

SUPREME COURT OF NOVA SCOTIA

Citation: 4187440 Canada Inc. v. The Physio Clinic, 2014 NSSC 214

Date: 2014-07-11

Docket: Hfx. No. 363344

Registry: Halifax

Between:

4187440 Canada Inc.

Plaintiff

v.

The Physio Clinic Limited, carrying on business as The Physio Clinic and
Woodlawn Physio Clinic; Michael D. Sutton; and M.D. Sutton Holdings Limited

Defendants

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Judge: The Honourable Justice Peter P. Rosinski

Heard: Tuesday, May 20, 2014, in Halifax, Nova Scotia

Written Decision: July 10, 2014

Subject: Rule 13.04 – summary judgment on evidence – “lifting the corporate veil”

Summary: In 1995, the commercial landlord rented to The Physio Clinic Ltd. [TPL] premises in Woodlawn area of Dartmouth. Complaints by TPL mounted and ultimately in June 2011 TPL vacated the premises approximately one year before the agreed termination date of the lease. Shortly thereafter TPL

opened another physiotherapy clinic in nearby Westphal Dartmouth. That rental space was owned by MD Sutton Holdings Ltd. Michael D. Sutton, being a physiotherapist by training, created a number of physiotherapy clinics under the umbrella of TPL. By 2006, on the basis of financial/legal advice, he had also created MD Sutton Holdings Ltd. and the Sutton Family Trust. The landlord sued TPL carrying on business as the Physio Clinic and Woodlawn Physio Clinic; Michael D. Sutton; and MD Sutton Holdings Ltd., alleging: the tort of conspiracy; breach of the *Assignments and Preferences Act*, and *Statute of Elizabeth*; and intentional interference with economic relations. The landlord alleged that Michael D. Sutton should be personally liable for the wrongs of TPL and MD Sutton Holdings Ltd. because there is a relationship of agency between he and those companies, or alternatively they are merely the “alter ego” of Michael D. Sutton as the “controlling mind” thereof. The defendants Michael D. Sutton and MD Sutton Holdings Ltd. brought a motion for summary judgment on evidence, seeking to be removed from the action herein. Those two defendants argued that the evidence presented is insufficient to cause them to remain as named defendants. They argued that neither of them has been shown to have been involved in the decision of TPL to vacate the premises at Woodlawn before the termination date of the lease.

Issues: (1) Should summary judgment be granted in favour of one or both defendants?

Result: (1) Applying *Coady v. Burton* 2013 NSCA 87, the defendants motion for summary judgment on evidence should be granted. Costs of \$1000 total awarded: [\$500 to each of] the self-represented Michael D. Sutton and MD Sutton Holdings Ltd.

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