

SUPREME COURT OF NOVA SCOTIA

Citation: *Laudahn v Chedabucto Homes Limited*, 2024 NSSC 428

Dates: 20240904

Dockets: Pt.H No. 495007 & Pt.H No. 517851

Registry: Port Hawkesbury

Between:

Martina Laudahn

Plaintiff

-and-

Chedabucto Homes Limited, Michael Peters, Irmgard Peters, Power Strength &
Energy Solutions Ltd. and Roland Bathen

Defendants

And Between:

Chedabucto Homes Limited, Michael Peters and Irmgard Peters

Plaintiffs

-and-

Martina Laudahn and Carina Laudahn

Defendants

DECISION

Judge: The Honourable Justice Patrick Murray

Heard: December 8, 2023, in Port Hawkesbury, Nova Scotia

Final
Submission: January 30, 2024

Decision: September 4, 2024

Counsel: Martina Laudahn, Self Represented, attorney for Carina
Laudahn

Matthew Moir, Solicitor for the Defendants in PtH No. 495007
& for the Plaintiffs in PtH No. 517851

Nicole Power, Solicitor for the Defendants

By the Court:

Introduction

[1] This is a motion “to dismiss” a claim brought against the Defendants, Chedabucto Homes Limited (“Chedabucto”) and its principals, Michael and Irmgard Peters, collectively (“the Chedabucto Defendants”), by the Plaintiff, Martina Laudahn.

[2] In the alternative, these Defendants seek a permanent stay of the proceeding. The motion is brought pursuant to *Civil Procedure Rules 88 – Abuse of Process* and *Rule 45 – Stay and Dismissal*.

[3] The claim brought by Ms. Laudahn originates from an agreement between her and the Defendants to construct a new home for the Plaintiff at Militia Point, in the County of Inverness, Province of Nova Scotia. The large-scale home’s cost was significant, as are the types of damages claimed by the Plaintiff.

[4] The Defendants defend the claim against them, and deny the allegations against them for faulty workmanship, and other deficiencies as alleged by the Plaintiff.

[5] The Defendants state it is them who have a valid cause of action against the Plaintiff pursuant to the agreement to construct the home. This was negotiated after

Ms. Laudahn contacted Chedabucto in 2016, regarding the design and construction of a custom-built home at 39 Pioneer Lane, Militia Point, Nova Scotia (the “home”).

[6] The Defendants maintain that it is the company Chedabucto and not the “Peters” personally that agreed to construct and design the home. Chedabucto states the workmanship it provided was of high standard and the materials were of high quality. In the result, the Chedabucto Defendants have filed a counterclaim. Ms. Laudahn has filed a defence to the counterclaim, denying any liability.

[7] An issue in this motion is the Plaintiff’s conduct throughout this proceeding described by the Defendants as abusive and having prevented the litigation from advancing since the Plaintiff commenced her action on December 19, 2019.

[8] Chedabucto asserts that the Plaintiff’s refusal to participate in the process, in and under the Civil Procedure Rules of Nova Scotia, has caused it to incur significant costs in defending the litigation and in dealing with its own claim against her.

[9] Chedabucto requests the Court to impose a remedy that will “rid” the Court of the abuse, and compensate it for its significant losses.

[10] The Plaintiff is a self-represented litigant. The documents filed by her have been voluminous and densely packed, containing unorthodox claims and defences. There has been an evolution in the style and content of the Plaintiff’s claims.

[11] Mostly, the Plaintiff has taken it upon herself to adjudicate the claim by setting self-imposed deadlines. For failing to respond to her demands, she has “declared” judgment in default against the Defendants in her favour.

[12] Among other processes employed, the Plaintiff, she has consistently relied on a doctrine of “tacit acceptance”, described above.

[13] The Court has granted various Orders, in attempts to have the matter proceed logically and in a conventional way. It has attempted to assist the parties procedurally under the *Civil Procedure Rules*, in giving directions on the record. The Plaintiff has refused to accept that the Rules of Court have the force of law in this action that she filed (Court No. 495007). A second related action is included later in this decision (Court No. 517851).

[14] In addition the Court has written to the Plaintiff on numerous occasions, directing the Plaintiff to respect the process of the Court, in order to properly bring the matter to a trial on the merits of her claim.

[15] The Court has reviewed the Plaintiff’s multiple filings closely in an effort to determine relevant and material information that may be favourable to her in assessing whether this motion should be granted.

[16] In considering this motion, the Court is mindful that the remedy sought by Chedabucto is an extraordinary remedy that should only be granted in extraordinary circumstances.

Background - Position of the Parties in the Main Action

Martina Laudahn- Plaintiff

[17] On December 19, 2019 the Plaintiff commenced an action claiming special, general and punitive damages (including breach of trust) against Chedabucto and Michael and Irmgard Peters personally. The contract in question involved a sum in excess of 2 million dollars and the heads of damages extended to breach of trust, loss of reputation, defective workmanship, heating deficiencies, repair and remediation costs, and incidental costs due to negligence. A major portion of the claim related to deficiencies to the heating system, a major expenditure.

[18] The Plaintiff says there was no estimate but rather a fixed price for the contract, an agreed price. She states the full cost was contracted in the quote provided by Chedabucto. She denies requesting additional services, stating if she wanted them, she would have requested a quote. She did not demand extras and throughout she made efforts to reduce the over all cost.

Chedabucto and Michael and Irmgard Peters – Defendants, Plaintiffs by Counterclaim

[19] The Plaintiff entered into a verbal contract with Chedabucto for the construction of a custom home. While the company provided an estimate for the total cost of the project, it did not commit to a capped price for its work. As the project progressed, the Plaintiff made regular demands for extras which were outside the scope of the work initially estimated. Chedabucto says it kept the Plaintiff informed of the increasing costs, but the Plaintiff refused to review the statements of account and invoices prepared for and provided to her.

[20] In March of 2019, Ms. Laudahn's initial deposit was exhausted and Chedabucto required her to make further payment. Mr. Peters discussed the status of the project with Ms. Laudahn. At that time, Chedabucto was already owed \$30,118.82 for its out-of-pocket expenses alone, and had received no remuneration for its work. Martina largely resisted discussing the financial status of the project, and she refused to make any further payments.

Position of the Parties on the Motions

Chedabucto's Position

[21] The Chedabucto Defendants seek that the main proceeding be dismissed, permanently stayed, or struck, due to the ongoing campaign of abuse, being inflicted upon the Court's process by the Plaintiff, Martina Laudahn. They also seek damages on the counterclaim in the main action commenced by the Plaintiff.

[22] In the related proceeding (517851) the Chedabucto Defendants as Plaintiffs seek to have certain conveyances made between the Defendants, Martina Laudahn and Carina Laudahn, declared void, and that title be returned to the Defendant/Plaintiff by Counterclaim, Martina Laudahn. They further seek that the Defence and Counterclaim filed by Martina Laudahn be struck. Finally, they seek default judgment against Carina Laudahn.

[23] Carina Laudahn, has been served with notice of these proceedings, and has filed documents, containing the Court file numbers, references to the motions, her property, and the date of the hearing. She has made multiple references to the names of the Defendants Peters, their Counsel, and the time date and place of the motion hearing. She has filed these documents in response to the Statement of Claim in 517851.

Martina Laudahn and Carina Laudahn's Position

[24] In the main proceeding, Martina Laudahn says there is no dispute, as the Chedabucto Defendants have “tacitly accepted” the demands made by the her, in correspondence dated July 28, 2019. Further, the Nova Scotia Supreme Court has no jurisdiction to hear the matter, and as Plaintiff seeks only to have this Court take judicial notice of the Defendant’s Default, among other positions that will be referred to in this decision.

[25] In the related proceeding (517851) Martina Laudahn submits that service has not been effected upon her daughter, Carina, claiming relief in “trespass in the case.” Carina Laudahn says that she has not received proper notice of these motions and has refused to accept service. She has provided a Power of Attorney to her mother. Her mother says “attempted service is not service”.

[26] Carina Laudahn wishes to have nothing to do with either of these actions, and simply wishes to have quiet use and enjoyment of her property. Both Defendants, Martina and Carina Laudahn say this Court does not have the authority or jurisdiction to deal with these motions. It is their belief, that the “Law of Commerce” applies.

Court Orders

[27] There have been a number of Orders issued that are relevant to the motion, and the remedy of dismissal sought by the Chedabucto Defendants.

[28] An Order for Case Management was issued on January 14, 2021. The matter came before Justice Chipman on November 23-24, 2020, for the hearing of the Plaintiff's Motion to strike Chedabucto's Defence and Counterclaim. Both the Court and legal counsel for the Defendants, including Mr. Bathen and Power Strength Energy Solutions Ltd. ("Power Strength") were of the view that case management was necessary and all parties, including the Plaintiff, consented to the Order. I shall discuss the Plaintiff's Motion filed February 20, 2020.

[29] A lengthy period passed, with little activity due to the worldwide pandemic, the Court's services model, required that only certain matters would be heard. This was the case during much of the year 2021.

[30] Prior to that, the Court had held a series of telephone and in person conferences in an attempt to organize and deal with the retention of counsel, completion of the pleadings, instruction and direction on proper form and content of affidavits with a view to hearing the motion and advancing the litigation.

[31] These dates were February 14, May 5, June 5, July 17, July 23, August 14, September 14, September 21 and October 9, 2020.

[32] During this time a number of documents were filed by the Plaintiff in which she argued grounds such as late filing by the Defendants and that liability had already been determined by “tacit acceptance”, meaning that the Defendants had admitted liability for alleged deficiencies by failing to respond to her demands within the time period prescribed by the Plaintiff.

[33] The “tacit procuration” doctrine would be a common theme, among others over the course of the litigation (see filings October 19, 2020, November 3, 2020).

[34] Further filings were made by the Plaintiff in 2021 and became excessive. These contained detailed submissions on the merits of the claim based on presumed facts. Repeated attempts were made by the Plaintiff to “foist” liability upon Chedabucto, and Mr. and Mrs. Peters based upon deemed admission (tacit procuration) resulting from a lack of response to the Plaintiff’s demands.

[35] For example, on December 8, 2021, Ms. Laudahn filed two documents, one entitled “Affidavit of Truth in Commerce” the second entitled, “Notice of Default and Imminent Liability/Notice of Irrevocable Estoppel by Acquiescence”. These documents contained similar language and themes as discussed above.

[36] On November 3, 2021, Ms. Laudahn filed a letter addressed to myself entitled “Brief”, in support of her Motion to set aside the Defendant’s Defence, referring to her letter of demand sent on the 28 June 2019, which stated:

“In commerce if the respondent choses (sic) not to respond the claim is tacidly accepted”

[37] The Plaintiff further stated, “He who does not deny admits”, and added a quote from Maxims of Law by John Bouvier, 1856 that states, “It is immaterial whether a man gives his assent by words or by acts and deeds”. In the right context, this Court takes no issue with that pronouncement. This was clearly not the right context.

[38] In the ensuing period, the Plaintiff began challenging the Court’s jurisdiction, questioning the oath taken by myself as the Case Management Judge, and the imposition of a superior court of record with authority higher than the Nova Scotia Supreme Court. The documents made clear that the Plaintiff, Martina Laudahn, “presided” over that court, entitled the “Court of Record”.

[39] A case management conference was held February 22, 2022. The Court explained the purpose of case management (*Rule 26*), the requirement for and the authority of the Court to give directions, while stating that there are consequences for parties who do not follow the Court’s directions or the Rules of the Court.

[40] The Court also addressed the preparation of affidavits, that a party cannot decide to file one when they please, and *Rule 23* which prescribes the deadlines for filing documents in a motion. In this case, the Plaintiff had filed two (2) supplementary affidavits containing all manner of opinion, unproven facts, hearsay and submissions.

[41] The Court further discussed attempts in the affidavits to force liability on an opposing party. A clear direction was given to the Plaintiff to cease using affidavits and filing documents for this purpose. The Court referred the parties to the decision of the Alberta Court of Appeal decision in *Meads v. Meads* 2012 ABQB 571.

[42] The Plaintiff responded by stating that the *Civil Procedure Rules* govern the Supreme Court, but the common law is superior and that the Law of Commerce still operates in the Courts today. In this matter “Law Merchant” is applicable, she said.

[43] Counsel for the Defendants, Mr. Moir, substantiated that the Plaintiff’s position has “no basis in Canadian Law”, stating he had previously forwarded her case law authority indicating there is no basis whatsoever for her argument.

[44] At this time the Court issued an order verbally ruling that the Plaintiff’s submissions were without merit, confirming to her this Court’s jurisdiction over the matter, and stating clearly that the Nova Scotia Supreme Court will decide the

processes to which she and the other parties are bound. The written Order was issued March 10, 2022, containing the following provisions:

1. Except as may be directed by this court, the parties shall not file any further documents or issue any further correspondence related to this matter to one another or the court until the court directs otherwise. Court approval may be sought for any filings which are urgent or essential.
2. The parties must abide by the Civil Procedure Rules. Particularly, the parties' filings must comply with:
 - a. Rule 23.12, requiring permission of a judge to file an affidavit in a motion in chambers after the deadline set out in Rule 23.11;
 - b. Rule 31.15, requiring delivery of filed documents to each other party immediately after it is filed unless accepted;
 - c. Rule 38 regarding pleadings; and
 - d. Rule 39 regarding affidavits.

The parties shall refrain from including in any of their affidavits:

- i. hearsay which does conform to a valid exception to the rule against hearsay evidence;
 - ii. opinion which does conform to a valid exception to the rule against opinion evidence;
 - iii. case law;
 - iv. legal submissions; or
 - v. legal pleas.
3. The parties shall not file documents or make oral representations in this matter which advance arguments:
 - a. that a party is deemed to have admitted a material fact or liability by virtue of having failed to respond to a document delivered by another party, known as "tacit acceptance," other than as is prescribed pursuant to the Civil Procedure Rules;
 - b. that any body of law which is not justiciable by, or does not fall within the jurisdiction of this honourable court governs any of the issues raised in this proceeding;
 - c. that an individual party has any legal personality which is distinct from the individual, including any distinction between the individual as a living person and any corporate personality of that individual person, and confine any and all such distinguishments to as between an individual party or

combination of individual parties on the one hand, and either of the two corporate parties in this proceeding, which are Chedabucto Homes Limited and Power Strength & Energy Solutions Ltd.

4. This order may be enforced pursuant to the court's jurisdiction to control vexatious conduct, including under Rules 77 – Costs, 88 – Abuse of Process, and 89 – Contempt, Violation of this or other court order related to this matter may result in sanctions, including costs being awarded against the offending party, dismissal of a claim and/or defence and/or conviction for contempt of court.

[45] Among other provisions, the Court directed the parties to take notice that the Court has the power to control vexatious conduct, under its Rules, including *Rule 88, Abuse of Process*. The Plaintiff was further advised that the Court had the ability to order indemnification of a party under *Rule 88.02(1)*. The Plaintiff was directed to review *Rule 88* and *Rule 77* on costs and, in particular, *Rules 77.03-77.07*.

[46] The Court restrained the Plaintiff from further filings without leave of the Court and required the Plaintiff to comply with the *Civil Procedure Rules* and rules of evidence. In addition it rejected her submissions based on: a) law of procuration; b) jurisdiction; and c) arguments based on separate legal personalities. Specifically, the Order stated that its provisions may be enforced by “dismissal of a claim or defence”.

[47] It was within a short time that further filings by Ms. Laudahn were attempted, including the (Court of Record's) orders for: 1) Consolidation of cases; 2) Vacating the Court's Order of March 10, 2022; and 3) Judgments in default.

[48] Following correspondence in May/June 2022 between the Court and Ms. Laudahn, and upon receipt of submissions from Mr. Moir, the Court issued a decision on June 27, 2022, awarding the sum of \$5,000.00 to Chedabucto, indemnifying it for abuse of process by the Plaintiff. An Order followed on June 29, 2022, but it has not been honoured. The Plaintiff earlier refused to comply with the directions contained in the Order of March 10, 2022.

[49] On October 11, 2022, Chedabucto and Mr. and Mrs. Peters filed a further Motion for Security for costs. The motion was heard on January 6, 2023. A decision on the motion was made orally that day. On January 12, 2023, an Order was issued requiring the Plaintiff to pay the sum of \$50,000.00 as security for costs, and \$1,750.00 in costs on the motion.

[50] In the Court's view, and based on the extensive submissions of the Defendants, there were compelling reasons for granting the order.

Judicial Reasons for Granting Previous Orders

[51] Prior to the first case management conference the Plaintiff made multiple filings, which on their face contained information that was inaccurate, illogical, and had no basis in law.

[52] Chedabucto motioned the Court to intervene to prevent the approaches that were being taken, with these incessant filings.

[53] In their brief on this motion, Chedabucto states:

On June 7, 2022, your lordship issued a letter to Ms. Laudahn, referring to the May 30 and 31 filings, and raising the prospect of contempt of court. The next day, Ms. Laudahn filed another letter, once again refuting the court's jurisdiction. More such documents followed, on June 13, July 1, and August 1. On October 7, 2022, your lordship wrote to Ms. Laudahn and Mr. Bathen, stating that their filings "vey clearly constitute an abuse of the Court's process."

Meanwhile, between October 7, 2022, and March 23, 2023, Martina Laudahn filed/delivered fourteen more documents, seemingly in both proceedings, violating your lordships orders and directions in various ways. These documents all contain densely worded pseudo-legal arguments variously in the nature of tacit procurement, superiority of the "common law" and inferiority of this honourable court. There are 210 pages of these materials in total.

[54] Having reviewed the record for the purpose of this Motion, I have concluded these statements by Chedabucto's counsel are accurate.

[55] The mover of this Motion, Chedabucto, also points out that included in the materials filed by the Plaintiff is an "Order" of the "Court of Record" dated May 16, 2022.

[56] This new version is 85 pages in length, containing 299 paragraphs. It states that a "Common Law Grand Jury Trial" had been convened on November 11, 2022, and the grand jury returned an "indictment" on December 19, 2022. This order purports to amend the "Court of Record" ruling on May 16, 2022. The Court wrote

to the Plaintiff on May 30, May 31 and June 7 with respect to these filings stating they were in breach of this Court's Order of March 10, 2022.

[57] It is with this background that I return to summarize the Orders that followed. The Court is attempting to maintain a just and balanced approach, strict adherence to principles of natural justice, procedural fairness and the rules of equity. Except for conduct that amounts to extraordinary circumstances, a matter cannot simply be brought to its conclusion. If the Rules of Court are breached to the detriment of other parties or if the Court's process is abused, that is another matter.

[58] The Orders issued by this court are relevant to this motion, in terms of *Rule 45 – Security for Costs*, and *Rule 88 – Abuse of Process*. Chedabucto relies on these *Rules* in support of the remedies they seek on the motion.

March 10, 2022

[59] At this hearing the Court concluded, on its own Motion, based on the previous filings that an Order was required to restrain any future filings, noting they were clogging up the litigation, and preventing the action from advancing. At the same time, the Plaintiff's conduct was expending considerable Court resources, and adding significantly to the legal fees of the parties with counsel.

[60] At the hearing held on February 22, 2022, the Court gave directions that included the following:

The objective is to promote a fair trial for all parties while bringing the action to trial in the most efficient and timely manner possible. The Court must not allow, and this is very significant for today's purposes, the Court must not allow the litigation to spin out of control. Unfortunately, that is what is happening here in my respectful view and steps must be taken by the Court to correct that.

I want to turn next to the filing of documents, and in particular, affidavits. I want to make it clear...several things. First, that a party cannot simply decide to file an affidavit whenever they please, and you'll pardon the expression. The Rules have limits. Under 23.11, for example, motions, no additional affidavits are permitted without approval of the Judge. In other words, no supplemental affidavits. Here we have two supplemental affidavits that have been filed by Martina. We have a replacement affidavit that has been filed for Mr. Hugh Murdoch MacDonald. So, that is problematic and should not be tolerated by the Court as a rule.

Secondly, when it is permissible to file an affidavit, an affidavit must not be so voluminous as to prevent the proper reading in a reasonable amount of time and it must be proportionate to the nature of the proceeding that it's supporting, be it an application, a motion or a matter in Chambers. It must not contain hearsay or opinion evidence. It must not contain case, and it must not contain paragraphs that are in the nature of a plea or a submission.

Thirdly, an affidavit must not be used to foist liability or I'm going to say hoist liability, which means an attempt to put liability on an opposing party by simply giving the opposing party a deadline for a reply with the result that if the deadline isn't met that a judgment is awarded in your favor or in favor of the person imposing the deadline; and you have clearly done that Martina in these documents. This is totally inappropriate, and importantly, it has no legal effect and you've been advised of such of that by Ms. Shephard in her response; and I understand as well, that you were forwarded documents back in November that had...that dealt with the term of organized suitable legal commercial litigants.

[61] In response, Ms. Laudahn stated in her submission to the Court:

So, just to sum it up, we have two different processes. One is the Supreme Court jurisdiction, the Notice of Action; and one is a commercial law merchant process which is shorter and came to a conclusion, came to an agreement. Without a response, they are very clear in these affidavits of commerce, and Michael and Irmgard chose not to respond.

[62] Ms. Laudahn later expressed concern that she did not understand the terms of the Order. The Court arranged for a full transcript of the hearing to be provided to her, along with a detailed letter explaining the terms of the Order, and her obligation to comply. Chief among them, was a prohibition on filing further documents without leave of the Court, and a prohibition on any further documents referencing “tacit procurement” and attempts to “foist” liability on the opposing parties.

June 29, 2022

[63] Chedabucto made a Motion for costs to indemnify it and its principals for losses resulting from the conduct of the Plaintiff. The reasons for the order are contained in it, and are self explanatory:

On motion of Matthew J.D. Moir, it is ordered that the plaintiff, Martina Laudahn, pay to Chedabucto Homes Limited, Michael Peters and Irmgard Peters costs in the amount of \$5,000.00, as indemnification for losses resulting from the plaintiff’s abuses of process in this matter, in accordance with Civil Procedure Rules 77.02(1) and 88, within 60 days of June 28, 2022.

January 6, 2023

[64] Chedabucto made a Motion on October 7, 2022, for an Order requiring the Plaintiff to provide security for costs, in this proceeding and for costs in the related proceeding.

[65] In my oral decision, I accepted the following submission made by the Defendants:

In light of the Plaintiff's behaviour with respect to her real property and her conduct of the litigation, the Chedabucto Defendants bring this motion for an order for security for costs against the Plaintiff. It is submitted that security for costs is warranted in this case as the Chedabucto Defendants are likely to experience undue difficulty realizing on a judgment for costs if their defence is successful and the claim is dismissed, and the difficulty would not arise from the Plaintiff lacking the means to satisfy the judgment.

[66] In addition, I was satisfied the Defendant had met their burden under *Rule 45.02(1)* and that the presumption created by *Rule 45.02(3)*, had been rebutted.

[67] The Record will show that none of these orders have deterred or even curbed the conduct of the Plaintiff in the litigation.

[68] Chedabucto has filed the Affidavit of Brittany Durnford (Volumes 1 & 2), sworn November 13, 2023 containing a summary of the orders and the various filings with the Court, or sent to the Defendants by the Plaintiff.

[69] At the time of these Orders being granted, while it was becoming a major plank in the Plaintiff's strategy/approach to her action, it had not reached its peak.

[70] At the January 6 Motion, Ms. Laudahn was present, but took the position she was not appearing as a Plaintiff or the Plaintiff but as a "third-party observer". This is repeated in the record.

[71] The resulting Order for Security for Costs issued January 12, 2023, required Ms. Laudahn to provide security for costs in the amount of \$50,000.00 and awarded \$1,750.00 costs in the motion. In the Statement of Claim, the Plaintiff claims she advanced the sum of \$1.2 million, a reduction from the original estimated cost of \$1.5 million for the construction of the new home.

The Law and Analysis

[72] There are a number of decisions in Nova Scotia that are instructive on the remedies sought by the Defendants.

[73] Cases such as *Ocean v. Economical Mutual Insurance Company*, 2012 NSSC 144; *National Bank Financial Ltd v. Barthe Estate*, 2015 NSCA 47 and *Tupper v. Nova Scotia (Attorney General)*, 2015 NSCA 92, are instructive in regard to the remedies sought here. In addition, the case of *Dataville Farms Ltd. v. Municipality of the County of Colchester*, 2014 NSCA 95 is particularly helpful in setting out the factors to be considered in a motion to dismiss, pursuant to *Rule 45.04(3)*. In addition, Saunders, J.A, comprehensively explains the doctrine of “abuse of process” and its underlying rationale.

[74] Bourgeois, J.A., in *Dataville*, explains that the granting of an Order for security for costs requires “special circumstances”. Justice Saunders comments in

Tupper, underscore the importance of the Court having a remedy to control its own processes, in order to maintain the integrity of the system of justice. This power is contained in the Court's inherent jurisdiction, as well as other remedies contained in the *Civil Procedure Rules*, and in the *Judicature Act*. The *Nova Scotia Civil Procedure Rules* have the force of law in this Province.

[75] The striking of pleadings is a severe remedy that a Court should grant only in the most egregious of circumstances, because it deprives the litigants of a trial on the evidence, and of a decision on the merits of the claim or defence. (*National Bank, Homer Estate v. Eurocopter S.A.*, 2003 BCCA 229)

[76] In the main proceeding (PtH No. 495007), the Defendants state that the Plaintiff's claim should be dismissed, pursuant to *Civil Procedure Rule 45* – Security for Costs and *Rule 88* – Abuse of Process.

[77] In the main proceeding the Defendants also seek that their counterclaim be allowed, and that a judgment for damages be entered in their favour including interest and costs. They seek an assessment of these damages.

[78] In the fraudulent conveyances action (PtH No. 517851) the Plaintiffs, Chedabucto and Peters seek that their claim be allowed and that the lots deeded be returned (reconveyed) from Carina Laudahn to her mother Martina.

Security for Costs

[79] The Order of January 12, 2023, provides certain consequences for failure to deliver the security as ordered by the Court. Clause 4 reads:

Should the plaintiff fail to deliver security by the date established by this Order, upon motion of the Moving Defendants, the plaintiff's claim against them shall be dismissed.

[80] The Order is contained in Ms. Durnford's Affidavit in support of the Motion (Exhibit AL) filed November 15, 2023.

[81] Further *Rule 45.04(3)* reads:

A party who obtains an order for security for costs may make a motion for dismissal of the claim if the party ordered to provide security fails to do so as ordered.

[82] Accordingly, the Chedabucto Defendants submit the Plaintiff has had ample notice that the remedy of dismissal was available to the company, upon motion by Chedabucto, as a consequence of non-compliance by the Plaintiff with the Order, that had been issued 9 months previous. As the caselaw illustrates however and despite the wording of the Order, dismissal is not automatic.

[83] In *Dataville*, Bourgeois, J.A. stated:

[19] At this juncture it may be of assistance to make some general observations. Firstly, the remedy sought by the respondents - dismissal of the appeal due to failure to provide security for costs, is, in accordance with Rule

90.42(2), discretionary. It should not be presumed that an order for dismissal will automatically flow from an appellant's failure to abide by an order to give security.

[20] The above being said, it is also important to note that for an order for security to have issued, the Court was satisfied based on evidence before it, that there were "special circumstances" justifying same (**Lienaux v. Campbell**, 2011 NSCA 94; **Sable Mary Seismic Inc. v. Geophysical Services Inc.**, 2011 NSCA 40). In the present case, Justice Scanlan based on affidavit evidence before him, found there were special circumstances justifying an order compelling the appellant to provide security for costs, and exercised his discretion accordingly. It is not the function of the Court faced with a subsequent motion to dismiss, to review and re-consider the original decision for security. That decision has been made, I cannot "unmake" it.

[21] So what does the Court consider when faced with a motion for dismissal pursuant to Rule 90.42(2)? Although there are a number of authorities which consider security for costs, there is little authority which address what considerations the Court should employ when a motion for dismissal arises following such a direction.

[22] The respondents rely upon **MacDonald v. Jollymore**, 2007 NSCA 46, where Justice Cromwell (as he then was) dismissed an appeal due to an appellant's failure to post security for costs. The rationale for doing so is explained as follows:

[2] I acknowledge that this is an extraordinary order. In my view, however, it is amply justified by the persistent failure of the appellant to recognize his obligations to the Court. He has failed to pay the judgment under appeal, neglected his appeal until prodded by a Registrar's motion to dismiss it and failed to provide the security ordered by Saunders, J.A. on March 1st, 2007. There has been offered by Mr. MacDonald no evidence by way of justification, excuse or even apology for this course of conduct. His failure to pay the security for costs, viewed in the full context of his conduct on the appeal, in my view, constitutes an abuse of process of the Court which ought to disentitle him from continuing with the merits of his appeal

[84] This case was decided under the rule relating to security for costs on an appeal which is not the case here. That said, the Court made clear that the failure to follow an Order of the Court must be looked at in a more serious light as compared to some procedural timelines, which are important in their own right, noting that for a Court to grant such an order, it was satisfied there were "special circumstances justifying

same” (para 20). Further, Justice Bourgeois stated that, “the failure to follow a Court Order should be considered in more serious light”, stating further in paragraph 28:

To fend off dismissal, an appellant who has failed to post security for costs, must come prepared to satisfy the Court with properly filed and admissible evidence, that it would not be in the interests of justice to grant the motion. An appellant who simply re-argues that security is unwarranted, will likely be unsuccessful.

[85] Ultimately, the Court of Appeal in *Dataville* decided not to excuse the Appellant from complying with Scanlan, J.A.’s Order for him to post security “in light of his clearly planned campaign of additional litigation’. The Appellant had put forward as an excuse that he was impecunious.

[86] In the decision, Bourgeois, J.A. noted while dismissing an appeal is “extraordinary”, the Court should not “shy away” from dismissing an appeal for failure to post security for costs in appropriate cases.

[87] In *Ocean*, Associate Chief Justice Deborah K. Smith (as she then was) heard a motion, that bears certain similarities to the present motion.

[88] In *Ocean*, the Defendant Economical sought dismissal of the plaintiff’s claim (Ms. Ocean) against it for negligence/bad faith, seeking an order pursuant to *Civil Procedure Rule 45*, as is the case here. The plaintiff was served with notice of the motion but did not file materials in response and did not attend the motion hearing.

[89] In correspondence filed with the Court, the plaintiff, Ms. Ocean, expressed a deep mistrust of the Court, stating in her letter:

I forth right refuse to acknowledge and/or partake in any trial proceedings with this lower court, “ACJ Smith and Defendant parties.”

[90] The plaintiff further alleged that the defendant’s motion for an order for a discovery examination was “another means to try to set me up so that my demise can be arranged”. In the letter she referred to the defendant Insurer, “and their affiliates within the Insurance/legal/Judicial conglomerate”.

[91] Later in the proceeding, a decision was released requiring the plaintiff to post security for costs in the amount of \$10,000.00, an Order to this effect was issued by the Court.

[92] In its analysis the Court noted that Economical had framed its motion, previously under *Civil Procedure Rule 88 – Abuse of Process*. (*Ocean*, para 28)

[93] Her Ladyship did however address *Civil Procedure Rule 45.03*, noting the importance of the Court considering the overall circumstances when deciding whether to dismiss an action:

[34] Civil Procedure Rule 45.04(3) provides for an exceptional remedy. It permits a claim to be dismissed without a hearing on the merits, if a party ordered to provide security for costs has failed to do so. Because a litigant may be denied a hearing of his/her claim on its merits it is, in my view, important that the court consider the overall circumstances of the case when deciding whether to dismiss

an action. There may be circumstances where a continued stay is warranted for a period of time rather than the more draconian remedy of dismissal.

[35] As indicated above, at the present time the Plaintiff is in breach of two court orders relating to costs. The first is the Order of Justice Coughlan dated May 26th, 2011 in which Ms. Ocean was ordered to pay costs of one thousand dollars (\$1,000.00), payable forthwith. The second is the Order issued November 25th, 2011 requiring Ms. Ocean to post security for costs in the amount of ten thousand dollars (\$10,000.00) by the 1st day of February, 2012. Neither of these Orders have been complied with.

[36] In addition, the Court is faced with a unique situation in which the Plaintiff refuses to participate (at least at this level of court) in an action which she, herself, has commenced.

[94] In *Ocean*, the Court found that the defendant continued to return to Court to deal with the proceeding while the plaintiff - the party that commenced the action – repeatedly refused to attend. (para. 38).

[95] The concluding paragraphs in the *Ocean* decision illustrate factors that are present and/or similar to this motion. These include:

- (i) failure to comply with Court Orders;
- (ii) failure to participate in her own action;
- (iii) a claim that has not yet reached the discovery stage, despite the fact that the cause of action arose in excess of 5-7 years;
- (iv) significant cost to the parties and to the system. (paras. 39-45)

[96] The relevant paragraphs, (39-45) of the decision are as follows:

[39] The Plaintiff's failure to comply with the Court's orders relating to costs and her refusal to participate in her own action undermines the integrity of the judicial system and, in my view, brings the administration of justice into disrepute.

[40] The object of our Civil Procedure Rules is to bring about the just, speedy and inexpensive resolution of disputes (see Civil Procedure Rule 1.01.)

[41] There is, in my view, nothing just about allowing a party to continue a proceeding that she refuses to participate in.

[42] Further, there is nothing speedy about a claim that has not yet reached the discovery stage despite the fact that the cause of action arose over a decade ago.

[43] Finally, this proceeding has been anything but inexpensive. The cost to the system and to the parties has been significant.

[44] The relief requested by Economical is extreme in the sense that it will put an end to the Plaintiff's claim against this Defendant for negligence and bad faith. In my view, there is no lesser remedy that will bring about a proper result.

[45] I am satisfied that the Plaintiff's failure to post security for costs, viewed in the context of the entire situation, warrants an order dismissing her claim against Economical for negligence and bad faith.

[97] In its conclusion the court clearly appreciated that the relief granted was extraordinary, but found "so too were the circumstances of the case". (para. 46)

[98] In the result, it was unnecessary for the court in *Ocean* to consider whether it was appropriate to strike out the claim (or portion) pursuant to *Rule 88*.

Abuse of Process – *Rule 88*

[99] The scope of *Rule 88* and the remedies available recognize the Court's inherent authority to control an abuse of its processes. There is no limitation on the varieties of conduct that may amount to an abuse or the remedies that may be granted in responding to or controlling abuse.

[100] In *Barthe*, Saunders, J.A., held that *Rule 88* is "dedicated to preventing an abuse of the Court's processes", stating further that the potential remedial set out in

Rule 88.02(1) are “not exhaustive”. Stating the *Rule* grants, “broad discretionary powers to Supreme Court to determine an appropriate remedy”, once they are satisfied the Court’s process has been abused. (paras. 165, 166)

[101] The available remedies under *Rule 88.02(1)* include (inter alia):

- (a) an order for dismissal or judgment;
- (b) an order granting a permanent or temporary stay of proceedings;
- (e) an order striking or amending a pleading.

[102] In terms of the type of conduct that can amount to an abuse of process, the Court in *Barthe* referred to the decision in *Babovic v. Babowech*, [1993] B.C.J. No. 1802 (S.C.), where the British Columbia Supreme Court described the principle of abuse of process as “amorphous”, Baker, J. stating:

... The principle of abuse of process is somewhat amorphous. The discretion afforded courts to dismiss actions on the ground of abuse of process extends to any circumstance in which the court process is used for an improper purpose. ...

The categories of abuse of process are open. Abuse of process may be found where proceedings involve a deception on the court or constitute a mere sham; where the process of the court is not being fairly or honestly used, or is employed for some ulterior or improper purpose; proceedings which are without foundation or serve no useful purpose and multiple or successive proceedings which cause or are likely to cause vexation or oppression...

[103] From this it can be seen that the potential categories are open. In *Barthe*, Saunders, J.A., described abuse of process as it related to the case itself:

...At this juncture, it is enough to say that National Bank's actions throughout these proceedings had proven to be so serious as to amount to an abuse of process, calling for extreme, unequivocal, and permanent sanctions...

...the Bank's conduct throughout these proceedings was said to be so egregious as to constitute an abuse of process necessitating a striking of the pleadings, or a stay.

[104] Saunders, J.A., also referred to the leading decision of the Supreme Court of Canada in *Toronto (City) v. C.U.P.E., Local 79 (2003)*, 2003 SCC 63, citing the comment of Justice Arbour, who described the underlying principle in relation to the doctrine of abuse of process as proceedings that are “unfair to the point that they are contrary to the interest of justice”; “misuse of a Court’s procedure in a way that would bring the administration of justice into disrepute; a doctrine that can be used in a variety of legal contexts; “in all of its applications the primary focus is... the integrity of the adjudicative freedoms of the courts”. (*Barthe* paras. 35-37, 43 citing *Toronto*)

[105] In *Barthe*, his Lordship put it this way, concisely and succinctly stating:

[239] Having regard to the numerous cases I have considered as well as the amorphous nature of the doctrine to begin with, I would not presume to prescribe a rigid test to be applied in all future civil disputes. I fully recognize that abuse of process is a “broad” and “somewhat vague” concept and one that “varies with the eye of the beholder”. Great care must be taken not to narrowly define the boundaries of the doctrine, or try to mechanically fit different factual situations within its limits.

[240] That said, I would respectfully conclude that the approach this Court ought to take is to ask whether the Bank’s conduct has tainted the case to such a degree as to be manifestly unfair to another party to the litigation, or has brought the administration of justice into disrepute by impairing the adjudicative function of the courts and undermining public confidence in the legal process.

[106] The importance of *Barthe v. AGNS* is recognized in the many decisions that have relied upon its authority. For example, in *Armoyan v. Armoyan*, 2015 NSSC 191, Justice Forgeron of the Nova Scotia Supreme Court (Family Division) referred to *Barthe* extensively in determining the issue before it, Her Ladyship stating in the initial paragraph of the decision in *Armoyan*:

Lisa Armoyan calls upon the court to grant a rare and exceptional remedy based on the doctrine of abuse of process because of Mr. Armoyan's egregious litigation conduct and the need for justice and fairness. Mr. Armoyan disputes the claim.

[107] In *Armoyan*, the Court discusses the severity of the remedy, using the phrase “sparingly, accessed only in exceptional circumstances”, once again citing *Barthe*. It was discussed that the power to apply it should be “measured and proportionate” (para. 32 in *Grewal v. Nijjer*, 2011 BCCA at para. 14)

[108] In the present motion there has been a pattern of behaviour displayed by the Plaintiff for a lengthy period in the litigation. There is no sign of it letting up and no expectation that it will change. Perhaps the best example is the directions given by the Court at the very first case management conference held February 22, 2022. (See paragraph 55 herein)

[109] A series of affidavits were filed by the Plaintiff on August 28, 2023, in violation of the Court's Order. One was entitled, “Non Statutory Abatement Notice” purporting to stay both proceedings, threatening personal liability against

participants in this proceeding (including myself as Case Management Judge), arguing separate legal personalities, and making mention of “taking this up with King Charles III”.

Ms. Laudahn’s Submissions

[110] I have transcribed and carefully reviewed Ms. Laudahn’s submissions given at the motion hearing. There is nothing in them that would constitute a valid legal defence, or a basis for contest. Throughout her submissions she touched upon some things that may have had relevance if placed in the proper context, or in language that was coherent, or had some basis in law. Some examples are:

- Regarding the “Whole Money transferred at one time to a trust account”, she was “relocating from Germany to Canada in 2017” and was “put in a rush to leave the country”.
- “I sold the house and we put Carina’s money and my money together and bought, as I say, Carina bought the property”.
- “I am placing on the Court’s public record the ruling of the Court of Record dated May 16th and dated December 19th, both in 2022 because there is a much deeper explanation about the definition of legal persons”.
- “It says the law of the Merchant Code which are codified and then we look in Article 2...no court has authority to enforce an invalid contract”.
- “It was a trespass by so-called serving and process servers trying to serve me as a woman by mislocating the statutes from a person to a woman and the same thing happened to Carina”.
- “I still wish for the Court to judicially acknowledge and render summary judgment on the non judicial matter at hand since August 6, 2019”.
- “I ask the Court to judicially notice the default of the party Peters which happened outside of the jurisdiction of the court, in commerce, in private”.

[111] In her submissions Ms. Laudahn stated that when she filed her action in PtH-495007 she never intended to have such a proceeding, “because it was already stipulated”, meaning there was no argument and liability/fault of Chedabucto had already been established. In her words, “the default judgment papers” included a Bill of Lading, “which is really clear evidence that it’s a commercial process”.

[112] It was Ms. Laudahn who drafted the “Bill of Lading” along with multiple other documents with various titles created by her.

[113] The Plaintiff’s conduct throughout this litigation, her failure to follow Court Orders and her failure to file proper documentation, has tainted the case so as to be manifestly unfair to other parties in the litigation. (*Barthe* at para 39)

[114] The references I have made to *Tupper* and *Ocean* confirm that the focus must be on upholding the integrity of the judicial system and to eradicate conduct that brings the administration of justice into disrepute and undermines the public’s confidence in the legal process.

[115] In her affidavit filed on November 14, 2023, Ms. Laudahn states in Paragraph 4: that she as affiant is “neither a legal person (real party in interest) nor a natural person” but is instead, “a natural living being of majority status conducting the style

condition of The Principal and Beneficial Equitable Title Holder of the Martina Laudahn estate and all its derivative thereof ..”

That Affirmant is neither a legal person (real-party-in-interest) nor a natural person; nor an infant/minor, nor a government employee, nor a public trustee in this instance, nor acting as security in any kind, but instead, Affirmant is a natural living being of majority status conducting the style condition of The Principal and Beneficial Equitable Title Holder of the Martina Laudahn estate and all its derivatives thereof, sua potestas esse.

[116] While not as lengthy as other filings, this document has a number of exhibits. Exhibit A is entitled “Bill of Complaint in Equity Presentment to Void Proceedings”. Exhibit 1 is entitled, “Verified Memorandum of the 12 Presumptions of the Roman Court”.

[117] These documents were filed just weeks before the motion hearing scheduled for December 8, 2023, the motion having been filed on May 9, 2023.

[118] On October 7, 2022, the Court sent a letter to Ms. Laudahn and Roland Bathen referencing certain documents for filing and rebuking the parties for other behaviour. The letter stated, “These demands (and refusals) very clearly constitute an abuse of the Court’s process”.

[119] In *Ocean*, the court commented about the Defendant Economical having to return to court each time in response to the plaintiff’s refusal to participate. The

Defendants here have also been attending and returning to Court, with paid legal counsel.

[120] Viewed in the context of the entire circumstances, I find that Ms. Laudahn's conduct/actions has brought the administration of justice into disrepute by impairing the adjudicative freedoms of this Court.

[121] Exercising my discretion, I am satisfied the Court's process has been abused.

Remedy for Abuse

[122] The *Rules* permit a broad discretion in the Court in determining an appropriate remedy for abuse of process. The caselaw is clear that the remedy chosen should not only be measured and proportional but should also be one that is likely to control the abuse.

[123] Dismissal is a remedy of last resort, as it is final and puts an end to a litigant's claim or defence or is similar in the case of having pleadings struck.

[124] There are many considerations that go into such a decision, choosing what remedy is appropriate. For example, are there exceptional or extraordinary circumstances that require a severe remedy in order to relieve the Court and other parties to the litigation of the abuse?

[125] Would a lesser penalty be sufficient and send the message that the Court will no longer tolerate non-compliance and disrespect for Court and its rules, in the particular facts of the case?

[126] All of the relevant circumstances should be taken into account exercising appropriate restraint in order to ensure that the remedy is warranted.

Self-Represented

[127] Ms. Laudahn has been representing herself throughout this proceeding. She has also advised the Court that she is representing her daughter in the related action. She has been advised that she should retain legal counsel and that her claim, a construction matter, is complex. She has continued to represent herself.

[128] The Court has attempted to assist and guide her procedurally by giving direction on certain matters, the filing of motions, affidavits and the Court's jurisdiction. The matter of jurisdiction (including my oath) has been a subject of considerable discussion and time expended.

[129] The fact that a party is self-represented does not excuse them from complying with the rules and established court procedures. Ms. Laudahn filed the forms required under the *Rule 34* for self-represented litigants. *Rule 34* has been explained

to her and she has been reminded that she is obligated, although not a lawyer, to become familiar with the rules and comply with them.

[130] In the beginning, Ms. Laudahn seemed prepared to accept the Court's guidance. It was only later the Court learned of her view that the Defendants had accepted the contract on July 28, 2019, before the action was started in December 2019. And further, that all she was seeking from this Court was the "ministerial act" of rendering default, and "entering judgment".

[131] The Affidavit of Brittany Durnford contains a thorough listing of Exhibits (A-Z, AA-AX) filed by Chedabucto to establish the OPCA" strategies employed by the Plaintiff. For example, in the Notice of Motion filed February 20, 2020, Ms. Laudahn claimed that the Defendants "waived their right to answer by tacit admission, rejecting the Defendants due process opportunity".

[132] Ms. Laudahn is from Germany and moved here to build a home and settle in Inverness County, Cape Breton in 2016/2017. German is her first language, she has mentioned this on several occasions. She has not appeared to have a major problem conversing in English, verbally or in writing. The Court has been aware of her origin and has attempted to answer questions in Court and letters.

Martina Laudahn's Motion for Default

[133] Martina filed a Notice of Motion to strike Chedabucto's Defence on February 20, 2020. There are the similar assertions in those documents. She did not file an affidavit in support of the Motion, instead she filed a Statement/Brief containing facts yet unproven.

[134] Imbedded in the Motion documents was an issue pertaining to the filing of the Defence and Counterclaim, by the Chedabucto Defendants.

[135] The Originating Notice Statement of Claim in this matter was filed by the Plaintiff December 19, 2019. Service was effected on December 23, 2019.

[136] The Court received correspondence from Mr. Moir on January 13, 2020, stating that he would be filing a defence on behalf of Chedabucto and Mr. and Mrs. Peters. He indicated that he would need some additional time to do so. This was received prior to the deadline for the Defence to be filed.

[137] The Defence and Counterclaim were filed on February 6, 2020, some 13 days after the required deadline of 15 days, counting holidays.

[138] At this time the Plaintiff had began to include "tacit procuration" arguments in her filings in February (the Default Motion) October, November and December of 2021.

[139] Ms. Laudahn filed a Motion on February 16, 2020, to address service issues on the Defendants, Mr. Bathen and Power Strength & Energy Solutions Ltd. An Order for Substituted Service was granted to the Plaintiff.

[140] At the hearing Martina asked several questions of the Court, about procedure and in particular, a **Motion for Default Judgment** based on the late filing of the Defence and Counterclaim. The Court is an excerpt of that hearing:

**JUSTICE MURRAY -
MARTINA LAUDAHN -**

Ms. Laudahn?
I just want to say what is my next action? Is the default action let's say reviewed by yourself, or do you expect me to put in another motion or what can I do at this time? Its just delayed.

JUSTICE MURRAY -

Well its I think you were informed, and I say this kindly with respect to you that the only matter I would be able to address or would be addressing today would be the substituted service aspect. I understand you are a self represented litigant there is a larger picture that you want to get on with. Certainly, I understand that, and I had some empathy for your circumstances especially with the heating and the issues that you have. I am not in a position, and this happens often to give legal advice it would not be appropriate for me to do that. I do see that I often belief I have an obligation to help or not help but assist procedurally in terms of what might be happen. Generally speaking, and please understand this is not in any way a ruling on any matter. Default judgment yes, the timeframes are there. Yes, they're supposed to be respected. It does even happen that even after default judgment is granted that it is not uncommon that a defendant would apply to have that set aside because they had full intentions of defending, and some reason or other they were not able to. Thats where a judge to weight at that time. In this particular case I gather, and I understand there was the defendant you're referring to did email the court and advise the court fairly early on I think within the period of I am not

exactly where its fall in the period that indeed they did intend to respond to the matter. I think your aware of that.

MARTINA LAUDAHN - yes sir.

JUSTICE MURRAY - And so what did happen was eventually it had something to do with the affidavits of service maybe not being properly sworn. Again, I don't want to be held to precision in regard to this that the defendants said they were going to file did get filed as well as a counter claim. So, yes I understand your position and now would fall to you to make, I imagine even if the default judgment were granted that it is open to the other side to apply to set it aside as opposed the converse is available to you that you can apply to have the defence set aside on the basis that it was not filed within the proper time. I think you will have the labouring oar in that respect for the reasons that I indicated. Do you understand what I mean by that?

MARTINA LAUDAHN - no

JUSTICE MURRAY - Ok I think that you can, its open for you to ask the Court to make judgment because the defence was not filed on time. What it is I am trying to tell you is that you will have an up-hill battle in that regard. For the reasons I have indicated. Especially given the difficulties associated with paperwork. So, I am not preventing you from making seeking a ruling from the court but I am telling you that based on what I seen it will not be an easy process for you to have that matter set aside.

MARTINA LAUDAHN - yes

JUSTICE MURRAY - ok. That's the best answer that I can give you. Practically speaking, well again I am not going to go any further than that.

MARTINA LAUDAHN - Thank you very much sir.

[141] The circumstances of the delay were such that the Defendants were served two days before Christmas, with an action claiming special, general and punitive damages (including breach of trust) against Chedabucto but also Mr. and Mrs. Peters personally.

[142] In terms of the timing the defence was filed thirteen (13) days following the prescribed time frame but Defendant's Counsel informed the Court that a defence would be filed on behalf of his clients, who had been served over the Holiday period.

[143] The Courts normal operations were impacted by the Covid 19 pandemic. The Motion scheduled for March 24, 2020, was adjourned. Eventually, after postponements and interruptions, the Court resumed operations. The matter was scheduled to be heard before Justice Chipman November 23, 24, 2021. During this time the Plaintiff sought to amend the Statement of Claim, which the Defendant Chedabucto consented to.

[144] By this time Mr. Bathen had retained counsel who was later discharged. Counsel and Justice Chipman were of the view that the matter was in need of case management.

The Statement of Claim – 495007

[145] The Statement of Claim consists of numerous subject areas and claims several heads of damages (including punitive damages). The claims alleged include: i) Breach of Trust; ii) Defective heating system, iii) Remediation costs, and iv) Incidental costs, alleging negligence by the Defendants. It also contains the "payments to Peters by the Plaintiff" and "Peters and CHL's defective

workmanship”. Each of these categories are outlined in the claims which contains sixty-six paragraphs and is ten pages in length.

[146] It could certainly be argued that the Statement of Claim contains evidence which is not permitted, as well as taking on the nature of plea and submission. It is a substantial claim made by a self-represented litigant. (*Waverly (Village) v. Nova Scotia (Minister of Municipal Affairs)*, [1993] N.S.J. No. 151).

[147] I am not going to deal with the Plaintiff’s claim on the merits, but will make brief comment about the document in order to provide some context for the remedy for abuse. (*Olumide v. Nova Scotia Human Rights Commission*, 2019 NSSC 223).

[148] As stated in these pleadings the Plaintiff did not allege the OPCA arguments that characterize the majority of the filings after the Statement of Claim and Defence to the Counterclaim were filed.

[149] Similarly, the Defence to the Counterclaim, while detailed, does not contain the abuse language or pseudo legal doctrines that the Plaintiff has adopted in the proceeding. The Defence references that the project was a turn-key operation at a fixed price. It refers to an “agreed price”.

[150] It also cites extensively from texts on the law of contract, and further comments on credibility, as evidence and takes on the nature of a plea.

Decision on the Remedy for Abuse of Process

[151] Relying on the cases such as *Barthe*, *Tupper*, *Ocean* and *Toronto City*, the Court finds that the Plaintiff's conduct in the litigation has been extraordinary, egregious and highly abusive.

[152] Having considered the entire circumstances, it constitutes abuse for which a severe penalty is warranted. I am satisfied that an Order of dismissal is needed to bring about a proper result, that is to end the abuse which has been constant.¹

[153] To expect Chedabucto Defendants (and the Court) to continue to respond to such extraordinary behaviour would be extremely unfair and bring the administration of justice into disrepute. The Plaintiff's conduct has tainted the proceedings to such a degree as to be manifestly unfair to the parties who have filed this motion seeking relief.

[154] In the result, the Statement of Claim and the Defence to the Counterclaim are hereby struck. As per *Rule 88.01* there is no limit to the remedies that may be

¹ In *Vacca v. Banks* (2005), 6 C.P.C. (6th) 22 the plaintiff had repeatedly failed to comply with orders related to discovery and the progress of litigation. Ferrier J. for the Divisional Court, observed at p. 27 that the master's remedy of the dismissal of the action may be an appropriate sanction to recognize the court's "responsibility for the effective administration of justice". (See *Barthe* at para 186 where Saunders, J.A. referred to *Pucaru v. Pucaru*, 2010 ONCA at paras 49-50.)

provided in response to an abuse. Pursuant to *Rule 88.02(1)* an Order for Judgment is granted on the Defendant's counterclaim.

[155] In my view there is no lesser remedy that would be about a proper result.

Dismissal – *Rule 45*

[156] In the alternative, I am further satisfied that the Plaintiff's failure to post security for costs, again viewed in the context of the entire situation, warrants an Order dismissing her claim. She has been aware of this potential remedy since the Motion was filed by Chedabucto on October 11, 2022.

[157] Based on the authority in *Dataville Farms*, and on the governing principles, the Chedabucto Defendants are entitled to the remedy of dismissal, pursuant to *Rule 45*, and as permitted in the Order for Security for Costs. Exercising my discretion, I find it is entirely in the interests of justice to grant the Chedabucto Defendants' motion.

Assessment of Damages on Counterclaim

[158] Chedabucto seeks an assessment of damages on the Counterclaim, pursuant to *Rule 70.04*. This *Rule* allows for such an assessment on motion.

[159] Michael Peters and Irmgard Peters have each filed an affidavit. In his Mr. Peter's provides evidence as to the background of the project, attesting to its formation and evidence as to *quantum*, as to the amount owing to Chedabucto.

[160] Ms. Peters' affidavit contains an explanation of the accounting for the project. Exhibit A contains a breakdown of material, labour, and invoices for subtrades and extras. It is a substantial document. The invoicing contains 591 pages, and the account itself is 65 pages. It appears detailed and organized. A summary of the amount owing (3 pages) is included, with a detailed breakdown of payments received and money's expended. The balance due for the contractor fee of \$129,549.48 inclusive of HST plus \$30,118.82 for out-of-pocket expenses.

Paragraph 6 of Mrs. Peters' affidavit reads:

I kept the bookkeeping file on the Project. This file consisted of the invoicing charged to Chedabucto for subtrades, labour and materials, and a Microsoft Excel spreadsheet, incorporating that invoicing and payments from Ms. Laudahn, and calculating our account. Attached hereto as Exhibit "A" is a readout of the parts of the spreadsheet which are necessary to summarize the account for the Project, and attached hereto as Exhibit "B" is a true copy of the invoicing for the Project.

[161] In his affidavit Mr. Peters provides evidence as to Chedabucto's method for estimating project and billing for jobs. He comments upon his company's experience and practices within the construction industry.

[162] In his affidavit Michael Peters says Chedabucto has received \$0.00 payment from the Plaintiff and no remuneration. They are in fact “in the hole”, said Mr. Moir.

[163] The applicable contract fee makes up the majority of the amount claimed in the action, plus out of pocket expenses. Ms. Laudahn has not filed admissible evidence to challenge Chedabucto’s account.

Assessment of Damages

[164] Damages on the counterclaim are hereby assessed in the amount of \$159,668.29. Pre-judgment interest is being claimed at the rate of 5% from the date of Chedabucto’s account (March 31st,2019) to the date of the hearing on December 8th, 2023, a period of 1713 days. This amount of interest claimed for that period is \$37,467.37. The total amount claimed by Chedabucto is \$197,135.66.

[165] There are a number of factors to be considered in determining an appropriate pre-judgement interest rate.² Chedabucto has been deprived of the use of the money being awarded and has not been responsible for any delay. The Chedabucto Defendants submit the delay has been caused by the Plaintiff who has abused the process. There was some delay as a result of the pandemic.

² *E. Weyman Construction (1989) Limited v. Tutty*, 2018 NSSC 328

[166] I have decided to award interest at the rate of 4.0 % for the period claimed, less 12 months, due to unforeseen delay resulting from the pandemic. Interest at 4% for a period of 1348 days (1713-365) amounts to \$23,590.00. The total amount for which judgment is entered is \$183,258.29 (\$159,669.29 + \$23,590.00).

Decision – Proceeding SPH No. 517851

[167] On September 14, 2022, Chedabucto filed the fraudulent conveyances Action, claiming that there were conveyances (deed transfers) by Ms. Laudahn wherein she conveyed title of properties to her daughter, Carina Laudahn, submitting that these title transfers should be reversed

[168] It is Chedabucto's position that the conveyances were made between the Defendants prior to Martina Laudahn commencing her legal action in SPH No. 495007 against Chedabucto and Mr. and Mrs. Peters in relation to construction of her home which agreement was negotiated in 2016-2017.

[169] The Plaintiffs in this action (SPH No. 517851) allege that Ms. Laudahn conveyed the properties, including Lot 20 to Carina, for "nil" consideration, with the intent to defeat her existing and future creditors, including the Plaintiffs.

[170] The Defendant, Ms. Laudahn, filed a “Notice of Defence and Counterclaim for Trespass on the Case” on March 23, 2023. The Defendant Carina Laudahn has not filed a defence.

[171] In this motion, the Plaintiffs are seeking that an Order for Default Judgment be entered against Carina and an Order for Summary Judgment be entered against Martina, respectively. The Plaintiffs, Chedabucto and Peters seek to have the conveyances of Lots 17, 18 and 20 declared void and ordered by the court to be transferred back to Martina Laudahn with costs to the Plaintiffs.

Affidavit Evidence

[172] A series of affidavits sworn November 10 and 13, 2023, were filed by the Plaintiffs in the Motion. These included the affidavit of the bailiff/process server, Mr. Christian Auer, sworn December 3, 2022. In addition, evidence of the land transactions is contained in the supplemental affidavit of Brittany Durnford sworn September 28, 2022, and the affidavit of Ms. Durnford sworn November 13, 2023.

[173] Ms. Durnford’s affidavit sworn on November 10, 2023, attaching her affidavit of September 28, 2022, at paragraph 12 states:

I am advised by Matthew J.D. Moir and do verily believe that he inquired with Robert Andrews, senior legal counsel for the Property Value Services Corporation, the agency responsible for assessing property taxes, regarding the data from affidavits of

value which were sworn since 2016 in relation to Lots 17, 18, 19, and 20. Mr. Andrews was not able to provide copies of the affidavits; however, he was able to share certain information without violating privacy rules. Mr. Andrews emailed Mr. Moir on October 21, 2020 regarding those transactions a true copy of which is attached hereto as Exhibit “Q”, and it discloses:

- a) Lot 19’s sale price for November 6, 2016 was \$168,306.44;
- b) Lots 17 and 18’s combined sale price for June 28, 2017 was \$243,592.03;
- c) Lots 17, 18 and 19’s combined sale price for August 3, 2018 was \$0.01, and declared to be exempt from deed transfer tax by reason of “Family Gift”;
- d) Lot 17’s sale price for April 29, 2020 was \$0.01, declared to be exempt from deed transfer tax by reason of ‘Transfer to Beneficiary for Nominal Amount’;
- e) Lot 17’s sale price for May 1, 2020 was \$0.01;
- f) Lot 20’s sale price for April 22, 2020 was \$0.01; and
- g) Lot 20’s sale price for June 22, 2020 was \$0.01, declared to be exempt from deed transfer tax by reason of ‘Transfer For Nominal Amount Between Family’

[174] Since the filing of the Plaintiffs’ Motion, there have been numerous filings by the Defendants. Carina Laudahn filed two (2) affidavits in this matter on August 28, 2023. Martina Laudahn filed an affidavit and a letter to “whom it may concern” on August 28, 2023. She also filed the November 14, 2023 affidavit on this motion and SPH 495007, which has been referred to in the decision on the main proceeding.

[175] I have reviewed and considered all of the affidavit evidence, and written submissions including the oral argument made by the parties at the Motion hearing on December 8, 2023. Carina Laudahn was not present at that hearing. Martina advised the Court that she was the authorized representative for Carina, for whom she filed a Power of Attorney signed by Carina, on November 14, 2023 prior to the hearing of the motion.

[176] I turn now to the discuss the issues on this motion.

Issue #1 – Service on the Defendant Carina Laudahn

[177] In advance of the motion for security for costs, heard January 6th, 2024 the Court raised the issue of whether Carina had been given proper notice of the action, and the motion itself. Submissions were made on the issue of service. Carina Laudahn was entitled to notice.

[178] The affidavit of the process server Mr. Auer confirms that on November 24, 2022, he attended at Carina Laudahn’s work place. He was able to meet with her and advised her he wished to give her a letter with enclosed documents, at which time she refused to accept the package.

[179] Mr. Auer explained it could be to her disadvantage to refuse to accept the letter. His Affidavit states that Carina Laudahn proceeded to make a phone call, which he inferred was made to her mother. Following the phone call, Carina informed him that she would not be accepting the letter. The process server asked that Carina sign the letter to confirm her refusal to accept the documents, a true copy of the letter with her signature is attached as Exhibit “B” to Mr. Auer’s affidavit.

[180] The process server did not leave the documents with her given her refusal to accept them. This is unlike the procedure in Nova Scotia, where documents are commonly left with the person. Mr. Auer was not familiar with that procedure.

[181] The letter, which listed both actions on the subject line was signed by her, with the date and time of her signature. The documents included were set out in bold and in point form. These included the Notice of Action, the Notice of Motion, with affidavits listing the name of the affiants, including Michael Peters.

[182] A full written report of the process server is attached to Ms. Durnford's Affidavit, sworn December 19, 2022, as Exhibit "A". It states his meeting with Carina Laudahn, once he located and identified and began at 10:50 a.m. His discussion with her and the telephone calls, ending with her signature at 11:25 am. In total the meeting lasted a period of 35 minutes.

[183] At the security for costs motion, the Court was satisfied, based on the affidavit of Christian Auer, the process server took reasonable steps to effect service upon Carina Laudahn, in Munich Germany.

[184] I was satisfied based on the affidavit and the Investigator's Report that the documents in question were brought to Carina Laudahn's attention. She was informed of the documents but chose not to accept them. She then called whom the

process served described as her mother. The rational inference is that the reason for the phone call Carina made was to discuss the documents that the process server was attempting to give her at that time.

[185] The rational inference, if not the only inference, is that it was Martina Laudahn that Carina spoke with. In the affidavit, I note Mr. Auer did not state he assumed this, he understood it to be her mother, a call for which he was present.

[186] I noted at the time that *Rule 22.15* permits the use of hearsay evidence on motions in determining a procedural right. That said, I do not consider the affidavit of Mr. Auer hearsay. Based on the affidavit evidence I find the evidence that Carina Laudahn spoke with her mother about the documents, to be compelling.

[187] Carina Laudahn was not a party to the motion proceeding in SPH 495007. She was served in her capacity as someone who could be bound by the Order sought in the motion (*Rule 22.11*). *Rule 22.11(6)* states that the *Rules* applicable to a party in a motion must be applied “as nearly as possible” to a non party who makes for an Order is sought to be bound by an Order.

[188] As stated, the Court was satisfied that service had been effected for the purpose of the security for costs motion.

[189] In terms of the present motion in SPH 517851, there are *Rules* and circumstances relevant to whether Carina Laudahn, has received proper notice.

[190] Since the filing of the Defendant's Motion on May 9, 2023 Carina Laudahn has filed two affidavits on August 28, 2023. I have reviewed these affidavits, as well as a third contained in the affidavit of Brittany Durnford, as exhibit AO, dated February 15, 2023. They contain the unusual and non-legal argument that are not relevant to the proceedings. They also contain references to this proceeding.

[191] In addition to stating she is neither a legal person, or a natural person, Carina states she will not accept liability or be compelled by any contract. She states that as a non party, she has not been made aware of details or shown instruments by Martina or anyone else. She acknowledges the papers but said they were pushed upon her by an unlawful entry and trespass.

[192] In addition she objects to the "continued false legal pretenses seeking to deprive me of my property and assets" even though she said she was "unaware". She also put forward a submission on defects in the home, that she recognized the name of these men who "constructed our home in Cape Breton", who "exhausted all funds and left the home incomplete with major deficits and deficiencies". While

stating she never received delivery of the documents in the lawsuit, she stated that the man was “courteous and patient” while she made her “clarification calls.”

[193] In paragraphs 16-20 of her affidavit, she discusses things that she was told by Martina Laudahn, having earlier stated she discussed it with no one. Some of the relevant paragraphs in the one of the affidavits are 10, 16, 21, 25, 28 and 29.

[194] In a second affidavit, Carina Laudahn refers to the “special appearance” to be held on December 8, 2023, at 11 a.m. She references the Court file number SPH 517851 that is the subject of the court appearance “de benne esse”. Chedabucto submits, having referred to the correct file number, as well as the nature of her comments, her response can only be in respect of this action and the related action.

[195] She describes the Supreme Court of Nova Scotia as a “service corporation” and mentions taking this matter up with King Charles III. In terms of service and notice of the hearing, she states that unless the Court or Mr. Moir compel her attendance by “wet ink contract signed by the King”, she will be excused “with a lawful excuse to participate”, before the corporate venue in the public courthouse (“Port Hawkesbury Justice Centre”) on December 8 at 11 a.m.

Rule 31.03

[196] *Rule 31.03* states personal service is made on an individual “by handing the document to the individual.” In the *1972 Civil Procedure Rules*, its predecessor (*Rule 10.36*) stated that personal service was effected on an individual “by leaving a copy of the document with them ...”.

Rule 31.07

[197] *Rule 31.07* states that a party who has not been notified in accordance with the other provisions, but files a document in response to the originating document, “is taken to have notice of the proceeding as of the day the responding document is filed”.

[198] In this case, Carina Laudahn filed two documents responding to the originating documents and the Notice of Motion, on August 28, 2023. In those she incorporated a third document as mentioned.

[199] Mr. Auer was clear in his attempts to explain the process of service to her in a respectful and courteous manner. The *Rules* no longer require that the document be left with the individual. Our Court of Appeal has ruled that a key factor is whether the person is given the opportunity to understand the nature of the proceedings.³

³ *Rad v. Poole*, 2018 NSCA 88

[200] The process server waited while Carina Laudahn made what she described as a “clarification call”. After that she signed the letter.

[201] I am satisfied that Carina was given adequate notice under *Rule 31, Rule 23* and under the common law. Since her initial efforts were an attempt to refuse the process, she has become fully aware of the proceedings, as evidenced by her filings on August 28, 2023, which incorporated a previous document sent by Carina Laudahn dated February 15, 2023 and sworn on November 13, 2023 before Ms. Hunt and before this motion was filed. (Exhibit AO of Ms. Durnford’s affidavit sworn November 13, 2023)

[202] Finally, it should be noted that all three affidavits filed by Carina Laudahn were solemnly affirmed before Commissioner, Dana Hunt, in Port Hawkesbury. As the movers here pointed out, she was in Cape Breton when the affidavit was signed.

[203] Finally, with permission of the Court, Mr. Moir filed an affidavit on January 26, 2024, with a letter pertaining to service. The affidavit confirms that following the Motion Hearing on December 8, 2023, his office received the motion package previously sent by regular mail to Carina Laudahn. The envelope was marked “RETURN TO SENDER – NO CONTRACT” and was received by Mr. Moir on January 9, 2024.

[204] Following Mr. Moir’s request to file an additional affidavit, Ms. Laudahn sent a letter to the Court containing two paragraphs that state:

WHEREAS On February 3, 2023 a large brown envelope has been found in the PO Box addressed to the fictitious legal person “Carina Laudahn”. Also this unopened envelope (with seal intact) has been returned for lawful cause to the business WELDON MCINNIS with the lawful NOTICE that any and all consent to contract is rejected.

WHEREAS Another attempt has been pursued by the business WELDON MCINNIS, this time an envelope has been found in a mailbox on November 21, 2023. (This is the envelope the legal counsel Matthew J.D Moir is referencing. The following day, on November 23, 2023, the woman Carina returned the unopened envelope (with seal intact) to sender for lawful cause, demonstrating again her rejection (and explicit non-consent) to the offered unsolicited contract. (cf. attached picture of the returned offer to contract).

[205] Mr. Moir submits that in these paragraphs, Carina Laudahn’s attorney, Martina Laudahn is admitting that Carina received the motion package sent by his office on November 21, 2023.

[206] On November 14, 2023, Ms. Laudahn filed a Power of Attorney signed by Carina Laudahn on October 16, 2023, in the matter of SPH 517851. Clause 3 of this document vests Ms. Laudahn with the power “to do all acts as fully and effectually as if I could do it personally present for me in my name.”

[207] Further, clause 3.7 states that Carina Laudahn’s attorney has the power “to conduct any business operations and deal with any legal matters.”

[208] At the motion hearing on December 8, 2023, Martina stated that she was the authorized representative of her own and Carina Laudahn's estate. Martina Laudahn further stated that Carina Laudahn was aware of the court date but had chosen not to participate. She stated also (while at other times, saying something different) that she was authorized to speak for her daughter.

[209] I am satisfied this additional evidence supports my finding that the motion proceeded on proper notice to the Defendant, Carina Laudahn.

Disentitlement to Notice

[210] In the alternative, I find that Corina Laudahn became disentitled to Notice pursuant to *Rule 31.12*. She did not file a Notice of Defence or a Demand for Notice within the prescribed time, after her filing of two affidavits on August 28th, 2023. I accept that she was served as of that date, pursuant to Rule 31.07. Rule 31.12(a) stipulates the following:

31.12(a) fifteen days, if notification is by personal service in Nova Scotia, or by other means completed entirely in Nova Scotia.

[211] Under *Rule 31.12(4)*, if a Notice of Defence is not filed when required, the party is taken to have admitted, for the purpose of the action, the claims made against the party, and the party making the claim may move for default judgment under Rule 8- Default Judgment. This is what Chedabucto has done here.

Default Judgment – Rule 8

[212] Chedabucto as the Plaintiffs in the Fraudulent Conveyance Proceeding, submit they are entitled to make a motion for default judgment.

[213] Carina Laudahn, has been notified of the proceeding, but has not filed a Defence within the deadline for filing a defence within *Rule 31*.

[214] According to *Rule 31.12*, the deadline for filing a defence would have expired 45 days following service in Munich in 2022 on November 24, 2022. If Carina is taken to have notice on August 28, 2023, as stated in *Rule 31.07*, the deadline for filing a defence would have expired within 15 days. Much earlier notice would have been given if the February 15th date is used, from the filing Carina made entitled, “Cease and Desist”.

[215] Since the action was started on September 14, 2022, there have been several ways that Carina Laudahn has become aware of the action. There has been the service date/meeting with Mr. Auer, four documents completed and filed by Carina herself, including her power of attorney and a returned envelope that had been post marked to her address in Germany.

[216] The Court has reviewed the affidavits of Carina Laudahn. With few exceptions, she has continued to espouse the same pseudo legal commentary, as has been referred to throughout this decision.

[217] This baseless commentary has no place in a court of law.

[218] Having reviewed these documents, I find that neither of the affidavits filed by Carina disclose a basis for a defence or contest. Even if a defence could be gleaned from these documents, it would be clearly unsustainable based on my review of these pleadings.

[219] Default Judgment therefore is hereby entered against Carina Laudahn in favour of the Plaintiffs, in this proceeding. (PtH. No. 517851)

Summary Judgment – *Rule 13*

[220] I have reviewed *Rule 13.03* entitled “Summary Judgment on the Pleadings”, with respect to the pleadings filed in the fraudulent conveyance action, by Martina Laudahn on March 23, 2023.

[221] Martina Laudahn has filed documents in matter 517851 entitled “Notice of Defence and Counterclaim – Claim for Trespass on the Case”

[222] The document has several components, referring to the status of the Defendants as (non) parties and jurisdiction. Further, it contains a “Statement of Facts” consisting of 65 pages; Exhibit “A” entitled “Law and Authorities”, consisting of 104 paragraphs; and three affidavits that had previously been filed. One is Carina Laudahn’s dated February 15, 2023. One is Martina Laudahn’s entitled “Notice of Correction and Rebuttal of False Presumption and Assumptions” dated January 12, 2023. The third is an affidavit of Martina Laudahn’s filed January 5, 2023, the day before the Security for Costs Motion. This document contains a “Plain Statement of Facts”. In this document, Martina Laudahn is claiming a “Writ of Habeas Corpus”.

[223] Other than using the word “Defense” (sic), it is essentially a Counterclaim. There is nothing else entitled a defence.

[224] Chedabucto submits in respect of this pleading:

This document does not contain any defences Instead it recites all the now-familiar pseudo-legal arguments we had come to expect: tacit procuration, the requirement of a contract in order to be bound by this court, separate legal aspects of the individual defendants, and inferiority of legislation to the law merchant, The document is 50 pages long.

If the court finds Ms. Laudahn’s pleadings either 1) to disclose no basis for a defence, or 2) to disclose only a basis for a defence which is clearly unsustainable, then the court must set aside her defence. Chedabucto’s claim must be allowed if either the defence is, or the parts of the defence that pertain to the claim, are set aside.

[225] *Rule 13.03* reads:

Summary judgment on pleadings

(1) A judge must set aside a statement of claim, or a statement of defence, that is deficient in any of the following ways:

- (a) it discloses no cause of action or basis for a defence or contest;
- (b) it makes a claim based on a cause of action in the exclusive jurisdiction of another court or tribunal;
- (c) it otherwise makes a claim, or sets up a defence or ground of contest, that is clearly unsustainable when the pleading is read on its own.

(2) The judge must grant summary judgment of one of the following kinds, when a pleading is set aside in the following circumstances:

- (a) judgment for the party making a claim, when the statement of defence is set aside wholly;
- (b) dismissal of the proceeding, when the statement of claim is set aside wholly;
- (c) allowance of a claim, when all parts of the statement of defence pertaining to the claim are set aside;
- (d) dismissal of a claim, when all parts of the statement of claim that pertain to the claim are set aside.

(3) A motion for summary judgment on the pleadings must be determined only on the pleadings, and no affidavit may be filed in support of or opposition to the motion.

(4) A judge who hears a motion for summary judgment on pleadings may adjourn the motion until after the judge hears a motion for an amendment to the pleadings.

(5) A judge who hears a motion for summary judgment on pleadings, and who is satisfied on both of the following, may determine a question of law:

- (a) the allegations of material fact in the pleadings sought to be set aside provide, if assumed to be true, the entire facts necessary for the determination;
- (b) the outcome of the motion depends entirely on the answer to the question

[226] I am satisfied that Ms. Laudahn's "Notice of Defence and Counterclaim - Claim for Trespass on the Case" does not disclose a basis for a defence or contest, and is otherwise clearly unsustainable, when it is read on its own.

[227] I have also reviewed all of the documents filed by Martina between the filing of the motion on May 9, 2023 and the motion hearing date of December 8, 2023. There is nothing contained therein that would constitute a defence or contest.

[228] Summary Judgment on the pleading is therefore granted against Martina Laudahn in favour of the Plaintiffs, in this proceeding, PtH. No. 517851.

[229] In the result the “Notice of Defence and Counterclaim – Claim for Trespass on the Case” shall be struck in its entirety.

[230] Pursuant to *Rule 13.03(2)(a)*, the Plaintiffs in this proceeding shall have judgment against the Defendant. The Plaintiffs are entitled to the relief sought. An order is granted, declaring the conveyances void, and the properties deeded to the Defendant, Carina Laudahn, by the Defendant/Plaintiff by Counterclaim, Martina Laudahn, shall be returned/conveyed to Martina Laudahn.

[231] In light of my conclusion in relation to *Rule 13.03* it is unnecessary for me to consider summary judgment on the evidence pursuant to *Rule 13.04*.

Abuse of Process

[232] In the alternative, the court is of the view that Martina Laudahn’s pleading purporting to be a Defence and Counterclaim should be set aside as constituting an

abuse of process. This doctrine has already been the subject of my decision in the main proceeding. In this proceeding the Plaintiffs have filed Ms. Durnford's affidavit containing a summary of the OPCA documents filed/delivered by Martina and Carina Laudahn, without including the documents themselves as exhibits. I find this summary fully supports a finding that the defence and counterclaim entitled "Notice of Defence and Counterclaim – Claim for Trespass on the Case" is an extension of Martina Laudahn's longstanding series of abusive filings.

Conclusion

[233] Martina Laudahn has been steadfast in her determination to distract the Court and the litigants from conducting this litigation in the normal course. She has provided neither documentary or electronic disclosure, or offered dates for discovery, according to the submissions of the Defendants.

[234] Moreover, the Plaintiff has continued to ignore Court Orders and carry on a campaign of vexatious litigation with impunity.

[235] Not only have the Orders of the Court not been complied with, but there has been an absolute refusal to recognize the authority of the Court. On the contrary, the Plaintiff has supplanted her own court, attempting to relegate the Nova Scotia Supreme Court to inferior status, to her own "Court of Record."

[236] It has not only been the litigants that have been the subject of foisted liability, but the Plaintiff has also turned her attention to the Court, as well as counsel, Mr. Moir, in her pronouncements on liability, and for failing to recognize and accede to the many demands foisted upon these individuals.

[237] Ms. Laudahn has taken positions that are inconsistent and contradictory. She has maintained “there is no dispute”, but “seeks this Court to Judicially Notice the Default”, for which she sought an “Executive Order and Default Judgment” from this Court.

[238] The Plaintiff refuses to participate in this proceeding, an action which she commenced in 2019. There are multiple documents containing similar comment that have not been specifically referenced due to proportionality.

[239] In the Main Proceeding the Plaintiff’s pleadings shall be struck and her claim is dismissed.

[240] Judgment on the Counterclaim shall be entered against the Plaintiff, with damages assessed to Chedabucto and Michael and Irmgard Peters in the amount of \$183,258.29, inclusive of interest.

[241] In the Fraudulent Conveyances Proceeding the Court finds that Carina Laudahn has had proper notice of the action (and the motion) and has not filed a

Notice of Defence. Default Judgment, therefore, is entered against the Defendant, Carina Laudahn.

[242] The “Notice of Defence and Counterclaim – Claim for Trespass on the Case” shall be struck and Summary Judgment is entered against Martina Laudahn. The series of conveyances of Lots 17, 18 and 20 are declared void and the properties are ordered to be returned to Defendant Martina Laudahn.

[243] The Court’s decision on costs is reserved.

[244] This concludes my decision in these matters.

Murray, J.