice sent to Plaintiffs. Plaintiffs incurred legal costs in excess of \$60,000.00 plus disbursements. Plaintiffs not successful on part of their claim but wholly successful on counterclaim.

**Issue:** Whether the Plaintiffs entitled to increased costs.

**Result:** Plaintiffs entitled to increased costs and lump sum. Defendants’ principal acted in deplorable, high-handed and arbitrary manner. Forced the Plaintiffs to go to trial – no prospect contractor would bargain settlement in good faith.

Even though Plaintiffs had limited success at trial, their claims were not frivolous and worthy to pursue. Majority of trial taken with issues where Plaintiffs were successful – fixed price contract and defeating the counterclaim.

Plaintiffs awarded:

Costs on main action	\$ 8,000.00;
Counterclaim – lump sum;	\$20,000.00
Length of trial (\$2000.00 X 4.5)	\$ 9,000.00
Total costs	\$37,000.00
Disbursements	<u>\$10,710.46</u>
	\$47,710.46

**Cases Noted:** **Landymore v. Hardy** (1992) 112 N.S.R. (2) 410 (N.S.S.C.); **Lienaux et al v. Toronto-Dominion Bank** (159 NSR (2d) 305 (NSCA) at para.34; **Cuvelier v. Bank of Montreal**, 2002 NSSC 284; **Founders Square Ltd. V. Nova Scotia (Attorney General)**, (2002) 186 NSR (2d) 189, (NSSC); **Burns v. Sobeys Group Inc.**, 2008 NSSC 102; **Boutcher v. Clearwater Seafoods Ltd. Partnership** 2010 NSSC 64; **Burns v. Sobeys Group Inc.**, [2008] N.S.J. No. 117; **Morash v. Burke**, [2007] N.S.J., No. 95; **Bain v. Nova Scotia (Attorney General)**, 2013 NSSC 82

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