

Superior Court of Justice
Cour supérieure de justice

Amended
Defence to / Défense à la

- Plaintiff's Claim
demande du demandeur
- Defendant's Claim
demande du défendeur

Form / Formulaire 9A Ont. Reg. No. / Régl. de l'Ont. : 258/98

DEFENCE / DÉFENSE

Toronto
Small Claims Court / Cour des petites créances de

SC-09-087264-00
Claim No. / N° de la demande

47 Shepherd Avenue East, Third Floor
Address / Adresse

416-326-3554
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.

Hatfield

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

Margaret Lorraine Maggie

First given name / Premier prénom Second given name / Deuxième prénom Also known as / Également connu(e) sous le nom de

106 Martha Street, Sarnia, ON

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

N7T 1Y7 519-337-2770

Postal code / Code postal 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.

Child

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

Donna

First given name / Premier prénom Second given name / Deuxième prénom Also known as / Également connu(e) sous le nom de

207 Sherway Gardens, 25 The West Mall, Toronto, ON

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

M9C 1B8 416-620-0500 416-620-1776

Postal code / Code postal Phone no. / N° de téléphone Fax no. / N° de télécopieur

Robert Dowhan (SmithValeriot Law Firm) 44118B

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

105 Silvercreek Parkway North, Suite 100, Guelph, ON

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

N1H 8M1 519-837-2100 519-837-1617

Postal code / Code postal Phone no. / N° de téléphone 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.

This Defence is being filed on behalf of: **Donna Childe**

La présente défense est déposée au nom de : (Name of defendant(s) / Nom du/de la ou des défendeur(s)/défenderesse(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) **2, 4, 5, 6, 7, 8, 9 and 30**
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) **all other allegations**
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 (Amount / Montant) \$ et propose/proposons la demande présentée contre moi/nous, soit
- 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 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)].

REASONS FOR DISPUTING THE CLAIM AND DETAILS
MOTIFS DE CONTESTATION DE LA DEMANDE ET PRÉCISIONS

In separately numbered paragraphs, explain why you do not agree with the claim made against you.
Expliquez sous forme de paragraphes numérotés pourquoi vous contestez la demande présentée contre vous.

If you are relying on any documents or other material, you **MUST** attach copies to the Defence. If evidence is lost or unavailable, you **MUST** explain why it is not attached.

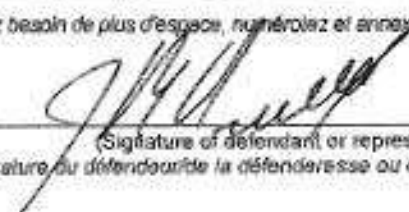
*Si vous vous appuyez sur des documents ou autres pièces, vous **DEVEZ** en annexer des copies à la défense. Si une preuve est perdue ou n'est pas disponible, vous **DEVEZ** expliquer pourquoi elle n'est pas annexée.*

See Schedule "A" attached.

(If more space is required, attach and number separate sheet(s) / Si vous avez besoin de plus d'espace, numérotez et annexe une ou des feuilles supplémentaires.)

Prepared on: August 7th, 20 09

Fait le :


(Signature of defendant or representative /
Signature du défendeur/le défendresse ou du/de la représentant(e))

1/15/08

SCHEDULE "A"

1. The defendants, Donna Child (hereinafter "Child") and Artworld of Sherway (hereinafter "Artworld") agree with the allegations of fact contained in paragraphs 2, 4, 5, 6, 7, 8, 9, and 30 of the plaintiff's statement of claim.
2. The defendants have no knowledge of the allegations of fact contained in paragraphs 10 and 11 of the plaintiff's statement of claim.
3. The defendants deny all other allegations made within the plaintiff's statement of claim and put the plaintiff to the strict proof thereof.
4. The defendant, Artworld, is a corporation incorporated pursuant to the laws of the Province of Ontario. At all material times Artworld operated as an art gallery located at the Sherway Gardens Mall in Toronto, Ontario where it sells various types of art to the public at large.
5. The defendant, Child, is an individual who normally resides in the Province of Ontario. Contrary to paragraph 3 of the claim, Child is not a sole proprietor but rather she is an employee of Artworld.
6. This matter involves a transaction whereby the plaintiff purchased a painting from Artworld on February 26, 2005 for the purchase price of \$9,000.00 plus tax of \$1,350.00. The painting is entitled, "Wheel of Life" and the artist of the painting is Norval Morrisseau.
7. The plaintiff is alleging that the painting is an imitation. The defendants state that in fact the painting in question is authentic as advertised and therefore the plaintiff's claim is without merit and should be dismissed with costs to be paid to the defendants on a substantial indemnity basis.
8. Contrary to the assertions in the statement of claim, at all material times Child was acting in her capacity as employee and officer of Artworld. None of her actions, of any sort or type, were done in her personal capacity. There is no basis for any action as against her personally.
9. With respect to paragraph 13 of the claim, the defendants did not have knowledge of the declaration until after the plaintiff had purchased the painting in question. On April 8, 2005, some 2½ months after the transaction had been completed, the defendant received an email disclosing the existence of the declaration but even then a copy of the declaration was not provided to the defendants.
10. There is currently litigation in the Ontario Superior Court of Justice involving several art galleries who have brought an action against individuals on the basis that these individuals are attempting to control the market of "Morrisseau artwork by falsely accusing galleries of having imitations of Mar art. At the same time, these individuals are promoting their own Morrisseau art as being the only authentic Morrisseau art in existence. The declaration states that there is evidence to suggest that the declaration is a forgery. In addition, the health of Mr. Morris at the time of the declaration being signed is questionable in that he had been suffering from advanced Parkinson's disease at that time and he subsequently died in December 2007.

11. The defendants state that there are numerous qualified appraisers and experts in the field of authenticating art that will substantiate the defendants claim that the painting in question is an authentic original Morriseau painting.
12. The defendants emphatically deny any liability and ask that the plaintiff's claim be dismissed with costs awarded to the defendants.
13. The defendants deny any conspiracy or deception. At all material times up to and including the issuance of this amended defence the defendants believed the painting to be genuine. The defendants have confirmed the paintings pedigree and maintain the position that the painting is authentic.
14. The defendants assert that art work is not an investment and cannot be characterized as such. At no time did the plaintiff assert an intention to use the painting as an investment vehicle. Any loss associated with missed investment opportunity are too remote at law and not actionable as against the defendants.