

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CHERYL LYNN WITTEVEEN

Plaintiff

- and -

THOMAS CHAN and ROSALIA VASTANO

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. 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 plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, 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.

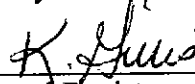
IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

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.

IF YOU PAY THE PLAINTIFFS' CLAIM, and \$100.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$100.00 for costs and have the costs assessed by the court.

Date: September 19, 2016

Issued by:


Local Registrar

Address of Court Office:

70 Simcoe Street
Peterborough, ON
K9H 7G9

To: Rosalia Vastano
269 Loudon Terrace
Peterborough, ON
K9J 0C3

And to: Thomas Chan
269 Loudon Terrace
Peterborough, ON
K9J 0C3

CLAIM

1. The Plaintiff claims:
 - (a) Against Thomas Chan general damages in the amount of \$350,000.00 for assault and battery;
 - (b) Against Rosalia Vastano general damages in the amount of \$350,000.00 for negligence;
 - (c) Against both Defendants:
 - (i) special damages in the amount of \$2,000,000.00;
 - (ii) Punitive, aggravated and exemplary damages in the amount of \$1,000,000.00;
 - (iii) damages for nervous shock and mental distress in the amount of \$250,000.00;
 - (iv) pre-judgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, C.c48;
 - (v) post-judgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, C.c 48;
 - (vi) costs of these proceedings on a substantial indemnity scale, plus applicable HST; and
 - (vii) such further and other relief as this Honourable Court may deem just.
2. The Plaintiff, Cheryl Lynn Witteveen ("Lynn"), is an individual residing in the City of Peterborough, ON.
3. The Defendant, Rosalia Vastano ("Rosalia"), is an individual residing in the City of Peterborough, ON.

4. The Defendant, Thomas Chan ("Thomas"), is an individual residing in the City of Peterborough, ON.
5. Thomas was born December 17, 1996, and is the 19 year old biological son of Rosalia and Dr. Andrew Chan ("Andrew"). Andrew is the late common law spouse of Lynn.
6. On December 27, 2015, Thomas attended Rosalia's home located on Denure St. north of Sherbrooke St. in Peterborough, ON.
7. While in attendance at his mother's home, Thomas ingested alcohol and illegal substances with his friends.
8. At approximately 11 p.m., Thomas began acting violently and erratically. Thomas's violent and erratic behaviour continued throughout the night. Thomas indicated to Rosalia that he was intending to go to Andrew's home.
9. In the early morning hours of December 28, 2015, Thomas exited Rosalia's home and began walking toward Andrew's home located at 1358 Haggis St., Peterborough, ON. A distance of approximately 600 metres.
10. Rosalia followed Thomas on foot. Rosalia's partner and Thomas's friend followed Rosalia in Thomas's friend's vehicle. The vehicle picked up Rosalia approximately half-way down Denure St and followed Thomas to Andrew's home.
11. Upon arriving at Andrew's home, Thomas began throwing rocks at the house while shouting delusional and violent statements. While on Andrew's front yard, Thomas continued to act in a violent, delusional and aggressive manner. At one point, Thomas approached the driver's side window of the vehicle and punched the window until it shattered.
12. Rosalia witnessed, or was aware of, Thomas's aforementioned actions at Andrew's home.
13. Andrew and Lynn were inside the home sleeping in Andrew's bedroom. Rosalia was aware that Lynn was Andrew's common law spouse and that Lynn slept at Andrew's house.

Rosalia knew, or ought to have known, that Andrew and Lynn were inside Andrew's home at the time.

14. Rosalia did not call the police, Lynn or Andrew to warn them of Thomas's violent, delusional, and destructive behaviour. Rosalia did not inform anyone of Thomas's violent, delusional and destructive physical and mental state.

15. Instead, Rosalia drove away from Andrew's home leaving Thomas in his violent, delusional and destructive physical and mental state on Andrew's front lawn.

16. On December 28, 2015, at approximately 3:30 a.m., Thomas entered Andrew's home. Thomas's entrance into the home awoke Andrew and Lynn. Andrew and Lynn discovered Thomas in their kitchen.

17. Thomas stabbed Andrew with a knife multiple times resulting in fatal injuries.

18. Thomas stabbed Lynn with a knife in the neck, through to her cervical spine, in the torso, in the abdomen, in the left arm and in the right eye.

19. Lynn was airlifted to St. Michael's Hospital from Peterborough Regional Health Centre as a result of her life threatening injuries. On February 3, 2016, Lynn was discharged from St. Michael's Hospital.

20. Thomas has been charged with murdering Andrew and attempting to murder Lynn. The criminal matter is ongoing.

21. Lynn pleads the torts of assault and battery as against Thomas.

22. Lynn pleads as against Rosalia that she failed to fulfil the following duties of care by falling below the standard of care in:

- (a) failing to warn Andrew, Lynn or the police of Thomas's violent, delusional and destructive mental and physical state; and

- (b) failing to take adequate or necessary steps to supervise Thomas and prevent him from causing any harm to the public in his violent, delusional and destructive mental and physical state as both a parent and a social host.

23. It was foreseeable that Thomas would cause harm in his violent, delusional and destructive mental and physical state. Furthermore, Rosalia materially contributed to an inherent and obvious risk by failing to supervise Thomas inside and outside her home prior to and after his consumption of alcohol and illegal substances.

24. Rosalia also had a special relationship of proximity with Lynn to create a duty of care given her prior family relationship with Lynn and knowledge of her common law relationship with her ex-husband, Andrew.

25. Rosalia fell below the applicable standard of care by failing to respond properly or take appropriate steps to protect Andrew, Lynn and other members of the public when she knew or ought to have known that Thomas would cause harm in his violent, delusional and destructive mental and physical state.

26. As a result of Thomas's actions and Rosalia's negligence, Lynn suffered significant immediate, continuing and permanent physical and psychological injuries, which include but are not limited to:

- (a) right scleral laceration;
- (b) three bowel injuries;
- (c) left neck external jugular injury;
- (d) sigmoid mesentery injury;
- (e) left anterior chest stab wound (non-penetrating);
- (f) left posterior upper back stab wound (non-penetrating);
- (g) lacerations to left hand, left anterior and posterior upper extremity;
- (h) facial fractures;
- (i) pain and numbness in right side of face;
- (j) loss of sight in her right eye,
- (k) light sensitivity and loss of balance;

- (l) pain, numbness and decreased mobility in her left arm and shoulder;
- (m) vocal cord paralysis;
- (n) hemorrhaged adrenal glands;
- (o) hematoma from the neck stab wound;
- (p) numbness in her left thigh;
- (q) the insertion of a gastrostomy tube to allow her to eat and drink;
- (r) bowel resections and hernia;
- (s) decrease in cognitive brain function;
- (t) post-traumatic stress disorder;
- (u) major depressive disorder; and
- (v) panic attacks, anxiety, fearfulness, insomnia, fatigue, flashbacks, nightmares and emotional and mental distress.

27. As a result of Thomas's actions and Rosalia's negligence, Lynn's ability to lead a normal life has been and continues to be permanently impaired. Lynn's enjoyment of life has been and continues to be diminished and her ability to earn a livelihood and to compete in the workforce has been and continues to be permanently impaired. Lynn has sustained a loss of income and will continue to sustain a loss of income, a loss of competitive advantage in the employment field, a loss of income earning potential and a diminution of income earning capacity.

28. As a further result of Thomas's actions and Rosalia's negligence, Lynn required and continues to require medical treatment and psychotherapy. Lynn continues to undergo medical treatment, physiotherapy, speech therapy, psychological counselling, and has several upcoming surgeries relative to her injuries sustained in the attack. Lynn has been put to medical, hospital, healthcare, counselling, housekeeping and other out-of-pocket expenses, the full particulars of which will be provided prior to the trial of this action.

29. The Plaintiff proposes that this action be tried at the City of Peterborough, in the Province of Ontario.

Date: September 1~~7~~¹⁹, 2016

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