

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**OLGA LEYENSON, DEREK CUMMINGS, JENNIFER LAUDER,
DOOR 2 DOOR MOVERS INC., MATTHEW KINCH, WAYNE PHILP and
BARTLOMIEJ TAZUSZEL**

Plaintiffs

- and -

**SCOTT McEACHERN and
McEACHERN, DE MEL LITIGATION PARALEGALS PROFESSIONAL CORPORATION**

Defendants

AND BETWEEN:

**SCOTT McEACHERN and
McEACHERN, DE MEL LITIGATION PARALEGALS PROFESSIONAL CORPORATION**

Plaintiffs by Counterclaim

-and-

**OLGA LEYENSON, PIXIE PARALEGAL SERVICES PROFESSIONAL CORPORATION,
DEREK CUMMINGS, JENNIFER LAUDER,
DOOR 2 DOOR MOVERS INC., MATTHEW KINCH, WAYNE PHILP and
BARTLOMIEJ TAZUSZEL**

Defendants by Counterclaim

STATEMENT OF DEFENCE AND COUNTERCLAIM

TO THE DEFENDANTS TO THE COUNTERCLAIM

A LEGAL PROCEEDING has been commenced against you by way of a counterclaim in an action in this court. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS COUNTERCLAIM, you or an Ontario lawyer acting for you must prepare a defence to counterclaim in Form 27C prescribed by the Rules of Civil Procedure, serve it on the plaintiff by counterclaim's lawyer or, where the plaintiff by counterclaim does not have a lawyer, serve it on the plaintiff by counterclaim, and file it, with proof of service, in this court, WITHIN TWENTY DAYS after this statement of defence and counterclaim is served on you.

If you are not already a party to the main action and you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

If you are not already a party to the main action, instead of serving and filing a defence to counterclaim, 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 defence to counterclaim.

IF YOU FAIL TO DEFEND THIS COUNTERCLAIM, 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.

IF YOU PAY THE AMOUNT OF THE COUNTERCLAIM AGAINST YOU, and \$ for costs, within the time for serving and filing your defence to counterclaim, you may move to have the counterclaim against you dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the amount of the counterclaim and \$400.00 for costs and have the costs assessed by the court.

Date NOV. 2, 2017

Issued by 

Local registrar

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Defendants by Counterclaim

STATEMENT OF DEFENCE

1. The defendants admit the allegations contained in paragraphs 4, 5, 6, 14 in part, 16 in part, 17 in part, 18 in part, 19, 22 and 25 in part of the Statement of Claim.
2. The defendants deny the allegations contained in paragraphs 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14 in part, 15, 16 in part, 17 in part, 18 in part, 20, 21, 23, 24, 25 in part, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 and 37 of the Statement of Claim.

The Parties:

3. The defendant Scott McEachern ("**McEachern**") is a licensed paralegal in the Province of Ontario.
4. The defendant McEachern, De Mel Litigation Paralegals Professional Corporation ("**MDM Paralegals**") is a professional corporation through which McEachern and Jeremy De Mel ("**De Mel**"), a licensed paralegal in the Province of Ontario, provide paralegal services. MDM Paralegals carries on business from premises located at 172 King Street East, Suite 106, Oshawa, Ontario.
5. The plaintiff Olga Leyenson ("**Leyenson**") is a licensed paralegal in the Province of Ontario.
6. Leyenson provides paralegal services through her professional corporation, Pixie Paralegal Services Professional Corporation ("**Pixie Paralegal**").
7. At all material times, the plaintiffs Derek Cummings, Jennifer Lauder, Door 2 Door Movers Inc., Matthew Kinch, Wayne Philp and Bartlomiej Tazuszel (the "**Client(s)**") were clients of MDM Paralegals. Door 2 Door Movers Inc. was also a client of McEachern's.

The Associate Agreement between MDM Paralegals and Leyenson:

8. In or around October 2016, Leyenson contacted McEachern through Facebook. Leyenson sought an opportunity to join MDM Paralegals as an associate.

9. Subsequently, MDM Paralegals and Leyenson entered into an associate agreement (the "**Associate Agreement**"), the terms of which included:
- i. Leyenson would provide paralegal services to existing clients of MDM Paralegals, as an associate of MDM Paralegals.
 - ii. Leyenson would direct all new clients to MDM Paralegals.
 - iii. Leyenson would docket a minimum of 20 hours per week on the files of MDM Paralegals.
 - iv. Leyenson would comply with the billing procedures and protocols of MDM Paralegals.
 - v. Leyenson would receive fifty (50%) percent of fees generated from work performed by Leyenson or an assistant of Leyenson's.
 - vi. Leyenson could continue to provide paralegal services through Pixie Paralegal only to existing clients of Pixie Paralegal.
 - vii. Leyenson would work exclusively on the files of MDM Paralegals while at the premises of MDM Paralegals.
10. Leyenson was provided with the use of two offices at the premises of MDM Paralegals, and administrative support.
11. Contrary to Leyenson's allegation in paragraph 7 of the Statement of Claim, the Associate Agreement was not with Pixie Paralegal. At no time did MDM Paralegals agree to provide Pixie Paralegal with office space and administrative support.
12. As an associate of MDM Paralegals, Leyenson owed MDM Paralegals a duty of loyalty, care, good faith and avoidance of conflict of interest and self-interest.

Leyenson's breach of the Associate Agreement:

13. In March 2017, McEachern and De Mel learned that Leyenson was engaging in the following conduct in breach of the Associate Agreement:
- i. Leyenson was directing new clients to Pixie Paralegal and not to MDM Paralegals.

- ii. Leyenson was working on the files of Pixie Paralegal at the premises of MDM Paralegals.
 - iii. Leyenson was not meeting her docketed quota of 20 hours per week.
 - iv. Leyenson refused to work on files of MDM Paralegals, stating that she was 'too busy'.
14. McEachern and De Mel subsequently learned that Leyenson failed to comply with the billing procedures and protocols of MDM Paralegals. Leyenson charged paralegal rates for work that should have been charged at administrative assistant rates. Leyenson failed to apply discounted rates to applicable clients. As a result, MDM Paralegals overpaid Leyenson fees to which Leyenson was not entitled.
 15. The full extent to which Leyenson failed to comply with the billing procedures and protocols of MDM Paralegals is unknown to MDM Paralegals. This can only be determined from a review of the Clients' files taken by Leyenson from MDM Paralegals, which Leyenson has refused to return.

The termination of Leyenson's association with MDM Paralegals:

16. In March 2017, De Mel met with Leyenson to discuss Leyenson's unauthorized operation of Pixie Paralegal from the premises of MDM Paralegals.
17. Leyenson refused to stop operating Pixie Paralegal from the premises of MDM Paralegals. Leyenson told De Mel that she would leave MDM Paralegals, effectively terminating her association with MDM Paralegals; and agreed to leave the premises of MDM Paralegals.
18. Contrary to Leyenson's allegation in paragraph 9 of the Statement of Claim, the termination of Leyenson's association with MDM Paralegals was not "amicable".
19. MDM Paralegals' priority was ensuring that the termination of Leyenson's association with MDM Paralegals would have minimal impact on the clients of MDM Paralegals, on whose files Leyenson was working. As a result, notwithstanding Leyenson's conduct, De Mel told Leyenson that client files could be transferred to Pixie Paralegal, subject to Leyenson following proper file transfer protocol.

20. The file transfer protocol included providing MDM Paralegals with signed authorizations from the clients; and permitting MDM Paralegals to retain a copy of the client files.
21. The reasons for MDM Paralegals retaining a copy of client files include:
 - i. Conducting a closing audit of client files.
 - ii. Finalizing and issuing a closing account to clients.
 - iii. Complying with MDM Paralegal's record retention protocols.
 - iv. Complying with Law Society of Upper Canada Guidelines with respect to retention and destruction of client files.
 - v. Defending against any errors and omissions allegations.
 - vi. Defending against any complaints to the Law Society of Upper Canada.
 - vii. Responding to any audits by the Law Society of Upper Canada.
 - viii. Responding to any audits by Canada Revenue Agency.
22. It was an express and/or implied term of the retainer agreement signed by each Client with MDM Paralegals and/or McEachern that the Client agreed to MDM Paralegals and/or McEachern retaining a copy of the Clients' file for a period of ten years.
23. Leyenson specifically agreed with De Mel that in the event files were transferred to Pixie Paralegal, Leyenson would arrange to have the files copied at the premises of MDM Paralegals before removing the files. MDM Paralegals would provide use of its copier, and paper, to make the copies.
24. Contrary to Leyenson's allegation in paragraph 12 of the Statement of Claim, MDM Paralegals does not have a "complete or virtually complete copy" of the files at issue, in electronic format.

Leyenson's surreptitious removal of client files:

25. On April 20, 2017, Leyenson attended at the premises of MDM Paralegals in the guise of removing the personal property of Leyenson.

26. Neither McEachern nor De Mel was at the premises at the time.
27. Leyenson removed, or caused to be removed, approximately twenty files from the premises; including the files of the Clients.
28. The files are the property of MDM Paralegals and/or McEachern. The files contain the work product and intellectual property of MDM Paralegals and/or McEachern
29. Leyenson removed the files surreptitiously; without the consent, authorization or knowledge of MDM Paralegals, and its principals, McEachern and De Mel.
30. Leyenson removed the files without providing MDM Paralegals an opportunity to retain a copy of the files.

The Client authorization letters:

31. After Leyenson removed the files from the premises of MDM Paralegals, Leyenson provided MDM Paralegals with letters purportedly signed by each of the Clients (the “**Authorization Letter(s)**”), authorizing the transfer of the files to Pixie Paralegal.
32. The Authorization Letters were printed on the letterhead of MDM Paralegals, and addressed to each of the Clients.
33. The Authorization Letters were drafted by Leyenson, and delivered to the Clients for signing, without the consent, authorization and knowledge of MDM Paralegals and its principals, McEachern and De Mel.
34. The Authorization Letters were drafted in such a manner as to misrepresent that Leyenson was authorized to draft and deliver the Authorization Letters on behalf of MDM Paralegals.
35. The Authorization Letters gave the false and misleading impression that MDM Paralegals required the Clients to transfer their files from MDM Paralegals to Leyenson’s paralegal business, Pixie Paralegal, or to another paralegal/lawyer.

36. In the Authorization Letter, Leyenson set out the Client's options. The options provided by Leyenson did not include the Client remaining with MDM Paralegals:

"I am required to inform you that you may retain me to continue to represent you in this matter or you can choose to retain a different paralegal or lawyer."

37. Each Authorization Letter contained a provision that the Authorization Letter, when signed by the Client, shall constitute a retainer or contingency agreement between the Client and Pixie Paralegal.

38. The Authorization Letters contained a clause with a check box for the Client to mark, as an indication that MDM Paralegals and McEachern were not to retain a copy of the Client's file:

"I do not wish for my original file or copy thereof to be retained by McEachern, de Mel Litigation Paralegals Professional Corporation or Scott McEachern, as the case may be."

Leyenson returned files for which there is no signed Authorization Letter:

39. At the time Leyenson removed the files from the premises of MDM Paralegals, Leyenson was not yet in possession of the Authorization Letters signed by clients.
40. MDM Paralegals is of the understanding that Leyenson sent the Authorization Letters to approximately twenty clients; and only received signed Authorization Letters from the six Clients.
41. Leyenson returned to MDM Paralegals those files with respect to those clients who did not sign an Authorization Letter. Leyenson told McEachern and De Mel that these files had been mistakenly removed by the movers when removing Leyenson's personal property.

Leyenson has prevented MDM Paralegals from copying the transferred files:

42. Of the approximately twenty files that Leyenson removed on April 20, 2017, six files were transferred to Pixie Paralegal; specifically the files of the Clients (the "Transferred Files").
43. MDM Paralegals has repeatedly demanded that Leyenson and Pixie Paralegal return the Transferred Files to MDM Paralegals, so that MDM Paralegals can make a copy of the Transferred Files. MDM Paralegals will incur the expense of making the copies. Once the Transferred Files are copied, the Transferred Files shall be returned to Leyenson and Pixie Paralegal.
44. Leyenson has refused to return the Transferred Files to MDM Paralegals for the purpose of making a copy of the Transferred Files.

Trust monies in the Transferred Files:

45. MDM Paralegals requires a copy of the Transferred Files in order to prepare a final account to each of the Clients.
46. MDM Paralegals has repeatedly advised Leyenson that any remaining trust monies held by MDM Paralegals in the Transferred Files shall be released once MDM Paralegals is in possession of a copy of the Transferred Files, and MDM Paralegals renders its final accounts.

The 'Goldentuler' action:

47. With respect to paragraph 22 of the Statement of Claim, this paragraph references the action of *The Estate of Henry Goldentuler v. Leyenson et al.* (the "Goldentuler Action"). The court decisions in the Goldentuler Action are a matter of public record.
48. Leyenson was an employee of a solicitor, Henry Goldentuler. Leyenson, amongst other defendants, was sued by the Estate of Henry Goldentuler for unlawfully removing files from the office of Henry Goldentuler.

49. The Ontario Court of Appeal held that the defendants, including Leyenson, “stole” client files from Henry Goldentuler; removing the files surreptitiously. The Ontario Court of Appeal described the defendants' conduct as “outrageous and high-handed”; that “cries out for sanction by the courts”.

The Facebook post:

50. With respect to paragraph 25 of the Statement of Claim, McEachern maintains a Facebook page called 'What Do You Think?'; which addresses general information and hypothetical legal issues.
51. The Facebook post at issue concerned a hypothetical scenario, involving a hypothetical individual named 'Alice'.
52. The Facebook post makes no reference whatsoever to Leyenson.

Response to the claim of Leyenson:

53. MDM Paralegals and McEachern deny any liability.
54. MDM Paralegals and McEachern deny that Leyenson suffered any damages, and put Leyenson to the strict proof thereof.
55. MDM Paralegals and McEachern deny that the alleged statements are defamatory, and put Leyenson to the strict proof thereof.
56. In the alternative, MDM Paralegals and McEachern plead that the statements at issue are true.
57. In the further alternative, the statements were published in good faith and without malice on an occasion of qualified privilege.

58. In the further alternative, the statements constitute fair comment, on matters of public interest, based on substantially true facts. The opinions were expressed in good faith and without malice.
59. In the further alternative, the statements are protected by absolute privilege. The Draft Claim referred to in paragraph 22 of the Statement of Claim incorporates statements contained in the Defendant's Claim in Oshawa Small Claims Court File No. 1112/17-D1.
60. The claim with respect to the Facebook post is statute barred.
61. MDM Paralegals and McEachern plead and rely upon sections 5, 6, 10, 23 and 24 of the Ontario *Libel and Slander Act*.
62. The claim of Leyenson is an abuse of process; and is a vexatious attempt to deter MDM Paralegals and McEachern from pursuing a copy of the Transferred Files.
63. MDM Paralegals and McEachern request that the claim of Leyenson be dismissed with costs on a substantial indemnity basis.

Response to the claim of the Clients:

64. MDM Paralegals and McEachern deny any liability.
65. MDM Paralegals and McEachern deny that the Clients suffered any damages, and put the Clients to the strict proof thereof.
66. In the event the Clients suffered any damages, which is not admitted but expressly denied, the damages are attributable to the conduct of the Clients, Leyenson and Pixie Paralegal.
67. In the alternative, in the event the Clients suffered any damages, which is not admitted but expressly denied, the Clients have not taken reasonable steps to mitigate their damages. The Clients have failed to instruct Leyenson to return the Transferred Files to MDM Paralegals for the purpose of copying the Transferred Files; following which MDM Paralegals shall release any remaining balance of the trust monies after rendering a final

account to each of the Clients.

68. MDM Paralegals and McEachern request that the claim of the Clients be dismissed with costs on a substantial indemnity basis.

Liability of Leyenson and Pixie Paralegal:

69. Contrary to Leyenson's pleading, it is Leyenson and Pixie Paralegal who are liable to MDM Paralegals and McEachern.
70. Leyenson and Pixie Paralegal have converted the Transferred Files for their own use without legal justification.
71. The conduct of Leyenson described herein constitutes a breach of the duty of loyalty, care, good faith and avoidance of conflict of interest and self-interest; which Leyenson owed to MDM Paralegals.
72. Leyenson's conduct was in bad faith.
73. MDM Paralegals and McEachern plead that Leyenson and Pixie Paralegal coordinated the filing of complaints to the Law Society of Upper Canada against McEachern, by the Clients (except Door 2 Door Movers Inc.). The complaints to the Law Society of Upper Canada contain false and malicious accusations against McEachern. Leyenson and Pixie Paralegal have prejudiced McEachern's ability to respond to the complaints by refusing to provide McEachern with a copy of the Transferred Files.
74. MDM Paralegals and McEachern plead the doctrine of unjust enrichment. By removing the Transferred Files from the premises of MDM Paralegals, Leyenson and Pixie Paralegal have been unjustly enriched at the expense of MDM Paralegals and McEachern.
75. Pixie Paralegal is vicariously liable for the conduct of Leyenson.

Liability of the Clients:

76. The Clients breached their respective retainer agreement with MDM Paralegals and/or McEachern by authorizing Leyenson to remove the Transferred Files from the premises of MDM Paralegals; and instructing Leyenson not to provide MDM Paralegals and/or McEachern with a copy of the Transferred Files.
77. The Clients' conduct was in bad faith.
78. Each of the Clients (except Door 2 Door Movers Inc.) commenced a complaint against McEachern with the Law Society of Upper Canada. The complaints contain false and malicious accusations against McEachern. The Clients have prejudiced McEachern's ability to respond to the complaints, by instructing Leyenson and Pixie Paralegal not to provide McEachern with a copy of the Transferred Files.
79. The Clients have converted the Transferred Files for their own use without legal justification.
80. MDM Paralegals and McEachern plead the doctrine of unjust enrichment. The Clients instructed Leyenson and Pixie Paralegal to remove the Transferred Files without permitting MDM Paralegals to prepare a final closing account to the Clients. The Clients have been unjustly enriched at the expense of MDM Paralegals and McEachern.

COUNTERCLAIM

81. MDM Paralegals claims against Leyenson and Pixie Paralegal, jointly and severely for:
 - a. A mandatory injunction order requiring Leyenson and Pixie Paralegal to deliver up to MDM Paralegals the Transferred Files; for the purpose of MDM Paralegals making a copy of the Transferred Files.
82. MDM Paralegals and McEachern claim against Leyenson and Pixie Paralegal, jointly and severely for:

- a. A declaration that the conduct of Leyenson and Pixie Paralegal described herein constitutes a breach of the fiduciary duty owed by Leyenson to MDM Paralegals.
 - b. A declaration that Leyenson and Pixie Paralegal have unlawfully converted the Transferred Files.
 - c. Punitive damages in the amount of \$100,000.
83. MDM Paralegals claims against the Clients, jointly and severely for:
- a. A mandatory injunction order requiring that the Clients direct Leyenson and Pixie Paralegal to deliver up to MDM Paralegals the Transferred Files for the purpose of MDM Paralegals making a copy of the Transferred Files.
84. MDM Paralegals and McEachern claim against the Clients, jointly and severely for:
- a. A declaration that each of the Clients has breached the terms of their retainer agreement with MDM Paralegals.
 - b. A declaration that the Clients have unlawfully converted the Transferred Files.
 - c. Punitive damages in the amount of \$50,000.
85. MDM Paralegals and McEachern claim against all of the defendants by counterclaim jointly and severely for:
- a. An order that the action in Oshawa Small Claims Court, being Claim No. 1112/17 and Claim No. 1112/17-D1, shall be transferred to the Superior Court of Justice at Oshawa; and shall be tried together with the herein action or one after the other at Oshawa; subject to an agreement by the parties or an order of this Court.
 - b. Prejudgment interest in accordance with the provisions of Section 128 and 129 of the *Courts of Justice Act, R.S.O. 1990*, as amended.

- c. Their costs in the main action and the counterclaim on a substantial indemnity basis.
- d. Such further and other relief as this Honourable Court may deem just.

86. MDM Paralegals and McEachern plead and incorporate the allegations in the Statement of Defence herein.

Date: ~~October 31, 2017~~

NOV 02 2017

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OLGA LEYENSON et al.

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and

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Plaintiffs by Counterclaim

Court File No.: 2560/17

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at **OSHAWA**

**STATEMENT OF DEFENCE AND
COUNTERCLAIM**

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