IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: JPMorgan Chase Bank v. Petrovici, 2007 NSSM 33

Date: 20070723
Claim: 268577
Registry: Halifax

Between:

JPMorgan Chase Bank, N.A.
(previously SEARS CANADA BANK)

Claimant

v.

Penny Petrovici

Defendant

Adjudicator:	J. Scott Barnett
Heard:	June 25, 2007
Written Decision:	July 23, 2007
Counsel:	Moneesha Sinha, Counsel for JPMorgan Chase Bank, N.A.
	Penny Petrovici, Not Present

By the Court:

[1] **INTRODUCTION:** The Claimant, JPMorgan Chase Bank, N.A. (previously SEARS CANADA BANK) sues the Defendant Penny Petrovici for an allegedly unpaid Sears Canada credit card account in the amount of $5,244.24, plus interest at a rate of 28.8% per annum.

[2] Despite proof of service upon the Defendant, Ms. Petrovici neither filed a Defence to the Claim nor did she (or any agent on her behalf) attend at the scheduled hearing. The Claimant was represented by counsel and I proceeded to hear the case.

[3] Because of the prior history of this court file, the principles of *stare decisis* and *res judicata* may be applicable. As will be discussed in greater detail below, I have come to the conclusion that the Claimant cannot be successful in this Claim and thus it shall stand dismissed.

[4] **BACKGROUND:** Hugues Nadon, agent for the Claimant, prepared a Notice of Claim form dated July 11, 2006 and filed the same with the Small Claims Court Clerk's office on July 14, 2006.

[5] In that Claim, the Claimant was described as "JPMorgan Chase Bank, N.A. (formerly SEARS CANADA BANK)" and the named Defendant was Penny Petrovici.

[6] The Claim sought payment of the sum of $5,244.24. The stated reason for the Claim was described as follows:

> "AMOUNT DUE ON SEARS CANADA CREDIT CARD ACCOUNT NUMBER 5307 8500 1353 9017 FOR PURCHASE MADE AT SEARS CANADA STORES AND/OR CATALOGUE WITH INTEREST AT A RATE OF 28.80% PER YEAR SINCE MAY 20, 2006."

[7] The original date set for the hearing of the Claim was September 12, 2006 at 6 p.m.

[8] The Affidavit of Service indicates that the Defendant was served with the Claim on August 10, 2006.

[9] It does not appear that the Defendant filed a Defence. The Claimant then made Application for Quick Judgment.

[10] In support of that Application, an Affidavit In Proof of Application in the usual form was submitted on August 29, 2006.

[11] In the body of the Affidavit, the affiant made oath and stated as follows:

> 1. That I am the representative / agent of the Claimant.
> 2. That on November 15, 2005, JPMorgan Chase Bank, N.A. acquired all Sears private label and MasterCard-branded credit card accounts. Please find attached a letter to that effect.
> 3. That I served the Claim on the defendant by personal servicing and documentation proving service is attached.
> 4. That 10 days have expired since the date of service.
> 5. That I have had no communication, either written or oral, from the Defendant to the effect that the Defendant intends to defend this action.
> 6. That no payments have been credited.
>
> 7. That the following breakdown of my claim is a true and accurate statement of the account owing by the Defendant, and documentation supporting my claim is attached:

Debt (amount claimed before costs)	$5,244.24
Credit (if any)	-
Cost of filing claim	160.00
Cost of service	105.69
Interest (from May 20, 2006 to August 4, 2006)	314.48
	$5,824.41

8. That I request judgment be issued in this matter in the amount of $5,824.41.

[12] I note that the first portion of the Affidavit in Proof of Application indicates that one Hugues Nadon is making oath and stating what follows in the Affidavit and yet, down at the jurat, the "Applicant" is stated to be "Emilie Nadon".

[13] In any event, a number of items were attached to the Affidavit in Proof of Application, including, among other things, a letter dated March 3, 2006 addressed to Mr. Hugues Nadon, Nadon & Nadon Lawyers, Inc. in Brossard, Quebec, from Peter Bean, Assistant General Counsel for JPMorgan Chase Bank, N.A.

[14] The letter is stated to be confirmation that all Sears private label and

MasterCard-branded credit card accounts were acquired by JPMorgan Chase Bank, N.A. pursuant to a Purchase Agreement dated August 31, 2005. The transaction is said to have closed on November 15, 2005.

[15] The letter also states:

> "Accordingly, all receivables in respect of Accounts issued by Sears Canada Bank or its predecessors became the property of Chase on November 15, 2005. All Accounts issued since that date were issued directly by Chase."

[16] Attached to the letter is a copy of the official press release addressing the topics discussed in the letter.

[17] The Application for Quick Judgment was placed before Adjudicator David T.R. Parker. He denied the Application and he placed a handwritten note dated

September 5, 2006, on top of the draft Order prepared by the Small Claims Court Clerk in Halifax in advance of all Quick Judgment Applications. These draft Orders simply facilitate the issuance of Quick Judgment in those cases where the Adjudicator finds that the granting of Quick Judgment is appropriate.

[18] In the note, Adjudicator Parker indicated that he was concerned that the Claimant was not an original party to the contract in question (an obvious reference to the possibility that Section 5 of the *Small Claims Court Act* might be applicable, thereby removing the matter from the Court's statutory jurisdiction).

[19] It then appears that Colin Kelly appeared on behalf of the Claimant on

September 12, 2006 (the originally scheduled hearing date) and gave oral evidence and submitted exhibits. There is no indication in the file that the Defendant appeared at the hearing. As it turned out, Adjudicator Parker heard the matter that evening, and he subsequently prepared a written decision dated November 27, 2006: *JPMorgan Chase Bank N.A. v. Petrovici*, [2006] N.S.J. No. 480 (SmClCt).

[20] Adjudicator Parker's decision appears to take for granted that the hearing on September 12, 2006 was similar to any other Application for Quick Judgment under Section 23(1) of the *Small Claims Court Act*. His decision also appears to take for granted that the hearing was not a simply a hearing taking place in the normal course where the Claimant appears but the Defendant does not appear.

[21] In his decision, Adjudicator Parker indicates that he is denying the "Application" for three reasons.

[22] First, he indicates that he cannot determine if the contract was with Sears Canada Bank or Sears Canada Inc.

[23] Second, he notes that he is unable to tell whether or not the named Claimant (JPMorgan Chase Bank, N.A.) was an original party to the contract. Earlier in his decision, Adjudicator Parker specifically cites Section 5(1) of the *Small Claims Court Act* which states:

> "5(1) To better effect the intent and purpose of this Act and to prevent the procedure provided by this Act being used by a corporate person to collect a debt or a liquidated demand where there is no dispute, no partnership within the meaning of the Partnerships and Business Names Registration Act and no corporation may succeed upon a claim pursuant to this Act in respect of a debt or liquidated demand unless the claimant is one of the original parties to the contract…."

[24] Third, Adjudicator Parker raises the question of whether or not the Claimant is registered pursuant to the *Corporations Registration Act* and indicates that this is "problematic" in light of Section 17(1) of that statute. Reference can be made to the recent decision of Justice Boudreau concerning this particular section: *Kaeser Compressors Inc. v. Bent*, [2006] N.S.J. No. 390 (S.C.).

[25] Following Adjudicator Parker's written decision in the Court file, another Affidavit in Proof of Application was apparently filed (on April 5, 2007).

[26] The Affidavit is sworn to by Hugues Nadon. It claims the same amount of debt, pre-judgment interest and costs as the prior Affidavit in Proof of Application. However, slightly different documentation is attached to the Affidavit.

[27] In particular, a "Detailed Affidavit" sworn to by Jennifer Hare of JPMorgan Chase Bank, N.A, an "authorized representative and employee of the legal department for the Plaintiff [sic]" indicates that JPMorgan Chase Bank, N.A., acquired all Sears private label and MasterCard-branded credit accounts effective November 15, 2005.

[28] The Affidavit also indicates that "they" acquired the financial services division of Sears "including not only accounts but also offices, employees and all

other assets and liabilities related to the division".

[29] Finally, the Affidavit supports the amount of the Defendant's alleged indebtedness to the Claimant.

[30] Also attached to the Affidavit is a letter from David Taylor, National Manager, Legal Counsel and Corporate Compliance for Sears, dated May 4, 2006, addressed to Nadon & Nadon Lawyers, Inc. The letter confirms that Sears Canada Inc. sold all of its right, title and interest in the Sears credit and financial services operations to JPMorgan Chase Bank, N.A. on November 15, 2005. A copy of a press release is attached to the letter.

[31] Finally, a copy of what appears to be a printed form JPMorgan Chase Bank, N.A. Sears Card and Sears MasterCard Cardholder Agreement is attached.

[32] The Cardholder Agreement states in the first paragraph below the title "Acceptance of this Agreement" as follows:

> "This agreement sets out the terms and condition under which we will provide credit to you through the use of one or more accounts which were opened when you obtained your Sears MasterCard or Sears Card. If your card was issued by Sears Canada Inc. or Sears Canada Bank, please be advised that your account was transferred to us when we purchased the Sears Canada credit card and financial services business in November 2005. This agreement replaces all earlier agreements relating to the Card."

[33] It would appear that on April 16, 2007, this Affidavit was placed before Adjudicator Parker. His handwritten note indicates that he had already prepared an Order on the file and that he had previously denied the Order for judgment.

[34] There is then a note in the file apparently prepared by someone in the Small Claims Court Office indicating that the office of Nadon & Nadon was called on April 17, 2007 and that someone there was told to "fill out application with new court date and refile and serve defendant."

[35] This was apparently done; a new Notice of Claim dated April 24, 2007, was issued by the Small Claims Court on May 1, 2007. The parties were exactly the same as those indicated on the Notice of Claim dated July 11, 2006, the same amount of damages were sought, the same reason for the claim was given and the same Claim number was placed at the top of the Notice of Claim.

[36] Documentation similar to that attached to the Affidavit in Proof of Application filed April 5, 2007, is attached to this Notice of Claim.

[37] The hearing date for the Claim was set at June 25, 2007.

[38] According to the Affidavit of Service dated May 2, 2007, the Defendant was once again personally served with a copy of the Claim form.

[39] Once again, no Defence was filed. And again the Claimant's agent prepared

an Affidavit in Proof of Application for Quick Judgment. This Affidavit was filed on June 12, 2007.

[40] In addition to the information previously provided, the Claimant's agent attached a list of previously successful
Applications for Quick Judgment submitted on behalf of JPMorgan Chase Bank, N.A., as well as copies of many of the Orders issued by various different Small Claims Court Adjudicators from all around the Province of Nova Scotia.

[41] The Application for Quick Judgment was placed before Adjudicator Parker on June 14, 2007. He refused to grant the Order for Quick Judgment and indicated in a note placed in the file that, in his view, the Claimant was barred from taking an action in the Small Claims Court and he referred to his earlier written decision in the file.

[42] The matter then came before me on June 25, 2007, the originally scheduled

hearing date for the second issued Notice of Claim.

[43] The Claimant's counsel attended at the hearing but the Defendant was not present. As previously indicated, I elected to proceed given that personal service upon the Defendant had been proven.

[44] At the hearing, the Claimant's counsel indicated that she wished to present "fresh evidence" supporting her client's position that judgment ought to be granted in favour of the Claimant. I asked her to present all further evidence that she wished me to consider and she did pass a number of documents to the Court.

[45] Upon my detailed review of all of the documents in the Court file after the hearing, however, it quickly became obvious that no new evidence of any kind had been submitted to me. All of the documentation had previously been presented to Adjudicator Parker.

[46] At the hearing, I indicated a concern to the Claimant's counsel that if additional information were not presented, it might well be that the final outcome of the case would be the same as that reached when the matter was placed before Adjudicator Parker.

[47] In response, the Claimant's counsel suggested that it would probably have been better for the Claimant to appeal one of the previous decisions of Adjudicator Parker had it wished to seek judgment in this case, rather than proceed to the hearing before me and essentially present exactly the same evidence again as had previously been submitted.

[48] **ISSUES:** Is this Claim barred by reason of the application of the principle of *res judicata*? If the matter is not res judicata, should judgment in favour of the Claimant be granted in light of the principle of *stare decisis*?

[49] **DISCUSSION**: (A) *Res Judicata*: Justice Cromwell dealt with *res judicata*

at length in his decision for a unanimous court in *Hoque v. Montreal Trust Co. of Canada*, [1997] N.S.J. No. 430 (C.A.). He stated, at para. 21, as follows:

> "Res judicata is mainly concerned with two principles. First, there is a principle that '…prevents the contradiction of that which was determined in the previous litigation, by prohibiting the relitigation of issues already actually addressed.': see Sopinka, Lederman and Bryant, The Law of Evidence in Canada (1991) at p. 997. The second principle is that parties must bring forward all of the claims and defences with respect to the cause of action at issue in the first proceeding and that, if they fail to do so, they will be barred from asserting them in a subsequent action. This '…prevents fragmentation of litigation by prohibiting the litigation of matters that were never actually addressed in the previous litigation, but which properly belonged to it.': ibid at 998."

[50] In the *Hoque v. Montreal Trust* decision, Justice Cromwell referred to the Supreme Court of Canada case of *Angle v. M.N.R.* (1974), 47 D.L.R. (3d) 544 in which Justice Dickson (as he then was) identified the two main branches of *res judicata*, both of which require that the previous court decision be final and be between the same parties or their privies for *res judicata* to apply.

[51] The first branch is cause of action estoppel. It concerns circumstances

where a person brings an action against another when that same cause of action has already been determined by a court of competent jurisdiction in earlier proceedings between the parties.

[52] The second branch is issue estoppel. It concerns circumstances where a person attempts to "re-litigate" some point or issue that has already been decided by a court of competent jurisdiction.

[53] In this case, both branches of *res judicata* are potentially applicable.

[54] There is no question that exactly the same cause of action is asserted by the Claimant against the Defendant in the two Notices of Claim that have been filed in this case.

[55] There is also no question that the exact same parties are involved in the two

Notices of Claim.

[56] The real issue to be determined is whether or not the Order of Adjudicator Parker dated November 27, 2006 is a "final" order. If it is, then the current Claim must be dismissed by reason of the application of the principle of *res judicata*.

[57] In *Lienaux v. 2301072 Nova Scotia Ltd.*, [2005] N.S.J. No. 247 (C.A.), Justice Roscoe wrote a decision (in which Justice Freeman concurred) in which she cited The Doctrine of Res Judicata, 2nd ed., Spencer Bower and Turner, Butterworths, London, 1969, at page 132 for the meaning of a "final" order:

> "A judicial decision is deemed final, when it leaves nothing to be judicially determined or ascertained thereafter, in order to render it effective and capable of execution, and is absolute, complete, and certain, and when it is not lawfully subject to subsequent recission, review, or modification by the tribunal which pronounced it. This definition involves the existence of two distinct types of non-finality, which it is proposed to examine separately: one, in which the judicial decision on the face of it is imperfect, provisional, conditional, indefinite, or ambiguous, and the other in which the judicial decision, though ex facie, purporting to be final, is by the English, or (as the case may be) the foreign, law applicable, liable to be afterwards rescinded,

re-opened, or varied by the originally adjudicating tribunal."

[58] Justice Roscoe also referred to The Doctrine of Res Judicata in Canada, Donald J. Lange, Butterworths, 2000, page 77:

> "The decision must be a final decision. A final decision for the purposes of issue estoppel is a decision which conclusively determines the question between the parties."

[59] From the foregoing, I conclude that an important distinction between Orders that are final and those that are not final is the effect that the Order has on the status of the litigation. For example, if an Order has the effect of bringing a proceeding to an end (even though the Order is subject to appeal to a higher court), then that Order should generally be considered a final decision.

[60] In the Small Claims Court, Applications for Quick Judgment may be made any time after the time for the filing of a Defence has expired but before the originally scheduled hearing date takes place.

[61] An Order granting a Quick Judgment Application can generally be seen as a final decision. An Order granting Quick Judgment brings the particular proceeding in which it is issued to an end and the Claimant can then proceed to seek execution.

[62] By contrast, a refusal by an Adjudicator to grant a Quick Judgment Order is not a final decision. The general expectation is that the Claim will be the subject of an oral hearing before an Adjudicator on the date and at the time that the hearing was originally scheduled to be heard as disclosed on the front of the Claim form.

[63] In this case, Adjudicator Parker did not grant Quick Judgment when the

matter was first placed before him on September 5, 2006. The matter then proceeded to a hearing on the date and at the time originally contemplated on the front of the first Claim form that was filed in this case.

[64] Adjudicator Parker's written decision of November 27, 2006 is somewhat confusing. Based upon the language used in the decision, it would seem that, in one sense, Adjudicator Parker was approaching the matter as if it were a continuation of the Application for Quick Judgment as opposed to the actual hearing at which a final decision would be made. For example, his written decision indicates that "[t]his is an Application …for an Order … pursuant to the provisions of the *Small Claims Court Act* specifically section 23(1) of the Act."

[65] Section 23(1) of the Act provides as follows:

Default of defence or appearance

23(1) Where a defendant has not filed a defence to a claim within the time required by the regulations and the adjudicator is satisfied that

(a) each defendant was served with the claim and the form of defence and with notice of the time and place of adjudication; and

(b) based on the adjudicator's assessment of the documentary evidence accompanying the claim, the merits of the claim would result in judgment for the claimant,

the adjudicator may, without a hearing, make an order against the defendant. [emphasis added]

[66] The underlined portions of Section 23(1) were perhaps developed to address the decision in *Waterview Machine Works Limited v. Peters*, [1988] N.S.J. 319 (Co. Ct.) in which Justice Haliburton held that a Defendant was entitled to a hearing even if he or she filed no defence on the basis that the then existing statutory language in Section 23 read:

> Where the defendant does not appear at the hearing and the adjudicator is satisfied that the defendant has been served with the claim and notice of the time and place of the hearing and is satisfied that the merits of the plaintiff's claim would have resulted in judgment in his favour if the defendant had appeared, the adjudicator may make an order against the defendant in the absence of the defendant.

[67] Whatever the case, Adjudicator Parker did proceed with a hearing in the absence of the Defendant, as he was clearly entitled to do: *Kemp v. Prescesky*, [2006] N.S.J. No. 174 (S.C.).

[68] It also appears to me that Adjudicator Parker took more than just documentary evidence into account and this makes what occurred on September 12, 2006 look more like a regular hearing than an Application for Quick Judgment.

[69] Of further interest is an examination of what happened when the Claimant submitted subsequent Applications for Quick Judgment. As a result of what was the Claimant's third attempt to secure a Judgment, Adjudicator Parker clearly indicated that he had already decided the matter and that the Claimant was barred from pursuing the Claim by reason of his written decision of November 27, 2006.

[70] However, contrasted with this are the frequent references in the written decision of November 27, 2006 to the September 12, 2006 hearing that was described as "the application" of the Claimant. Indeed, Adjudicator Parker

indicated that "this application" was not going to succeed at this stage…" [emphasis added] which again implies that September 12, 2006 was simply part of a continuing Application for Quick Judgment. Adjudicator Parker's decision implies that the Claim might succeed at some future stage should evidence addressing his concerns be presented.

[71] Finally, the last sentence of Adjudicator Parker's November 27, 2006 decision is that, for the reasons given, he was "going to deny this application." At no point in the written decision does he indicate that the Claim is being dismissed.

[72] From my perspective, the hearing before Adjudicator Parker on September 12, 2006 resulted in a decision dated November 27, 2006 that could probably have been considered a final decision and thus *res judicata*.

[73] However, at no time, was an Order actually issued dismissing the Claim (as

opposed to an Application for Quick Judgment).

[74] Moreover, there was an irregularity in that the hearing of the Claim was scheduled for September 12, 2006 in Halifax, but the actual hearing before Adjudicator Parker took place in Dartmouth. While there is no indication that such took place, it is possible (although rather unlikely) that the Defendant appeared at the Provincial Courthouse on Spring Garden Road in Halifax, the place of hearing indicated on the Claim form, instead of Dartmouth.

[75] In the circumstances, I do not believe that it would be appropriate to consider the Claim a matter of *res judicata* either as a cause of action estoppel or an issue estoppel.

[76] As already indicated, no Order dismissing the Claim was ever issued and thus cause of action estoppel does not appear to apply.

[77] With respect to issue estoppel, the contents of the decision of November 27, 2006 are somewhat equivocal. The reasons for denying the "application" all suggest that, with additional evidence, the Claimant might overcome the three identified difficulties.

[78] In this regard, reference can be made to the statements that the adjudicator "cannot determine" if the contract in question was with Sears Canada Bank or Sears Canada Inc, that the adjudicator "simply do[es] not know" if JPMorgan Chase Bank, N.A. is an original party to the contract in question because he heard "no evidence who the parties to the contract are for the use of this MasterCard," and that it would be beneficial for the Claimant to provide evidence that it is not barred from bringing or maintaining an action in light of the *Corporations Registration Act.*

[79] In light of all of the foregoing, I conclude that this Claim is not barred by reason of the principle of *res judicata*.

[80] (B) *Stare Decisis*: Even though the principle of *res judicata* may not dictate the dismissal of this Claim, the facts of this case raise the distinct possibility that the principle of *stare decisis* is applicable.

[81] The phrase "*stare decisis*" is an abbreviation of the Latin phrase *"stare decisis et non quieta movere*" which effectively means to adhere to precedents and not to unsettle things which are established.

[82] The principle *stare decisis* is often applied in one particular context. It is generally understood that every court is bound to follow decisions made by courts above it in the court hierarchy. For example, the Small Claims Court is bound to follow decisions of the Supreme Court of Nova Scotia, the Nova Scotia Court of Appeal and the Supreme Court of Canada.

[83] However, the concept of *stare decisis* also imports the generally understood principle that cases with like facts be decided alike. Some measure of certainty, predictability and consistency is important in any legal system.

[84] Accordingly, the question is whether or not judges or adjudicators of the same court are bound by or required to follow what has previously been decided in that court by another judge or adjudicator.

[85] As previously indicated, Adjudicator Parker denied the Claimant's attempts to secure a judgment in respect of its Claim and, in what represents its fourth attempt at securing judgment against the Defendant, the Claimant has presented absolutely nothing new in the way of evidence before me.

[86] The analysis of Justice Granger in *Holmes v. Jarrett*, [1993] O.J. No. 679 (Gen. Div.) is extremely helpful. He there considered whether or not one member of the Ontario Court of Justice (General Division) was bound to follow the

decision of another judge of that Court.

[87] In his decision, Justice Granger described three different views on the issue.

[88] The "authoritative view" is that a judge is bound to apply the law as previously stated by the court of which that judge is a member.

[89] The "persuasive view" holds that the authoritative view is too restrictive and *stare decisis* is simply an expression of "judicial comity" in which a judge may, out of respect, follow another decision of the court of which that judge is a member. However, that judge is not required or bound to follow the decisions of his or her colleagues.

[90] The "conformity view" is that a judge ought to follow previous decisions of his or her colleagues and unless there are very cogent reasons to depart from an

earlier decision of a "coordinate court," the prior decisions should be followed.

[91] Justice Granger ultimately concluded that it was best to follow the "conformity view," in part because it is "imperative that as much certainty be brought to the law as possible…."

[92] While Justice Granger did not provide any comprehensive description of what the phrase "very cogent reasons" might exactly mean, he did indicate in *Holmes v. Jarrett* that the other Ontario Court of Justice (General Division) judges' decisions to which he had been referred ought to be followed "unless there is some indication that their decisions were given without consideration of the appropriate statute or that they failed to consider some relevant caselaw." Since the criteria for departing from the earlier decisions had not been satisfied in the case before him, Justice Granger felt bound by those decisions.

[93] In coming to the decision that he did, Justice Granger made reference to a

decision of Chief Justice McRuer in *R. v. Northern Electric Co. Ltd. et al.*, [1953] 3 D.L.R. 449 (Ont. H.C.) in which it was held, at p. 466, that a decision of a co-ordinate court ought to be followed in the absence of "strong reasons to the contrary."

[94] In an editorial published in the Advocates' Society Journal (Winter 2003) 22 Advocates' Soc. J. No. 3, 1-6, David Stockwood, Q.C., commented upon the decision of Justice Granger and suggested at para. 5 that "strong reasons to the contrary" mean:

(a) subsequent decisions are affected by the validity of the impugned judgment;

(b) it is demonstrated that some binding authority case law or some relevant statute was not considered;

(c) the judgment was not considered, that is, given in the course of a trial without opportunity to fully consult authority.

[95] In this case, the Claimant is perhaps implicitly invoking the principle of *stare decisis*. It brought to the attention of Adjudicator Parker (and to my attention) a list of cases in which other Adjudicators granted Quick Judgment in favour of JPMorgan Chase Bank, N.A. as well as copies of the related Orders.

[96] All of those Orders for Quick Judgment are perfunctory in nature, however, and they are neither accompanied by written reasons for decision nor do they disclose what actual evidence was presented to the Adjudicators in those cases. It may be that the concerns raised by Adjudicator Parker in his written decision of November 27, 2006 were addressed in the evidence before those other Adjudicators in those others cases where JPMorgan Chase Bank, N.A. was the successful Claimant.

[97] By contrast, Adjudicator Parker's written decision of November 27, 2006 is obviously a considered judgment that was not rushed. He identified certain problems with the Application for Quick Judgment that the Claimant has never chosen to directly address.

[98] As previously mentioned, the Claimant has presented absolutely nothing in the way of fresh evidence to address Adjudicator Parker's concerns.

[99] Instead, the Claimant has simply tried to secure a different opinion from a different Adjudicator regarding the same case with the same evidence rather than appeal any of Adjudicator Parker's earlier decisions in this very same case. In my view, this may well constitute an abuse of process and, at the very least, this course of conduct is vexatious (see *Lang Michener et al. v. Fabian et al.*, [1987] 37 D.L.R. (4th) 685 (Ont. H.C.J.), per Henry, J., referred to by Justice Hood in *Potter v. Courtney*, [2005] N.S.J. No. 265 (S.C.) at para. 41).

[100] I have come to the conclusion that there are no cogent or strong reasons that dictate a departure from the outcome of the earlier Quick Judgment Applications decided by Adjudicator Parker wrote a decision dated November 27, 2006. He considered the applicable statutes, the decision was considered and there is no indication that he overlooked any relevant case law authority or any of the evidence (including all of the same evidence presented to me).

[101] In fact, it would be inappropriate for this Court to grant judgment in favour of the Claimant in this case where the very same evidence was earlier deemed insufficient to grant judgment. To grant judgment in this case would represent a conscious decision by this Court to create undesirable uncertainty, unpredictability and inconsistency in the law and to act contrary to the principle of *stare decisis*.

[102] I therefore find that this Claim ought to be dismissed for the reasons expressed by Adjudicator Parker in his November 27, 2006 decision. There is insufficient evidence to demonstrate that JPMorgan Chase Bank, N.A. was an original party to the contract with the Defendant, there is insufficient evidence with respect to whether or not the contract with the Defendant was with Sears Canada Bank or Sears Canada Inc., and there is no information as to whether or not the Claimant is entitled to bring or maintain a court proceeding pursuant to the *Corporations Registration Act*.

[103] **CONCLUSION:** This Claim shall be and the same is hereby dismissed.

Small Claims Court Adjudicator