[26] There is no hard and fast rule for the determination of whether a proceeding is

an abuse of process.[[1]](#footnote-1) Instead the enquiry will involve a broad, merits-based

judgment.[[2]](#footnote-2)

[27] The circumstances in which proceedings may amount to an abuse of process

are varied. [[3]](#footnote-3) One of these is an attempt to relitigate a claim previously determined by

the court. As per *Rabson v Judicial Conduct Commissioner* [2016] NZHC 2539:

The abuse of process which the instant case exemplifies is the initiation of

proceedings in a court of justice for the purpose of mounting a collateral attack

upon a final decision against the intending plaintiff which has been made by

another court of competent jurisdiction in previous proceedings in which the

intending plaintiff had a full opportunity of contesting the decision in the court

by which it was made.

[28] Essentially, it will be an abuse of process to bring the same proceeding in a

different garb.[[4]](#footnote-4) If this is the case, it is no bar that the later proceeding is brought

against a different party. Claims may be struck out as an abuse of process even though

the defendant was not party to the previous litigation.

[29] We are satisfied that Mr Tarr’s action against Mr Sutcliffe is an abuse of

process of the Court. We acknowledge that the causes of action themselves, undue

influence and breach of fiduciary duty (but more particularly the latter), are unrelated

to the Family Court proceeding. But, for a cause of action to be viable it must be

possible to prove loss arising from proof of the cause of action.[[5]](#footnote-5) Here, that would only

be possible if the High Court were to hear afresh the arguments Mr Tarr made to the

Family Court and to the High Court and reach different conclusions.

[30] It has been held against Mr Tarr that he never had a beneficial interest in the

GEL shares.

1. *Hodder v Baker* [2016] NZHC 548 [↑](#footnote-ref-1)
2. *Dotcom v District Court at North Shore* [2017] NZHC 3158 at [24]. [↑](#footnote-ref-2)
3. *Rabson v Judicial Conduct Commissioner* [2016] NZHC 2539, [2016] NZAR 1679 at [31]. [↑](#footnote-ref-3)
4. *Brown v Sinclair and Ors* [2016] NZHC 3196 [↑](#footnote-ref-4)
5. *Body Corporate 172108 v Manchester Securities Limited* [2017] NZHC 329. [↑](#footnote-ref-5)