

Court File No. CV-12-455650

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

KEVIN HEARN

Plaintiff

-and-

**ESTATE OF JOSEPH BERTRAM MCLEOD, DECEASED
AND MASLAK-MCLEOD GALLERY INC.**

Defendants

AFFIDAVIT OF NATHANIEL BIG CANOE

I, Nathaniel Big Canoe, of the City of Toronto, in the Province of Ontario, AFFIRM:

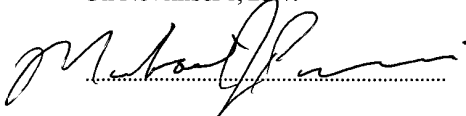
1. I, Nathaniel Big Canoe, am a Full Status member of the Chippewas of Georgina Island First Nation with Status No. 1380029105, and one of the potential intervenors in the above-noted action and as such I have knowledge of the matters hereinafter deposed. Where I have been informed by others, I state the source of the information, and verily believe it to be true.
2. I am a painter in the Woodlands School of art in the tradition of Norval Morrisseau.

3. I have also been reselling, through the Morrisseau Family Foundation, Norval Morrisseau originals and limited edition Norval Morrisseau prints since 2015 to individual clients.
4. I have read the Statement of Claim and Statement of Defence for this matter. Annexed hereto and marked as Exhibit A to this my affidavit are true copies of the Statement of Claim and Statement of Defence for this matter.
5. I have read Rule 13 of the *Rules of Civil Procedure*. Annexed hereto and marked as Exhibit B to this my affidavit is a true copy of the Rule 13 of the *Rules of Civil Procedure*.
6. I confirm that I have an interest in the subject matter of this proceeding, because of the following reasons:
 - a. I do verily believe that this proceeding is a matter of great public interest to the First Nations and Aboriginal Communities comprising Canada;
 - b. Norval Morrisseau is important to First Nations and Aboriginal Communities because he took oral legends and traditions which were passed down from his grandfather, who was a medicine man, and depicted First Nations symbolism in paintings, which play an important role in the revitalization of First Nations culture and history;
 - c. I do verily believe that this proceeding is a matter of great public interest in relation to preserving and protecting the artistic and culture legacy and tradition of Norval Morrisseau;
 - d. As stated above, I also paint in the Norval Morrisseau tradition;

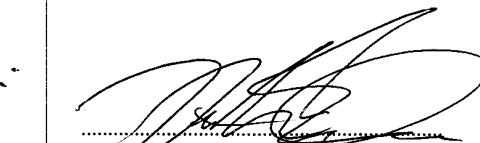
- e. Commercially, as a reseller of Norval Morrisseau originals and prints, I have an interest in protecting the integrity of Norval Morrisseau name;
 - f. Finally, a Judgment in this matter that finds as fact that “Spirit Energy of Mother Earth” is a fake will adversely affect my commercial interests as a reseller, but that is secondary to me.
7. I do verily believe that the within motion for leave to intervene in the within matter satisfies the test comprising the elements listed above.
8. My interest in this matter is broader than merely a legal or commercial interest. I have a genuine interest in promoting and protecting the art of Norval, the legacy of Norval, and the art of his son, Christian, and the contribution by the Morrisseau Family to the art and culture of the Aboriginal Community and Canada.
9. I do verily believe that the practical result of a Judgment that finds that “Spirit Energy of Mother Earth” is a forgery will be that the legacy of Norval Morrisseau will be permanently tarnished and that the esteem of the First Nations and Aboriginal Communities will be greatly diminished as a result within our own communities and Canada as a whole.
10. Finally, I do verily believe that I have right as a First Nations person to intervene in this matter under s. 25 of the Charter of Rights and Freedoms. First Nations people must have a voice at this Trial and I intend to be that voice.

11. I make this affidavit in support of this motion to obtain leave to intervene as a party at the Trial of the within matter and for no other or improper purpose.

Sworn before me at the City of Toronto
In the Province of Ontario,
On November 1, 2017.



.....
Commissioner for Taking Affidavit



.....
Nathaniel Big Canoe

This Exhibit A to the Affidavit of Nathaniel Big Canoe

Sworn before me on November 1, 2017

A handwritten signature in cursive script, appearing to read "Michael J. ...", is written over a horizontal line.

A commissioner, etc.

Court file no.

CV-12-455650

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

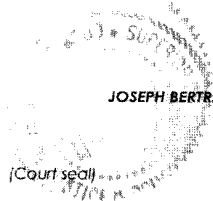
KEVIN HEARN

Plaintiff

and

JOSEPH BERTRAM MCLEOD and MASLAK-MCLEOD GALLERY INC.

Defendants



(Court seal)

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$2500 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

Date June 8, 2012

Issued by [Signature] Local registrar

Address of court office: 150 Bond Street East
Oshawa ON L1G 0A2

393 UNIVERSITY AVE. 10TH FLOOR TORONTO, ONTARIO M5G 1E6
393 AVE. UNIVERSITY 10E ÉTAGE TORONTO, ONTARIO M5G 1E6

TO

JOSEPH BERTRAM MCLEOD
118 Scollard St. Toronto, Ont.
M5R 1G2 Canada
Tel: 416-944-2577
Fax: 416-922-1636

AND TO:

MASLAK-MCLEOD GALLERY INC.
118 Scollard St. Toronto, Ont.
M5R 1G2 Canada
Tel: 416-944-2577
Fax: 416-922-1636

THIS ACTION IS BROUGHT AGAINST YOU UNDER THE SIMPLIFIED PROCEDURE PROVIDED IN
RULE 76 OF THE RULES OF CIVIL PROCEDURE.

CLAIM

1. The plaintiff claims as against both defendants:
 - (a) The sum of \$20,000.00 representing the purchase price of the Painting (as described below);
 - (b) The sum of \$25,000.00 representing the loss of investment return on the Painting (as described below);
 - (c) The sum of \$50,000.00 in punitive damages;
 - (d) pre-judgment and post-judgment interest on the sums claimed in subparagraph (a) pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (e) post-judgment interest on the sums claimed in subparagraphs (b), (c) and (d) pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (f) costs on a substantial indemnity basis; and
 - (g) such further and other relief as to this Honourable Court seems just.

The Parties

2. The plaintiff is an individual who resides in the City of Toronto in the Province of Ontario, and is a member of the famous Canadian music group *Barenaked Ladies*.
3. The defendant Joseph Bertram McLeod ("McLeod") is an individual who resides in the City of Toronto in the Province of Ontario, and who from time to time has carried on business as Maslak-McLeod Gallery and through Maslak-McLeod Gallery Inc., a corporation acting as his personal agent, for which he is the sole officer, director and shareholder.

4. The defendant Maslak McLeod Gallery Inc. ("MMGI") is an Ontario corporation carrying on business as an art gallery, one location of which is located in the City of Toronto, in the Province of Ontario.

Background

5. Long prior to his dealings with the defendants, the plaintiff had a deep admiration for the art of Norval Morrisseau, the Native Canadian artist known as "The Picasso of the North". It was his long-standing desire to own one of Morrisseau's paintings, both for his personal pleasure, and for its investment value.
6. Beginning in the 1990's, the plaintiff's fame grew, as he performed as a member of, *inter alia*, such internationally-known groups as *Corky and the Juice Pigs*, *Barenaked Ladies*, and *The Rheostatics*. In recent years, he has performed with *Barenaked Ladies*, *The Tragically Hip*, Lou Reed's band, and *Kevin Hearn and Thin Buckle*, his own band. He is an active celebrity, performing at many important Canadian events, including, most recently, at Jack Layton's state funeral.

Purchase of the Painting

7. On or about May 3rd, 2005, the plaintiff visited the defendants' art gallery, which advertises to the public that it is a gallery specializing in the works of Native artists and, especially, that of Norval Morrisseau. The plaintiff advised the defendants that he was a novice collector, and was interested in the works of Norval Morrisseau. The plaintiff also told the defendants who he was, and they expressed their awareness of his celebrity status.
8. The defendants hold themselves out to be experts who thoroughly and critically investigate the provenance of the works they sell. Furthermore, they hold themselves out as trustworthy agents to their clients on whose expertise such clients may comfortably rely.

9. At the defendants' gallery, the defendant McLeod showed the plaintiff several alleged Norval Morrisseau paintings, including a painting titled "Spirit Energy of Mother Earth" which was dated 1970 (the "Painting"). The price of the Painting was \$20,000.
10. Prior to committing to the purchase of the Painting, the plaintiff asked the defendant McLeod about the Painting's provenance. McLeod responded by assuring the plaintiff that the painting was an authentic Norval Morrisseau, and that his gallery was the best and safest place to purchase a Norval Morrisseau work. McLeod also represented that if the plaintiff purchased the Painting, a written statement describing the Painting's provenance could be provided to substantiate his claim that it was authentic.
11. Relying on and believing the defendants' representations regarding the authenticity of the Painting, the plaintiff purchased the Painting on or about May 4th, 2005. The Painting was delivered to the plaintiff by the defendants on or about May 24, 2005.
12. At the time of the Painting's purchase, the plaintiff's reasons for buying it were that he admired Norval Morrisseau's work and he believed that such works represented a sound financial investment. Prior to purchasing the Painting, he communicated these reasons to the defendants. The defendants then advised the plaintiff that Norval Morrisseau was very ill and was expected to die shortly, at which time the Painting's value would increase significantly.
13. In or about early 2009, at the plaintiff's request, the defendants provided some basic documentation regarding the Painting which included information about value, date and a few other details.
14. At no time did the defendant disclose to the plaintiff certain other critical information relevant to the Painting that was within the defendants' knowledge, which information included, *inter alia*, the facts that the Painting is of a species of Morrisseau painting that is the subject of significant and persistent disagreement regarding authenticity, and that the defendants were specifically prohibited by Morrisseau himself from acting as

authenticators of his work on the basis that the defendants had, *inter alia*, allegedly been selling and authenticating large quantities of fake and/or forged Morriseau paintings as a part of a fraud scheme.

15. Had the plaintiff known that the Painting was a fake or forgery, or had he known all of the relevant facts regarding the Painting's lack of provenance, the disputes over the provenance of the Painting, and the prohibition and complaints made by Morriseau against the defendants, he never would have purchased the Painting in the first place.

The AGO Show

16. In or about April of 2010, the Art Gallery of Ontario (the "AGO") invited the plaintiff to act as a celebrity guest curator for an AGO art show (the "AGO Show"). The AGO Show would feature works from the plaintiff's art collection, some of his own drawings, and works similar to the art in his collection, drawn from participating galleries and from the AGO's own collection. The plaintiff agreed.
17. The defendants were made aware of the AGO Show and encouraged the plaintiff to display the Painting at that show. The defendants also made arrangements to have two alleged Norval Morriseau paintings from their own collection displayed at the AGO Show.
18. On June 11, 2010 the AGO Show opening took place, and was well attended, but approximately one week later the AGO advised the plaintiff that numerous individuals, including the head curator of the AGO, had suggested that the Painting was most likely a fake. For these reasons, the Painting was removed from the AGO Show by the AGO. As a result of similar concerns, the two paintings provided by the defendants to the AGO Show were also removed.
19. The removal of the Painting from the AGO Show caused the plaintiff great humiliation and embarrassment.

20. Following the AGO Show, the plaintiff contacted the defendants and demanded that the defendants provide him with the Painting's provenance. The defendants advised that the painting had been sold on consignment and so the defendant's files would have to be searched. The defendants offered to refund the plaintiff's purchase price for the Painting if, after evidence of provenance was provided, the plaintiff was still unhappy with the Painting.
21. A few days later, the defendants furnished the plaintiff with several documents purporting to provide the provenance for the Painting. The documents provided failed to establish such provenance, and actually contradicted previous statements that the defendants had made to the plaintiff about same.
22. The plaintiff then demanded that the defendants refund his money for the purchase of the painting, but the defendants responded that they would only refund the plaintiff's money if he obtained a letter from the AGO apologizing and confirming the Painting's authenticity, or stating that it is a fake or forgery.
23. The plaintiff subsequently engaged experts to provide their opinions as to the authenticity of the Painting, with the result that such experts concluded that either it was a fake or forgery and/or that its authenticity could not be established.

The Plaintiff's Position

24. The plaintiff states that the Painting is a fake or forgery, and that the defendants knew at all material times that such is the case.
25. Given that the Painting is a fake or forgery, the value of the Painting at the time of purchase was approximately \$300, which is \$19,700 less than what the plaintiff paid. If the Painting were an authentic Morriseau, it would, as of the date of this pleading, be worth approximately \$45,000, which would represent an investment return of \$25,000. Accordingly, the plaintiff claims said loss of purchase price and said loss of investment return.

26. In the alternative, the plaintiff states that if the defendants did not know that the Painting is a fake or forgery (which is denied) then such lack of knowledge has been the result of their negligence in failing to properly investigate the provenance of the Painting, and/or their wilful and/or reckless disregard for the truth, and such negligence resulted in their failure to fully advise the plaintiff of the lack of solid provenance for the Painting.
27. In the further alternative, the plaintiff states that in the event that the Painting is an authentic Morisseau (which is denied), then the defendants failed to advise the plaintiff at the time of the Painting's purchase of all of the critical facts relevant to the plaintiff's decision to purchase the Painting, which facts included, *inter alia*, disclosure to the plaintiff that the Painting is of a species of Morisseau painting that is the subject of significant and persistent disagreement regarding authenticity, and that the defendants were specifically prohibited by Morisseau himself from acting as authenticators of his work.
28. The plaintiff states that the defendants' actions constitute, *inter alia* and in the alternative, deceit, fraudulent misrepresentation, negligent misrepresentation, breach of fiduciary duty, breach of contract, innocent misrepresentation, and/or mistake.
29. The plaintiff states that as a result of the defendants' actions he is entitled to be awarded the relief claimed herein.
30. The plaintiff states that the plaintiff's embarrassment and humiliation that resulted from the withdrawal of the Painting from the AGO Show was the direct result of the defendants' fraudulent, deceitful, and negligent conduct, and that such result was foreseeable by the defendants as a result of their knowledge of the plaintiff's celebrity status and of his intention to place the Painting in the AGO Show.
31. The plaintiff states that the defendants have persisted in perpetrating their fraud upon the plaintiff, and have even attempted to improperly and illegally enlist the assistance of the plaintiff to obtain a letter from the AGO in order to

further such fraud so that said fraud could be perpetrated upon other unsuspecting persons. Because of this, and because of the deceptive and fraudulent behaviour of the defendants, the plaintiff states that the defendants have acted in a manner that is properly described as high-handed, malicious, arbitrary or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour, and which justifies the claim of punitive damages herein.

32. The plaintiff states that the failure of the defendants to supply an authentic Norval Morrisseau painting as promised constitutes, *inter alia*, a breach of warranty.
33. The plaintiff pleads and relies upon the provisions of the Sale of Goods Act, R.S.O. 1980, c. 462 and, without limitation, sections 15 and 51 thereof.

The plaintiff proposes that this action be tried in the City of Toronto.

June 8, 2012

SOMMER'S BUSINESS LAW FIRM
2239 Queen Street East
Main Floor
Toronto, Ontario
M4E 1G1

Jonathan J. Sommer
LSUC# 42958N

Tel: 416.907.1085
Fax: 1.866.488.6403

Lawyer for the Plaintiff

TO :

JOSEPH BERTRAM MCLEOD
118 Scollard St. Toronto, Ont.
M5R 1G2 Canada

Tel: 416-944-2577
Fax: 416-922-1636

AND TO:

MASLAK-MCLEOD GALLERY INC.
118 Scollard St. Toronto, Ont.
M5R 1G2 Canada
Tel: 416-944-2577
Fax: 416-922-1636

KEVIN HEARN and JOSEPH MCLEOD
(plaintiff) (defendant)

(Court file no.) CV-12-45650

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO
STATEMENT OF CLAIM

SOMMER'S BUSINESS LAW
FIRM
2239 Queen Street East
Main Floor
Toronto, Ontario
M4E 1G1

Jonathan J. Sommer
LSUC#42958N

Tel: 416.907.1085
Fax: 1.866.488.6403

Lawyer for the Plaintiff

Court File No. CV-12-455650

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

KEVIN HEARN

Plaintiff

-and-

JOSEPH BERTRAM MCLEOD and MASLAK-MCLEOD GALLERY INC.

Defendants

STATEMENT OF DEFENCE

1. The defendants admit the allegations contained in paragraphs 2, 3 (except for the allegation that the corporate defendant is a personal agent for Mr. McLeod), 4, 5, 9, (other than the word "alleged") 11 (other than to what representations Mr. Hearn relied upon), and 16-18 of the statement of claim.
2. The defendants deny the allegations contained in paragraphs 1, 7, 8, 10-15, 19-22, and 24-32 of the statement of claim.
3. The defendants have no knowledge of the allegations contained in paragraphs 6 and 23 of the statement of claim.
4. The defendants deny that Mr. Hearn is entitled to the relief claimed, or at all, and Mr. Hearn is put to the strict proof of the entitlement to the relief claimed in paragraph 1 of the statement of claim.

Mr. Hearn falsely alleges fraud

5. The allegations of fraud as set out in paragraphs 14, 15, 24, 25, 28, 30 and 31 of the statement of claim are scandalous, frivolous and vexatious.
6. Mr. Hearn is a famous Canadian. He is a member of the musical band the Barenaked Ladies. He publicized his statement of claim in this proceeding. As a result of his fame his allegations in the statement of claim have received widespread notoriety in the press. Mr. Hearn is also extremely well liked and respected as a musician and the public would never believe him to make unsubstantiated allegations. As a result, the public assumes the allegations of fraud made in his statement of claim are true.
7. The allegations of fraud and, more particularly, of taking part in a widespread criminal fraud scheme as alleged in paragraph 14 of the statement of claim, are entirely false and have irreparably damaged the business of the defendants. Mr. Hearn should be condemned to pay to the defendants their substantial indemnity costs of this action. Mr. Hearn's conduct in this regard was reckless and showed a total disregard for the reputation and livelihood of the defendants.

The defendants are experts in authenticating Morrisseau's art

8. The defendant gallery has significant experience and expertise in the field of native art and has exhibited numerous native artists throughout Canada.
9. Mr. McLeod has been qualified by the Federal Court of Canada as an expert who may provide opinion evidence regarding works of art by the late artist Norval Morrisseau ("Morrisseau"). Mr. McLeod has been a student of Morrisseau's art for more than 50 years, has exhibited his art and has a particular expertise in the content and form of Morrisseau's paintings in the period from 1960 to 1980.

10. Mr. McLeod has extensive experience buying, consigning and selling the art of Morrisseau and has a profound respect for the legacy of the artist. He would never knowingly sell any painting that was a forgery or a fake. Neither of the defendants has in fact knowingly, or otherwise, sold paintings that were represented to be paintings by Morrisseau when they were not.
11. To this day, Mr. McLeod maintains a relationship with Morrisseau's children and has attempted to assist them in benefiting financially from their father's legacy.

The provenance of Morrisseau's art

12. Norval Morrisseau was a prolific artist. By some accounts he painted as many as 15,000 works of art in his lifetime. The exact number is unknown and will never be known. He painted from the late 1950s until some time in the 1990s. The exact date when he could no longer paint due to his ill health is unknown.
13. Morrisseau was an alcoholic who was burned over a significant percent of his body in a fire in 1972 and suffered two strokes in the 1980s. By 1985 Morrisseau was confined to a wheelchair. In or about 1995, Morrisseau was diagnosed with Parkinson's disease. By the time of his death in 2007, Morrisseau had no use of his hands, could not speak and was being carted around by his supposed caregivers who used and abused him for their personal financial gain.
14. During his lifetime, Morrisseau lived and worked in many places. He painted while living on the street, in jail and in many communities around Northern Ontario. At times, he traded paintings for sustenance or alcohol. He could paint many paintings at one time. Much of the art he produced was masterful. However, many of the paintings he produced were inferior and simply uninspiring. He signed the front of his paintings using Cree syllabics to spell out his native name Copper Thunderbird

15. At various times, Morrisseau signed his English name on the back of his paintings. He used various mediums to sign his English name. There are paintings by Morrisseau in the 1960s, 1970s and 1980s that are signed in pencil, pen and marker. At times, at least in the 1960s and 1970s, Morrisseau signed the backside of some of his paintings in black acrylic paint. Typically, the last part of a painting that Morrisseau would complete was the black lines around the images. Once he finished painting the black lines, he would turn the canvass over, date, sign and identify the painting using the remnants of the black paint on his brush. Because of this, frequently the paint was faded in his signature, the date and the identification of the painting.
16. Like many famous artists, determining the provenance of a work of art by Norval Morrisseau can prove difficult. Many of his works were painted and sold in small communities throughout Northern Ontario over a long period of time.
17. Like numerous famous artists, including Picasso, Warhol, Basquiat and Modigliani, many of Morrisseau's paintings cannot be traced directly back to him and the authenticity of his art is often controversial. In fact, the vast majority of Morrisseau's paintings cannot be traced directly back to him.

The Khan Auction Paintings

18. Commencing in or about 1999, many paintings by Morrisseau came up for auction through an auction house named Khan Auctions. Most of those paintings were dated in the 1970s and Morrisseau signed the back of some of the paintings in dry brush, black acrylic paint. Those paintings are in fact the easiest paintings by Morrisseau to

authenticate as many samples of his signature and writing are available for comparison.

19. The Khan Auction paintings trace their origins through a private art collector named David Voss. David Voss has advised Mr. McLeod that he acquired many Morriseau paintings from various individuals in Northern Ontario over several years commencing in or about 1980. He has even provided to Mr. McLeod the names of many of those people.
20. Both Mr. MacLeod and an art dealer named Donald Robinson, purchased Morriseau paintings from Khan Auctions. Donald Robinson purchased 28 paintings at the Khan Auctions.
21. Mr. Robinson is an individual who resides in the Province of Ontario and has a gallery in Yorkville called the Kinsman Robinson Gallery. For a period of time from 1989 onward, Mr. Robinson had a business relationship with Morriseau and has been, and is, in possession of a large quantity of paintings received directly from Morriseau.
22. In addition to purchasing paintings from Khan Auctions, Mr. Robinson's gallery appraised paintings purchased from Kahn Auctions that they did not purchase.
23. Mr. Robinson also re-sold many of the Khan Auction paintings and represented those paintings as works of art by Morriseau.
24. Mr. McLeod also bought some paintings from Khan Auctions, but not as many as Mr. Robinson. When Mr. McLeod attended Khan Auctions, he formed the opinion that the paintings he viewed and purchased were authentic works of art by Morriseau.

Mr. Robinson also formed the opinion that the Khan Auction paintings were authentic and advised other prospective bidders that they were authentic.

Robinson seeks to control the market in Morriseau paintings

25. As the market in Morriseau art became saturated with paintings sold at Kahn Auctions, the value of Mr. Robinson's paintings that he possessed through his business relationship with Morriseau declined. This is because large numbers of Morriseau paintings were readily available in the market place.
26. Mr. Robinson went public in a National Post article and stated that there were serious concerns with the Khan Auction paintings. Mr. Robinson raised suggested that all Morriseau paintings sold at Khan Auctions are fakes. He was held out in the article as a leading expert on Morriseau art. Many years later, he provided supposed expert testimony that Morriseau never signed the back of his paintings in black acrylic paint. The conclusion therefore is that the signature on the back of the Khan Auction paintings that purports to be that of Norval Morriseau is in fact a forgery. This allegation by Mr. Robinson has resulted in buyers, like Mr. Hearn, falsely accusing gallery owners of fraud where no fraud exists.
27. Shortly after the National Post article, Mr. Robinson sent out a letter to prospective Morriseau art purchasers telling them that the market was saturated with fake painting and that if purchasers wanted to be sure that they were buying an authentic Morriseau, they should buy from *his* gallery.
28. The only expert to challenge the authenticity of the Khan auction paintings is Mr. Robinson. Mr. Robinson is unqualified to determine the authenticity of a Morriseau painting as he is untrustworthy and has sought to destroy the secondary Morriseau

market for his own financial gain and that of his gallery. Mr. Robinson obtained paintings directly from Morrisseau in the 1990s and has gained an advantage in the sale of Morrisseau's paintings by effectively telling the world that his gallery is the only gallery to trust when purchasing a Morrisseau.

29. Starting in or about 2003, Mr. McLeod received correspondence from a lawyer purporting to act on behalf of Morrisseau. Mr. McLeod was told that paintings he was exhibiting for sale in the defendant Gallery and in catalogues were fakes.
30. Mr. McLeod was told that he was not permitted to appraise works of art by Morrisseau and that he was not entitled to show images of Morrisseau's works of art in any catalogues. These prohibitions carried no legal weight.
31. In reality, Morrisseau was in very poor physical and mental health and was simply being manipulated by others for their own financial gain. In the last several years of his life, Morrisseau suffered from elder abuse. He had no control of his finances or his legacy.
32. Despite Mr. McLeod's repeated efforts to address the allegations that were supposedly coming from Morrisseau, no detail or response was ever provided. Despite the expressed threat of litigation by Morrisseau's controllers, no proceedings were ever commenced and none of the allegations were ever substantiated. The allegations were not coming from Morrisseau. In fact, in April, 2002, Mr. Morrisseau personally authenticated paintings that were signed by him on the back in black acrylic paint and dated in the 1970s. He did so by looking at them, and then signing them again and putting his thumb print on them. There are several eyewitnesses to this occurring and there is videotape of Mr. Morrisseau undertaking the authentication process.

33. Norval Morrisseau died on December 4, 2007. The level of control by his supposed caregivers was so all encompassing that they sought to cremate him without any permission from the Morrisseau family who had to step in and stop the cremation so that Morrisseau could be buried next to his wife on the Keewaywin Native Reserve where he belonged. Morrisseau's supposed caregivers had taken control of his financial affairs and attempted to exclude his children from his estate. His children were forced to retain counsel and litigate for the right to take part in their own father's legacy.
34. Numerous of the Khan Auction paintings have been studied by forensic examiners who have determined that the signatures on dozens of Khan Auction paintings are authentic signatures of Morrisseau.
35. At the relevant times, the Morrisseau family considered the Khan Auction paintings as authentic and galleries across Canada exhibited and sold Khan Auction paintings. To this day, the Morrisseau family does not dispute the authenticity of the Khan Auction paintings.
36. Today, as a direct result of Mr. Robinson's knowingly false statements concerning the Khan Auction paintings, the market for Morrisseau's art is stagnant. Mr. Robinson has assisted in destroying Morrisseau's financial legacy for his own financial gain. To this day, Mr. Robinson emphasizes the alleged "second-tier" of Morrisseau's art that is dangerous to purchase. He falsely states this to increase his sales while diminishing the sales of other galleries who sell legitimate works of art by Morrisseau. The Kinsman Robinson Gallery holds itself out as the only trustworthy place to buy a Morrisseau painting as they have distanced themselves from the taint

of the Khan Auction paintings – a taint manufactured and manipulated by Donald Robinson himself.

37. To compound the problem, an individual named Ritchie Sinclair, who falsely calls himself a protégé of Morriseau, has deceitfully labeled approximately 1,000 paintings by Morriseau as fake and has assisted Mr. Robinson in propagating the myth that the Khan Auction paintings are fakes. Mr. Sinclair is a failed artist who has absolutely no expertise or qualifications to determine the authenticity of a Morriseau painting. However, prospective purchasers of a Morriseau painting undoubtedly do Internet searches and are easily directed to Sinclair's fraudulent web site.
38. The defendants brought action against Sinclair to do what they could to mitigate their losses and the Ontario Superior Court of Justice ordered Sinclair to make it clear on his web site that the allegations he was making were disputed. Sinclair complied with the court order.
39. The defendants are not aware of any other supposed experts in Morriseau art who have claimed that the Khan Auction paintings are fakes.

Mr. Hearn purchases a Morriseau painting from the defendant gallery

40. In or about May, 2005 Mr. Hearn attended the defendant Gallery for the purpose of purchasing a painting by Morriseau.
41. Contrary to what is alleged in paragraph 7 of the statement of claim, Mr. Hearn attended the defendant Gallery on many occasions. He told Mr. McLeod of his long-time interest in Morriseau and that he was shopping around for a painting. Mr. Hearn is also a painter.

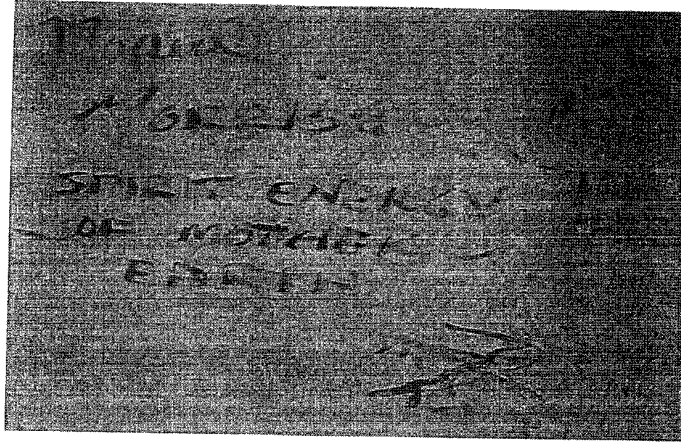
42. Mr. Hearn became interested in a painting entitled "Spirit Energy of Mother Earth" (the "Painting"). The Painting was on consignment to the defendant and had been purchased at Kahn Auctions.
43. It is an important work of art by Morrisseau and Mr. Hearn recognized this. Mr. McLeod and Mr. Hearn talked at length about the stories told by Morrisseau's art. By 2005, Mr. McLeod had gathered more than 40 years of experience and extensive knowledge of Morrisseau's art and he explained to Mr. Hearn that the Painting depicted the spirit, like in Christianity, as having the ability to alter its shape, to float, to act as a gage and reveal. The depictions in the Painting include birds, snakes, and other living things as having spirits that become uniform. Colour was extremely important to Morrisseau. The Painting is a vivid green. Morrisseau saw the colour green as a representation of life.
44. Mr. Hearn purchased the Painting for the sum of \$20,000 as alleged in paragraph 9 of the statement of claim.
45. Contrary to the allegations in paragraph 10 of the statement of claim, prior to his purchase of the Painting, Mr. Hearn did not ask the defendants about its provenance. Further, Mr. McLeod did not and would never advise anyone that the defendant gallery "was the best and safest place to purchase a Norval Morrisseau work". In fact, that is a slogan that Mr. Robinson used to advertise the Kinsman Robinson Gallery's sale of Morrisseau art at or around the time the Painting was purchased by Mr. Hearn. Mr. McLeod knew the painting was authentic and its provenance was never an issue in his discussions with Mr. Hearn. The defendants are certain to this day that the Painting is authentic.

- 11 -

46. Contrary to the allegations in paragraph 12 of the statement of claim, at no time did Mr. McLeod advise Mr. Hearn that Morrisseau "was very ill and was expected to die shortly". While the defendant Gallery seeks to purchase art for resale in the hope that the art will appreciate in value, it can never know this for certain and never guarantees to its customers that their purchases will appreciate in value.

The Provenance of the Painting

47. His Catholic grandmother and his animistic shaman grandfather raised Morrisseau. He was constantly being told stories that spoke of animate and inanimate things and their relationship to the universe. The stories Morrisseau was told, for example, spoke of the beaver and how it goes into the body and becomes the spirit. Mr. Hearn was told about the meaning of the use of circles in the painting – the representation of the sun, of up and down and how these images form the basis for understanding the living.
48. Mr. McLeod explained the significance of the fact that all lines in the Painting join together. This is what Morrisseau considered to be the center of his being. Mr. Hearn was told that the Painting is very complex.
49. Further, Mr. Morrisseau signed, titled, dated and drew a sketch of a Copper Thunderbird on back of the Painting as follows:



50. The sketch of a copper thunderbird on the back is rare but Mr. Morrisseau did draw them on some of his paintings. Mr. McLeod has provided to Mr. Hearn examples of other paintings by Morrisseau that contained a copper thunderbird sketch on the back. The sketch adds to the value and importance of the Painting. At the age of 19, Morrisseau was very ill. It was feared that he would die. In a renaming ceremony in the hospital, a medicine woman gave Morrisseau the new name Copper Thunderbird. According to the traditions of Morrisseau's people, giving a powerful name to a dying person can save their lives. Morrisseau recovered and almost always signed his works with his Anishnaabe name in Cree syllabics on the front of his paintings.
51. Contrary to the allegation in paragraph 9 of the statement of claim, the date indicated on the back of the Painting is 1974 and not 1970.
52. The Painting was on consignment to the Defendant and had been purchased from Khan Auctions. Mr. Hearn has been told the name of the individual who consigned

the Painting to the defendants, where that individual obtained the Painting and its ownership as far back as was possible.

53. As a result of the deliberately false allegations by Donald Robinson that were published in the National Post in May, 2001, Mr. McLeod had a number of the Khan Auction paintings reviewed by a forensic examiner to determine if the handwriting on the backside of the paintings was that of Morrisseau. Mr. McLeod possesses handwriting samples from Morrisseau as a result of the fact that he knew and dealt with Morrisseau for several decades. For example, Mr. McLeod is in possession of a letter sent to his wife that was written and signed by Morrisseau on December 30, 1968.
54. The forensic examinations concluded that in some instances it was impossible to match the handwriting due to smudging of paint, the faintness of the handwriting and the difference in the writing instruments used. The forensic examiner was able to assess the signatures on many other paintings and reached the conclusion that the handwriting on the paintings had many similarities to Morrisseau handwriting samples and that there was strong support for the conclusion that the signatures on the back of typical Khan Auction paintings were written by Morrisseau.
55. The defendants did not simply determine that the paintings were authentic based on the handwriting on their backs and Mr. McLeod's expertise; they also looked into the provenance of the paintings and did so long before they met Mr. Hearn.
56. Mr. McLeod determined that the paintings came to the Khan Auction through David Voss. On further investigation, he learned that Mr. Voss lived in Northern Ontario in the early eighties, had met Morrisseau, had seen him paint and was very successful in purchasing paintings by many artists including Mr.

McLeod also met with David Voss years prior to meeting Mr. Hearn. Mr. Robinson takes the position that Mr. Voss has never existed.

57. For Mr. McLeod, this information was consistent with his understanding of the whereabouts of Morrisseau at the time the paintings were created.
58. Mr. McLeod also had knowledge that Morrisseau had been in jail frequently in Northern Ontario and that he had done a great deal of painting from jail in or around the time that many of the Khan Auction paintings were created. For instance, Morrisseau's first art dealer, Jack Pollack, wrote in his book *Dear M, Letters from A Gentleman of Excess* (1979) of the following experience in 1974 (the same year the Painting is dated):

I knew that Norval was in the Kenora jail. He had been there for over four months. On more than one occasion, I had bailed him out of jail. But this time the Kenora police chief refused bail, stating that if Morrisseau was to survive, he would have to dry out completely. Reluctantly, I allowed him to remain in prison.

Two months later, I visited him in jail and found he was well and being treated like a prince. He had one cell in which to sleep and another one he used as a studio. Some of his finest pictures were painted during that period.

59. Mr. McLeod was well aware of Mr. Pollack's writings long before he met Mr. Hearn.
60. While Mr. McLeod was satisfied with the provenance of the Khan Auction paintings, in November, 2001 he also came into possession of a notarized statement from David Voss that provided the following information:
- a. While living in Northern Ontario, he collected for resale acrylic on canvas paintings by Norval Morrisseau;
 - b. That he placed those paintings for sale in a number of galleries, with collectors and in auction houses; and

c. That the sources of his paintings included five (5) individuals who he named in his statement.

61. Mr. McLeod was also in contact with some or all of Morrisseau's seven children. Many of them viewed some of the Khan Auction paintings and were of the view that they were works by their father.

Post purchase conduct of Mr. Hearn

62. The defendants did not hear from Mr. Hearn again until some four years later in 2009. In the intervening period (on December 4, 2007), Morrisseau passed away.
63. Further to the allegations in paragraph 13 of the statement of claim, in 2009 Mr. Hearn did make a request for certain information of and concerning the Painting and received the information requested. The information related to the provenance of the Painting and included an appraisal by Mr. McLeod that placed a value on the Painting of \$25,000. The appraisal is dated May 5, 2009 and was likely requested by Mr. Hearn for insurance purposes. Mr. McLeod made it clear on the face of the appraisal that "for legal reasons, this appraisal is not to be considered a scientific fact, but rather as a professional opinion on the art object described".
64. Contrary to the allegations in paragraph 14 of the statement of claim, there was no critical information to provide to Mr. Hearn. At no time did Morrisseau state in writing or otherwise that the Painting was a fake or that the signature on the back was a forgery.
65. The Painting is not "of a species of Morrisseau painting that is the subject of significant and persistent disagreement regarding authenticity". No such species exists. The only purported expert who has suggested that all of the Khan sourced paintings are fakes is Mr. Robinson. In the eight years that Morrisseau was alive

following the commencement of sale of the Kahn-sourced paintings he never stated publicly that (i) signatures on the back of his paintings in black acrylic dry brush were forgeries or (ii) all of the paintings sold at Khan auctions were fake. In fact, other than some questionable affidavits purportedly by Morrisseau, he has never questioned any Khan-sourced paintings. Moreover, Morrisseau himself authenticated 1970s style paintings signed on the back in black acrylic paint contrary to Mr. Robinson's flawed expert opinion.

66. Contrary to the allegation of criminality alleged in paragraph 14 of the statement of claim, the defendants were not "selling and authenticating large quantities of fake and/or forged Morrisseau paintings as a part of a fraud scheme." Mr. Hearn has no evidence of such a scheme as no scheme exists.
67. The allegations in paragraphs 16 and 17 of the statement of claim are accurate except the paintings that the defendant Gallery exhibited at the AGO show are genuine works of art by Morrisseau and were not purchased from Khan Auctions.
68. With respect to the allegations in paragraph 18 of the statement of claim, Mr. Hearn contacted the defendants by email dated June 28, 2010 to relate what had happened at the AGO show. He wanted to know:
 - a. Where the Painting came from;
 - b. Who owned it before him; and
 - c. If there was any further information that Mr. McLeod could provide to him concerning the authenticity of the Painting.
69. On June 30, 2010 Mr. McLeod responded to Mr. Hearn's email and advised as follows:

- a. He had tried to contact Mr. Hearn by telephone but was unsuccessful in reaching him;
 - b. He asked Mr. Hearn to call him;
 - c. He related to Mr. Hearn that he contacted "Jennifer" at the AGO and had a "positive conversation" with her and that she indicated to him that there was no investigation of the Painting being undertaken, that only AGO staff members were aware of the issue and that a letter of apology was going to be sent to Mr. McLeod to clear up the misunderstanding; and
 - d. He assured Mr. Hearn that the Painting was authentic;
70. Despite her assurances, Jennifer never did provide a letter of apology.
71. On July 10, 2010 the defendants provided to Mr. Hearn details of the provenance of the Painting known to them and a forensic report of other Khan Auction paintings. Mr. McLeod also explained to Mr. Hearn that the Painting was a "spirit" painting and he provided to Mr. Hearn examples of spirit paintings from the publication "Morrisseau", from Methuen Publication, Jack Pollock and Lister Sinclair. This is the definitive book of art by Morrisseau that was published in 1979. Mr. McLeod explained to Mr. Hearn that the other spirit paintings establish the bald or smooth head of the spirit known as "Enkenkar" that is exhibited in the Painting. Mr. Hearn was told that this was a repeated use of imagery in Morrisseau's work when he was depicting spirit beings. Mr. McLeod also informed Mr. Hearn that the Painting and the examples from the Pollack and Sinclair book were all paintings from the 1970s that were painted by Morrisseau in Northern, Ontario in the Kakebeka Falls area. Finally, Mr. McLeod let Mr. Hearn know that Morrisseau would sketch a Copper Thunderbird on the back of the painting when he considered the painting to be of special worth.

72. Mr. McLeod and Mr. Hearn spoke on the phone a few times. Mr. McLeod asked Mr. Hearn to contact the AGO and demand that they state in writing that the Painting was a fake. Mr. Hearn did not wish to do so. Mr. McLeod asked if he could contact the AGO and Mr. Hearn agreed.
73. Mr. McLeod wrote to the curator of Native Art at the AGO on July 10, 2010 and insisted on being a party to any investigation of the Painting that would be undertaken. The AGO did not respond to the July 10, 2010 letter.
74. Mr. McLeod then spoke to Mr. Hearn again and explained that the AGO had not responded to his letter. Mr. McLeod suggested that Mr. Hearn should contact the Director of the AGO for an explanation. Mr. Hearn did not wish to do so but told Mr. McLeod he could do so if he wished.
75. On August 6, 2010, Mr. McLeod wrote to the Director of the AGO demanding an explanation. The Director of the AGO never responded.
76. Mr. Hearn never made any demands of the defendants other than those set out above and never sought to return the Painting.
77. Mr. Hearn never contacted Mr. McLeod again. He waited almost two years and started this lawsuit.
78. The defendants expressly deny that Mr. Hearn demanded his money back as alleged in paragraph 22 of the statement of claim or at all.
79. If Mr. Hearn has the opinions of experts that the Painting is a fake as alleged in paragraph 23 of the statement of claim, he has never provided those opinions to the

defendants. Following service of the statement of claim, the defendants sought production from Mr. Hearn of the opinions and he refused to provide them.

80. The defendants plead that the signature, sketch and description on the back of the Painting is the authentic handwriting of Norval Morrisseau and the Painting is an authentic work of art by Norval Morrisseau.
81. The defendants deny that they have acted fraudulently, deceitfully or negligently as alleged, or at all, and Mr. Hearn is put to the strict proof thereof.
82. The defendants deny that they have breached any warranty to Mr. Hearn and he is put to the strict proof of that allegation.
83. The defendants plead and rely upon the *Negligence Act*, R.S.O. 1990, c. N. 1. The defendants also plead and rely upon the *Limitations Act*, R.S.O. 2002, S.O. 2002, c. 24.
84. The defendants ask that this action be dismissed with costs payable on a substantial indemnity basis.

February 7, 2013

RUBY SHILLER CHAN HASAN
Barristers & Solicitors
11 Prince Arthur Avenue
Toronto, ON M5R 1B2

Brian G. Shiller (34470G)
Tel: 416-964-9664
Fax: 416-964-8305
Email: bshiller@rubyshiller.com

Lawyers for the Defendants

- 20 -

TO:

SOMMERS BUSINESS LAW FIRM
2239 Queen Street East
Main Floor
Toronto, ON M4E 1G1

Jonathan J. Sommer (42958N)
Tel: 416-907-1085
Fax: 1-866-488-6403

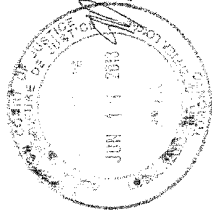
Lawyers for the Plaintiff

KEVIN HEARN
Plaintiff

-and-

JOSEPH BERTRAM MCLEOD and
MASLAK-MCLEOD GALLERY INC.
Defendants

Court File No. CV-12-455650



ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto

STATEMENT OF DEFENCE

RUBY SHILLER CHAN HASAN
11 Prince Arthur Avenue
Toronto, Ontario
M5R 1B2

Brian Shiller (#34407G)

Telephone: (416) 964-9664
Facsimile: (416) 964-8305
Email: bshiller@rubyshiller.com

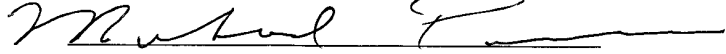
Lawyers for the Defendants, Joseph Bertram
McLeod and Maslak-McLeod Gallery Inc.

Service of a true copy
hereof admitted this
26th day of February 2013

Solicitors for the Plaintiff
Storobouna per Jonathan Semmer

This Exhibit B to the Affidavit of Nathaniel Big Canoe

Sworn before me on November 1, 2017

A handwritten signature in black ink, appearing to read "Michael P. [unclear]", written over a horizontal line.

A commissioner, etc.

RULE 13 INTERVENTION

LEAVE TO INTERVENE AS ADDED PARTY

13.01 (1) A person who is not a party to a proceeding may move for leave to intervene as an added party if the person claims,

- (a) an interest in the subject matter of the proceeding;
- (b) that the person may be adversely affected by a judgment in the proceeding; or
- (c) that there exists between the person and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding. R.R.O. 1990, Reg. 194, r. 13.01 (1).

(2) On the motion, the court shall consider whether the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding and the court may add the person as a party to the proceeding and may make such order as is just. R.R.O. 1990, Reg. 194, r. 13.01 (2).

LEAVE TO INTERVENE AS FRIEND OF THE COURT

13.02 Any person may, with leave of a judge or at the invitation of the presiding judge or master, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument. R.R.O. 1990, Reg. 194, r. 13.02; O. Reg. 186/10, s. 1.

LEAVE TO INTERVENE IN DIVISIONAL COURT OR COURT OF APPEAL

13.03 (1) Leave to intervene in the Divisional Court as an added party or as a friend of the court may be granted by a panel of the court, the Chief Justice or Associate Chief Justice of the Superior Court of Justice or a judge designated by either of them. R.R.O. 1990, Reg. 194, r. 13.03 (1); O. Reg. 292/99, s. 4; O. Reg. 186/10, s. 2; O. Reg. 82/17, s. 16.

(2) Leave to intervene as an added party or as a friend of the court in the Court of Appeal may be granted by a panel of the court, the Chief Justice or Associate Chief Justice of Ontario or a judge designated by either of them. R.R.O. 1990, Reg. 194, r. 13.03 (2); O. Reg. 186/10, s. 2; O. Reg. 55/12, s. 1; O. Reg. 82/17, s. 16.

KEVIN HEARN V. ESTATE OF JOSEPH BERTRAM MCLEOD,
DECEASED, ET AL.

Court File No. CV-12-455650

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF NATHANIEL BIG CANOE

Michael J. Panacci, Lawyer
214 Merton Street, Suite 209
Toronto, Ontario
M4S 1A6
Tel: 416-560-0846
Fax: 866-507-0105

Michael J. Panacci (LSUC NO. 508480)
Lawyer for the Intervenor