

**SUPERIOR COURT OF JUSTICE
SMALL CLAIMS COURT**

B E T W E E N:

OTAVNIK, JOSEPH

Plaintiff

v.

**SINCLAIR, RITCHIE and
KINSMAN ROBINSON GALLERIES**

Defendants

P R O C E E D I N G S

BEFORE THE HONOURABLE JUSTICE D. GODFREY
on January 11, 2011, at TORONTO, Ontario

APPEARANCES:

J. Otavnik

On His Own Behalf

R. Sinclair

On Behalf of the Defendants

SUPERIOR COURT OF JUSTICE
SMALL CLAIMS COURT

T A B L E O F C O N T E N T S

<u>WITNESSES:</u>	<u>Exam.</u> <u>in-Ch.</u>	<u>Cr-</u> <u>Exam.</u>	<u>Re-</u> <u>Exam.</u>
Kim, S.N.	3	16	17
White, J.H.	18	37	-
Otavnik, J.	49	52	-

Reasons for Judgment	142
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E X H I B I T S

<u>EXHIBIT NUMBER</u>	<u>ENTERED ON PAGE</u>
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January 11, 2011

REPORTER'S NOTE: Due to technical difficulties, tape 10/11 is defective.

MR. SINCLAIR: No, I have some issues that would need to be brought up. There's a lot happened since we were last here on November 16th, Your Honour.

My witnesses on November 16th that were here were particularly Mr. Don Robinson and Mr. Garth Cole (ph). Mr. Cole did testify; Mr. Robinson didn't have an opportunity before you ended the day. This morning I planned to bring three witnesses in my, to help me with my prosecution of my case. Mr. Robinson first, Mr. Muskovich (ph), my lawyer, and Mr. Richard Baker.

As you know, Mr. Robinson and Mr. Baker both testified on March 18th. Mr. Robinson and Mr. Baker were both even, were both subpoenaed on March 18th by Mr. Otavnik, even though....

MR. OTAVNIK: That's not in evidence, I....

THE COURT: All right, wait a second. Let him finish with his statement.

MR. OTAVNIK: Go ahead then.

MR. SINCLAIR: So what I'd like to suggest is the witnesses that I wanted to bring in here this morning didn't come in because of the, first off, they've been harassed unduly by Mr. Otavnik.

THE COURT: All right, well they can tell me that if that's the case.

MR. SINCLAIR: They could tell you that, sir, but I, I requested...

MR. OTAVNIK: ...Your Honour.

THE COURT: No, no.

MR. SINCLAIR: ...the suite of documents and emails that was sent to my witnesses by Mr. Otavnik yesterday. This is one amongst many, there's several emails here. There's documents, there's....

THE COURT: Well, again, this evidence is going to have to be - just one moment.

Why can't we deal with the witnesses that are here? The witnesses that aren't here, we can talk about what you want to do about the fact that they're not here without referencing why they're not here, first of all.

MR. OTAVNIK: Your Honour, we have two witnesses here....

THE COURT: No, no. Mr. Otavnik..

MR. OTAVNIK: I'm sorry, Your Honour.

THE COURT: ...I haven't asked to hear from you.

MR. SINCLAIR: Well, okay. Well, why they're not here, I've just, I've explained.

THE COURT: No, no. Let's deal with that part later. Let's get the witnesses that are here that are going to give evidence give their evidence so they can be done with and we'll deal with parties that aren't here and the significance of that.

MR. SINCLAIR: I understand, sir.

MR. OTAVNIK: Thank you, Your Honour.

MR. SINCLAIR: Okay, then in the meantime, I don't think we should have any witnesses leave that are here, that would be Mr. White, Mr. Kim. These people, Mr. and Mrs. Goldie (ph) here, I don't know what's going on with....

THE COURT: Well, for now witnesses, they can be in the courtroom.

MR. OTAVNIK: No, they can be here.

MR. SINCLAIR: Well, okay, so we have two witnesses, from what I can tell that are here that would....

MR. OTAVNIK: Well....

MR. SINCLAIR: ...and maybe Mr. White, if you could leave the room for a few minutes while Mr. Kim....

THE COURT: Mr. Kim, do you want to come into the witness box.

MR. OTAVNIK: You have to leave, Jim. Mr. Kim, he wants you to testify.

SUN NAN KIM - AFFIRMED

THE COURT: All right, go ahead, Mr. Sinclair.

EXAMINATION IN-CHIEF BY MR. SINCLAIR:

Q. Thank you for coming today, Mr. Kim, I appreciate it.

You're the owner of the Art Cube Gallery;

correct?

A. Yes.

Q. How do you know Mr. Otavnik?

5 A. I met him about three years ago at the
auction house.

Q. Three years ago?

A. Yeah.

Q. At, at an auction house?

A. About three, yes, three years ago, yeah.

10 Q. The Randy Potter Auction House?

A. Yeah, in - yeah, at the Port Hope.

Q. Would it be fair to say that you and he are
in the same business?

A. No.

15 Q. Could you tell me what your business is,
sir?

A. My business?

Q. Yes.

20 A. My business was I am selling on the
consignment for arts and antiques.

Q. For arts and antiques?

A. Yes.

25 Q. So you met Mister - do you do business with
Mr. Otavnik?

A. No.

Q. How do you know Mr. Otavnik?

MR. OTAVNIK: He's answered it, asked and
answered.

30 THE COURT: Let's not object or we'll never get
through today.

A. I, I went with Mr. Jim White, Jim White

introduced Mr. Otavnik.

MR. SINCLAIR: Q. Okay. And is Mr. Jim White in the same business as yourself?

5 A. Not the same business - fine art and Jim White, I think he is some - and print and some kind, you know, the Canadian art and artist, the paintings, he's selling to close (ph) Canada, the limits I know.

10 Q. And you both, you both deal with purported Morrissette artwork?

MR. OTAVNIK: Objection, Your Honour. This is not part of Mr. Sinclair's counterclaim. Mr. Sinclair's counterclaim is my alleged defamation of character....

15 THE COURT: Okay, I agree. Just one moment. Mr. Sinclair, you should be introducing evidence now that deals solely with your...

MR. SINCLAIR: I understand...

THE COURT: ...defendant's claim...

20 MR. SINCLAIR: ...sir.

THE COURT: ...not...

MR. SINCLAIR: I understand...

THE COURT: ...getting back to...

MR. SINCLAIR: ...sir.

25 THE COURT: ...bringing in evidence to counter Mr. Otavnik's claim.

MR. SINCLAIR: Right.

THE COURT: So just....

30 MR. SINCLAIR: But the fact that they are in the - they are in the same or similar business...

A. Yeah, similar business.

MR. SINCLAIR: ...speaks to...

A. Yes, similar but not the same.

MR. SINCLAIR: ...the matters....

MR. SINCLAIR: Q. Right, okay. You sued me on November 21st, 2008; is that correct, sir?

A. Two thousand?

Q. Two thousand and eight, November 21st, you sued me, along with Mr. White and some..

A. Yes, yes...

Q. ...Mr. McLeod?

A. ...I did, yeah.

Q. What happened there?

MR. OTAVNIK: Relevance, Your Honour?

THE COURT: All right. You know, I'm just going to let it - if I have problems with the relevance I'll interject, just leave it for now.

MR. OTAVNIK: Okay.

A. I remember in at that time I seen your website...

MR. SINCLAIR: Q. Yes?

A. ...and also Mr. Joe Otavnik called probably Jim White, Mr. Jim White, you know, explained to me you had just opened your website. The website was some kind of my face there, my name there.

Q. I'm sorry?

A. ...website on the picture, the pictures of my, you know, my face there.

Q. Yes.

A. And also, you know, what I trying to sell into - painting to, you know, close Canada and some painting was some, you say to me, you know, are counterfeit and that

5 those kind of things, they'll be, I also a little upset.
You should have call us, because we are buying and selling
and I'm a specialist, but usually when the, you know, my
kind of blinging (ph), you know, we try to ask the owners
to, to, to make certificate by the, you know, his family,
specially of Elderson, David Morris, and the David Morris
always say to - inspection for the painting, he say that
it's a genuine painting, what it a fair painting and the....

10 COURT REPORTER: Court's indulgence for a
minute. I have a little bit of difficulty....

THE COURT: Yes, I'm having difficulty, you're
going to have to speak slowly, sir.

A. No, I, I'm sorry.

15 MR. SINCLAIR: Q. Yes. Thank you, Mr. Kim.

That's very good though.

So it was Mr. Jim White that informed you first
or Mr. Otavnik?

A. Yes.

20 Q. Mr. White?

A. Yeah, Mr. White.

Q. Okay. Did you attend a meeting called by
Mr. Jim White on or around September 3rd, the first week of
September of 2008; do you recall that?

25 A. I can't remember....

Q. Okay. Have you ever attended a meeting
called by Mr. White?

A. No.

30 Q. Have you ever attended a meeting called by
Mr. Otavnik?

A. No.

Q. When I delivered the subpoena to you...

A. M'hm.

Q. ...which was very nice, you were very....

THE COURT: Okay, just ask the question.

5 MR. SINCLAIR: Q. Yeah. You advised me that you, that you felt that I was actually right in most of my or many of my opinions...

A. Yeah.

Q. ...with regard to the paintings.

10 A. I think you know though some, some time that you have some kind of specialty for Norval Morris painting, yeah, I told you.

Q. Thank you, Mr. Kim.

A. Yeah.

15 Q. So....

THE COURT: Keep the hand signals down, Mr. Otavnik, the evidence....

MR. SINCLAIR: Q. What's the current status....

20 THE COURT: I don't want to see your reactions to any of the evidence at this point.

MR. OTAVNIK: I fail to see the relevance to the questions.

25 THE COURT: No, I told you that I'm going to give him..

MR. OTAVNIK: Yes, Your Honour.

THE COURT: ...some leeway, so just....

MR. OTAVNIK: Thank you, Your Honour. Thank you, Your Honour.

30 MR. SINCLAIR: Q. With regard to that lawsuit from 2008...

A. M'hm.

Q. ...what is the status of that lawsuit and what is your position in that lawsuit right now?

A. I think, I, I don't know you object to me, you know, what's going on. But....

Q. I'm sorry, sir?

A. I'm not sure, you know, what's going on.

Q. Okay.

A. Okay. And one time, the lawyer, they send it to some kind of legal fee.

Q. Some kind of what?

A. Some, you know, money, for the fee.

Q. Yes.

A. So is not easy to pay for the legal fee, you know, at the, at the time, so rather than go ahead, I just stop. That's why I stop.

Q. You just stopped paying the lawyer..

A. Yeah.

Q. ...fee?

A. Yeah.

Q. I see. And so that, so you don't know what happened to that..

A. No, I don't.

Q. ...lawsuit at all? I see. Okay.

A. Just to....

THE COURT: Okay, just wait for the next question, sir.

MR. SINCLAIR: Q. Excuse me just for a moment.

THE COURT: What are you showing him....

MR. SINCLAIR: I, I'm showing Volume II, tab eight of the additional documents of the defendant, the three volumes that I often use.

5 THE COURT: One second. We made this an exhibit, so what Exhibit Number are we talking about? I'll just get those. What volume did you say?

MR. SINCLAIR: Volume II.

THE COURT: Okay, so it's Exhibit Four. Tab eight?

MR. SINCLAIR: Yup, tab eight.

10 Q. This is an affidavit.

A. M'hm.

Q. Do you mind if I bring it up....

THE COURT: All right, go ahead.

MR. SINCLAIR: Q. This is an affidavit from
15 this court case...

A. Okay, yeah.

Q. ...that you signed?

A. Yes.

Q. You wrote; do you recognize that affidavit?

A. Yeah, I, yeah.

20 Q. Okay. There's your signature, right?

A. Yeah.

Q. Okay.

THE COURT: Mr. Sinclair....

MR. SINCLAIR: Q. Now in this affidavit....

THE COURT: Just one moment.

MR. SINCLAIR: Yes, tab, tab eight, Your Honour, Volume II.

THE COURT: I'm seeing an affidavit...

MR. SINCLAIR: And unfortunately....

THE COURT: ...of Mr. McLeod....

MR. SINCLAIR: It's the last, yes, there's five
30

affidavits in there. The last affidavit, the last six pages are Mr. Kim's affidavit.

THE COURT: All right. So what do you want to ask him, sir?

5 MR. SINCLAIR: Q. In this affidavit you say that Mr. Otavnik was the one who first informed you in early....

THE COURT: Read him the....

10 MR. SINCLAIR: Q. Yes. I'm going to read you the, the paragraph six:

"In early October 2008, James White and Joe Otavnik were both art collectors in the Canadian art community, each contacted me to tell me that Sinclair had created the website."

15 Is that correct?

A. Yes.

Q. Who contacted you first; Mr. White?

A. Jim White, yes.

20 Q. Jim White, okay. And did Jim White ask you to join him in a lawsuit against me?

A. Yeah, he - to me and the decide on my decision, I did, yes, yes.

25 Q. Okay. And then subsequent to that, Mr. Otavnik called you and he also suggested that you sue me?

A. I don't think so.

Q. Okay. Okay. He says he first contacted you about me in October, but you met him three years prior to that?

30 A. Yeah, about three years, yes.

Q. Right? Did you know that there was a controversial issue before you ever looked at, before Mr.

White ever showed you Morrissimeau.com and the pictures on it...

A. M'hm.

Q. ...did you know that there was an ongoing controversy about Morrissimeau artworks?

A. No.

Q. You didn't? And you...

A. No, I....

Q. ...never heard of a controversy?

A. No.

Q. You never saw any...

A. No.

Q. ...newspaper articles?

A. No.

Q. You never saw any television programs?

A. No.

Q. No?

A. One day I heard from the, you know, somebody, about the - the things, but I, I didn't know anything about that.

Q. Oh, but you did hear from somebody?

A. Yeah, well....

Q. From people?

A. Yeah, someones, yes.

Q. I see.

A. Yes.

Q. Did you get a sworn affidavit from Norval Morrissimeau?

A. I seen it, but I don't believe.

Q. You, you saw it, but you didn't believe it?

MR. OTAVNIK: Your Honour, I object.

MR. SINCLAIR: Q. Okay.

MR. OTAVNIK: We're dealing with my alleged...

THE COURT: All right.

MR. OTAVNIK: ...defamation of....

MR. SINCLAIR: I, I....

MR. OTAVNIK: ...I'm....

THE COURT: Mr. Otavnik. Mr. Otavnik! Sit down.

MR. OTAVNIK: ...on topic.

THE COURT: Mr. Otavnik....

MR. OTAVNIK: It's not on topic, sir.

THE COURT: Mr. Otavnik...

MR. OTAVNIK: Thank you.

THE COURT: ...I know what you're arguing. Mr. Sinclair, get to the point what you're trying to ask in relation to the allegations...

MR. SINCLAIR: Yeah.

THE COURT: ...against Mr. Otavnik.

MR. SINCLAIR: Okay.

THE COURT: I've given you a little bit of leeway...

MR. SINCLAIR: Yeah.

THE COURT: ...but it's going on, get to the point of what you want to ask that's relevant.

MR. SINCLAIR: Q. Were you aware of Mr.

Otavnik launched two websites in August,
NorvalMorrisseauLawsuit.com?

A. Sorry....

Q. Mr. Otavnik?

A. No.

Q. Were you - did you...

A. No.

Q. ...see those websites?

A. No, I don't know. What kind of website?

THE COURT: Okay. No, no, you're not to ask him questions.

A. Oh, I see, I'm sorry.

MR. SINCLAIR: Q. Okay. Now, you filed a second lawsuit recently, in November 2010?

MR. OTAVNIK: Your Honour, that's not part of...

A. Yes, I did.

MR. OTAVNIK: ...the records.

THE COURT: Okay.

MR. OTAVNIK: That's not part of the record, Your Honour.

THE COURT: Well, it doesn't have to be part of the record.

MR. SINCLAIR: Q. This, this lawsuit. Have you seen this lawsuit before?

A. Oh yeah, to you.

Q. Yes.

A. Oh yeah, I did, yeah.

Q. What's your address on Yonge Street?

A. Six-oh-three-five (6035) Yonge Street.

Q. So who put the address in here?

A. What address?

Q. The address says 5322 Yonge Street.

A. Oh, that old one.

Q. That's the old one. How old? When did you move from there?

A. About three and a half years ago.

Q. Three and a half years ago?

A. Yeah.

Q. So who put the address on here?

A. Okay. One time, I don't know how to....

THE COURT: All right, just one moment.

A. Okay.

THE COURT: Mr. Sinclair, I'm trying to figure out the relevance of this new lawsuit that was issued. In relation to what you're pleadings are, I don't know what the relevance is.

MR. SINCLAIR: Well, I, I, I - Q. Did you make this lawsuit? Okay, Mr. Kim....

THE COURT: Okay, no, I'm not sure - that suit's going to be dealt with separately and you can....

MR. SINCLAIR: The, the actual existence of this lawsuit is about Mr. Otavnik's harassment of me, Your Honour.

THE COURT: Well, you know what? You can deal with that in the next lawsuit if you want to add Mr. Otavnik.

MR. OTAVNIK: Thank you, Your Honour.

THE COURT: It's not part of the pleadings in this lawsuit.

MR. OTAVNIK: Thank you, sir.

MR. SINCLAIR: Well....

THE COURT: No, no, I know what you're going to say.

MR. SINCLAIR: You know what I'm going to say?

THE COURT: Well....

MR. SINCLAIR: I did bring this into evidence on November 16th.

THE COURT: You know what? I'm going into the

questions of the facts that were pleaded in this lawsuit; that's not part of this lawsuit.

MR. SINCLAIR: Well, Your Honour, I've pleaded..

THE COURT: No, no, no.

MR. SINCLAIR: ...this as a fact in this lawsuit of harassment.

THE COURT: It may have come out in the last day, but I'm not dealing with it for the purpose of determining any claim of harassment, et cetera, that you have against....

MR. SINCLAIR: Right, I just want to determine who made this..

THE COURT: No, no.

MR. SINCLAIR: ...thing, not what's in it.

THE COURT: No, no. Let's move on.

MR. OTAVNIK: Thank you, sir.

THE COURT: Mr. Otavnik, I don't need your comments on my Rulings.

MR. SINCLAIR: Can I talk about this lawsuit?

THE COURT: No.

MR. SINCLAIR: It's a duplicate of....

THE COURT: If it's a duplicate then bring a motion to strike it as being a duplication; it's not a matter I'm dealing with.

MR. SINCLAIR: Okay. Mr. Kim, thank you for appearing here today.

A. Thank you.

MR. SINCLAIR: I appreciate it.

THE COURT: Any questions?

MR. OTAVNIK: Yes, sir.

CROSS-EXAMINATION BY MR. OTAVNIK:

5 Q. Mr. Kim, was I part of your lawsuit against Mr. Sinclair back in 2008?

A. Yes.

Q. No, I was not part of your lawsuit.

A. No, at the time, no.

10 Q. Who was part of that lawsuit, you, Jim, Joe McLeod, Jackie Bugera....

A. Yeah, I think four or five person.

Q. Right. Five people; but not me?

A. Not you.

Q. And I didn't give any money?

A. No.

15 Q. And I didn't give any testimony?

A. No.

Q. And I didn't give any evidence?

A. No.

20 MR. OTAVNIK: Thank you, sir. No more further questions.

THE COURT: You can step down, Mr. Kim, unless you want to clarify something out of that...

MR. SINCLAIR: I do, yeah.

25 THE COURT: ...line of questions.

RE-EXAMINATION BY MR. SINCLAIR:

30 Q. Did, do you, are you aware of Mr. Otavnik assisting in this lawsuit with Mr. McLeod and Mr. White and...

A. No.

Q. ...the others? Are you aware of - assisting

in it?

A. No.

Q. Are you aware of him assisting financially..

A. No.

Q. ...in it? Okay. Thank you.

THE COURT: You can step down.

MR. SINCLAIR: Thank you, Mr. Kim.

THE COURT: Are you calling Mr. White next, Mr. Sinclair?

MR. SINCLAIR: Yes, Mr. White.

THE COURT: Do you want to call him in then?

Mr. White, do you want to come in the witness box.

JAMES HOWARD WHITE - AFFIRMED

EXAMINATION IN-CHIEF BY MR. SINCLAIR:

Q. Thank you for appearing here today, Mr. White.

A. My pleasure.

Q. You're the owner of White Distribution Incorporated?

A. Correct, yes it is.

Q. What is your business?

A. Art business, buying and selling of original art.

Q. What's your - original art by who?

A. Norval Morrisseau, Armand Tortosian (ph), Norman Brown.

Q. And how long has this business been focussed on Norval Morrisseau?

A. Three years.

Q. Three years?

A. Yes, a little over three and a half years.

Q. How do you know Mr. Otavnik?

A. I met Mr. Otavnik at a Potter auction.

Q. Randy Potter Auctions?

A. M'hm.

Q. And when would that be, sir?

A. It's got to be about four years ago, I
guess.

Q. About four years ago.

A. M'hm.

Q. Would it be fair to say you and he are in
the same business?

A. I don't know what business Mr. Otavnik is
in as regards to the art business, but the job he works at,
I believe, has nothing to do with art.

Q. You don't know what job Mister - oh, with
regard to - I'm sorry, sir. Could you repeat that? I think
I was....

A. I, I don't know that Mr. Otavnik is in any
art business. I know he purchased art at Potter Auctions.
I do not know him to own any company or be actively engaged
in the art business, other than as I say, I know him to have
purchased art.

Q. But you don't know him to have ever sold
art?

A. Not, I do..

Q. Morrisseau art?

A. ...not have direct knowledge of that, no.

Q. No. How about indirect knowledge of that?

A. No.

Q. You sued me on November 21st, 2008?

A. Yes, was that, you're referring to the suit in which there were five of us who were plaintiffs?

Q. Yes, I am.

A. Yes, that's correct.

Q. And you sought an injunction at that time; correct?

A. Correct, yes indeed.

Q. What happened to that action?

A. That action, as we speak, either your lawyer, Mr. Muskovich is going to file a defence in which case that action will carry on as such. Or, my lawyer, Brian Shiller of Ruby & Shiller will file that you are in default and will ask that it be set down for trial.

Q. Now, this lawsuit was laid down November 21st, 2008, we're now at 2010.

A. Correct.

Q. Right?

A. Absolutely correct.

Q. And there's not even a defence been filed?

A. By yourself, that is correct.

Q. Right. But there, yeah, is an intent to defend that's been filed, right?

A. Sorry, I'm not a lawyer.

Q. Okay. Let's turn to Volume II, tab eight again, Your Honour. I'm just looking for an affidavit that you filed in support of your motion to injunct (ph) Morrissette.com and myself.

A. Sure, m'hm, yeah.

Q. It says in paragraph one that you started

5 this business of buying and selling the artwork of Norval
Morrissette in the year 2000?

A. White Distribution, which you asked me
about, was not incorporated or start to do business until
much later than that. It was an unincorporated business
prior to that.

Q. So, I....

10 MR. OTAVNIK: Your Honour, again I fail to see
the relevance....

MR. SINCLAIR: Q. So for three-point-five
years...

THE COURT: I'm giving him some....

MR. SINCLAIR: Q. ...you've been selling
purported Morrissettes...

15 A. I'm sorry, I....

Q. ...according to your testimony; is that
correct?

A. That is absolutely not correct. I've been
selling legitimate, not purported, Morrissettes.

20 Q. Purported is....

A. Is what?

Q. Doesn't mean it's illegitimate; it just
means, let's say, that they're reported to be Morrissettes.
The point is....

25 A. What I believe to be legitimate, yes.

Q. Right, right. Okay. But it says here in
paragraph one that you started this business, White
Distribution, paragraph one, in the year 2000; so we're
talking...

30 A. That's absolutely....

Q. ...seven years' difference...

A. Yeah....

Q. ...between....

A. ...the business was never incorporated. You asked me about White Distribution Incorporated.

Q. Oh no.

A. Yes, you did.

THE COURT: Wait a minute. Okay. He's...

MR. SINCLAIR: Q. In any case....

THE COURT: ...given the distinction, Mr. Sinclair.

MR. SINCLAIR: I see.

THE COURT: Let's move on.

MR. SINCLAIR: Q. Okay. On page two, the first two people on the list, number, Roman numeral one and two, were your fellow plaintiffs in the claim, in the \$17 million lawsuit against me; is that correct?

A. I'm sorry, I....

Q. Maslak McLeod Gallery and Artworld of Sherway?

A. They are.

Q. You do business with them, right?

A. They are also plaintiffs, that's correct.

Q. Right. So you're in the same business?

A. No, I am not.

THE COURT: Again, Mr. Sinclair, get to the point that relates to...

MR. SINCLAIR: To Mr. McLeod.

THE COURT: ...Mr. Otavnik.

MR. SINCLAIR: Otavnik. Q. On page three...

A. M'hm.

Q. ...paragraph five, you state in your

affidavit that you were first informed about Morrissette.com from Mr. Otavnik on October 11th, 2008?

A. It sounds about right.

5 Q. Could you tell me how that happened? The details of the....

A. At one of the auctions he said "You should look at this site. It's claiming that there are a lot of fake Morrissettes" and those are the details.

10 Q. So you were at Randy Potter Auctions?

A. Yes.

Q. And Mr. Otavnik told you what?

A. That I should look this website.

15 Q. Had, Mr. Otavnik, since he discovered the website, he discovered the issue on the website on September 16th, 2008, but he didn't inform you for almost a month; is that, for something that...

A. I would have...

Q. ...he was so upset about...

A. ...no idea....

20 Q. ...that you would sue for \$17 million and some - how's it possible that he wouldn't have spoken to you about this issue for a month?

A. I think you'd have to ask him, because....

25 Q. Yeah, I will ask him. With regard to the first week in September of 2008, did you attend a meeting with Mr. Otavnik, Donna Child (ph) and perhaps other people?

A. That's a long time ago. I attended one meeting with Mr. Otavnik, as I recall, at the offices of Falconer Charney.

30 Q. In September 2008?

A. I have no idea.

Q. So law offices?

A. M'hm.

MR. OTAVNIK: I fail to see the relevance....

THE COURT: Okay, now Mr. Otavnik, I told you, I'll interrupt when I think it's...

MR. OTAVNIK: Sorry, Your Honour.

THE COURT: ...getting beyond the point.

MR. SINCLAIR: Q. Volume III, tab six, page one.

THE COURT: It's Exhibit Five.

MR. SINCLAIR: Tab six. Do you mind if I show it to the witness?

THE COURT: Go ahead.

MR. SINCLAIR: Q. Do you recognize this letter, Mr. White?

THE COURT: I'm not sure I'm looking at the same thing. Tab? Volume III.

MR. SINCLAIR: Volume III, page one of tab six.

THE COURT: Oh, page one of tab six. All right.

A. Something, okay, that I sent to all of the people.

MR. SINCLAIR: Q. M'hm.

A. M'hm.

Q. Will you tell the court that you, that you recognize this letter?

A. Yes, I believe I sent that email, m'hm.

Q. So this letter, in this letter you state that Mr. Otavnik and we're looking at the second last paragraph with, you know, these....

THE COURT: You had better read it to him so he

knows...

MR. SINCLAIR: ...paragraphs.

THE COURT: ...what you're....

MR. SINCLAIR: Q. Wait, I'll read it to you.

A. Sure.

Q. You send a letter to all these people saying, including many of the plaintiffs in this major lawsuit:

"I've just seen the work undertaken by Joe Otavnik and it is nearing completion. It contains much of the documentation we need in this case and while Joe is not on the roster of plaintiffs for this case, this time his time and effort and financial costs will probably exceed each of our shares."

How much was your share by December 11th?

A. Oh geez, I would have to look at invoices. This is - when was the case started, if you would again?

THE COURT: Okay, it doesn't matter the exact figure. What question, what...

MR. SINCLAIR: Q. Yeah, in general.

THE COURT: ...show as a result of the statement?

MR. SINCLAIR: Q. Well, that was my first question. So would you agree with that statement that you wrote?

A. I....

Q. That Mr. Otavnik's share...

A. If I wrote it....

Q. ...did exceed any of your shares....

A. If I wrote it then at the time I wrote it I believed it.

Q. Right. And by that time you'd already

filed two telephone books worth of materials for an interlocutory injunction; correct?

A. I filed nothing, of course.

Q. Your lawyers?

A. I assume...

Q. Yeah.

A. ...they filed whatever they filed, of course.

Q. And your lawyers' representing, you appeared for two full days in court.

THE COURT: All right, well....

A. Okay.

THE COURT: What is the question you want to get to, having said....

MR. SINCLAIR: I want, I want some recognition of, of what his share is, how much Mister....

THE COURT: I'm not concerned. What do you want to ask in relation to how that reflects on Mr. Otavnik in your case against him? Ask him...

MR. SINCLAIR: I think it....

THE COURT: ...a question that relates to that.

MR. SINCLAIR: Q. So Mr. Otavnik supplied much of the documentation you needed for this \$17 million case, you, you...

A. Not that I'm aware of.

Q. ...attest to? Well you say it here:

"...Joe's not on the roster of plaintiffs for this case, his time...." Oh, I'm sorry, the line before.

"I've just seen the work undertaken by Joe Otavnik and it is nearing completion. It contains much of the documentation we need for this case and while Joe's not on the roster of plaintiffs...." blah, blah, blah.

5 A. I don't think anything there indicates that he actually provided anything.

THE COURT: Well, I guess the question he's asking, sir, what does it mean, well, you've seen the work and "it contains much of the documentation we need...." What documentation are you referring to? That's the question he's asking. What documentation did he provide?

10 A. This was his case in which I, I believe he had cases against yourself, which was why we're here, he had a case against Gabe Vadas and he was putting together evidence for that.

MR. SINCLAIR: Well, actually he didn't have....

15 THE COURT: Okay, no, no. Let's not, I don't want your comments.

MR. SINCLAIR: Okay.

THE COURT: That just leads to the next question.

20 MR. SINCLAIR: Q. So, you believe that Mr. Otavnik had sued me by December 11th, 2008, there was a case active from Mr. Otavnik against me?

A. I wouldn't have a clue.

25 Q. But you just said....

A. I wouldn't have a clue.

Q. But you just said that he had me in a lawsuit at that time.

30 A. Was preparing documents. I, the dates, I really have no idea when these things were started or not.

Q. Well, okay. Now, in the last paragraph of this letter, which you sent, I'd like to read the names off

5 of who this letter was sent to. This letter was sent to Joe Otavnik; it was sent to Donna Chow (ph) of Artwork of Sherway; Jackie Bugera of Bear Claw Gallery; Joe McLeod of the Maslak McLeod Gallery; Marlo Goering of Qualican (ph) Frameworks; Sunny Kim of Art Cube; Christian Morrissette, the youngest son of Norval Morrissette, and; Wolf Morrissette, estranged brother of Norval Morrissette, and; Randy Potter of Randy Potter Auctions.

10 Now, in this letter in the last paragraph you say you will outline, "I will outline the type of truthful statement I believe they can provide" speaking in particular of Christian and Wolf Morrissette. "I have included Christian and Wolf Morrissette as I know they have information of value. I will outline the type of truthful statement I believe they can provide". What kind of outline did you provide?

THE COURT: All right. Well, again, let's talk about in relation to Mr. Otavnik only.

MR. SINCLAIR: These statements are....

THE COURT: No, no, no. The questions that you're going to ask him have to relate to Mr. Otavnik, not in relation..

MR. SINCLAIR: Right.

THE COURT: ...you're not cross-examining him on the outstanding lawsuit that's...

MR. SINCLAIR: Okay.

THE COURT: ...against you. It's not the purpose of...

MR. SINCLAIR: Right.

THE COURT: ...the cross-examination.

MR. SINCLAIR: I understand, Your Honour, thank

you.

5 Q. Okay. You asked Mr. Otavnik, I'm going to roll back in this letter a bit here. If we have the truth ourselves documented, you say, if we know of others that know the truth, pressure them until the document it. Well, I've been under pressure....

THE COURT: No, no. Ask him a....

10 MR. SINCLAIR: Q. Were you asking Mr. Otavnik to, to pressure me?

A. To pressure you?

Q. Did you ask him to - yes.

A. No. I....

15 Q. To pressure other people to provide documentation?

A. As to the truth of what was going on in this case.

20 Q. Right. And your last line is, "I will outline the type of truthful statement I believe they can provide which will be of benefit in this case and possibly to the family's case as well as other family members who may wish to provide evidence to refute Ritchie's claims". Right? So...

A. Absolutely right.

25 Q. ...what you were doing was you, you were asking these nine people to pressure other people....

THE COURT: All right, well I don't care.

Let's talk about in relation to Mr. Otavnik only, please.

30 MR. SINCLAIR: Okay.

Q. Mr. Otavnik sent multiple letters to the media and to various members of the Norval Morrisseau

Heritage Society on August 28th, 2008. Are you aware of those letters?

A. Not specifically at this time.

5 Q. Exhibit A to my defendant's claim is a letter, correspondence between yourself and Mr. Otavnik.

A. M'hm.

Q. On August 27th, the day before.

THE COURT: Is this one of the exhibits?

10 MR. SINCLAIR: It's exhibit A to the defendant's claim, Your Honour. I don't believe it's in the, in these three volumes. It's attached here, if I could, I do believe I brought an extra copy.

15 THE COURT: Well, have you seen this, Mr. Otavnik? You had better show it to Mr. Otavnik.

MR. SINCLAIR: It's exhibit A, it's been filed for, for, since the beginning, since I filed this defendant's claim.

20 MR. OTAVNIK: Yes, I'll, I'll allow it.

THE COURT: All right. Let him take a look at it.

25 MR. SINCLAIR: Q. Do you recognize this correspondence between yourself and....

A. It sounds familiar.

Q. Thank you. So as of August 27th, 2008, you had no issue with me personally; did you?

A. I don't believe so.

30 Q. No. Do you remember the first time you and I actually had contact with one another?

A. Oh, I certainly do.

Q. Do you?

A. Oh, yes.

Q. Two thousand and seven?

A. The Liss Gallery.

Q. Pardon me?

A. The Liss Gallery?

Q. No, it was before that.

A. I do not recall that.

Q. Our first contact was correspondence. I wrote you a letter in December 2007 to your EBay account....

THE COURT: Okay, again, again....

A. May I respond?

THE COURT: Just one moment, no, no, no.

A. Certainly.

THE COURT: Again, it better relate to something in relation to Mr. Otavnik.

MR. SINCLAIR: Thank you, sir.

Q. Okay. In this letter sent August 27th, the morning of, the letter says, "Hi Joe, Should we get together to plan? You should attend the current show at Artview", which Sunny Kim's gallery. Jim, what were you going to plan? You and Joe, what were you going to plan on August 27th?

A. We were going to plan how to basically tell the world what a liar you are.

Q. We're talking August 27th, 2008.

A. Okay.

Q. Well, what were you going to tell them I was lying about on August 27th, 2008?

A. Specifically I don't know, but the claims on your website in general.

Q. The website, I didn't begin posting....

THE COURT: Okay, no, don't give an explanation.

MR. SINCLAIR: Right.

THE COURT: Phrase a question....

MR. SINCLAIR: Okay. Q. So you were aware of that, of images on my website in August 27th...

A. That's right, all of these...

Q. ...2008?

A. ...dates that you're throwing at me, I have absolutely no idea, they're kind of interspersed and....

Q. Okay, so then I'll ask...

A. I have no idea.

Q. ...once again. You say that you're getting together to plan to tell the world that I was a liar?

A. I said that.

Q. And this is on August 27th, 2008? That's what the plan was.

A. If, okay, as I say, these dates...

Q. Okay.

A. ...they intermingle, I don't know. I'm only concerned with, as I say, telling the world what a liar you are.

Q. Now, Mister, the owner of Art World of Sherway, Mr. Brian Chow, has advised that a meeting did take place a week later.

A. Okay.

Q. Between yourself....

THE COURT: What is the question?

MR. SINCLAIR: Q. Do you recall that meeting now?

A. I remember meeting with Mr. Chow, yes, on several occasions actually.

Q. Right. This first week in September?

A. The date is meaningless as far as any meeting with him, but yes, there were meetings.

Q. Okay. And his response to you, Mr. Otavnik says, "Hi Jim, I hope and trust everything is well. Yes, we should get together. I launched my website, Norval Morrisseau Lawsuit.com last week and will launch Norval Morrisseau Legal Defence Fund.com today or tomorrow."

Were you aware of those websites in August; do you, do you recall? Did you go and look at them when he sent you this letter?

A. No.

MR. OTAVNIK: Again, Your Honour....

THE COURT: No, no....

MR. OTAVNIK: I must say the - remember, this case is about Mr. Sinclair's counterclaim of me defaming him on the internet. I fail to see any question bringing in....

THE COURT: Have a seat, Mr. Otavnik.

MR. OTAVNIK: I apologize. I just....

MR. SINCLAIR: Q. Mr. Otavnik writes back to you, "I'm now going to focus my attacks on the individual members of the NMHS and the organizations they work for. It's going to get ugly, but that's okay. In fact, I'm going to start at the bottom of the barrel because it's going to get there eventually, so why not start there? I think me," meaning Mr. Otavnik, "you," meaning yourself, Mr. White..

A. M'hm.

Q. ..."Donna," who would Donna be?

A. Donna Child, I believe....

Q. ...who is Sun....

A. Mr. Kim.

5 Rog? Q. And who would Michael Rog (ph) be? Michael

A. Michael Rogozinsky I assume.

Q. And he's?

A. The owner of Empire Auctions.

10 Q. That's right. Now, do you recall that? Did these people appear at this meeting?

A. No, no such meeting took place with particularly Michael Rogozinsky, no.

15 Q. And the final line is, "I have a plan I think will work." Right? So I'm going to ask you, was this plan that you and, and, and Joe Otavnik had, was this plan to attack people?

A. Plan to, to reveal the truth about people. If that qualifies as an attack, so be it.

20 Q. So this is - now, you're saying I was on the radar as of August 2008 or you're saying you're mixed up about dates?

A. I'm saying I may be mixed, was that before or after we met at Liss Gallery?

25 Q. Oh, this was after. But, you know, I'm the one asking the questions.

THE COURT: All right, so I'm not sure why you answered it then. Anything else of this witness?

30 MR. SINCLAIR: Yes, there is, Your Honour.

Q. Okay, so you started up the \$17 million lawsuit again and as of November 2010 you filed a lawsuit in

this court against me....

THE COURT: Again....

MR. SINCLAIR: There're certain issues with this particular one, Your Honour, that I need to bring to the court's attention.

THE COURT: Well, you're not bringing it to my attention. I ruled I wasn't going to hear it when Mr. Kim was in the box; I'm not going to hear it when Mr. White's in the box.

MR. SINCLAIR: This one's different.

THE COURT: I don't care if it's different. It can be dealt with at that time.

MR. SINCLAIR: Would it, would it be considered if Mr. Otavnik made these lawsuits, talked to....

THE COURT: You deal with them....

MR. SINCLAIR: ...if Mr. Otavnik....

THE COURT: No, no, that's not..

MR. OTAVNIK: Your Honour....

THE COURT: ...the issue before me.

MR. OTAVNIK: Thank you.

THE COURT: The only issue before me....

MR. SINCLAIR: It's certainly before me.

THE COURT: No, no. No, it isn't.

MR. OTAVNIK: Next question.

THE COURT: Mr. Otavnik, I don't need..

MR. OTAVNIK: Sorry.

THE COURT: ...your sarcasm or assistance.

MR. OTAVNIK: I apologize to the court.

MR. SINCLAIR: Just give me a moment, Your Honour. Okay, I'll talk to Otavnik.

Q. Did you know that Mr. Kim also filed a lawsuit at the same time?

THE COURT: No, not relevant.

MR. SINCLAIR: Can I ask that, Your Honour?

THE COURT: No. I said it wasn't relevant.

MR. SINCLAIR: Okay.

Q. I'd like to ask, I believe it is relevant to harassment, why you've filed these lawsuits and why you started up this Superior Court lawsuit....

THE COURT: No, no, not relevant...

MR. SINCLAIR: Q. ...after leaving it...

THE COURT: ...it's not relevant.

MR. SINCLAIR: Q. ...now?

THE COURT: He doesn't have to answer that.

MR. SINCLAIR: Okay.

A. May I?

THE COURT: No.

MR. SINCLAIR: Q. Are you in business with Mr. McLeod?

A. No.

Q. Are you in business with Donna Child?

A. I provide artwork to the gallery on consignment. If they sell it they sell it, if they don't it's returned; if that constitutes business, perhaps so.

Q. Yeah, I mean, in your....

THE COURT: Okay, that's the answer. Next question.

MR. SINCLAIR: Q. I'll ask it again. Are you in business with Mr. McLeod?

THE COURT: No, he's answered the question.

A. At this time I have not supplied art to Joe

McLeod.

MR. SINCLAIR: Thank you, Your Honour.

THE COURT: Any questions?

MR. OTAVNIK: Yes.

CROSS-EXAMINATION BY MR. OTAVNIK:

Q. Mr. White....

THE COURT: Stand up, please.

MR. OTAVNIK: Pardon?

THE COURT: Stand up, please.

MR. OTAVNIK: Thank you, Your Honour.

Q. Mr. White, do you own the website in which
Mr. Sinclair claims I defamed him?

A. Is that, that Google Matavlik (ph) website?

Q. Yes.

A. No, I have no interest in that.

Q. Do you control what gets posted on that
website?

A. No, not at all.

Q. Do you have any idea who posted anything on
that website?

A. No, I do not.

Q. And Mr. White, can you give the court a
brief background on how you got involved in buying the
artwork of Norval Morrisseau?

THE COURT: All right...

MR. OTAVNIK: Q. Briefly.

THE COURT: ...again, I don't have to hear that.

MR. OTAVNIK: Q. How did Mr. Website's (sic),
Mr. Sinclair's website affect your business and the

galleries you have distribution deals with?

THE COURT: Okay, no....

MR. OTAVNIK: Your Honour, I...

THE COURT: No, no.

MR. OTAVNIK: ...give me wide latitude, give me two....

THE COURT: He's not a litigant.

MR. OTAVNIK: I understand..

THE COURT: I don't have to hear.

MR. OTAVNIK: ...I understand. I understand. I understand. Okay.

Q. Now with respect to your suit in District Court in 2008 against Mr. Sinclair with the five other named plaintiffs, what was my extent of the involvement in that case?

A. Nothing whatsoever. I mean...

Q. Did I....

A. ...you never met with the lawyers or with us as a group or did you provide any money.

Q. Nor any evidence?

A. No, none.

Q. Thank you. Now, Mr. Robinson referred to you in his expert report on page nine. I'd like to show it to you - well, actually I'll just read it: "However in 2001 Jim White bought (sic) 23 Pottersore's (ph) paintings to KRG for individual appraisals." Is that, I sent 23 large colour photos of them to Norval; is that you, Mr. White, that he's talking about?

A. It is.

Q. Can you give the court a little bit of a background on that whole situation?

THE COURT: No, that doesn't assist me.

MR. OTAVNIK: Okay, one second, Your Honour.
Just give me one moment.

5 Q. Can you explain how you met Mr. Sinclair at
the Liss Gallery; what happened there?

10 A. I was asked to bring paintings by Norval
Morrisseau to the Liss Gallery by Mr. Tambori (ph), who said
he was bringing customers there who may wish to purchase. I
did so, and indeed gentlemen appeared as potential
15 purchasers and they brought with him Mr. Sinclair. Lengthy
discussions ensued, Mr. Sinclair made his recommendations to
the purchasers and I believe at that time two paintings were
purchased, the total amount well in excess of \$20,000.
Subsequently those paintings have appeared on Mr. Sinclair's
website as fakes.

20 Q. Thank you, thank you, Mr. White. Now,
let's go to the trial manuscripts on page 158. I'm going to
show them to - I'm going to read them to you or show them to
you.

A. As you wish.

THE COURT: One-fifty-eight of what?

MR. OTAVNIK: Of the - manuscripts.

THE COURT: Of what? I can't see....

25 MR. OTAVNIK: Of the trial, the actual trial
transcripts.

THE COURT: Of what trial?

MR. OTAVNIK: Of this trial, March 18th, 2010.

THE COURT: I don't have the transcripts.

30 MR. OTAVNIK: Your Honour, I have the copies.

THE COURT: One-fifty-eight?

MR. OTAVNIK: One-fifty-eight, line 20. I'm

going to start reading from there.

COURT CLERK: Okay, sir, you have to be close to a microphone when reading.

MR. OTAVNIK: I apologize, madam.

THE COURT: Go ahead, read....

MR. OTAVNIK: Oh, okay, sorry.

Q. This is Mr. Sinclair's in-chief testimony:

"The Court: What would you like to tell me?

A. I am a graduate of the commercial art at George Brown College, 1979. I met, I, Norval Morrisseau put in advertisement in a newspaper seeking his protégé in 1979, the summer up. I responded to that advertisement. I was the 20th person interviewed personally by Norval Morrisseau and he took me as apprentice at that time. I painted with him from 1979 until he was no longer capable of painting."

Now, Mr. White..

A. M'hm.

Q. ...you know the Morrisseau family quite well?

A. I am the only person that has a contract with the Morrisseau family for the reproduction of Norval Morrisseau's artwork.

Q. And what has Mr. Wolf Morrisseau told you about....

THE COURT: No, hearsay evidence. I'm not accepting it.

MR. OTAVNIK: Q. Has the Morrisseau family ever said that they knew of Ritchie Sinclair?

THE COURT: It's hearsay.

MR. OTAVNIK: Okay, okay. Okay, that's fine.

5 Q. Mr. White, just bear with me for one second, Your Honour. Mr. White, are you aware or ever heard of anyone proving a Norval Morrissimeau was fake at all....

THE COURT: Not relevant.

MR. OTAVNIK: I didn't think so, Your Honour.

Q. Mr. White, is there anything else you'd like to think the court would be aware of (sic)?

10 THE COURT: Okay, let's not - if you have something specific to ask..

MR. OTAVNIK: Okay.

THE COURT: ...him, fine.

MR. OTAVNIK: Okay, sure.

15 Q. Bottom line, to rephrase. Mr. White, I have not been, I was never involved in that 2000....

THE COURT: All right, we've already gone through that.

MR. OTAVNIK: Okay, thank you, Your Honour.

Mr. White, you're excused.

20 THE COURT: Okay. Anything else based on what the cross-examination produced?

MR. SINCLAIR: No. The Liss Gallery - is irrelevant. I could ask questions, but I won't.

25 THE COURT: All right, I'm not asking for your opinion; do you want to ask him any questions based on what Mr. Otavnik leads?

MR. SINCLAIR: No. Thank you, Mr. White....

30 THE COURT: Okay, you can step down. Do you have another witness here?

MR. SINCLAIR: I don't.

THE COURT: So the questions becomes what at