

Court File No. CV-08-00366828

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**JOSEPH MCLEOD (c.o.b. as MASLAK MCLEOD GALLERY), JACKIE
BUGERA, BUGERA HOLDING LTD. (c.o.b. as BEARCLAW ART GALLERY),
JAMES WHITE, WHITE DISTRIBUTION LIMITED, DONNA CHILD,
ARTWORLD INC. (c.o.b. as ARTWORLD OF SHERWAY), SUN NAM KIM
("SUNNY KIM"), and GALLERY SUNAMI INC. (c.o.b as GALLERY SUNAMI)**

Plaintiffs

- and -

**RITCHIE SINCLAIR (also known as "RITCHIE ROSS SINCLAIR", "RICHIE
SINCLAIR", "STARDREAMER", and "BLACKMAGIC")**

Defendant

**AFFIDAVIT OF JACKIE BUGERA
Sworn November 21, 2008**

I, Jackie Bugera, of the City of Edmonton in the Province of Alberta make oath and say as follows:

1. I am the sole shareholder, Director and Officer of Bugera Holding Ltd., operating as Bearclaw Art Gallery ("Bearclaw"). Bearclaw is located at 10403 124 Street, Edmonton Alberta. I began working in this gallery twenty-eight years ago (in 1980). I purchased the gallery from my parents in June 2007.
2. Bearclaw's business consists of buying and selling artwork, including the paintings of Norval Morrisseau. Bearclaw buys and sells Morrisseau paintings in the secondary art market. What this means is that we buy Morrisseau paintings from other collectors and re-sell them. Until 1996, Bearclaw also worked through an agent to obtain Morrisseau paintings from Norval Morrisseau (the primary

market). Currently, the gallery does not obtain paintings directly from Morriseau or his estate.

3. Bearclaw sells art to the public. Currently, Bearclaw has approximately 45 Morriseau paintings in the gallery for sale. The total retail value of these paintings is approximately \$750,000. Bearclaw keeps careful records of all art purchased and sold.

4. I only obtain Morriseau paintings from select suppliers who have excellent reputations and extensive experience buying and selling Morriseau paintings. Some of the Morriseau paintings that Bearclaw has bought and/or sold have been authenticated by experts on Morriseau's artwork. In other cases, Bearclaw has authenticated the paintings by carefully investigating their provenance. I believe that every Morriseau painting that Bearclaw has bought and/or sold is an original work of art by Norval Morriseau.

Ritchie Sinclair

5. Although I have been involved in the business of purchasing and selling paintings, including the works of Norval Morriseau, since 1980, I do not know Sinclair and have had no dealings with him. I am not aware of anyone in the art community who recognizes Sinclair as an expert in the artwork of Norval Morriseau.

Discovery of Morriseau.com website

6. On or around October 11, 2008, Joe Otavnick, a fellow art collector in the Canadian art community, contacted me to tell me that the Defendant, Ritchie Sinclair, had created the website, www.morrisseau.com. Otavnick informed me and I do believe that on or after September 16, 2008, Sinclair began posting images on the website of paintings which Bearclaw owns, has sold, or is attempting to sell. Sinclair alleged that the paintings were forgeries, counterfeits or otherwise inauthentic.

7. On or around October 11, 2008, I visited the website and confirmed that it contained numerous images of paintings which Bearclaw owns, has sold, or is

attempting to sell. The website describes those paintings as being forgeries, counterfeits or otherwise inauthentic.

Description of the Defamatory Statements

8. There are currently over one thousand images of Norval Morrisseau paintings posted on the website which Sinclair claims are counterfeits, forgeries, frauds, stolen or otherwise authentic. The site is updated several times a day with new images of alleged counterfeit Morrisseau paintings being added.

9. Due to the updating of the site, it is virtually impossible to make a complete list of all the paintings related to Bearclaw that are posted on the site. As a representative sample I have identified 45 paintings posted on the website which are either owned, consigned or have been sold by Bearclaw. The images were posted on morrisseau.com accompanied by statements which alleged that the various paintings were stolen, forgeries, counterfeit or otherwise inauthentic. The total retail value of the paintings in question is \$563,300. Attached as Exhibit A is a chart setting out the 45 images that were posted on the website, with their retail value and an indication of whether they have been sold. I have reviewed this chart and I confirm that this information is correct.

10. Each and every one of these numbered images on morrisseau.com was given a title "Inferior Counterfeit Morrisseau" and a number, for example, "Inferior Counterfeit Morrisseau # 808". This was displayed on the web-page within the site entitled "photos". On the main page, 24-120 images could be displayed at once. Attached as Exhibit B are screen-captures of the "thumbnail" images and statements on morrisseau.com relating to art described in Exhibit A. The images in Exhibit B that relate to Bearclaw have been circled by hand.

11. When I selected one of the images on the website, a new page opened with a larger image of the selected painting, and a commentary. On this sub-page, Sinclair provided a description stating:

INFERIOR COUNTERFEIT NORVAL MORRISSEAU...In the opinion of Norval Morrisseau protégé, Ritchie "Stardreamer" Sinclair this is an image of an INFERIOR COUNTERFEIT NORVAL MORRISSEAU painting. Inferior counterfeit... Means counterfeit, fake, false, falsified, unauthorized, ungentuine, unreal, forged, forgery,

descending into the inferior regions of the earth, poor in quality, substandard, less important, valuable or worthy, bottom-rung, less, lesser, lower, nether, peon, subordinate, under underneath, bent, bogus, copy, crock, deceptive, delusive, illusory, faked, fishy, fraudulent, imitation, misleading, mock, pseudo, sham...

12. These untrue statements damage my reputation, my business and my livelihood.

13. In an attempt to have the images and statements removed from the morrisseau.com website, I instructed my counsel to contact the host of the website, morriseau.com, GoDaddy.com, to ask them to remove the offending photographs. Attached as Exhibit D is a copy of the letter sent by Symes & Street to GoDaddy.com dated November 4, 2008. I am informed by my counsel that as the host is governed by U.S. law, and the images had been improperly taken from the Bearclaw website, it was possible pursuant to a Takedown Notice procedure set out in the *Digital Millennium Copyright Act*, 112 Stat. 2860 (1998), to have the images removed from the website. On November 5, 2008 the website host advised Symes & Street that it would be suspending the morrisseau.com website. Attached as Exhibit C1 is a copy of the email confirmation from GoDaddy.com dated November 5, 2008.

14. On November 5, 2008 I went to the morriseau.com website and observed that the photographs from Bearclaw Gallery had been removed from the website.

15. On November 8, 2008 I went again to the morrisseau.com website and observed that Sinclair had posted new and more harmful images and text relating to Bearclaw.

16. I observed on the website that Sinclair had posted new images labeled "Inferior Counterfeit" at numbers 107-118, 202, 280, 282, 302, 320, 326, 575, 576, 579, 584, 589, 665, 666, 669, 696, 700 – 704, 706, 707, 808, 814 on the website. Sinclair replaced most of the previous images of the paintings with a "stop sign" image which read as follows:

IMAGE COPYRIGHT – BEARCLAW GALLERY- THIS IMAGE HAS BEEN REMOVED.
THERE ARE SO MANY INFERIOR COUNTERFEIT MORRISSEAU'S TO CHOOSE
FROM... AND IT SEEMED SO IMPORTANT TO THIS GALLERY THAT THEY SWORE

UNDER PENALTY OF PERJURY, THAT THEY HOLD EXCLUSIVE COPYRIGHT TO THIS IMAGE THAT... IT SEEMED WISE TO COMPLY. IMAGE COPYRIGHT – BEARCLAW GALLERY

17. Attached as Exhibit D are the screen captures I saw on the morrisseau.com website on November 8, 2008 of the “thumbnail” images of the “stop sign” postings relating to Bearclaw. Attached as Exhibit D1 are screen captures of the full sized “stop-sign” images I observed on November 8, 2008 on the website.

18. Next to each “stop sign” image I saw the same description “Inferior Counterfeit Morrisseau” which had previously been posted next to the numbered image of a Bearclaw-owned painting. The damage in posting the new statements is even greater to Bearclaw, in that the name of the gallery is written next to the allegation that “there are so many inferior counterfeit Morrisseaus to choose from”, and the description of an “Inferior Counterfeit Morrisseau”.

Identification of Bearclaw

19. As noted, the Sinclair has specifically identified Bearclaw Gallery in dozens of images as set out in Exhibit D and Exhibit D1.

20. With respect to the earlier postings that did not identify Bearclaw explicitly, the images in question are of one-of-a-kind paintings that were sold or are currently for sale by Bearclaw. Even without naming Bearclaw, anyone in the Canadian art community, and particularly anyone who deals with Norval Morrisseau artwork, could easily determine that these paintings are owned or were sold by me and/or Bearclaw. Anyone with knowledge of Morrisseau art or who would consider purchasing such art would associate the image on the website with me and my gallery. Thus, the allegations of fraud, forgery, and theft taint my reputation and the reputation of Bearclaw even if we are not explicitly named in relation to each image.

Damage to My Business

21. In my business, I am only successful if Bearclaw and I have the trust of my clients and colleagues. My business depends entirely on my reputation for honesty and upon my clients' trust that Bearclaw sells authentic paintings. If

collectors, colleagues or other members of the public come to believe or suspect that Bearclaw sells inauthentic artworks, my reputation will be ruined and my business will be permanently destroyed.

22. The Canadian art community is a small one. The dealers, galleries and purchasers involved with the purchase and sale of Norval Morrisseau paintings is even smaller. Very few individuals are involved and as a rule, these persons know and rely on one another for business.

23. The images and the statements that Sinclair posted on the website, as set out in Exhibits B, D and D1, have damaged my reputation, my business and my livelihood. These statements wrongly inform all visitors to the website that the paintings owned, sold, or displayed by Bearclaw are forged, counterfeit or inauthentic. These statements are untrue. If these statements continue to be published they will destroy my business and my livelihood.

24. As set out in Exhibit A, the morrisseau.com website makes allegations of fraud about at least 30 Morrisseau paintings which Bearclaw had already sold, valued at approximately \$389,300. I fear that the purchasers of these paintings may attempt to sue me or seek a refund for their purchases as a result of the comments on morrisseau.com.

25. As set out in Exhibit A, the morrisseau.com website makes allegations of fraud about at least 15 Morrisseau paintings which Bearclaw currently has for sale, valued at approximately \$174,000. I believe that the statements on this website are negatively impacting my business and will make it difficult or impossible to sell these paintings.

26. The untrue statements on the website have been read by members of the public. In the screen captures attached at Exhibits B, D and D1, each numbered image has a view counter which shows that each of the listed images and the accompanying commentary had been viewed dozens of times.

27. As noted, my colleagues such as Joe Otavnick have viewed the website and have contacted me regarding the untrue statements about me and Bearclaw which are contained on the website.

28. If the allegations and untrue statements on the website continue to be published, I expect that my reputation and my business will be permanently and irreparably destroyed.

Notice of Defamation

29. On October, 31, 2008, I retained the law firm Symes & Street to represent me, Bearclaw, and Bugera Holdings Ltd. in this matter. On November 4, 2008 my counsel sent a notice of defamation to Ritchie Sinclair. Attached as Exhibit E is a copy of that letter and attached as Exhibit E1 is the affidavit of service from the process server who delivered the notice.

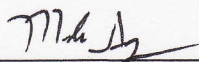
30. To date, Sinclair has not responded to this Notice of Defamation, and has not removed the untrue allegations relating to me and White Distribution from his website.

31. Sinclair has continued to post additional untrue statements and allegations relating to me and my business on his website despite being served with a Notice of Defamation and a Takedown Notices under the U.S. *Digital Millennium Copyright Act*. Given this persistent and unrepentant conduct, I believe that Sinclair will continue to post these untrue statements on his website in an effort to permanently destroy my reputation, my business and my livelihood.

Undertaking to Pay

32. I make this affidavit in support of this motion for an interlocutory injunction and other relief, and for no other improper purpose. I undertake to abide by any order concerning damages that the Court may make if it ultimately appears that the granting of the order requested has caused damage to Sinclair for which the moving parties ought to compensate Sinclair.

SWORN BEFORE ME at the
City of Edmonton, in the
Province of Alberta
This 21st day of November, 2008



COMMISSIONER FOR TAKING AFFIDAVITS



JACKIE BUGERA

Michael J. Hughes
Student-at-Law

