Court File No 12-0545-SR

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

ALLA NIKITYUK AND VALENTIN NIKITYUK

Defendants
(Plaintiffs by Counterclaim)

and

PAVEL DANILOV AND SVETLANA DANILOVA

Plaintiffs
(Defendants by Counterclaim)

REPLY TO AMENDED STATEMENT OF DEFENCE AND DEFENCE TO COUNTERCLAIM

1. Except where expressly admitted herein, the Plaintiffs (Danilovs) deny each and every allegation contained in the Amended Statement of Defence and Counterclaim of the Defendants Alla Nikityuk and Valentin Nikityuk (except paragraphs 1-10, 12, 15-16, 21-23, 29-30, 39,

45-46, 48, 58, 62, 64, 72, 74, 77-79, 85 and 110 of the Statement of Defence) and put Defendants (parents, Nikityuks) to the strict proof thereof.

2. In response to paragraph 11, only Valentin has an engineer diploma and high education degree; Alla's education is 7 grades in school and 4 years in technical college which make her a technician.

3. In response to paragraph 13, actually both Defendants are cancer survivors. Valentin had lung cancer and following bladder cancer. As Valentin's cancer was advanced with no proper treatment available in Russia, Svetlana arranged cancer immunotherapy for him in 1997 in Latvia, Europe where Plaintiffs were living permanently at that time after leaving Russia in August, 1996. Valentin was living in the apartment with Plaintiffs in Riga, Latvia for over two months. During this period the dose of medication used was adjusted and all necessary tests done to continue therapy later on in Russia. Svetlana sent medication to Russia by DHL. Alla received the same treatment as substitution for her chemo in Russia after Svetlana made all arrangements for her in April 2005. Svetlana had followed up with Dr.

Bykova who provided immunotherapy for parents communicating with her by email and by phone. Overall, treatments cost for Plaintiffs about $11000, was paid in cash or by Western Union and Defendants never cared to know how much it was.

4. In response to paragraph 14, Defendants were desperate to leave Russia to be able to receive Canadian health care. If they stayed in Russia any longer, they would not survive. By bringing them to Canada the Plaintiffs actually saved their lives.

5. In response to paragraphs 17, the regular monthly transfers started not in 2007 but in December 2005, and were not $200 but $400-$450 per month (proof – CIBC bank statements for the period 2005-2008). On top of that, documented immigration expenses, tickets for visits and final one-ways, medical insurance, etc. and thousands of dollars of undocumented cash like immunotherapy, cash for doctors in Russia etc.

    a. At the time Plaintiffs were not in position to send $400 "gifts" every month. As the immigration decision has been made, the process started, and Sponsorship Agreement signed, the Plaintiffs

covered parents' extra and some regular expenses because the parents promised them to pay back every penny after their arrival to Canada, from the proceedings of the sold property in Russia.

b. Parents told the Plaintiffs that their Russian pension was only about $200 per month (see email parents refer as "Offer" where they silently admit that their pension is only $200). Only after parents' arrival to Canada and transfer of Russian pension to Canadian bank account it became known to Plaintiffs that it was in fact about $600 per month. Parents used family relationship feelings to simply pull out more money from the Plaintiffs.

c. Plaintiffs didn't claim back the total amount of the Before Canada support debt so far because it never was an issue in the family till October 2011. The entire family of four lived together, was happy, had shared wallet and kitchen. It was convenient to maximize the investment portfolio to generate higher income for parents. After the parents left the house, begun to make trouble and deny the

debt the Plaintiffs don't trust them any more, and intend to collect this debt.

6. In response to paragraph 18, Plaintiffs admit that email was sent, but it is obvious that it's not any kind of "Offer" or "Promising Letter", or "Pension Agreement", as the Defendants keep referring to it on different occasions. It is just a regular email between family members who were about to be reunited. Email explains the costs of living in Canada in 2008 and starts with the phrase "These are calculations that look realistic as of today". It was never intended to be any kind of "business offer" or "contract" between the Plaintiffs and "Nikityuks, Inc."

Email states that 10% is a risk free investment option for the parents because it's the average annual return stock market historically provides in case of long term (10-30 years) investments, and life-time term of support obviously is a "long term". This fact can be read in any book about stock market, and it looked realistic in January 2008 when the email was sent because short-term volatility of stock market could be easily covered by Pavel's new full time job, with compensation enough to support a family of 4. Investment into stock market was

a calculated risk for Plaintiffs and risk-free option for parents because the risk was absorbed by the Plaintiffs.

Email also clearly states that more than 10% would be too risky and unacceptable option simply because, on one hand, stock market in long term average doesn't provide that return, and on another hand the risk level higher that 10% cannot be absorbed by the Plaintiffs and might easily cause a substantial loss.

Plaintiffs never signed off for a 10% guaranteed annual return for parents investment but during the period 2008-2011 when all the family lived together, actually provided for them much more than 10% (16-18% annually). Funds came 100% from Pavel's full time job because stock market didn't provide any positive return in 2008. After parents left the house the Plaintiffs are abandoned with almost the same household expenses but have to pay extra for the second accommodation, so are not able to provide such high return for parents any more.

7. In response to paragraph 19, plenty of conversations took place when the Plaintiffs explained the parents how life looks in Canada, how much is rent, cars etc. There

were no any specific event when the parents "accepted the Offer"; conversations about selling property and moving to Canada were going on since 2004. On the contrary, it's the Plaintiffs who accepted Alla's offer about selling all property in Russia to provide support capital, before the immigration process started in 2004. Selling property to finance their life in Canada and to pay back all debts associated with it from the proceedings was the only option, it was discussed from every possible angle, including rent-out of the St. Petersburg apartment as an investment (see email they call "Offer"), and Plaintiffs would never started the immigration process for parents if there were no such agreement in the family. The "verbal agreement" about selling Russian property in principle was made in 2004 before the Plaintiffs signed the Sponsorship Agreement and renewed in 2008 when the actual value of the property became known and it became possible to estimate more or less realistically the parents' budget (see email they call "Offer"). It's not a "proposed" budget, it's just an estimate of what they could afford based on the best of Plaintiffs' knowledge in January 2008.

8. In response to paragraph 20, the Loan Agreement between Family Members was signed in writing by three reasons:

    a. Based on the fact that Valentin is not actually Svetlana's farther, and being well familiar with him during 30 year of marriage to his step-daughter, Pavel never trusted him and always expected a move like this one happening now;

    b. A lot of things happened since January 2008 when "the Offer" email was send, and especially since 2004 when the immigration process started, including the purchase of a new house in Innisfil in July 2007 or stock market crash in August 2008.

    c. CRA requirement. The Plaintiffs won't be able to file 2008 tax returns neither for themselves nor for parents if the Loan Agreement was not made in writing and signed.

It was translated for parents in writing, and they still should have a copy of the Agreement in their records with the Russian translation attached. Alternatively, if they lost it or don't want to show, the Loan agreement basically repeats

the terms of the email in Russian the parents refer to as an "Offer", which are still valid despite of other things changed, so they were completely aware of what they were signing for. The agreement was requested by CRA for review in 2009 (proof – CRA request for the documents and CRA confirmation with the approval).

9. In response to paragraph 24, apartment was not just offered but actually rented (Rental application, letter about additional parking space and invoice from Park Property Management as a proof) while parents still were in Russia in preparation to leave (April 18, 2008). The floor plan of the apartment exactly as the rented one was sent by email (email as a proof) and approved. A few days before parent's arrival the Plaintiffs visited the Builder's (Pratt Homes) office in Innisfil and were notified that delay in closing date (normally a year or more) was not expected and in August 2008 the family could move in. The parents saw the model of the house during their previous visit in 2007 when the Purchase agreement was already signed and the initial deposit made by the Plaintiffs, saw the building lot, the lake and neighbourhood, liked everything, and asked Plaintiffs to

consider their accommodation in the Plaintiffs' new house close to the Lake Simcoe instead of the rented apartment in the city. Plaintiffs agreed, but it was already too late to cancel the rental agreement without losing the last month deposit. Parents promised to pay the loss back from their proceedings after selling property in Russia. The parents knew at the first place that eventually the Plaintiffs would move in the house, only the exact date was not known because Plaintiffs' daughter, UofT student, was living with the Plaintiffs in Etobicoke apartment rent-free.

10. In response to paragraph 25: Neither Alla nor Valentin would be qualified for mortgage not having any Canadian credit history in 2008 which means that they would have to spend the cash on the house. If the Defendants spend most of their cash on a house, what would be the source of their income? Plaintiffs never intended to spend Defendants' capital on the house, never did that, never told them that they did that, and never intended to include them in the title.

The Plaintiffs have no knowledge what "pension fund" the parents are referring to. By the best of Plaintiffs'

knowledge, in parents' age, being retired, they are not eligible for any Canadian pension until they live in Canada for 10 years, i.e. till June 14, 2018.

The entire paragraph 25 is simple nonsense.

11. In response to paragraph 26, the new house always was Plaintiffs' primary residence despite the fact that they spent only 2 days per week there during the first year. The reason was the daughter Anastasia, UofT student, who lived with the Plaintiffs in Etobicoke apartment rent-free till May 1, 2009. Once she moved out, the Plaintiffs moved to their primary residence permanently as soon as possible to avoid countless problems caused by the parents living "independently". It was mutual family decision, and the only possibility at the time.

12. In response to paragraphs 27 and 59: both paragraphs are outrageous lie.

a. Parents never lived on their pension, even when they lived in Russia. But they always lied about their pension, even when they lived in Russia. They lied to Plaintiffs, to their legal representatives, to

Ontario Works, etc. Proof – bank and credit card statements for the period 2005-2011 and the letter from Fernandes Paralegal Services of Apr 23, 2012.

b. The truth is that the Russian pension was deposited to the joint bank account opened by Alla and Svetlana together back in 2005 since their arrival to Canada in June 2008. Alla was visiting Plaintiffs in 2005, and at the bank appointment signed the contract (proof – CIBC agreement about chequing account with Alla's signature); it was not possible to open bank account in CIBC for Alla without Svetlana as a co-signer because at that time Alla was not a Canadian resident, just a visitor. Alla was supplied with the convenience (debit) card which parents used for several years after that to withdraw cash from this account in Russian ATMs (proof – bank statements for 2005-2008). In 2008 after their arrival to Canada Valentin was added to the account and supplied with his own convenience card.

c. To deposit the Russian pension an individual must send the application (in Russian language, can be

downloaded from the website of the Russian Consulate in Toronto) to the Russian Pension Fund, with the void cheque or equivalent information. Both applications, for Alla and Valentin's pensions, were filled by them and sent to Russian Pension Fund in 2008 upon their arrival to Canada, and pension always was transferred to this account till the end of 2011 when they left the house. Bottom line is that the parents had access to their pension funds at all times since December 2005 when the account was opened, till now, and were well aware of that account because were actively using it since December 2005.

d. On December 15, 2011 the Plaintiffs received a letter from Deborah L. of WALL-ARMSTRONG & GREEN Barristers, Solicitors & Notaries with the note that Alla's quarterly instalment of Alla's Russian pension was "inadvertently deposited" to Plaintiffs' bank account. Again, it was the same CIBC account (joint with Svetlana) opened with Alla back in 2005. After the parents left the house they changed the bank for Valentin's pension but

did not do the same for Alla's. Plaintiffs have no knowledge about the reason why the parents did that but there may be only two: either they are not able to manage their finances or were creating mess on purpose trying to make as much trouble for Plaintiffs as they could (proof – the letter).

e. On December 23, 2011 the Plaintiffs responded to Wall-Armstrong & Green with the detailed explanation of the account issue and VOID cheque of the account (proof – the letter).

f. Parents withdrew Alla's pension on December 20, 2011, even before the response letter was sent out by Plaintiffs, which proves that they had access to the account and their funds which they were demanding from Plaintiffs through a law firm, all the time (proof – CIBC bank statement).

g. March 2012 instalment didn't come to CIBC joint account any more which means that parents somehow finally managed to transfer Alla's pension to the new bank too, without any action from the Plaintiffs.

h. Every quarter during 2008-2011, when pension was deposited to CIBC joint checking account, every time Plaintiffs asked the parents what they want to do with it. The usual option was to transfer it to the high interest saving account in PC Financial, opened on Pavel's name in 2007 which Plaintiffs didn't use at a time. The reason was because by the mutual decision the pension had to be kept separate from all shared expenses parents paid from the joint CIBC chequing account, because they spent it completely on their discretion, but CIBC account was used exclusively for the parents' portion of shared expenses.

i. For parents' convenience, they were provided with the supplementary TD Visa card ("green Visa") and were instructed to use it pay for their private expenses. This TD Visa Rebate credit card with the limit $7000 covered almost an annual portion of their Russian pension (proof – TD Visa statements), and as they never kept more than 2 or 3 instalments, they always had access to their pension funds through this credit card. Parents

used TD Visa exclusively, and only for their own (not shared) expenses, mostly entertainment, medical expenses, gifts for friends and relatives in Russia. The balances of TD Visa Rebate card were paid by Pavel from the saving account were the remaining pension was kept. Proof: statements for TD Visa Rebate 2008-2011. The most interesting statements are the ones for July and August 2011 when Valentin's daughter was visiting; they immediately give the best impression how they spent their pension. Plaintiffs never expressed any concern about how parents spend their pension, despite the fact that being in Russia the parents lied about their pension (told Svetlana it was only $200 when in fact it was $600 per month), and despite the fact that by accepting the email sent by Pavel in January 2008 as an "Offer" they actually promised to contribute all their pension into shared household expenses.

j. From time to time parents requested cash withdrawals from the saving account which were provided for them by Svetlana on usually the same

day or day after that. During August – October 2011 parents requested to withdraw unusually a lot of cash, now Plaintiffs know that they were preparing for the "safe leave" or whatever they call it. Cash was required because there are no records of spending after it's withdrawn.

13. In response to paragraphs 28 and 60, part about the vehicle is true. The parents used the leased car almost exclusively (proof – mileage in the maintenance invoices during the time when parents and Plaintiffs lived together and another one when parents left the house and the car stays in garage).

Monthly lease payment for the car is $355, insurance is about $100, on top of that maintenance required to keep the manufacturer's warranty, - all these expenses suffered by the Plaintiffs now: the car stays in the garage but the Plaintiffs cannot give it to the parents because of lease and insurance contractual obligations for all drivers to live on the same address. The parents were well aware of those requirement when were leaving the house.

Statements about groceries are false. Family budget for groceries was about $1500-1700 per month for 4 people living together, was charged to CIBC Dividend Visa which both parents had too ("red Visa"), with the limit $8500 (proof – Plaintiffs' records and CIBC Visa statements for any random period in 2008-2011), and paid by Plaintiffs as shared expenses. The parents could spend on the groceries for the entire family as much as they wanted and could buy whatever they wanted, which they did. On top of that, they always could buy whatever they wanted for their own consuming from the separate TD Visa Rebate ("green Visa"). Gas and other auto expenses were charged to CIBC MasterCard with Petropoints and paid by the Plaintiffs (proof – Plaintiffs' records and statements of CIBC MasterCard for any random period 2008-2011).

14. In response to paragraph 31: First statement is outrageous lie. Proof with a lot of witnesses, greeting cards, Valentin's emails, hundreds of family photos for 2008-2011. Second statement is true: Defendants moved out on Monday October 24 with the police escort.

The question remains unanswered what the police escort was for.

15. In response to paragraph 32,

a. Plaintiffs never signed off any agreement guaranteeing 10% of annual investment return. 10% mentioned in the email Defendants refer to as "Offer" looked realistic in January 2008, which clearly in plain Russian states in the first sentence of that email. See response to paragraph 18 for more details.

b. In 2008-2011 Plaintiffs actually provided much more than 10% (16-18% annually) and can prove that with bank and credit card statements and CRA assessments of Nikityuks. 2011 tax return was prepared by Nikityuks' book keeper. Nikityuks also were well aware of all their tax returns, and this fact can be easily proven at least for the 2010 year because Valentin invited his daughter for a visit and had to provide the 2010 CRA assessment in the application for visitor's visa.

16. In response to paragraph 33, there is no such thing as "Savings" of the Defendants. There is capital brought by them, which Plaintiff Pavel invests on his own discretion (including but not limited to the possibility of investment in real estate), according to the Loan Agreement between Family Members, to generate regular income for the Defendants. According to the same agreement, cash out of the loan is not specified because the loan is designated for life time support of the Defendants. If the Defendants want to set aside the Loan Agreement they must pay off all their debts to the Plaintiffs first, return all interest paid to them in 2008-2011 and then to settle the payment plan with the Plaintiffs who will insist on a collateral enough to cover the possible social assistance the Defendants would receive by the end of the Sponsorship term (June 14, 2018), because the social assistance will be eventually charged by the Government back to Plaintiffs as sponsors, and Plaintiffs don't intend twice for the same.

17. In response to paragraph 34: allegation is ridiculous. All financial documentation and records of the Plaintiffs are in perfect condition, are kept in the

basement office in the clearly labelled folders, and also in electronic format on the hard drive which is available through LAN and can be accessed at any time from any computer in the house. Living together with the Plaintiffs, the parents had their own computer connected to the LAN and were able to access any documentation at any time. Basement office doesn't have any door locks and also could be accessed freely at any time, including times when Plaintiffs were not at home. The only problem is, as the Defendants admit proudly, they "don't speak, don't read, don't write and don't understand English" despite of 4 years of English classes in YMCA, but this issue obviously is not under Plaintiffs' control, so is the fact that all documentation in Ontario must be processed in English.

After the Defendants left the house, they obviously cannot access the office folders and LAN any more, but all financial documentation required for Defendants' 2011 tax return was forwarded to them by registered mail in time, received by them and passed to their book keeper, who contacted the Plaintiffs with some questions a few

times before filing the tax return, and all questions were properly addresses by the Plaintiffs.

18. In response to paragraph 35, the whole "abuse" story is a lie to justify the attempt to scam the Canadian social assistance system.

19. In response to paragraphs 36 and 37, the Plaintiffs will strictly prove all losses they claim prior to Trial with a lot of documents, witnesses and material evidences. Limitations Act, 2002 the Defendants refer to in their Defence Claim is not applicable because the cause of action happened on October 17, 2011 when the Defendants left the house and later illegally applied for social assistance.

DEFENCE TO COUNTERCLAIM

20. In response to paragraphs 43-44: Email was not an "Offer", just a regular email between family members with the explanation how some people live in Canada and what are possible options of getting extra income for parents to live on.

There was another verbal offer which was accepted by Plaintiffs (Defendants by Counterclaim) in 2004 when the

Sponsorship Agreement was signed by both parties. Nikityuks were desperate to come to Canada for medical care covered by OHIP because they could not afford the corruptive Russian medicine where an individual have to pay cash to every doctor she deals with; sometimes even to receptionists to get to the doctor.

The Plaintiffs could not afford 10 years commitment in 2004 with Pavel the only person working in the family for approximately $50000 per year. Svetlana could not afford full time job back then because at any time she could be called to Russia for medical emergency, and it happened. Basically, Svetlana gave up her career in Canada to be able to take care of the parents.

Alla asked back in 2004 would it help if they sell all their property in Russia and give all monies to Plaintiffs (Defendants by Counterclaim). As it was a matter of life and death back then, Plaintiffs promised to think about it and after a few months of thinking agreed to provide life time support for parents in exchange of unknown at that point lump sum amount of proceedings from property sold in Russia.

Alla and Valentin also asked for some financial help because simply could not afford expensive cancer treatments, immigration expenses, document translations, air tickets etc. and promised to pay back all those expenses from the property proceedings.

Part of the property (25% share in Nikityuks' 1 bedroom apartment), by the way, was Svetlana's. Till age 17 she lived with her mother in a room in a multi-owner apartment, then Alla married Valentin who lived in another apartment; they moved together into 1 bedroom apartment which was registered to all 3 of them. Svetlana was against the deal and begged her mother to leave the room for her and to move in with Valentin alone into his place, but she didn't come out of age at that point and they simply ignored her. It was promised though that 25% of the apartment always would be on Svetlana's name.

In 1996 Svetlana and her husband Pavel immigrated to Latvia and left Alla with general PoA, so Alla and Valentin could do most of operations with Svetlana's property on her behalf while she was out of country.

In 2003 Svetlana and Pavel immigrated from Latvia to Canada.

In 2004 the Sponsorship Agreement has been signed. Knowing Valentin personally, Pavel would never agree to sponsor Svetlana's parents if they didn't offer to sell all their property in Russia and to secure the 10 years sponsor's commitment with the proceedings.

In 2007 the Plaintiffs (Defendants by Counterclaim) purchased a new house from Pratt Homes; mortgage was pre-approved by TD Canada Trust (proof – purchase agreement and pre-approval notice). Plaintiffs (Defendants by Counterclaim) had enough money for down payment on RRSP and on brokerage account (proof – RRSP statement and CIBC Investor Edge statement).

In 2008 Nikityuks sold the property. Svetlana unregistered from the apartment through the Russian Consulate in Toronto to let the parents to complete the transaction (proof – copy of Svetlana's internal Russian passport with registration and unregistration stamps and dates, and email correspondence of Svetlana with her real estate agent in St. Petersburg). Nikityuks would not be able to sell the apartment without Svetlana's

authorization because 25% share of the property belonged to her.

Later in 2008, when Nikityuks arrived to Canada, Plaintiffs (Defendants by Counterclaim) decided not to use their RRSP for down payment because at that point had enough cash available otherwise, and deducted about $50000 USD from the Russian property proceedings for the down payment for the house. It was perfectly logical: the approximate selling price for the apartment was $200000 USD; 25% of that is $50000. Svetlana used her share in Russian property to pay the down payment.

25% share in the apartment is the reason why it clearly states in the "Offer" email that the size of investment portfolio is approximately $200,000 and not $260,842.71. The full transferred amount $260,842.71 USD existed in the portfolio only temporarily, until the Plaintiffs (Defendants by Counterclaim) decided to use Svetlana's share for the house down payment and to deduct from the Loan principal. Nikityuks were well aware of the transaction and completely onboard with

this decision, and initialled the 2008 statement of the Loan principal confirming it.

Responding specifically to paragraph 43e, $200,000 in the "Offer" email obviously has the same level of "hypotheticality" as 10% of risk free annual interest and all other numbers and statements in that email.

21. In response to paragraph 47: Cash belonging to Defendants (Plaintiffs by Counterclaim) always passed through a separate account (CIBC account). That account was known to Defendants (Plaintiffs by Counterclaim) since December 2005 when Alla was visiting. Valentin was added to the account in 2008 upon his permanent arrival to Canada. Account was used to withdraw cash in Russian ATMs, to transfer their pension and later to pay their share of household expenses. It would be strange if the Plaintiffs (Defendants by Counterclaim) told the parents that they cannot open an account "because of their immigration status" at the same time when the parents already had the account opened, knew about it and actively used it. As to the transfer of the proceeding from the sold property, it was a part of the verbal agreement of 2004: parents transfer

Russian property on the name of the Plaintiffs in exchange of life time support in Canada. If they did not, they would never be able to immigrate to Canada.

22. In response to paragraph 49: All made up. Plaintiffs have no knowledge where $150000 number comes from, and never told Alla and/or Valentin that they are in the title of the house. The house was purchased in 2007 when nobody even knew that they would be permitted to immigrate. Moreover, because of both Alla and Valentin's health problems the Plaintiffs were expecting the rejection of the immigration application because there was a big risk that Nikityuks would not pass the medical exam.

Plaintiffs have no knowledge what is "pension fund" the parents have in minds and how they see it: they never worked for Canada and cannot have Canadian pension till 2018 (after 10 years in Canada). How can anybody invest in their "pension fund"?

There were no any "verbal reports"; all financial reporting always was done in writing and available to Nikityuks at any time on computer through LAN, and/or filed in clearly labelled folders in the basement office.

23. In response to paragraph 50: irrelevant. The Plaintiffs signed the Purchase Agreement on the house in July 2007 with Pratt Hansen Group Inc.; Plaintiffs have no knowledge about Crisdawn Construction Inc.

24. In response to paragraph 51: twisted. The Plaintiffs tried to show Valentin many times how to use online banking to pay bills and transfer money but it was a waste of time because he could not even remember a password. It's also obvious that no one can navigate a web site if he/she does not understand the language the website is designed in. After 20 or 30 attempts, starting from parents' arrival to Canada, the Plaintiffs gave up the attempts to teach them. The only possible solution was to manage Nikityuks' bills themselves, which Svetlana did having online access to their account (joint with her) and PoA.

25. In response to paragraph 52: PoA were signed in the Russian speaking firm and notarized. All text was translated for Nikityuks; the purpose of the document was explained in all necessary details. Russian speaking employee of the law firm Aurika Karasseva, who translated, explained and signed the PoA as a witness,

will be called to the Trial. Plaintiffs' presence was not even required during the procedure.

26. In response to paragraph 53: To the best of Plaintiffs' knowledge, it's impossible to open a bank account for a person without physical presence of the person even if the opener has a PoA. Any bank clerk can testify that. Nikityuks were present on all bank appointments and all information about their bank accounts was translated for them in a presence of a witness (bank clerk).

27. In response to paragraph 54: All documents the Nikityuks had to sign always were translated for them. Moreover, it's a lame excuse: Nikityuks are adults and nobody ever forced them to sign anything if they didn't want to or didn't understand. Plaintiffs, for example, never sign anything until they read carefully all fine prints. But in Nikityuks' case there were no any fine prints, all straight and clear, like "if you want your pension to be transferred to this account you must sign here", only in Russian.

28. In response to paragraph 55: The Defendants must decide what they actually want: to eat or to be included

in the title of Plaintiff's house. Nobody used the monies the Defendants called "Savings" to purchase the house. It is Plaintiffs' house and the Plaintiffs used their own money and mortgage to purchase it.

29. In response to paragraph 56: If the "Retirement Agreement" the Defendants refer to, is the email they call "Offer", the Plaintiffs actually paid way more than 10% annually. But email in fact is not a "Retirement Agreement", and not even an "Offer". The only official document the Plaintiffs base their financial relationships with the Defendants is the Loan Agreement between Family Members.

30. In response to paragraph 57: not completely true. The parents temporarily lived in Plaintiffs' apartment because they liked the new Plaintiffs' house when they saw a model during their previous visit, asked the Plaintiffs to accommodate them there, close to the lake, on the fresh air, instead of rented apartment in the city, and were waiting for the builder's closing date. The separate rented apartment was cancelled by their request, and the last month deposit was lost. But they didn't live in the living room: most of the summer 2008

Plaintiffs' daughter Anastasia was out of Canada playing beach volleyball on the World Tour, and Alla slept in her room in Plaintiffs' 2 bedroom apartment. Valentin slept in the living room separately.

31. In response to paragraph 58: It definitely was not "recreational" property because every weekend Plaintiffs had to take care of the parents: clean up the house, assemble furniture, setup appliances, buy groceries for the next week etc. On top of that, 2-2.5 hours in the 400 highway traffic every Friday afternoon and 2-2.5 hours in the traffic back to Etobicoke every Sunday.

32. In response to paragraph 59, see response to paragraph 27.

33. In response to paragraph 60, see response to paragraph 28.

34. In response to paragraph 61: 2009 was the year when TFSA accounts were introduced by the Government. Being responsible for parents' finances (because as the Defendants admin, they accepted the "Offer"), and with the purpose of minimizing tax on investment income, Plaintiffs arranged an appointment

with TD Waterhouse representative in Alcona TD bank office with the purpose to open TFSA accounts for parents which would give an extra $10000 capacity per year for tax free investments. Two self-directed TFSA accounts were opened in TD Waterhouse – one on the name of Alla Nikityuk, another on the name of Valentin Nikityuk, with trading authority option for Svetlana Danilova, and PoA was registered at the same time. Both parents were present at the appointment and signed all paperwork themselves after the accurate and complete translation what every signature is for (there are 4 or 5 required when you open a registered account). The bank representative who did the paperwork can testify that no bank policy has been violated during that procedure. By the best of Plaintiffs' knowledge, it's even not possible in Canada to open a registered bank account without physical presence of the owner.

35. In response to paragraph 63, item by item:

a. Basement. Pavel works most of the time from home and after moving into the house set up a computer office at the 2nd floor loft. Pretty soon Alla started to complain to Svetlana that they were

shy to use their bathroom across the hall when Pavel was working. In 2010 the Plaintiffs hired a contractor who finished the basement and Pavel moved office downstairs. The reconstruction cost more that $30000 and was financed completely by Plaintiffs. Nothing to do with parents "savings". Proof with bank and credit card statement.

b. Fence. More and more neighbours were moving in new houses around, and in summer 2010 the parents started to complain that the neighbours' kids were all over the place and they could not stand the noise and the fact that sometimes they were running and playing on the house's backyard, and that the fence was desperately required. The Plaintiffs convinced them to wait till next summer because already spent a lot of money on construction in 2010. Next summer the complaints were escalating more and more and the Plaintiffs hired a contractor who built the backyard fence. The construction cost was more than $2000 and again was financed completely by Plaintiffs. If the parents didn't insist on the urgency the Plaintiffs

could save hundreds of dollars because Pavel is handy, has construction experience and could build the fence himself on weekends. Nothing to do with parents "savings". Proof with bank and credit card statement.

c. Gazebo. After the fence was built, the parents begun to complain that backyard became hot because with the fence there is no breeze and the south side of the house is very sunny. Now they needed some kind of shade like gazebo or pergola to sit there and enjoy themselves. In summer 2011 the gazebo kit was purchased in Costco for about $5000 and assembled by Pavel with the help of Plaintiff's daughter Anastasia and her boyfriend Niklas Kaspers (now husband). At the same time 6 comfortable outdoor Muskoka chairs were purchased at Lowe's, assembled and stained. All the purchases were completely financed by Plaintiffs. Nothing to do with parents "savings". Proof with bank and credit card statement.

36. In response to paragraph 64: For the record, Svetlana arranged and negotiated parents' admission in

YMCA at every step to help them to integrate into Canadian society, proof – email correspondence with Yana Skybin, YMCA settlement counsellor at the time.

37. In response to paragraph 65: Lie, which will be proven by pictures, greeting cards, emails sent by Valentin to relatives and friends in Russia, witnesses.

38. In response to paragraph 66: There were no any abuse and no such thing as "Savings". What the Defendants call "Savings" was in fact investment into family business in the form of Loan Between Family Members for the purpose of generation investment income for life time support without cash-out option. The form was suggested by CRA as a legal way to make the interest payments tax-deductible for Plaintiffs. In 2009 CRA audited Plaintiffs' tax return and approved the Loan agreement and the entire scheme of financial support (proof – CRA request for documentation and CRA assessment approving 2009 tax return after the audit).

Russian pension was for private Nikityuks' use only, for things like clothes, entertainment, gifts and medicines. Gas was paid by Plaintiffs as shared expenses till June 2011 (proof – electronic statements of CIBC MasterCard

for any random period). Starting from June 2011 Plaintiffs suggested that Nikityuks pay for their gas because after 3 years of English classes their English didn't improve at all but as the classes were more than 20 km one way from home and they were attending them on a daily basis, this part of gas expenses must go from their pension, as it was not in category "shared expenses" any more but moved to category "entertainment". Internet, as well as home phone and cable TV including Russian programming included in the package especially for Nikityuk, were always paid by the Plaintiffs as shared expenses (proof – Rogers's bills and electronic CIBC Visa statements for any random period). Plaintiffs have no idea what "computer use" fee Nikityuks are referring to. There was no any computer use fee.

Nikityuks never demanded any accounting reports. Once a year before tax return, as per Loan Agreement, electronic statement for the principal of the Loan was printed out and provided for them but they never paid attention or express any interest or understanding in those data. On the first sign they wanted to talk about money the family meetings were gathered and all

information about current family incomes and expenses was provided for them in table and graphic formats. For 3 years (Jun 2008 – August 2011) they were completely happy with this approach and didn't ask a question. None of those conversations triggered any "abuse" in any form.

Moreover, all financial documentation and records were available for Nikityuks at any time in 2 forms: 1) electronic at the shared drive on the media server accessible through the LAN, directory "Invoices & Statements" right next to "Photos" Valentin was well aware of; 2) in paper format in the office, perfectly organized and filed in marked folders, like "Alla & Valentin TFSA 2009". All records are in perfect condition and always were, and if Nikityuks were interested at least a little bit they could get familiar with all family finances at any time they wanted, with or without Plaintiffs' help. There are no locks on the doors, and there were plenty of times when Nikityuks were home alone and could get familiar with any documents they wanted without any ask.

67 a. What was in that mailbox to keep it as a secret from a family member? Hydro bill? They don't understand a word in it anyway, so why would Plaintiffs restrict parents' access to the mailbox and, more important, how? As a matter of fact, the community mailbox in the new neighbourhood of Rankin Way became available only on or about December 2009; before that, since August 2008 it was Nikityuks' duty (the only duty!) to pick up all family mail at the post office. After that when the builder actually set up the mailbox, there were two keys to the mailbox: one for Nikityuks, and the spare one which always was kept at the bookshelf right next to the entrance door.

67 b. Lie. On countless occasions, any family friend who visited the family can testify that they always were treated with love and respect. Even Yana's mother can do that.

67 c. Lie. Proof - hundreds of photos taken by Valentin on all kinds of Ontario festivals they attended in 2008-2011, with different people Plaintiffs even don't know. Tours with "Irina Travel" – one was a Christmas gift from Plaintiffs. A big slideshow with pictures taken by Valentin

will be demonstrated as evidence. Moreover, Plaintiffs actually introduced the parents to all their Russian-speaking friends and some not Russian-speaking. Most of them listed as possible witnesses. At the Trial the parents will be requested to tell in details about their typical day and tell at what point of that day Plaintiffs discouraged or obstructed them and how exactly (from 9AM till 2PM they spent in YMCA almost every day).

67 d. At the last day, on October 17 before parents left the house, Pavel suggested that it would be a good investment for the family if parents had a life insurance with critical illness and final expenses covered. The reason of this request was that at the time both parents were in good health shape and all they had to do was to answer a few simple questions by the phone and then to take a medical exam. Plaintiff even had already negotiated a very reasonable quote for both of them. For the record: both Plaintiffs are insured and don't understand the strong resistance Alla and Valentin expressed on the matter. Probably the parents already knew at that point that they were going to apply for welfare and if they do the welfare automatically turns on

many benefits. They didn't take into account that though they are not eligible for welfare.

67 e. This is the most ridiculous reason to have LAN at home Plaintiffs ever heard, making a professional engineer Valentin completely technically incompetent. How Valentin expected to send and receive emails without LAN setup in the house, at all?

Both Plaintiffs are IT professionals. Pavel works for IBM as full time Senior IT professional, responsible for computer networks consisting of thousands computers of different kinds, of such customers as Rogers, Manulife Financials, TD Bank or Bank of Canada. Computers and computer networks are just Plaintiffs' regular tools to do pretty much everything. There were more than 10 computers in the house, including Valentin's one, and the LAN is a must thing to have, to share media, documentation (including financial), to make regular backup copies, and hundreds of other reasons. There are many more useful and exciting things to do through the LAN than to "monitor Valentin's emails". Pretty much every one of those emails, received or sent, was a big family event and was read out load and didn't contain

more secrets than "yesterday we went to Collingwood and the weather was good", or "Lena and Ira just planted new flowers". Plaintiffs and Defendants lived together as a family of four and enjoyed those communications all together. When in September 2011 a thunderstorm caused power outage, Valentin's computer was improperly turned off and the hard drive was completely damaged. Pavel spent several hours of his private time reformatting the hard drive, reinstalling the operating system and all Valentin's favourite software, including games, emails and photos from the backup copy. If there were no LAN in the house Valentin would lose all his pictures, emails and other stuff he keeps on his computer, including that "Offer" email he keeps referring to.

If the Plaintiffs did need to monitor parents' email they could do that at any time from any place in the world even without LAN or Valentin's computer being turned on, because Pavel is the owner of the Internet domain webprofit.ca and can, may, and must create, remove, block and unblock any email box under this domain and off course to monitor all emails. It's Plaintiff's

responsibility as a business owner to make sure that no illegal action initiated by his email users, including but not limited to terror threats, religious or sexual abuse, child porno, downloading of unlicensed software etc. As a matter of fact, email address valentin@webprofit.ca has been blocked and frozen at webprofit.ca internet server by Pavel next minute after it became known to the Plaintiffs that the parents committed welfare fraud, to make sue that all Valentin's email correspondence left untouched in case if some evidence needed to be collected for the authorities at some point, so nobody can remove any message.

39. In response to paragraphs 68 and 69: Lie. Almost every evening the parents were watching their favourite Russian TV show "Malakhov" where people yell at each other, like a mother who says that her daughter's husband is an idiot and they both stole a wallet from her to buy drugs and in response the daughter yells at her mother that she is crazy etc. – a lot of ridiculous and very noisy stuff, something new every evening; everything was very entertaining for the parents, especially Alla who spent hours "glued" to the TV and

watching it, and next day the Plaintiffs found her using some phrases picked up from the yesterday's show, in the real life. The Plaintiffs were forced to listen that cat concerts on TV almost on every day basis, usually an hour or more every day. When they could not take it any more, they nicely asked the parents to move to basement's TV, so it would not be so annoying. Plaintiffs guess that the parents picked up ideas for their "abuse" accusations from that show. Anyway, nothing like they describe ever happened in the family.

40. In response to paragraph 70, Plaintiffs don't have knowledge about any "personal safety plan" but state that if that plan ever existed, the reason was to simply justify the illegal welfare application, walk around the Sponsorship Agreement, and to avoid 10 yrs lines for social housing in Barrie. Plaintiffs didn't know that Valentin had an "emergency cellular phone" until parents left the house on October 17, 2011 and Valentin proudly demonstrated it.

41. In response to paragraph 71, Plaintiffs didn't physically prevent parents to leave the house; but they prevented them from opening the garage door with a

remote garage opener button, by taking it from the shelf where it was usually attached to, because parents tried to leave the house on Plaintiff's Honda Civic 2009. The Plaintiffs insisted on returning the car key saying "you may not leave on our car", and then Valentin demonstrated his "emergency cell phone" and told that he just presses the button, and in a few minutes the Police are at the door. Pavel immediately asked him to press the button and even offered his help to dial the number, but Valentin was confused, did not call anybody and kept shaking with his "emergency phone" before Plaintiffs' faces.

After a few minutes of arguing Alla finally told him "Return the key, it's their car. I don't have a daughter any more.", and once the key was returned the parents "successfully" left the house with a couple of shopping bags filled with clothes and probably some other stuff. Even if the "emergency cell phone" was not working, Valentin had his regular Rogers cell phone on the family plan paid by the Plaintiffs, which always was working and which he dropped at the floor by Pavel's feet when they were finally leaving. The home phone was also working,

and one of the home phone handsets is right next to the entrance door. None of those possibilities has been used because there were no reason for that, and Valentin was well aware that if he called 911 or emergency number without any reason he would be in trouble.

Now the Plaintiffs have second thought that back then they probably should have let the parents to leave the house on the new car. Plaintiffs didn't know that the parents were simulating abuse back then, and headed to the Barrie's Women Shelter, otherwise they would allow them to take the car just to make the whole thing look ridiculous when the Police found the car by the shelter.

42. In response to paragraph 73: Cheque for the period October 18 – November 30, 2011 was sent through YMCA on October 18 and delivered on November 2, 2011 (proof – copy of letter to YMCA with the postal notification); parents tried to cash it only on December 5, 2011 (proof – Scotiabank statement), more than a month after they received it! They didn't cash it before because their application for welfare was in progress at that time and they intended to hide their income by all means. Once the application was approved, and to the

best of Plaintiffs knowledge it happened in the first decade of November 2011, parents decided that nothing stops them from cashing the cheque any more. They didn't know that in the meantime the Plaintiffs as their sponsors were advised by Ontario Works that parents applied for welfare and received funds in the amount covering the same period of time. As all government assistance eventually is charged back to the sponsor, the Plaintiffs cancelled the cheque right after Ontario Works notification, because they don't intend to pay twice for the same.

The parents' debt in the amount of $1644 received from Ontario Works illegally in 2011, was paid by the Plaintiffs by the request of Ontario Works in December 2012 (proof – requesting letter from Ontario Works, copy of cheque and bank statement)

43. In response to paragraph 74: True, and the police car was parked by the house for a few hours without any reason. In a new neighbourhood people pay extra attention to what happens around, and some of them still avoid Plaintiffs like they are some kind of criminals. Damage to Plaintiffs' reputation will be included into the

separate Claim of Defamation of Character against Valentin Nikityuk. The police officer who assisted in this action was engaged by Yana Skybin and will be included in the list of witnesses.

44. In response to paragraphs 75 and 76: The TFSA accounts for Alla and Valentin were opened in 2009 with the purpose of increasing the tax-free portion of family portfolio by $10000 per year ($5000 per person per year), and therefore to increase parents' income. Both accounts were funded in October 2009 by Plaintiffs in the scope of Loan Agreement between Family Members. The securities were hold on the accounts for more than 2 years and were controlled by Plaintiffs who had trading authority signed by Alla and Valentin in April 2009 at the bank appointment. Alla and Valentin never expressed any interest in any account they opened with the help of Plaintiffs, where, what for and how to access or control them, although actually they always had full access and authority, including online and telephone banking.

When the parents started to close all their accounts the Plaintiffs opened to support them in different financial institutions, without any explanation or knowledge about

a purpose of the accounts, the Plaintiffs realized that they can lose a part of the portfolio and removed their assets from parents' accounts.

Plaintiffs were not aware that parents were going to revoke PoA and didn't even suspect that because it would be a meaningless and useless action, but at the moment of the TFSA transactions PoA was still valid: sell operation takes 3 business days for settlement, was started on October 20, 2012 and completed by TD Waterhouse on October 25; withdrawal operation takes 5 business days for registered accounts, was initiated on the same day October 20 and completed by TD Waterhouse on October 27, 2011. PoA was revoked on October 24 when parents returned for their belongings with the police escort; all operations were already in progress at that moment. Proof with TD Waterhouse statements provided in the AFFIDAVIT of the Defendant Valentin Nikityuk in the CPL Motion Record.

Plaintiffs never used PoA revoked on October 24, 2012.

45. In response to paragraph 77: The Plaintiffs still honestly think it's the case, especially after the latest developments. The parents could not take care of

themselves even in Russia, demanded monthly support from the Plaintiffs in the amount of $400+, even lied about their pension. In Canada the parents don't understand what they are doing, commit fraud, listen and trust random strangers they meet on Ontario festivals, YMCA classes and all kinds of other places, and make false accusations against people who love them and don't want any bad things happen to them, still have no idea about managing their finances (tons of proof of that like systematic over drafting of their CIBC account), and stubbornly try to achieve things which are not possible even from the common sense perspective. As a result, they hurt themselves, and Plaintiffs collected records with a long list of episodes to prove it, coming from the times when the entire family still lived together. At the Trial the parents will be requested to provide their comments about those episodes, and it will be obvious to everybody that their mental capacity may be not completely adequate. If the parents voluntarily agree to assess their mental capacity, the Plaintiffs would be willing to pay for the test. To the best of Plaintiffs' knowledge, the test can be arranged in their native language.

46. In response to paragraph 78: True. The fraud parents committed was reported immediately and by all means: phone, email and fax, and was stopped while it didn't go too far. All damage control was done to keep the parents from criminal charges. The Plaintiffs did their best to cut parents from welfare because with $37000 annual income they are not eligible for any sort of social assistance, even despite of being "abused" or not being "abused". There are a lot of people over there, which do need social assistance. Plaintiffs, as loyal Canadian citizens, don't want to be anywhere close to this disgusting shame caused by the parents and everybody who helped them in committing fraud.

47. In response to paragraph 79: All true. There were also a lot of other letters sent to Ontario Works with statements proving parents' income, and other information. In the future, according to the obligations listed in the Sponsorship Agreement, and knowing that the parents are capable of illegal actions, the Plaintiffs intend to monitor their moves very closely, being in contact with Ontario Works and other social services institutions, and in case of repeated attempt of any

illegal action every possible controls at Plaintiffs disposal to stop it will be pursued immediately.

48. In response to paragraph 80: All important terms and conditions of the sponsorship were discussed hundreds of times since 2004 when the first immigration fee was paid by Plaintiffs, and later when the parents came to Canada to visit, in person and by phone. The "verbal agreement" the parents keep referring to, was made in 2004 when the Sponsorship Agreement has been signed. The Plaintiffs would never sponsor the parents without acceptable verbal agreement that they provide enough funds to support themselves.

49. In response to paragraph 81: True, and investigation didn't find any evidence of "abuse" (because there were no any abuse), and welfare was terminated immediately.

50. In response to paragraph 82: First statement is false: Plaintiffs always were very careful during all telephone conversations with family friends and never told them things like "they are crazy". But most of the family friends are well educated people and might express their own opinion in conversations with parents

which the Plaintiffs are not responsible for. At the same time, Plaintiffs reserve the right to tell their friends and family whatever they think is appropriate at any moment simply because Canada is a free democratic country.

Second statement is true. Parents must stop making false accusations or they will be legally enforced to do so. Claim of Defamation of Character against Valentin Nikityuk will be served separately.

51. In response to paragraph 83: Plaintiffs don't recall such event and don't understand its importance or relevance.

52. In response to paragraph 84: All mentioned accounts were opened at the bank appointments with the parents presence, all important stuff was translated to them in the presence of a bank representative who can testify that none of bank policies were violated, which makes the second statement a lie.

53. In response to paragraph 85: True. Plaintiffs still don't understand why Nikityuks closed all their accounts except the CIBC account opened in 2005 where their investment interest comes to. When on October 17, 2011

Valentin was asked about joint account in Scotia Bank they closed on or about October 4, 2011, he responded "Because". It took plenty of time to make the necessary arrangements to open the accounts, to setup the accounts as required with all correct options, fees etc. Nikityuks could just revoke the PoA from all accounts and/or trading authority. One more proof that they just don't understand what they are doing.

54. In response to paragraph 86: The house was purchased by Plaintiffs way before Nikityuks came to Canada and even before it became certain that they were coming. Plaintiffs never had an intention to include Nikityuks into the title of their house, never mentioned this stupid idea to anybody including Valentin or Alla and never depended on parents so-called "Savings" to purchase (proof – Purchase Agreement with Pratt Hansen Inc., Pre-approval from TD Canada Trust Mortgage Department, bank statements and Pavel's pay stubs as a proof that Plaintiffs had enough money for down payment already in 2007).

As to the Nikityuks' so-called "Savings", it's either the house, or investment income, $200,000 is not enough to

cover both, – must be obvious for any reasonable person. If they spend all the capital to buy a house, how Plaintiffs supposed to generate life time income for them? One more proof that they don't understand what they are doing.

55. Plaintiffs specifically deny all allegations contained in paragraphs 38, 87-109 of the Counterclaim, as based on a number of twisted facts and outrageous lies. This section of the Counterclaim is fabricated by Defendants without any ground to serve 3 purposes:

a. To shift the focus from Nikityuks' failed attempt to scam Canadian welfare system

b. To drown the matter under the tons of ridiculous accusations which cannot be proven because never happened, and irrelevant documents, and to make it as difficult as possible to find the truth. Nikityuks make false statements even to their own legal representatives, which can be easily proven.

c. To make the Plaintiffs nervous, possibly to provoke a conflict and to justify the "abuse" accusations after the fact. But this never going to happen

because the Plaintiffs didn't do anything wrong and feel absolutely confident with all their litigations.

Plaintiffs consider paragraphs 87-109 as libel and perjury, and intend to press charges against Defendant Valentin Nikityuk personally because he is the one individual who is making false accusations under the oath.

"Abuse"

56. After meeting with YMCA counsellor Yana Skybin Nikityuks became educated in the well-known fraudulent scheme how to scam Canadian social assistant system. Abuse imitation was their only option to go around the Sponsorship Agreement and to avoid 10 yrs waiting lists for social housing in Barrie area. In the summer 2011 they tried to approach the Plaintiffs with the abuse imitation scheme on several occasions but were rejected strictly and decided to act on their own, being supported and encouraged by Yana Skybin, YMCA settlement counsellor. Once committed fraud applying for welfare, they cannot stop and just trying to make their case "better" by denying the obvious and lying even about the events the Plaintiffs have a strong proof about.

57. The family was well known for loving relationship. Strong proof will be presented through family photo albums, postcards signed by Nikityuks, emails sent by Nikityuks to relatives, multiple witnesses. Even the police officers and social worker involved will be called as witnesses. In the best interest of Plaintiffs was to live together with Nikityuks as a family of 4.

58. Investigation performed by Ontario Work didn't find any evidence of abuse, and could not obviously, because no abuse ever took place. Welfare fraud was terminated due to immediate interference by Plaintiffs. But Nikityuks are still taking advantage of Canadian social system spending taxpayers' money by abusing community services still accessible to them.

59. In the future, as required by Sponsorship Agreement with the Ministry of Citizenship and Immigration Canada, the Plaintiffs will continue watching Nikityuks carefully and take immediate and effective steps to stop any illegal action they try to commence.

Loan Agreement between Family Members and "Missing Savings"

60. Nikityuks did transfer $260803 US to Plaintiffs' account before their arrival to Canada in 2008. As per verbal agreement, this amount formed the principal of the Loan between Family Members and was invested into stock market on the same or next day after the arrival of each instalment, - can be proven by bank and brokerage account statements.

61. The Plaintiffs absorbed all the risks associated with stock market investments, based on a well-known fact that in long-term stock market in average provides approximately 10% annual gain. Risk-free 10% for Nikityuks was guaranteed by high qualification of both Plaintiffs, high compensation of Pavel's full time position in IBM, life and disability insurance and the Final Will of both Plaintiffs, so Nikityuks would not be left without funds even in case if something happens to both Plaintiffs.

62. The Loan Agreement was signed on paper before 2008 tax return and dated by June 14, 2008, next day after Nikityuks' arrival to Canada. Loan Agreement

doesn't have cash out option because its purpose is to generate life time income for Nikityuks. The Loan Agreement was audited and approved by CRA in 2009. The details of the Loan Agreement were verbally discussed by Nikityuks and Plaintiffs on many occasions:

a. Before the Sponsorship Agreement was signed in 2004. Back in 2004 the Plaintiffs income was limited, only about $50,000 per year, they supported dependant daughter, UofT student, and obviously could not afford 2 more adult dependants for 10 years of sponsorship. Another problem was increased monthly expenses of Nikityuks in Russia: expensive medications, significant immigration fees, Nikityuks' apartment and summer cottage renovations. Alla offered to pay back all expenses spent by Plaintiffs on Nikityuks from the proceeding after selling property in Russia. Plaintiffs accepted this offer and agreed to provide support on a monthly basis. Now Nikityuks call those amounts "gifts" which is ridiculous – being immigrants themselves, Plaintiffs worked too hard to make

regular $400-$500 gifts to anybody on a monthly basis.

As a matter of fact, Plaintiffs spent on before-Canada support of Nikityuks most of their cash they brought to Canada when emigrated from Latvia in 2003. $41000 was brought in cash from selling Pavel's apartment in Riga (Latvia); proof – form IMM5292 (Confirmation of Permanent Residence) issued by the immigration officer at the moment of crossing the border.

b. During Alla's visit in October 2005. To make support transfers easier, the joint bank account in CIBC was opened on the name of Svetlana (Plaintiff) and Alla Nikityuk (Defendant). Alla was provided with the bank debit card to access the account. For the record, it's the same bank account which was always accessible to Nikityuks:

    i. It's the same bank account from which they withdrew money in Russian ATMs in 2005-2008

ii. It's the same bank account where they instructed the Pension Fund of Russian Federation to transfer their Russian pension to in 2008

iii. It's the same bank account where their investment interest is being transferred to by Plaintiffs since 2008 till now

iv. It's the same bank account which they didn't list in the Ontario Works application when they illegally applied for welfare in 2011.

All bank documents since 2005 will be provided as a proof.

c. During Alla and Valentin's visit in October-November 2007, when it was made crystal clear to Nikityuks in their own language that:

i. Plaintiffs cannot afford to send them support on a monthly basis any more

ii. Required extensive medical treatment cannot be received by Nikityuks in Russia because Plaintiffs cannot afford ridiculously high

hidden costs of that treatment without guaranteed results

iii. Plaintiffs won't pay Nikityuks' life expenses from their own (Plaintiffs') money, but as the Sponsorship Agreement loads a 10 years commitment on Plaintiffs, Nikityuks must provide a collateral for all 10 years period of sponsorship, to guarantee that the Plaintiffs won't be in any financial trouble caused by sponsorship

iv. Nikityuks verbally confirmed that they intended to sell all their property in Russia to provide the guarantee of their financial stability. They also confirmed their intention to pay back to Plaintiffs all before-Canada expenses, as it was discussed in 2004.

d. During the uncountable telephone conversations during December 2007 – March 2008.

e. In many emails during the same period. One of those emails Nikityuks refer to, sometimes as "Promising Letter", sometimes as "Offer",

sometimes as "Pension Agreement", is actually none of those but just a regular email between family members, one among of many others, explaining how much life costs in Canada at the moment when email was sent (February 2008). It starts with wording "There are the calculations that look realistic as of today" and cannot be considered as some kind of "Business Offer" to "Nikityuks Incorporated", barely a document at all. But it does summarise some options what Nikityuks could do with their money, and all important statements of that email later were formalized in writing in the Loan Agreement between Family Members which by some reason Nikityuks decided to compromise.

63. Nikityuks admit that they verbally accepted some "offer". It was actually other way around: Plaintiffs verbally accepted Nikityuks' offer they made in 2004 before Plaintiffs agreed to sponsor them and signed the Sponsorship Agreement. The offer was as simple as that:

a. We (Nikityuks) sell all our property in Russia and give all money to you, as a gift or whatever you

would call it, because you (Danilovs) inherit everything we have after our death anyway.

b. We (Nikityuks) don't care about all money you spent on us before Canada: food, medications, renovations, immigration fees etc. because you can take whatever you want whenever you want from the property proceedings, but

c. In exchange you (Danilovs) provide us with not just 10 years sponsorship, but with life time support and care in Canada. We don't care how you do that because we don't understand English, don't want to learn anything new, especially English, and we don't know a thing about finances, but make sure that our living conditions won't be worse than we have in Russia.

After a lot of consideration that offer was accepted by Plaintiffs in 2004 and the Nikityuks' immigration process was initiated.

64. Once Nikityuks transferred the property proceedings to Plaintiffs' account and arrived to Canada in June 2008, Plaintiffs were facing a problem how to

legally make those funds not taxable. During several telephone consultations with CRA hotline the way was found: to declare these funds as "Loan Agreement between Family Members" without cash-out option. The loan becomes an investment capital designed for life time support; interest paid on the loan becomes investment interest, tax deductible for Plaintiffs, immediately shifting them into lower tax bracket and providing extra income. The same investment interest paid to Nikityuks is not taxable either because they don't have other taxable income (Russian pension is under tax treaty and gets deducted from income). After Nikityuks pass away the Plaintiffs inherit all their property including the remaining principal of the Loan, by the Final Will of Nikityuks, which is an inalienable part of the package and will be provided prior to the Trial.

65. CRA requested to put the terms of the Loan Agreement on paper, which was done in preparation of 2008 tax return (first tax return of Nikityuks in Canada); the agreement was signed by both parties and presented to CRA for review and audit. It was approved by CRA in 2009. For Nikityuks the Russian translation of the Loan

agreement on paper was provided, which still should be somewhere at their disposal, but even if they want to hide it and pretend that they didn't understand what they were signing back then is irrelevant because Nikityuks were well aware of all the terms and conditions of the agreement since 2004, and admit that they accepted the email "Offer" in Russian which basically states the same.

66. Living in Canada, till they left the house on October 17 2011, Nikityuks always participated in all family expenses:

a. In the period Jun 13 – Aug 14, 2008 when Nikityuks were living together with Plaintiffs and Plaintiffs' daughter in Etobicoke rented apartment and waiting for the Plaintiffs' house built – in proportion 3:2, according to the number of people living together. Plaintiffs' daughter Anastasia was actually out of the country most of the time back then.

b. In the period Aug 15, 2008 – May 31, 2009 when Nikityuks lived in new Plaintiffs' house in Innisfil and Plaintiffs came every weekend to buy groceries

for the next week, to clean the house, to setup appliances, to assemble furniture etc. – in proportion 2:7 if the expense is shared by number of week days (like household fees or utilities) or in proportion 2:2 if the expense is shared by number of people (like automotive, groceries, or bank charges)

c. In the period Jun 1, 2009 – Oct 17, 2011 when Nikityuk lived with Plaintiffs together all the time – in proportion 2:2, by the number of people sharing all the expenses

67. Nikityuks' share of expenses was paid from the same CIBC account which was opened for them back in 2005. Investment interest always was transferred to this account by Plaintiffs ahead of time.

68. The Loan Agreement doesn't specify the exact interest rate (as in "variable rate"). CRA publishes a minimum rate required for this specific type of loans, which currently is 1% since the 3rd quarter of 2009. For the purpose of the life time support loan obviously the rate cannot be determined in advance, but has to be much higher and in fact was:

a. In 2008: $17558 paid in investment interest (16% annual interest)

b. In 2009: $34243 paid in investment interest (17% annual interest)

c. In 2010: $37191 paid in investment interest (18% annual interest)

d. In 2011: $32405 paid in investment interest (16% annual interest)

Proof can be done with CRA assessments of Nikityuks for 2008-2010. 2011 tax return Nikityuks ordered themselves in a community service, so they cannot accuse Plaintiffs in any falsification.

69. Such high interest was possible only because Nikityuks lived together with the Plaintiffs, had good relationships with them, and paid their share in family expenses. After Nikityuks left the house on October 17 2011 such high amounts paid in interest are not possible any more by several reasons:

a. Back in 2007-2008, making preparations before the Nikityuks' arrival, the Plaintiffs reorganized all their life in Canada:

   i. Plaintiffs spent a lot of their time and their own money educating themselves in finances, investments, income tax and immigration law. Plaintiffs can easily say that currently they are experts in all those things, but that self-education cost them a lot.

   ii. Svetlana gave up her carrier to make enough free time to take care of Nikityuks upon their arrival, and even before.

   iii. Plaintiffs purchased a house big enough to accommodate family of 4 or 5 people, using their own money and mortgage.

   iv. Plaintiffs leased a second car for Nikityuks on their (Plaintiffs') name because without any credit history in 2008 Nikityuks were not qualified for any financing like lease or mortgage.

By leaving the household, Nikityuks ignored all these sacrifices the Plaintiffs made for them and abandoned them with all expenses and commitments they promised to share responsibility for. All financial losses caused by Nikityuks and confirmed by the honourable Court to be deducted from the remaining Loan principal.

b. Plaintiffs spent a lot of their hard gained money and almost all Pavel's savings from the apartment sold in Riga, Latvia, to support Nikityuks even before Canada, to pay for their medications, renovations, air tickets, immigration fees etc. and now Nikityuks reject to pay all of these expenses back claiming that those expenses were some kind of "gifts". Plaintiffs don't want to keep amounts Nikityuks owe them in their principal any more and will deduct it as soon as the honourable Court confirms the total.

c. Plaintiffs are not willing to absorb risk of stock market investments any more because Nikityuks made on several occasions through their legal representatives that they don't want any

relationship with Plaintiffs. As per Loan Agreement, during the next 2-3 years the long term investment portfolio will be rebalanced in favour of low risk and low income instruments on Plaintiffs' discretion. To compensate the required difference in cash flow to support Nikityuks the Plaintiffs will have to constantly deduct some significant amounts from the remaining principal of the Loan, which will lead the remaining Loan principal to value close to zero at the end of the Sponsorship (June 14, 2018).

d. As Nikityuks rejected to buy the life insurance covering the critical illness and final expenses, the amount required to cover those expenses to be reserved in the Loan principal to be deducted at the time when required

e. High investment interest paid to Nikityuks was a tax-deductible expense for Plaintiffs, legally putting them into low tax bracket and producing a big tax return cheque every year. As this is not the case any more, the direct financial loss of Plaintiffs in tax returns also to be deducted from the Loan

principal after confirmation by the honourable Court, the exact amount not known at the moment but can be easily calculated at the each year's tax return time by simple changing of one number in tax return inputs (annual investment income of Nikityuks) and comparing two results before and after. Income tax expert witness will be called to the Trial if necessary.

f. Nikityuks constantly and on purpose create obstacles for Plaintiffs to perform their support function specified in the Loan Agreement:

    i. Closed joint bank account in TD bank which was used as a transit between Nikityuks TFSA accounts and CIBC, without a minimal understanding of its purpose and even without notifying the Plaintiffs about their intentions

    ii. Closed joint bank account in Scotia bank which was used as a transit for mortgage payments, without a minimal understanding of its purpose and even notifying the Plaintiffs about their intentions

iii. Closed TFSA accounts opened for them in 2009 (in their presence off course because it's impossible in Canada to open a bank account without the owner's presence) to take advantage of the new government instrument which gives an opportunity to make $5000 investment per person per year tax free. A part of investment portfolio in long-term investments was hold on those 2 TFSA accounts until the Nikityuks begun to close their accounts everywhere, so the Plaintiffs had to sell the investments at bad time, to take losses, and to move investments to accounts not having tax advantage. A few days after transaction has been initiated the Nikityuks revoked Svetlana's Power of Attorney and closed their TFSA accounts without a minimal understanding of their purpose and even notifying the Plaintiffs about their intentions.

iv. In January-March 2012 Nikityuks on purpose created mess on their CIBC chequing account

by putting account in deep overdraft status several times. The Plaintiffs had to cover high 20% interest charged by the bank for the overdraft and finally overdraft option has been removed from the account completely. Nikityuks created the mess on purpose because the Welfare Tribunal hearing was scheduled for or about Jun 6, 2012, and they wanted to demonstrate that Plaintiffs didn't transfer support amount on Jun 1 2012, as promised. Support was actually transferred before, 2 months ahead of schedule, to cover the $2000 overdraft Nikityuks created on the account and to avoid high interest charges.

v. The Plaintiffs have a low interest credit line, secured by their property in the house, and regularly borrow against the house to invest in high quality securities with reasonable income. In October 2012 the Plaintiffs re-appraised the house and were going to increase the limit on their home equity credit line. As the value of real estate skyrocketed

in the area since the previous appraisal, the limit on that HELOC could be easily increased by $28000. Plaintiffs had an opportunity to transfer $28000 of cash to their brokerage account and to buy AGNC stock for $30 per share on October 15, 2012. With 25% margin requirement for AGNC stock the Plaintiffs could buy $28000*4/$30=3733 shares of AGNC. But on October 5, 2012 the Plaintiffs were advised by their lawyer to stop borrowing against the house because Nikityuks notified about their intention to receive a CPL against the Plaintiffs' property. The Plaintiffs cancelled the paperwork appointment on Oct 7 and missed the opportunity. AGNC pays $1.25 dividend per share every 4 months, which comes to $18665 minus approximately $2500 of interest on the credit line and margin, i.e. $16000 of missed profit per year plus capital gain on AGNC, which can easily be $15000-$25000 extra.

vi. On April 9, 2012 Nikityuks requested the paper statements for Plaintiffs' Visa Rebate Rewards. They were provided with supplementary credit cards before but the account was closed by the Plaintiffs on November 10, 2011 because was used exclusively by Defendants and after the Defendants left the household Plaintiffs didn't need it any more. As the former co-users of the account, they Nikityuks were served by TD Canada Trust, and the requested statements were printed out for them. Defendants instructed the bank to charge the fee in the amount $140 to the Plaintiff's closed credit card. Plaintiff Pavel rejected to pay for the unauthorized transaction and on July 7, 2012 his credit history was downgraded based on missed credit card payment.

g. Under these circumstances the Nikityuks expectations to receive 10% of annual investment income from Plaintiffs sound like a delirium.

h. As the total amount to be deducted from the Loan principal in compensation of all Plaintiffs' financial losses caused by Nikityuks' actions is not known at the moment and finally to be determined by the honourable Court, and the monthly amount of interest directly depends on the unknown remaining principal, the Plaintiffs temporarily pay to Nikityuks the maximum welfare amount they would be eligible for if didn't have investment income, plus $1, because:

   i. by applying for welfare in 2011 Nikityuks de-facto agreed to live on this amount

   ii. to keep Nikityuks from more attempts to abuse the Canadian system of social assistance

At the moment this amount is $1033 per month, plus Nikityuks receive their Russian pension which is approximately $600-$700 per month. To the best of Plaintiffs' knowledge, $1600-1700 per month should be enough to cover all Defendants' mandatory living expenses. All requests of Plaintiffs to provide the documents confirming Nikityuks'

mandatory living expenses such as apartment rent, made on different occasions and based on the Sponsorship Agreement which, by the best of Plaintiffs' knowledge, is still valid, are ignored so far.

i. Alternatively, Nikityuks may stop playing their "abuse" game, apologize (in writing), and return home to live together with the Plaintiffs as a family of four. They must make this decision by 9PM EST October 17, 2013 and give the Plaintiffs one month notice if they decide to move back in. Obviously, in this case Plaintiffs' financial damages will be limited by the amount accumulated on the date of their return home.

House

70. The house was purchased by Plaintiffs in July 2007 when nobody even knew if the Nikityuks would be permitted to immigrate to Canada – will be proven by the purchase agreement.

71. The transaction was pre-approved by TD Bank Mortgage Department in August 2007 because Plaintiffs had

a. about $20000 in RRSP (will be proven by the CIBC RRSP statements)

b. about $26000 in stocks on the CIBC Investor Edge brokerage account (will be proven by CIBC Investor Edge account statement)

which combined gave them enough funds for down payment

72. At that point the purchase of the house was considered by Plaintiffs as a pure investment because Innisfil was a fast developing area. One of the options considered by the Plaintiffs was selling the house a few months after the closing date.

73. As the Plaintiffs didn't know about would Nikityuks be permitted to immigrate or not they never counted on the proceedings from the sold Russian property, even despite the fact that there was a significant Svetlana's share in that property.

74. Before Nikityuks arrival to Canada the Plaintiffs rented apartment for them in the same building they used to live in Etobicoke. Once the Builder notified the Plaintiffs (happened right before Nikityuks' arrival) that no delay of the closing date expected, the Nikityuks told the Plaintiffs that they better would live on the fresh air by the lake than in the city, asked to cancel the apartment rent agreement, and said that they would prefer to wait for the house 1-2 months. Plaintiffs agreed to accommodate Nikityuks in their house.

75. Plaintiffs never intended to include neither Alla nor Valentin in the title of the house and never told them about such intention simply because it would be a very strange and stupid move:

a. House was already bought on the name of the Plaintiffs in 2007, a year before Nikityuks even got a permission to immigrate to Canada

b. For what purpose would the Plaintiffs change the title? To pay capital gain tax when Nikityuks pass away?

c. Nikityuks could live in the house rent-free not being in the title, as they did in 2008-2011 and were happy, and they still can if they just decide to return and to be happy again.

d. Without any credit history Nikityuks were not even qualified for mortgage, why Plaintiffs would go through this trouble if they were already pre-approved for mortgage without Nikityuks?

e. If Nikityuks intended to spend most of their Russian property proceedings on the purchase of some house, how much would remain after that for the investment capital to live on?

76. In 2008 Nikityuks sold the property in Russia. Svetlana unregistered from the apartment to let the Nikityuks to complete the transaction (proof – copy of Svetlana's internal Russian passport with registration and unregistration stamps and dates; correspondence with Svetlana's real estate agent in St.Petersburg, Russia, about the apartment, the procedure, and all financial aspects of the transaction). Nikityuks would not be able to sell the apartment without Svetlana's authorization because 25% share of the apartment belonged to her.

Till age 17 Svetlana lived with her mother in a room in a multi-owner apartment, then Alla married Valentin who lived in another apartment of the approximately equivalent value as Alla's and Svetlana's room; they moved together into 1 bedroom apartment which was registered to all 3 of them. Svetlana was against the deal and begged her mother to leave the room for her and to move in with Valentin alone into his place, but she didn't come out of age at that point and Nikityuks ignored her. It was promised though that 25% of the apartment always would be on Svetlana's name.

77. In 1996 Svetlana and her husband Pavel immigrated to Latvia and left Alla with general Power of Attorney, so Alla and Valentin could do any operations with Svetlana's property on her behalf while she was out of country. In 2003 Svetlana and Pavel immigrated from Latvia to Canada.

78. In 2008, when Nikityuks arrived to Canada, Plaintiffs decided not to use their RRSP for down payment because had enough cash available otherwise, and deducted $50000 USD from Russian property proceedings for the down payment for Plaintiffs' house

because it was perfectly logical: the approximate selling price for the Russian apartment was $200000 USD; 25% of that is $50000. Svetlana used her share in Russian property to pay the down payment for her house.

79. Nikityuks were completely onboard with this decision because it was exactly how it was discussed countless times before during their visits and overseas telephone conversations in the period 2004-2008. Proof – statement of the Loan principal initialled by Nikityuks together with the Loan Agreement, and email the Nikityuks refer to as "Offer", which clearly states "200,000 USD" and not "260,842.71 USD".

80. If Nikityuks would not approve the $50,000 transaction, in August 2008 the Plaintiffs had enough funds available for the down payment anyway: about $42500 in RRSPs and approximately $40,000 in stocks and options on the same brokerage account where Nikityuks' Loan was transferred (all relevant statements will be provided).

Russian pension

81. See detailed explanations about the issue in the comments to paragraphs 27 and 59. The bottom line is that Nikityuks always had access to their Russian pension both directly through the CIBC account where the pension instalments were deposited to by the Pension Fund of Russian Federation, and through TD Visa credit card.

Sponsorship Agreement, Power of Attorney and other documents signed by Nikityuks

82. All bank accounts opened for Nikityuks were opened in their presence and in the presence of a bank clerk. To best of Plaintiffs' knowledge, in Canada there is no way to open an account without owner's presence.

83. As to the Power of Attorney, it was translated to Nikityuks completely and accurately by certified Russian translator at the "Explore World Immigration Services" in Toronto. The translator (Aurika Karasseva) will be called as a witness and testify that none of standard notary procedures were violated and Nikityuks understood completely what they were doing.

84. All other documents signed by Nikityuks always were translated to them. Even if they didn't understand completely what they were signing, they are adults and nobody forced them to sign anything with a gun pointed at them. They always could ask to repeat, to re-translate, to bring the document to a lawyer or at least to YMCA Newcomer Services and show it to their beloved Yana Skybin or anybody else before signing.

85. Statement that they didn't understand the details and conditions of Sponsorship Agreement when they signed it is irrelevant because it's an agreement mostly between them and Ministry of Citizenship and Immigration Canada. Their legal representative should advise them to report to Ministry of Citizenship and Immigration that they didn't understand the details of the Sponsorship Agreement when signed it, and to request annulment and immediate deportation.

86. **Plaintiffs intend to move for summary judgement dismissing all of Nikityuks' Statement of Defence and Counterclaim as 100% based on lies and outrageous accusations which cannot be**

proven because never happened, and contain no genuine issue for trial.

Date: December 17, 2012

Svetlana Danilova and Pavel Danilov
1490 Rankin Way Innisfil ON L9S 0C6
Home phone/fax 705 294 0592

Representing in person

TO:
Community Legal Clinic-Simcoe,
Haliburton, Kathartha Lakes
71 Colborne Street East
P.O. Box 275
Orillia, ON L3V 6J6

Lisa Loader
Erik Bornmann

Tel:705-326-6444
Fax: 705-326-9757

Lawyers for the Defendants and
Plaintiffs by Counterclaim,
Alla Nikityuk and Valentin Nikityuk

AND TO:
HRG Graham Partners LLP
Barristers and Solicitors
107-190 Cundles Road East
Barrie, ON L4M 4S5
Robert L. Bigioni
Lawyer for the Defendants
Yana Skybin and Young Mens Christian Association operating as
YMCA Simcoe/Muskoka and YMCA Simcoe/Muskoka Newcomers Services

RCP-E 27C (July 1, 2007)

Courts of Justice Act

DANILOVA et al -and- NIKITYUK et al

Plaintiff *Defendants*

Court File No:12-05-45-SR

ONTARIO SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT Barrie

REPLY TO AMENDED STATEMENT OF DEFENCE AND DEFENCE TO COUNTERCLAIM

Svetlana Danilova and Pavel Danilov

1490 Rankin Way Innisfil ON L9S 0C6

Tel/fax 705 294 0592

Plaintiffs, Defendants by Counterclaim

Representing in person

RCP-E 4C (July 1, 2007)