ST. GEORGE WEST COUNTY
PORT OF SPAIN PETTY CIVIL COURT

RULING ON ABUSE OF PROCESS

CITATION: Errol Leslie v. Selwyn Mohammed

TITLE OF COURT: Port of Spain Petty Civil Court

FILE NO(s): No. 491 of 2012

DELIVERED ON: 29th July 2013

CORAM: Her Worship Magistrate Nalini Singh
St. George West County
Port of Spain Petty Civil Court Judge

REPRESENTATION:

Mr. Errol Leslie appeared in person.

Mr. Daniel Khan appeared for the defendant.

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1.0 INTRODUCTION

1.1 Abuse of process is defined in **AG v. Barker [2000] 2 FCR 1** as using the process of the court "for a purpose or in a way significantly different from its ordinary and proper use". Jamadar JA has identified four species of abuse of process in civil proceedings. One -according to His Lordship in **Danny Balkissoon v. Roopnarine Persaud & JSP Holdings Limited Claim No. CV 2006-00639 at page 9,** occurs when a litigant commences two or more sets of proceedings in respect of the same subject matter. It is the submission of Mr. Daniel Khan; counsel for the defendant Mr. Selwyn Mohammed (hereinafter referred to as "the defendant"), that the matter before the Court falls within this category and should therefore be struck off the Court's List as an abuse of process.

1.2 It is necessary to review the background of this case in order to put into perspective, the issues which now arise for determination. In this regard, these are the facts which give rise to this application.

2.0 BACKGROUND

The Original Proceedings

2.1 By ordinary summons dated and filed on the 24th March 2011 (hereinafter referred to as the "original proceedings"), the claimant Mr. Errol Leslie (hereinafter referred to as "the claimant"), issued proceedings against the defendant, for the sum of $3,900.00 TTD as legal fees advanced under an incomplete contract between the parties.

2.2 The defendant made his first appearance in the matter on the 10th August 2011. The claimant was unrepresented whilst the defendant was represented by Mr. Ken Sagar. No directions were given for the filing of a defence and the matter was adjourned to the 8th September 2011.

2.3 When the matter next came up for hearing on the 8th September 2011, the claimant was still unrepresented and Mr. Ken Sagar again appeared for the defendant. On this day, the claimant sought leave to withdraw the original proceedings with no orders as to costs and same was granted to him by the Petty Civil Court Judge. There is no endorsement on the Magistrate's Case Sheet or the Case Folder as to why this course was adopted by the claimant. Further the audio proceedings for that day only commenced at or about 11AM so this too sheds no light on what actually transpired on that day in relation to the withdrawal of the original proceedings by the claimant.

The Instant Proceedings

2.4 By ordinary summons dated and filed on the 4th December 2012, the claimant launched proceedings (hereinafter referred to as "the instant proceedings") against the defendant for a second time. On this occasion, it was for the sum of $2,800.00 TTD which according to the claimant was due to him by the defendant as legal fees advanced under an incomplete contract between the parties. The matter first came up on the Court's List on the 30th January 2013 and was adjourned from time to time to facilitate service on the defendant. Service was effected on the 1st March 2013 and the matter came up on the Court's List on the 8th April 2013. On this day the claimant alone appeared and he was unrepresented. The defendant did not appear nor was

any word sent to the Court to explain his absence. The matter was accordingly set for the 15th April 2013 for *ex parte* trial.

2.5 On the 15th April 2013 when the matter came up to be proceeded with by way of *ex parte* trial, the claimant appeared -unrepresented as before. The defendant did not appear on this day but sent attorney at law Ms. Nicole Basraj to represent him and obtain directions regarding the filing of his defence. Leave was granted by the Court to the defendant to defend the instant proceedings and directions were given that the defence be filed in the Petty Civil Court Registry on or before the 9th May 2013. The matter was then adjourned to the 16th May 2013.

2.6 The defence was in fact filed on the 8th May 2013 and when the matter came up for hearing on the 16th May 2013, directions were given regarding the filing of a reply which was to be done on or before the 24th May 2013. The case was then given a trial date of the 3rd June 2013.

2.7 On the 3rd June 2013, Mr. Daniel Khan appeared for the defendant and invited the Court to rule that the instant matter was an abuse of the court's process because it was in essence, successive civil litigation against his client arising from the same facts.

2.8 At this point the Court made certain enquiries from the claimant and learnt that:

- The instant proceedings and the original proceedings are based on the same facts.

- The reason for withdrawing the original proceedings was because the claimant felt that he needed something more "substantive" than what he had at the time he filed the original proceedings, to succeed in the matter.
- This belief stemmed from what was told to him by people who according to him, were from the legal fraternity.
- The reason for instituting the instant proceedings is because the claimant is of the view that he now has what he says is "substantive evidence" to support his claim against the defendant.
- The nature of this "substantive evidence" is set out in a document which was filed on the 3rd June 2013 under the rubric "New Discovered Evidence".
- The "New Discovered Evidence" is really a printout of **sections 49 through 57 of the Legal Profession Act Chap. 90:03**.

2.9 The issues which therefore arise for this Court's determination are set out below.

3.0 THE ISSUES

3.1 The disputed application presents three issues for determination. They are:

1. Whether it is an abuse of process to seek to litigate, in subsequent proceedings, issues which have been raised (but not adjudicated upon) in earlier proceedings.

2. Whether it is possible to seek to litigate, in subsequent proceedings, issues which have been raised (but not adjudicated upon) in earlier proceedings *after* those earlier proceedings were withdrawn by the claimant.

3. Whether I should exercise my discretion to strike out the instant proceedings as an abuse of the court's process.

4.0 THE LAW

1. Whether it is an abuse of process to seek to litigate, in subsequent proceedings, issues which have been raised (but not adjudicated upon) in earlier proceedings.

4.1 The controlling principle which emerges from the cases is that litigating in subsequent proceedings, issues which have been raised (but not adjudicated upon) in earlier proceedings, could be an abuse of the process of the court. This approach seems to be predicated upon the public policy consideration that no individual should be sued more than once for the same cause; *nemo debet bis vexari pro una et eadem causa.*

4.2 The point was clearly stated in the case of **Wahab v. Khan & Others [2011] EWHC 908** where at paragraph 16 Briggs J said that:

> "The bringing of a second claim where an earlier claim based upon the same facts or seeking the same relief has failed may give rise to a number of different types of what may loosely be called an abuse of process".

4.3 Indeed the case of **Buckland v. Palmer [1984] 1 WLR 1109** is an example of where the court struck out the second matter on the basis that the refiling was considered to be an abuse of process. This was a case where the entire original claim was settled and then a second claim was made against the defendant in the name of the plaintiff for a larger sum based on the same facts which founded the original claim. It was held that the second claim was an obvious abuse of

process and was struck out since the original proceedings existed but was stayed. It was further held that since the original claim was not adjudicated upon, that claim could be revived and proceeded with.

4.4 In that case the plaintiff and the defendant were involved in a road traffic accident. The plaintiff's car was damaged as a result of the collision. The defendant accepted liability for the accident and furnished the plaintiff with his insurance particulars. The plaintiff passed on the information to her insurers who informed her that they had a "knock for knock" agreement with the defendant's insurance company and would therefore reimburse her for the cost of repairs less £50 which was the excess that she was expected to payout of her own pocket.

4.5 The cost of repairing the plaintiff's car was estimated at £1142. On the 28th April 1982, the plaintiff commenced proceedings against the defendant for £50 as the "uninsured excess on car insurance" and £5 in court fees. On the 6th May 1982, the defendant paid the £50 and £5 costs into court indicating that he disputed the plaintiff's claim and wished to make a counterclaim. The plaintiff accepted the £55 and her action was stayed by operation of the County Court Rules.

4.6 The plaintiff's insurers then realized that the defendant was not insured and on the 17th September 1982, the plaintiff's insurers, using the plaintiff's name by subrogation, commenced a second action against the defendant in respect of the collision claiming the sum of £1,142 as the cost of repairs to the plaintiff's car less the £50 which was already paid by the defendant. The

county court registrar dismissed the defendant's application to strike out the second action as an abuse of the process of the court.

4.7 On appeal it was held that where proceedings were in existence based upon a particular cause of action, it was in principle an abuse of the process of the court to bring a second action based upon the same cause and the second matter was struck out.

4.8 In arriving at this decision Sir John Donaldson M.R. made the point at page 1114H that:

> "Whilst I dislike procedural technicality and, on the facts of the instant appeal, the defendant's argument [viz that the second proceedings were an abuse of process] might be thought to have no other justification, in reality there are wider issues involved. The public interest in avoiding any possibility of two courts reaching inconsistent decisions on the same issue is undoubted and this alone would suggest that two actions based upon the same cause of action should never be allowed. Equally clear is the public interest in there being finality in litigation and in protecting citizens from being 'vexed' more than once by what is really the same claim. Against this must be set the public interest in seeing that justice is done. It will not be done if, for example, a plaintiff accepts payment of a small sum which is only part of his claim in the belief that the remainder is not in issue and will be paid in due course. These competing public interests will be differently reconciled on the differing facts of particular cases and this is best achieved if we hold, on principle and on the authorities to which I have referred,

that (1) it is an abuse of the process of the court to bring two actions in respect of the same cause of action but (2) where there has been no judgment in the first action, that action can, in appropriate circumstances, be revived and amended so as to enable there to be an adjudication upon the whole of the plaintiff's claim. Should the original claim be brought in the county court and the enlarged claim be outside its jurisdiction, that court has power to transfer the whole matter to the High Court" (emphasis mine).

Griffiths L.J. agreed saying at page 1116G:

"… the rule against multiplicity of proceedings in respect of a single cause of action is soundly based on considerations of public policy designed to prevent the harassment of litigants by exposing them to the anxiety and expense of unnecessary legal proceedings; often in the past expressed in the legal maxims nemo debet bis vexari and interest republicae ut sit finis litium. I would not therefore think it right to make this case an exception to that general rule, particularly where there exists a procedure, namely the application for the removal of the stay, which will prevent any injustice resulting to the insurance company. If an exception was to be created in this class of action, it might lead to the very undesirable result of two actions proceedings in respect of the same accident in different courts, e.g., uninsured loss claimed in the local county court, and insured loss claimed by insurers in the High Court, with the possibility of different judges taking different views on liability. Therefore, unless bound by authority to hold otherwise, I have reached the conclusion that the insurers should

not have been permitted to commence a fresh action to claim the insured loss" (emphasis mine).

4.9 The law on this area appears to be settled. It could be an abuse of the court's process to seek to seek to litigate, in subsequent proceedings, issues which have been raised (but not adjudicated upon) in earlier proceedings.

2. Whether it is possible to seek to litigate, in subsequent proceedings, issues which have been raised (but not adjudicated upon) in earlier proceedings after those earlier proceedings were withdrawn by the claimant.

4.10 What puts this matter on an entirely different footing from a case of simply seeking to litigate in subsequent proceedings, issues which have been raised (but not adjudicated upon) in earlier proceedings is that the earlier proceedings were withdrawn by the claimant. The effect of this withdrawal is another point which must be given due consideration by this Court in so far as this abuse of process application is concerned.

4.11 The effect of a withdrawal on proceedings before the court was covered at paragraph 9 of **Girao v. Allstate Insurance Company of Canada 2011 CarswellOnt 1050.** This is what was said:

"The courts have grappled with withdrawals — what their process calls a notice of discontinuance — and are clear on a number of principles. First, there is an expectation of finality flowing from a notice of discontinuance. A plaintiff's request to discontinue litigation is a serious step which should not be lightly

undone. Second, if prejudice will occur, such as where a limitation period has expired, setting aside the notice of discontinuance should not be granted unless special circumstances exist. Such circumstances can include inadvertence, misapprehension or mistake" (emphasis mine).

Similarly Easson JA made the point at paragraph 3 of **Warford v. Zyweck 2002 BCCA 221** that:

> "Because there should be an expectation of finality flowing from the filing of a notice of discontinuance or abandonment, such a step is a serious matter from which, in the absence of exceptional circumstances of a compelling nature, the court will not relieve the appellant".

This approach also accords with the sentiments expressed at paragraph 25 in the matter of **Yancey v. Neis 1999 CarswellAlta 939** where Russell JA said this:

> "a decision to file a discontinuance... has the effect of putting an end to the plaintiff's rights to bring a cause of action against a particular defendant. At the very least, it is a significant and considered measure which should not be lightly undone".

4.12 In light of this legitimate expectation of finality which is created by the discontinuance, the logical question which arises now is whether it would amount to an abuse of process to launch subsequent proceedings which raises issues which were raised but not adjudicated upon in original proceedings if those original proceedings were withdrawn.

4.13 This was specifically dealt with in **Adam v. Insurance Corp. of British Columbia (1985) 2 CPC (2d) 285.** On the facts of this case, the plaintiff was involved in an accident when the bus in which she was a passenger, collided with a motor vehicle. The plaintiff was at that material time acting within the scope of her employment. She instituted proceedings against the Insurance Board of British Columbia, and the unidentified owner and driver of the motor vehicle for the negligence. Just prior to the matter proceeding to trial, the plaintiff discontinued proceedings against the Insurance Board of British Columbia as it was the view of counsel for the plaintiff that the action was barred because of Regulation 8.02(d) in the Insurance (Motor Vehicle) Act which provided that once a claim fell under section 20 or section 24 (where a claimant is entitled to workers' compensation benefits) the Insurance Board of British Columbia was not liable to pay. The plaintiff's claim came under section 20 or alternatively, under section 24. After this decision counsel for the plaintiff subsequently came across an unreported decision which suggested that Regulation 8.02(d) may have been *ultra vires*. The knowledge of this case indicated a possibility to counsel for the plaintiff that his client's position was not as hopeless as he had originally thought when he withdrew proceedings against the Insurance Board of British Columbia. Against this backdrop counsel then sought to have the matter proceed as though no withdrawal of proceedings had been made against the Insurance Board of British Columbia. This is what Mr. Justice Esson had to say on the matter at page 292:

> "The question then is as to the basis upon which the power can be exercised. I do not propose to attempt to catalogue the circumstances which would justify its exercise. I do think, however, at least where a limitation period has gone by, that the circumstances must be very special and that they may not go beyond the kind of inadvertence, mistake or misapprehension relating to the procedural aspects

which were referred to by the Master in the Cusack case. There may well, however, be other grounds.

I think that the standard may well be more relaxed where the limitation period has not gone by. In those circumstances it is open to the plaintiff to bring another action on the same cause of action, and it might well be a proper consideration that to require the commencement of a new action would tend to waste the effort that had already gone into the existing action. Here, however, we are dealing with a different situation. The limitation period arose after the discontinuance. The effect of setting aside the notice would be to give a cause of action which would otherwise be clearly statute-barred. There are other elements of prejudice to the defendant which can be observed. Had the plaintiff continued on to trial at the time the action was set, the matter would have been resolved long ago. In any event, it is my view that there, as here, the grounds are simply a change of heart, based on some greater consideration of the law or the facts, as to the possibility of success, that is not enough" (emphasis mine).

4.14 The law on this area appears to be equally settled. The withdrawal of proceedings creates an expectation that proceedings are at an end and there must be very special circumstances which would warrant a court allowing a litigant to pursue a claim which raises issues that were raised (but not adjudicated upon) in earlier proceedings which have been withdrawn.

4.15 Within this framework, I come now to address the issue of whether the circumstances of this particular case give rise to an abuse of the process of the court in light of the fact that:

- it is the refiling of a matter which raises issues raised in previous proceedings which were not adjudicated upon and,
- the claimant withdrew the previous proceedings.

4.16 In the instant proceedings it is evident that the claimant -if what he told the Court is anything to go by, acted with the benefit of counsel and upon the advice of counsel. If he was troubled by what he was told, it was always open to him to get a second opinion

4.17 The decision to withdraw the original proceedings against the defendant was made on the 8th September 2011 which would have been almost six months after he had filed the ordinary summons commencing the original proceedings against the defendant. It is clear from this that the withdrawal did not come in the heels of the commencement of the action so it cannot be said that the decision to withdraw was made in haste. Rather, it appears to have been considered over the course of many months.

4.18 Something of value -that is the defendant foregoing costs, was obtained by the claimant. It is agreed that the costs which can be awarded against a litigant in the Petty Civil Courts jurisdiction is at best the modest sum of $1000.00 TTD, this notwithstanding, it still is real and sufficient albeit, arguably, not adequate.

4.19 The withdrawal of the original proceedings took place in 2011. It is now 2013 and at least two years have elapsed. On these facts it appears to this Court that the claimant made a bargain -in the legal sense in that the claimant would withdraw the matter and in consideration thereof the defendant would forego costs. Further, the claimant appeared to have been content with it for a long time.

4.20 The withdrawal created a legitimate expectation in the defendant that the matter was at an end.

4.21 The defendant lost the opportunity to have the matter resolved before the original tribunal in a timely manner.

4.22 It is only within recent times that the claimant has come across the **Legal Profession Act Chap. 90:03** which he classifies as "New Discovered Evidence" and it has caused him to question the wisdom of his earlier decision to withdraw the original proceedings against the defendant.

4.23 What appears to have happened with the claimant in this case therefore is that he had a change of heart and I do not think a change of heart in itself can justify proceeding with the prosecution of this matter. I believe the opinion of Mr. Justice Esson, as set out in the last sentence of his quoted remarks above, is highly pertinent to this case.

4.24 It is therefore my view that a change of heart, based on some new appreciation of the law relating to the possibility of success in a matter, is simply not enough to prevent this Court from concluding that continuing with the instant proceedings in light of the previous withdrawal would be an abuse of the process of the court.

3. Whether I should exercise my discretion to strike out the instant proceedings as an abuse of the court's process.

4.25 Having concluded that the instant proceedings amount to an abuse of process, the final matter which remains to be determined is whether I should strike out the claim. This question arises as a separate issue because I share the sentiments expressed by His Lordship Jamadar JA at pages 9 to 10 of *Danny Balkissoon v. Roopnarine Persaud & JSP Holdings Limited (supra)* to the effect that:

> "...under the CPR even the power to strike out proceedings as an abuse of the process of the court ought to be considered in light of the overriding objective and the function of the court to deal with cases justly. Thus, even where there may be abuse of process that does not mean that the only correct response is to strike out a claim or statement of case(or part thereof)... the jurisdiction and power of the court to strike out proceedings as an abuse of the process of the court is discretionary; and given the status of the constitutional right of access to the courts it would appear that striking out a claim should be the last option".

4.26 This mirrors the sentiments in a number of cases where it has been said that striking out is a power which ought to be exercised sparingly and only in an exceptional case: **Lawrence v.**

Lord Norreys (1890) 15 App Cas 210, Dyson v. AG [1911] 1 KB 410, Metropolitan Bank Ltd v. Pooley (1885) 10 App Cas 210 and Salaman v. Secretary of State in Council of India [1906] 1 KB 613.

4.27 With this in mind I turn to the matter of whether the instant proceedings should be struck off the Court's List and in the process deny the claimant the opportunity to litigate a question which was not previously adjudicated upon in the true sense.

4.28 The answer to this question depends on whether the "special reason" advanced by the claimant, would justify the decision to allow the present proceedings to continue -having regard to the overriding objective of the New Rules. This "special reason" test is set out in the case of **Arbuthnot Latham Bank Ltd v. Trafalgar Holding Ltd [1998] 2 All ER 181** where Lord Woolf MR in giving the judgment of the court on whether the court should exercise its discretion to strike out a second action after the first action (which raised the same issues as the second matter) was struck out for abuse of process, said this:

> "In order to exercise my discretion so as not to strike out the present action, some special reason needs to be identified which, having regard to the overriding objective, would mean that it was just to allow the present action to proceed".

I find this test to be equally applicable to the present proceedings. I have also directed my mind to the learning in **DC v. CPS Fuels Ltd [2001] EWCA Civ 1597** where at paragraph 59, some light is shed on the meaning to be given to the term "special reason". This is what Judge LJ had to say:

"I should say a word or two about his reference to “some special reason”. The use of these words is an attractive form of forensic shorthand which encapsulates the broad approach to the decision-making process to be adopted when an action has failed as a result of an abuse of process and the court is considering whether a second action relating to the same issues should be allowed to continue. The words come from authority binding on this court: *Arbuthnot Latham Bank Ltd v Trafalgar Holdings Ltd[1998] 2 All ER 181*, [1998] 1 WLR 1426; but they are not words which derive from the statute, nor from the Civil Procedure Rules, and they should not be treated as if they had. Nor should they be employed as some form of ritual incantation. If the judge in this case had chosen to express the same principle by saying “very good reason”, or “powerful” or “sufficient reason”, he would not, in my judgment, have misdirected himself".

4.29 What then are the special reasons which have been advanced in this case for the present proceedings to move forward? According to the claimant, it is that he now has "New Discovered Evidence".

4.30 Now there is no dispute that a new trial can be proceeded with if new evidence comes to light and it is the sort of new evidence which could not have been obtained by reasonable diligence before the trial and, it is the sort of evidence which if adduced, would be practically conclusive. This principle comes from **Young v. Kershaw; Burton v. Kershaw (1899) 15 TLR 52 at page 54** where Lord Justice Collins said this:

> "In exceptional cases the Court had granted a new trial on the ground that new evidence had been discovered since the trial. But that had been fenced round with limitations. The party must show that the fact that he had not brought it forward before was not owing to any remissness on his part. Then as regards the class of the evidence, in his opinion the rule was that the evidence must be such that, if adduced, it would be practically conclusive".

The problem in this case is that the "New Discovered Evidence" the claimant premises the present proceedings upon are not in my very humble and respectful view, the kind of evidence contemplated in *Young v. Kershaw; Burton v. Kershaw (supra)* which from my understanding refers to viva voche or documentary evidence. The "New Discovered Evidence" of the claimant is not at all in this category as it is really just sections of the **Legal Profession Act Chap. 90:03**. And so I find that the claimant cannot avail himself of the principle that a new trial can be proceeded with where new evidence has been discovered or becomes available since no new evidence was discovered by the claimant. The reality of the situation the claimant seems to have found himself in is that he has had a change of heart, based on some new appreciation of the law relating to the possibility of success in a matter and it is on this basis that he now wishes to have the present proceedings continue.

4.31 The overriding objective of the New Rules is to enable courts to deal with cases justly. This includes allocating to a case an appropriate share of the court's resources, while taking into account the need to allot resources to other cases. I understand this to mean that the right of litigants to be heard is not unfettered. Indeed the point was made in **Dow Jones & Co v. Jameel [2005] EWCA Civ 75** that:

"It is no longer the rule of the court simply to provide a level playing field and to referee whatever game the parties choose to play upon it. The court is concerned to ensure that judicial and court resources are appropriately proportionately used in accordance with the requirements of justice".

4.32 There is no denying that citizens of this country have a constitutional right of access to the courts (section 4(a) and (b) of the Constitution) -a point which was raised by Mr. Justice Seepersad in the matter of **Steve Chairman v. Samuel Saunders CV 2012-01670 at paragraphs 24 to 25 of page 10** and in turn cited with approval by Her Ladyship Madam Justice Gobin in the matter of **Adanna Paul v. Well Services Petroleum Company Limited CV 2011-03806 at paragraph 37 of page 16.** At the same time I understand *Dow Jones & Co v. Jameel (supra)* to be saying that the right of litigants to be heard is not an unrestricted one. So would proceeding with this present matter place a disproportionate burden on the court's resources? I am of the view that it would. There is of course no denying that the previous proceedings never got to the stage of directions being given for the filing of a defence but the reality is that the present proceedings did. It got to the doorstep of the trial before the point was taken that the matter be struck off of the Court's list. I am mindful of the fact that this is precious judicial time which could have been allocated to resolving other disputes involving other litigants. And this is made all the more critical in the context of our local perspective where resources are more likely to be limited as compared to other jurisdictions such as England –a point which was made by His Lordship Mr. Justice Rampersad in **Wendell Steel v. Lennox Petroleum Services Limited Claim No. CV 2009-04689 at paragraph 14 of page 6.** This is the second time this litigant has

brought the defendant to court in respect of this matter[1] and I find that to allow the proceedings to move forward would be to violate the principle of finality of proceedings. This Court cannot be understood to condone the practice of withdrawing and refiling claims. Indeed it is my very humble and respectful view that litigants ought not to be allowed to withdraw matters in one breath and depending on how they feel about this decision later on, return to the court to re-launch the very proceedings against the same defendant. Such conduct of litigation is to be deprecated in the strongest of terms. Indeed the vivid imagery used by Mr. Justice Kokaram at paragraph 30 of **David Walcott v. Scotia Bank of Trinidad and Tobago Limited Claim No. CV 2012-04235** captures the matter best. His Lordship's very pertinent sentiments are worth repeating:

> "In short parties must know that civil litigation is not a game. It is not a procedural casino for litigants to gamble with the Court's resources or that of the Defendant. Parties are to properly formulate their claims with the genuine interest of seeking a resolution of their dispute. The cost sanctions regime of wasted costs and the discretion to award costs proportionately built into the rules underscores that the pursuit of litigation must be bona fide and seek to promote the legitimate aim of bringing forward all its claims for determination. Failure to do so must be accompanied by good reason and special circumstances. In light of a public policy which calls for the economical disposition of disputes and the preservation of the integrity of the court's process there is very little tolerance for claimants seeking to re-litigate claims where there were clear opportunities open to do so in earlier proceedings"

[1] Albeit the sum claimed is reduced because according to the claimant the defendant returned to him the sum of $1,000.00 TTD after the original proceedings were withdrawn.

5.0 ORDER OF THE COURT

5.1 As such it is the order of the Court that:

1. Mr. Daniel Khan's abuse of process submissions are upheld.

2. The instant proceedings are struck off the Court's List as an abuse of process.

3. The sum of $1,000.00 TTD is awarded as costs. I am aware that $1,000.00 TTD is the maximum amount that I may award under the **Petty Civil Courts Act Chap 4:21** in so far as costs are concerned. If I had the authority, I would have ordered a higher amount, as I am certain that the defendant has incurred costs far in excess of this sum in time and expense because of the conduct of the claimant in this matter.

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Her Worship Magistrate Nalini Singh

Petty Civil Court Judge