

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Eagle Creek Consultants Limited v. Burke et al,
2003 NSSC 022

Date: 20030129
Docket: SPHa(PH) 0798
Registry: Port Hawkesbury

Between:

Eagle Creek Consultants Limited and Peter King

Plaintiffs

v.

Chris Burke, Richard W. Burke, William A. Burke, Keith Campbell,
Victor Campbell, Paul Hiltz, Ronald Kennedy, Elmer MacVillivary,
Robert MacKinnon, Sylvester MacIntosh, Dan Alec MacIntyre, Ramsey
MacLeod, Stephen O'Neil, Chester Rafus, Colin Spencer, Brent
Sutherland, Brian Wadden, Harold Wadden, Kenneth Wadden

Defendants

Judge: The Honourable Justice Frank Edwards

Heard: via briefs

Written Decision: January 29, 2003

Counsel: Lindsay M. MacDonald for the Plaintiffs
James R. Gogan, Esq., for the Defendants

By the Court:

[1] The plaintiffs have applied to have the East Cape Breton Fisheries Group Association (the Association) joined as a defendant in this action. The

defendants took no position on the application and made no appearance.

They now seek costs in any event of the cause.

- [2] The defendants claim that the addition of the Association at this stage will have a significant cost impact on the existing defendants. They claim that further discovery examinations will now be required. They also claim that there will now be a delay in setting a trial date.
- [3] **Background:** This action was commenced by Eagle Creek Consultants and Peter King on May 25, 2000 (the first action). On the same date, Eagle Creek Consultants and Peter King commenced action against Josephine Kennedy (the second action). While these two actions are different in law, they arise out of the same set of facts. Essentially, the plaintiffs claim that they had a contract to provide consulting services to the East Cape Breton Fishers Group Association (Association). They further allege that the named defendants were members of the association and that the defendants breached the contract between the plaintiffs and the Association.
- [4] Defences were filed on behalf of the defendants on July 14, 2000.
- [5] Discoveries in this matter were conducted in January 2001 and October 2001. Discoveries are now substantially complete. There remains one

outstanding discovery examination scheduled for January 9, 2003. The discovery is the discovery of Josephine Kennedy. The defendant notes that this final discovery examination relates primarily to the second action commenced against Josephine Kennedy.

- [6] The defendants had anticipated that following the discovery of Josephine Kennedy, this matter would be ready for trial. The defendants say they are ready to have this matter set down for trial.
- [7] I am not satisfied that the addition of the Association will have a significant cost impact. In any event, the application cannot have come as a surprise to the defendants. In their defence, the defendants allege that it was the Association and not the individual defendants which contracted with the plaintiffs.
- [8] The discovery of Josephine Kennedy was not scheduled until January 9, 2003. It is therefore unlikely that the trial could have been scheduled before the fall of 2003. The addition of the Association will have little if any bearing on that time line.
- [9] The defendants cite *Blair v. Alderney Consultants* (1995), 149 N.S.R. (2d) 184 (S.C.). There the joinder application was brought one week before the trial. Obviously, at that stage, the respondents were entitled to costs. That is

not the situation here. I am sure that trial preparation is not a factor here as no trial date has even been set.

[10] I am making no award of costs on this application.

J.