



No. S-153693  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

JIMMY NOWZER MISTRY

PLAINTIFF

AND:

SHIAMAK DAVAR

DEFENDANT

**RESPONSE TO CIVIL CLAIM**

**Filed by:** The Defendant, Shiamak Davar

**Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS**

**Division 1 – Defendant’s Response to Facts**

1. The facts alleged in paragraphs 3-5 of Part 1 of the Notice of Civil Claim are admitted.
2. The facts alleged paragraphs 6, 7, 8-12, 13-22, 23-34, 35 and 36-43 of Part 1 of the Notice of Civil Claim are denied.
3. The facts alleged in all other paragraphs of the Notice of Civil Claim are outside of Mr. Davar’s knowledge.

**Division 2 – Defendant’s Version of Facts**

1. Mr. Davar categorically denies the allegations contained in the Notice of Civil Claim (“NOCC”). The Plaintiff’s allegations are simply not true and have been made with the intention of ruining Mr. Davar’s character, reputation and affiliated organizations.

## Background

2. Shiamak Davar is a performing artist most known for his dance and choreography work. He is internationally recognized as the "Guru of Contemporary Dance" in India, and is responsible for modernizing India's traditional dance scene.

3. Mr. Davar started teaching dance classes in Mumbai in 1985 to a small group of 7 students. In 1987 Mr. Davar choreographed his first musical, and thereafter went on to choreograph and direct many more theatrical productions. With a small group of talented dancers, Mr. Davar formed The Shiamak Davar Dance Company in January, 1989 (the "Dance Company").

4. In 1991, Shiamak Davar's Institute for the Performing Arts (India) ("SDIPA") was created. Shiamak Davar International (India) Private Limited has operations in Mumbai, Delhi, Pune, Bangalore, Hyderabad and other cities teaching dance classes, performing shows & events and teaching dance as therapy classes to the underprivileged and special needs groups.

5. The SHIAMAK Group has a presence in 6 countries - India, Canada, Australia, UK, UAE and USA and provides dance education through their 150 talented dance instructors in 31 cities at over 600 locations (rented dance studios, schools and non-governmental / special needs organizations). Shiamak Davar International (Canada) Inc. was formed on December 28, 2006.

6. The Dance Company was at all material times a respected dance school and performance troupe in India and Internationally. The Dance Company has met with considerable success over the years in its efforts to share traditional Indian dance and culture to international audiences.

7. In the early 1980's Mr. Davar met and began following the teachings of Mrs. Khorshed Bhavnagri (deceased). Mrs. Bhavnagri is the sole founder of the VRRP Spiritual Learning Society (the "VRRP"), an organization developed after the death of her sons Vispi and Ratoos in a car accident. The VRRP are guided by the contents of a book *The Laws of the Spirit World* written and originally published by Mrs. Bhavnagri. The VRRP believes that there is One God, that the aim of the Earthly life is to be a good human being and in reincarnation. The process through which Mrs. Bhavnagri would receive and communicate messages with the spirit world is called Automatic Writing. Mrs. Bhavnagri had a close relationship with Mr. Davar, and prior to her death in 2007 she expressed her wishes for Mr. Davar to be the custodian of the VRRP,

specifically the teachings set out in *The Laws of the Spirit World* and continue her legacy. Since 2007, Mr. Davar has carried on his devotion to the VRRP, but at no point did he consider himself to be, or hold himself out as, a spiritual guru or leader.

### **2000 - 2003: India**

8. In or around the year 2000, the Plaintiff began taking dance classes at SDIPA. Shortly thereafter he became a principal member of the Dance Company and a contract dance instructor at SDIPA. All instructors and Dance Company members trained and rehearsed for shows with Mr. Davar personally.

9. During rehearsals Mr. Davar would often split up his Dance Company into smaller groups so that his attention could be better focused on his individual dancers. In all talent based activities, including dance, levels of talent and potential among participants varies. It is not uncommon for coaches to separate groups or teams in order to address certain strengths or weaknesses and to effectively coach each individual. As a Dance Company member, the Plaintiff would have certainly been instructed by Mr. Davar in small group settings. The allegation by the Plaintiff that these circumstances were for the purposes of some kind of "sexual grooming" (as alleged in paragraph 10 of the NOCC) is simply false.

10. It was not uncommon for Mr. Davar to socialize with his dancers before and after classes; and, he would often invite his colleagues and students to join him for meals or activities after rehearsals. Mr. Davar made the outings an open invitation to all members of the Dance Company, both male and female. These social outings never took place at Mr. Davar's residence and certainly not his bedroom (as alleged in paragraph 11 of the NOCC).

11. At all material times Mr. Davar has taken his role as dance teacher and coach seriously and has respected the boundaries between him and his pupils. It was important to Mr. Davar that he created an environment in which his dancers felt confident and encouraged. He made an effort to individually interact with all his students, and foster a team environment by encouraging socialization with one another as previously described. Mr. Davar has always maintained a friendly relationship with his students, male and female, and has never inappropriately touched the Plaintiff or any other member Dance Company or encouraged or allowed his students to inappropriately touch him (as alleged in paragraphs 11 and 12 of the NOCC).

12. Mr. Davar acknowledges that in 2001 he took about 12 to 14 dancers and friends, including the Plaintiff and the Plaintiff's brother, to Mandwa for a short vacation. While away, Mr. Davar acted appropriately and certainly did not touch or kiss the Plaintiff (as alleged in paragraph 17 of the NOCC).

13. As a devout follower of Mrs. Bhavnagri's teachings, Mr. Davar is transparent about his spirituality and often discusses his beliefs with those around him. Generally speaking, if someone expressed interest in the VRRP, Mr. Davar would encourage them to explore their interest further by attending group meetings held by Mrs. Bhavnagri. Mr. Davar has no specific recollection of sharing his beliefs with the group in Mandwa.

14. At some point the Plaintiff began attending the meetings of the VRRP, and very quickly became a dedicated follower of Mrs. Bhavnagri's teachings. Mr. Davar never forced his beliefs upon the Plaintiff or any member of the Dance Company, nor did he ever advise anyone of the spiritual level system in the manner alleged in paragraph 16 of the NOCC. In the book *The Laws of the Spirit World* it is stated that levels are indicators of one's spiritual progress. Individuals are encouraged to complete a self-analysis to discover certain areas where one needs to grow to expand their spiritual understanding. Members were free to consult with Mrs. Bhavnagri regarding their levels, but it was not compulsory. Levels are not a metric of seniority within the VRRP, they are a self-exploration tool. It is impossible for a member of the VRRP, such as Mr. Davar, to give or take away spiritual levels as alleged.

15. During the Plaintiff's tenure with the Dance Company, he travelled internationally to perform with the group. At all material times the Plaintiff travelled with other members of the Dance Company and never had occasion to travel with Mr. Davar alone. On all occasions Mr. Davar acted in an appropriate manner. Mr. Davar has certainly never had any sexual relations with the Plaintiff.

16. Mr. Davar is an outgoing individual who is colourful in his expression. He often uses terms of endearment when communicating to others. At no time did Mr. Davar ever imply sexual feelings or show favouritism towards the Plaintiff. If the Plaintiff interpreted Mr. Davar's words or actions that way, then that is on his own subjective interpretation and not as a result of Mr. Davar's implications. Mr. Davar denies using the words alleged by the Plaintiff in paragraphs 18, 21 and 22, or at all.

**February – September 2004: Toronto**

17. In or around 2004, a third party organization with whom the Dance Company works with applied for and received a positive Labour Market Opinion (“LMO”) for the Plaintiff to work in Toronto, Ontario. The Plaintiff was granted a work permit for the period of February to September, 2004.

18. The third party handled all the day to day operation of the Dance Company in Toronto. The Plaintiff taught dance classes and his administrative work was restricted to maintenance of student attendance and the occasional collection of fees. By all account, his responsibilities were that expected of a dance instructor. He was provided accommodation and food by the third party. Mr. Davar understands that the Plaintiff was paid appropriately for teaching dance classes. At some point the Plaintiff may have pointed out to the Defendant that the third party appeared to be taking advantage of the Defendant financially. However, the Defendant’s decision to dissolve the partnership with the third party was not solely based on the Plaintiff’s observation. The Defendant decided to dissolve the partnership with the third party and run the Dance Company’s Toronto operations himself. The Plaintiff helped Mr. Davar by identifying locations for the dance classes. The Plaintiff did not help in any other administrative capacity or in rebranding the dance school as he claims.

19. During the period of time that Mr. Davar was dissolving the partnership with the third party, he decided to temporarily stop classes in Toronto until the dissolution was complete. As a result, the Plaintiff was to return to India. The Plaintiff, through Mr. Davar’s staff, pleaded with Mr. Davar to allow him to complete a one year stay in Canada so that he could apply for permanent residency. Mr. Davar advised the Plaintiff that it was not possible because the classes in Toronto had stopped and Vancouver already had enough dance instructors to teach the existing classes. Nevertheless, Mr. Davar obliged and agreed to help the Plaintiff and advised his office in Vancouver to apply for a LMO and work permit for the Plaintiff. It was solely at the Plaintiff’s request that Mr. Davar gave him a job in Vancouver.

**September 2004 – Present: Vancouver**

20. During his employment with the Dance Company in Vancouver the Plaintiff duties were limited to teaching dance classes. He was not involved in any financial or administrative work.

Mr. Davar states that the Plaintiff was paid as promised for teaching dance classes and provided a reasonable allowance for food and accommodation.

21. In answer to paragraph 27 of the NOCC, Mr. Davar acknowledges that the VRRP are influenced by certain beliefs of Mrs. Bhavnagri relating to geography and residence location. Each individual member is at liberty to make their own decisions based on Mr. Bhavnagri's beliefs and their choice is respected. The Plaintiff freely and willingly chose to reside in North Vancouver and continued his participation in the VRRP until 2008. The Plaintiff's involvement with the VRRP would have been overseen by Mrs. Bhavnagri until her death in 2007.

22. From 2004-2008 the interactions between the Plaintiff and Mr. Davar were limited to the occasions when Mr. Davar was in Vancouver. Although the Plaintiff lived in Mr. Davar's basement suite for a short period of time, very often their interaction was restricted to their mutual attendance at group meetings of the VRRP. There was certainly no physical or sexual interaction between the Plaintiff and Mr. Davar as described in paragraph 28 of the NOCC.

23. Mr. Davar denies that the Plaintiff ever advised him, at a VRRP meeting as alleged or otherwise, that he was not being paid appropriately for his work at the Dance Company or that the Dance Company was short-changing other employees. Furthermore, Mr. Davar denies that as a result of this accusation the VRRP asked him to leave and/or ostracized him from the group. The VRRP does not remove members from the spiritual group, or ask them to stop attending. Attendance is based on the free will of the attendee. The Plaintiff was not evicted from the Defendant's basement, nor was he fired from his employment at the Dance Company.

24. Mr. Davar is aware that at some point, the Plaintiff's girlfriend, Ira, moved to Vancouver. Mr. Davar denies any knowledge about the determination of where they would reside. At all times Mr. Davar's relationship with the Plaintiff and Ira was friendly and appropriate. Ira was also a member of the Dance Company. Mr. Davar recalls that there was a time when both the Plaintiff and Ira distanced themselves from the VRRP. Mr. Davar understands that at the time the Plaintiff and Ira were having a lot of difficulties in their relationship.

25. Mr. Davar is aware that at some point the Plaintiff sought advice from Mrs. Bhavnagri about leaving Ira. He was feeling mentally oppressed by her and was not happy. The VRRP does not typically interfere with relationships, and Mr. Davar understands that Mrs. Bhavnagri advised the Plaintiff that, in accordance with his spirituality, he must live an honest life and be

open with Ira about his feelings. Mr. Davar understands that the Plaintiff was not happy with this advice; he was hoping that Mrs. Bhavnagri would direct him to leave Ira; however, such advice would not be in keeping with *The Laws of the Spirit World*. Shortly after that meeting, Mr. Davar is aware that the Plaintiff asked Ira to move out. The Plaintiff has on many occasions reached out to Mr. Davar for friendship and personal guidance. The Defendant was not involved in any decision related to the Plaintiff's relationship with Ira, specifically he did not encourage or manipulate the Plaintiff to leave Ira as alleged in paragraphs 33 and 34 of the NOCC or at all.

26. Sometime later, the Plaintiff and Ira reconciled and were married. Mr. Davar is aware that shortly after their reconciliation they ceased all contact with the VRRP. The decision to leave the VRRP was made of the Plaintiff's free will and Mr. Davar was not involved in it.

27. It is the aim of the VRRP to help individuals reach their highest potential as human beings, and living an open and honest life is a key to spiritual growth. Mr. Davar denies ever using the Plaintiff's spirituality to manipulate or coerce sexual actions or expressions from the Plaintiff. Doing so would be contrary to the principles by which he lives his life. Mr. Davar denies the event alleged in paragraphs 35-37 of the NOCC in its entirety. Further, Mr. Davar denies ever holding himself out as the leader of the VRRP.

28. At no time prior to, or after Mrs. Bhavnagri's death did Mr. Davar hold himself out as a spiritual leader or guru. Although he acknowledges that Mrs. Bhavnagri wished for him to continue her legacy after her death, he always maintained that spiritual knowledge as stated in *The Laws of the Spirit World* is the true guru – not a single individual. If the Plaintiff identified Mr. Davar as his "spiritual leader" or "spiritual guru" then that was a result of his own personal view of Mr. Davar, and not due to any actions or statements made by Mr. Davar.

### **Division 3 – Additional Facts**

29. At all material times the Plaintiff and Mr. Percy Shroff were good friends.

### **Part 2: RESPONSE TO RELIEF SOUGHT**

1. Mr. Davar opposes the granting of all of the relief sought in Part 2 of the Notice of Civil Claim.

2. Mr. Davar asks that this proceeding be dismissed as against him and seeks an order of special costs against the Plaintiff.

### **Part 3: LEGAL BASIS**

1. Mr. Davar denies each and every allegation in the Notice of Civil Claim and puts the Plaintiff to the strict proof thereof.

2. Mr. Davar states that there is no factual basis whatsoever for the allegations contained in the NOCC. Mr. Davar denies that he at any time harassed abused or assaulted the Plaintiff in a sexual manner or otherwise. At all material times, Mr. Davar says that he performed his role as teacher, employer and perceived spiritual advisor in a professional and appropriate manner. At no time did Mr. Davar misuse or abuse his position in the Dance Company and/or perceived position in the Spiritual Group as alleged by the Plaintiff or at all. There is no truth whatsoever to these allegations.

3. With respect to the VRRP generally and specifically Mr. Davar's role in it, there was most assuredly never any systemic practices, policies or actions that promoted abuse, humiliation, degradation of its members. At all material times the Plaintiff participated in the VRRP of his own free will, and at no time was coerced into doing so by Mr. Davar or others. During his time with the VRRP the Plaintiff was never subjected to any oppressive behavior or teachings. He was not harmed, humiliated or caused to live in fear or anxiety in any way.

4. To the extent that the Plaintiff experienced feelings of unhappiness, humiliation or mental suffering while a member of the Dance Company and/or the VRRP, such was a product of his own subjective reaction to particular events or his life in general. There was nothing about the conduct of Mr. Davar that would have caused an objective reasonable person in like circumstances to have experienced either such feelings, or lasting injury or damage arising out of same. Mr. Davar denies that any act or omission on his part caused or contributed to any of the injury, loss or damage alleged to be suffered by the Plaintiff.

5. If the Plaintiff is found to have suffered injury, loss or damage, which is denied, Mr. Davar says that the extent of the Plaintiff's damages could have been prevented, or the severity reduced, if the Plaintiff had not been negligent in respect of his own personal health and



wellbeing. Further, Mr. Davar says that the Plaintiff failed to take any reasonable steps to minimize, avoid or otherwise mitigate his alleged injury, loss or damage.

6. Mr. Davar pleads the provisions of the *Negligence Act*, RSBC 1996, c. 333 and amendments thereto.

7. The allegations contained in paragraphs 8-22, including the alleged "Sexual Advances", "Further Sexual Advances" and "Sexual Demands" of the NOCC are said to have occurred in India. These acts are specifically denied, but, in any event not within the jurisdiction of the British Columbia Supreme Court. Mr. Davar pleads and relies on the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C 2003, c. 28.

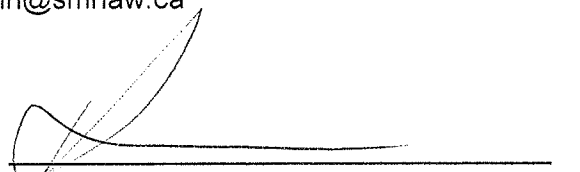
8. Further, the alleged acts or omissions of Mr. Davar, all of which are denied, do not warrant or justify an award of punitive or aggravated damages.

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Date: May 7, 2015



Signature of the Lawyer for Shiamak Davar

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

- (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
  - (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.