

CV-20-00651746-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

IHOR VOLOSHYN

Plaintiff

-and-

PAVEL A. PATRIKI

Defendant

STATEMENT OF DEFENCE

1. The Defendant admits the allegation contained in paragraph 3 of the Statement of Claim, as it relates to the address.
2. The Defendant has no knowledge or insufficient knowledge to either admit or denies the allegations contained in paragraph 2 of the Statement of Claim.
3. The Defendant denies all other allegations in the Statement of Claim unless expressly admitted hereafter and puts the Plaintiff to the strictest of proof thereof.

DENIAL OF LIABILITY

4. The Defendant denies he is liable for the accident referred to at paragraphs 4-6 of the Statement of Claim (hereinafter “the accident”).
5. The Defendant denies the accident occurred as described in the Statement of Claim.
6. The Defendant denies any negligence, fault or neglect on his part resulting in the accident.

7. The Defendant submits that at all material times his motor vehicle was being operated in a careful and prudent manner and that there was no negligence, breach of duty or want of care in respect of the Plaintiff.

NEGLIGENCE OF THE PLAINTIFF

8. The Defendant states that if the Plaintiff sustained injuries and damages as alleged, which are not admitted, but expressly denied, then same were caused or contributed to by the Plaintiff himself, the particulars of which include, but are not limited to, the following:

- (a) On the occasion in question, he was a careless pedestrian, lacking reasonable care and self-command;
- (b) He failed to obey the rules of the road pertaining to pedestrians;
- (c) He stepped into a moving vehicle;
- (d) He walked in front of a moving vehicle;
- (e) He attempted to cross a road on foot where there is no pedestrian crosswalk;
- (f) He failed to keep a proper or any lookout for his own safety;
- (g) He might and could have, by the exercise of reasonable care, seen the Defendant's motor vehicle and avoided the collision;
- (h) He entered the intersection when it was unsafe to do so;
- (i) He moved suddenly from a place of safety to a place of danger;
- (j) He saw that the Defendant vehicle was proceeding to turn left and yet he attempted to walk across Scarlett Road, anyway;
- (k) On the occasion in question, he was distracted by a cellular telephone, objects he was carrying, other pedestrians, eating/drinking, smoking or a combination thereof;
- (l) On the occasion in question, he was carrying objects that impaired his view of his surroundings;
- (m) He had the last opportunity to avoid the pending collision but failed to take any or sufficient evasive measures;
- (n) He failed to keep a look out for traffic while attempting to cross the street or, alternatively, he disregarded such traffic;

- (o) He was impaired using alcohol and/or drugs and/or by fatigue and/or prescription drugs;
 - (p) He was lacking in reasonable skill and physical and/or mental ability and ought not to have attempted to cross the road under the circumstances;
 - (q) He attempted to cross the road with a reckless disregard for the safety of other road travelers;
 - (r) He failed to take reasonable, or any, precautions to avoid a collision, when he saw or should have seen that a collision was likely to occur;
 - (s) He was wearing dark clothing and/or inadequate footwear;
 - (t) He wore clothing which obstructed his vision;
 - (u) He created a situation of danger from which the Defendant could not extricate himself;
 - (v) He was the author of his own misfortune;
 - (w) He failed to wear prescribed corrective lenses;
 - (x) He failed to observe the rules of the road as required by the *Highway Traffic Act*, R.S.O. 1990, c. H. 8 (“the *Highway Traffic Act*”);
 - (y) Such further and other particulars that become known during the litigation and/or at the examination for discovery; and
 - (z) Such further particulars of negligence that are within the knowledge of the Plaintiff.
9. In the alternative, the Defendant pleads that the accident occurred because of other factors that will become apparent through documentary productions and examinations for discovery. In that regard, the Defendant pleads and relies upon the defence of inevitable accident.

REMOTENESS AND FAILURE TO MITIGATE

10. The Defendant pleads that the Plaintiff has failed to mitigate his damages, if any.

11. The Defendant pleads that if the Plaintiff sustained any injuries or damages as alleged, which is not admitted to but expressly denied, the Plaintiff's claims for damages are exaggerated, excessive, remote, and not recoverable at law and the Defendant requires the Plaintiff be put to the strict proof thereof.

NO CAUSATION

12. The Defendant states that if the Plaintiff suffered the injuries, losses, or damages as alleged, or any injury, losses, or damage, which is denied, then said injuries were caused or contributed to by reason of illness, trauma or disease suffered by the Plaintiff either before or after his involvement in the accident and were wholly unrelated to the accident.
13. If the Plaintiff did sustain a permanent, serious disfigurement and/or a permanent serious impairment of an important physical, mental, psychological, physiological, or anatomical structure or function, all of which is denied, the Defendant pleads that his disfigurement and/or impairment is attributable to one or more of the following causes:
- a. A pre-existing casualty, injury or illness;
 - b. A post-accident casualty, injury, or illness; and/or
 - c. *A novus actus interveniens*.

STATUTORY PLEAS

14. The Defendant pleads and relies upon the provisions of the *Insurance Act* R.S.O. 1990 c. I-8, as amended (hereinafter referred to as "the *Insurance Act*") and the regulations thereunder.
15. The Defendant denies the Plaintiff sustained a permanent serious disfigurement or a permanent serious impairment of an important physical, mental, psychological or physiological function. In that regard, the Defendant pleads and relies upon s. 267.5 of the *Insurance Act*.

16. The Defendant further pleads and relies upon s. 267.5 of the *Insurance Act* and states that the Plaintiff is not entitled to maintain this action for non-pecuniary damages against the Defendant.
17. If the Plaintiff is entitled to recover for non-pecuniary damages, which is denied, then such damages are subject to reduction in accordance with the deductibles set forth in the *Insurance Act*.
18. The Defendant denies the Plaintiff has suffered a loss of enjoyment of life, or that his daily activities have been, or will be, permanently impaired and put him to the strictest proof thereof.
19. The Defendant pleads and relies upon section 267.5(3) of the *Insurance Act*, in pleading that the Plaintiff is precluded from recovering health care expenses.
20. The Defendant denies the Plaintiff has incurred any expenses, including, but not limited to medical, pharmaceutical, or any other out-of-pocket expenses, or that he will incur any such expenses in the future as a result of this alleged accident and hold the Plaintiff to the strictest proof thereof.
21. The Defendant denies the Plaintiff has sustained the damages, losses of income, and losses for future damages as alleged, and puts the Plaintiff to the strict proof thereof.
22. The Defendant pleads that if the Plaintiff has suffered an income loss, a loss of earning capacity, or a loss of competitive capacity, which is denied, then such loss is subject to the provisions of the *Insurance Act*.
23. The Defendant further pleads and relies upon s. 267.8 of the *Insurance Act* and states that the Plaintiff has received or was entitled to receive the benefit of certain

insurance payments referred to therein, together with all other collateral benefits referred to therein and to the extent of such payments, has released the Defendant.

24. The Defendant further pleads and relies upon s. 258.3(1)(c) of the *Insurance Act* and states that the Plaintiff has failed to comply with the requirements of that subsection and regulations made thereunder.
25. The Defendant denies the Plaintiff suffered, or continues to suffer from any injuries, damages and/or losses as alleged in the Statement of Claim and puts the Plaintiff to the strictest of proof thereof.

COSTS AND PRE-JUDGMENT INTEREST

26. The Defendant denies the Plaintiff's entitlement to pre-judgment interest and states the Plaintiff has failed to provide the Defendant with particulars of the alleged damages and to bring his claim in a timely manner.
27. The Defendant further pleads that the Court should, therefore, exercise its discretion under s. 130 and 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C48 ("the *Courts of Justice Act*") and restrict his limit of pre-judgment interest accordingly.
28. The Defendant pleads that if the Plaintiff is found to have sustained injuries, damages or losses as a result of the Defendant's negligence or breach of duty, which the Defendant expressly denies, the Plaintiff's damages will be assessed such that any judgment awarded in the Plaintiff's favor will be for an amount of \$200,000.00, or less, exclusive of interests and costs, and thus, the Defendant pleads and relies upon the costs consequence provisions contained in Rule 76.13 of the *Rules of Civil Procedure*, R.R.O 1990 Reg. 194.

LEGISLATION

29. The Defendant pleads and relies upon the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, the *Highway Traffic Act*, the *Insurance Act*, and the

Courts of Justice Act.

THE RELIEF SOUGHT

30. The Defendant submits that this action should be dismissed with costs on a substantial indemnity basis.

Dated: December 31, 2021

THOMPSON, TOOZE, McLEAN & ELKIN

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PLAINTIFF

- and -

LAJANI
DEFENDANT

Court File No. CV-20-00641746-0000

**ONTARIO SUPERIOR COURT
OF JUSTICE**

Proceeding commenced at
TORONTO

STATEMENT OF DEFENCE

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