#### ENDORSEMENT OF JUSTICE FESTERYGA DATED JULY 11, 2001

Glover v. Pafco et al, 00-1531 and all following actions

Nogra v. Allstate et al, 00-474
Dick v. Ing/Halifax et al, 00-439
Dick v. Ing/Halifax et al, 01-3307
Fraser-Rolson v. Pafco et al, 00-492
Fraser-Rolson v. Pafco et al, 00-2085
Young v. Pem Bridge Ins. Co. et al, 00-1849
Young v. Burl Oak et al, 00-2682

For the Plaintiffs: Mr. Paul Miller

For the Defendants: Mr. Ryan M. Naimark

I am the case management Judge under Rule 37.15 in the above noted matters as well as in an application 01-3852 to have Lou Ferro declared a vexatious litigant.

Motions for Summary Judgment were served by the Defendants on October 26, 2000 returnable November 9, 2000 in the following actions: 00-474, 00-2085, 00-492, 00-1531 and 00-439. In April 2001 the solicitors for the Defendants served motions for summary judgment in 00-2682, 00-1849 and 01-3307. In addition the application court file 01-3852 was served.

Requests for affidavits of documents were served with each statement of claim. The Plaintiffs have served their affidavits of documents.

By letter dated October 31, 2000 Mr. A. Spurgeon notified Defendants' counsel that he was retained by Mr. Ferro on the motions returnable November 9, 2000. He needed time to review the affidavit material, and if necessary conduct cross-examinations.

Due to the complexity of the number of motions the matters were put over and when the application 01-3852 was served in April 2001 by the Defendants, Mr. Spurgeon's office became counsel representing Mr. Ferro on the application and Mr. Miller's office was retained as counsel for Mr. Ferro, solicitor for the Plaintiffs on all summary judgment motions.

The Defendants served an affidavit of documents dated November 24, 1998 in Glover v. Pafco et al 5325/98 but not in any of the other actions although requested to do so.

The Plaintiffs have not filed responding material to-date on the motions for summary judgment, nor have they cross examined the Defendants who filed affidavits in support of the Summary Judgment motions.

# The Issues before me to-day

Although the motions request the striking of the statements of defence for failing to produce affidavits of documents, counsel for the Plaintiffs is not pursuing that.

1. The main issue on the motions is the production of a complete affidavit of documents prior to the hearing of any motion for judgment.

On consent counsel also agreed/argued

- 2. Whether Plaintiffs' counsel is precluded from cross examining the deponents of affidavits in motion (5) served on October 2000 and returnable November 9, 2000.
- 3. What documents should be included in a complete affidavit of documents?

#### Discussion

The summary judgment motions are to dismiss the claims against the employees of various Insurance Companies amongst other things but not to dismiss against the Insurance Companies except where conspiracy is alleged.

There is no doubt that the time for delivery of an affidavit of documents by the defendants has expired per Rule 30.03(1) except in the Glover action but should I order their production before the motions for Summary Judgment are heard?

My answer to that is no because I am satisfied that the Plaintiffs are launching a "fishing expedition" on the material before me. I find the Statements of Claim are almost "boiler plate" in each action against the personal defendants. Affidavits have not been filed on behalf of the Plaintiffs. I draw the inference that the Plaintiffs did not have the information to put in these affidavits or I dare say before the Statements of Claims were issued.

Under the circumstances the affidavits of documents need not be produced before the Summary Judgment motions. I rely on the following decisions:

645952 Ont. Inc. v. Guardian Ins. Co. (1989) 69 O.R. 2d 341 P345

Bank of Montreal v. Negin (1994) O.J. No. 3159 (Gen. Div.) (1996) 31 O.R. (3d) 321 (C.A.)

Manulife Bank of Canada v. Burly Developments (Gen. Div.) [1997] O.J. No. 3985 [1998] O.J. No. 1849 (C.A.)

with quote respect to Justice Cumming in

# Cole v. Hamilton (City) 1999 45 O.R. (3d) 235

he did not appear to consider the above cases.

## Laurentian Bank of Canada v. Herzog [1990] O.J. No. 3272

can be distinguished on the facts.

In any event I choose to exercise my discretion under Rule 2.03. I do not require the Defendants to serve their affidavit of documents before the hearing of the Summary Judgment motions.

There will be an Order dismissing that portion of the Plaintiffs' motions.

### **Cross-Examination of Deponents**

The Defendants were made aware in late October 2000 the Plaintiffs' counsel intended to conduct cross examinations. Part of the blame for delay is the service of the application to declare Mr. Ferro a vexatious litigant.

In the interests of justice and to move these motions along I Order that Plaintiffs' counsel may cross-examine the various deponents in the various affidavits filed in support of the motions for Summary Judgment after they deliver their responding material. Similarly, the defendants may cross-examine any deponent on affidavits filed to oppose the motions, if so advised.

The Plaintiffs shall deliver their affidavits within 20 days of this Order. The cross-examinations shall be completed as soon as practicable.

### **Affidavits of Documents**

In the Glover action 5325/98 the Defendants shall deliver a better affidavit. In particular they shall comply with Rule 30.03(2) and (3).

They shall also deliver affidavits of documents setting out the contents as listed in 30.03(2)(3) in all other actions.

The above affidavits shall be delivered within 20 days after the completing of the above Summary Judgment motions.

I find that it is premature to decide what particular documents ought to be provided.

#### Costs

The success is divided. No Order as to costs.

Signed by Justice W.J. Festeryga.

Endusement. July 11/01
More v Papao et al 00-1531
and all following actions

Nogra V allstoted at 00-474

Dick V Ing/Halfax et at 00-439

Dick V Ing/Halfax et at 01-3307

Diasu-Loloson V Pafco et at 00-492

Diasu-Robison V Pafco et at 00-2085

Grang V Pem Bridge In Co et at 00-1849

grang V Brost Oak et at 00-2682

For the steps. Mr. Paul Miller For the objects Hu. Ryon M. Naimank

Lown the case management fledge under Rule 37.15 in the above matters as were as in an application 01-3852 to howe Low Zono declared a vixation litigant.

Motions for summan Judgment were served by the suforts on Ook 24/00 uters nathle have 9/00 mm the following actions 60-474, 00-2085, 00-492,00-1531 and 00-439. In Cypni 2001 the substitute the Sport 2001 the substitute affects. served next one for summy judgment in 00-2682



00-1849 and 01-3307. In addition the application come file 01-3852 boar served. a Regusts for affidavits of documents was served with each state mind of claim. The plefor have saved their affidavits of clocuments. By letter dated Oct 31/00 Mr. A Spungeon Notified defolts commel that he was retained by the Elmo on the motions returnable throgloo. He hushed Imo to seven the afficient ansterial, and of reasony condust curs examinations. Suc to The complexity of the number of motions the matter were pulmer and when the application 01-385'2 war suved in april 2001 by the olyde, Mi. Spingeon's office became counsel suprimpy Her. Leves on the application and Mr. Killing

office was retained as comment for Mr. There soh for the petts on all orunning judgment histories.

The defets sewed an efficiently drowning drowning dotted Now 24/48 in Short I Paper it at 5825/98 but not mi any of the toother actions although reguested to do so.

The plops have not filed us pending motorial be-date on the motories for summon folgeness, her have they can warmind the depresents who filed affidants in support of the summon judgment works.

The lamer before me to-day.

although the motions request the striking of the later number of defence for failing to produce our afficients. of documents, counsel for the peter

is not pursuing That. The main inne on the motions is the production of a complier affichanis of Warments prior to The hearing of any Motor for Jerdyment. On oment comment also angued @ Whether plf counsel is precluded from Cross examing. The deponds of affectivity. in husting (5) seved an Och som and returnable Nov-9/00.
(3) What documents should be included in a complete affidont y doormets! Dis cursion - The summany pred much mustions are by dis min the claims against the supergues of varion Insuan Componer aungst. Othe Things but wit by dis min against the Susmane Companie Heyr where compring is alleged.

There is no doubt that the time for olchwing of an affidowited door by the defoil. has expend per Rule 30.03 (1) Houst mi The Store action but should I orden Their production before The historis for summy judgment are heard? My answer to Kal is no because down satisfied that the peter are launching a "fishing expedition" on the natural before me. I find the statements of claim are almost boiler plate in each action against the personal defalts. Affridanits have not be filed on behalf of the petter. I down the informe that the perfor and not have the information to gut un There afficients or I done vous before the state went is of claim were would.

Under the encumbranes the officewited document need not be produced before the surmay judgmed hustins. I vely on the following char's inis 645952 BAT. INC V GUNROIM INSEC (1989) 69 OR 2d 341 7345 Bounda OF MONTREAL V NOTOIN (1914) OJ NO 3159 (GON DIV) 72 (1996) 31 OR (Sd) 321 (CA.) MANULIFE BANK OF CONGDA V BURLY DEVELOPMENT (GEN DIV) [1997] OJ NO. 3985 . [1998] O.J. NO. 1849 (C.A.) buth qual uspeal to Justice Cumming in COLE V HAMILTON (CITY) 1999 45 OR (Sd) 235 he did not appear to consider the other corn. LAMERICATION BANK OF CONSOA VHERE ZUG [1990] OS NO 3272 can be disting without the facts. In any went of chose to renow my disordin under No Idonol Rule 2.03. A aguni to defats to some Their affidavit of do arment before the hearing of the Summing Judg num hirtimi. There was be an order dis numming that portrup

the petp: notions.

# Eurs Hammetini of depoints -

The difets were made amore in late Och 21to that get commet interced to consent cars examines factly the blame for delay is the server of the application to declar the Zens a receiver

lettgant.

In the onto the justice and to move these heaters along I Occle That the petts' comme!

Many cum examine the various dynamits in the various officiaints filed in mymph of the unitions.

In ammong judg ments, Similarly the dynamic and produced the deflots council many own examine any dynamic on affidants files to oppose the northis, if so advised.

The peth shoul delvin then offidomits within 20 days of This Order. The own Hammaton's should be completed as now as procticable.

Officiants of Stemments -If In the blown action 5325/98 the defalts show dehre a buter afficient. In particular They shoul emply with tende 30.03(2) and (3). They show also deliver affidents of documents setting me the contact as bothed in 30.03 (2)(3) an The above affication shall be within 20 days the completion of The above summan polyment motions. I find that it is premature to dearde at partienton do orm.

Costo - The puccess is divided.

The Droln as to costo.

Willestoned. What partienten doorments ought to be produced.