

Court File No. CV08-00366828

**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 DONNA CHILD  
Sworn November 22, 2008**

I, Donna Child, of the City of Toronto in the Province of Ontario make oath and say as follows:

1. I am the Gallery Director of Artworld of Sherway ("Artworld"), which is a division of Artworld Inc., and is located at Sherway Gardens, 25 The West Mall #207 in Toronto Ontario. My husband, Brian Child, is the sole shareholder, Director and Officer of Artworld Inc. He opened Artworld 16 years ago in 1992 and the gallery has remained in its original location since that time. I became the Gallery Director of Artworld in 1995.
2. Artworld's business consists of buying and selling original artwork of approximately thirty artists, including the paintings of Norval Morrisseau. Artworld buys and sells Morrisseau paintings in the secondary art market. What this

means is that we buy Morrisseau paintings from other collectors and from estates and re-sell the paintings. The gallery does not obtain the paintings directly from Morrisseau or his estate.

3. Artworld sells art to the public, and occasionally on consignment to other galleries. On average, Artworld sells 1,000 to 2,000 pieces of art each year. Artworld keeps careful records of all art purchased and sold. It is Artworld's practice to carefully investigate the history of each piece of art it purchases, consigns or sells in order to ensure its authenticity. I believe that every Morrisseau painting that Artworld has bought, consigned and/or sold is an original work of art by Norval Morrisseau.

#### **Ritchie Sinclair**

4. I met the Defendant, Ritchie Sinclair in March 2008. He considers himself an artist and refers to himself as "Stardreamer". Sinclair approached me in or around March 2008 and asked if my gallery would show his work. I told Sinclair that, at that time, Artworld did not have any space and had all of our shows planned for 2008.

5. Although I have been involved in the business of purchasing and selling paintings, including the works of Norval Morrisseau, for over 13 years, I had not met or heard of Sinclair until March 2008. I am not aware of anyone in the art community who recognizes Sinclair as an expert in the artwork of Norval Morrisseau.

#### **Discovery of Morrisseau.com website**

6. On or around October 11, 2008, Joe Otavnick, a fellow art collector in the Canadian art community, contacted me to tell me that Sinclair, had created the website, [www.morrisseau.com](http://www.morrisseau.com). Joe informed me and I do believe that on or around September 16, 2008, Sinclair began posting images on the website of paintings which Artworld owns, has sold, or is attempting to sell. Sinclair alleged that the paintings were forgeries, counterfeits or otherwise inauthentic.



7. On or around October 11, 2008, I visited the website and confirmed that it contains dozens of images of paintings which Artworld owns, has sold, or is attempting to sell. The website describes those paintings as being forgeries, counterfeits or otherwise inauthentic.

#### **Description of the Defamatory Statements**

8. There are currently over one thousand images of Norval Morrisseau paintings posted on the website which Sinclair claims are counterfeits, forgeries, frauds, stolen or otherwise authentic. The site is updated several times a day with new images of alleged counterfeit Morrisseau paintings being added. Due to the constant updating of the site, it is virtually impossible to make a complete list of all the paintings related to Artworld that are posted on the site.

9. I have identified images on the website of at least 36 paintings which relate to Artworld. When I viewed the website I observed that images in question were accompanied by statements which alleged that the various paintings were stolen, forgeries, counterfeit or were otherwise inauthentic. The total retail value of the paintings in question is \$572,000. Attached as Exhibit A is a chart setting out the 36 paintings of which images were initially posted on the website, their title, and retail value. I have reviewed this chart and I confirm that this information is correct.

10. When I viewed the website, I observed that each and every one of these numbered images was given a title "Inferior Counterfeit Morrisseau" and a number, for example, "Inferior Counterfeit Morrisseau #331". This was displayed on the web-page within the site entitled "photos". On the main page, 24-120 images could be displayed at once. Attached as Exhibit B are screen-captures of the "thumbnail" images and statements on morrisseau.com relating to the art described in Exhibit A. I have circled by hand the images in Exhibit B that relate to Artworld.

11. When I selected one of the images, a new page opened with a larger image of the selected painting, and a commentary. On this sub-page, Sinclair provided a description stating:

### **Inferior Counterfeit Morrisseau # 351**

**blackmagic**

Tags: **copy inferior forgery fake sherway 1976**

Description: INFERIOR COUNTERFEIT NORVAL MORRISSEAU Titled: Bear & Salmon Spirits Dance (c. 1976) 31 x 35 >>> In the opinion of Norval Morrisseau protege, Ritchie "Stardreamer" Sinclair this is an image of an INFERIOR COUNTERFEIT NORVAL MORRISSEAU painting. >>>> Inferior counterfeit >>>> means counterfeit, fake, false, falsified, unauthorized, unguenuine, unreal, forged, forgery, descending into the inferior regions of the earth, poor in quality, substandard, less important, valuable, or worthy, bottom-rung, less, lesser, lower, nether, peon, subordinate, under, underneath, bent, bogus, copied, crock, deceptive, delusive, delusory, faked, fishy, fraudulent, imitation, misleading, mock, pseudo, sham. >>> Displayed in Toronto at the Art World of Sherway, <http://www.artworldofsherway.com>

12. Attached as Exhibit C list of each painting with a transcription of the description that was posted next to each image on morrisseau.com. I am informed by my legal counsel and do believe that the transcription was made by Lori LeBlond, a legal assistant employed by Symes & Street, on November 4, 2008. I have reviewed the transcriptions at Exhibit C and I believe that it accurately reflects the descriptions that I viewed on morrisseau.com which accompanied the images in question.

13. The statements and allegations on the morrisseau.com site, as set out at Exhibits B and C, are untrue and they damage my reputation, the reputation of Artworld, my business and my livelihood.

14. In an attempt to have the images and statements removed from the morrisseau.com website, I instructed my counsel to contact the host of the website, morriseau.com, GoDaddy.com, to ask them to remove the offending photographs. Attached as Exhibit D is a copy of the letter sent by Symes & Street to GoDaddy.com dated November 4, 2008. I am informed by my counsel that as the host is governed by U.S. law, and the images had been improperly taken from the Artworld website and gallery catalogue, it was possible pursuant to a Takedown Notice procedure set out in the *Digital Millennium Copyright Act*, 112 Stat. 2860 (1998), to have the images removed from the website. On November 5, 2008 the website host advised Symes & Street that it would be suspending the morrisseau.com website. Attached as Exhibit D2 is a copy of the email confirmation from GoDaddy.com dated November 5, 2008.



15. On November 5, 2008 I went to the morrisseau.com website and observed that the photographs from Artworld Gallery had been removed from the website.

16. On or after November 8, 2008 I went again to the morrisseau.com website and observed that Sinclair had posted new and more harmful images and text relating to Artworld.

17. I observed on the website that Sinclair had posted new images labeled "Inferior Counterfeit" at numbers 330-352, 443, 450, 453, 455, 474, 481, 500, 530, 532, 538, 543, 545, 546, 548, 563, 630, 631, 634 which all stated on the image of a "stop sign":

IMAGE COPYRIGHT – ARTWORLD OF SHERWAY- THIS IMAGE HAS BEEN REMOVED. THERE ARE SO MANY INFERIOR COUNTERFEIT MORRISSEAU TO CHOOSE FROM... AND IT SEEMED SO IMPORTANT TO THIS GALLERY THAT THEY SWORE UNDER PENALTY OF PERJURY, THAT THEY HOLD EXCLUSIVE COPYRIGHT TO THIS IMAGE THAT... IT SEEMED WISE TO COMPLY. IMAGE COPYRIGHT – ARTWORLD OF SHERWAY

18. Attached as Exhibit E are the screen captures of the "thumbnail" images of the "stop sign" postings relating to Artworld that I observed on the morrisseau.com website. Attached as Exhibit F are screen captures of the full sized "stop-sign" images relating to Artworld that I observed on the website.

19. Next to each "stop sign" image is the same description "Inferior Counterfeit Morrisseau" which had previously been posted next to the numbered image of a Artworld-owned painting. The damage in posting the new statements is even greater to Artworld, in that the name of the gallery is written next to the allegation that "there are so many inferior counterfeit Morrisseaus to choose from", and the description of an "Inferior Counterfeit Morrisseau".

#### **Identification of Artworld**

20. As noted, Sinclair has specifically identified Artworld in dozens of images as set out in Exhibits E and F.

21. With respect to the earlier postings that were displayed on the website prior to service of the Takedown Notice, these postings either directly or implicitly referred to Artworld as well. As noted, when I selected one of the images, a new

page opened with a larger image of the selected painting, and a commentary. For the images with numbers 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352 the website clearly noted that the paintings are "Displayed in Toronto at the Art World of Sherway , <http://www.artworldofsherway.com>", as set out in the transcription at Exhibit C.

22. With respect to the postings that do not identify Artworld explicitly, the images in question are of one-of-a-kind paintings that were sold or are currently for sale by Artworld. Even without naming Artworld, anyone in the Canadian art community, and particularly anyone who deals with Norval Morrisseau artwork, could easily determine that these paintings are owned, consigned or were sold by me and/or Artworld. Anyone with knowledge of Morrisseau art or who would consider purchasing such art would associate the image on the website with me and my gallery. Thus, the allegations of fraud, forgery, and theft taint my reputation and the reputation of Artworld even if we are not explicitly named in relation to each image.

### **Damage to My Business**

23. In my business, I am only successful if Artworld and I have the trust of my clients and colleagues. My business depends entirely on my reputation for honesty and upon my clients' trust that Artworld sells authentic paintings. If collectors, colleagues or other members of the public come to believe or suspect that Artworld sells inauthentic artworks, my reputation will be ruined and my business will be permanently destroyed.

24. The Canadian art community is small. The dealers, galleries and purchasers involved with the purchase and sale of Norval Morrisseau paintings is even smaller. Very few individuals are involved and as a rule, these persons know and rely on one another for business.

25. The images and the statements that Sinclair posted on the website, as set out in Exhibits B, C, E, and F, have damaged my reputation, my business and my livelihood. These statements wrongly inform all visitors to the website that the



paintings owned, sold, or displayed by Artworld are forged, counterfeit or inauthentic. These statements are untrue. If these statements continue to be published they will destroy my business and my livelihood.

26. In September-October 2007, Artworld's sales of Morrisseau paintings were approximately \$20,000. In September-October 2008, Artworld has not sold any Morrisseau paintings. I believe that this significant decline in sales is a result of the untrue allegations posted on morrisseau.com. I further believe that the statements on this website will continue to affect the volume of sales for Artworld.

27. The morrisseau.com website makes allegations of fraud about at least 36 Morrisseau paintings that Artworld is selling or has sold. The total retail value of these paintings is \$572,000, as set out in Exhibit A. I believe that the statements on this website are negatively impacting my business and will make it difficult or impossible to sell these paintings.

28. The untrue statements on the website have been read by members of the public. In the screen captures attached at Exhibits B, C, E, and F, each numbered image has a view counter which shows that each of the listed images and the accompanying commentary had been viewed, sometimes dozens of times.

29. I fear that the purchasers who have previously bought Morrisseau paintings from me may attempt to sue me or to seek a refund for their purchases as a result of the untrue allegations on morrisseau.com. A client of mine who purchased a Morrisseau painting from Artworld recently called me and advised that he had seen the morrisseau.com website and that he was extremely disturbed to see his painting listed on the site as a fake. This was a regular client of Artworld, but he has not returned to the gallery and has not purchased anything from Artworld since this incident.

30. If the allegations and untrue statements on the website continue to be published, I expect that my reputation, the reputation of Artworld, my business and my livelihood will be permanently and irreparably destroyed.

### Notice of Defamation

31. On October, 29, 2008, I retained the law firm Symes & Street to represent me, Artworld of Sherway, and Artworld Inc. in this matter. On November 4, 2008 my counsel sent a notice of defamation to Ritchie Sinclair. Attached as Exhibit G is a copy of that letter and the affidavit of service from the process server who delivered the notice.

32. To date, Sinclair has not responded to this Notice of Defamation, and has not removed the untrue allegations relating to me and Artworld from his website.

33. Sinclair has continued to post additional untrue statements and allegations relating to me and my business on his website despite being served with a Notice of Defamation and a Takedown Notice under the *Digital Millennium Copyright Act*. Given this persistent and unrepentant conduct, I believe that Sinclair will continue to post these untrue statements on his website in an effort to permanently destroy my reputation, my business and my livelihood.

### Undertaking to Pay

34. I make this affidavit in support of this motion for an interlocutory injunction and other relief, and for no other improper purpose. I undertake to abide by any order concerning damages that the Court may make if it ultimately appears that the granting of the order requested has caused damage to Sinclair for which the moving parties ought to compensate Sinclair.

SWORN BEFORE ME at the  
City of Toronto, in the  
Province of Ontario  
this 22<sup>nd</sup> day of November, 2008

  
\_\_\_\_\_  
COMMISSIONER FOR TAKING AFFIDAVITS

  
\_\_\_\_\_  
DONNA CHILD