

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** Hains v Granat, 2011 NSSC 263

**Date:** 20110408

**Docket:** SYD. 278803

**Registry:** Sydney

**Between:**

Frank Joseph Hains

Plaintiff

v.

Sharon Granat and Rebecca Granat and the Nordic Insurance Company of  
Canada/La Nordique Compagnie D' Assurance Du Canada

Defendant

-and-

Kathleen Hains

Third Party

**Judge:** The Honourable Justice Patrick J. Murray

**Heard:** March 21, 2011 in Sydney, Nova Scotia

**Written Decision:** April 8, 2011

**Counsel:** Nash T. Brogan, for the Plaintiff, Frank Joseph Hains  
Wendy Johnston, Q.C. for the Defendant, Sharon Granat  
Connie F. Morrissey, for the Defendant, The Nordic  
Insurance Company of Canada  
Kathleen Hains, Self Represented

**By the Court:**

[1] This is my decision in regard to the motion of Mr. Brogan on behalf of the Plaintiff heard on March 21, 2011.

[2] Mr. Brogan has made a motion on behalf of his client, the Plaintiff, to obtain an Order setting a Date Assignment Conference in this matter. The motion is made pursuant to CP Rule 4.13(2) and cites two grounds as to why it should be granted.

The Plaintiff relies on Rules 4.13 (2)(a) and (c) which state as follows:

4.13(2) “A party may make a motion for permission to request a date assignment conference before each party has done everything required in Rule 4.13(1), and the party must satisfy the judge on one of the following:

(a) a party is lagging in making disclosure or conducting discovery, and the party requesting the conference has made disclosure and conducted the discoveries that party requires;

(c) the efficient administration of justice requires that the conference be held.”

[3] The affidavit of Derek Kimball filed in support of the application states at paragraph 24 as follows:

“This motor vehicle accident occurred over five years ago. The action was commenced over three and a half years ago. There has been no request for the discovery of the Plaintiff by either Defendant or Third Party. Ms. Johnston and Ms. Morrissey have observed in their respective letters that discovery of the parties has not taken place but have never requested discovery of the Plaintiff. The Plaintiff’s condition has not improved and he is impecunious.”

[4] Some discoveries were completed in Ontario in October of 2010 but the Defendant, Rebecca Granat, has yet to be discovered as has the Plaintiff. The Defendants, Nordic Insurance Company of Canada and Sharon Granat oppose the motion stating there are important steps to be completed and it is premature to set a Date Assignment Conference. They argue a key step is the discovery of the Defendant Rebecca Granat, who is the daughter of the Defendant, Sharon Grant. Whether Rebecca Granat was driving the vehicle with or without the consent of her mother, the defendant Sharon Granat will determine as between the Defendants who will be required to address the Plaintiff’s claim. Further issues could arise in terms of the pleadings once that is determined.

[5] The affidavit of Wendy Johnston, who represents Sharon Granat states at paragraph 12 as follows:

“It is my client’s position that a Date Assignment conference cannot be held and trial dates assigned until the consent issue has been determined. The Defendant, Nordic, has requested discovery of

Rebecca Granat, the driver of the vehicle, in order to assess the evidence on consent. A determination of the consent issue will decide which insurer must respond to the Plaintiff's claim. In the event the insurer of the Granat vehicle must respond, the Third Party pleadings must close and documents be exchanged and discovery conducted of the Plaintiff and Third Party on liability and quantum."

[6] There is also certain disclosure items to be completed by the Plaintiff to the Defendants. Mr. Brogan provided submissions that these are near completion and I accept that production can be completed in the next month or two at the latest. There is a third party which has been joined, Kathleen Hains, but she has not yet filed a defence. The consent issue referred to earlier will impact on that aspect as well.

[7] The Defendant, Rebecca Granat, has never been served with a Discovery Subpoena. The evidence is she was expecting a child last year and did not provide her contact information. She undertook to provide it after her child was born. She has been contacted only recently and the Defendant, Nordic, has filed a supplemental affidavit confirming this. On the basis of this affidavit the Defendants have assured the Court that Ms. Granat appears now to be cooperative and they will be able to serve and discover her within the next 90 days.

[8] Connie Morrissey represents the Defendant Nordic. In the email attached to her affidavit, Rebecca Granat explains that her daughter is sick and she further states:

“I will be unable to meet with you until later next, I will contact you then”.

[9] Further in Connie Morrissey’s affidavit sworn on March 15<sup>th</sup>, 2011 she states at paragraph 24:

“It is my client’s position that a DAC cannot be held, and trial dates assigned, until the Defendant Rebecca Granat has been discovered and the issue of consent to drive the Defendant Sharon Granat’s vehicle has been determined. At that stage it is hoped that the issue of whether there was insurance coverages for the Granat vehicle, and therefore which insurer must respond to this claim, can be determined.”

[10] Were it not for this and the Defendant’s position that discovery of her is pivotal in respect of the pleadings and the action, I would be inclined to order a Date Assignment Conference. However while the administration of justice requires the matter to be moved forward, the efficient administration of justice requires that further steps be completed prior to the setting of a DAC.

[11] The Plaintiff experienced a serious accident and alleges that he suffered a serious brain injury. The accident occurred in 2005, almost six years ago. The Defendant, Nordic, indicated they were named in the action approximately two years ago.

[12] While I am generally satisfied that the motion has merit, I am not satisfied there has been lagging on the part of the Defendants. Exercising the discretion afforded to me by the rules and in particular Rule 94.06 and 2.03(1)(a) and as discussed with counsel during the hearing of the motion I am going to set the following time lines in respect of matters which arose during the motion:

- (i) That the discovery of the Defendant, Sharon Granat and if required the Plaintiff be completed by June the 30<sup>th</sup>, 2011.
- (ii) That the disclosure requirements and or undertakings of counsel in respect to same be completed by June the 30<sup>th</sup>, 2011.
- (iii) That any pleadings, procedures arising therefrom with respect to the parties including defences to be filed be completed by August 31<sup>st</sup>, 2011.
- (iv) That the motion for a Date Assignment Conference will be returnable on the second chambers date in Sydney in September of 2011 which is September 12<sup>th</sup> of 2011 at 9:30 for determination of whether it would be then appropriate to set a Date Assignment Conference, having regard to the status of the file at that time.

[13] In conclusion my decision on this motion falls short of granting a Date Assignment Conference. It is hoped and expected that upon the returnable date in September that a date for an Assignment Conference can be set at that time. I would therefore direct that an appropriate order incorporating the above terms be prepared.

[14] As this Order is intended to serve all parties, no costs are awarded on the motion. If counsel have any questions concerning the Order, kindly advise the Court. I thank all counsel for their submissions.

J.