

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JOHN MCDERMOTT

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

October 17, 2013

Issued by

S. Chandrasekhar
Registrar

Local registrar

Address of court office:

393 University Avenue, 10th Floor
Toronto, ON M5S 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 \$15,500.00 representing the purchase price of the Paintings (as described below);
 - (b) The sum of \$29,000.00 representing the loss of investment return on the Paintings (as described below);
 - (c) The sum of \$25,000.00 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 professional singer.
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.

Purchase of the Paintings

5. In or about August, 2003, the plaintiff visited the defendants' art gallery, which advertises to the public that it is a gallery specializing in the works of First Nations artists and, in particular, that of Norval Morrisseau.
6. 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.
7. The plaintiff understood the defendants to be experts on the art of Norval Morrisseau, and relied upon such expertise as a representation, warrantee and guarantee of the authenticity of the works sold by the defendants.
8. At the defendants' gallery, the defendant McLeod showed the plaintiff several alleged Norval Morrisseau paintings, including the three paintings titled "Sacred Bear Children" which is dated 1971 ("SBC"), "Self-Portrait" which is dated "circa 1970's" ("SP"), and "Animals of the Woods" which is dated "circa 1960's" ("AOTW") (the three being, collectively, the "Paintings"). The price of the Paintings was \$9,000.00 for SBC, \$3,000.00 for AOTW, and \$3,500.00 for SP, for a total of \$15,500.00.
9. Prior to committing to the purchase of the Paintings, the plaintiff asked the defendant McLeod about them. McLeod responded by saying a few words about their beauty and quality, and by discussing Norval Morrisseau. These statements, *inter alia*, assured the plaintiff that the paintings were authentic works by Norval Morrisseau.
10. Relying on and believing the defendants' representations regarding the authenticity of the Paintings, the plaintiff purchased the Paintings on or about

August 26, 2003. He paid the defendants \$15,500.00 in cash.

11. At the time of the Paintings' purchase, the plaintiff's reasons for buying them were that he admired Norval Morrisseau's work and he believed that such works represented a sound financial investment. It is a fact that authentic works of Norval Morrisseau did then, and do now, represent sound financial investments.
12. At the time of the purchase of the Paintings, the defendants provided the plaintiff with appraisals, made for the plaintiff as the purchaser and owner of the Paintings, confirming that the Paintings are authentic works of Norval Morrisseau. The appraisals make no mention of there being any problems with the provenance of the Paintings.
13. At no time did the defendant disclose to the plaintiff certain critical information relevant to the Paintings that was within the defendants' knowledge, which information included, *inter alia*, the facts that the Paintings are of a species of Morrisseau painting that was then (and still 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 Morrisseau paintings as a part of a fraud scheme.
14. Furthermore, at no time did the defendants disclose to the plaintiff that they knew that one of the Paintings, SBC, had been specifically identified by Norval Morrisseau himself, in a sworn and witnessed declaration, dated April 24, 2003, as a "fake and imitation" (the "Declaration").
15. The plaintiff has investigated the likely source of the Paintings and discovered that they appear to have been made by a fraud ring operating out of Thunder Bay, Ontario. The fraud ring is run by an individual by the name of Gary Lamont, who at various times has employed various forgers, including local artists Benjamin Morrisseau and Timothy Tait, to produce large numbers of fake Norval Morrisseau paintings. The resulting paintings are then sold on the internet, by phone, and in person to various collectors, resellers, dealers

and auction houses for resale, which reseller entities include both David Voss and Randy Potter, both of whom the defendants have referred to as having handled Paintings sold and/or authenticated by them in the past. The large numbers of fake paintings produced by this fraud ring have deeply infiltrated the market for Norval Morrisseau artworks.

16. The Paintings are fakes and imitations and have no credible provenance. In the alternative, if they are not fakes and imitations, then as a result of the controversy over this species of painting, their lack of provenance and the Declaration, they have little or no value.
17. Had the plaintiff known that the Paintings were fakes and imitations, or had he known all of the relevant facts regarding the Paintings' lack of provenance, the disputes over the provenance of the Paintings, the prohibition and complaints made by Morrisseau against the defendants, and/or the Declaration, he never would have purchased the Paintings in the first place. Furthermore, the defendants knew, ought to have known, or were reckless in their disregard for the fact that he would not have purchased the Paintings if they had disclosed these issues.
18. Since the time of the Paintings' purchase, Norval Morrisseau died, in 2007, and authentic works by his hand have increased significantly in value.
19. Despite knowing, well prior to the issuance of this claim, that the plaintiff is of the view that the Paintings are fakes and imitations, the defendants have not provided the plaintiff with any evidence of authenticity or provenance whatsoever.

The Plaintiff's Position

20. The plaintiff states that the Paintings are fakes and imitations, and that the defendants knew at all material times that such is the case. In the alternative, if the defendants did not know the Paintings are fakes and imitations, they had a reckless disregard for the truth that such is the case, and they wilfully persist in maintaining that reckless disregard as of the date of this pleading.

21. In the alternative, even if the Paintings are authentic works of Norval Morrisseau (which is denied), the plaintiff states that the Paintings have little to no value as a result of their lack of provenance, the disputes over their provenance, the prohibition and complaints made by Morrisseau against the defendants, and/or the Declaration.
22. As fakes and imitations, and/or as works with a lack of provenance and, in the case of SBC, where the authorship has been denied by the artist, the value of the Paintings at the time of purchase was approximately \$500, which is \$15,000 less than what the plaintiff paid. If the Paintings were authentic Morrisseau works, they would, as of the date of this pleading, be worth approximately \$25,000 in the case of SBC, \$12,000 in the case of SP, and \$7,500 in the case of AOTW, which would represent an investment return of \$29,000. Accordingly, the plaintiff claims said loss of purchase price and said loss of investment return.
23. In the alternative, the plaintiff states that if the defendants did not know that the Paintings are fakes and imitations (which is denied) then such lack of knowledge has been the result of their negligence in failing to properly investigate the provenance of the Paintings, and/or their wilful and/or reckless disregard for the truth, and such negligence included their failure to fully advise the plaintiff of the lack of solid provenance for the Paintings.
24. In the further alternative, the plaintiff states that in the event that the Paintings are authentic Morrisseau works (which is denied), then the defendants failed to advise the plaintiff at the time of the Paintings' purchase of all of the critical facts relevant to the plaintiff's decision to purchase the Paintings, which facts included, *inter alia*, disclosure to the plaintiff that the Paintings are 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, and that they had been accused by Morrisseau of selling fakes and imitations.
25. The plaintiff states that the defendants owed the plaintiff a duty of care, and

that such duty of care was of a fiduciary nature, as a result of the defendants holding themselves out as trustworthy, reliable, diligent experts and appraiser/evaluators in the field of Norval Morrisseau's art.

26. 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.
27. The plaintiff states that the defendant McLeod's actions in relation to the plaintiff constitute acts and omissions outside the scope of his duties to the corporate defendant, which corporate defendant is merely his personal agent, established for, *inter alia*, the purpose of insulating him from liability in his ongoing sales of questionable, fake and fraudulent artworks.
28. The plaintiff states that as a result of the defendants' actions he is entitled to be awarded the relief claimed herein.
29. The plaintiff states that because of the defendants' deceptive and fraudulent behaviour, 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.
30. 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.
31. 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.

JOHN MCDERMOTT (plaintiff) and **JOSEPH MCLEOD ET AL** (defendants)

(Court file no.) **CV-13-490894**

**ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO**

STATEMENT OF CLAIM

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October 17 20 13
Jonathan J. Sommer
SOMMER'S BUSINESS LAW FIRM
SOLICITOR FOR THE PLAINTIFF
AVOIGAT POUR LE PLAINTIF
M. J. Sommer
M. J. Sommer

