

SUPREME COURT OF NOVA SCOTIA

Citation: Andrews v. Keybase Financial Group Inc., 2014 NSSC 287

Date: 20140730
Docket: Hfx. No. 339660
Registry: Halifax

Between:

Martin Douglas Andrews and the Estate of Sheila Rebecca Andrews (2010HfxNo339660), David Bateman and Sharleen Bateman (2011HfxNo343599), John Cameron and John Cameron as Executor of the Estate of Linda Cameron (HfxNo300385), Charles Raymond Michael Crowell and Darlene Joyce Crowell (2011HfxNo343611), Jeffrey H. Phillips and Denise Kowalski-Phillips (2009HfxNo306313), Jared Raymond Phillips and Becky Lynn Waterfield (2010HfxNo327381), James Edward Maxwell Ramsay and Lisa Elayne Matheson (2010HfxNo343604), Wilma Lee Shane and Wilma Lee Shane as Administrator of the Estate of Ruth Shane (2009HfxNo316695) and Robert Andrew Verney and Janice C. Verney (2010HfxNo327213)

Plaintiffs

-and-

Keybase Financial Group Inc. and Global Maxfin Investments Inc.

Defendants

Library Sheet

Judge: The Honourable Justice Robert W. Wright

Last Written

Submission: July 4, 2014

Written

Decision: July 30, 2014

Subject: Assessment of pecuniary damages for financial investment losses - costs and disbursements - expert fees.

Summary: In a decision reported at 2014 NSSC 31, the defendants were found fully liable to the plaintiffs for financial losses which they all incurred as a result of the fraudulent conduct of a financial advisor successively employed by them between 2005-2007. The trial evidence included nine separate expert reports pertaining to each of the plaintiffs respectively (the nine actions being heard together) in which a calculation was made of the economic loss to each plaintiff. Although the methodology of these calculations by the plaintiffs' expert was agreed to by defence counsel, the Court made a request to counsel in its initial decision to try to reach agreement on the exact quantum of the plaintiffs' respective pecuniary losses. Counsel were unable to reach any such agreement, nor was any agreement reached on costs and disbursements. This supplementary decision is now rendered based on extensive post trial submissions by counsel.

Issues:

- (1) What is the appropriate quantum of the plaintiffs' respective pecuniary losses?
- (2) What costs award should be made in favour of the plaintiffs?
- (3) What taxable disbursements should the plaintiffs be permitted to recover?

Result:

- (1) The Court accepted the calculation of each of the pecuniary losses as set out in the plaintiffs' expert reports (taking into account relatively minor clerical adjustments made as a result of post trial submissions). Having waived the right to cross-examine the plaintiffs' expert at trial, and not having filed any expert reports of their own, the defendants were not permitted post trial to submit their own calculations of the plaintiffs' pecuniary losses. In the result, the Court awarded pecuniary damages as set out in the plaintiffs' expert reports in the aggregate of \$1,239,298.
- (2) Because the application of tariff costs would not provide a substantial contribution towards the plaintiffs' reasonable expenses in the litigation, this was an appropriate case where lump sum costs should be awarded instead of tariff costs. Party and party costs in the amount of \$310,000 were accordingly awarded to the plaintiffs in one bill of costs.
- (3) After making an appropriate reduction of the expert fees allowed to the plaintiffs as being necessary and reasonable, recovery of disbursements was ultimately allowed in the amount of \$120,000 in one bill of costs.