

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**TELE-CONNECT PUBLICATIONS LTD. C.O.B KINSMAN ROBINSON
GALLERIES, DONALD ROBINSON AND PAUL ROBINSON**

Plaintiff

and

UGO MATULIC

Defendant

STATEMENT OF DEFENCE

1. Except as hereinafter specifically admitted, the Defendant, Ugo Matulic ("Matulic"), deny the allegations contained in paragraphs 5 to 16 of the Amended Statement of Claim ("ASOC") and denies that the Plaintiff is entitled to any of the relief claimed in paragraph 1 therein.

BACKGROUND

2. Ugo Matulic ("Matulic") is the owner and author the Norval Morrisseau Blog located at <http://norvalmorrisseau.blogspot.com/>. He is also the owner of many pieces of original Norval Morrisseau artwork, acquired from reliable sources and sources with direct connections to the artist, that Matulic has collected over a decade. As stated in the banner on the Norval Morrisseau Blog:

"This Blog is posted in honour of the Spirit of Norval Morrisseau a.k.a. Copper Thunderbird - Grand Shaman of the Ojibway. Also, this is the first and the only Blog incepted during Norval Morrisseau's lifetime. It is dedicated entirely to the preservation of his artistic legacy along with the living presence of the Ojibway peoples on the North American continent."

3. Since Matulic created his blog, the plaintiffs have been provoking and disparaging a very large number of pieces of Norval Morrisseau artwork not sold through or by the Kinsman Robinson Gallery, in a concerted effort to corner the public market in Norval Morrisseau's artwork owned by Matulic and others. The plaintiffs' smear campaign is directed in devaluing and stigmatizing the authentic artwork of the late Norval Morrisseau who passed away in 2007.

4. The Plaintiffs have actively and deliberately taken action to corner the market in paintings by Norval Morrisseau. They are using their own position, as a former Morrisseau dealer, to inflate the value of their own holdings of Norval Morrisseau's paintings, and deflate the value of paintings held by Matulic, other Morrisseau collectors and art galleries all across Canada, by falsely claiming that many genuine Morrisseaus are forgeries, especially those signed on the back by the artist in black paint using drybrush (DB) technique. However several of these paintings have been positively confirmed for the signature authenticity by three independent forensic document examiners from Ottawa, Toronto and Calgary.

5. The Plaintiffs along with other individuals have attacked Matulic's personal and professional reputation in an attempt to devalue paintings from Matulic's personal collection calling them forgeries and abominations.

6. The Plaintiff, Kinsman Robinson Galleries, previously owned and used the domain name www.norvalmorriseau.com. However, they did not pay the necessary domain name registration renewal fees and it was placed on the open market and Matulic purchased the domain name. Since then, Matulic has used the domain name and blog to honour the late great Canadian painter Norval Morriseau. The plaintiffs have on several occasions tried to intimidate him and to portray him in negative light, thereby allowing other individuals to launch a number of character defamation attacks on him on the internet and other forms of media.

7. All of the blog postings written by Matulic contain statements that are factually accurate or contain statements of opinion based upon accurate facts.

THE ACTION IS STATUTE BARRED

8. The Plaintiffs failed to give written notice to Matulic of the alleged defamation within six weeks of the Postings coming to the Plaintiffs attention contrary to the requirements of s. 5 (1) of the *Libel and Slander Act* (the "Act") R.S.O. 1990, c. L.12. Furthermore, the Plaintiffs failed to commence this action within three months of the postings coming to their attention contrary to the requirements of s. 6 of the *Act*. This action is therefore statute-barred.

9. In the alternative, Matulic pleads that the alleged defamatory statements, which are not admitted to be defamatory, but specifically are denied as such, were published

on dates ranging from 2008 through to the present. However, the plaintiffs only commenced this action 3 years following the initial defamatory post as alleged in paragraph 5 of the ASOC. By a Response to a Demand for Particulars dated August 31, 2011, the Plaintiffs admitted that they each became aware of Matulic's blog posts within a month of the publication on the internet. Accordingly, Matulic pleads that the plaintiffs' action is time-barred and pleads and relies upon section 4 of the Limitations Act, 2002, S.O. 2002, c. 24, Schedule B.

10. Matulic commenced his Blog almost four years ago following false statements made publicly by the Plaintiffs and other individuals who were closely associated with the Plaintiffs regarding the authenticity of many Norval Morrisseau's paintings which these individuals called '*questionable*', '*fakes*', '*forgeries*', '*abominations*' and other defamatory attributes¹. Matulic felt the need to create a platform that would speak for Norval Morrisseau when this privilege to speak for himself was put in the hands of others who were only interested in their personal financial gain all the while putting the Legacy of Norval Morrisseau aside.

11. With respect to paragraph 9 of the ASOC, Matulic denies the allegations therein and put the Plaintiffs to the strict proof thereof. Matulic was only served with two Notices of Libel: the first being the Notice of Libel dated December 23, 2010 and the second being the Notice of Libel dated January 6, 2011. The Notice of Libel dated November 19, 2010 was received via e-mail by Plaintiffs' Lawyer on March 11, 2011 (the

first time Matulic had received or seen the November 19, 2010 Notice Of Libel. The March 11, 2011 letter from counsel for KRG stated the following:

"We have attempted, unsuccessfully, to serve you personally with our client's Statement of Claim which was recently issued in the Ontario Superior Court of Justice. We have also sent you, over the past few months, various Notices of Libel, some of which have been returned to us. It appears as though you have received some, but not all, of our correspondence despite each of these documents being sent to the same address."

QUALIFIED PRIVILEGE

12. Further, and in the alternative, the postings by Matulic were published in good faith and without malice on an occasion of qualified privilege, particulars of which occasion are as follows:

- (a) Matulic's Blog constituted a forum for fellow art enthusiasts, Norval Morrisseau supporters and others interested in his artwork to communicate with one another on those subjects.
- (b) Matulic had an interest or duty- legal, social or moral - to communicate the postings complained of in the ASOC to other persons accessing Matulic's Blog.
- (c) Other persons accessing Matulic's Blog had a corresponding duty or interest to receive the communications in the postings.

- (d) Matulic's Blog expressly invited comments from the Plaintiffs and other persons accessing his Blog.

FAIR COMMENT

13. Further and in the alternative, the words complained of in the postings constitute fair comment by Matulic, on matters of public interest, based on the substantially true facts as set out this Statement of Defence ("SOD"). Matulic expressed those opinions in good faith and without malice.

PUBLIC INTEREST RESPONSIBLE COMMUNICATION

14. Further and in the alternative, the postings constituted communications on matters of public interest and Matulic was diligent in trying to verify the statements made in the postings have regard to all relevant circumstances.

CHARTER IMMUNITY

15. Freedom of expression is guaranteed by s. 2 (b) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*"). It is essential to the proper functioning of the institutions of a democratic form of governance, including the institutions of the courts, the judiciary and an independent professional bar. The law should encourage and permit freewheeling debate in good faith on matters of public interest. The law should not be used to thwart such freewheeling debate by an overtly solicitous attempt to protect a private corporation such as one owned by the plaintiffs. The Matulic postings at issue

in this action, demonstrate the vital importance of such a free-wheeling debate. In the particular circumstances of this case, the postings should benefit from constitutional immunity.

16. The Plaintiffs have been associated with individuals who have been devaluating paintings from Matulic's personal collection calling them forgeries and abominations.

17. The Plaintiffs were also involved in selling assisted artwork(s) without disclosing full history of the authorship of the said artwork(s) as to be fully painted by the artist.

18. There are more than 40 galleries and various auction houses and museums across North America which have exhibited authentic Norval Morrisseau's artwork which the Plaintiffs consider fakes and they are in support of individuals who collectively deflated the value of paintings held by Matulic and other Norval Morrisseau collectors all across Canada, by falsely claiming that many genuine Norval Morrisseau's are fakes.¹

19. The Plaintiffs' concerted campaign of online terror in the form of libel chill is a transparent attempt to monopolize the privileged sale of the Norval Morrisseau's artwork and to silence any of their critics.

20. It is not Matulic's fault that his opinion of the Plaintiffs' actions has brought unwanted publicity, public hatred, ridicule and contempt by supporters of Norval

¹ See <http://norvalmorrisseau.blogspot.com/2011/07/morrisseaus-artwork-in-auction-houses.html>

Morrisseau. The Plaintiffs' actions have significantly devalued the art of great artist Norval Morrisseau.

21. Contrary to the Plaintiffs' assertions, Mr. Joseph McLeod of Maslak McLeod Gallery, the other most prominent expert in Norval Morrisseau's art considers the paintings in question to be authentic.

NO DAMAGES

22. Matulic denies that the Plaintiffs have suffered damages as alleged in the ASOC paragraphs 14 and 15 or at all as a result of the postings and puts the Plaintiffs to the strict proof of their allegations concerning damages.

DAMAGES IF ANY DUE TO ACTS AND OMISSIONS OF PLAINTIFFS

23. If the Plaintiffs suffered any damages, which is not admitted but expressly denied, they are attributed to the acts and omissions of the Plaintiffs which failed to notify Matulic that is considered the postings to be defamatory. In this regard, Matulic also relies on the particulars of the Plaintiffs conduct provided in this SOD and the following additional facts:

- (a) The Plaintiffs did not at any time make any attempt to contact Matulic through the private messaging system, which was available at all times through his blog at <http://norvalmorrisseau.blogspot.com/> , or in any

other reasonable manner before the commencement of this litigation to notify Matulic of the Plaintiffs' complaint about the postings.

- (b) The Plaintiffs were aware of Matulic's Blog since its inception in November 2007.

NO BASIS FOR AGGRAVATED OR PUNITIVE DAMAGES

24. Matulic specifically denies the allegation in the ASOC paragraph 5 that he was actuated by bad faith in "publishing/broadcasting" the words complained of in the ASOC subparagraph 5. Matulic honestly believed his words to be true and posted them in good faith and without malice and without gross negligence.

25. The ASOC does not allege any material facts which would justify this Court in awarding either aggravated or punitive damages. In any event, the circumstances of this case do not warrant an award of either aggravated or punitive damages against Matulic.

26. Further, and in the alternative, as a matter of law, a corporate plaintiff is not entitled to recover aggravated damages.

PLAINTIFFS FAILED TO MITIGATE DAMAGES

27. The Plaintiffs made no attempt to notify Matulic in a timely way that the postings were considered by the Plaintiffs to be defamatory. Nor did the Plaintiffs ask Matulic to remove or modify the postings. No request was made for an apology.

THE ACTION AGAINST MATULIC IS AN ABUSE OF PROCESS

28. Matulic therefore submits that this action constitutes an abuse of process and has been commenced with the vexatious attempt to deter Matulic from expressing his opinions, and as such, this is a strategic lawsuit against public participation intended to interfere with Matulic's right to freedom of expression.

29. Matulic pleads and relies on sections 5, 6, 10, 23 and 24 of the *Libel and Slander Act* and sections 1 and 2 (b) of the *Charter*.

RELIEF SOUGHT

30. The Defendant, Ugo Matulic, asks that this action be dismissed with costs on a substantial-indemnity basis.

September 21, 2011

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Court File No. CV-10-417123

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STATEMENT OF DEFENCE

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RCP-E 4C (July 1, 2007)

