

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**SVETLANA DANILOVA AND PAVEL DANILOV**

**Plaintiffs**

**- and -**

**ALLA NIKITYUK, VALENTIN NIKITYUK, YANA SKYBIN, YOUNG MENS  
CHRISTIAN ASSOCIATION operating as YMCA SIMCOE/MUSKOKA AND  
YMCA SIMCOE/MUSKOKA NEWCOMER SERVICES**

**Defendants**

**AFFIDAVIT**

**of the Defendant Valentin Nikityuk**

**I, VALENTIN NIKITYUK, of the City of Barrie, in the Province of Ontario, MAKE  
OATH AND SAY:**

1. My wife, Alla Nikityuk, and I are the Defendants in this action, Plaintiffs by counterclaim. I am making this affidavit in support of a motion for a certificate of pending litigation in respect of the lands and premises municipally known as 1490 Rankin Way, Innisfil, Ontario and legally described as "LT 57, PL 51M892, S/T EASEMENT FOR ENTRY UNTIL 2013/08/15 AS IN SC672893; INNISFIL", PIN 58075-0631 (LT)" (the "House").

2. I have personal knowledge of all facts stated in this affidavit, except where I have been informed of such facts, in which case I have stated the source of such facts and I hereby state that I believe such facts to be true.
3. My wife, Alla Nikityuk, is 73 years old. I am 76 years old. My wife and I were born and spent all of our lives in Russia until we immigrated to Canada in 2008. We are both retired professional engineers. Neither my wife nor I read, write, speak or understand English.
4. The Plaintiffs and Defendants by Counterclaim are Svetlana Danilova ("Danilova") and Pavel Danilov ("Danilov"). Danilova and Danilov are wife and husband. Danilova is the biological daughter of my wife.
5. Danilova and Danilov immigrated to Canada from Russia in 2003. I have been told by Danilova and Danilov, and I believe it to be true, that between 2003 and August 8, 2008, Danilov worked in information technology and Danilova was employed intermittently. I have been further told, and I believe it to be true, that, during this time, Danilova and Danilov supported their daughter, a student, and lived in a rented apartment.
6. In 2004, Danilova and Danilov proposed that my wife and I immigrate to Canada. My wife and I thought this was a good idea and told Danilova and Danilov we were interested in immigrating to Canada. Danilova and

Danilov told us that they would complete the application process on our behalf.

7. In or about January 2008, Danilova and Danilov encouraged my wife and me, by telephone, to decide on a plan for paying for our retirement in Canada. Danilova and Danilov proposed that my wife and I give the entirety of our life savings to them, so that they could arrange a retirement plan on our behalf.
8. On January 27, 2008, Danilov emailed my wife and me a retirement proposal from Danilova and Danilov (the "Offer"). A true copy of the Offer and a certified English translation of the same is attached and marked as **Exhibit "A"**.
9. The Offer included the following:
  - a. a proposal that my wife and I give Danilova and Danilov \$200,000 in "brought capital" in return for yearly return of 10% "interest on capital";
  - b. "Operation factors", which included a monthly breakdown of "expenditure" on living expenses in Canada and "income" to finance same from "interest on capital", our Russian pensions and \$210 of monthly support from Danilova and Danilov;

- c. comment that investments at 10% annual interest rate is a “risk-free” option;
  - d. assurance that this would lead to financial independence for my wife and me;
  - e. a top-up payment to us of \$200 to \$300 per month by Danilova and Danilov would be “no problem” if necessary; and,
  - f. comment on how other investment strategies for financing a retirement in Canada compared to the Offer.
10. In or about February 2008, my wife and I accepted the Offer by telling Danilova over the telephone that we wanted the “risk-free” option whereby we would earn a 10% annual return on the “brought capital”. I told Danilova and Danilov the acceptance was conditional on our money being kept in a bank account separate from money belonging to Danilova and/or Danilov. Danilova and Danilov promised to keep our money in a separate bank account (the accepted Offer and promises being the “Agreement”).
11. In or about April 2008, Danilova told me that my wife's and my immigration application was approved. Upon hearing this news, my wife and I sold all our assets in Russia – being a two-room apartment, car, garage and summer cottage in St. Petersburg – and, relying on the Agreement, I wire-transferred \$260,842.71 in United States Dollars (hereinafter “the

Savings") to Danilova's TD Canada Trust account (Account No.: 00482-004-714578) in four instalments:

- a. \$ 14,117.00 USD on April 21, 2008;
- b. \$ 31,000.00 USD on May 15, 2008;
- c. \$107, 841.00 USD on May 27, 2008; and
- d. \$107,884.71 USD on June 9, 2008.

12. A document with wire-transfer instructions received from Danilova indicated, and I believe it to be true, that Account 00482-004-714578 was a TD Canada Trust bank account in the name of Danilova. A true copy of these instructions is attached and marked as **Exhibit "B"**.
13. My wife and I arrived in Canada on or about June 13, 2008.
14. Upon our arrival in Canada, my wife and I slept in the living room of Danilova and Danilov's rented two-bedroom apartment in Etobicoke, Ontario. Danilova and Danilov told me, and I then believed it to be true, that the Savings could not be kept in a separate bank account because because of our inability to speak English and understand the Canadian system. Danilova and Danilov told me, and I then believed it to be true, that my wife's and my Russian pension needed to be deposited in a bank account in the name of Danilova and/or Danilov because it would costly to

keep another bank account.

15. Following our arrival in Canada, Danilova and Danilov would, from time-to-time, instruct my wife and/or me to sign documents in English. These documents were not translated into Russian or explaining the purpose of the document. Danilova and Danilov would say, and I believed it to be true, that these documents were necessary for the immigration status. In 2011, my wife and I discovered that we had unknowingly signed Powers of Attorney in favour Danilova and/or Danilov in 2009 as described in paragraphs 22 and 23 below.
  
16. A month or so after landing in Canada, I learned from Danilova and Danilov, and I believed it to be true, that \$150,000.00 of the Savings had actually been used to buy the House, but in my name. I was told, and I believed it to be true, that the balance of the Savings had been invested to pay for my wife's and my retirement. I did not object to this breach of the Agreement because I was happy to learn that I owned the House. Danilova and Danlov also told me, and I believed it to be true, that I would still receive a 10% annual return on the balance of the Savings.
  
17. In or about August 2008, my wife and I moved into the House. Danilova and Danilov continued to live in their rented two-bedroom apartment in Etobicoke, Ontario.

18. Danilova and Danilov did not pay the 10% annual return on the Savings as promised in the Agreement, but I believed that the Savings were secure because they had been used to purchase the House in my name.
19. On or about June 1, 2009, Danilova and Danilov moved into the House too.
20. Shortly thereafter, Danilova and Danilov began new construction on the House. This included finishing the basement and constructing a fence and gazebo. At the time, Danilova and Danilov told me, and I believe it to be true, that the cost of the construction was approximately as follows:  
\$30,000.00 for the basement; \$7,000.00 for the fence; and \$5,000.00 for the gazebo.
21. After they moved in, relations with Danilov and Danilova took a turn for the worst. My wife and I were physically and verbally abused by Danilova and Danilov. The abuse was often triggered by talk of money. This included my demands for an accounting of the Savings. It also followed requests for money to cover household expenses. The abuse included, but was not limited to, Danilova and Danilov:
  - a. restricting my wife's and my access to the mailbox of the House, so that all of our mail was received by Danilova and Danilov;

- b. communicating with my wife and me in a demeaning manner and making frequent derogatory remarks;
- c. discouraging and obstructing my wife and me from having company or socializing with others;
- d. advising my wife and me to buy burial insurance because we were expected to die soon;
- e. indicating that it had been their hope and expectation that my wife and I would have died by 2009;
- f. asserting that Danilova and Danilov had authority over our finances because they had "Powers of Attorney";
- g. setting up a home Local Area Network ("LAN") to which all computers in the House were connected, which I believe Danilova and Danilov used to monitor my wife's and my electronic mail and the contents of our emails were later described by Danilova and Danilov in their Statement of Claim.

22. In October 2009, as described in paragraph 15 above, I unknowingly signed a Power of Attorney ("TD POA #1") for property in favour of Danilova with respect to TD Waterhouse account 81R126-J. This was signed on October 1, 2009. Neither Danilova nor Danilov translated TD POA #1 from English into Russian for me nor explained its purpose or



legal effect. In or about December 2011, I discovered TD POA #1 when TD Canada Trust provided me with a copy. I have no recollection of signing TD POA #1. After the discovery, TD Canada Trust staff explained the purpose of TD POA #1. Upon hearing the explanation, I realized that I signed TD POA #1 without knowing that it granted powers to Danilova with respect to my property.

23. Also in October 2009, as described in paragraph 15 above, my wife also unknowingly signed a Power of Attorney ("TD POA #2") for property in favour of Danilova with respect to TD Waterhouse account 81R108-J. This was signed on October 1, 2009. My wife has told me, and I believe it to be true, that neither Danilova nor Danilov translated TD POA #2 from English into Russian for her nor explained the purpose or legal effect of the document. In or about December 2011, she too discovered TD POA #2, in my presence, when TD Canada Trust provided her with a copy. My wife told me, and I believe it to be true, that she has no recollection of signing TD POA #2. Staff of TD Canada Trust also explained to my wife, in my presence, the purpose of TD POA #2. Upon hearing the explanation, my wife told me, and I believe it to be true, that she realized then that she had signed TD POA #2 without knowing that it granted powers to Danilova with respect to my wife's property.

24. In or about August 2011, Danilov threw plates at a wall in the House, in my presence, during the course of an argument. Danilov then threw a glass cup near my feet and threatened to throw a plate at my head.
25. Also, in or about August 2011, I witnessed Danilova grabbing and shaking my wife by the arms and shoulders. I saw bruises on my wife's arms and shoulders resulting from Danilova's attack.
26. On October 17, 2011, my wife and I left the House because of concerns for our personal safety. We obtained assistance from the Salvation Army and Barrie Women's Shelter and received seven nights of emergency shelter at a local motel. We also sought legal advice about asserting control over our finances.
27. On October 24, 2011, my wife and I returned to the House with a police escort to revoke all powers of attorney made in favour of Danilova and Danilov. In my presence, my wife personally served Danilova with copies of four new powers of attorney (together, the "New POAs"), signed on September 14, 2011, which we had made in favour of each the other. In my presence, my wife advised Danilova that this had the effect of revoking powers of attorney previously made in favour of Danilova and Danilov. Attached are true copies of the New POAs marked as **Exhibit "C"**.

28. In or about December 2011, my wife and I learned from the Ministry of Community and Social Services about the existence of accounts at TD Canada Trust and TD Waterhouse that were open in the names of my wife and me. Upon learning about these accounts, I requested account statements and all other documents in the possession of TD.
29. The TD account statements show, and I believe it to be true, that, on October 28, 2011, Danilova and Danilov:
- a. transferred the entire \$13,155.90 balance of TD Waterhouse account 81R108-J, an account in my wife's name to TD Canada Trust account 0048-6414315, which was in the name of my wife and me jointly; and,
  - b. transferred the entire \$1,705.09 balance of TD Waterhouse account 81R128-J, an account in my name, to TD Canada Trust account 0048-6414315, which was in the name of my wife and me jointly.
30. True copies of the account statements for TD Waterhouse account 81R108-J and TD Waterhouse account 81R128-J for the month of October 2011 are attached and marked as **Exhibit "D"**.
31. In or about December 2011, staff at TD Canada trust told me, and I believe it to be true, that the transfer was made by Danilova and Danilov in my wife's and my name using TD POA #1 and TD POA #2. This took

place only four days after my wife and I had served the New POAs, revoking all past powers of attorney.

32. A TD Canada Trust account printout shows, and I believe it to be true, that on the same day as the TD Waterhouse transfers, Danilova and Danilov transferred the entire balance of TD Canada Trust account 0048-6414315 in my wife's and my name to another account, which was not in our name:
- a. \$5,242.00 to an account numbered 65L079J; and,
  - b. \$9,618.99 to an account numbered 65J997J;

A true copy of an account printout for TD Canada Trust account 0048-6414315 for the month of October 2011, obtained from the Ministry of Community and Social Services, is attached and marked as **Exhibit "E"**.

33. The transfer of funds, out of TD Canada Trust account 0048-6414315, were made by Danilova and Danilov in the name of my wife and me using a power of attorney. I was told this by staff of the TD Canada Trust, and I believe it to be true. At the time of the transfer, my wife and I had no knowledge of the TD accounts in my wife's and/or my name, the transactions that took place that day, nor of the powers of attorney used to authorize the transactions. True copies of TD POA#1 and TD POA #2 are attached and marked as **Exhibit "F"**.

34. In or about March 2012, I learned through counsel that my name was not registered on the title of the House and had in fact never been so registered. A true copy of a property search for the House, dated July 31, 2012, is attached and marked as **Exhibit "G"**.
35. From the property search I discovered the following information, which I believe to be true:
- a. the House had been purchased in the name Danilova and Danilov from Chrisdawn Construction Inc., the builder of the House, on August 8, 2008;
  - b. the purchase date was only about a month after June 9, 2008, the date on which final instalment of the Savings was transferred to Danilova and Danilov;
  - c. the purchase price of \$261,845 was nearly equal to the value of the Savings, USD \$260,842.71; and
  - d. a charge in favour of The Bank of Nova Scotia ("Scotiabank") of \$271,900, dated August 15, was registered against the House on August 8, 2008 – a true copy of which is attached and marked as **Exhibit "H"**.
36. Based on the information in the property search record, I believe:
- a. the Savings were used to buy the House as evidenced by

- i. the proximity in time, less than one month, between the transfer of the Savings and purchase of the House;
  - ii. the similar values of the two transactions; and ,
  - iii. my belief that Danilova and Danilov did not have any alternative source for such an amount of money, which belief is based upon Danilov and Danilova having told me, and I believe it to be true, that Danilov worked in information technology in Canada since immigrating to Canada in 2003, Danilova worked intermittently during this time and Danilova and Danilov could not save much money from this income because of the costs of supporting a daughter who was a university student and maintaining a two bedroom rental apartment in Etobicoke, Ontario and a family motor vehicle;
- b. the Savings were used without my wife's or my authorization to buy the House in the name of Danilova and Danilov for the benefit of Danilova and Danilov;
  - c. Danilova and Danilov falsely told me that the House was purchased in my name to conceal the unauthorized use of the Savings;
  - d. Danilova and Danilov knew that I had been misled to believe that the House was purchased in my name; and,
  - e. after purchasing the House with the Savings, Danilova and Danilov encumbered the House with a charge in favour of Scotiabank,

which I believe was used to obtain a line of credit to pay for in renovations to the House and other expenses incurred to benefit Danilova and Danilov given the absence of any alternative source for such money to Danilov and Danilova, which belief is based on Danilova and Danilov having told me the following:

- i. Danilov worked in information technology in Canada since immigrating to Canada in 2003;
- ii. Danilova worked intermittently during this time; and,
- iii. Danilova and Danilov could not save much money from this income because of the costs of supporting a daughter who was a university student and maintaining a two bedroom rental apartment in Etobicoke, Ontario and a family motor vehicle.

37. My wife and I asked Danilova and Danilov to return the Savings and provide an accurate accounting of the Savings. Danilova and Danilov refused to return the Savings and have not provided an accurate account of what has been done with the Savings. A true copy of correspondence dated March 1, 2012 and April 23, 2012, from Fernandes Paralegal is attached and marked as **Exhibit "I"**.

38. In or about May 2012, Danilova and Danilov commenced an action against my wife and me. A true copy of the Statement of Claim is attached and marked as **Exhibit "J"**.

39. In the Statement of Claim, Danilova and Danilov make certain allegations, which I believe to be true and provide further evidence that the Savings were misappropriated, including, but not limited to, the following:

- a. upon receipt of the Savings in June 2008, Danilova and Danilov transferred the Savings into a joint brokerage account in the name of Danilova and Danilov [such transfer would have been made without my wife's or my authorization] (at paragraph 10 on page 7);
- b. at least \$24,815 of the Savings was used to make an August 7, 2008 down payment on the House [such payment would have been made without my wife's or my authorization] (at paragraph 13 on page 8); and,
- c. on August 7, 2008, the day before the House was purchased, the account purportedly used for Danilova and Danilov's alleged "family business" of trading stocks, options and currencies, contained no more than \$26,825 in assets belonging to Danilova and Danilov and such assets were either withdrawn to cover half of the down payment on the House purchase, the other half coming from the Savings, or co-mingled with the balance of the USD \$260,842.7 in Savings not used for the down payment, which were then collectively used for benefit of Danilova and Danilov [such comingling of the Savings and subsequent use for the "trading of stocks, options and currencies" would have been done without my



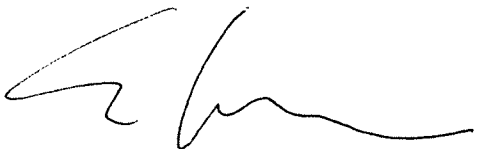
wife's or my authorization] (at paragraph 13 on page 8).

40. If a Certificate of Pending Litigation is not registered against the House, my wife's and my ability to trace and recover the Savings will be prejudiced.

41. I make this affidavit in support of a motion for a Certificate of Pending Litigation and for no other or improper purpose.

**SWORN BEFORE ME** at the City of )  
Barrie, this 18th day of October, 2012 )  
through the interpretation of Igor )  
Trutanow, a person fluent in the )  
Russian and English languages, the )  
said Igor Trutanow, having sworn that )  
he had truly, distinctly and audibly )  
interpreted the contents of this )  
document to the deponent, and that )  
Igor Trutanow did truly and faithfully )  
interpret to the said deponent the )  
oath about to be administered to )  
them. )

  
VALENTIN NIKITYUK



\_\_\_\_\_  
Commissioner for Taking Affidavits

Igor Trutanow  
\_\_\_\_\_  
Interpreter Name

**ERIK BORNMANN**  
BARRISTER AND SOLICITOR

DANILOVA et al

-and-

NIKITYUK et al

Court File No.

12-0545

Plaintiffs

Defendants

ONTARIO  
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Barrie

**AFFIDAVIT OF VALINTIN  
NIKITYUK**

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