

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Court File No.

CW-09-0037036

**BETWEEN**

**DR. JONATHAN BROWNE**

**Plaintiffs**

**- and -**

**JACKIE BUGERA carrying on business as BEARCLAW GALLERY, AND  
BUGERA HOLDINGS LTD. carrying on business as BEARCLAW GALLERY**

**Defendant**

**STATEMENT OF CLAIM**

**TO THE DEFENDANTS:**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the Plaintiffs. The claim against you is set out in the following pages.

**IF YOU WISH TO DEFEND THIS PROCEEDING**, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days, if you are served outside Canada and the United States of America, the period is sixty days.

Instead of filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGEMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE**

**UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU  
BY CONTACTING A LOCAL LEGAL AID OFFICE.**

**Dated:**

*Jan 15/09*

**Issued by:**

*[Signature]*

Local Registrar

Address of 393 University Avenue  
Court Office: 10<sup>th</sup> Floor  
Toronto, Ontario  
M5G 1E6

TO: JACKIE BUGERA  
10403 – 124 STREET  
EDMONTON, ALBERTA T5N 3Z5

AND TO: BUGERA HOLDINGS LTD.  
10403 – 124 STREET  
EDMONTON, ALBERTA T5N 3Z5

**THIS ACTION IS BROUGHT AGAINST YOU UNDER THE SIMPLIFIED  
PROCEDURE PROVIDED IN RULE 76 OF THE RULES OF CIVIL  
PROCEDURE.**

CLAIM

1. The Plaintiff claims:

- (a) Rescission of the contract between the Plaintiff and the Defendants dated on or about April 7, 2007 in respect of the painting, "Grandfather Speaks of Great Ancestral Warriors";
- (b) Damages for out-of-pocket expenses in the amount of \$10,000.00;
- (c) In the alternative, damages in the amount of \$25,275.00 plus GST for negligent misrepresentation, breach of contract and/or breach of warranty;
- (d) Pre-judgment interest, in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990 c. C. 43, as amended;
- (e) Post-judgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990 c. C. 43, as amended;
- (f) The costs of this action on a substantial indemnity basis together with Goods and Services Tax; and
- (g) Such further and other relief as this Honourable Court may deem just.

2. The Plaintiff, Dr. Jonathan Brown, is an individual resident of the City of Ottawa in the Province of Ontario.

3. The Defendant, Jackie Bugera, is an individual businesswoman who at all material times carried on business as Bearclaw Gallery in the City of Edmonton in the Province of Alberta.

4. The Defendant, Bugera Holdings Ltd. is a corporation incorporated under the laws of the Province of Alberta and at all material times also carried on business in the City of Edmonton in the Province of Alberta, as Bearclaw Gallery.
5. In or about April of 2007, the Defendant offered for sale via the World Wide Web on the Internet, a certain acrylic on canvass, original painting, dated 1977, entitled “Grandfather Speaks of Great Ancestral Warriors” (the “Painting”).
6. The Painting was specifically represented by the Defendants as a valuable work of art painted by the famous artist, Norval Morrisseau.
7. The Painting was listed for sale on a web site owned and operated by the Defendants, and was thereby offered to potential customers located all over the world, including the Plaintiff, who viewed the web site in and from Ontario. Accordingly, the Defendants purposefully directed their activities to persons resident in the Province of Ontario, including the Plaintiff.
8. In or about early April of 2007, the Defendants and the Plaintiff discussed the possible purchase of the Painting by the Plaintiff from the Defendants.
9. In the course of those discussions, the Defendants repeated their representation that the Painting was an original and valuable work of art painted by Norval Morrisseau, and in addition, specifically represented to the Plaintiff that the Painting came with ‘excellent provenance’.

10. The Defendants represented to the Plaintiff that the 'excellent provenance' of the Painting gave the Painting substantial value.
11. Furthermore, the Defendants specifically represented to the Plaintiff that the ownership of the Painting was traceable back to the original owner and artist, i.e. Norval Morrisseau himself.
12. The Defendants specifically represented to the Plaintiff that the authenticity of the Painting had been established and was beyond question.
13. As a novice art collector, the Plaintiff was entitled to and did in fact rely upon the Defendants' representation of expertise in the appraisal and authentication of works of art by Norval Morrisseau.
14. At no time did the Defendants disclose to the Plaintiff that the Painting had in fact been withdrawn from an auction held by Heffels auctioneers, as a result of Heffels having been advised by Norval Morrisseau that the painting was in fact a fake.
15. It was on the basis of the aforementioned representations upon which the Plaintiff relied, that Defendants induced the Plaintiff into contracting for the purchasing the Painting (the "contract") for the sum of \$25,000.00 plus shipping of \$275.00, plus GST (the "Purchase Price").
16. The Plaintiff paid the Purchase Price to the Defendants by way of several instalments, the last one being in the amount of \$7,049.00 on November 21, 2007,

pursuant to the contract. All the instalments towards the Purchase Price were paid by Visa on behalf of the Plaintiff.

17. In consideration of the Purchase Price, the Defendant also agreed to provide the Plaintiff with a Certificate of Appraisal and Provenance for the Painting.

18. The Plaintiff took delivery of the Painting subsequent to the payment of the Purchase Price, in or about December of 2007.

19. The Defendants subsequently, in or about January of 2008, provided the Plaintiff with a Certificate of Appraisal and Provenance. This certificate repeated and confirmed the aforementioned representations.

20. On or about July 24, 2008, the Plaintiff discovered that the Painting had in fact been withdrawn from auction, on or about September 12, 2006, by Heffels auctioneers, as a result of being advised by the artist, Norval Morrisseau, that the painting was in fact, a fake.

21. Accordingly, the 'excellent provenance' that the Defendants had represented to the Plaintiff, was in fact a misrepresentation, as the provenance that the Defendants represented to the Plaintiff omitted the crucial facts that an allegation had been made from a credible source which questioned the authenticity of the painting, and that the Painting had been withdrawn from auction.

22. The fact that the painting had been identified by Morrisseau himself as a fake and withdrawn from auction, served to destroy all, or substantially all, the value of the Painting to the Plaintiff, and to any other subsequent purchasers.
23. The impugned authenticity and withdrawal from auction constituted a latent defect in the Painting.
24. The Plaintiff pleads that it is the fact that an allegation questioning the authenticity of the Painting was made by Norval Morrisseau, and the fact that it was withdrawn from auction, which constitute the latent defects, and not necessarily that the Painting is actually a fake, as has been claimed.
25. The purported 'excellent provenance' of the Painting constituted either a condition or a warranty of the Painting's quality, which was breached as a result of the fact that the painting's authenticity had been questioned by the artist, Norval Morrisseau, and had also been withdrawn from auction.
26. Accordingly, the Plaintiff states that the Defendants innocently misrepresented the quality of the Painting by failing to disclose the latent defect in the painting, and by representing that the Painting had 'excellent provenance', that its authenticity was unquestionable, and by omitting that the Painting had been withdrawn from auction after being identified as a fake by Norval Morrisseau.
27. As a result of the Defendants' innocent misrepresentation, the Plaintiff is entitled to the rescission of the contract for the sale of the painting.



28. In the alternative, the Plaintiff states that the Defendants' misrepresentations were negligent, in that the Defendants failed to exercise reasonable care in determining the actual and complete provenance of the Painting, without fundamental omissions. The Defendants owed a duty of care towards the Plaintiff that resulted from the relationship created between the Defendants as purported art experts, and the Plaintiff customer. The Plaintiff relied upon the Defendants negligent misrepresentations and was thereby induced into the purchase of the Painting.

29. The Plaintiff further, and in the alternative, claims damages against the Defendants for breach of contract and breach of warranty. Particulars of the breaches are as follows:

- a) The Painting was not reasonably fit for the purposes for which it was sold, in that its value had been all but eradicated as a result of the questioned authenticity and withdrawal from auction;
- b) The painting was defective and not of merchantable quality and such defects were not capable of being readily ascertained by the Plaintiff;
- c) The Painting did not correspond with the warranties and representations made by the Defendants.

30. The Plaintiff pleads and relies upon the provisions of the Sale of Goods Act, R.S.O. 1990, Chapter S.1, as amended, and, in particular, the implied conditions and warranties that the Painting would be reasonably fit for such purpose and be of merchantable quality, as contained in Section 15 of the Act.

31. The Plaintiff claims a rescission of the contract together with damages for out-of-pocket expenses incurred, the full particulars of which will be provided prior to trial. In the alternative, the Plaintiff is entitled to damages corresponding to the substantial depletion in value of the Painting.
32. Despite numerous and repeated attempts by the Plaintiff to have the Defendants refund the Purchase price in exchange for return of the Painting, the Defendants have failed, refused or neglected to agree to same.
33. The Plaintiff is entitled to serve this claim under the provisions of Rule 17.02(a) as the proceeding consists of claims in respect of personal property, i.e. the Painting, which is located in Ontario. In the alternative, the Plaintiff is entitled to serve this claim pursuant to Rule 17.02(f) because the claim is in respect of a contract that was made in Ontario. In the further alternative, the Plaintiff is entitled to serve this claim pursuant to Rule 17.02(h), because damages were sustained in Ontario.

34. The Plaintiff proposes that the trial of this action be held at Ottawa, Ontario.

Date: January 15, 2009

**ZAK A. MUSCOVITCH**

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Solicitor for the Plaintiff

DR. JONATHAN BROWN v. JACKIE BUGERA c.o.b. BEARCLAW GALLERY et al.

Court File No.

CU-09-00370363

**ONTARIO SUPERIOR COURT OF JUSTICE**

Commenced at Toronto

**STATEMENT OF CLAIM**

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