

**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 SUN NAM KIM ("SUNNY KIM")
Sworn November 21, 2008**

I, Sun Nam Kim, of the City of Toronto in the Province of Ontario make oath and say as follows:

1. I am the sole shareholder and Director of Gallery Sunami, a division of Gallery Sunami Inc. I am also the sole shareholder and Director of Artcube Inc. Gallery Sunami has two locations. In 1997 it opened at the first location at 5322 Yonge Street, in North York. The Gallery moved in 2006 to 6035 Yonge Street, Toronto. In December, 2006 Gallery Sunami opened a second location called "Artcube" located at 2387 Weston Road, Toronto. The Artcube location is used only for exhibitions.
2. Sunami's business consists of buying and selling original artwork, including the paintings of Norval Morrisseau. Sunami buys and sells Morrisseau

paintings in both the primary and the secondary art market. What this means is that we buy Morriseau paintings from other collectors and from estates and re-sell the paintings (the secondary market). In addition, the Sunami has in the past obtained the Morriseau paintings directly from Morriseau and his family (the primary market).

3. Approximately 25% of Sunami's 2007 sales were of Norval Morriseau artwork.

4. I have been selling Norval Morriseau paintings since 1997 and Sunami has had an exhibition of Morriseau's work and Morriseau's family member's work each year since that time. I have sold hundreds of Morriseau paintings since 1997 and am considered an expert on Norval Morriseau's work. I am able to identify and authenticate original Norval Morriseau artworks. I have carefully examined each piece of Norval Morriseau artwork that Sunami has bought, consigned, or sold and have satisfied myself that each work is an original painting by Morriseau. Until this dispute, my assessments of Morriseau paintings have never been challenged.

Ritchie Sinclair

5. Although I have been involved in the business of purchasing and selling paintings, including the works of Norval Morriseau, since 1997, I do not know Sinclair and have had no dealings with him prior to this dispute. 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. In early October, 2008, James White and Joe Otavnick, who are both fellow art collectors in the Canadian art community, each contacted me to tell me that Sinclair had created the website, www.morrisseau.com. White and Otavnick informed me and I do believe that on or after September 16, 2008, Sinclair began posting images on the website of paintings which Sunami owns, has sold, or is

attempting to sell. Sinclair alleged that the paintings were forgeries, counterfeits or otherwise inauthentic.

7. In early October 2008, I visited the website and confirmed that it contained numerous images of paintings which Sunami 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. Due to the constant updating of the site, it is virtually impossible to make a complete list of all the paintings related to Sunami that are posted on the site.

9. I have identified at least 70 images posted on the website of Morrisseau paintings which are either owned or have been sold by Sunami Gallery. As a representative sample and for the purposes of this action, I have identified 12 images in particular. 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 \$167,000. Attached as Exhibit A is a chart setting out the names of each of the paintings in question, its retail value, and if sold by Sunami, its date of sale and sale price. I have reviewed the chart at Exhibit A and I confirm that this information is correct.

10. I observed that each of these numbered images on morrisseau.com was given a title "Inferior Counterfeit Morrisseau" and a number, for example, "Inferior Counterfeit Morrisseau # 20" except for numbers 18 and 22 which state only "Inferior Counterfeit." "Thumbnail" images of each painting were 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 in question. I have circled by hand the images in Exhibit B that relate to Sunami.

11. When I selected one of the images entitled "Inferior Counterfeit Morrisseau # 89", a new page opened with a larger image of the selected painting, and I observed the following commentary next to the image:

Description: INFERIOR COUNTERFEIT NORVAL MORRISSEAU >>> In the opinion of Norval Morrisseau protege, Ritchie "Stardreamer" Sinclair this is an image of an INFERIOR COUNTERFEIT NORVAL MORRISSEAU painting. >>>> Inferior counterfeit >>>> means counterfeit, fake, false, falsified, unauthorized, ungenune, 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, copied, crock, deceptive, delusive, delusory, faked, fishy, fraudulent, imitation, misleading, mock, pseudo, sham. >>> Shaman with Creator '79 Acrylic on Canvas 29 x 23 inches

12. I observed the same or similar commentary next to each of the images identified in Exhibit A, except for the image entitled "Inferior Counterfeit Morrisseau #87", which did not display any commentary. Attached as Exhibit C are screen-captures of the images and commentaries that I observed on morrisseau.com relating to the artworks described in Exhibit A.

13. In addition to the numbered images, which morrisseau.com indicates are "Inferior Counterfeits", I observed a number of featured sub-pages on the website which directly allege that Sunami is selling inauthentic Morrisseaus. In one page with the heading "Inferior Counterfeits at Artcube" the site posts an advertisement flyer from Artcube for a 2008 Morrisseau show. On this page, I observed statements that "David Morrisseau authenticates and titles these paintings." David Morrisseau is Norval Morrisseau's son and he is also an artist. Sunami Gallery is the exclusive agent for David Morrisseau's work. The statements I observed on morrisseau.com suggest that David is falsifying artwork to allege it is his father's. This is not true. Attached as Exhibit D is a screen capture of this page as I observed it on the website.

14. I observed another sub-page website which is also titled "Inferior Counterfeits at Artcube". The page a picture of David Morrisseau seated on a painting. The comments indicate

Mr. David Morrisseau posing with what appear to be inferior counterfeit Norval Morrisseau paintings.... There appear to be copies of the old "70's" style "Reforged" and there appear to be fresh paintings like this one that David Morrisseau is sitting on David Morrisseau authenticates and titles these paintings

15. This page notes that it has "65 views" (at the time of printing, November 12, 2008) and comments have been posted by readers. A comment from Jacobson101 states

There it is.....right there.... I would never let a person "sit" on a painting purported to be a Norval Morrisseau" original.....what the hell are you thinking? Especially at \$50,000.00 to \$100,000.00 dollars..... but I must say once again..... a picture tells quite the story wouldn't you say?..... I sure think so..... what lunacy!.....MAJ 2008!

Attached as Exhibit E is a screen capture of this page as I observed it on the website.

16. I observed another page on the website which presents a picture and written identification of "Artcube owner Sunny" in another page in which I am pictured sitting with Christian Morrisseau, another son of Norval Morrisseau. The Description states:

Mr. Christian Morrisseau posing with what appear to be inferior counterfeit Norval Morrisseau paintings.... There appear to be fresh paintings behind Artcube owner Sunny who sites [sic] with Christian Morrisseau.... David Morrisseau authenticates and titles these paintings...

This image similarly alleges fraud on the part of me and my gallery. We are clearly identified throughout these images. Attached as Exhibit F is a screen capture of this page as I observed it on the website.

17. Finally, I observed another page on the website which presents a similar allegation of forgery as follows:

Mr. David Morrisseau posing with what appear to be inferior counterfeit Norval Morrisseau paintings... There appear to be fresh paintings like this one the Artcube owner is holding up with David Morrisseau.

Attached as Exhibit G is a screen capture of this page as I observed it on the website.

18. In each of these pages at Exhibits D through G, there is an excerpt taken from the Artcube website which describes the gallery and its location.

19. These untrue statements and allegations as shown in Exhibits B through G damage my reputation, my business and my livelihood.

Identification of Sunami

20. The website has specifically identified me, Gallery Sunami and Artcube as set out above, and in Exhibits D through G.

21. With respect to the postings and images that do not identify me or Sunami explicitly, the images in question are of one-of-a-kind paintings that were sold or are currently for sale by Sunami. Even without naming Sunami, 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 Sunami. 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 Sunami even if we are not explicitly named in relation to each image.

Damage to My Business

22. In my business, I am only successful if Sunami 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 Sunami sells only authentic paintings. If collectors, colleagues or other members of the public come to believe or suspect that Sunami sells inauthentic artworks, my reputation will be ruined and my business will be permanently destroyed.

23. The Canadian art community is a small one. The community of 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.

24. The images and the statements that Sinclair posted on the website, as set out in Exhibits B through G, 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 Sunami are forged, counterfeit or

inauthentic. These statements are untrue. If these statements continue to be published they will destroy my business and my livelihood.

25. Eleven of the twelve paintings identified above in Exhibit A are currently for sale at Sunami Gallery. When I became aware of the website, morriseau.com, I was in negotiations with longstanding clients to sell each of these 11 paintings. When I became aware of the untrue allegations of fraud on morriseau.com I was compelled to halt these negotiations. This is because I did not want to jeopardize my relationships with these important clients by selling them Morrisseau paintings at a time when the authenticity of those paintings is being questioned on morriseau.com. That is, I have lost the sales of these 11 paintings, which have a total retail value of \$142,000 (as set out in Exhibit A) as a direct result of the untrue allegations on morriseau.com. But for the images posted on morriseau.com, I would have sold these 11 paintings. I further believe that the statements on this website will continue to affect the volume of sales for Sunami.

26. I have sold only one Morrisseau painting since the images were posted on morriseau.com. I fear that the purchaser of this painting may attempt to sue me or seek a refund for their purchase as a result of the untrue allegations on morriseau.com.

27. As noted above, a number of other art dealers, including Joe Otavnick and James White, have contacted me to alert me about the allegations on the website. I believe that other art dealers, clients, and members of the public who view the untrue allegations contained on the website will choose not to purchase any Morrisseau paintings from Sunami. I believe that Sunami will continue to lose sales from these and other clients as a direct result of the untrue allegations on morriseau.com.

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.

29. In addition, I believe that the continued publication of the untrue allegations on the website will destroy the market for Norval Morrisseau artworks. That is, I believe that these untrue allegations will destroy the value of all the works of Norval Morrisseau, who is one of Canada's most important artists.

Notice of Defamation

30. On November 11, 2008, I retained the law firm Symes & Street to represent me, Gallery Sunami, and Gallery Sunami Inc. in this matter. On November 12, 2008 my counsel sent a notice of defamation to Ritchie Sinclair. Attached as Exhibit H is a copy of that letter and the affidavit of service from the process server who delivered the notice.

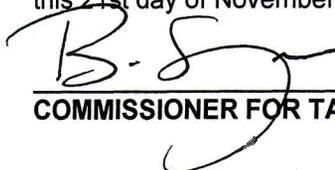
31. To date, Sinclair has not responded to this Notice of Defamation, and has not removed the untrue allegations relating to me and Sunami from his website.

32. 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. 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

33. 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 Toronto, in the)
Province of Ontario)
this 21st day of November, 2008)



COMMISSIONER FOR TAKING AFFIDAVITS



SUN NAM KIM