

Court File No. CV08-00366828

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**JOSEPH MCLEOD (c.o.b. as MASLAK MCLEOD GALLERY), JACKIE
BUGERA, BUGERA HOLDING LTD. (c.o.b. as BEARCLAW ART GALLERY),
JAMES WHITE, WHITE DISTRIBUTION LIMITED, DONNA CHILD,
ARTWORLD INC. (c.o.b. as ARTWORLD OF SHERWAY), SUN NAM KIM
("SUNNY KIM"), and GALLERY SUNAMI INC. (c.o.b as GALLERY SUNAMI)**

Plaintiffs

- and -

**RITCHIE SINCLAIR (also known as "RITCHIE ROSS SINCLAIR", "RICHIE
SINCLAIR", "STARDREAMER", and "BLACKMAGIC")**

Defendant

NOTICE OF MOTION

The Plaintiffs, will make a motion to a judge on **Thursday, December 4, 2008, at 10:00 a.m.** or as soon as the motion can be heard at the court house, by the Superior Court of Justice, 393 University Avenue, 10th Floor, Toronto Ontario, M5G 1E6.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR the following relief:

- i. an interlocutory injunction restraining the Defendant from making, publishing, distributing or in any way communicating any statements or assertions whether oral or written and whether distributed via the internet or otherwise about any or all of the Plaintiffs, the Plaintiffs' businesses, or any paintings or other artworks which are or have been purchased, owned, consigned to, possessed or sold by any of the Plaintiffs;
- ii. a mandatory order requiring the Defendant to immediately take all necessary steps to remove the website, www.morrisseau.com, and not to re-post, broadcast, or otherwise communicate in any way any of the words, references, statements, images or other information that are contained on the website, www.morrisseau.com, relating in any way to the Plaintiffs, the Plaintiffs' businesses, or any paintings or other artwork which are, or have been purchased, owned, consigned to, possessed or sold by any of the Plaintiffs;
- iii. in the alternative, a mandatory order requiring the Defendant to remove from the website, www.morrisseau.com, and not to re-post, broadcast, or otherwise communicate in any way any or all of the words, references, statements, images or other information that is contained on the website, www.morrisseau.com, relating in any way to the Plaintiffs, the Plaintiffs' businesses, or any paintings or other artworks which are or have been purchased, owned, consigned to, possessed or sold by any of the Plaintiffs;
- iv. in the event that service on the Defendant of the Plaintiffs' Notice of Motion, Motion Record, or Factum is not made in strict accordance with the Rules, validation of short-service pursuant to Rule 16.08;
- v. costs of this motion on a substantial indemnity basis; and
- vi. such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION are

- i) Rule 40 and Rule 40.01.
- ii) The Plaintiffs have brought an action against the Defendant, Ritchie Sinclair, for defamatory libel and intentional interference with economic relations with respect to numerous defamatory statements contained on the Defendant's website: www.morrisseau.com. A Notice of Action was issued by the Court on November 21, 2008 and a Statement of Claim will be served on the Defendant by no later than January 2, 2008.
- iii) The Plaintiffs have a strong *prima facie* case against the Defendant. The assertions contained on the Defendant's website are clearly and manifestly defamatory and cannot be justified.
- iv) If the Defendant is allowed to continue to broadcast or communicate these or any other defamatory statements, the Plaintiffs will suffer irreparable harm to their reputations, their businesses and their livelihoods.
- v) The balance of convenience favours the granting of an interlocutory injunction to stop the Defendant from continuing to broadcast or communicate these or any other defamatory statements:
 1. If the relief is not granted, the Plaintiffs will suffer permanent, irreparable harm to their reputations, their businesses, and their livelihoods which cannot be compensated for by damages.
 2. If the relief is granted, the Defendant will suffer no economic harm. At most, his efforts to damage and interfere with the businesses of the Plaintiffs will be temporarily delayed until this matter is resolved at

trial. Any inconvenience to the Defendant can be compensated for by damages at trial.

- vi) There is a serious issue as to whether a successful defense could be raised.
- vii) Pursuant to Rule 40.03, the Plaintiffs have undertaken to abide by any Order concerning damages that this Court may make if it ultimately appears that the granting of this Order has caused compensable damage to the Defendant.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- 1) Affidavit of Joseph Mcleod, sworn on November 21, 2008, and exhibits attached thereto.
- 2) Affidavit of Jackie Bugera, sworn on November 21, 2008 and exhibits attached thereto.
- 3) Affidavit of James White, sworn on November 22, 2008 and exhibits attached thereto.
- 4) Affidavit of Donna Child, sworn on November 22, 2008 and exhibits attached thereto.
- 5) Affidavit of Sun Nam Kim, sworn on November 21, 2008 and exhibits attached thereto.
- 6) Affidavit of Kate J. Zavitz, sworn on November 21, 2008 and exhibits attached thereto.
- 7) Notice of Action issued on November 21, 2008.
- 8) Such further and other material as counsel may advise and this Honourable Court may permit

November 24, 2008

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Solicitors for the Applicants

TO: Ritchie Sinclair (a.k.a. "Ritchie Ross Sinclair", "Richie Sinclair",
"Stardreamer" and "Blackmagic")
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30 Hillsboro Ave.
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JOSEPH McLEOD ET AL
Applicants

- and -

RITCHIE SINCLAIR
Respondent
Court File No. CV-08-00366828

**PROCEEDING COMMENCED AT
TORONTO**

NOTICE OF MOTION

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