

**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", "RICHE
SINCLAIR", "STARDREAMER", and "BLACKMAGIC")**

Defendant

**AFFIDAVIT OF JOSEPH MCLEOD
Sworn November 21, 2008**

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

1. I am the owner and sole proprietor of Maslak McLeod Gallery ("Maslak McLeod") which is located at 118 Scollard St. in Toronto Ontario.
2. My business consists of buying and selling artwork, including the paintings of Norval Morrisseau. Maslak McLeod sells art to the public as well as to museums and other galleries. I keep careful records of all art purchased and sold by Maslak McLeod.
3. Maslak McLeod buys and sells Morrisseau paintings in the secondary art market. What this means is that we buy Morrisseau paintings from other

collectors and re-sell them. We do not obtain the paintings directly from Morrisseau or his estate.

4. I started collecting Norval Morrisseau paintings in the early 1960's. At that time I began buying and selling artwork by Morrisseau and other artists under the business name "Maslak McLeod". I opened Maslak McLeod as a full time gallery in 1994. I have been selling paintings by Morrisseau for almost 48 years.

5. I am an expert in appraising and authenticating paintings by native artists including Morrisseau. I regularly appraise art on behalf of owners who need to have their works valued for income tax and insurance purposes. In 1993, I was qualified as an expert and gave expert evidence relating to the authentication of Norval Morrisseau paintings in Federal Court on behalf of the Government of Canada, Department of National Revenue.

6. I have been retained to authenticate Norval Morrisseau paintings by McMaster University Museum of Art, Thunder Bay Museum, the McIntosh Gallery at the University of Western Ontario, and the Montreal Museum of Fine Arts. I am a member of the Canadian Public Appraisers, which is a professional organization of art appraisers and authenticators, as well as the Morrisseau Family Foundation, which was established by Norval Morrisseau's children for the purpose of authenticating the artworks of Norval Morrisseau.

7. I authenticate all of the Morrisseau paintings owned and sold by Maslak McLeod by examining them and carefully tracing their provenance. I believe that all of the Morrisseau paintings that have been purchased and/or sold by Maslak McLeod are authentic works painted by Norval Morrisseau.

Ritchie Sinclair

8. I have known of the Defendant, Ritchie Sinclair, for about ten years. Sinclair refers to himself as "Stardreamer". He considers himself an artist and he has approached me to see if Maslak McLeod would show his work. Our gallery did not agree to show Sinclair's work.

9. I do not believe that Sinclair has any expertise in identifying or authenticating original artworks by Norval Morrisseau. 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

10. On or around October 2, 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. Otavnick informed me and I do believe that on or around September 16, 2008, Sinclair began posting images on the website of paintings which Maslak McLeod owns, has sold, or is attempting to sell. Sinclair alleged that the paintings were forgeries, counterfeits or otherwise inauthentic.

11. On or around October 2, 2008, I visited the website and confirmed that it contained numerous images of paintings which Maslak McLeod owns, has sold, or is attempting to sell. The website describes those paintings as being forgeries, counterfeits or otherwise inauthentic.

12. In addition to the paintings owned or sold by Maslak McLeod, I have observed images posted on the website of at least two paintings by Norval Morrisseau which are hanging in the National Gallery of Canada in Ottawa. I have observed that on the website, Sinclair describes both paintings "forgeries", "counterfeits" or otherwise inauthentic works.

13. On or around October 7, 2008, Sinclair visited Maslak McLeod Gallery. In light of his untrue allegations which I had observed on his website, I asked Sinclair to leave. Sinclair stated, "I'm going to get the Morrisseau establishment."

Description of the Defamatory Statements

14. 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 inauthentic. The site is updated several times a day with new images of alleged counterfeit Morrisseau paintings being constantly added. Due to the updating of the site, it is virtually impossible to make a

complete list of all the paintings related to Maslak McLeod that are posted on the site.

15. On or around October 10, 2008 I identified 45 images posted on the website which relate to Maslak McLeod. I believe that these images that I observed on morrisseau.com were taken from the gallery's website www.maslakmcleod.com and/or from our published gallery books: *Norval Morrisseau* (2006), Gallery Book [Maslak McLeod Gallery]; and *Norval Morrisseau: The Development of the Woodland School of Art* (2003), Gallery Book [Maslak McLeod Gallery].

16. The images were taken from these sources without my or Maslak McLeod's permission and posted on morrisseau.com. I observed that the images on the website were numbered and were accompanied by statements which alleged that the various paintings were stolen, forgeries, counterfeit or were otherwise inauthentic. The retail value of the paintings in question is \$868,000. Attached as Exhibit A is a chart setting out the names of each of these paintings and their retail value. I have reviewed the chart at Exhibit A and I confirm that this information is correct. Attached as Exhibit B are screen-captures of the images and statements that I observed on morrisseau.com relating to the paintings described in Exhibit A. The images in Exhibit B that relate to Maslak McLeod have been circled by hand.

17. I observed that thirty-eight of the images as set out in Exhibit B were described as "Forged Morrisseaus" on www.morrisseau.com. Seven paintings were described as "Stolen Morrisseaus."

18. 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, Wild West Domains Inc., to ask them to remove the offending images and commentary. 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 Maslak McLeod website and publications website, 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. Attached as Exhibit C1 is a copy of the letter sent by Symes & Street to Wild West Domains Inc. dated October 10, 2008. I am informed by my legal counsel that at some time after October 10, 2008, Godaddy.com became the host of the website morrisseau.com. I instructed my counsel to contact Godaddy.com as well to ask them to remove the offending images and commentary. Attached as Exhibit C2 is a copy of the letter sent by Symes & Street to Wild West Domains Inc. and Godaddy.com, dated October 15, 2008. On October 15, 2008 the website host advised Symes & Street that it would be suspending the morrisseau.com website. Attached as Exhibit C3 is a copy of the email confirmation from GoDaddy.com dated October 15, 2008.

19. On or after October 15, 2008 I went to the morriseau.com website and observed that the images related to Maslak McLeod had been removed from the website.

20. However, by October 28, 2008 I observed that more images were posted on morrisseau.com of Morrisseau paintings owned or sold by Maslak McLeod, with similar allegations of forgery and fraud attached.

21. On October 29, 2008, I observed that the website contained at least 18 new images of paintings which Maslak McLeod owns, has sold, or is attempting to sell. The images were numbered 601, 600, 598, 597, 100, 595, 582, 103, 581, 374, 361, 361, 360, 358, 321, 101, 105, 53. These numbered images on morrisseau.com were labeled "Inferior Counterfeit Morrisseau". The total retail value of these paintings is \$283,000. Attached as Exhibit D is a chart setting out the 18 new images that I observed on the website, as well as the title and retail value of the corresponding painting from Maslak McLeod. I have reviewed the chart at Exhibit D and I confirm that this information is correct.

22. Attached as Exhibit E are screen-captures of the "thumbnail" images and statements relating to the paintings in Exhibit D that I observed on morrisseau.com on or about October 29, 2008.

23. On October 29, 2008 my counsel again engaged the US process for takedown of this material taken from our gallery publications and website. Attached as Exhibit F1 is the letter sent by Symes & Street to Godaddy.com, dated October 29, 2008. On October 29, 2008 the website host advised Symes & Street that it would be suspending the morrisseau.com website. Attached as Exhibit F2 is a copy of the email confirmation from GoDaddy.com dated October 29, 2008.

24. On or around October 30, 2008 I went to the morriseau.com website and observed that the second set of images related to Maslak McLeod had been removed from the website.

25. However, after October 31, 2008, I have visited the website and observed that Sinclair has continued to post untrue allegations about me and Maslak McLeod on morrisseau.com. The most recent postings have even more clearly identified Maslak McLeod as being involved alleged theft and forgery. On or around November 11, 2008, I observed the following posting on the main page (homepage) of morrisseau.com:

Stolen art for sale? These murals were unseen since 1985... Why? Joe McLeod's campaign to sell them at 100K+ began days after Morrisseau's death...Why?

Under this posting, I observed the following comment posted by "Stardreamer".

Unfortunately the photos of the seven TTC artworks won't be shown here because Joe McLeod has sworn, under penalty of perjury, that he owns the exclusive copyright to the images of these paintings - and he won't allow me to post them. He published pictures of these magnificent Morrisseau paintings in a catalogue that he is using to promote his sale.

Joe McLeod chose to ignore Norval's signed letter sent to him and his gallery. The letter demands that they cease and desist publishing pictures of Norval's art (or inferior counterfeit art that they attribute to Norval Morrisseau). Norval, as the creator, owns the copyright.

Maslak McLeod Gallery have no right to publish any of Norval's images however if you wish to see this series of amazing paintings give Joe some traffic at http://www.maslakmcleod.com/norval_subway.html

>>>>>>>> Stardreamer

Attached as Exhibit G are screen captures of the posting and the comments that I observed.

26. Stardreamer's comments are accompanied by a photo of an individual who I recognize as Ritchie Sinclair. When I clicked on the profile name "Stardreamer" above the user comment, a new page opened up which displayed the "Stardreamer" user profile. I observed that the profile identifies "Stardreamer" as "Ritchie Sinclair". Attached as Exhibit H is the user profile of "Stardreamer" that I observed on morrisseau.com.

27. In addition, On November 18, 2008, I observed that Sinclair has posted at least 12 additional images of paintings which Maslak McLeod owns, has sold, or is attempting to sell. The total retail value of these paintings is \$185,000. Attached as Exhibit I is a chart setting out the 12 additional images that I observed on the website, as well as the title and retail value of the corresponding painting from Maslak McLeod. I have reviewed the chart at Exhibit I and I confirm that this information is correct.

28. I have observed that Sinclair has described each of these paintings as "Inferior Counterfeit Morrisseau." When I selected one of the images, a new page opened with a larger image of the selected painting, and a commentary. On each of these sub-pages, except for the image entitled "Inferior Counterfeit Morrisseau #919", Sinclair provided a description:

Description: INFERIOR COUNTERFEIT NORVAL MORRISSEAU >>> 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, ungenune, 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. >>> Titled: "Energy Transformation"- acrylic on canvas, approx. 28"x 44", 1976 >>> From the Ugo Matulic a.k.a. Spirit Walker blog at <http://norvalmorrisseau.blogspot.com/>

Attached as Exhibit J are screen-captures of the images and commentaries that I observed on morrisseau.com relating to the artworks described in Exhibit I.

29. All of the allegations on the website regarding me Maslak McLeod and the Morrisseau paintings owned, or sold by me or the gallery are all untrue. My opinion and belief is that the paintings in question are authentic paintings by Morrisseau.

Identification of me and Maslak McLeod

30. I have observed that many of the most recent posts on the website identify me by name and suggest that I and my gallery sell forged or counterfeit Morrisseau paintings, as set out in Exhibit G.

31. All of the images at Exhibits B, E, and J are of one-of-a-kind paintings that are owned, were sold or are currently for sale by MasLak McLeod. Even without naming Maslak McLeod, I believe that anyone in the Canadian art community, and particularly anyone who deals with Norval Morrisseau artwork, could easily determine that these paintings are owned or were sold by me and/or Maslak McLeod. I believe that 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 Maslak McLeod even if we are not explicitly named in relation to each image.

Damage to My Business

32. In my business, I am only successful if Maslak McLeod 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 Maslak McLeod sells authentic paintings. If collectors, colleagues or other members of the public come to believe or suspect that Maslak McLeod sells inauthentic artworks, my reputation will be ruined and my business will be permanently destroyed.

33. The Canadian art community is a small one. The community of 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.

34. The images and the statements that Sinclair posted on the website, as set out in Exhibits B, E, G, and J, 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 Maslak McLeod are forged, counterfeit or inauthentic. These statements are untrue. If these statements continue to be published they will destroy my business and my livelihood.

35. At the time that the morrisseau.com website posted the images and allegations of fraud in September 2008, Maslak McLeod owned approximately 100 Norval Morrisseau paintings valued at approximately \$2 million.

36. In September – October 2007, my sales of Morrisseau paintings were approximately \$17,000. My sales in September – October 2008 are approximately \$7,000. I believe that this significant decline in sales is a result of the untrue allegations posted on morrisseau.com. I believe that the statements on this website will continue to negatively impact the volume of sales for Maslak McLeod.

37. The untrue statements on the website have been read by members of the public. In the screen captures attached at Exhibits B, E, and J, 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.

38. As noted, my colleagues such as Joe Otavnick have viewed the website and have contacted me regarding the untrue statements about me and Maslak McLeod which are contained on the website. In addition, a client of Maslak McLeod, Robert Hall, has contacted me and advised that he has seen the allegations on morrisseau.com and is troubled by them.

39. Where untrue statements have been made about paintings which have already been sold by Maslak McLeod, I fear that my customers may sue me and that I will incur the costs and risks of defending my reputation and my business in the Courts.

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

41. In addition, I believe that the continued publication of the untrue allegations on the website will destroy the market for Norval Morrisseau artworks. That is, I believe that these untrue allegations will destroy the value of all the works of Norval Morrisseau, who is one of Canada's most important artists.

Notice of Defamation

42. On October 8, 2008, I retained the law firm Symes & Street to represent me, Maslak McLeod Gallery in this matter. On October 8, 2008 my counsel sent a notice of defamation to Ritchie Sinclair. Attached as Exhibit K is a copy of that letter and the affidavit of service from the process server who delivered the notice.

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

44. 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 two Takedown Notices under the U.S. *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

45. 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 21st day of November, 2008)



COMMISSIONER FOR TAKING AFFIDAVITS



JOSEPH MCLEOD