

Retired teacher continues legal fight over disputed Norval Morrisseau painting

BY JACQUIE MILLER, OTTAWA CITIZEN MAY 10, 2013



Margaret Hatfield, shown at home in Sarnia with the painting *Wheel of Life*, is continuing her battle to prove the work is fraudulent. She has appealed a small-claims court ruling that said the painting is on the balance of probabilities an authentic work by Norval Morrisseau.

Photograph by: Brent Foster, Ottawa Citizen

A retired Sarnia school teacher is continuing her fight to prove that a painting she bought from a Toronto art gallery by Ojibwa artist Norval Morrisseau is a fake. Margaret Hatfield has appealed a Toronto small-claims court ruling that the painting she bought in 2005 was “on the balance of probabilities” a genuine work of art by Morrisseau, one of Canada’s most famous painters.

Hatfield’s appeal alleges that the ruling by deputy judge Paul Martial had 34 errors of law and fact.

The ruling resulted in a “substantial wrong and miscarriage of justice,” according to Hatfield’s appeal filed May 1 with the Divisional Court, Superior Court of Justice.

Martial’s judgment was significant because it’s apparently the first court ruling on the authenticity of a work of art by Morrisseau, who died in 2007. Morrisseau’s legacy has been clouded by years of controversy over allegedly fraudulent paintings. Bitter disputes have erupted between art collectors, gallery owners, auctioneers, and Morrisseau’s family and friends.

Morrisseau created perhaps 10,000 paintings in his life but they are not always easy to authenticate. He had alcohol and drug problems, sometimes lived on the street, and didn’t keep comprehensive records. Morrisseau’s work is widely regarded as brilliant, and there is a multi-million dollar market for his art.

Hatfield bought a colourful painting entitled Wheel of Life from Artworld of Sherway in 2005. She filed suit against the gallery in 2009 after discovering that Morrisseau himself had sworn an affidavit saying that Wheel of Life was not authentic. The gallery, by “deceit or mistake” failed to inform her of that “crucial fact,” said her lawsuit.

The small-claims court judge ruled that Artworld of Sherway “did not misrepresent the authenticity of the painting.” The judge accepted testimony from a handwriting expert and from Toronto gallery owner Joseph McLeod, who provided a certificate saying Wheel of Life was authentic.

In her appeal, Hatfield alleges that the judge “erred in fact and law by incorrectly and unreasonably failing to take into account” that art gallery officials failed to inform Hatfield when she bought the painting that they were “fully aware of the significant authenticity controversy regarding the subject painting and paintings of its species, that Joseph McLeod was also the subject of such accusations and communications, and that they had been contacted by Norval Morrisseau’s lawyers and his personal caretaker with cease and desist demands and allegations of mass sales of fakes by their gallery.”

At trial, a gallery official said she discounted the Morrisseau affidavit because she believed the artist was not of sound mind at the time it was sworn. Morrisseau had several strokes and suffered from Parkinson’s disease in his later years. In her appeal, Hatfield argues that the judge “erred in law” when he “effectively” placed the onus on Hatfield to prove Morrisseau was competent when he swore the document, rather than on the defendants to prove he wasn’t.

The appeal also alleges the small-claims court judge erred by “unreasonably and incorrectly relying in the decision upon misapprehended facts, statements of fact that do not form a part of the evidence, unsupported non-expert hearsay evidence, and documents which were never disclosed or made evidence ...”

The appeal lists several examples, including the judge’s statement that Morrisseau had “Alzheimer’s disease.”

The case was unusually complicated for a small-claims court. There were five days of testimony, and the judge reserved his decision for about seven months.

Hatfield's appeal asks for the court to grant her original request of \$25,000, as well as her legal costs of \$40,605; or else to order a new trial.

Wheel of Life was among a group of as many as 2,000 paintings that were sold by an auctioneer in southern Ontario in the late 1990s and early 2000s. Most were dated in the 1970s and signed "Norval Morrisseau" on the back in black "dry-brush" acrylic paint, a technique that makes a signature appear old. Many of the paintings from the auctions were resold at art galleries.

Throughout his career, Morrisseau signed his paintings on the front "Copper Thunderbird," written in Cree syllabics. Witnesses at the Hatfield trial disagreed over whether paintings with black paint signatures in English on the back are authentic. The judge ruled there was "overwhelming evidence" that Morrisseau had signed paintings that way, accepting evidence by Morrisseau's brother Wilfred, two art gallery owners who have sold paintings with that type of signature, and a handwriting expert. The judge rejected evidence by Morrisseau's principal dealer during the last two decades of his life, Toronto art gallery owner Donald Robinson, who testified that all the paintings signed that way were fakes.

The "learned judge erred in fact by unreasonably emphasizing the fact that Don Robinson sells paintings by Norval Morrisseau as evidence of a conflict of interest, while entirely ignoring the fact that the defendants and the key witnesses for the defendants ... all currently own and/or sell the black-drybrush paintings at the heart of the controversy in the trial," said the appeal.

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