

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N :**

**GANA KIRITHARAN**

Plaintiff

-and-

**TD CANADA TRUST**

Defendant

**FACTUM SUBMITTED ON BEHALF OF THE DEFENDANT,  
TD CANADA TRUST**

**PART I – NATURE OF THE ACTION**

1. On this motion, the Defendant, TD Canada Trust (hereinafter referred to as the “Bank”), seeks Summary Judgment as against the Plaintiff, Gana Kiritharan (“Gana”) who is liable for outstanding credit facilities in the amounts of \$3,811.67 and \$13,128.66 as of November 10, 2008; post-judgment interest at the rates of 21.00% and 4.25% respectively from November 10, 2008 and cost of this action on a substantial indemnity basis.

**PART II – TD CANADA TRUST’S POSITION ON THE FACTS**

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

2. On March 5, 1996, the Defendant, Gana, applied for and was approved for a TD Emerald Visa credit card (the “TD Visa”). By signing the TD Emerald Visa Application (the “Visa Application”), Gana agreed to be bound by the terms and conditions contained in the TD Emerald Visa Cardholder Agreement (the “Visa Agreement”). Based on the Visa Application and the Visa Agreement, the Bank advanced monies at the request of Gana and all such advances were made solely for the benefit of Gana.

**Affidavit of Gerry Deschenes sworn on November 10, 2008,**  
**Tab 1 of Defendant's Responding Record, ("Deschenes Affidavit") paragraphs 2 – 4,**  
**Exhibits "A" and "B"**

3. Monthly statements with full particulars of the said advances and interest charged thereon were mailed to Gana.

**Deschenes Affidavit, paragraph 5**

4. The last payment made towards the TD Visa was on February 28, 2005. All subsequent payments made by Gana were returned NSF. Default under the terms of the Visa Agreement occurred on March 28, 2005 and still continues.

**Deschenes Affidavit, paragraphs 6 – 7**

5.) As the TD Visa was in arrears for over 180 days, on October 31, 2005, the outstanding balance of \$2,329.63 was written off for account purposes. At the time the account was written off by the Bank, the interest rate charged was 21.00% per annum.

**Deschenes Affidavit, paragraphs 8 – 9**

**Line of Credit Account No. 4457424**

6. On May 12, 2002, Gana accepted an offer for a Line of Credit from the Bank with a pre-approved limit of \$9,000.00.

**Deschenes Affidavit, paragraph 11**

7. By executing the Response Form, Gana agreed to the terms and conditions contained in the Line of Credit Agreement (the "LOC Agreement"). 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 Gana and at an interest rate agreed upon between the parties.

**Deschenes Affidavit, paragraph 12**

8. Full particulars of the advances and interest thereon were provided to the Plaintiff.

**Deschenes Affidavit, paragraph 13**

9. The last payments made by the Plaintiff towards the Line of Credit account were on March 3, 2005 in the amounts of \$325.56 and \$10.00. No subsequent payments were made towards the outstanding debt.

10. Despite repeated requests, no payments were received subsequent to March 3, 2005. Default pursuant to the terms of the LOC Agreement occurred on April 3, 2005.

**Deschenes Affidavit, paragraphs 14 – 15**

11. On October 19, 2005, after over 180 days of non-payment by Gana, the amount of \$11,611.72 was written off for accounting purposes. At the time the Line of Credit account was written off, the interest rate was at 4.25% per annum.

**Deschenes Affidavit, paragraphs 17 – 19**

12. In the Statement of Claim and the Reply and Defence to Counterclaim made by Gana, he acknowledges the debt owed to the Bank and Gana also admits that he stopped making monthly payments towards his Line of Credit account around the time it went into default.

**Statement of Claim, paragraph 3**

**Reply and Defence to Counterclaim, Defence to Counterclaim, paragraph 5**

**Deschenes Affidavit, paragraphs 31 and 33**

13. To date, no payments have been made towards the outstanding debts and the Bank seeks payment of the outstanding amount of the Visa Account and Line of Credit plus interest and costs on a substantial indemnity basis.

### **PART III – THE LAW**

#### ***A. The Test to be Applied on a Rule 76 Motion for Summary Judgment***

14. The action herein was commenced pursuant to the simplified procedure. Accordingly, the test to be applied to the Motion herein is set out in Rule 76.07(9) which provides as follows: The presiding judge shall grant summary judgment on the motion unless he or she is unable to decide the issues in the action without cross-examination; or it would be otherwise unjust to decide the issues on the motion.

#### ***Rule 76.07(9) of the Rules of Civil Procedure***

15. Rule 76 establishes a lower threshold than that applied under Rule 20. The wording of Rule 76 suggests that the motions judge *should* make determinations of fact, including determinations of credibility, unless unable to do so without cross-examination.

***Newcourt Credit Group Inc. v. Hummel Pharmacy Limited et al.***  
**(1998), 38 O.R. (3d) 82 at paragraph 86 (Ontario Court of Justice – Divisional Court)**

16. The onus of establishing that summary judgment should be granted is on the moving party. However, pursuant to Rule 76.07(4): “In response to affidavit material supporting

the motion, the responding party may not rest on the mere allegations or denials of the party's pleadings, but is required to set out, in affidavit material, specific facts to show that judgment ought not to be granted."

**Newcourt Credit Group Inc. v. Hummel Pharmacy Limited et. al. (1998), 38 O.R. (3d) 82 at paragraph 86 (Ontario Court of Justice – Divisional Court)**

**Braithwaite Technology Consulting Inc. v. Blanketware Corp. (2004), 72 O.R. (3d) 611 (Ontario Superior Court of Justice)**

17. For the purposes of resisting a motion for summary judgment under Rule 76.06, it is not sufficient to show that there is a genuine issue for trial; rather, it is necessary to show that judgment ought not be granted. Where a genuine issue is shown, the role of the motions court is not terminated but is instead to determine whether that issue is such that the matter can properly be decided without a trial.

**Masini USA Inc. v. Simsol Jewelry Wholesale Ltd. (2003), 67 O.R. (3d) 229, [2003] O.J. No. 576 at paragraph 21 (Ontario Superior Court of Justice)**

**Branco v. Sunnybrook & Women's College Health Sciences Centre [2003] O.J. No. 3287 at paragraph 6 (Ontario Superior Court of Justice)**


#### **PART IV – ORDERS SOUGHT**

18. It is respectfully submitted that the Bank has firmly established that summary judgment ought to be granted. The Plaintiff has failed to adduce any evidence to show that judgment ought not to be granted.

19. TD Canada Trust therefore seeks the following relief:

- i. Motion for Summary Judgment is granted; and
- ii. Costs on a substantial indemnity basis.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

  
\_\_\_\_\_  
**SUSAN RAI**

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

(905) 763-3770 ext. 208  
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Lawyers for the Defendant,  
TD Canada Trust

**GANA KIRITHARAN**  
**Plaintiff**

**- and -**  
**TD CANADA TRUST**  
**Defendant**

**COURT FILE # 07-CV-341987 PD2**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**Proceeding Commenced in TORONTO**

**FACTUM SUBMITTED ON BEHALF OF THE**  
**DEFENDANT, TD CANADA TRUST**

**FLUXGOLD IZSAK JAEGER LLP**  
**Barristers & Solicitors**  
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**Susan Rai**  
**LSUC #50863W**  
**Lawyer for the Defendant,**  
**TD Canada Trust**  
**07-1298**

**SUPERIOR COURT OF JUSTICE  
CIVIL**

**BETWEEN**

**Gana Kiritharan**

**Plaintiff**

**and**

**TD Canada Trust**

**Defendant**

**AFFIDAVIT OF GANA KIRITHARAN  
(Sworn on April 09, 2009)**

I, Gana Kiritharan, of the City of Toronto, of Province of Ontario, the Plaintiff in this action,

MAKE OATH AND SAYS AS FOLLOWS:

1. I started this legal proceeding on 18<sup>th</sup> of October 2007 on a suspicion that there is concealed money belong to me (a secret account opened by unknown people and used to cash my royalty cheques) existed in Defendant; TD Canada Trust {Motion Record (Defendant) Tap 3}.
2. I started this proceeding only after I tried to communicate with defendant regarding this issue. Defendant failed to give clear explanations for my concerns when I communicated before coming to court {Responding Motion Record (Plaintiff) Tab 2, MR Page 5 – 16, Affidavit of Document 3 Civil}.
3. I tried to make a Police Complaint regarding this issue before filing this civil claim, but Toronto Police Services failed to accept my complaint saying this is a Civil Issue. Though Toronto Police Services accepted my complaint after filing my civil claim, present status of the complain is “Departmental Discretion”. According to explanation received at Toronto Police Services, 42 Division reception this means my issue is a civil matter {Responding Motion Record (Tab 3), MR Page 17 – 28}.
4. Due to above mentioned circumstances I am utilizing this civil procedure to determine the cause of action. Though I suspect fraud, this is not formally acknowledge.



## **REASONS FOR THE CLAIM (Present Status):**

### **A. Printing Additional Information on Daily Transaction Records (Slips).**

{Responding Motion Record (Tab 8), MR Page 69 – 78}

5. Between November 2004 and March 2005, when I went for regular banking transactions at different branches of TD Canada Trust in Scarborough area; I experienced tellers were printing additional information on daily transaction records, I was supposed to sign.
6. I provided necessary details to trace these records with my first letter dated 12<sup>th</sup> March 2007 to defendant regarding this issue and documents were searched and available as early as 22<sup>nd</sup> March 2007.
7. But defendant failed to provide these details to me under various excuses.
8. These details were provided only after Court ordered to provide them on 20<sup>th</sup> February 2008.
9. As the provided details were not complete I requested to inspect originals.
10. Defendant produced only 8 out of 10 original were being claimed.
11. Defendant may provided misleading information to the court by saying the copies provided initially came from microfiche. But the copies may taken from originals during March 2007 by TD Canada Trust official named Veena Bedi and two original may disappeared only after this enquiry started.

### **B. What happened to Plaintiff Line of Credit {also Value (checking) Account} with Defendant?**

{Responding Motion Record (Tab 4, 5, 6 and 7), MR Page 29 – 62}

12. My Line of Credit and Value (Checking) Accounts with Defendant at closure are being reported as follows:

Date	Trans Description	Trans Amount	Balance
10/19/2005	<b>Collection Item</b>	11,611.72 CR	
10/19/2005	Close Account	0.00 DR	0.00
Date	Trans Description	Trans Amount	Balance
06/28/2005	<b>Collection Item</b>	107.30 CR	
06/28/2005	Close Account	0.00 DR	0.00

13. Also my Line of Credit in TransUnion Canada credit report reported as “Balance 0, Closed Consumers Request”.

14. Defendant may deemed to admitted that above accounts were closed with money received from unknown resource and not written-off {Responding Motion Record (Tab 7)}.
15. "Deposit Account Transaction Enquiry" for above two transactions may provide more details about the transactions {Responding Motion Record (Tab 6)}.
16. Plaintiff claim for these documents were not fulfilled by Defendant.

**MISLEADING INFORMATION BY DEFENDANT DURING COURT HEARINGS:**


{Responding Motion Record (Tab 8)}

17. During Telephone Conferences and Feb 20, 2008 and April 8, 2008 and during Motion on Nov 12, 2008 defendant may mislead the court by deliberately concealing plaintiff account details and other banking documents.
18. Most important mislead attempt may be "Total Account Enquiry".
19. This documents list Plaintiff's accounts managed in Defendant one by one. When the document failed to saw plaintiff's checking (value) account as mentioned by defendant, plaintiff discovered the documents may had another page and defendant deliberately concealed that page.
20. Until today plaintiff failed to receive second page of this document.

**PLAINTIFF'S REQUEST FOR COURT IN THIS MOTION:**

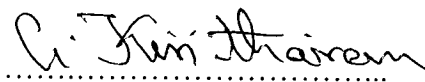
21. Defendant obtained court order dated January 19, 2009 by misleading the court by deliberately concealing plaintiff account details and other banking documents.
22. For the reasons explained from paragraph 1 – 21, plaintiff claim document disclosed by defendant is not complete.
23. Plaintiff requesting the court to dismiss defendant's motion for summary judgment with costs.

SWORN Before me at the  
City of Toronto, Province of Ontario  
This Day 9<sup>th</sup> of April 2009



SUPERIOR COURT OF JUSTICE  
393 UNIVERSITY AVE  
10TH FLOOR  
TORONTO, ONTARIO  
M5G 1E6

COMMISSIONER, etc.  
COUR SUPÉRIEURE  
DE JUSTICE  
393 AVE. UNIVERSITY  
10E ÉTAGE  
TORONTO, ONTARIO  
M5G 1E6



Signature of Plaintiff

*(Short Title of Proceedings)*

KIRITHARAN VS TD CANADA TRUST

Court File No:

07 – CV – 341987PD 2

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

Proceeding commenced at Toronto

**AFFIDAVIT OF GANA KIRITHARAN**

(Name, Address & Telephone Number of Party)

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

**TOTAL ACCOUNTS ENQUIRY**

PAGE 1 OF 2  
CHAPTER 1

**MR GANA KIRITHARAN**

**ALERT  
REFER ECOM**

**SELECTION #** \_\_\_\_\_

APL	PRODUCT	ACCOUNT	BR	BALANCE	CUR	STAT	TYPE
<b>ASSETS</b>							
1	GLS TRADING	436031A	1253	0.00		ACTV	
2	GLS TRADING	436031B	1253	0.00	USD	ACTV	
<b>TOTAL ASSETS</b>				<b>0.00</b>			
<b>LIABILITIES</b>							
3	VSA EMERALD VS	4520050002413878	5926	*****	WR/O		OWNR
<b>CREDIT LIMIT</b>				<b>*****</b>			
<b>TOTAL LIABILITIES</b>				<b>0.00</b>			
<b>OTHER RELATED ACCOUNTS AND SERVICES</b>							
4	ACS ELV	4520050002413878			FRAU		OWNR

USER ID: PACHEN

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 M5501037 MOD MOC040A5 07/14/09 11:25:02

- \* During Motion on 14th of July 2009, Gana Kiritharan brought the issue of 2nd Page of "Total Account Enquiry" to the attention of Honorable Justice Moore. When Hon Justice Moore requested bank lawyer to produce the 2nd page, bank lawyer initially objected as this issue already discussed during previous Motion but later agreed to produced the page.
- \* At this point Gana Kiritharan mentioned that he like to see the second page of print out taken by person with ID of "RALPHD2" on 10/19/07 around 15:01:00. As this print out was taken as a part of enquiry into his Civil Claim bank has obligation to produce the second page. Also Gana Kiritharan requested for a Total Account Enquiry in his former name that is "Kiritharan Kanagalingam".
- \* After few minutes interval bank produced this new print out of "Total Account Enquiry" and informed the court they are unable to produce the second page of previous print out and no account details existed in the name of "Kiritharan Kanagalingam".
- \* Also the bank lawyer informed the Court the reason the second page was (? knowingly) omitted by the bank because in did not contain any significant information.
- \* When the bank lawyer tried to explain the details in the document to Hon Justice Moore, he told the explanations bring more confusion and asked Gana Kiritharan whether he agree with the new print out.
- \* When Gana Kiritharan told he do not agree with the new print out, Hon Justice Moore did not expect Gana Kiritharan to explain why he do not agree with the new print out, but Hon Justice Moore tear the copy of new print out in his hand to two pieces, retuned the teared pieces to Litigant section of the court room continued the proceeding with other documents filed for the day and delivered his decision.
- \* The reasons Gana Kiritharan disagreed with new print out as follows:
  1. The new print out do not contain details of Gana Kiritharan's Line of Credit. Though bank try to explain this is because bank has a policy of removing account details which are 7 years old, this expanation is not acceptable for following reasons.
    - A. Gana Kiritharan received account details of 1999 from bank in 2008 and account details of 2001 in 2009.
    - B. Even bank try to argue that they have a diffrent way of counting the years, there won't be a reason for removing Gana Kiritharan's line of credit details while his visa card details still in the system. According to bank statement both accounts were written-off in October 2005.
  2. If Gana Kiritharan's Line of Credit details can be removed from the system prematuarly then any other (secret account) details also can be removed from the system.
  3. From the day one to last day bank maintained no account details maintained in Gana Kiritharan's old name was available in their system. But during the motion on 14th of July 2009 in order to satisfy a previous court order bank lawyer provided some account details managed in the name of Kiritharan Kanagalingam (for the year of 2001 - 2002) to Gana Kiritharan.

Jul. 14. 2009 11:41AM  
APPL: CIF TRAN: ETOT  
BR #: 1976

TD Internal Recovery  
ID:

**TOTAL ACCOUNTS ENQUIRY**

**MR GANA KIRITHARAN**

No. 1114 P. 3  
SC:

PAGE 2 OF 2  
CHAPTER 1

**ALERT**  
**REFER ECOM**

**SELECTION #** \_\_\_\_\_

APL PRODUCT	ACCOUNT	BR	BALANCE	CUR STAT TYPE
5 ACS PAC	5892970000040913270			ISSD OWNR
<b>EASYLINE</b>				<b>INAC</b>
6 TDA	26K69201	5905		OWNR
<b>WEB BROKER</b>				<b>INAC</b>

USER ID: PACHEN

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**LAST PAGE - SELECT AN ACCOUNT FOR DETAILS, SCROLL BACK OR REQUEST NEXT TRAN**

1/HELP 3/END 4/MAIN 7/BACKWARD 8/FORWARD 10/CH BKWCD 11/CH FWD  
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**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Gana Kiritharan v. TD Canada Trust

**BEFORE:** Moore J.

**COUNSEL:** Gana Kiritharan, Plaintiff and Defendant by Counterclaim, In Person

Susan Rai, for the Defendant and Plaintiff by Counterclaim, TD Canada Trust

**ENDORSEMENT**

[1] This is a motion for summary judgment for the relief claimed in the statement of defence and counterclaim, being damages in the sum of \$16,456.11 plus interest and costs in the sum of \$5,000.00.

[2] Gana Kiritharan (Mr. Kiritharan) was a customer of TD Canada Bank (the bank) between March of 1996 and March of 2005. In that interval, the bank issued a Visa credit card and opened a line of credit. Money was advanced to Mr. Kiritharan on each of these accounts. The evidence establishes that no payments have been made upon either account since March 3, 2005.

[3] In accordance with bank policies governing the manner by which the bank deals with overdue accounts, the unpaid balances of the Visa account and the line of credit account were written off for accounting purposes in October of 2005.

[4] I accept the evidence of the bank on this application that writing off an overdue balance on an account 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 zero balance.

[5] Further, I accept the submission of the bank that after the Visa and line of credit accounts were written off, the bank was still owed the money that it had advanced to Mr. Kiritharan and had written off. Indeed, in the course of his submissions upon this application, Mr. Kiritharan agreed that the amounts claimed on these accounts were accurately stated and owed, at least until the time that the bank took the step of writing off the account balances.

[6] As well, Mr. Kiritharan admitted in paragraph 3 of his statement of claim that he stopped making monthly payments toward his line of credit account with the bank around March 2005. In light of that admission, the bank chose to file a statement of defense and counterclaim seeking

payment of the outstanding balances in each of the Visa and line of credit accounts. In response, Mr. Kiritharan served a reply and defense to counterclaim in which he acknowledged the debt owed to the bank [in paragraph 5] and that there was default on his part in payment of the line of credit and the Visa accounts.

[7] I accept the evidence of the bank that 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 Mr. Kiritharan. As well, I accept that the bank did not appropriate or conceal any funds and nor were any funds received by the bank in either Mr. Kiritharan's current name or his previous name, Kiritharan Kanagalingam.

[8] In an affidavit filed in support of his position on this motion, Mr. Kiritharan stated that:

I started this legal proceeding on 18th of October 2007 on a suspicion that there is concealed money belonging to me (a secret account opened by unknown people and used to cash my royalty cheques) existed in defendant.

[9] As well, Mr. Kiritharan deposed that: "I am utilizing this civil procedure to determine the cause of action. Though I suspect fraud, this is not formally acknowledge (sic)".

[10] Mr. Kiritharan sought an order from Master Birnbaum in January of 2009 for documentary production, a further and better Schedule B in the bank's affidavit of documents and other relief. The learned Master dealt with each claim upon its merits. By amended order dated January 19, 2009, the learned Master found that "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 defendants not proceed with its summary judgment motion".

[11] I too found Mr. Kiritharan to be an articulate spokesman for his cause and felt that he well understood the issues and the evidence before me on this summary judgment motion. He indicated that he may, even at this late date, seek to appeal the order of Master Birnbaum but stated that he has taken no positive steps in that direction yet. As such, this motion proceeded solely as a summary judgment motion.

[12] In this regard, Mr. Kiritharan indicated that he "may" disagree with the contents of paragraphs 5 and 11 of the bank's factum but he agreed that he has taken no steps to cross-examine the deponent of the affidavit attesting to the facts set out in those paragraphs nor indeed any other facts put forward on the bank's behalf. As well, he brought forward no evidence to support a finding that the amounts owing on the subject accounts are not exactly the amounts asserted by the bank.

[13] In an application for summary judgment brought, as this one is, under Rule 76.07(9), the presiding judge is directed to grant summary judgment on the motion unless unable to decide the issues in the action without cross-examination or unless it would otherwise be unjust to decide the issues on the motion.

[14] Rule 76 establishes a lower threshold than that applied in respect of matters that are not within the simplified rules procedure. Although the onus to establish entitlement to judgment rests with the moving party, the responding party clearly is obliged to put a "best foot" forward to establish a positive basis to support the position that the responding party maintains in the action and cannot merely rests upon allegations or denials in the pleadings or evidence put forward by the opposite party. The responding party must assert specific facts to show that judgment ought not to be granted. Mr. Kiritharan has simply not met the onus upon him: whereas, the bank has met the onus upon it and has demonstrated its entitlement to summary judgment.

[15] There is no genuine issue for trial in this matter. Put another way, Mr. Kiritharan has not adduced any evidence to show that judgment ought not to be granted at this time and upon this motion.

[16] In the result, the bank shall have judgment in the counterclaim for damages in the amount of 16. \$456.11 and the plaintiffs claim is dismissed and the bank shall recover costs fixed in the sum of \$5,000.00.

  
Moore J.

DATE: July 14, 2009





**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**THE HONOURABLE MR.**

**JUSTICE MOORE**

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)  
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**TUESDAY, THE 14TH DAY  
OF JULY, 2009**

**BETWEEN:**

**GANA KIRITHARAN**

Plaintiff

-and-

**TD CANADA TRUST**

Defendant

**JUDGMENT**

**THIS MOTION**, made by the Defendant, TD Canada Trust, for Summary Judgment of the Defendant's Counterclaim was heard this day at 393 University Avenue, 10<sup>th</sup> Floor, Toronto, ON.

**ON READING** the Affidavit of Gerry Deschenes, sworn November 10, 2008, the Affidavit of Gana Kiritharan, sworn April 6, 2009, filed, and upon hearing submissions from counsel for the Defendant and the Plaintiff;

1. **THIS COURT ORDERS** that the Plaintiff, **GANA KIRITHARAN**, pay to the Defendant on account of TD Emerald Visa Credit Card No.: 4520-0500-0241-3878, the sum of \$3,573.46 and interest thereon at the rate of 21.00% per annum from May 15, 2008.
2. **THIS COURT ORDERS** that the Plaintiff, **GANA KIRITHARAN**, pay to the Defendant on account of Line of Credit Account No. 4457424, the sum of \$12,882.65 and interest thereon at the rate of 4.25% per annum from May 15, 2008.

3. **THIS COURT ORDERS** that the Plaintiff's Statement of Claim is hereby dismissed.
4. **THIS COURT ORDERS** costs of this motion and of the action in the sum of \$5,000.00, inclusive of GST and interest thereon at the rate of 2.0 % from the date of this Order.

C. CHIBA  
DEPUTY REGISTRAR, SUPERIOR COURT OF JUSTICE  
GREFFIER ADJOINT, COUR SUPÉRIEURE DE JUSTICE

204/01

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

SEP 08 2009

AS DOCUMENT NO.:  
À TITRE DE DOCUMENT NO.:  
PER / PAR:

