

COURT FILE NO.: SC0908444000

DATE: 2010-04-09

ONTARIO  
SUPERIOR COURT OF JUSTICE  
TORONTO SMALL CLAIMS COURT

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BETWEEN:

Joseph Otavnik

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) Self-represented  
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- and -

Garth Cole

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) Self-represented  
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) HEARD: April 8, 2010

Justice Pamela A. Thomson

JUDGMENT

[1] This is one of several matters brought by Mr. Otavnik involving a serious issue of the authenticity of a Norval Morrisseau painting owned by the Plaintiff.

[2] The first issue in this Claim is whether the Defendant Cole can be found responsible for the content of a web site called morrisseau.com. I find he is not. I dismissed the Claim at trial with reasons to follow.

[3] The Defendant has the same residential and mailing address as a Mr. Ritchie Sinclair, who is known in certain Canadian contexts as "Stardreamer". (See, for example, action CU-08-00366828 which was recently dismissed as abandoned, and the pleadings in action SC-09 - 82782).

[4] Messrs Cole & Ritchie are partners in a business called "Friendship Enterprises" which originated an initiative in the 1990's called the "Heartfelt project". As can be seen from Exhibit 2, this project is referred to on the home page of "[Remembrances.ca](http://Remembrances.ca)" in the "connect" link. This web page gives the Defendant's address as that for Friendship Enterprises together with an email for it: "connect @Remembrances.ca".

[5] Friendship Enterprises held a memorial for Mr. Morrisseau in December 2007 (Tab 5 of Exhibit 1)

[6] The [Remembrances.ca](http://Remembrances.ca) site seems to have been accessed by Mr. Otavnik through [stardreamers.com](http://stardreamers.com), the same site given in Exhibit 2 as to where there is more information about Mr. Sinclair. This [Remembrances.ca](http://Remembrances.ca) site, Exhibit 2 states, was designed and programmed by "Stardreamer Netmedia", email "contacts@stardreamers.com". No corporate or business search was filed for Stardreamer Netmedia or Stardreamer Media.

[7] The [stardreamers.com](http://stardreamers.com) site (Exhibit 6) has Mr. Sinclair as the sole focus.

[8] Exhibit 1 Tab 4 pages 2 & 3 are web pages from a site called [whois.domaintools.com](http://whois.domaintools.com) indicating Mr. Cole has registered 2 domains. [Netgenerationlawfirm.com](http://Netgenerationlawfirm.com) cannot be found on the web: it is a link to nowhere.

[9] The second website registered by the Defendant is [vibrationalarts.com](http://vibrationalarts.com). The Defendant's e-mail address on the [whois.domaintools.com](http://whois.domaintools.com) record is "contact@canada2.com". The site is copyrighted "1999-2008 Stardreamer Media". It has a single page with a logo of, & links to, Stardreamer. It has no content other than links to six 'dot-coms', including [morrisseau.com](http://morrisseau.com). Three of the other 5 links are not available, while the other 2 relate solely to Mr. Ritchie (Stardreamer).

[10] Exhibit 4 is a copy of the home page of [www.morrisseau.com](http://www.morrisseau.com) as of April, 2009. It is clear this site is the sole purview of Stardreamer. There is no mention of, or links to, Mr. Cole.

[11] Next, Mr. Otavnik filed Exhibit 3 which is a page from [canada2.com/vision](http://canada2.com/vision) showing that Messrs. Cole & Sinclair, as partners in Friendship Enterprises, are the "principle (sic) architects of the Canada 2 Project, which "is a network of web channels..... that will permanently serve Canadian communities" in the "medium of interactive television".

[12] Tab 3 of Exhibit 1 is the home page of [canada2.com](http://canada2.com) as of this month. It shows that the website was developed by Stardreamer Netmedia and copyrighted 1999-2003 by Friendship Enterprises.

[13] This same [whois.domaintools.com](http://whois.domaintools.com) site records the registrant of [canada2.com](http://canada2.com) as Stardreamer Netmedia, not Mr. Cole (Exhibit 5).

[14] Both Exhibit 1 Tab 4 Page 1 (a Google search page) and Exhibit 4 (the Morrisseau web site) contain a link to [MorrisseauBuyersBeware.com](http://MorrisseauBuyersBeware.com), which is, again, a link to nowhere.

[15] The Plaintiff argued that because Messrs. Cole & Ritchie live at the same address and are partners in one business (Friendship Enterprises), the activities of Stardreamer (Mr. Sinclair) are also the activities of Mr. Cole. Mr. Otavnik argued "estoppel" and "partnership estoppel", but essentially was arguing without facts. The Plaintiff is wrong in law and on the meagre evidence adduced.

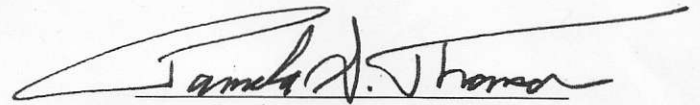
[16] Most obviously, the Friendship Enterprises 'partnership' has had nothing to do with art or with [morrisseau.com](http://morrisseau.com). No corporate, business or internet search or documents were filed.

[17] A one page web site ([vibrationalarts.com](http://vibrationalarts.com)) registered by the Defendant has a hyperlink to the Morrisseau site administered by his Friendship Enterprise partner and roommate. This fact, either alone or in combination with the other facts recited above, does not remotely establish on a balance of probabilities that the Defendant has participated in the Morrisseau site.

[18] The decision of the B.C. Court of Appeal in **Crookes v Wikimedia Foundation Inc.** [2009] B.C.J. No. 1832 is clear: providing a hyperlink is not participation in, or promulgation of, that site's content.

[19] The Defendant has not directly or indirectly slandered Mr. Otavnik's title to his Morrisseau painting, defamed the Plaintiff or Mr. Morrisseau, or issued an injurious falsehood.

[20] The Claim is dismissed with costs of \$590.00 under Rules 19.01 (\$40), 19.03 (\$50), & 19.05 (\$500).

  
Justice Pamela A. Thomson