

SCHEDULE 'A' to The AMENDED Plaintiff's Claim

1. The Plaintiff claims:
  - (a) Rescission of the contract between the Plaintiff and the Defendants dated on or about February 28, 2005 in respect of the Painting, "Wheel of Life" based upon the Plaintiff's Claims of misrepresentation and/or breach of contract;
  - (b) Reimbursement of all costs associated with the purchase of the Painting; and
  - (c) In the alternative, damages for deceit, including the amount of the purchase price of the subject painting and loss of investment opportunity in relation to said amount;
  - (d) Punitive damages, and;
  - (e) Costs incurred by the Plaintiff associated with this Small Claims Court action.
2. The Plaintiff, Margaret L. Hatfield, is an individual resident of the City of Sarnia in the Province of Ontario.
3. The Defendant, Donna Child, is an individual businesswoman who at all material times carried on business as Artworld of Sherway in the City of Toronto in the Province of Ontario.
4. The Defendant, Artworld of Sherway, is a corporation incorporated under the laws of the Province of Ontario and at all material times also carried on business in the City of Toronto in the Province of Ontario.
5. In or before February, 2005, the Defendant offered for sale via the World Wide Web on the Internet, a certain acrylic on canvass, original painting, dated 1979, entitled "Wheel of Life".
6. The Painting was specifically represented by the Defendants as a valuable work of art painted by the famous artist, Norval Morrisseau.
7. In or about late February of 2005, the Defendants and the Plaintiff discussed via telephone the possible purchase of the Painting by the Plaintiff from the Defendants.
8. In the course of those discussions, in response to queries from the Plaintiff regarding provenance, the Defendants represented that the painting was an original and valuable work of art painted by Norval Morrisseau which the gallery

was offering for sale which had been placed for sale by a collector named James White.

9. In further support of the request for provenance, the Defendants specifically represented to the Plaintiff that the painting had been appraised by two separate art galleries: Bremner's Fine Art and Maslak McLeod Gallery and that the certificates of appraisal would be included with the bill of sale upon completion of purchase. The Defendants represented to the Plaintiff that the authenticity of the Painting had thereby been established and was beyond question.

10. 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 the Painting.

11. It was on the basis of the aforementioned representations upon which the Plaintiff relied, that the Defendants induced the Plaintiff into contracting for the purchase of the Painting for the sum of \$9,000.00 plus tax of \$1,330.00.

12. The Plaintiff paid the purchase price to the Defendants by way of a single transaction through the Plaintiff's Master Card account. The transaction was completed on February 26, 2005.

13. At no time during the discussions regarding the purchase and its provenance did the Defendants disclose to the Plaintiff that the Painting which was the proposed object of purchase had been specifically named and repudiated as a fake and an imitation in a Statutory Declaration made by the artist, Norval Morrisseau and served on the Defendants.

142. This declaration was sworn before a commissioner in the office of Stevens and Company, Barristers and Solicitors, in Parksville in the Province of British Columbia on September 22, 2004 in the area where Norval Morrisseau was residing.

153. This declaration was served on the Defendants at least four months prior to the purchase of the Painting by the Plaintiff.

164. Accordingly, the authentication that the Defendants had represented to the Plaintiff was, in fact, a misrepresentation, deceit or mistake, as it omitted the crucial fact that an allegation had been made by none other than the artist himself that the Painting was not authentic.

175. The fact that the Painting had been identified by Norval Morrisseau himself as a fake served to destroy all the value of the Painting to the Plaintiff and to any other subsequent purchasers.

186. The painting is a fake or, in the alternative, the impugned authenticity

constituted a latent defect in the Painting.

197. The Plaintiff asserts that it is the fact that an allegation denying questioning the authenticity of the Painting was made by Norval Morrisseau which constitutes the latent defect, and not necessarily that the Painting is actually a fake, as is alternatively had also claimed.

2018. The purported authentication of the painting by the Defendants constituted either a condition or a warranty of the Painting's quality which was breached as a result of the fact that the painting is a fake or, alternatively, the painting's authenticity had been questioned denied by the artist, Norval Morrisseau.

2119. Accordingly, the Plaintiff states that the Defendants misrepresented the quality of the Painting by failing to disclose the latent defect in the painting and by representing that its authenticity was unquestionable, or alternatively, deceived the Plaintiff in to believing it was not a fake.

220. As a result of the Defendants' innocent misrepresentation, the Plaintiff is entitled to the rescission of the contract for the sale of the Painting.

231. 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 long-established purveyors of art, and the Plaintiff as customer. The Plaintiff relied upon the Defendants' negligent misrepresentations and was thereby induced into the purchase of the Painting.

242. 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;

b) The Painting was defective and not of merchantable quality and such defects were not capable of being really ascertained by the Plaintiff;

c) The Painting did not correspond with the representations made by the Defendants.

253. The plaintiff further, and in the alternative states that the defendants deceived the plaintiff into purchasing the Painting even though they knew, ought

to have known, or were reckless in failing to know, that the Painting was a fake, and that they conspired with one another to perpetrate said deception against the plaintiff.

26. The plaintiff further, and in the alternative, pleads that either the plaintiff was mistaken as to the authenticity of the Painting and the defendants knew or ought to have known of that mistake, or the parties were mistaken in common, but that in either alternative case the mistake goes to the root of a basic and fundamental element of the contract of sale.

27. 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.

28. The Plaintiff asserts that had she been apprised of the existence of the Statutory Declaration sworn by Norval Morrisseau prior to or at the time of the purchase of the painting she would never have followed through with completion of the transaction which resulted in the purchase of 'Wheel of Life.'

29. The plaintiff states that had she not purchased the Painting she would have had the opportunity to invest the purchase funds in an alternative investment vehicle which would have yielded an investment return.

30. The Plaintiff further asserts that the Defendants had an obligation to reveal the existence of the Statutory Declaration, especially in light of the Plaintiff's specific inquiries about the provenance of the Painting.

31. The Plaintiff made her discovery of the Statutory Declaration on April 6, 2009.

32. In support of her assertion that she would never have bought the Painting, on June 5, 2009, the Plaintiff made a trip to the Defendants' place of business and sought out a meeting with her to request the refund of her money and to effect the return of the painting.

33. The Defendant, Donna Child, Artworld of Sherway gallery director, cited her involvement in another related legal matter as the reason she was unable to comment on or act upon the Plaintiff's request at that time. Ms. Child stated she would be in contact with the Plaintiff once she had had the opportunity to consult her legal counsel.

34. By means of a registered letter dated June 16, 2009, the Defendants made known their wish that the Plaintiff proceed to trial.