

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

HENRY YOUNG¹

Plaintiff

- and -

RALPH SMITH

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

¹ All individuals and circumstances described in this draft Statement of Claim are made up. Any similarity to any real-life people or events is unintentional and purely coincidental.

Date: August 19, 2019

Issued by _____
Local Registrar

Address of Court Office: 330 University
Avenue, Toronto ON M4G 1R7

To: Ralph Smith
88 Shady Lane
Toronto, ON M5P 1E6

CLAIM

1. The plaintiff, Henry Young (“**Henry**”), claims:
 - (a) An order setting aside the gift of 88 Shady Lane (“**Shady Lane**”) to the defendant, Ralph Smith (“**Ralph**”), on the basis of equitable fraud;
 - (b) In the alternative, restitution for unjust enrichment and/or damages for the market value of Shady Lane at a point-in-time that this Honourable Court may deem just;
 - (c) prejudgment and postjudgment interest, pursuant to ss. 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
 - (d) Cost of this action on a substantial indemnity scale, including H.S.T. thereon under the *Excise Tax Act*, R.S.C., 1985, c. E-15; and
 - (e) Such further and other relief as this Honourable Court may deem just.

Shady Lane and the Parties

2. Henry is a 68-year-old widower currently living at the Don Vale Retirement House (“**Don Vale**”), a publicly-funded nursing home.
3. Shady Lane is a 3-bedroom, loft-style laneway house in the City of Toronto, valued at approximately \$1.3 million. It represented substantially all of Henry’s wealth.
4. Prior to his retirement, Henry was a geotechnical engineer and an active triathlete and ironman. Henry lived at Shady Lane for many years with his late spouse, Kelly Cooper (“**Kelly**”), a professional pianist and also an active triathlete. Henry and Kelly loved world travel and competed in triathlons together all over the world.
5. Henry and Kelly were both originally from a small town on Cape Breton Island, Nova Scotia. Although they had several close friends, neither had any family.
6. Henry and Kelly had mirror wills prepared by their long-time lawyer, Lawson Law (“**Lawson**”). These wills gifted all of their assets to each other. Both wills contemplated that the survivor would gift all the assets to various charities in Toronto.

7. The defendant, Ralph, was Kelly's long-time personal trainer and life coach at Beyond Body and Mind Gym.

The Accident

8. Tragically, on or about September 18, 2017, while Henry and Kelly were riding their bicycles on the outskirts of Honolulu, Hawaii, while training, they were struck by a car driven by a distracted driver. Kelly was killed instantly and Henry was severely injured, suffering from multiple broken bones (the "**Accident**").

The Gift of Shady Lane to Ralph

9. Following the Accident, Henry was forced to undergo multiple surgeries. After spending several months recovering at Bridgepoint Active Healthcare ("**Bridgepoint**"), Henry was set to be discharged to a luxurious long-term care facility, which Henry intended on paying for through the sale of Shady Lane.

10. On or about December 15, 2017, Ralph visited Henry at Bridgepoint and offered to take him back to his home at Shady Lane and take care of him on a long-term basis in exchange for \$3,500.00 per month. This was the first time that Henry had seen Ralph since Kelly's funeral.

11. Although Henry had known Ralph for a long time, they were never close. However, Henry was eager to move back into his house with Ralph's assistance. Therefore, Henry agreed to the arrangement, and, with Ralph's assistance, moved back into his home at Shady Lane on or about January 4, 2018 (the "**Attendant Care Arrangement**").

12. At the time that Henry entered into the Attendant Care Arrangement with Ralph, Henry also appointed Ralph as his attorney for personal care (the "**POA**") under Part II of the *Substitute Decisions Act*, 1992, S.O. 1992, c. 30. The POA was prepared on the advice of Henry's lawyer, Lawson

13. The Attendant Care Arrangement worked well for Henry initially, and with Ralph's assistance, he partially recovered from the physical injuries he suffered in the Accident.

14. However, Ralph then began to complain that the Attendant Care Arrangement entailed more work than he initially anticipated, kept asking for more money from Henry, and threatened

to end the Attendant Care Arrangement in early August of 2018. Although, Henry was doing better physically, he still remained substantially disabled.

15. Henry did not want to find another live-in caregiver and loathed the idea of moving to an institution. He begged Ralph to stay and was prepared to agree to any terms. They agreed as follows:

- (a) Henry was to transfer his home to Ralph for \$1,000 in exchange for which Ralph agreed to take care of Henry. That obligation lapsed on the earlier of 20 years or a point in time that Henry could no longer be taken care of by one caregiver or for any reason moved out of the home.
- (b) Henry would pay his expenses related to his own care out of his savings. Ralph would pay all the expenses related to Shady Lane, the food for Henry and would not charge Henry rent.
- (c) This agreement was contingent on:
 - (i) Henry retaining a capacity assessor who would review the draft revised agreement and report whether, in his view, Ralph has the capacity to understand and agree to the terms of the agreement. Henry obtained such an assessment.
 - (ii) Henry retaining his own lawyer who would confirm that he had capacity and was not being subjected to undue influence to enter into this agreement. Henry obtained such a letter.

16. Henry then consulted with his real estate lawyer, Lawson, and ultimately signed documents on September 13, 2018, effectively gifting the title of Shady Lane to Ralph (the **"Impugned Gift"**).

17. At the time that Henry made the Impugned Gift of Shady Lane to Ralph, Shady Lane was valued at approximately \$1.3 million.

18. The plaintiff relies on the doctrine of equitable fraud. Ralph recognized, or should be taken to have recognized that taking this gift under these circumstances was unconscionable and he owed an equitable duty to Ralph to decline accepting the gift.

19. Ralph breached his equitable duties by accepting the gift.

Ralph Transfers Henry to Don Vale

20. Following the making of the Impugned Gift of Shady Lane to Ralph, Ralph took care of Henry for several more months. During this period of time, Henry's physical condition began to deteriorate, as he began to suffer from arthritis in both of his hips and knees. It became clear that Ralph could no longer take care of him at Shady Lane.

21. Ralph then took steps under the POA to transfer Henry to a long-term nursing home, and ultimately transferred him to Don Vale on December 20, 2018, just under a year after Henry had entered into the Attendant Care Relationship with Ralph, and mere months after Henry had gifted Shady Lane to him.

22. As a result of the Impugned Gift of Shady Lane to Ralph, Henry had insufficient assets to finance the cost of a private nursing home, and was essentially rendered a pauper.

23. After Ralph placed Henry in Don Vale, he stopped contacting him and refused to provide him with any funds for his comfort or enjoyment.

The Impugned Gift of Shady Lane to Ralph should be set aside on the basis of equitable fraud.

24. Ralph's transfer of Henry to Don Vale under the POA mere months after Henry made the Impugned Gift is unconscionable in the circumstances in that:

- (a) there was an inequality of bargaining position arising out of ignorance, need or distress of Henry who was the weaker party;
- (b) the defendant was the stronger party who unconscientiously preyed upon the weaker party and used a position of power to achieve an advantage; and:

- (c) the agreement reached is substantially unfair to the weaker party in that it is sufficiently divergent from community standards of commercial morality that it should be set aside

25. Henry, therefore, states that the Impugned Gift of Shady Lane to Ralph should be set aside on the basis of the doctrine of equitable fraud.

26. Henry proposes that this action be tried by a jury in the City of Toronto.

August 19, 2019

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