

Claim No.: SC-09-00087264-0000

ONTARIO
SMALL CLAIMS COURT

BETWEEN:

MARGARET HATFIELD

Plaintiff

- and -

CHILD and ARTWORLD INC. o/a ARTWORLD OF SHERWAY

Defendants

CLOSING ARGUMENT OF THE PLAINTIFF - REPLY

Sommer's Business Law Firm
Jonathan J. Sommer (LSUC
42958N)
2239 Queen Street East
Main Floor
Toronto, Ontario M4E 1G1
Tel: 416.907.1085
Fax: 1.866.488.6403
Email: jsommer@sommers-
law.ca

The plaintiff makes the following submissions in reply to various points raised in the Defendants' Closing Submissions. References to paragraph numbers are, unless otherwise noted, references to paragraphs in the Defendants' Closing Submissions.

Donald Robinson

1. The allegations by the defendants that Mr. Robinson “purported to give evidence as to the handwriting on the painting without any qualifications to do so” (paragraph 6) and that he “was not qualified as a handwriting expert” (paragraph 30) are false and/or misleading. Mr. Robinson demonstrated highly extensive experience, knowledge and familiarity with all aspects of Norval's work and history, and thus is well qualified to give the evidence he did. In fact, it may fairly be said that Mr. Robinson's exposure to and knowledge of Norval's signatures exceeds by leaps and bounds that of Dr. Singla, who admitted that he never did any research outside of looking at the tiny sampling of non-paint signature specimens provided to him by Joseph McLeod. Mr. Robinson was not proffered as an expert on signature analysis in general, he was proffered and then qualified as an expert with respect to both valuation and authentication of Norval Morrisseau's works, which qualification included all aspects of such works, including the signatures.
2. In their submission, the defence tries to make much of the fact that Mr. Robinson admitted to having been fooled by fake Norval paintings in the first few years he saw such fakes on the market, and that this failure somehow makes him unreliable as a witness. It is submitted that: first, his admission to having made such

embarrassing mistakes demonstrates his integrity and devotion to the truth at the risk of personal financial and reputational cost; and second, his testimony makes absolute sense – he was caught off guard when the first fakes arrived, but then, over time, he educated himself and, as a result, honed his ability to identify fakes.

3. In discussing Mr. Robinson's evidence, and then later (see paragraphs 36, 37 and 67 among others), the defendants confuse the evidence, claiming that Mr. Robinson gave Norval "two options: Tick the box that indicated that all 23 paintings were fakes or tick the box that all 23 paintings were genuine". No such single check box for all paintings existed, a fact that is evidenced by paragraph 9 of Jim White's March 9, 2005 Declaration (trial Exhibit 46), which he then contradicts in his viva voce testimony. Ultimately, however, this submission forms a part of an argument by the defendants that appears to suggest that Norval sometimes called paintings fakes and then called them authentic. The problem with that argument, however, is that it is a logical fallacy based on the false premise that any painting that Norval was presented with and which he did not call a fake is therefore a painting which he was identifying as authentic. When Jim White was confronted with this logic in his cross-examination he admitted its validity. Furthermore, it is submitted that any instance in which Norval did not identify as fake a painting which he subsequently, or had previously, identified as fake can be explained in a number of ways, including by suggesting that he may have been acting out of caution, or that he failed to notice certain fakes at first, or that he ignored paintings he had already identified as fakes. Ultimately, for the defendants to conclude from his non-identifications of certain fakes that they were

authentic is logically unsound and, in any event, does not apply to his observation regarding the Painting, for which his statement that it is inauthentic was never contradicted.

4. The defendants state (at paragraph 42) that Mr. Robinson ignored “crystal clear” evidence that Norval “handed out paintings all over Ontario over a long period of time. [...] People acquired them for as little as a case of beer or a pack of cigarettes.” There is no such “crystal clear” evidence. Nobody testified to having been involved in or even witnessing such a transaction.

5. Much is made in the defendants’ submission about Mr. Robinson having posed as a “Mr. Smith” while visiting the defendants’ gallery. Given, however, that this accusation was never mentioned by the defendants prior to the trial, and was not put to Mr. Robinson while he was on the stand, it is submitted that it should be given no weight.

Ritchie Sinclair

6. The defendants claim that Mr. Ritchie Sinclair lied about telling Mr. Cott that his painting was a fake, after initially calling it authentic. First, it is difficult to comprehend what possible motivation Mr. Sinclair would have to lie about this clearly unrelated issue. He told Mr. Cott that the painting was authentic and then later realized it was a fake, so he told Mr. Cott so, and posted the painting on his website, identifying it as a fake. Was there a misunderstanding or miscommunication between him and Mr. Cott when he communicated that it was a fake? Did Mr. Cott ignore Mr. Sinclair’s statement for some reason, such as a desire not to confirm the

embarrassing and costly fact that Jim White had sold him a fake painting for a significant amount of money? Who knows. It is submitted that this is not the sort of issue that should figure in this Honourable Court's assessment of Mr. Sinclair's truthfulness as a witness.

7. It should be noted that the attack on Mr. Sinclair's evidence (at paragraph 52) based on the use of a book that is not an exhibit and that was never put to the witness is improper and should be ignored by this Honourable Court.

Donna Child

8. At paragraph 57, the defendants allege that "at the time of the CBC documentary Ms. Child had no information that Mr. Morrisseau was taking the position that Artworld was selling allegedly fake Morrisseau paintings." This is absolutely false, and misstates the evidence. First, Ms Child admitted to being aware of the fake painting controversy for at least two years prior to the airing of the documentary. Second, a cease and desist letter was previously sent by Norval's lawyers in British Columbia to the defendants in 2004 (see affidavit of Michele Vadas –paragraph 2 of Exhibit 32 (sub-exhibit A)). Third, immediately following the documentary, the defendants received a telephone call from Michele Vadas in which she informed them that they were selling fakes. Fourth, also immediately following the documentary, the defendants received correspondence by email and mail from Norval's lawyers in Toronto advising them that they were selling fakes.

9. The defendants' suggestion that this Honourable Court should prefer Ms Child's evidence over that of Ms Vadas on the basis that Ms Vadas gave her evidence by way of affidavit is backwards. Ms Vadas' affidavit was served on the defendants long before the trial, and they were afforded ample opportunity to investigate her statements and then cross-examine her, which they chose not to do. By contrast, Ms Child's evidence was lengthy and little to no notice was provided to the plaintiff of much of what she would say, which significantly limited the plaintiff's ability to cross examine her. It is submitted that, if one considers the evasive, illogical and untruthful answers given by Ms Child throughout her testimony, there can be no doubt that Ms Vadas' affidavit should be preferred.

Wilfred "Wolf" Morrisseau ("Wilfred")

10. Wilfred Morrisseau, in stark contrast to the defence's improper statement (at paragraph 11) that "[n]o evidence was ever adduced at trial that [he] ever provided false testimony in a court of law", is a convicted criminal who was found by an Ontario criminal court and appeals court to be without credibility, and to have told numerous lies under oath (see trial Exhibit 34). Rather than accept responsibility for such lies, however, Wilfred denied the authority of Ontario's courts ("those who govern this land") to make such a judgment. Furthermore, Mr. Sinclair (whom Wilfred confirmed was a close friend and protégé/artistic assistant of Norval) testified that Wilfred was a thief who stole from Norval and him and, in the words of Norval himself, was a "psychic leach" who ought to be avoided. Wilfred even confirmed that he resented Norval. Clearly, anything Wilfred says should be regarded with great suspicion

without further proof, especially when, as in this case, he purports to give un-qualified expert opinion evidence about the authenticity of the Painting and also talks about the alleged existence of reverse-side Norval-signed paintings which he then claims “turned to smoke”, a fact that should only increase this Honourable Court’s concern that no such paintings ever existed, and which correlates with the defence’s failure to produce a single example of any such species of Norval painting from the documented historical record.

11. The discussion of Wilfred’s evidence contains a number of misstatements of the evidence:

(a) At paragraph 86: “[Wilfred’s] evidence [that the Painting is authentic] was unchallenged...”. This is false. The plaintiff objected to the admissibility of his evidence on the basis that it was expert opinion evidence. The plaintiff reiterates that objection;

(b) At paragraph 87: Mr. Sinclair “believes that there exists a forgery ring responsible for the entire Morrisseau secondary market” (emphasis mine). No such assertion was made by Mr. Sinclair, nor was it implied. If anything, from his evidence it is reasonable to think that Mr. Sinclair is of the view that the secondary market for Norval’s work includes both authentic and fake paintings;

(c) At paragraph 88: Norval’s “response was words to the effect that it is the white man’s problem”. This was not said, nor was it implied.

Joseph McLeod

12. The evidence of Joe McLeod was a combination of evidence that is inadmissible, unreliable and/or fabricated. In particular:

- (a) His testimony regarding his opinion that the Painting is authentic is opinion evidence, and would only be admissible had it been given by a properly-qualified witness in the normal procedure. None of that procedure was followed;
- (b) Even if his opinion were admissible, it was based on little to no substance, and on vague and incomprehensible statements, some of which amount to hearsay, about the meaning and provenance of the Painting, none of which were ever communicated to the plaintiff before the moment he testified, and none of which were supported by any documentary or corroborating evidence;
- (c) Mr. McLeod claimed to have no knowledge of this action until the morning of his testimony, despite the facts that: his name has appeared on numerous past witness lists for the defence; Dr. Singla testified that he met with McLeod over a year prior to this trial to view signature specimens for his report; it is inconceivable that a witness would not hear of an ongoing trial at which he was to be a witness until the day he testified.
- (d) He indicated that he was the agent for Norval's children in registering copyright in Norval's entire artistic oeuvre during the course of ongoing litigation in which the very question at stake was such children's entitlement to said copyright;
- (e) He denied having any legal connection, other connection, or any involvement with a gallery known as the "Maslak-McLeod" gallery in New Mexico, other than the fact that his ex-wife operated it, despite the fact that

his resume, which appears at page 56 of Exhibit 30 (a catalogue produced by his gallery), lists him as the "Curator/Director" of that New Mexico gallery;

- (f) He initially denied that he is, or ever was, a plaintiff in the \$17 million lawsuit against Ritchie Sinclair (trial Exhibit 33). After he was shown the Statement of Claim in that lawsuit, however, he admitted that he was involved, but denied still being a plaintiff, even though counsel for the defence advised the court that he still is a plaintiff;
- (g) He admitted that in the weeks leading up to when he issued his 2004 Certificate of Appraisal for the Painting he was subject to various cease and desist demands by Norval's lawyers regarding selling fakes, appraising Norval's paintings, and copyright infringement. He then boldly, and without evidence, claimed that Norval's lawyers acted without Norval's consent when said demands were made, and that they, and others, were "controlling" Norval;
- (h) He claims, incomprehensibly and without any proof, that Norval did not sign the September 22, 2004 commissioned statutory declaration in which the Painting is identified as a fake, and that the signature thereupon is forged;
- (i) He stated (and this statement is repeated at paragraph 108) that in the late 70's, Norval's art was not selling well and therefore it would not make sense for forgers to make fakes at that time. Given that it is well known that the accusations of 70's-style forgeries begin in the late 90's, and are directed at paintings that are alleged to have been produced in the 90's, when those 70's paintings did

have significant value, McLeod's statement demonstrates either a severe failure of logic and knowledge, or a pathetic attempt to obfuscate;

- (j) He admitted to having been expelled and/or resigned (his testimony was unclear) his membership in the Art Dealers Association of Canada ("ADAC") because he was issuing appraisals of Norval's paintings in contravention of ADAC's policies;
- (k) Throughout his evidence there are numerous examples of entirely speculative statements, hearsay, and other statements made without any direct knowledge or even with any common sense to them.

It is submitted that most of the evidence of Joseph McLeod should be considered entirely unreliable and/or fabricated, and that this finding should bring into question the entire body of evidence of the defendants, much of which is based on the false position that Joseph McLeod is a "renowned" expert and that his word is truthful.

13. It should be noted that at paragraph 101 the defendants attempt to bolster sympathy for Mr. McLeod and, at the same time, attack Mr. Sinclair's credibility by claiming that Mr. Sinclair "stalked him and criminally harassed" him. It is the plaintiff's submission that this accusation is entirely improper given that, as Mr. McLeod admitted in cross-examination, the criminal proceeding against Mr. Sinclair resulted in a dismissal.

Marlowe Goring

14. The evidence of Mr. Marlowe Goring, even if taken as true, has little to no value in this matter. First, Mr. Goring, as a party who sells and

authenticates reverse-side drybrush signature alleged-Norval paintings, has a great deal at stake in the dispute over the authenticity of such paintings. Second, as with the reverse-side drybrush signature paintings Wilfred Morrisseau claimed to have been produced by Norval in jail, and which subsequently “turned to smoke”, Goring was unable to tell the Court where any of such paintings are now. Third, Goring had no direct evidence at all regarding the Painting itself. Fourth, Goring was not, as the defence puts it, just someone who “failed to file proper income tax returns” – he was convicted of lying numerous times to the federal government, for illegal financial gain. Finally, Goring’s evidence, for which no testimonial, documentary or physical corroborating evidence was offered, was evidence for which no detailed notice was provided to the plaintiff, thus making it impossible to prepare for or cross-examine upon. Accordingly, it is submitted that Mr. Goring’s evidence should be given no weight, and regarded with serious suspicion.

15. It is worth noting that Mr. Goring, although he provides Certificates of Authentication for various alleged Norval paintings, did not appear to have any formal training or certification to do so, and made mistakes in his testimony regarding terms that he ought to have easily known, such as when he twice substituted “syllabus” for the proper term “syllabics”, and substituted “Norval Morrisseau” for “Copper Thunderbird”.

Dr. Atul Singla

16. At paragraph 120 and footnote 15, the defendants indicate that the plaintiff has tried to cast doubt on the authenticity of the

“known signatures” examined by Dr. Singla. The plaintiff has not tried to cast doubt upon those signatures. The defendants appear to be attempting, in their response, to draw the court’s attention away from the two points the plaintiff is actually making, namely that: first, Dr. Singla’s analysis was based on a tiny sample set; and second, that Joseph McLeod is unreliable and/or a liar because he claims he only heard about this case the day he testified even though he was clearly involved in cooperating with Dr. Singla by providing sample signatures for his report.

17. At page 36, paragraph 120(b), the defendants argue that the plaintiff’s “apples to oranges” argument is an expert argument, but then go on to say that had Dr. Singla used black acrylic paint comparison signatures, his opinion could have been more definitive. From the defendants’ own logic, then, it is clear that the lack of painted signatures as comparators weakened Dr. Singla’s ability to provide a like-comparison, thus supporting the plaintiff’s “apples to oranges” argument.

18. At paragraph 120(c), the defendants indicate that this Honourable Court should not use its own eyes and make note of the “obvious” differences between the Painting’s signature and the comparators used by Dr. Singla, and also that the plaintiff did not have a handwriting expert. First, the court can certainly make note of and consider obvious discrepancies that Dr. Singla refused to acknowledge and question the value of his resulting conclusions. Second, the plaintiff did have an expert on Norval’s handwriting: Donald Robinson.

19. The plaintiff takes exception at the entire contents of paragraph 120(e), and the final sentence of paragraph 122. It is unacceptable that the defendants attempt to improperly and unethically influence this Honourable Court through reference to alleged evidence and facts that were not presented at trial and that were not referred to by Dr. Singla, either when he was asked about these issues or in re-direct. It is submitted that this Honourable Court should entirely ignore the defendants' highly improper statements in said paragraphs.

James ("Jim") White

20. The testimony of Jim White, it is submitted, was illogical, irrelevant and cannot be believed. Among other things:

- (a) Mr. White was unable to provide any direct evidence of the provenance of the Painting, but did reveal that such provenance may involve one Deiter Voss and his son, David Voss. According to him, these people are alive. The plaintiff requests that this Honourable Court draw an adverse inference from the defendants' failure to call these witnesses;
- (b) Mr. White denied suing Mr. Sinclair in a Small Claims Court action which was dismissed as a duplication of the Superior Court action against Sinclair, but then admitted to doing so, claiming that the Small Claims action was brought by his lawyers without his knowledge or authorization. It is submitted that it is incomprehensible that Mr. White's lawyers brought an action without such knowledge or authorization;

- (c) Mr. White claimed that Joseph McLeod (who in his testimony initially denied being involved in the Superior Court action) organized the Superior Court action. Given McLeod's claimed lack of knowledge of, and current participation in, that lawsuit, this statement by White is obviously untrue or, at least, highly questionable;
- (d) Mr. White reiterated, without any remotely reasonable evidence, the other defendants' witnesses statements that Norval did not direct his lawyers to write the demand letters they did.
- (e) Mr. White agreed that, to his knowledge, there was a bad relationship between Norval and his children;
- (f) Mr. White, without reason or proof, absurdly stated that Mr. Robinson either wrote or "orchestrated" an article in the National Post regarding fake Norval paintings;
- (g) Mr. White stated that it is his hope that he can use a favourable outcome in this action as a way to pursue the Superior Court action further, thus demonstrating that the plaintiff's theory that she is merely being used as a guinea pig by the defendants to obtain an advantage in the Superior Court action against Mr. Sinclair is correct.

21. Mr. White provided some vague information regarding the provenance of the Painting. As with Mr. McLeod and Ms Child, however, this information was never disclosed prior to the trial, and was not corroborated by any documentary or other physical evidence. It is the plaintiff's submission that the provenance information provided by all three of these defence witnesses is recently fabricated and that it was not revealed by the defence

until the trial in order to thwart any possibility of investigation by the plaintiff.

22. It was abundantly clear from Mr. White's testimony that he has a lot of money staked on the authenticity of various reverse-side drybrush signed alleged Norval paintings, including the Painting, which came from his collection. He claims to have had 250 such paintings, and that he now owns 100 of them. He agreed that if this action concludes in a positive outcome for the defendants, he will make a lot of money. Clearly, he has ample motivation to lie about the facts, which is exactly what the plaintiff submits he was doing.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 20th DAY OF AUGUST, 2012.