

**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 JAMES WHITE
Sworn November 22, 2008**

I, James White, of the City of Toronto in the Province of Ontario make oath and say as follows:

1. I am the sole shareholder, Officer and Director of White Distribution Limited ("White Distribution"), which is located at 16568 Mount Hope Road in Caledon, Ontario. My business consists of buying and selling artwork of Norval Morrisseau in the secondary art market. What this means is that I buy paintings from other collectors and re-sell them. I do not obtain paintings directly from the artist or his estate. I started this business in 2000.
2. White Distribution sells paintings on consignment through a number of art galleries. What this means is that the gallery agrees to display paintings owned by White Distribution for sale to the public. Generally the sale price of each

painting is divided 50/50 between the gallery and White Distribution. White Distribution sells paintings on consignment primarily through the following galleries:

- i. Maslak McLeod Gallery – a fine art gallery specializing in Native art which is located in Toronto, Ontario;
- ii. Artworld of Sherway – a fine art gallery located in Toronto, Ontario;
- iii. Bay of Spirits Gallery – – a fine art gallery specializing in Native artworks, which is located in Toronto, Ontario;
- iv. Whetung Ojibwa Crafts and Art Gallery – a fine art gallery specializing in Native artworks, which is located on the Curve Lake Indian Reserve, Ontario;
- v. Gallery on the Lake – a fine art gallery specializing in Canadian artworks, which is located in Buckhorn, Ontario; and
- vi. Qualicum Frameworks Gallery – a fine art gallery and custom frameworks business, which has locations in Qualicum Beach, British Columbia, and Calgary, Alberta.

3. It is White Distribution's practice to obtain certificates of authenticity from qualified appraisers for each Morrisseau painting that we buy or sell. In many cases the paintings in question have been authenticated by David Morrisseau, who is Norval Morrisseau's son and is considered an expert on his father's work. In addition, the signature of Norval Morrisseau on the back of the Morrisseau paintings owned or sold by White Distribution has, in many cases, been authenticated by Documentation Examination Consultants Inc. which is a forensic services company that specializes in authenticating signatures. I believe that every painting that White Distribution has bought and/or sold is an original work of art by Norval Morrisseau.

4. Since 2000, I have bought and put up for sale approximately 250 paintings by Morrisseau. I currently own approximately 160 Morrisseau paintings which have a retail value of approximately \$2.5 million.

Discovery of Morrisseau.com website

5. 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 around September 16, 2008, Sinclair began posting images on the website of paintings which White Distribution owns, has sold, or is attempting to sell and alleged that the paintings were forgeries, counterfeits or otherwise inauthentic.

6. On or around October 11, 2008, I visited the website and confirmed that it contains hundreds of images of paintings which White Distribution owns, has sold, or is attempting to sell. I observed that the website describes those paintings as being forgeries, counterfeits or otherwise inauthentic.

Ritchie Sinclair

7. I was first introduced to Sinclair, who refers to himself as "Stardreamer", in 2007 at an exhibition at Liss Gallery in Toronto. Sinclair attended the exhibition with another individual who was a potential customer of mine. Sinclair stated to me and to the other individual that a particular Morrisseau painting that White Distribution had for sale was "a great Morrisseau" and recommended that the client purchase the piece. The other individual then purchased that painting from White Distribution.

8. I have visited morrisseau.com and observed that Sinclair has posted an image of the painting in question which he now describes as "Inferior Counterfeit Morrisseau #640". Next to the image I observed that Sinclair has posted the following commentary:

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, unguenuine, 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, delusory, delusory, faked, fishy, fraudulent, imitation, misleading, mock, pseudo, sham. >>>

Attached as Exhibit A is a screen capture of the image and the accompanying commentary that I observed on the morrisseau.com website.

9. Although I have been involved in the business of purchasing and selling the works of Norval Morrisseau since 2000, I had not heard of Sinclair or had any dealings with him until 2007. I do not believe that Sinclair has any expertise in identifying or authenticating original artworks by Norval Morrisseau. I am not aware of anyone in the art community who recognizes Sinclair as an expert in the artwork of Norval Morrisseau.

Description of the Defamatory Statements

10. 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 inauthentic. The site is updated several times a day.

11. I have observed hundreds of images posted on the website which are either owned by or have been sold by White Distribution. Due to the constant updating of the site, it is virtually impossible to make a complete list of all the paintings related to White Distribution that are posted on the site. As a representative sample and for the purposes of this action, I have identified 24 images in particular. I observed that the images were posted on morrisseau.com accompanied by statements which alleged that the various paintings were stolen, forgeries, counterfeit or otherwise inauthentic. Attached as Exhibit B is a chart setting out the title, retail value and, if applicable, its date of sale for each of these 24 paintings that were referred to on the website. The total retail value of these paintings is \$753,500. I have reviewed Exhibit B and verify that its contents are accurate.

12. I observed that the images displayed on the website are each given a number. 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 # 83". I observed that "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 C are screen-captures of the thumbnail images in question.

13. When I selected one of the images, a new page opened with a larger image of the selected painting, and a commentary. On each of these sub-pages, Sinclair provided a description. For the images with numbers 131, 151, 158, 163, 182, 188, 643, 683, 705, 692, 738, 787, 860, 894, 907, 925, 941, the description states:

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, unguenuine, 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....

Attached as Exhibit D are screen-captures of the images and commentaries that I observed on morrisseau.com relating to the artworks described in Exhibit B.

14. For each of the images above, I observed that the website identifies the name of the painting. In image number 151 I observed that the description indicates that "Each Norval Morrisseau inferior painting sold is accompanied by a Certificate of Authenticity and an appraisal." I observed a similar statement next to the images numbered 158, 163, 182, and 188.

15. The allegations on the website regarding these paintings are all untrue. I believe that the paintings listed in Exhibit A are authentic paintings by Morrisseau based on the certificates of authenticity and in many cases the expert opinion of David Morrisseau and Documentation Examination Consultants Inc. Attached as Exhibit E are certificates of authenticity issued by appraiser Marlowe J. Goring and the screen capture from morrisseau.com of that painting.

16. Sinclair has also made untrue allegations about me with respect to a painting that I had never seen and have never owned or sold. On morrisseau.com, I observed that Sinclair has posted an image titled "Inferior counterfeit auctioned off by Jim White." The image is of a painting which I had

never seen and which neither I nor White Distribution has ever owned or sold. White Distribution has never auctioned a Morrisseau painting.

17. When I clicked on the image a new page opened with a larger image of the selected painting. Next to the image, I observed the following commentary:

Did you buy this 70s style forgery from Jim White? >>>> Titled: >>> Thunderbird Envoke Into After Dimention (suddenly Norval has no idea how to spell!) >>>> Framed acrylic on canvas, signed in syllabics and on verso signed, titled and dated 1979 (I was there...this wasn't!). >>>> Provenance: Gallery Sunami (ARTCUBE), Toronto (as noted by present owner JIM WHITE >>> From his private Collection of fake Morrisseaus, Richmond Hill, Ontario >>>> Condition: DANGEROUS. Sight: 34 3/4"x 52", Frame: 40" x 58" x 2" >>>> >>> Inferior counterfeit >>> means counterfeit, fake, false, falsified, unauthorized, unguine, 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. >>> <http://www.liveauctioneers.com/item/5287786>

18. I observed a number of user comments accompanying this image and commentary. Two of the comments are posted by "Stardreamer", one of which reads as follows:

It actually appears to be Titled" Thunderbird voices to push windigo into afterdimention". [sic] The listing title must have been Jim White's attempt at reading drybrush.

Attached as Exhibit F are screen captures of the image, the commentary and the user comments that I observed on morrisseau.com.

19. Stardreamer's comments are accompanied by a photo of an individual who I recognize as Ritchie Sinclair. When I clicked on the profile name "Stardreamer" above the user comment, a new page opened up which displayed the "Stardreamer" user profile. The profile identifies "Stardreamer" as "Ritchie Sinclair". Attached as Exhibit G is the user profile of "Stardreamer" from morrisseau.com.

20. The title, commentary and user comments about this image state that I auctioned this painting and that it is a forgery. The user comments by Stardreamer/Sinclair suggest that I invented the title for this painting. All of this is untrue. As noted, neither I nor White Distribution have ever seen, purchased owned or sold the painting in question.

Identification of White Distribution

21. As noted, I observed that Sinclair has referred to me by name in the untrue statements and comments that he posted on the website as set out at Exhibit F.

22. For the images with numbers 530, 532, 538, 543, 545, 548 I observed that the website states that the images are "displayed at Qualicum Frameworks." As noted, Qualicum Frameworks is one of the galleries to which White Distribution sells paintings on consignment. The images listed are of White Distribution owned paintings and I believe that they could easily be linked back to White Distribution.

23. For the images with numbers 494 and 514 I observed that the website states that the images are "displayed at Randy Potter Auctions, Port Perry, 2007." The images listed are owned by White Distribution and were purchased from Randy Potter Auctions. I believe that the paintings could easily be linked back to White Distribution.

24. All of the paintings referred to in Exhibits A, C, D, and F are one of a kind paintings that White Distribution owns, has sold, or is attempting to sell. Even without naming White Distribution, I believe that it is easy for anyone in the Canadian art community, and particularly anyone who deals with Norval Morrisseau artwork, to determine that these paintings are owned or have been sold by White Distribution.

25. I believe that anyone with knowledge of Morrisseau art who would consider purchasing such art would associate the image on the website with my business. The allegations of fraud, forgery, and theft taint White Distribution even if it is not explicitly named in each comment.

26. I have already had numerous calls from clients and colleagues who have identified White Distribution as the source of the paintings whose images are posted and commented upon on the website, as will be detailed below.

Damage to My Business

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

28. 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.

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

30. At the time that the morrisseau.com website posted the images and allegations of fraud in September 2008, White Distribution had approximately 100 Norval Morrisseau paintings for sale on consignment, valued at approximately \$1.5 million. None of these paintings have sold since the images were posted on morrisseau.com.

31. In the fourth quarter of 2007, White Distribution's sales of Morrisseau paintings were approximately \$160,000. To date my sales in the fourth quarter of 2008 are approximately \$7,000. I believe that this enormous decline in sales is a result of the untrue allegations posted on morrisseau.com. I further believe that the statements on this website will continue to affect the volume of sales for White Distribution.

32. The untrue statements on the website have been read and acted upon by my customers. One of my biggest customers is Qualicum Beach Frameworks Gallery. In 2007, Qualicum sold White-Distribution owned paintings worth approximately \$250,000. On November 12, 2008, Marlowe Goring, the Director of Qualicum, sent me the following email:

From: Qualicum Frameworks Gallery [mailto:info@qualicumframeworks.com]
Sent: Wednesday, November 12, 2008 10:32 AM
To: jw@delarm.com
Subject:

Jim,

I realize that the website, morrisseau.com is a joke but I am feilding [sic] calls from longstanding customers regarding the authenticity of their pieces. I have asked stardreamer to take the pieces off his website to no avail. Thus I have taken them off my website and off my gallery floor. I have had one sale go south because of this site, and I am hoping there will be no more. I am worried about returns of works that are already sold. Is there anything I can do?

Marlowe

A copy of this email is attached as Exhibit H.

33. Thus, as a direct result of the untrue allegations on the website, Qualicum has taken down all paintings that White Distribution had on consignment at the gallery. These paintings have a retail value of approximately \$200,000.

34. I expect that if the untrue allegations on the website continue to be posted, my business with other galleries and customers will continue to suffer as well.

35. I had already sold some of the Morrisseau paintings listed on the website (#158 and #860 as set out in Exhibit B). I fear that the purchasers of these paintings may attempt to sue the White Distribution and the galleries that sold the paintings on consignment and/or seek a refund for their purchases as a result of the untrue allegations I have observed on morrisseau.com.

36. White Distribution only buys and sells paintings by Morrisseau. 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.

37. 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

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

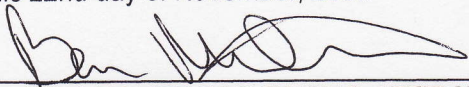
39. To date, Sinclair has not responded to this Notice of Defamation, and has not removed the untrue allegations relating to me and White Distribution from his website.

40. 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

41. 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 22nd day of November, 2008



COMMISSIONER FOR TAKING AFFIDAVITS



JAMES WHITE