

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

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

**FRESH AS AMENDED STATEMENT OF DEFENCE OF YANA SKYBIN, YOUNG  
MENS CHRISTIAN ASSOCIATION, OPERATING AS YMCA SIMCOE/MUSKOKA  
AND YMCA SIMCOE/MUSKOKA NEWCOMER SERVICES**

1. These defendants deny each and every allegation and claim set out in the fresh as amended statement of claim as if set out and in traversed seriatim save where expressly admitted herein
2. These defendants admit the allegations contained in paragraphs 4,5,6,7 and 8 of the fresh as amended statement of claim. Save that in relation to paragraph 8 these defendants deny that “participation in Ontario festivals” is a specific service provided.
3. These Defendants have no knowledge in respect of the allegations contained in paragraphs 11,12,13,14,17,18,25,26,28,33,34,35,36,37,38,39,40,41,42,43,44,45,46,47,48,49,50, 51,52 and 53 of the fresh as amended statement of claim.

4. Further, and full the avoidance of doubt, these defendants deny the allegations which are either directly or indirectly alleged against these Defendants in paragraphs 51, 52, 53 and 54 of the fresh as amended statement of claim.

5. YMCA is incorrectly described in the title of proceedings. YMCA is a corporation, the full name of which is “YMCA of Simcoe/Muskoka”. Newcomer Services is a division within the YMCA organization and not a separate entity as alleged in the fresh as amended statement of claim.

6. YMCA offers a variety of services designed to assist the communities in which it is located. Some services are designed to assist immigrants to Canada. These services to newcomers include the provision of language instruction, advice and assistance in relation to housing, transportation and banking and/or referrals to agencies with respect to the same.

7. The Newcomer Services programs offered by YMCA are fully funded by the citizenship and immigration ministry of the Federal government.

8. Yana Skybin (“Skybin”) is employed by YMCA in connection with the Newcomer Services program offered by it.

9. In 2009, the defendants Alla Nikityuk and Valentin Nikityuk (“Alla” and “Valentin”) enrolled in an English language program offered by YMCA. Alla and Valentin came to know and deal with Skybin, since all three parties could communicate in the Russian language. It is denied that Skybin discussed all aspects of Alla and Valentin’s involvement with the YMCA with Svetlana as alleged in the fresh as amended statement of claim. It is further denied that the plaintiff Svetlana “negotiated” Alla and Valentine’s acceptance on the program.

10. Until about late August of 2011, the involvement of YMCA with Alla and Valentin was limited to providing English language instruction to Alla and Valentin.

11. However, on August 23, of 2011, Alla and Valentin initially approached Skybin (in her role as counsellor at the YMCA) and complained that the plaintiffs were verbally and, more recently, physically abusive toward them and showed Skybin bruising on Alla's arms.

12. Further, on September 30, 2011, Alla and Valentin approached Skybin (in her role as counsellor at the YMCA) and complained that the abusive situation between them and the plaintiffs had become worse and further complained about the plaintiff's treatment of their (i.e. Alla and Valentin's) finances and showed Skybin documents with respect to the same.

13. Entirely in keeping with usual procedures as well as any other legal moral or social duty, these defendants provided Alla and Valentin with information as to services available to them in these circumstances.

14. The advice, information and services provided by YMCA and Skybin was at all times provided in good faith and consisted of, inter alia, referrals to sources of short-term and long-term subsidized accommodation, and assisting them as a translator to attend to their financial and banking needs.

15. These defendants also referred Alla and Valentin to various sources of legal and other advice in order to allow them to attempt to address the concerns which they had expressed to these defendants in relation to the conduct of the Plaintiffs toward them.

16. Skybin remained involved with Alla and Valentin over the ensuing months, since Skybin was able to communicate with them in their mother tongue (Russian).

17. Skybin accompanied Alla and Valentin as a translator to various meetings with agencies and service providers to enable them to obtain, inter alia, legal and banking services and advice.

18. Alla and Valentin moved out of the home occupied by the plaintiffs and arranged new rental accommodation and obtained medical, legal and funding with advice from various organizations and their professional advisors.

19. These defendants specifically deny that either or both of them made any arrangements for the police and YMCA volunteers to appear at the plaintiff's house as alleged in paragraph 23 of the fresh as amended statement of claim.

20. These defendants further deny that any YMCA volunteers assisted in Alla and Valentin moving out of the plaintiff's property.

21. These defendants aver that they provided direction, referrals and assistance to Alla and Valentin in order to help them address the concerns which they expressed about the conduct of the plaintiffs and that at all times such conduct was in good faith, without malice or other ulterior motive or any other mal intent towards the plaintiffs and without any form of compensation or other benefit being paid or expected to be paid to them.

22. These defendants specifically deny that (i) either or both of them solicited, advised, encouraged or otherwise induced Alla and Valentin to break their relationship with the Plaintiffs or breach any contract that was in existence between them, (ii) Skybin received "expensive gifts" from Alla and Valentin in breach of her duties and responsibility as a YMCA employee, (iii) Skybin solicited Alla and Valentin to imitate domestic abuse, and (iv) either or both of them acted

in bad faith and/or in the expectation or with the intention of receiving compensation from Alla and Valentin.

23. These defendants admit that Alla and Valentin provided and/or contributed to a modest birthday gift to Yana, a \$50 in a card. It is further admitted that on occasions Alla and Valentin would bring chocolates to staff at the YMCA.

24. These defendants admit that Skybin wrote and received the communications set out in paragraph 24 of the fresh as amended statement of claim.

25. These defendants plead that it is impossible to specifically plead a defence to the vague and unspecified allegations of defamation and libel set out at paragraph 27 of the fresh as amended statement of claim.

26. Further and without prejudice to the foregoing, YMCA and Skybin specifically deny that they made any defamatory or libelous statements about the plaintiffs to any third parties. These defendants specifically plead and reply upon the following:

- (a) The truth of any comments made by either or both of them about the plaintiffs to any third parties;
- (b) The defences of qualified privilege, fair comment and the principle of responsible communication;
- (c) Due to the nature of the relationship between these defendants and Alla and Valentin, these defendants were under a legal, moral, social or otherwise a duty of

care to assist Alla and Valentin to obtain advice, assistance and services from other agencies and professional advisors;

- (d) That Skybin acted in good faith as a translator for Alla and Valentin to assist them in dealing with non-Russian speaking service providers;
- (e) That any comments made by either or both of these defendants to third parties about the plaintiffs were made without malice, in good faith and without any ulterior, collateral or personal motive;
- (f) That any such alleged comments were made as a translator in pursuance of Alla and Valentin seeking and receiving appropriate advice, assistance and services from necessary agencies and on the belief such comments were true;
- (g) Any statements actually made by these defendants pertaining to the plaintiffs were made honestly believing them to be true and in good faith and based on available evidence provided by Alla and Valentin.

27. These defendants deny that any of the statements were widely circulated as alleged in the fresh as amended statement of claim and the plaintiff support to strict proof of such allegation.

28. These defendants plead and aver that the plaintiffs had no reputation to protect with the recipients of any alleged defamatory communications and therefore suffered no harm to their reputations.

29. With respect to the allegation that these defendants conspired with Alla and Valentin to cause loss or harm to the plaintiffs notwithstanding the lack of specificity with respect to such

allegation in the fresh as amended statement of claim, such allegation is denied and the plaintiffs are put to strict proof thereof. These defendants further plead that such claim is frivolous, vexatious and scandalous.

30. Further, and without prejudice to the foregoing, these defendants plead and aver that they provided services and assistance to Alla and Valentin consistent with their social, legal, moral or other duties and responsibilities towards them solely for the purpose of assisting them to obtain advice and assistance from necessary agencies and service providers.

31. As pleaded hereinbefore, such advice and assistance was provided to Alla and Valentin in good faith, without malice towards the plaintiffs and without any other personal or ulterior motive, or expectation of gain, on the part of these defendants.

32. With respect to the negligence claims these defendants plead and aver as follows:

- (a) That they owed no duty of care to the plaintiffs;
- (b) Alternatively and without prejudice to the foregoing, if there were any duty of care towards the plaintiffs, such duty was met.

33. Specifically with respect to the allegations set out in paragraph 56 a and b of the fresh as amended statement of claim, these defendants plead and aver that:

- (a) They undertook a reasonable investigation of Alla and Valentin's complaint of abuse by the plaintiffs in all of the circumstances which presented, specifically Skybin witnessed physical evidence of the abuse namely bruising on Alla's arms

and was presented by them with documentation with respect to the control of their finances by the plaintiffs;

- (b) They did not encourage Alla and Valentin to seek Government assistance in breach of, or intended to breach their sponsorship agreement with the plaintiffs. Alla and Valentin were directed to appropriate agencies to provide them with the necessary assistance and guidance to address their situation;
- (c) They provided no encouragement to Alla and Valentin at all.

34. With respect to the allegations contained in paragraph 56, c, d and f of the fresh as amended statement of claim, these defendants plead, aver and rely upon the decision of this Court dated July 15, 2015 which expressly dismissed such claims. Additionally, and without prejudice to the foregoing, these defendants plead and rely upon the general and specific denials and defences contained herein in respect of such allegations.

35. With respect to paragraph 57 of the fresh as amended statement of claim, the YMCA pleads and avers that:

- (a) At all material times it had systems in place to ensure that its staff provided services to its patrons;
- (b) Its staff was aware of avoiding conflicts of interest between them and patrons of the YMCA;
- (c) It provided reasonable training to its staff;
- (d) It had in place reasonable policies and procedures;



- (e) It provided reasonable, necessary and appropriate support to members of staff in the event that staff were faced with situations not specifically or directly set out in any written procedural policy and staff were aware of the same;
- (f) That the YMCA exercised reasonable control and supervision over Skybin in the assistance she provided to Alla and Valentin, where necessary and appropriate.

36. Without prejudice to the foregoing, if the YMCA did not have a specific policy in place at the relevant time with respect to any allegation set out in the fresh as amended statement of claim, it pleads and avers that in any event both it and Skybin acted in good faith and to reasonably accepted standards at all material times.

37. Specifically with respect to paragraph 57 (f) of the fresh as amended statement of claim, these defendants plead and aver that they had no authority, ability or duty to compel Alla and Valentin to report the plaintiff's abuse to the police or any other authority. Such a decision to file any report was for Alla and Valentin to make and these defendants were obliged to maintain the confidentiality of Alla and Valentin who were competent adults. Notwithstanding the foregoing, these defendants plead and aver that Skybin advised Alla and Valentin to report the situation to the police or authorities and Alla and Valentin declined to do so.

38. For the avoidance of doubt these defendants plead and aver that Skybin did not behave in any inappropriate or unethical manner as alleged in the fresh as amended statement of claim or at all towards the plaintiffs or otherwise.

39. With respect the allegations that these defendants induced Alla and Valentin to breach any agreement they had or may have had with the plaintiffs is denied and the plaintiffs are put to strict

proof thereof. As pleaded herein before, the advice and assistance provided to the co-defendants was in accordance with these defendants' social, legal, moral or other duties, was provided in good faith and without intent to injure the plaintiffs or interfere with any contractual relations between the plaintiffs and Alla and Valentin – or otherwise induce or solicit any breach of such contractual relations or in an attempt or intending to do so.

40. These defendants deny that they were aware of the terms of any specific agreement between the plaintiffs and Alla and Valentin or the alleged transfer of proceeds of sale of family assets as alleged in paragraph 19 of the fresh as amended statement of claim prior to receiving the complaints made by Alla and Valentin.

41. For the avoidance of doubt any specific element of these defendants' defence pleaded herein in relation to any specific claim made by the plaintiffs are repeated and adopted in respect of all such claims.

42. These defendants deny that the plaintiffs have suffered any damages as a result of their acts or omissions.

43. Without prejudice to the foregoing, if, which is denied, the plaintiffs have suffered any loss or damage, such losses or damages claimed by the plaintiffs are excessive, grossly inflated, remote, purely economic in nature and otherwise not known or recoverable in law. These defendants plead and aver that the plaintiffs have failed to adequately or at all mitigate such alleged losses and damages.

44. These defendants plead and aver that the plaintiffs due to their own actions and conduct are the authors of their own misfortune and are wholly responsible for any loss and damage they may have suffered as set out in the fresh as amended statement of claim or at all.

45. Specifically with respect to paragraph 58 of the fresh as amended statement of claim, these defendants plead and aver that the plaintiffs are estopped and otherwise limited from proceeding with any claim for damages against these defendants other than those which directly flow from the heads of claim which survive as a consequence of the decision of this Court dated July 15, 2015.

46. These defendants deny that they are liable to the plaintiffs for any amounts whatsoever, put the plaintiffs to the strict proof of allegations to the contrary.

47. These defendants plead, aver and rely upon the decision of this Court dated July 15, 2015, the *Negligence Act* R.S.O. 1990, the *Limitations Act* S.O., the principles of estoppel, waiver, laches, acquiescence, merger and ex turpi causa.

48. These defendants plead and aver that the plaintiff's claim, in particular but not limited to any part or parts which was or were dismissed by this Court on July 15, 2015, is/are scandalous, frivolous and vexatious, and they are otherwise debarred from pursuing any such claims.

49. These defendants ask that this action be dismissed with costs on the substantial indemnity basis.

March 4, 2016

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SVETLANA DANILOVA et al.  
Plaintiffs

-and- ALLA NIKITYUK et al.  
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Court File No. 13-1101

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

Proceeding commenced at  
BARRIE

FRESH AS AMENDED STATEMENT OF DEFENCE

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