

**SUPERIOR COURT OF JUSTICE**  
**CIVIL**  
**393 University Ave – 10<sup>th</sup> Fl**  
**Toronto ON M5G 1E6**

**BETWEEN**

**Gana Kiritharan**

**Plaintiff**

**and**

**TD Canada Trust**

**Defendant**

**NOTICE OF MOTION**

As Per Order of Master Egan dated 05-February-2008. This Request is to be treated as a case conference in writing. Case Conference by Telephone to be held on 20<sup>th</sup> February 2008 at 9.00 AM, at Conference Call in Chambers (Call), Superior Court of Justice – Civil, 393 University Ave, Toronto ON M5G 1E6.

THE MOTION IS FOR: Requesting the Court to;

1. Order Defendant to Provide Affidavit of Documents on or before 27<sup>th</sup> February 2008.
2. Order Defendant to Provide Particulars for Allegations made in Counterclaim on or before 27<sup>th</sup> February 2008.
3. Order Defendant to Answer the Question on Written Examination for Discovery on or before 27<sup>th</sup> February 2008.
4. Order Defendant to Stop Making Changes to Account Details Managed under Plaintiff Name or the way they are being Reported in Credit Reports without leave of the court.
5. Claim for the Cost of this Motion from Defendant.

THE GROUNDS FOR THE MOTION ARE:

6. Plaintiff in this action, Gana Kiritharan, is a person with exceptional intellectual capacity and with lots of innovative Ideas. {Affidavit of Document 4 Civil (Pages 65 – 88 of Motion Record)}.
7. Unfortunately when it came to the payments for his intellectual contribution, he experienced some fraudulent interference due to a conspiracy of an organized group of people. {Affidavit of Document 4 Civil (Pages 65 – 88), Affidavit of Document 5 Civil (Pages 89 -102) and Affidavit of Document 6 Civil (Pages 103 – 124 of Motion Record)}.
8. On reasonable ground Plaintiff developed a suspicion that Defendant, TD Canada Trust has some important information regarding this fraudulent activity or even money belong to Plaintiff. {Affidavit of Document 1 Civil (Pages 15 – 24) and Affidavit of Document 2 Civil (Pages 25 – 36 of Motion Record)}.
9. Plaintiff tried to communicate with Defendant regarding his concerns between 12<sup>th</sup> of March 2007 till 16<sup>th</sup> of October 2007 by other means of formal communications {Affidavit of Document 3 Civil (Pages 37 – 64 of Motion Record)}. The Branch Managers, Mr. Tim Hockey - Group Head Personal Banking and Co-Chair TD Canada Trust, TD Ombudsman and other Departmental Official Plaintiff had contacted failed to give a Formal and Responsible explanation for the transaction in Gana Kiritharan's line of credit on 19<sup>th</sup> October 2005, that is:

Date	Trans Description	Trans Amount	Balance
10/19/2005	Collection Item	11,611.72 CR	
10/19/2005	Close Account	0.00 DR	0.00

10. On 18<sup>th</sup> of October 2007 Plaintiff filed a civil claim for Account Details managed under his name in Defendant (Pages 177 – 180 of Motion Record).
11. Defendant filed a Notice of Intent to Defend on 7<sup>th</sup> of November 2007 (Pages 181 – 182 of Motion Record) and Statement of Defence and Counterclaim on 19<sup>th</sup> of November 2007 (Pages 183 – 188 of Motion Record).
12. Plaintiff filed his Reply and Defence to Counterclaim on 5<sup>th</sup> of December 2007 (Pages 189 – 196 of Motion Record).
13. Plaintiff received a call from Defendant's Lawyer on 5<sup>th</sup> or 6<sup>th</sup> of December 2007 saying Defendant willing to satisfy Plaintiff claim for Account Details and asking some explanations regarding the claim and reasons for the claim. Defendant's lawyer also informed they were not going to file a reply for the Defence for Counterclaim.
14. As Defendant failed to file a Reply for Defence to Counterclaim, Pleading come to closure on 16<sup>th</sup> of December 2007.
15. Plaintiff forwarded his Affidavit of Documents to Defendant on 14<sup>th</sup> of December 2007 (Pages 197 – 200 of Motion Record), also sent a complete set of copies of Affidavits of Gana Kiritharan's Statements and Facts on 17<sup>th</sup> of December 2007.
16. Plaintiff received a call from Defendant Lawyer on 14<sup>th</sup> of December 2007 explaining that the Affidavit of Documents from defendant may be delayed.
17. On 27<sup>th</sup> of December 2007 deadline to file Affidavit of Documents expired.

18. On 11<sup>th</sup> of January 2008 Plaintiff forwarded following Documents to Defendant Lawyer (Page 201 of Motion Record).

**A.** Demand for Particulars and Affidavit of Documents from Defendant (Pages 203 – 205 of Motion Record).

In this Document Plaintiff Demanded for Particulars for Allegations made against him by Defendant in Paragraphs 11, 12, 13, 14, 19, 20 and 21 of Counterclaim.

In this Document Plaintiff also Demanded for Affidavit of Documents from Defendant.

**B.** Questions on Written Examination for Discovery (Pages 205 – 208 of Motion Record).

In this Documents Plaintiff send 12 Questions and Demanded Mr. Tim Hockey, Group Head Personal Banking and Co-Chair TD Canada Trust on behalf of Defendant TD Canada Trust to answer the questions.

Plaintiff in this Document also demanded copies of 4 different documents regarding Bank Accounts from Defendant.

19. On 15<sup>th</sup> of January 2008 Plaintiff received a call from Defendant Lawyer explaining Defendant need more time to provide account details of Plaintiff and asking to reach an agreement regarding this delay.

20. Plaintiff refused for an agreement and explained Demand for Particulars of Counterclaim filed against him and Answering Question on Written Examination for Discovery can be done on time and demanded to be provided to him on time.

21. On 30<sup>th</sup> of January 2008, Plaintiff received some account details from Defendant. Plaintiff summarises the details provided. Plaintiff also explains for which he ask further explanation from Defendant.

**A. a) Account Name or Type: Line of Credit**

b) Account Number: 1625 - 4457424

c) Opened On: May 22, 2002

d) Closed On: October 19, 2005.

e) Reason For Closure: Default in Payments

f) How Account was Balanced: As Follows:

Date	Trans Description	Trans Amount	Balance
10/19/2005	Collection Item	11,611.72 CR	
10/19/2005	Close Account	0.00 DR	0.00

***Plaintiff demanding explanation for above transaction.***

**B. a) Account Name or Type: TD Visa Emerald Card**

b) Account Number: 4520 0500 0241 3878

c) Opened On: September 5, 2000

d) Closed On: October 31, 2005.

e) Reason For Closure: Default in Payments

f) How Account was Balanced: Account Still Showing a Balance of \$ 2329.63

**C. a) Account Name or Type: Value Account. (Checking Account)**

b) Account Number: 5926 – 318810

c) Opened On: 22<sup>nd</sup> of February 1999

d) Closed On: 28<sup>th</sup> of June 2005.

e) Reason For Closure: Closed By Bank (Over Draft?)

f) How Account was Balanced: As Follows:

Date	Trans Description	Trans Amount	Balance
05/31/2005	Value Account Fee	3.95 DR	101.77-
06/28/2005	Collection Item	107.30 CR	
06/28/2005	Overdraft Interest	1.58 DR	
06/28/2005	Value Account Fee	3.95 DR	
06/28/2005	Close Account	0.00 DR	0.00

***Plaintiff demanding explanation for above transactions.***

**D. a) Account Name or Type: Saving Account**

b) Account Number: Not Available

c) Opened On: Around June - August, 1999

d) Closed On: Around September – October , 2000.

e) Reason For Closure: Request By Plaintiff.

f) How Account was Balanced: By Retuning the Balance as Cash to Plaintiff.

No Account Detail were Provided from Defendant for this account.

- E. a) Account Name or Type: **Investment Account.**  
b) Account Number: 436031  
c) Opened On: Around July, 2002 ???  
d) Closed On: 30<sup>th</sup> of November 2002.  
e) Reason For Closure: Plaintiff withdraw all the money and left a balance of 0.00.  
f) How Account was Balanced: Plaintiff left a balance of 0.00.

***In July 1 2002 to July 31 2002 statement, account details says that “Total Portfolio as of 07/31/99 – 104,260.00” Plaintiff Demanding Explanation for it.***

22. The information received may be considered Particulars for allegations made in Paragraphs 20 and partial information for allegations made in Paragraphs 19 and 21. The information provided does not contain any Particulars for allegations made in Paragraphs 11, 12, 13 and 14 of Counter Claim.
23. Plaintiff called defendant lawyer on 31<sup>st</sup> of January 2008 and informed he received some information and explained the information received may not be complete and explained what is the information he is still expecting from Defendant.
24. Defendant lawyer informed they need more time to provide the information but failed to give a definite time limit for providing these documents.
25. Then Plaintiff informed if Defendant is ready to give a formal explanation for the following transaction the dispute may reach an early solution.

Date	Trans Description	Trans Amount	Balance
10/19/2005	Collection Item	11,611.72 CR	
10/19/2005	Close Account	0.00 DR	0.00

26. Plaintiff bring to the attention of the court Transfers made by Plaintiff in his account with Defendant during July 2002 may explain some basic idea of how Debit and Credit relationship recorded in accounts during transfer (Pages 209 – 212 of Motion Record).
27. Defendant lawyer informed above transaction means the bank “Write Off” Plaintiff’s account balance.

28. Then Plaintiff asked why Plaintiff's visa account was showing a balance of \$ 2329.63 after "Write Off" but his Line of Credit was showing a balance of \$ 0.00 after "Write Off". Defendant lawyer informed it was because they are different product.
29. When Plaintiff asked whether Defendant Lawyer certain about the explanations, Defendant Lawyer replied she is certain about the explanations.
30. Then Plaintiff informed as he requested in "Questions on Written Examination for Discovery" if Mr. Tim Hockey, Group Head Personal Banking and Co-Chair TD Canada Trust can give above explanation under Oath and provide supporting exhibits as requested in the same document, then the matter can be solved easily.
31. Plaintiff also informed Defendant Lawyer, he is preparing to bring a motion regarding these issues.
32. Plaintiff failed to receive any communication from Defendant after that.
33. For the reasons explained in Paragraphs 6 to 32 Plaintiff Request the Court to order Defendant to Provide Affidavit of Documents on or before 27<sup>th</sup> February 2008 on the Ground: Rule 30.08 (2) of the Rules of Civil Procedure. R.R.O. 1990, Reg. 194.

***"EFFECT OF FAILURE TO DISCLOSE OR PRODUCE FOR INSPECTION***

***30.08***

***Failure to Serve Affidavit or Produce Document***

*(2) Where a party fails to serve an affidavit of documents or produce a document for inspection in compliance with these rules or fails to comply with an order of the court under rules 30.02 to 30.11, the court may,*

*(a) revoke or suspend the party's right, if any, to initiate or continue an examination for discovery;*

*(b) dismiss the action, if the party is a plaintiff, or strike out the statement of defence, if the party is a defendant; and*

*(c) make such other order as is just. R.R.O. 1990, Reg. 194, r. 30.08 (2)."*

34. For the reasons explained in Paragraphs 6 to 32 Plaintiff request the court to order Defendant to Provide Particulars for Allegations made against him by Defendant in Paragraphs 11, 12, 13 and 14, also for explanation of when the 21% of yearly interest rate was started applied for the TD Visa Emerald (# 4520 0500 0241 3878) account and on what basis interest was calculated on or before 27<sup>th</sup> February 2008 on the Ground: Rule 25.10 of the Rules of Civil Procedure. R.R.O. 1990, Reg. 194.

***“PARTICULARS***

***25.10***

*Where a party demands particulars of an allegation in the pleading of an opposite party, and the opposite party fails to supply them within seven days, the court may order particulars to be delivered within a specified time. R.R.O. 1990, Reg. 194, r. 25.10.”*

35. For the reasons explained in Paragraphs 6 to 31 Plaintiff request the court to order Defendant to answer the Question on Written Examination for Discovery on or before 27<sup>th</sup> February 2008 on the Ground: Rule 35.04 (2) of the Rules of Civil Procedure. R.R.O. 1990, Reg. 194

***“FAILURE TO ANSWER***

***Further List of Questions***

***35.04***

***Court Order for Further Answers***

*(2) Where the person being examined refuses or fails to answer a proper question or where the answer to a question is insufficient, the court may order the person to answer or give a further answer to the question or to answer any other question either by affidavit or on oral examination. R.R.O. 1990, Reg. 194, r. 35.04 (2).*



### ***Court Order for Oral Examination***

*(3) Where the court is satisfied, on reading all the answers to the written questions, that some or all of them are evasive, unresponsive or otherwise unsatisfactory, the court may order the person examined to submit to oral examination on such terms respecting costs and other matters as are just. R.R.O. 1990, Reg. 194, r. 35.04 (3).*

### ***Additional Sanctions***

*(4) Where a person refuses or fails to answer a proper question on a written examination or to produce a document that he or she is required to produce, the court may, in addition to imposing the sanctions provided in subrules (2) and (3),*

*(a) if the person is a party or a person examined on behalf or in place of a party, dismiss the party's action or strike out the party's defence;*

*(b) strike out all or part of the person's evidence; and*

*(c) make such other order as is just. R.R.O. 1990, Reg. 194, r. 35.04 (4)."*

36. Plaintiff also bring to the Attention of the Court, that after Plaintiff started to communicate with Defendant, Plaintiff's Bank Account details with Defendant are being Changed.
37. When Plaintiff contacted Defendant on 3<sup>rd</sup> of April 2007 and on 10<sup>th</sup> of May 2007, he got informed interest being charged for his Line of Credit is 7.5% Annum and Interest being charged on daily basis. The balances were on 3<sup>rd</sup> of April 2007 – 12673.70 and on 10<sup>th</sup> of May 2007 – 12,770.41{Document 3 Civil (Pages 37 – 64 of Motion Record)}.
38. Above said interest rate may fail to explain the balances and Plaintiff brought this to the attention to the defendant on a subsequent letter (Pages 46 - 49 of Motion Record).
39. The Counterclaim filed by Defendant gives a new interest rate of 4.25% and the basis it is being charged may a confusing one (Pages 183 – 188 of Motion Record Paragraph 13 and 14).

40. Also Plaintiff Line of Credit is being reported in Equifax credit report as follows in April and July 2007 credit reports (Page 129 of Motion Record):

TDCT TR 16252 last reported to us in 12/05 rating your revolving account as R9, meaning a bad debt, collection account or unable to locate. At that time the reported balance of your account was \$11000. Your account number is xxx...424. This account is in your name only. The account was opened in 05/02. The credit limit or highest amount of credit advanced was \$11000. Your account is past due in the amount of \$11000. The last payment or transaction made on this account was in 04/05. Additional comments: Personal line of credit. Bad Debt.

41. But 22<sup>nd</sup> of January 2008 Equifax Credit Report, reports as follows (Page 140 of Motion Record):

TDCT TR 16252 last reported to us in 01/08 rating your revolving account as R9, meaning a bad debt, collection account or unable to locate. At that time the reported balance of your account was \$11000. Your account number is xxx...424. This account is in your name only. The account was opened in 05/02. The credit limit or highest amount of credit advanced was \$11000. The last payment or transaction made on this account was in 03/05. Additional comments: Personal line of credit. Bad Debt.

42. According to analysis the last reported date and the last payment or transaction made on this account date were changed.

43. The way Plaintiff's the TD Visa Emerald (# 4520 0500 0241 3878) account is being reported in same report (22<sup>nd</sup> of January 2008 Equifax Credit Report) reproduced here to saw the differences in reporting Plaintiff's Line of Credit (Pages 141 of Motion Record).

TDCT VISA (800) 983-8472 last reported to us in 12/07 rating your revolving account as R9, meaning a bad debt, collection account or unable to locate. At that time the reported balance of your account was \$2329. Your account number is xxx...878. This account is in your name only. The account was opened in 09/00. The credit limit or highest amount of credit advanced was \$2329. The minimum monthly payment terms are \$47. The last payment or transaction made on this account was in 04/05. Additional comments: Bad Debt. Closed by credit grantor. Your account was previously rated R5, meaning at least 120 days past due in 10/05. Your account was previously rated R5, meaning at least 120 days past due in 09/05. Your account was previously rated R5, meaning at least 120 days past due in 08/05.

44. When Plaintiff called defendant lawyer on 31<sup>st</sup> of January 2008, Plaintiff brought these changes in Credit Report to Defendant Lawyer.

45. For the reasons explained in Paragraphs 36 to 44, Plaintiff request the Court to order Defendant stop making changes to account details managed under Plaintiff name or Plaintiff's credit reports on the Ground: Sections 137 and 366 of Criminal Code.

***"Fabricating evidence"***

*137. Every one who, with intent to mislead, fabricates anything with intent that it shall be used as evidence in a judicial proceeding, existing or proposed, by any means other than perjury or incitement to perjury is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years. .S., c. C-34, s. 125.*

***Forgery***

***366.***

*(1) Every one commits forgery who makes a false document, knowing it to be false, with intent*

*(a) that it should in any way be used or acted on as genuine, to the prejudice of any one whether within Canada or not; or*

*(b) that a person should be induced, by the belief that it is genuine, to do or to refrain from doing anything, whether within Canada or not.*

***Making false document***

*(2) Making a false document includes*

*(a) altering a genuine document in any material part;*

*(b) making a material addition to a genuine document or adding to it a false date, attestation, seal or other thing that is material; or*

*(c) making a material alteration in a genuine document by erasure, obliteration, removal or in any other way. R.S., c. C-34, s. 324."*

46. Plaintiff also Claim for the Cost of this Motion from Defendant.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Affidavit of Document 1 Civil; Printing Additional Information on Daily Banking Transaction Slip Gana Kiritharan Supposed To Sign; Affidavit of Gana Kiritharan, Dated 14<sup>th</sup> of December 2007.
2. Affidavit of Document 2 Civil; Details of Financial Transaction in Gana Kiritharan's Line Of Credit in October 2005; Affidavit of Gana Kiritharan, Dated 14<sup>th</sup> of December 2007.

3. Affidavit of Document 3 Civil; Gana Kiritharan's Attempts to Communicate with TD Canada Trust and Confusing Reply from The Bank; Affidavit of Gana Kiritharan, Dated 14<sup>th</sup> of December 2007.
4. Affidavit of Document 4 Civil; Gana Kiritharan's Intellectual Contributions for The Communities He Lived and The Institutions He Worked; Affidavit of Gana Kiritharan, Dated 14<sup>th</sup> of December 2007.
5. Affidavit of Document 5 Civil; Demonstrative Worst Case Scenario; Affidavit of Gana Kiritharan Dated, 14<sup>th</sup> of December 2007.
6. Affidavit of Document 6 Civil; Incident of Forgery; Affidavit of Gana Kiritharan, Dated 14<sup>th</sup> of December 2007.
7. Plaintiff's Equifax Canada Credit report Dated 25<sup>th</sup> of July 2007.
8. Plaintiff Communication with Equifax Canada between 5<sup>th</sup> of December 2007 and 22<sup>nd</sup> January 2008.
9. Plaintiff's Equifax Canada Credit report Dated 22<sup>nd</sup> of January 2008.
10. Plaintiff's Account Details received from Defendant on 30<sup>th</sup> January 2008.

DOCUMENTS OF THIS PROCEEDING BEING REFERRED IN THIS MOTION.

11. Kiritharan Vs TD Canada Trust Court File Number: 07 – CV – 341987PD 2, Statement of Claim filed on 18<sup>th</sup> of October 2007.
12. Kiritharan Vs TD Canada Trust Court File Number: 07 – CV – 341987PD 2, Notice to Intent to Defend filed on 7<sup>th</sup> of November 2007.
13. Kiritharan Vs TD Canada Trust Court File Number: 07 – CV – 341987PD 2, Statement of Defence and Counterclaim filed on 19<sup>th</sup> of November 2007.

14. Kiritharan Vs TD Canada Trust Court File Number: 07 – CV – 341987PD 2, Reply and Defence to Counterclaim filed on 5<sup>th</sup> of December 2007.
15. Kiritharan Vs TD Canada Trust Court File Number: 07 – CV – 341987PD 2, Plaintiff's Affidavit of Documents forwarded to Defendant on 14<sup>th</sup> of December 2007.
16. Kiritharan Vs TD Canada Trust Court File Number: 07 – CV – 341987PD 2, Affidavit of Services, Faxing Demand for Particulars and Affidavit of Document from Defendant and Questions on Written Examination for Discovery, Faxed to Defendant by Liz Alves, Legal Assistant Dated 11<sup>th</sup> of January 2008.
17. Kiritharan Vs TD Canada Trust Court File Number: 07 – CV – 341987PD 2, Demand for Particulars and Affidavit of Documents from Defendant, forwarded by Plaintiff to Defendant on 11<sup>th</sup> of January 2008.
18. Kiritharan Vs TD Canada Trust Court File Number: 07 – CV – 341987PD 2 Questions on Written Examination for Discovery forwarded by Plaintiff to Defendant on 11<sup>th</sup> of January 2008.
19. Transfers made by Plaintiff between his accounts managed in Defendant

Date: January 9, 2008

**Gana Kiritharan**  
307 – 10 Stonehill Court  
Scarborough, Ontario  
M1W 2X8  
Tel: 416 – 820 – 8581

**TO: Susan Rai,**  
**Solicitor for the Defendant, TD Canada Trust,**  
**FLUXGOLD IZSAK JAEGER LLP,**  
Barristers & Solicitors  
100 York Boulevard, Suite 220  
Richmond Hill, Ontario  
L4B 1J8

Tel: (905) 763-3770  
Fax: (905) 763-3772

**SUPERIOR COURT OF JUSTICE  
CIVIL  
-  
393 University Ave – 10<sup>th</sup> Fl  
Toronto ON M5G 1E6 .**

Proceeding commenced at Toronto

NOTICE OF MOTION

(Name, Address & Telephone Number of Party)

Gana Kiritharan  
307 – 10 StoneHill Court  
Scarborough ON M1W 2X8  
TEL: 416 – 820 8581



# SUPERIOR COURT OF JUSTICE - ONTARIO

## ORDER

07-CV-341987802

COURT FILE NUMBER: \_\_\_\_\_

TITLE OF PROCEEDING: KIRITHARAN V TD CANADA TRUST

COUNSEL: MR KIRITHARAN <sup>in person</sup> for Plaintiff Fax No.: \_\_\_\_\_  
MS RPI for Defendant Fax No.: 905-763-3773  
 \_\_\_\_\_ for \_\_\_\_\_ Fax No.: \_\_\_\_\_  
 \_\_\_\_\_ for \_\_\_\_\_ Fax No.: \_\_\_\_\_  
 \_\_\_\_\_ for \_\_\_\_\_ Fax No.: \_\_\_\_\_

In Writing Case Conference ☐

Telephone Case Conference ☒

Personal Attendance ☐

- ① MS RPI IS TO FORTHWITH MAIL A COPY OF THE ORDER TO THE PLAINTIFF.
- ② THE SUBJECT OF THE CASE CONFERENCE WAS TO ARRANGE A LATE MOTION, AT THE REQUEST OF THE PLAINTIFF PRIOR TO TODAY, THE PLAINTIFF SERVED AND FILED A MOTION RECORD.
- ③ THE MOTION RECORD REQUESTS (a) AN AFFIDAVIT OF DOCUMENTS; (b) PARTICULARS OF THE COUNTERCLAIM, (c) FOR JUSTICE TO BE AWARDED OF A WRITING DISCOVERY AND (d) AN ORDER THAT "THE DEFENDANT STOP MAKING CHANGES TO ACCOUNT DETAILS THROUGH UNDER PLAINTIFF NAME OR THE WAY THEY ARE BEING REPORTED IN CREDIT REPORTS WITHIN LEAVE OF THE COURT."
- ④ REGARDING AN AFFIDAVIT OF DOCUMENTS, THE DEFENDANT WILL SERVE AN AFFIDAVIT OF DOCUMENTS BY MARCH 31, 2008. THE SAID AFFIDAVIT WILL INCLUDE:  
 (a) ANY TRANSACTIONS SINCE THE DEFENDANT CAN LOCATE DESCRIBED AND REFERRED TO AS NUMBERS 1-10 AT

PAGES 17-24 of THE MOTION RECORD;

(2) ANY DOCUMENTS, IF ANY, PRODUCED TO DOCUMENT THE WRITING OFF OF THE LINE OF CREDIT;

(C) DOCUMENTS REFERRED TO AS A, B, C AND D AT PAGE 207 of THE MOTION RECORD.

(5) REGARDING PARTICULARS OF THE COUNTERCLAIM, THE PLAINTIFF CONCEDES THAT IS REALLY DOCUMENTS HE WANTS AND THAT IS COVERED BY AN AFFIDAVIT OF DOCUMENTS

(6) REGARDING THE LOST REQUEST FOR RELIEF IN THE MOTION (d), I ADVISE THE PLAINTIFF THAT I COULD NOT MAKE SUCH AN ORDER AND IF THERE ARE DISCREPANCIES IN ANY OF THE DEFENDANT'S DOCUMENTS, IT IS A MATTER FOR CROSS-EXAMINATION AT TRIAL OR JUSTICES AT DISCOVERY.

(7) THE ONLY REMAINING ISSUE IS WHO IS TO ADVISE WRITTEN JUSTICES AT DISCOVERY AND A TIMETABLE FOR THE DISCOVERY PROCESS. MR. NAI WILL OBTAIN INSTRUCTIONS WHETHER SHE WILL PRODUCE MR. HACKETT WITH THE PLAINTIFF HAS REQUESTED. THAT WILL BE DISCUSSED AT THE NEXT CASE CONFERENCE.

(8) The next Case Conference will take place on APRIL 8/08 at 9:00 am/pm. It will proceed by telephone conference call ☒, to be arranged by MR. NAI; Master Egan's telephone number is 416-326-5983. ~~It requires a personal attendance.~~

It is the responsibility of counsel to make all necessary arrangements for telephone conference calls. Prior to the scheduled date, they should ensure that their telephone system is equipped to handle the number of anticipated participants. If that is not the case arrangements should be made through a telephone conferencing service provider. Counsel are expected to be punctual; to have their calendars at hand; to know their clients availability and to be ready to schedule events and fix exact dates.

Registrar: Salma Bapoo

Tel: 416-327-8730

Fax: 416-326-5416

DATE: FEB 20/08

Jane Egan  
Case Management Master

  
Signature

Master Jane Egan

NOTE: THIS ORDER IS EFFECTIVE WITHOUT FURTHER FORMALITY.



**SUPERIOR COURT OF JUSTICE  
CIVIL  
393 University Ave – 10<sup>th</sup> Fl  
Toronto ON M5G 1E6**

**BETWEEN**

**Gana Kiritharan**

**Plaintiff**

**and**

**TD Canada Trust**

**Defendant**

**NOTICE OF MOTION 2 (Continued)**

As Per Order of Master Egan made during Case Conference on 20 -February-2008, a second conference in writing to be held. Case Conference by Telephone to be held on 20<sup>th</sup> February 2008 at 9.00 AM, at Conference Call in Chambers (Call), Superior Court of Justice – Civil, 393 University Ave, Toronto ON M5G 1E6.

47. Plaintiff Claims are mentioned in Paragraphs 52, 53, 60, 61 and 62.

48. As Per Order of Master Egan made during Case Conference on 20 -February-2008, The Defendant will serve an affidavit of documents by March 31, 2008. The said affidavit will include:

- A. Any Transaction slips the defendant can locate described and referred to as numbers 1 – 10 at pages 17 – 24 of the motion record;
- B. Any documents, if any, produced to document the writing off of the line of credit;
- C. Documents referred to as A, B, C & D at page 207 of the motion record.

49. On March 31, 2008 Plaintiff received following documents from Defendant.

- A. An Affidavit of Documents from Defendant (MR Page # 223 – MR Page # 230).
- B. Account Details for accounts described in Paragraph 21 of the motion record (MR Page # 145 – MR Page # 176).
- C. Photocopy of Transaction Record Slips as Follows (MR Page # 231 – MR Page # 243):

*Table 49.1: Details of Transaction Slips Provided by Defendant.*

Number Represented on Motion Record Page 17 - 24	Transaction Date	Front Side	Back Side	Comments
1	Nov 02/04	Details, Date Stamp	Hand Written Cash Details	
2	Dec 03/04	Details	Computer Generated Cash Details	Missing Date Stamp
3	Dec 10/04	Details, Computer Generate Cash Details.	Not Provided	Missing Date Stamp ?? Signature
4	Dec 17/04	Details	Some Account Details	Missing Date Stamp, Missing Cash Details
5	Jan 05/05	Details, Date Stamp	Compu Generate Cash Details, Date Stamp	
6	Feb 04/05	Details	Not Provided	Missing Date Stamp, Missing Cash Details
7	Feb 02/05	Details, Date Stamp	Not Provided	Missing Cash Details
8	Feb 12/05 Feb 14/05	Details Date Stamp	Computer Generated Cash Details.	
9	Mar 02/05	Details, Computer Generate Cash Details.	Some Account Details? Date Stamp.	Why some account details?
10	Mar 03/05	Details	Not Provided	Missing Date Stamp, Missing Cash Details.

- D. Three different lists of Abbreviations which may be considered as mentioned as D and C in Page number 207 of Motion Record (MR Page # 244 – MR Page # 250).

50. Defendant failed to provide following documents mentioned in Order made by Master Egan during Case Conference on 20 -February-2008.

A. Some Details of Transaction slips described at pages 17 – 24 of the motion record.

Missing Details are mentioned as high lighted cell in Table 49.1.

B. Any documents, if any, produced to document the writing off of the line of credit;

C. Documents referred to as A & B at page 207 of the motion record.

51. Plaintiff presents his Factum regarding provided Documents and Documents he still expecting from Defendant in following Paragraphs.

52. In Schedule B of Affidavit of Documents (MR Page # 227) Defendant Failed to list and describe documents individually. Plaintiff claims the Defendant to List each of the Documents with Title of the document and date of document.

53. As the Details received regarding Transaction Slips mentioned in this issue is incomplete, Plaintiff demanding to Inspection of the Originals of the Documents and if any information material for this Civil case found to be printed on them, then Plaintiff demand such Transaction record slip to deposited for safe keeping to the court on the Ground Rules 30.04 and 30.11 of the Rules of Civil Procedure. R.R.O. 1990, Reg. 194.

54. From the accounting abbreviations received from defendant following two different abbreviations can be found (MR Page # 244 and MR Page # 248):

<b>COLL</b>	COLLECTIONS / COLLECTOR
<b>W/O</b>	WRITE OFF

These two clearly indicate Collections is a different Financial Transaction from Write Off. As Plaintiff Line of Credit Balance became “0.00” after Collection Item, most logical explanation is an Appropriation (or “Offsetting” as usually called in Accounting) made

from funds belong to Plaintiff is the mode of closure for Plaintiff line of credit with Defendant.

55. Plaintiff presents Generally Accepted Accounting Principle (GAAP) collected from Canadian Institute of Chartered Accountant (CICA) Handbook to support his argument (MR Page # 252 – MR Page # 281). Office of Superintendent of Financial Institutions Canada when preparing guide lines for Banks and other Federally Regulated Financial Institutions, consider this GAAP from CICA Hand book as their basis (MR Page # 282 – MR Page # 289).
56. According to CICA Handbook “Write Off” Means “A reduction of the recorded investment in a loan, either in full or in part, by the amount considered beyond realistic prospect of recovery” (MR Page # 255 CICA Handbook Section 3025 Paragraph 2 (g)).
57. According to CICA Handbook when Write Off happens the loan account will be Credited with Write Off amount and Write Off Account or Allowance for Loan Impairment will be Debited with same amount of money (MR Page # 265 CICA Handbook Section 3025 Paragraph 42).
58. According to CICA Handbook “Offsetting” can happens when “A financial asset and a financial liability should be offset and the net amount reported in the balance sheet when an entity (a) has a legally enforceable to set off the recognized amount; and
- (b) intend either to settle on a net basis, or to realize the asset and settle the liability simultaneously.

During Set Off the loan account will be Credited with Set Off amount and the asset account will be Debited with same amount (MR Page # 274 & 275, CICA Handbook Section 3861 Paragraphs 27 - 29).

59. According to the information presented in Paragraphs 52 to 56 what happened to Plaintiff line of credit on October 19, 2005 is better considered as an Off Setting.

60. On this basis Plaintiff demand the Defendant to provide from which asset belongs to Plaintiff, defendant made the offset.

61. If Defendant continued to maintain what happened on October 19, 2005 to Plaintiff Line of Credit is an Write Off, then Plaintiff demand copies of details of entries which are made in defendant's (a) Write off Account or

(b) Allowance for Loan Impairment Account,

For Plaintiff's

(i) Value Account (Checking Account) on 06/28/2005 for the amount of 107.30

(ii) Line of Credit on 10/19/2005 for the amount of 11,611.72

(iii) TD Visa Emerald Card on 10/31/2005 for the amount of 2329.63

62. Plaintiff also demands:

A. Any documents, if any, produced to document the writing off of the line of credit;

B. Documents referred to as A & B at page 207 of the motion record.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

20. Affidavit of Documents from Defendant.

21. Photocopy of Transaction Record Slips Received from Defendant, which are described and referred to as 1 – 10 at pages 17 – 24 of the motion record.

22. Standard and ARM Standard Abbreviations received from Defendant.

23. Flow Chart of Default Accounts in a Bank prepared by Gana Kiritharan.
24. Important Pages of CICA Handbook.
25. Guideline from Office of Superintendent of Financial Institutions Canada for Banks and Other Federally Regulated Financial Institutions.

Date: April 1, 2008

**Gana Kiritharan**  
307 – 10 Stonehill Court  
Scarborough, Ontario  
M1W 2X8  
Tel: 416 – 820 – 8581

**TO: Susan Rai,**

**Solicitor for the Defendant, TD Canada Trust,**

**FLUXGOLD IZSAK JAEGER LLP,**  
Barristers & Solicitors  
100 York Boulevard, Suite 220  
Richmond Hill, Ontario  
L4B 1J8

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# SUPERIOR COURT OF JUSTICE - ONTARIO

ORDER 07-CV-341987 PD 2

COURT FILE NUMBER: \_\_\_\_\_

TITLE OF PROCEEDING: KINATHAN V TO CANADA TRUST

COUNSEL: MR KINATHAN <sup>in person</sup> for Plaintiff Fax No.: \_\_\_\_\_  
MS. RAI for Defendant Fax No.: 905-763-3772  
 \_\_\_\_\_ for \_\_\_\_\_ Fax No.: \_\_\_\_\_  
 \_\_\_\_\_ for \_\_\_\_\_ Fax No.: \_\_\_\_\_  
 \_\_\_\_\_ for \_\_\_\_\_ Fax No.: \_\_\_\_\_

In Writing Case Conference ☐ Telephone Case Conference ☒ Personal Attendance ☐

① REGARDING ITEM 4 (a). of my order of FEBRUARY 20, 2008, MR. KINATHAN PRODUCED A SECOND MOTION RECORD FOR THE CASE CONFERRED TODAY AND AT PAGE 216 ~~THE~~ THERE IS A HIGHLIGHTED CHART WITH WHAT HE ALLEGES IS MISSING DOCUMENTS FROM THE DOCUMENTS PRODUCED. MOSTLY, THIS CONSISTS OF A MISSING BACK SIDE AND/OR MISSING DATE STAMPS.

MS. RAI WILL INQUIRE WHETHER ANY ORIGINAL DOCUMENTS EXIST SINCE THE DOCUMENTS PRODUCED WERE FROM MICROFICHE. IF NO ORIGINALS EXIST, THE PROCESS OF SCANNING FOR THE MICROFICHE DOCUMENTS WILL BE EXPLAINED.

② MS. RAI ADVISED THAT THERE ARE NO FURTHER DOCUMENTS TO PRODUCE REGARDING THE WRITING OFF OF THE LIST OF CREDIT.

③ MS. RAI WAS TO PRODUCE ANY WRITTEN POLICIES REGARDING PERSONAL ACCOUNT AND PERSONAL ACCOUNTS PLACED FOR COLLECTION. SHE ADVISED THAT THERE ARE NO

SUCH WRITTEN POLICIES. SHE HAS PRODUCED A GENERAL FINANCIAL SERVICES AGREEMENT AND INJURY NOTIFICATION THE PLAINTIFFS AND FINANCIAL SERVICES AGREEMENT CAN BE FOUND.

4) SCHEDULE B OF THE AFFIDAVIT OF DOCUMENTS IS NOT CORRECT PROPERLY. BY MAY 9, 2008 MS. RAI WILL SHOW AN AMENDED AFFIDAVIT OF DOCUMENTS WITH A PROPER SCHEDULE B AND ANY ADDITIONAL DOCUMENTS FOUND IN THE INTERIM.

5) THE PARTIES AGREE THAT THE PLAINTIFF WILL CONDUCT A WRITTEN DISCOVERY AND THAT THE JUSTICES WILL BE PAID FOR BY MR. HOCKEY. THE PARTIES CAN AGREE UPON A TIMETABLE FOR THIS DISCOVERY WITHIN ~~THE~~ THEY ARE READY.

6) MS. RAI IS TO FORTHWITH MAIL A COPY OF THIS ORDER TO THE PLAINTIFF

7) I AM NOT SEIZING OF ANY FURTHER MOTIONS IN THIS ACTION.

The next Case Conference will take place on \_\_\_\_\_ at \_\_\_\_\_ am/pm. It will proceed by telephone conference call \_\_\_\_\_, to be arranged by \_\_\_\_\_; Master Egan's telephone number is 416-326-5983. It requires a personal attendance.

It is the responsibility of counsel to make all necessary arrangements for telephone conference calls. Prior to the scheduled date, they should ensure that their telephone system is equipped to handle the number of anticipated participants. If that is not the case arrangements should be made through a telephone conferencing service provider. Counsel are expected to be punctual; to have their calendars at hand; to know their clients availability and to be ready to schedule events and fix exact dates.

Registrar: Salma Bapoo

Tel: 416-327-8730

Fax: 416-326-5416

DATE: April 8/08

Jane Egan  
Case Management Master

Signature 

NOTE: THIS ORDER IS EFFECTIVE WITHOUT FURTHER FORMALITY Master Jane Egan