

Court File No.

81654/12

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

YASMIN NAKHUDA

Plaintiff

- and -

STORY BOOK FARM PRIMATE SANCTUARY and SHERRI DELANEY

Defendants

STATEMENT OF CLAIM

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.

Date: Dec 14, 2012

Issued By: 

Address of Court Office:
**150 Bond Street East
Oshawa, Ontario
L1G 0A2**

TO: Story Book Farm Primate Sanctuary
2315 Concession 10, RR#3
Sunderland, Ontario L0C 1H0

AND TO: Sherri Delaney
2315 Concession 10, RR#3
Sunderland, Ontario L0C 1H0

CLAIM

1. The plaintiff claims as follows:
 - (a) Recovery of possession of personal property being a Japanese Macaque, monkey named Darwin (“Darwin”);
 - (b) An interim order for recovery of Darwin pending trial;
 - (c) Alternatively, an interim and permanent order granting the plaintiff regular access to Darwin;
 - (d) Costs of this action; and
 - (e) Such further and other relief as his Honourable court may deem just.
2. The plaintiff (“Yasmin”) resides in the City of Toronto. Yasmin has owned Darwin since he was gifted to her in July 2012.
3. On December 9, 2012 Darwin was a passenger in the plaintiff’s motor vehicle parked at Ikea in North York. He was in a carrier while the plaintiff was shopping at Ikea but managed to open the carrier and the car door. While he was walking about the parking lot Toronto Animal Services seized him and took him to their Sheppard avenue location.
4. The plaintiff attended Animal Services that day and requested Darwin be returned to her. A by-law enforcement officer interviewed her, issued a ticket under the Toronto Municipal Code (“the Code”) for keeping a prohibited animal in Toronto and refused to return Darwin.
5. The officer’s refusal to return Darwin was unlawful because the Code does not authorize the officer to keep an animal other than dogs and cats. The only penalty under the Code is a fine. Animal Services therefore unlawfully detained Darwin.
6. In addition to unlawfully detaining Darwin the officer coerced Yasmin into signing a form surrendering Darwin to Animal Services. Yasmin pleads the surrender or transfer of ownership is void for lack of consideration, duress and misrepresentation.
7. Particulars of the duress and misrepresentation are:
 - (a) the officer stated that Yasmin could not own Darwin because of the Code. This was misleading because the Code prohibits the animal in Toronto but not owning the animal,

(b) the officer said that if she surrendered Darwin, he would not lay criminal charges. This was misleading because the officer did not have reasonable or probable grounds to lay criminal charges. In addition the threat of charges was intimidating for Yasmin who is a lawyer and her livelihood would have been severely impacted by the charges and the publicity associated with the charges,

(c) the officer said that Yasmin could not see Darwin unless she surrendered him. Yasmin experienced duress because she feared for Darwin and wanted to comfort him and see him,

(d) the officer knew that his statements would be believed by Yasmin and that the statements would induce her to sign the surrender, and

(e) the officer knew that the threat of criminal charges and withholding access to Darwin would cause Yasmin to experience duress and sign the surrender.

8. Animal Services did not have any ownership interest in Darwin when it purported to transfer ownership to the defendants. The defendants knew that Darwin belonged to Yasmin when they applied to have Darwin transferred to the shelter. The defendants have therefore unlawfully taken Darwin from the possession of the plaintiff or have unlawfully detained Darwin.
9. Despite numerous requests the defendants refuse to return Darwin or allow the plaintiff access to visit with Darwin.
10. The Defendant, Story Book Farm Primate Sanctuary, is a registered charity under the *Registered Charities Act* located in Sunderland, Ontario.
11. The Defendant, Sherri Delaney, is the Director of the Story Book Farm Primate Sanctuary.
12. The plaintiff proposes that the trial of this action take place at the City of Oshawa.

December 14, 2012

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Plaintiff

v. **Story Book Farm Primate Sanctuary et al**
Defendants

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SUPERIOR COURT OF JUSTICE
Proceedings commenced in OSHAWA

STATEMENT OF CLAIM

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