

Superior Court of Justice
Cour supérieure de justice

FILED MAY - 8 2009

Defence to / Défense à la
 Plaintiff's Claim
demande du demandeur
 Defendant's Claim
demande du défendeur

Form/Formule 9A Ont. Reg. No./Règl. de l'Ont.: 258/98

47 Sheppard Avenue East, 3rd Floor
Small Claims Court / Cour des petites créances de

SC-07-51428-00
Claim No. / N° de la demande

Seal / Sceau

Oshawa, Ontario M2N 3W3
Address / Adresse

416 326 3354
Phone number / Numéro de téléphone

Plaintiff No. 1 / Demandeur n° 1

- Under 18 years of age.
Moins de 18 ans.
- Additional plaintiff(s) listed on attached Form 1A.
Le ou les demandeurs additionnels sont mentionnés
sur la formule 1A ci-jointe.

Otavnik

Last name of individual or name of company, etc. / Nom de famille du particulier ou nom de la compagnie, etc.

Joseph

First given name / Premier prénom

Second given name / Deuxième prénom

Also known as / Également connu(e) sous le nom de

299 Dover Court, Oshawa, Ontario (Durham Region)

Address for service (street & number, unit, municipality, province) / Adresse aux fins de signification (numéro et rue, unité, municipalité, province)

L1G 6G7

Postal code / Code postal

905 728 2133

Phone no. / N° de téléphone

Fax no. / N° de télécopieur

Representative / Représentant(e)

LSUC # (if applicable) / N° du BHC (le cas échéant)

Address for service (street & number, unit, municipality, province) / Adresse aux fins de signification (numéro et rue, unité, municipalité, province)

Postal code / Code postal

Phone no. / N° de téléphone

Fax no. / N° de télécopieur

Defendant No. 1 / Défendeur n° 1

- Under 18 years of age.
Moins de 18 ans.
- Additional defendant(s) listed on attached Form 1A.
Le ou les défendeurs additionnels sont mentionnés
sur la formule 1A ci-jointe.

Vadas

Last name of individual or name of company, etc. / Nom de famille du particulier ou nom de la compagnie, etc.

Gabor

First given name / Premier prénom

Michael

Second given name / Deuxième prénom

Gabe

Also known as / Également connu(e) sous le nom de

5735 Alder Way, Nanaimo, British Columbia

Address for service (street & number, unit, municipality, province) / Adresse aux fins de signification (numéro et rue, unité, municipalité, province)

V9T 5N4

Postal code / Code postal

250-802-2514

Phone no. / N° de téléphone

250 758 3577

Fax no. / N° de télécopieur

Brianna K. Davies

Representative / Représentant(e)

52811N

LSUC # (if applicable) / N° du BHC (le cas échéant)

c/o Fraser Milner Casgrain LLP, 1 First Canadian Place, 100 King Street West, Suite 3900, Toronto, Ontario

Address for service (street & number, unit, municipality, province) / Adresse aux fins de signification (numéro et rue, unité, municipalité, province)

M5X 1B2

Postal code / Code postal

416 863 4540

Phone no. / N° de téléphone

416 863 4592

Fax no. / N° de télécopieur

Within seven (7) calendar days of changing your address for service, notify the court and all other parties in writing.
Dans les sept (7) jours civils qui suivent tout changement de votre adresse aux fins de signification, veuillez en aviser par écrit le tribunal et les autres parties.

DEFENCE / DÉFENSE

This Defence is being filed on behalf of: Gabor Vadas

La présente défense est déposée au nom de:

(Name of defendant(s) / Nom du/de la ou des défendeur(s))

(Check as many as apply / Cochez la ou les cases qui s'appliquent.)

I/We dispute the full claim made against me/us.

Je conteste/Nous contestons la totalité de la demande présentée contre moi/nous.

I/We admit the allegations contained in paragraph(s)

Je reconnais/Nous reconnaissons les faits allégués au(x) paragraphe(s) (Paragraph number(s) / Numéro du ou des paragraphes)

I/We deny the allegations contained in paragraph(s)

Je nie/Nous nions les faits allégués au(x) paragraphe(s) (Paragraph number(s) / Numéro du ou des paragraphes)

I/We admit the full claim made against me/us and propose the following terms of payment:

Je reconnais/Nous reconnaissons être redevable(s) de la totalité de la demande présentée contre moi/nous et propose/proposons les modalités de paiement suivantes:

\$ _____ per _____ commencing _____, 20 _____
(Amount / Montant) \$ par (Week/month / Semaine/mois) à compter du

I/We admit part of the claim made against me/us in the amount of \$ _____ and propose

Je reconnais/Nous reconnaissons être redevable(s) d'une partie de _____ \$ et propose/proposons
(Amount / Montant)

the following terms of payment: \$ _____ per _____ commencing
les modalités de paiement suivantes: (Amount / Montant) \$ par (Week/month / Semaine/mois) à compter du

_____, 20 _____

CAUTION TO PLAINTIFF(S):

If this Defence contains a proposal of terms of payment, you are deemed to have accepted the terms **unless** you file with the clerk and serve on the defendant(s) a Request to Clerk (Form 9B) for a terms of payment hearing **WITHIN TWENTY (20) CALENDAR DAYS** of service of this Defence [R. 9.03(3)].

AVERTISSEMENT AU(X) DEMANDEUR(S):

Si la présente défense comprend une proposition à l'égard des modalités de paiement, vous êtes réputé(e)s les avoir acceptées, **sauf si vous déposez auprès du greffier et signifiez au(x) défendeur(s) une demande au greffier (formule 9B) pour la tenue d'une audience relative aux modalités de paiement DANS LES VINGT (20) JOURS CIVILS** de la signification de la présente défense [par. 9.03 (3)].

CAUTION TO DEFENDANT(S):

If your Defence contains a proposal of terms of payment and **YOU FAIL TO MAKE PAYMENT** in accordance with your proposal, **JUDGMENT FOR THE UNPAID BALANCE MAY BE OBTAINED AGAINST YOU** [R. 9.03(2)].

AVERTISSEMENT AU(X) DÉFENDEUR(S):

Si votre défense comprend une proposition à l'égard des modalités de paiement et que **VOUS N'EFFECTUEZ PAS LES PAIEMENTS** conformément aux modalités que au(x) défendeur(s) une demande au greffier (formule 9B) pour la tenue d'une audience vous proposez, **UN JUGEMENT À L'ÉGARD DU SOLDE IMPAYÉ PEUT ÊTRE OBTENU CONTRE VOUS** [par. 9.03 (2)].

NOTE TO DEFENDANT(S):

YOU MUST FILE WITH THE COURT a copy of this Defence (Form 9A) for every plaintiff [R. 9.01(1)].

REMARQUE AU(X) DÉFENDEUR(S):

VOUS DEVEZ DÉPOSER AUPRÈS DU TRIBUNAL une copie de la présente défense (formule 9A) pour chaque demandeur [par. 9.01 (1)].

SCHEDULE "A"

1. Except as expressly admitted herein, the Defendant, Gabor Michael Vadas, denies each and every allegation in the Plaintiff's Claim.
2. Mr. Vadas is an individual living in Nanaimo, British Columbia, and is a long-time friend of Norval Morrisseau. Mr. Morrisseau is a renowned Canadian artist who paints aboriginal subjects. Mr. Vadas is the attorney for property for Mr. Morrisseau pursuant to a Power of Attorney dated April 24, 1990. Mr. Morrisseau asked Mr. Vadas to be his attorney so Mr. Morrisseau could focus on his painting. Mr. Morrisseau currently suffers from Parkinson's disease and has been confined to a wheelchair since around 2001. Mr. Vadas continues to assist Mr. Morrisseau with his personal care and business affairs.
3. At all material times, Mr. Vadas was acting as the attorney for Noval Morrisseau pursuant to the above-noted Power of Attorney.
4. On or about September 12, 2006, Mr. Vadas discovered that Heffel Auction House ("Heffel") was offering two paintings for auction which purported to be original works by Mr. Morrisseau.
5. Mr. Vadas confirmed with Mr. Morrisseau that the impugned paintings were not his works and advised Heffel that the paintings were not authentic.
6. Mr. Vadas states, and the fact is, that the impugned paintings were not painted by Mr. Morrisseau.
7. Accordingly, Mr. Vadas was justified in advising Heffel that the paintings were not Mr. Morrisseau's works, contrary to the attribution in Heffel's auction materials.
8. The Plaintiff has not suffered damages, as alleged or at all, and Mr. Vadas puts the Plaintiff to the strict proof of the authenticity of the impugned painting and the Plaintiff's alleged damages.

9. The Defendant further states that the evidence tendered by the Plaintiff in the Plaintiff's Claim as to the authenticity of the impugned painting is not credible and cannot be relied upon.
10. Specifically, Mr. Vadas ~~denies~~ denies the veracity of all statements in Christian and David Morrisseau's Statutory Declarations and states that, aside from having no professional training or credentials that would allow either of these individuals to provide a reliable opinion on the authenticity of Mr. Morrisseau's art, both Christian and David Morrisseau have been estranged from their father, Noval Morrisseau, for at least five years and their opinions are biased as a result of the breakdown of that relationship, their relationship with the Plaintiff, and their relationship with Joseph McLeod.
11. Furthermore, Mr. Vadas denies the veracity of all statements in Joseph McLeod's letter and states that his letter should not be relied upon because Mr. McLeod and his gallery, the Maslak McLeod Gallery, have been and continue to be involved in a dispute concerning the authenticity of and control over Mr. Morrisseau's works. Mr. McLeod's letter is biased and self-serving and not admissible as evidence.
12. If this Honourable Court finds that Mr. Vadas is liable to the Plaintiff, which is not admitted but expressly denied, then the Plaintiff's damages are excessive and remote and not recoverable at law and the Plaintiff has failed to mitigate his damages. Mr. Vadas holds the Plaintiff to the strict proof of his alleged damages.
13. Based on the foregoing, Mr. Vadas submits that the Plaintiff's Claim should be dismissed with costs.

May 8, 2007

FRASER MILNER CASGRAIN LLP
Barristers and Solicitors
1 First Canadian Place
100 King Street West
Toronto, Ontario M5X 1B2

Eric N. Hoffstein
LSUC No.: 443410
Telephone: 416-863-4640
Facsimile: 416-863-4592

Brianna Davies
LSUC No.: 52811N
Telephone: 416-863-4540
Facsimile: 416-863-4592

Solicitors for the Defendant
Gabor Vadas