

ONTARIO
SUPERIOR COURT OF JUSTICE
393 University Ave – 10th Fl
Toronto ON M5G 1E6

BETWEEN

Gana Kiritharan

Plaintiff

and

TD Canada Trust

Defendant

FACTUM

This moving party's (plaintiff's) factum to be heard during motion on Wednesday, 12th of November 2008, at 10.00 AM, or soon after that time as the motion can be heard, at Superior Court of Justice - Civil, 393 University Avenue, Toronto, Ontario.

THIS FACTUM CONTAINS FOLLOWING SECTIONS:	Page	Paragraph
A. Introduction	2	1 – 3
B. Evidences and Arguments for Commission of Crime:	2	4 – 38
C. Evidences and Argument for Liberty for Inspection:	8	39 – 42
D. Evidences and Argument for Cost of Discovery:	9	43 – 46
E. Request for Amended Affidavit of Documents:	11	47 – 55
F. Psychiatric Diagnosis of Plaintiff's Mental Condition:	12	56 – 66
G. Plaintiff's Claim to Inspect Cheques and Transaction Records:	13	67 – 74
H. Plaintiff's Claim for Case Management:	15	75 – 91
I. Cost of This Motion:	18	92 – 93

A. INTRODUCTION:

(Tab 2 of Motion Record; Pages 15 - 62 of Motion Record)

1. Plaintiff started this legal proceeding on 18th of October 2007, on a suspicion that Defendant, TD Canada Trust has some illegally concealed financial information or even money belong to Plaintiff.
2. When defendant failed to provide an Affidavit of Document before the deadline Plaintiff requested Court intervention in discovery.
3. Under court order two telephone case conferences were conducted on 20th of February 2008 and on 8th of April 2008. As a result of these Case Conferences, Court first issued an order the Defendant to provide an Affidavit of Documents by 31st of March 2008. As the issued Affidavit of Document was not properly done Court issued second order to Provide and amended affidavit by 9th of May 2008.

B. EVIDENCES AND ARGUMENTS FOR COMMISSION OF CRIME:

(Tab 4 of Motion Record; Pages 75 – 171 of Motion Record)

4. Plaintiff is making a submission to the Court that following evidences are collected so far for an illegally Opened and Managed Account in Plaintiff's name at Defendant bank.

Evidence 1: Collection Item for Plaintiff's Line of Credit.

(Affidavit of Document 2 Civil; Pages 75 – 86 of Motion Record.)

5. When Plaintiff defaulted his Line of Credit (Account # 1625 – 4457424) with Defendant, after 7 months the Line of Credit Account gets closed as follows:

Date	Trans Description	Trans Amount	Balance
10/19/2005	Interest	49.89 DR	
10/19/2005	Collection Item	11,611.72 CR	
10/19/2005	Close Account	0.00 DR	0.00

6. Above Transaction is being reported in Plaintiff's TransUnion Credit report as Follows;
(Balance 0, Closed Consumer's Request).

Reported	Opened	Last Activity	High Credit	Balance	Past Due Amount	Terms	Account Type/Current Payment	Payment History
								30 60 90 #m
TORONTO DOMINION BANK								
Oct 01, 2005	May 2002	Oct 2005	11,000	0	0	346/Month	R5 REVOLVING AT LEAST 120 DAYS OVERDUE	1 1 5 42
Comments: CLOSED CONSUMER'S REQUEST, LINE OF CREDIT								

7. Though Defendant tries to argue this means that the Bank "Written-Off" the account (Page 25 of Motion Record, Paragraph 11), Defendant failed to produce any evidence which may lead to a conclusion that "Collection Item" means "Write-Off".
8. Mean time Plaintiff was able to define the word "Collections Item" (Affidavit of Document 7 Civil; Pages 87 – 112 of Motion Record.) with the help of 3 formal financial Documents. One of the documents is TD Canada Trust – Accounts – Account Related Information and Administrative Fees. This document was obtained from TD Canada Trust official web site.
9. As plaintiff understand, **Collection Item** is a Financial Instrument prepared by the Bank for the Liability of Full amount Plaintiff owes for his Line of Credit as of 19th of October 2005, which successfully received payments from a concealed account belong to Plaintiff. As there is no additional charges leads to a conclusion that payer account for this Collection Item also located in Defendant bank.
10. Defendant Accounting Documents should be able to tell more detail about the concealed account belongs to Plaintiff.
11. According to Information Collected by Plaintiff a document called "Deposit Account Transaction Enquiry" from defendant record management system for the above transaction may provide more information about the transactions are being discussed. (Pages 113 – 116 of Motion Record.)

Evidence 2: Collection Item for Plaintiff's Value (Checking) Account.

(Pages 117 – 120 of Motion Record.)

12. When Plaintiff's Value (Checking) Account (Account # 5926 – 318810) started to become Over Draft due to some accounting charges, after 4 months the Account gets closed as Follows:

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

13. As Explained above Defendant Accounting Documents should be able to tell more detail about the concealed account belong to Plaintiff from where above money came from.
14. Above mentioned two transactions explain a fact that a minimum value of \$ 11,719.02 Canadian Dollars was existed in concealed account.

Evidence 3: Write-Off date for Plaintiff's TD Emerald Visa Card.

(Pages 121 – 164 of Motion Record.)

22. When Plaintiff defaulted for payments for his TD Emerald Visa Card (Account Number 4520-0500-0241-3878) with Defendant, bank supposed to Write-Off the account in 180 Days (6 Months). (As per C - 1 Guide Line of Office of Superintendent of Financial Institutions Canada.) (Paragraph 26 of this Factum.)
23. In Court Documents bank say they Written-Off the account in 240 Days (8 Months). (Page 27 of Motion Record; Paragraph 20 of Statement of Defence and Counterclaim).
24. But Evidence (Account Details Provided by Defendant and TransUnion Canada Credit Report) indicate account was Written-Off only after 540 Days (18 Months). (Page 121 – 136 of Motion Record.)
25. This is because probably the concealed account provided security for Plaintiff's Visa Card loan amount.

26. Appropriate excerpts from C - 1 Guidelines. (Pages 137 – 164 of Motion Record.)

Subject: Impaired Loans
No: C-1

Category: Accounting
Date: March 1995
Revised: July 2007

(Page 2, Paragraph 6 and 7) (Page 139 of Motion Record.)

€ a payment on any loan is contractually 180 days in arrears. Any credit card loan that has a payment 180 days in arrears should be written off.

An exception to these conditions is made for not more than 365 days from the date a loan is contractually in arrears where the loan is guaranteed or insured by a Canadian government (federal or provincial) or a Canadian government agency, the validity of the claim is not in dispute, and as a consequence the lender has reasonable assurance of collection of the principal and interest, including full compensation for overdue payments calculated at the loan's contractual interest rate.

(Page 7, Paragraph 1) (Page 144 of Motion Record.)

A loan cannot be split into unimpaired and impaired portions for the purpose of reducing the recorded investment in impaired loans that is required to be disclosed unless this is done to reflect a change in the underlying legal agreements. The existence of a partial government guarantee or insurance does not preclude a loan from being disclosed as an impaired loan when reasonable assurance of the timely collection of the full amount of principal and interest does not exist.

27. Evidence discussed in Paragraph 22 – 26 confirms following facts regarding existed concealed money belong to plaintiff.

- i. In addition to \$ 11,719.02 there was at least another \$ 3,000.00 was existed in the concealed account.
- ii. The money existed was not claimed by any body else and provided an unchallenged security for the plaintiff's loan amount.
- iii. The concealed account was being managed in defendant for more than one year.

28. Plaintiff also makes a submission to the Court that above mentioned evidences may be **Deemed to be Admitted** by Defendant as Defendant failed to response Request to Admit from Plaintiff dated 18th of August 2008. (Pages 165 – 168 of Motion Record.)

29. Plaintiff makes submission to the court that evidences presented in paragraph 5 – 27 are accounting details provided by defendant as a part of Affidavit of Document and Trans

Union Canada Credit Report which was not changed when Plaintiff made a query for accuracy.

30. Plaintiff argue that evidence discussed in paragraph 5 to 28 demonstrate existence of an account in the name of plaintiff (Gana Kiritharan or Kiritharan Kanagalingam) in defendant bank which was not opened or managed by plaintiff. (Legal Name Change Details; Page 169 – 171 of Motion Record.)
31. Plaintiff argues that above account was opened and managed by unknown people for the purpose of misappropriating plaintiff's royalty cheques. (Tab 5: Plaintiff's belief in this issue and evidences; Pages 173 – 246 of Motion Record.)
32. As plaintiff understand the Law, this activity is violation of following sections of Criminal Code; (Tab 7: Related Provisions of Law, Common Law Cases and Police Complaint.)
- i. 322: Theft: The Account or Asset was hidden from plaintiff attention with intention to deprive his rights to benefit from it permanently.
 - ii. 341: Fraudulent Concealment: The Account or Asset was hidden from plaintiff attention for Fraudulent Purpose.
 - iii. 403: Personation: The Account or Asset in plaintiff name is managed without his consent with intention to cause disadvantage.
33. Plaintiff makes a submission to the court that he has communicated regarding this issue with following personnel in TD Canada Trust; (Tab 6: Pages 247 – 293 of Motion Record.)
- i. Branch Managers:
 - a. Eileen Vaughan – Branch Manager of Bayshore Shopping Center Branch – Letters Dated 12th of March 2007, 4th of April 2007 and 12th of July 2007.
 - b. Ramba J – Branch Manager of Branch at Kennedy and Eglinton Ave, – Personal Visit on 3rd of April 2007.

- ii. TD Canada Trust Communication center (1 888 453 0334), Telephone call on 10th of May 2007.
 - iii. TD Ombudsman – Copy of a Letter dated 12th of March 2007 sent to Bayshore Shopping Center Branch Manager also sent to TD Ombudsman.
 - iv. Mr. Tim Hockey (Executive - Group Head of Personal Banking) – Copy of a Letter dated 12th of March 2007 sent to Bayshore Shopping Center Branch Manager also sent to Mr. Tim Hockey.
 - v. Ms. Angel Wang – Account Recovery and Fraud Management – Communication made through CB Associate and Consultant.
 - vi. Mr. John M Thomson - Chairman of the Board – As a part of Public Relation Campaign – Letter and Document Brief Dated 26th of June 2008 was sent by Xpress Post.
 - vii. Audit Committee Chair and Members of Board of Directors – As a part of Public Relation Campaign – As individual address are not known Letters are included with letter to Chairman of Board.
34. Plaintiff make a submission to the court that during above instances the personnel either tried to mislead plaintiff (i.b, ii, v) or failed to respond to plaintiff's inquiries.
35. Plaintiff also make a submission to the Court, the counterclaim filed by defendant gives a misleading idea that Collection Item means Write-Off. (Page 25 of Motion Record; Paragraph 11 of Statement of Defence and Counterclaim.)
36. Based on Submission made in Paragraph 33 and 35, Plaintiff argue that the above illegal activity happened in defendant is not a mistake of one or two people, but TD Canada Trust as a institution responsible for it.

37. Plaintiff also makes reference to Common Law case which may be appropriate here. (Page 318 of Motion Record.)

i. The words of Lacourciere J, then Ontario High Court, Application under Rule 6 of the Criminal Appeal Rule to quash a search warrant, in *Regina v. Movat, Ex Parte Toronto-Dominion Bank* [1967], [1968] 2 C.C.C. 374.,

“I do not want to be understood as stating that banks are in all cases exempt from search and seizure under s.429; a bank suspected of a criminal offence would be subject to search and seizure of its books and records;”

38. Based on Submission and arguments made from Paragraph 5 to 37 Plaintiff Requesting the Court to Order that there are enough evidence to suspect that there was a Commission of Crime in accounts managed under the name of Plaintiff (Gana Kiritharan or Kiritharan Kanagalingam) in Defendant bank (TD Canada Trust).

C. EVIDENCES AND ARGUMENT FOR LIBERTY FOR INSPECTION:

39. Plaintiff makes a submission to the court as he understand the Law according to Section 33 of Evidence Act, R.S.O. 1990 Plaintiff and/or; Canadian Police Departments and/or Private Investigators investigating Plaintiff’s complaint be at liberty to inspect and take copies of any entries in the books or records of accounts managed under the name of Plaintiff for following reasons.

- i. Defendant is a party in this proceeding.
- ii. As Plaintiff is asking his own account details, question of privacy or secrecy does not arise here.
- iii. As the production of account details managed under plaintiff name is pertinent to the proof of the commission of crime, the “special cause” is established.

40. Following Common Law Case references may be supportive of plaintiff claims. (Page 326 of Motion Record)

- i. The words of Barclay J, then Quebec Court of King Bench, Appeal Side, in *Ship v. The King* [1949], 95 C.C.C. 143 at p.155, 8 C.R. 26,

“I am of the opinion that when it is shown that the production of such documents is pertinent to the proof of the commission of a crime, the special cause, spoken of in the statute, is established.”

41. Plaintiff also makes a submission to the court that he has made a police complaint regarding this issue. The complaint number: Fraud Complaint 2529262. Present status of complaint is “Departmental Discretion”. (Pages 232 – 238 of Motion Record.)

42. Based on Submission and Arguments made on Paragraph 39 to 41 Plaintiff requests the Court to Order that Plaintiff and/or; Canadian Police Departments and/or Private Investigators investigating Plaintiff complaint be at liberty to inspect and take copies of any entries in the books or records of accounts managed under the name of Plaintiff.

D. EVIDENCES AND ARGUMENT FOR COST OF DISCOVERY:

43. Plaintiff make a submission to the court that, defendant is default in disclosing full account details managed under the name of plaintiff for following reasons;

- i. Defendant failed to give clear explanation for Plaintiff’s concerns when contacted between 12th of March 2007 till 16th of October 2007 by Plaintiff before filing this claim. (Pages 247 – 274 of Motion Record.)
- ii. After filing this claim Defendant failed to provide an Affidavit of Document before deadline that is 27th of December 2007.

- iii. Affidavit of Document filed by Defendant according Section 4 of Court Order dated 20th of February 2008 was not properly done and Court issued an order for an Amended Affidavit of Document. (Pages 59 – 60 and 339 – 344 of Motion Record.)
- iv. Amended Affidavit of Documents from Defendant according section 4 of Court Order dated 8th of April 2008 also was not properly done and may not be a complete disclosure of documents for following reasons; (Pages 62 and 347 – 354 of Motion Record.)
 - a. It failed to respect Court order to list the documents in Schedule B individually.
 - b. It failed to include any document which may give cleared explanation for the word “Collection Item”.
 - c. It failed to include any document which may lead to a conclusion that “Collection Item means Write-off”.
 - d. It failed to include any account details which were previously concealed from Plaintiff.
- 44. Plaintiff also makes a submission to the Court that Defendant failed to response to Request to Admit from Plaintiff dated 18th of August 2008. (Pages 165 – 168 of Motion Record.)
- 45. For the reasons explained in Paragraph 43 and 44, Plaintiff argue that Defendant is Default in document discovery and according to Section 33.6 of Evidence Act, R.S.O. 1990 has the obligation to incur all future expenses of discovery of account details managed under the name of Plaintiff.
- 46. According to submission and argument made in Paragraph 43 to 45 Plaintiff Requesting the Court to Order that Defendant has to pay the cost of all future discovery of account details managed under Plaintiff name in Defendant.

E. REQUEST FOR AMENDED AFFIDAVIT OF DOCUMENTS:

47. Plaintiff make a submission to the court that as explained in paragraph 43.iv Amended Affidavit of Documents from Defendant received on 9th of May 2008 may not be complete disclosure of documents.
48. Plaintiff also claim following documents for the reasons explained subsequently.
49. Plaintiff claim for **“Deposit Account Transaction Enquiry” for Transactions recorded as Collection Item** in Plaintiff account Details with Defendant. (Pages 113 – 116 of Motion Record.)
50. This Claim is to gather more information about Transactions Recorded as “Collection Item”.
51. Plaintiff claim Defendant to Provide the **Complete Detail of Payer Account** for Collection Item in Plaintiff accounts with Defendant.
52. This Civil Action started by Plaintiff primarily to get the details of above mentioned Payer Account. The evidences for existence of such an account are presented in Paragraph 5 -28.
53. Plaintiff claim Defendant to Provide **Monthly Statement from October 2006 till April 2007 for Plaintiff TD Visa Emerald** Card No: 4520-0500-0241-3878.
54. This Request is for the purpose of determine the actual write-off date for above account.
55. On the Ground of Rules 30.06 of the Rules of Civil Procedure. R.R.O. 1990, Reg. 194 plaintiff Requesting the Court to Order that Defendant Provide an Amended Affidavit of Document by 19th of November 2008 which include following details.
- i. A proper Schedule B which list documents individually with title of the document and date of the document.

- ii. Deposit Account Transaction Enquiry for Transactions Reported as “Collection Item” in Plaintiff’s Line of Credit and Value Account.
- iii. Monthly Statement from October 2006 till April 2007 for Plaintiff TD Visa Emerald Card No: 4520-0500-0241-3878.
- iv. Details of Payer account for Collection Item of Plaintiff’s Line of Credit and Value Account as follows;
 - a. Deposit Account History – Financial Enquiry from Opening of the account till Latest date account managed in Defendant.
 - b. Deposit Account Transaction Enquiry for each transaction of that account.
- v. Any other Plaintiff’s account details which are previously concealed from Plaintiff.

F. PSYCHIATRIC DIAGNOSIS OF PLAINTIFF’S MENTAL CONDITION:

(Tab 9: Pages 355 – 410 of Motion Record.)

- 56. A Psychiatric Diagnosis of Plaintiff’s mental condition saying “Delusional Disorder of Persecutory Type” may be causing unnecessary delays in this proceeding and also become a serious damage for Plaintiff life
- 57. A diagnostic letter from Dr. Sooriabalan saying above diagnosis has happened on 30th of May 2007 and the letter dated 4th of June 2008 was received by Plaintiff on 22nd of July 2008. (Page 359 of Motion Record.)
- 58. Plaintiff argues that the Psychiatric Diagnosis of “Delusional Disorder of Persecutory Type” is a mistake for following reasons.
 - i. Systematic and innovative nature of Fraud into Plaintiff royalty income.
 - ii. Misleading and concealing attitude being shown by defendant.
 - iii. Failure of Toronto Police Services to investigate plaintiff’s complaint.
 - iv. Some professional incompetence in Psychiatric Profession regarding diagnostic criteria.

- v. Dr. Sooriabalan's poor commonsense in accounting, banking and credit reports and his negligence in analysing evidences presented for fraud and negligence in responding for a request to review diagnosis.
59. Plaintiff make a submission to the Court, he on his own initiative went to see Dr. Sooriabalan and informed Dr. Sooriabalan that he is a victim of fraud and requested treatment for stress and depression. Plaintiff also have shown Dr. Sooriabalan evidences for the fraud.
60. Dr. Sooriabalan with out making any attempt to understand the evidences for the fraud came to the conclusion that Plaintiff's complaints are delusions.
61. By doing so Dr. Sooriabalan may have crossed his professional barrier and acted as an accountant and a Judge. By doing so Dr. Sooriabalan caused serious damages for Plaintiff's self-esteem and personal life.
62. Defendant also without any legal basis claiming plaintiff under legal disability and causing unnecessary damages for Plaintiff's self-esteem and attempt to create delays in this actions.
63. Plaintiff make a submission to the court that only Court Order No.1 is being requested by Plaintiff (there are enough evidences to suspect a commission crime in accounts managed under the name of Plaintiff in defendant) will put an end to this confusion and stop damages being done to Plaintiff's self-esteem and personal life.
64. Plaintiff also make a submission that as his Complaint regarding this issue to Toronto Police Services not being investigated because of "Departmental Discretion", this civil court is only place plaintiff can expect such relief. (Pages 332 – 338 of Motion Record.)
65. Plaintiff also believe that Defendant may have received a Diagnostic Letter regarding Plaintiff mental condition even before Plaintiff has received it and may have used it with bad faith

66. Plaintiff claim from Defendant Complete detail of any psychiatric diagnostic letter regarding Plaintiff's Mental Status which Defendant received from any party other than Plaintiff and complete details of usage of such a letter in this proceeding and/or for any other purposes.

G. PLAINTIFF'S CLAIM TO INSPECT CHEQUES AND TRANSACTION RECORDS;
(Tab 10: Pages 411 – 436 of Motion Record.)

67. Plaintiff noticed that during November 2004 – March 2005 period when he went for counter transactions at defendant branches, tellers at the bank were printing some additional information on the back side of the Transaction Record (Slips) or were attaching some additional printed papers to the Transaction Record (Slips) plaintiff supposed to sign.

68. As a result of Court Orders first Defendant Provided copies of these Transaction Records and then an opportunity to inspect originals of eight out of ten Transaction Records being claimed.

69. From the information gathered it is confirmed that Transaction Record signed on 2nd of March 2005 (Identified as Transaction Record No: 9; Page 430 of Motion Record) has some additional transactions that were not carried out on that date were printed on back side of the sheet and Transaction Record signed on 3rd of March 2005 (Identified as Transaction Record No: 10; Pages 431 and 432 of Motion Record.) has some additional paper with printed transactions which were not carried out on that day attached to it.

70. The two original which were not produce may have some information regarding illegally opened and managed account or this may be an attempt to label plaintiff as a psychiatric patient and use such diagnosis as a defence in any anticipated legal proceeding at that time.

71. Plaintiff claim from Defendant an opportunity to inspect and take copies of all Cheques and Transaction Records of the payer account for Plaintiff's line of credit and value account.

72. As above account was opened and managed without the consent of Plaintiff, this information is essential for plaintiff determine the details of his royalty payments.
73. This information may be essential for any future criminal investigation into this issue.
74. On Ground of Rule 30.04 of the Rules of Civil Procedure. R.R.O. 1990, Reg. 194 Plaintiff requesting the Court to Order that Defendant produce following documents for inspection and copying by 12th of December 2008.
- i. The two originals of transaction records which are not produced for inspection being claimed in Affidavit of Document 1 Civil.
 - ii. All checks and Transaction records of the payer account for Plaintiff's line of credit.

H. PLAINTIFF'S CLAIM FOR CASE MANAGEMENT:

(Tab 6: Pages 247 -274 of Motion Record), (Tab 11: Pages 437 – 450 of Motion Record).

75. Plaintiff makes a submission to the court that this Civil Action experiencing delays because of default of defendant in discovery, failure to response to plaintiff request for additional evidences and a motion requests by defendant with intention to cause delay.
76. Plaintiff make a submission to the court that, he brought the issue to attention to the defendant for the first time by a letter to Branch Manager, Bayshore Shopping Center, Ottawa dated 12th of March 2007. Plaintiff forwarded all necessary details for an enquiry with this letter. (Page 249 of Motion Record).
77. When responding to this letter on 28th of March 2007, branch manager informed that "I have ordered the entries you are enquiring about but this will take some time as they date back to 2005". (Page 250 of Motion Record).
78. Despite this confirmation plaintiff failed to receive any clear explanation for his concerns until 16th of October 2007. (Affidavit of Document 3 Civil; Pages 247 – 274 of Motion Record.)

79. After Plaintiff filed the claim for account details, defendant failed to provide Affidavit of Documents before dead line that is 27th of December 2007.
80. During first telephone conference on 20th of February 2008, when defendant requested more time to search Plaintiff's account details, court granted one month and ten days to submit Affidavit of Documents. (Page 59 – 60 of Motion Record).
81. As the Affidavit of Documents provided by defendant was not properly done court issued for an order for amended affidavit with missing details. Again defendant asked one more month to search plaintiff account details and court granted one more month. (Page 61 – 62 of Motion Record).
82. As explained in paragraph 43.iv of this factum, provided amended affidavit failed to respect court orders and may not be a complete disclosure of necessary documents.
83. Defendant failed to respond to Plaintiff's following documents sent regarding out standing issues in document discovery after previous telephone case conferences.
- i. Notice to Defendant – Outstanding Issues in Document Discovery and Other Issues, Dated 14th of March 2008. (Pages 437 – 440 of Motion Record.)
 - ii. Request to Save Keep Evidences and Requesting Explanation (Regarding Transaction Records), Dated 12th of June 2008. (Pages 433 – 436 of Motion Record.)
 - iii. Request for Deposit Account Transaction Enquiry, Dated 12th of June 2008. (Pages 166 – 168 of Motion Record.)
 - iv. Notice to Defendant – Outstanding Issues in Document Discovery and Requesting Date for Motion, Dated 18th of August 2008. (Pages 441 – 444 of Motion Record)
 - v. Request to Admit from Plaintiff, Dated 18th of August 2008. (Pages 166 – 168 of Motion Record.)

- vi. Notice to Defendant – New Evidences by Plaintiff and Requesting Defendant to Fulfill following Out Standing Issues in Document Discovery and Other Issues before Motion for Summary Judgment (on 16th of October 2008), Dated 26th of September 2008. (Pages 477 – 450 of Motion Record.)
84. While Plaintiff waiting for dates for motion to argue regarding outstanding issues in 2nd week of September 2008, defendant called Plaintiff and informed they wanted to bring a motion in front of a Judge and on such a motion Plaintiff need to be represented by a lawyer.
85. When Plaintiff informed he do not have enough money to hire a lawyer and his application for legal aid was turned down, defendant lawyer conclude plaintiff do not need a lawyer and informed when the date for motion is booked, they will inform plaintiff.
86. Later plaintiff received a letter from defendant saying a motion for summary judgement is booked on 16th of October 2008 also from court he learned it is before a master. (Page 445 of Motion Record.)
87. On 9th of October 2008 on dead line to receive motion materials, plaintiff failed to receive anything and on same day afternoon plaintiff unsuccessfully tried to contact defendant lawyer for an explanation.
88. On next day defendant lawyer informed plaintiff that they are not going to proceed with motion for summary judgement because of the Psychiatric diagnosis of plaintiff's mental condition. (Page 446 of Motion Record.)
89. On 18th of October 2008, plaintiff received a request to appoint a litigate guardian from defendant which plaintiff believe is another evidence that defendant tried to behave in "High-handed manner without any respect for Plaintiff legal rights."

90. Plaintiff argue that submissions made in paragraph 75 to 89 explains defendant intention to cause delays in this proceeding.

91. Based on submission and arguments presented in paragraphs 75 to 90 and on the ground of Rule 78.12 (3) of the Rules of Civil Procedure. R.R.O. 1990, Reg. 194, Plaintiff Requesting the Court to place this case under Case Management master or judge.

I. COST OF THIS MOTION:

92. Plaintiff making a submission to the court that as discussed in Paragraph 43 – 45, this motion is the result of Defendant default in document discovery.

93. On the ground Rule 57.03 of the Rules of Civil Procedure. R.R.O. 1990, Reg. 194 and Section 30.06 of Evidence Act R.R.O. 1990, Plaintiff Requesting the Court to Order Defendant to Pay the Cost of this motion and other cost incurred until now related to discovery to Plaintiff within 30 days.

Date: 3rd of November 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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

GANA KIRITHARAN

Plaintiff
(Defendant by Counterclaim)

- and -

TD CANADA TRUST

Defendant
(Plaintiff by Counterclaim)

**AFFIDAVIT OF GERRY DESCHENES
(Sworn on November 10, 2008)**

I, GERRY DESCHENES, of the Town of Markham, in the Regional Municipality of York, MAKE OATH AND SAY AS FOLLOWS:

1. I am a Litigation Officer for the Defendant, TD Canada Trust hereinafter referred to as the "Bank". As such, I have knowledge of the matters to which I hereinafter depose except where stated to be based upon information received from others in which cases I verily believe such information to be true.

TD Emerald Visa Credit Card No.: 4520-0500-0241-3878

2. On March 5, 1996, the Plaintiff, Gana Kiritharan ("Gana") applied and was approved for a TD Emerald Visa credit card ("TD Visa"). Attached hereto and marked as Exhibit "A" is a copy of the TD Emerald Visa Application (the "Visa Application").

3. By signing the Visa Application and by use of the TD Visa, Gana agreed to be bound by the terms and conditions contained in the TD Emerald Visa Cardholder Agreement (the "Visa Agreement") (Exhibit "B").

4. The Defendant advanced monies at the request of the Plaintiff and all such advances were made solely for the benefit of Gana at an interest rate agreed upon between the parties.

5. Monthly statements with full particulars of the said advances and interest thereon were mailed to the Plaintiff. Attached hereto and marked as Exhibit "C" are copies of all monthly statements from June 6, 2002 to September 6, 2006.

6. The last payment made by Gana toward the TD Visa debt was remitted by way of pre-authorized payment on February 28, 2005. Subsequent payments from thereon were returned NSF.

7. The Plaintiff failed and/or refused to remit payment of the minimum amount due pursuant to the terms of the Visa Agreement. Default in payment occurred on March 28, 2005 and still continues.

8. Since the TD Visa was in arrears for more than 180 days on October 31, 2005, the outstanding balance of \$2,329.63 was written off by the Defendant for accounting purposes.

9. At the time of writing off the account the interest rate charged on the TD Visa was 21.00% per annum.

10. The total amount now due and owing to the Defendant with respect to the TD Visa is as follows:

Balance as of October 31, 2005	\$2,329.63
Interest to November 10, 2008 (per diem \$1.34)	<u>\$1,482.04</u>
Total	\$3,811.67

Line of Credit No. 4457424

11. On May 12, 2002, Gana agreed to accept an offer for a Line of Credit from the Bank with a pre-approved limit of \$9,000.00. Attached hereto and marked as Exhibit "D" is a copy of the Response Form signed by the Plaintiff with attached Change of Name registration.

12. By signing the Response Form, the Plaintiff agreed to the terms and conditions contained in the Line of Credit Agreement (the "LOC Agreement") attached hereto and marked as Exhibit "E". Pursuant to the terms of the LOC Agreement, the Defendant advanced monies at the request of Gana. All advances and payments were made solely for the benefit of the Plaintiff and at an interest rate agreed up on between the parties.

13. Full particulars of the said advances and interest thereon were provided to the Plaintiff. Attached hereto and marked as Exhibit "F" is the Deposit Account History of the Line of Credit account.

14. The last payments made by the Defendant towards the Line of Credit account were on March 3, 2005 in the amounts of \$326.56 and \$10.00. No subsequent payments were made by either the Plaintiff or any other persons towards the outstanding account.

15. Despite repeated request, no payments were received subsequent to March 3, 2005 and as such, default pursuant to the terms of the LOC Agreement occurred on April 3, 2005.

16. Pursuant to paragraph 8 of the Terms and Conditions in the LOC Agreement (Exhibit "E") the Plaintiff was to notify the Defendant within thirty (30) days of the statement date if he had any questions or errors to report. If such written notice was not received then the Plaintiff lost its right to dispute any information appearing on the statement, including, without limitation, as a result of any alleged forgery, negligence, fraud, breach of trust or lack of authorization.

17. On October 19, 2005, the outstanding balance on the Line of Credit account was \$11,611.72.

18. As the account was in arrears for over 180 days, the outstanding amount was written off by the Defendant for accounting purposes on October 19, 2005.

19. As of October 19, 2005, the interest rate on the Line of Credit account as agreed upon between the parties was 4.25% per annum. Accordingly, the balance due and owing as of November 10, 2008 is as follows:

Balance as of October 15, 2005	\$11,611.72
Interest to November 10, 2008 (per diem \$1.352)	<u>\$ 1,516.94</u>
Total	\$13,128.66

20. Subsequent to writing off the aforementioned TD Visa and Line of Credit accounts for accounting purposes, both accounts closed and the outstanding amounts were sent to a collection agency for recovery.

21. Despite several attempts made by the collection agency, no payments have been made towards either of the outstanding accounts and the Plaintiff has refused and/or neglected to pay the debt. As of today's date the accounts remain outstanding.

22. Both outstanding accounts became a liability to the Bank. The Bank's practice is to write off an account that has been in arrears for 180 days or more (number of days depends on the type of account). Write off means that the Bank has determined that the outstanding money will never be collected and to remove the negative dollar amount in the account, it is written off by replacing the negative balance with a 0 balance.

23. Subsequent to writing off the account, the outstanding amount is sent to either the Bank's in-house collection department or an outside collection agency for recovery and is thereafter referred to as a collection item.

24. After the Visa and Line of Credit accounts were written off, the Bank was still owed the money that it had advanced to the Plaintiff and written off.

25. At the time the Visa and Line of Credit accounts were written off and closed there were no surplus funds in any of the other accounts held by the Plaintiff. The Bank did not appropriate or conceal any funds of the Plaintiff and nor were any funds received by the Bank in either the Plaintiff's name or his previous name, Kiritharan Kanagalingam.

26. On March 12, 2007, the Plaintiff forwarded correspondence to TD Canada Trust branch #5926 seeking information with respect to ten transactions that occurred during March 2005 to May 2006. Attached hereto and marked as Exhibit "G" is a copy of the correspondence from the Plaintiff.

27. In response to the letter from the Plaintiff, the branch manager, Eileen Vaughan forwarded a letter to the Plaintiff dated March 28, 2007 (Exhibit "H") stating that the Bank was in the process of locating the information requested by the Plaintiff.

28. On April 3, 2007, the Plaintiff attended branch #5926 and was given copies of the ten transaction slips that he requested information for in his letter dated March 12, 2007. Attached hereto and marked as Exhibit "I" are copies of the ten transaction inquiries.

29. Thereafter, the Plaintiff sent Ms. Vaughan letters dated April 4, 2007 and July 12, 2007, stating that he was not satisfied with the information provided to him regarding his accounts with TD Canada Trust. Attached hereto and marked as Exhibit "J" are copies of the correspondences from the Plaintiff and the response from Ms. Vaughan dated July 13, 2007.

30. Subsequently, the action herein was commenced by the Plaintiff on October 18, 2007 against the Bank. In the Statement of Claim the Plaintiff seeks details of each account the Plaintiff had with the Bank.

31. In paragraph 3 of the Statement of Claim the Plaintiff admits that he stopped making monthly payments towards his Line of Credit account with the Bank around March 2005.

32. Due to the Plaintiff's acknowledgement of the debt, the Defendant filed a Statement of Defence and Counterclaim against Gana seeking payment for the aforementioned outstanding TD Visa and Line of Credit accounts.

33. In response, Gana served a Reply and Defence to Counterclaim in which he acknowledges the debt owed to the Defendant in paragraph 5 and admits that there was default in payment of his Line of Credit and TD Visa accounts held with the Bank.

34. I am advised by Susan Rai of Fluxgold Izsak Jaeger LLP, the lawyers acting on behalf of the Bank, and verily believe that on May 29, 2008, the Plaintiff attended at her office to inspect the originals of the ten transaction slips requested by the Plaintiff. Eight of the ten original transaction slips were made available for inspection by the Plaintiff. The Bank has been unable to locate two of the original transaction slips, however, copies of the two have been provided to the Plaintiff.

35. There has been an exchange of Affidavit of Documents and the Plaintiff has been provided with all information in the Defendant's control, including the account transaction history, with respect to the accounts held by the Plaintiff.

36. I am also advised by Susan Rai that on September 9, 2008, she spoke with the Plaintiff to advise him that the Bank would be proceeding with a motion for summary judgment of the Bank's Counterclaim. Attached hereto and marked as Exhibit "K" is a copy of the

correspondence dated September 12, 2008 that was delivered to the Plaintiff confirming the motion date that was available with the Toronto Court.

37. On September 29, 2008, the Plaintiff served a "Notice to the Defendant" containing an "Affidavit of Document 10 Civil" sworn by the Plaintiff on September 26, 2008 and titled "Psychiatric Diagnosis of Gana Kiritharan's Mental Condition" (Exhibit "L"). At page 5 of the Affidavit there is a Psychiatric Report dated June 4, 2008, from Dr. Sooriabalan of Rouge Valley Health System concluding that the Plaintiff was suffering from a major psychiatric illness called Delusional Disorder of Persecutory Type.

38. Due to this discovery the Bank cancelled its motion for summary judgment and served the Defendant with the Request for Appointment of Litigation Guardian on the Plaintiff on October 18, 2008. Attached hereto and marked as Exhibit "M" is a copy of the Affidavit of Service on the Plaintiff.


39. The Plaintiff's motion returnable November 12, 2008, does not seek leave to appoint a Litigation Guardian. It seeks an Order from the Court that there is enough evidence to suspect that there was a commission of crime in accounts managed in the Plaintiff's name by the Defendant. No evidence or documents provided by the Plaintiff indicate that there was any type of criminal activity by the Bank.

40. The Defendant managed the following four accounts in the Plaintiff's name: Value account, TD Visa account, Line of Credit account and Investment account. Attached hereto and marked as Exhibit "N" is a copy of the Total Accounts Enquiry of the four accounts in the Plaintiff's name. Account histories for each of the accounts have been provided to the Plaintiff at Tabs 1 through to 4 of the Defendant's Amended Affidavit of Documents.

41. There are no other accounts in the Plaintiff's name, Gana Kiritharan or Kiritharan Kanagaligham other than the four listed above.

42. The Plaintiff's motion is vexatious and should be dismissed with costs.

SWORN before me at the Town
of Markham, in the Regional
Municipality of York
this 10th day of November, 2008


A Commissioner, etc.

)
)
)
) 
) **GERRY DESCHENES**

MR GANA KIRITHARAN

SELECTION # _____

APL PRODUCT	ACCOUNT	BR	BALANCE	CUR	STAT	TYPE
ASSETS						
1 GLS TRADING	436031A	1253	0.00		ACTV	
2 GLS TRADING	436031B	1253	0.00	USD	ACTV	
TOTAL ASSETS			0.00			
LIABILITIES						
3 PDA LINE OF CR	4457424	1625	0.00		CLOS	APPL
CREDIT LIMIT			0.00			
4 VSA EMERALD VS	4520050002413878	5926	*****		WR/O	OWNR
CREDIT LIMIT			*****			
TOTAL LIABILITIES			0.00			

USER ID: RALPHD2

PSWD:

FIRST PAGE - SELECT AN ACCOUNT FOR DETAILS, SCROLL FORWARD OR REQUEST NEXT TRAN
1/HELP 3/END 4/MAIN 7/BACKWARD 8/FORWARD 10/CH BKWCD 11/CH FWD

IMSTX TCIF0040 LTRM M2001078 MOD MOC040A5 10/19/07 15:01:00

* This Document First Produced by the Bank (TD Canada Trust) for the Motion on 12th of November 2008 *

While Gana Kiritharan was challenging the Bank for an illegally opened and managed account in his name (secret account) existed in the bank, bank produced this document and tried to argue that above 4 accounts only existed in his name. But this document turned to be supportive for Gana Kiritharan's argument.

- * Line number 3 gives the details Gana Kiritharan's Line of Credit and Line number 4 gives the details Emerald Visa Card.
- * Details for Gana Kiritharan's Line of Credit as of this document, Balance 0.00, Credit Limit 0.00, and STAT is CLOS.
- * Details for Gana Kiritharan's Emerald Visa card as of this document, Balance ****, Credit Limit **** and STAT is WR/O.
- * Details Presented in above two paragraphs clearly explains Gana Kiritharan's Line of Credit was closed in a different manner than his Emerald Visa card.
- * Also this document failed to give any details of Gana Kiritharan's Value (Checking) account. When examined the document for reasons, Gana Kiritharan discovered (Right hand upper corner - Page ? of 2) there may be another page of this document existed and the Bank may have with fraudulent intention concealed that page.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN

Gana Kiritharan

Plaintiff

and

TD Canada Trust

Defendant

FACTUM (REPLY)

This moving party's (plaintiff's) factum (reply) to be heard during motion on Wednesday, 12th of November 2008, at 10.00 AM, or soon after that time as the motion can be heard, at Superior Court of Justice - Civil, 393 University Avenue, Toronto, Ontario.

94. When replying to Defendant's Affidavit of Gerry Deschenes (Sworn on November 10, 2008), Plaintiff argue that above affidavit is collection of
- i. Back to Forth contradicting statements,
 - ii. Fraudulently misleading arguments and explanations.
95. To support his argument Plaintiff makes following submissions.
96. Paragraph No. 8 of Affidavit of Gerry Deschenes says plaintiff's visa card with defendant was written-off on October 31, 2005 by defendant for accounting purposes. Paragraph No. 22 admits when a loan account is written-off the balance of the account will be 0. If we look at the Exhibit "C" and count 11 pages from the back, the monthly statement for October 6th 2005 to November 6th 2005 is available.

97. This monthly statement does not contain a transaction saying “Write-Off” or “Collection Item”. This monthly statement and next 10 monthly statements are showing a balance of \$2,329.63. This confirms as plaintiff argued in paragraph 22 – 27 of his factum the actual write-off happened only after September 6th 2006 and defendant’s argument write-off happened on October 31st 2005 may be an attempt to fraudulently mislead this court.
98. Paragraph No. 16 of Affidavit of Gerry Deschenes argues that as plaintiff failed to notify any questions or errors within 30 days of statement date, plaintiff lost his rights to dispute any information in monthly statement.
99. Plaintiff is not disputing the word “Collection Item”. It is defendant who disputing it with an unsupported argument saying “Collection Item” means “Write-Off” and this argument given to plaintiff only after this civil claim was filed.
100. Plaintiff take above transaction as an evidence for another account opened and managed at defendant under plaintiff’s name without any agreement with plaintiff.
101. Even “Limitation Act” may not put a barrier for this civil claim as above account details are still being concealed from plaintiff with fraudulent intention and formal discovery of the Account details are not made until now.
102. Paragraph No. 18 of Affidavit of Gerry Deschenes is giving a misleading idea that what happened to plaintiff’s Line of Credit on October 19th 2005 is write-off. But as plaintiff argued in paragraph 5 to 9 of his factum this line of credit was closed by “Off-Setting” against plaintiff’s funds.
103. Paragraph No. 19 of Affidavit of Gerry Deschenes says the interest is being charged for plaintiff’s Line of Credit after it closed is 4.25%. But when plaintiff contacted defendant on 3rd of April 2007 and on 10th of May 2007 he got informed the interest rate is being charged for his line of credit is 7.5% and the interest is being charged on daily basis.

104. But the said interest rate failed to explain the balances was told for plaintiff. Plaintiff brought this issue to the attention of the defendant on letter dated 12th of July 2008. New interest rate of 4.25% may be an attempt to conceal the previous mistake. (Pages 247 - 260 of Motion Record).
105. Despite previous claims defendant failed to produce any evidence for paragraph No. 20 and 21 of Affidavit of Gerry Deschenes.
106. Paragraph No. 22 of Affidavit of Gerry Deschenes spells out some banks account management practice regarding default loans. Plaintiff would like to ask whether it is Mr. Gerry Deschenes own idea about defendant's accounting practice or there is some documentary basis for these statements. If there is some documentary basis for it, why they are not produced today.
107. At this juncture Plaintiff makes a submission to the court that when plaintiff requested and court ordered for written polices regarding personal accounts and personal accounts placed collections, defendant lawyer during telephone case on 8th of April 2008, informed the court "There is no such a written polices."
108. Above information confirms that either one of the statement made by defendant regarding account management polices is misleading one.
109. Paragraph No. 23 of Affidavit of Gerry Deschenes tried to give an explanation for the word "Collection Item". Mr. Gerry Deschenes failed to give any documentary support to this explanation. Defendant's document "TD Canada Trust – Accounts – Account Related Information and Administrative Fees" gives a different explanation for the same word (Pages 104 – 109 of Motion Record).
110. To dispel any confusion plaintiff say that as he understand a loan amount may be classified a "Collection Item" prior to Write-Off. But such Collection Item will be

credited only when money received. This happened to Plaintiff's Line of Credit. Failure of additional charges confirm the money received from an account inside TD Canada Trust.

111. Paragraph No. 25 of Affidavit of Gerry Deschenes affirms that there was no additional money or accounts in the name of plaintiff in the bank. But as plaintiff argued in paragraph 5 to 27 of his factum there is enough evidences suspect there was another account existed in plaintiff name at defendant bank.
112. Exhibit "N" being presented by defendant may be supportive of Plaintiff's argument. This exhibit "Total Account Enquiry" lists account managed under the name of GANA KIRITHARAN.
113. Line number 3 gives the details Plaintiff Line of Credit and Line number 4 gives the details Emerald Visa Card.
114. Details for Plaintiff's Line of Credit as of this document, Balance 0.00, Credit Limit 0.00, and STAT is CLOS.
115. Details for Plaintiff's Emerald Visa card as of this document, Balance ****, Credit Limit **** and STAT is WR/O.
116. Details Presented in Paragraph 113 and 114 clearly explains Plaintiff's Line of Credit was closed in a different manner than his Emerald Visa card.
117. Also this document failed to give any details of Plaintiff's Value (Checking) account. When examined the document for reasons, Plaintiff discovered (Right hand upper corner – Page ? of 2) there may be another page of this document and Defendant may have with fraudulent intention concealed that page from plaintiff and the court.
118. Also Defendant failed to give a "Total Account Enquiry" for "KIRITHARAN KANAGALINGAM"

119. Plaintiff Requesting the Court to Order that Defendant Provide following documents with an Amended Affidavit of Document which is being claimed by 19th of November 2008.
- i. “Total Accounts Enquiry” for the name of GANA KIRITHARAN.
 - ii. “Total Accounts Enquiry” for the name of KIRITHARAN KANAGALINGAM.

REGARDING TRANSACTION RECORDS BEING CLAIMED FOR INSPECTION.

120. Plaintiff affirms the court that he was not given copies of the ten transaction slips is being requested on his visit to branch 1488 at Eglinton and Kennedy on 3rd of April 2007.
121. Also Plaintiff affirms the court that he did not received the letter dated 13th July 2007 from Ms. Vaughan.
122. Plaintiff make a submission to the court that time needed for search these transaction records was given as an excuse for delaying Affidavit of Documents from defendant. Defendant lawyer even complaint to the court on 20th of February 2008 telephone case conference that Plaintiff did not provided necessary details to search these transaction records.
123. But evidence (Exhibit “I”) is being provided today confirms these details were forwarded to Branch 5926 at Bayshore shopping center as early as 23rd March 2007.
124. This confirms that previous excuses for delay in providing affidavit of document were actually attempt by defendant to cause delays in this proceeding.
125. Defendant now giving an excuse that two of the originals could not be located.
126. When answering the question then where the copies of these two transaction records came from? The documents provided (Exhibit “I”) give an explanation they may taken from originals. But defendant lawyer said to the court that they came from Microfiche. According to Court order section 1 dated 8th of April 2008, if no original exist, the

process of scanning for the microfiche documents will be explained. Defendant failed to give any explanation.

127. Exhibit “I” may not contain any documents related to Transaction Record identified as No: 6 for which originals were not produced.
128. Plaintiff argue that defendant response to the claim for the inspection of transaction records may explains the misleading, concealing and delaying attitude being shown by defendant.
129. Paragraph No. 35 of Affidavit of Gerry Deschenes says defendant provided affidavit of documents with all information. But as explained in paragraph 43.iv of plaintiff’s factum provided affidavit failing to respect court orders and may not be complete disclosure of documents.
130. Paragraph No. 36 of Affidavit of Gerry Deschenes says defendant tried to proceed with a motion for summary judgement. Plaintiff arise two questions here. If summary judgement is possible here why defendant failed to move it earlier and what is the basis for defendant lawyer advising plaintiff need to be represented by a lawyer in such a motion.
131. Paragraph No. 37 and 38 arises the issue of Psychiatric Diagnosis of Plaintiff’s mental condition and defendant request appoint a litigate guardian here.
132. Plaintiff makes a submission here that as he argued in paragraph 58 to 61 of his factum this diagnosis is a mistake.
133. In addition plaintiff argues that all psychiatric diagnosis does not automatically lead to a conclusion that the person is under legal disability.
134. The appropriate Law govern this issue may be Section 54.1 to 54.4 of Mental Health Act R.S.O. 1990.

135. As Plaintiff understand the law, a person become identified as incapable only when a attending physician on his examine determine the patient is not capable of managing property and informing Public Guardian and Trustee in approved forms.
136. As Plaintiff's Psychiatrist did not inform any body that he is not capable of managing property the question of incapacity do not arise here.
137. In order to dispel any confusion Plaintiff contacted Public Guardian and Trustee and as they advised followed necessary procedure for a capacity assessment of his decision making capacity. But as his application for capacity assessment fees was turned down he was not able to subject him-self for a immediate capacity assessment.
138. Arguments being presented by plaintiff today may help the court to determine the capacity of plaintiff.
139. Paragraph No. 39 of Affidavit of Gerry Deschenes argues there were no evidences provided by plaintiff for criminal activity by bank. But by not responding to Request to Admit from plaintiff dated 18th of August 2008, defendant may deemed to admitted evidences presented from paragraph 5 – 27 of plaintiff's factum.
140. Paragraph No. 40 of Affidavit of Gerry Deschenes talks about Exhibit "N". But as explained in paragraph 112 – 118 of this factum (reply) the exhibit may be actually supportive of plaintiff's arguments.
141. For reasons explained from paragraph 96 to 140, Plaintiff requesting the court to dismiss Affidavit of Gerry Deschenes as it is an attempt to mislead the court.
142. In order to prevent same mistake happening again plaintiff requesting the court to order that all future affidavit in this issue need to be signed by either by Mr. Ed Clark (President and Chief Executive Officer, TD Bank Financial Group) or Mr. Tim Hockey (Group Head Canadian Banking and President and CEO, TD Canada Trust.)

Date: 12th of November 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



FACSIMILE TRANSMISSION COVER SHEET

From the Office of Master BIRNBAUM

Registrar: Gbemi Kester

Masters' Chambers
Superior Court of Justice
Toronto Region

Court House
393 University Avenue
6th Floor
Toronto, ON M5G 1E6

Chambres des Protonotaires
Cour supérieure de Justice
Région de Toronto

DATE: 1/20/09

TO: GANA KIRITHARAN

FAX: VIA REGULAR MAIL

TO: SUSAN RAI

FAX: 905-763-3772

TO:

FAX: 416

TO:

FAX: 416

TO:

FAX: 416

TO:

FAX: 416

TO: **

FAX: 416

TO: **

FAX: 416

NUMBER OF PAGES INCLUDING COVER SHEET: 4

COMMENT: KIRITHARAN V. TD CANADA TRUST

COURT FILE NUMBER(S): 07-CV341987

If there is anyone to whom this fax should have been addressed, but was not, it is the responsibility of counsel for the plaintiff/s (or, if the plaintiff is self-represented, counsel for the defendant/s) to forward a copy of this facsimile cover sheet, and all attachments, to the person(s) missed. Likewise, contact information, as recorded above and by the Master, is derived from the case history. If an error is noted, the 10th floor is to be notified, as is the Master's registrar.

-ATTENTION-

This facsimile may contain PRIVILEGED and CONFIDENTIAL INFORMATION for the use of the Addressee(s) named above. If you are not the intended recipient of this facsimile or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone to arrange for the return or destruction of this document. Thank you.

Le présent document télécopié peut contenir des RENSEIGNEMENTS PRIVILEGIÉS ET CONFIDENTIELS destinés exclusivement aux personnes dont le nom est mentionné ci-dessus. Si vous n'êtes pas le destinataire de ce document ni l'employé ou l'agent responsable de le délivrer à son destinataire, vous êtes par la présente avisé qu'il est strictement interdit de distribuer ou copier ce document. Si celui vous est parvenu par erreur, veuillez nous en aviser immédiatement par téléphone pour arranger le retour ou la destruction de ce document. Merci.

If you do not receive all the pages, please call Gbemi Kester immediately at (416) 326-1083
Si vous ne recevez pas toutes les pages, veuillez appeler Gbemi Kester au: (416) 326-1083

Case Management Masters' FAX Number/Nombre de Télécopieur: (416) 326-5416
General Inquiries/Motions Scheduling: (416) 327-5482

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

GANA KIRITHARAN

Plaintiff

- and -

TD CANADA TRUST

Defendant

ORDER

Counsel:

Gana Kiritharan, in-person plaintiff, moving party
Susan Rai, for the defendant

- [1] Mr. Kiritharan opened a number of accounts with TD including a line of credit and a Visa card. In 2005, he stopped making payments on the two above accounts, a debt that he acknowledges he owes. The bank eventually closed the accounts, sent them to a collection agency and wrote off the amounts
- [2] The Statement of Claim, issued October 18, 2007, asks for information for each of his accounts including when they were closed, why they were closed and how the balance of each account became zero. There is no claim for damages and no recognizable cause of action.
- [3] The motion before me today is for documentary production, a further and better Schedule B in the defendant's affidavit of documents and some further relief described below. No oral discovery has taken place as yet.

[4] During his submission today and in response to my questions, it became clear that Mr. Kiritharan believes that the bank has a secret account in his name into which his publishers and some unknown persons have deposited money that the bank used to pay the amounts owing in the line of credit and Visa accounts. He has produced no evidence to support his view.

[5] I will now address each of the items of relief requested today.

1. an order that there is evidence to suspect there was commission of a crime in the plaintiff's accounts managed by TD Canada Trust.

There is no relief this court can find or grant on this motion today. This is a civil, not a criminal, court.

2. an order that the plaintiff, Canadian Police Departments and/or Private Investigators be able to inspect and make copies of any entries in TD books and records regarding plaintiff's accounts.

Canadian Police Departments and Private Investigators are not parties to this action. The court cannot make orders on behalf of unidentified entities. Mr. Kiritharan has already been given copies of many documents and the opportunity to inspect documents at the defendant's counsel's office.

3. an order that the defendant pay plaintiff's future documentary discovery costs.

I am not aware of any further document discovery costs at this time so I will not make this order.

4. an order that the plaintiff provide an amended Affidavit of Documents with information as listed in the notice of motion.

i. The plaintiff shall provide a detailed Schedule B to its Affidavit of Documents as required by the rules.

ii. Defendant will provide transaction enquiry under plaintiff's former name but not the enquiry as requested in the motion.

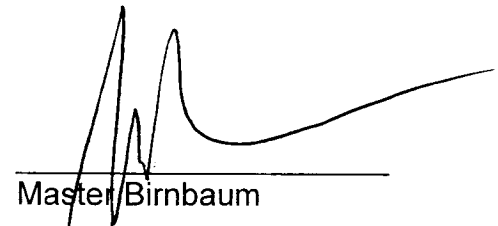
iii. No Visa statements for October 2006 to April 2007 need be produced. Counsel advises none exist. The statements that have been produced all show the amount of money plaintiff owed as at October 2005 which he has acknowledged he did not pay.

vi. Mr. Kiritharan included in his motion record a letter from his psychiatrist setting out his diagnosis that Mr. Kiritharan suffers from a delusional disorder of persecutory type. I am satisfied that until being served with the motion record, the defendant and its counsel did not know of the plaintiff's medical diagnosis.

iv and v. Mr. Kiritharan's submission was that these requests refer to the secret account that he feels exists. I find no basis in the material before me that any secret account exists. There is an air of unreality in the suggestion that Mr. Kiritharan's publishers, who are in India, would deposit money to a secret account in his name without any evidence that he directed them to send the money to TD Canada Trust or how they would know where he banks in Canada. No response is needed to these questions; I am satisfied that the bank has produced all the relevant documents it has, subject to any issue of privilege that may arise from the detailed Schedule B ordered above.

- [6] The defendant had brought a summary judgment motion that they cancelled when they learned of the plaintiff's medical diagnosis. They then served a Request for Appointment of Litigation Guardian. Mr. Kiritharan advised the court that he contacted the Public Trustee who advised that he would have to be accessed and declared incapable before they would act. Based on his appearance before me, I think that Mr. Kiritharan understood the proceeding today and made his submissions in an appropriate manner. I see no reason that the defendant not proceed with its summary judgment motion.
- [7] Lastly, the request by plaintiff to move this action into case management is denied. At the present time the action does not meet the test. The request was made because of lack of documentary disclosure. My order reflects my view that there is no outstanding documentary disclosure.
- [8] Mr. Kiritharan has produced a voluminous motion record, with numerous irrelevant materials. Even if he were successful in this motion, he would not be compensated for over-papering the court as he has.
- [9] Costs fixed at \$1000 payable by the plaintiff to the defendant in any event of the cause.

January 19, 2009



Master Birnbaum



FACSIMILE TRANSMISSION COVER SHEET

From the Office of Master BIRNBAUM

Registrar: Gbemi Kester

Masters' Chambers
Superior Court of Justice
Toronto Region

Court House
393 University Avenue
6th Floor
Toronto, ON M5G 1E6

Chambres des Protonotaires
Cour supérieure de Justice
Région de Toronto

DATE: 2/17/09

TO: Gana Kiritharan

FAX: TO PICK-UP

TO: Susan Rai

FAX: 905-763-3772

TO:

FAX: 416

TO:

FAX: 416

TO:

FAX: 416

TO:

FAX: 416

TO: **

FAX: 416

TO: **

FAX: 416

NUMBER OF PAGES INCLUDING COVER SHEET: 4

COMMENT: AMENDED ORDER – KIRITHARAN V. TD CANADA TRUST

COURT FILE NUMBER(S): 07-CV-341987PD 2

If there is anyone to whom this fax should have been addressed, but was not, it is the responsibility of counsel for the plaintiff/s (or, if the plaintiff is self-represented, counsel for the defendant/s) to forward a copy of this facsimile cover sheet, and all attachments, to the person(s) missed. Likewise, contact information, as recorded above and by the Master, is derived from the case history. If an error is noted, the 10th floor is to be notified, as is the Master's registrar.

-ATTENTION-

This facsimile may contain PRIVILEGED and CONFIDENTIAL INFORMATION for the use of the Addressee(s) named above. If you are not the intended recipient of this facsimile or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone to arrange for the return or destruction of this document. Thank you.

Le présent document télécopié peut contenir des RENSEIGNEMENTS PRIVILEGES ET CONFIDENTIELS destinés exclusivement aux personnes dont le nom est mentionné ci-dessus. Si vous n'êtes pas le destinataire de ce document ni l'employé ou l'agent responsable de le délivrer à son destinataire, vous êtes par la présente avisé qu'il est strictement interdit de distribuer ou copier ce document. Si celui vous est parvenu par erreur, veuillez nous en aviser immédiatement par téléphone pour arranger le retour ou la destruction de ce document. Merci.

If you do not receive all the pages, please call Gbemi Kester immediately at (416) 326-1083
Si vous ne recevez pas toutes les pages, veuillez appeler Gbemi Kester au: (416) 326-1083

Case Management Masters' FAX Number/Nombre de Télécopieur: (416) 326-5416
General Inquiries/Motions Scheduling: (416) 327-5482

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

GANA KIRITHARAN

Plaintiff

- and -

TD CANADA TRUST

Defendant

AMENDED ORDER

Counsel:

Gana Kiritharan, in-person plaintiff, moving party
Susan Rai, for the defendant

- [1] Mr. Kiritharan opened a number of accounts with TD including a line of credit and a Visa card. In 2005, he stopped making payments on the two above accounts, a debt that he acknowledges he owes. The bank eventually closed the accounts, sent them to a collection agency and wrote off the amounts
- [2] The Statement of Claim, issued October 18, 2007, asks for information for each of his accounts including when they were closed, why they were closed and how the balance of each account became zero. There is no claim for damages and no recognizable cause of action.
- [3] The motion before me today is for documentary production, a further and better Schedule B in the defendant's affidavit of documents and some further relief described below. No oral discovery has taken place as yet.

[4] During his submission today and in response to my questions, it became clear that Mr. Kiritharan believes that the bank has a secret account in his name into which his publishers and some unknown persons have deposited money that the bank used to pay the amounts owing in the line of credit and Visa accounts. He has produced no evidence to support his view.

[5] I will now address each of the items of relief requested today.

1. an order that there is evidence to suspect there was commission of a crime in the plaintiff's accounts managed by TD Canada Trust.

There is no relief this court can find or grant on this motion today. This is a civil, not a criminal, court.

2. an order that the plaintiff, Canadian Police Departments and/or Private Investigators be able to inspect and make copies of any entries in TD books and records regarding plaintiff's accounts.

Canadian Police Departments and Private Investigators are not parties to this action. The court cannot make orders on behalf of unidentified entities. Mr. Kiritharan has already been given copies of many documents and the opportunity to inspect documents at the defendant's counsel's office.

3. an order that the defendant pay plaintiff's future documentary discovery costs.

I am not aware of any further document discovery costs at this time so I will not make this order.

4. an order that the defendant provide an amended Affidavit of Documents with information as listed in the notice of motion.

i. The defendant shall provide a detailed Schedule B to its Affidavit of Documents as required by the rules.

ii. Defendant will provide transaction enquiry under plaintiff's former name but not the enquiry as requested in the motion.

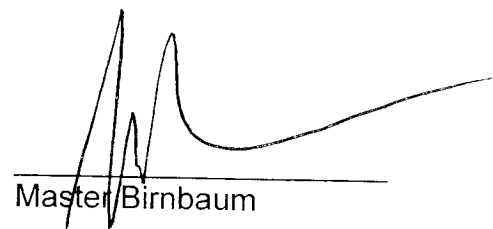
iii. No Visa statements for October 2006 to April 2007 need be produced. Counsel advises none exist. The statements that have been produced all show the amount of money plaintiff owed as at October 2005 which he has acknowledged he did not pay.

vi. Mr. Kiritharan included in his motion record a letter from his psychiatrist setting out his diagnosis that Mr. Kiritharan suffers from a delusional disorder of persecutory type. I am satisfied that until being served with the motion record, the defendant and its counsel did not know of the plaintiff's medical diagnosis.

iv and v. Mr. Kiritharan's submission was that these requests refer to the secret account that he feels exists. I find no basis in the material before me that any secret account exists. There is an air of unreality in the suggestion that Mr. Kiritharan's publishers, who are in India, would deposit money to a secret account in his name without any evidence that he directed them to send the money to TD Canada Trust or how they would know where he banks in Canada. No response is needed to these questions; I am satisfied that the bank has produced all the relevant documents it has, subject to any issue of privilege that may arise from the detailed Schedule B ordered above.

- [6] The defendant had brought a summary judgment motion that they cancelled when they learned of the plaintiff's medical diagnosis. They then served a Request for Appointment of Litigation Guardian. Mr. Kiritharan advised the court that he contacted the Public Trustee who advised that he would have to be accessed and declared incapable before they would act. Based on his appearance before me, I think that Mr. Kiritharan understood the proceeding today and made his submissions in an appropriate manner. I see no reason that the defendant not proceed with its summary judgment motion.
- [7] Lastly, the request by plaintiff to move this action into case management is denied. At the present time the action does not meet the test. The request was made because of lack of documentary disclosure. My order reflects my view that there is no outstanding documentary disclosure.
- [8] Mr. Kiritharan has produced a voluminous motion record, with numerous irrelevant materials. Even if he were successful in this motion, he would not be compensated for over-papering the court as he has.
- [9] Costs fixed at \$1000 payable by the plaintiff to the defendant in any event of the cause.

January 19, 2009



Master Birnbaum