

May 8, 2009

SYMES & STREET
Barristers & Solicitors
133 Lowther Avenue
Toronto, Ontario
M5R 1E4

Beth Symes (17975B)
Ben Millard (54628V)
Tel : (416) 920-3030
Fax: (416) 920-3033

Solicitors for the Plaintiffs

TO: Donna Child, Artworld Inc. (c.o.b. as Artworld of Sherway)
25 The West Mall
Suite 207
Toronto, ON M9C 1B8
Ph: 416-620-0500
Fax: 416-620-1776

AND TO: James White and White Distribution Limited
16568 Mount Hope Road
Caledon, ON L7E 3K8
Ph: 416-850-7850
Fax: 416-850-7859

AND TO: Jackie Bugera and Bugera Holding Ltd. (c.o.b. as Bearclaw Art Gallery)
10403-124 Street
Edmonton, Alberta, T5N 3Z5
Ph: 780-482-1204
Fax: 780 488-0928

AND TO: Joseph McLeod and Maslak McLeod Gallery
118 Scollard Street
Toronto, ON M5R 1G2
Ph: 416-944-2577
Fax: 416-922-1636

AND TO: Sunny Kim and Gallery Sunami Inc. (c.o.b. as Gallery Sunami)
6035 Yonge Street
Toronto, ON M2M 3W2
416-221-5056
Fax: N/A

- ii. costs of this motion on a substantial indemnity basis; and
- iii. such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION are

- i) Rule 15.04 of the *Rules of Civil Procedure*.
- ii) There is an irreconcilable conflict between the Plaintiffs on the fundamental issue of how to proceed in this litigation. The conflict cannot be resolved. It is not possible for Symes & Street to continue to act for any of the Plaintiffs as we are unable to get unanimous instructions.
- iii) Each of the clients was billed by Symes & Street on a monthly basis for the fees that were incurred in this matter. However, despite repeated requests for payment both orally and in writing, the clients have not paid all of the outstanding accounts.
- iv) As of today, the outstanding account is \$42,941.10. Symes & Street is not prepared to take any further steps in this litigation without being paid.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- 1) Affidavit of Benjamin Millard, sworn on May 8, 2009, and Exhibits attached thereto.
- 2) Such further and other material as counsel may advise and this Honourable Court may permit

**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 BENJAMIN MILLARD

I, Benjamin Millard, of the City of Toronto make oath and say as follows:

1. I am an associate in the law firm of Symes & Street and as such have knowledge of the matters hereinafter deposed to.
2. On October 8, 2008 Joseph McLeod, the owner of the Maslak McLeod Gallery in Toronto, retained Symes & Street to take steps to require Ritchie Sinclair to remove from the morrisseau.com website all references that certain paintings of Norval Morrisseau that were for sale or had been for sale through this gallery were allegedly counterfeit and/or stolen.

apology posted on the website and to seek damages in the civil action. Attached as Exhibit "A" is a copy of the Retainer Agreement signed by Joseph McLeod, as Exhibit "B" is a copy of the Retainer Agreement signed by Sunny Kim and as Exhibit "C" is a copy of the Retainer Agreement signed by Jackie Bugera.

7. On November 22, 2008 James White and Donna Child signed Retainer Agreements on behalf of themselves and on behalf of White Distribution Limited and Artworld of Sherway and Artworld Inc., respectively. The Retainer Agreements are the same agreements as set out in paragraph [6] above. Attached as Exhibit "D" is a copy of the Retainer Agreement signed by James White and as Exhibit "E" is a copy of the Retainer Agreement signed by Donna Child.

8. Symes & Street were retained to represent all of the plaintiffs jointly.

9. The Retainer Agreements provide that if conflicts arose between the clients, Symes & Street would confirm each of the client's instructions in an attempt to resolve the conflict. If a successful resolution could not be accomplished in a timely way or at all, or if the firm's attempts to resolve the issue would cause the lawyers ethical concerns, Symes & Street would have to withdraw from representing all of the clients.

10. Symes & Street agreed to bill the clients on a monthly basis for legal work performed. The hourly rates for each lawyer in the firm, the time spent working on the case was defined as well as disbursements and taxes. The clients were jointly and severally responsible for payment of the entire amount.

Conduct of Litigation

11. On October 9th, November 4th and 12th 2008 Defamation Notices were served on Ritchie Sinclair. A Notice of Motion for an Interim Injunction was

prepared and the affidavits of Joseph McLeod, Jackie Bugera, Donna Child, James White and Sunny Kim in support of the interim injunction were drafted. The Motion materials were served on Sinclair on November 28, 2008.

12. Beth Symes and I attended before Justice Lederer on December 4, 2008. Zak Muscovitch, representing the Defendant, Sinclair, sought an adjournment. On December 8, 2008 Justice Lederer issued an interim interim injunction requiring the Defendant to post on the website, morriseau.com, on each and every page that states or in any way suggests that any distributor, gallery, or individual owner possesses, has possessed, owns or has owned, sold or is selling any work attributed to Norval Morriseau that is stolen, forged, fraudulent, counterfeit, or otherwise deficient or inauthentic the Court File Number of this action and the following:

The opinions expressed on this website and on this page are those of Ritchie Stardreamer Sinclair, and of no other person.

These opinions are alleged to be defamatory and are the subject matter of an action in the Ontario Superior Court in the above-referenced court file number.

Attached as Exhibit "F" is a copy of the Order of Justice Lederer dated December 8, 2008.

13. The Motion was returnable on February 18, 2009 before Justice Lederer. The Court subsequently changed the date to March 17, 2009. Subsequently, the parties agreed to adjourn the motion *sine die*.

14. On December 17, 2008 the Statement of Claim was issued and subsequently served on counsel for the defendant.

15. On January 5, 2009 counsel for the defendant served responding materials, including the affidavit of Ritchie Sinclair.

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10. Symes & Street agreed to bill the clients on a monthly basis for legal work performed. The hourly rates for each lawyer in the firm, the time spent working on the case was defined as well as disbursements and taxes. The clients were jointly and severally responsible for payment of the entire amount.

Conduct of Litigation

11. On October 9th, November 4th and 12th 2008 Defamation Notices were served on Ritchie Sinclair. A Notice of Motion for an Interim Injunction was

16. No Statement of Defence has been served.

Conflicts

17. In March 2009 conflicts arose between the Plaintiffs as to the conduct of the litigation. Symes & Street attempted unsuccessfully to find common ground between the clients and to obtain unanimous instructions from them.

18. On April 22, 2009, Beth Symes wrote to the clients, setting out the conflict and seeking common instructions on how to proceed. The clients were advised that unless this impasse could be resolved and unanimous instructions obtained in writing, Symes & Street would be unable to continue to act for any of the clients.

19. Between April 23rd and April 29th, 2009 Symes & Street received confirmation from four of the five individual clients that they could not agree on how to proceed. The fifth individual has still not provided confirming instructions.

20. There is an irreconcilable conflict between the Plaintiffs on the fundamental issue of how to proceed in this litigation. The conflicts cannot be resolved. It is not possible for Symes & Street to continue to act for any of the Plaintiffs as we are unable to get unanimous instructions.

Unpaid Accounts

21. Each of the clients was billed by Symes & Street on a monthly basis for the fees that were incurred in this matter. However, despite repeated requests for payment, the clients did not pay all of the outstanding accounts.

22. On January 23, 2009, the clients were advised that all unpaid accounts with Symes & Street had to be paid immediately. The outstanding accounts were not paid.

23. On February 25, 2009 the clients were advised that Symes & Street could not continue to act in this matter unless the outstanding fees were paid.

24. On March 12, 2009, Beth Symes wrote to the clients and advised that Symes & Street could no longer represent the Plaintiffs unless the outstanding fees were paid by 5:00pm on March 31, 2009 failing which Symes & Street would take steps to be removed as counsel of record in this matter. The deadline for payment was extended to April 30, 2009.

25. As of today, the outstanding account is \$42,941.10. Symes & Street is not prepared to take any further steps in this litigation without being paid.

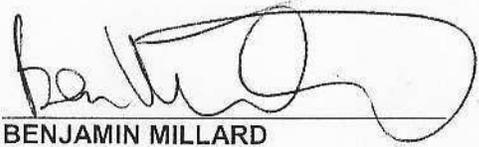
26. On May 13, 2009, Symes & Street will be initiating proceedings to have the clients' accounts assessed pursuant to the *Solicitors Act*, R.S.O. 1990, c. S.15.

27. This affidavit is in support of a motion to remove Symes & Street as counsel of record for the plaintiffs in this action.

SWORN BEFORE ME at the)
City of Toronto, in the)
Province of Ontario)
this 8th day of May, 2009)



COMMISSIONER FOR TAKING AFFIDAVITS



BENJAMIN MILLARD

JOSEPH McLEOD ET AL
Plaintiffs

- and -

RITCHIE SINCLAIR
Defendant

Court File No. CV-08-00366828

**PROCEEDING COMMENCED AT
TORONTO**

**AFFIDAVIT OF BENJAMIN MILLARD
SWORN MAY 8, 2009**

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M5R 1E4

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Solicitors for the Moving Party