



10403 - 124 Street
Edmonton, Alberta T5N 3Z5
Phone: (403) 482-1204 Fax: (403) 488-0928
Email: info@bearclawgallery.com
Website: www.bearclawgallery.com

January 15, 2008

To Whom It May Concern:

This letter is to state that the Norval Morrisseau painting entitled "Grandfather Speaks Of Ancestral Warriors" was purchased by [redacted] from the Bearclaw Gallery on April 20, 2007 (re: invoice #46589).

The Bearclaw Gallery acquired the painting in 2007 from a gentleman agent with the following provenance:

David Voss, Thunderbay, Ontario
Rolf Schneider, Thunderbay, Ontario
Norval Morrisseau, Artist, Thunderbay, Ontario

The work is acrylic on canvas, dated 1978 and measures 58 x 61 inches.

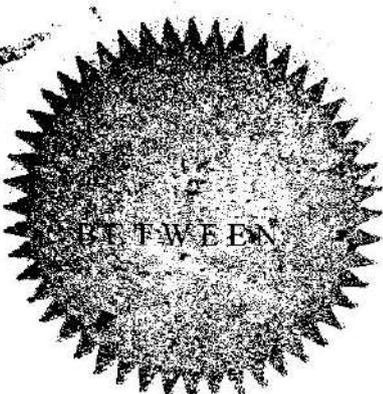
Sincerely,

Jackie Bugera
Gallery Manager

ONTARIO
SUPERIOR COURT OF JUSTICE

Court File No.

CW-09-0037036



BETWEEN

DR. JONATHAN BROWNE

Plaintiffs

- and -

**JACKIE BUGERA carrying on business as BEARCLAW GALLERY, AND
BUGERA HOLDINGS LTD. carrying on business as BEARCLAW GALLERY**

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim 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 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, JUDGEMENT 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.**

Dated:

Jan 15/09.

Issued by:



Local Registrar

Address of 393 University Avenue
Court Office: 10th Floor
Toronto, Ontario
M5G 1E6

TO: JACKIE BUGERA
10403 – 124 STREET
EDMONTON, ALBERTA T5N 3Z5

AND TO: BUGERA HOLDINGS LTD.
10403 – 124 STREET
EDMONTON, ALBERTA T5N 3Z5

**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:
 - (a) Rescission of the contract between the Plaintiff and the Defendants dated on or about April 7, 2007 in respect of the painting, "Grandfather Speaks of Great Ancestral Warriors";
 - (b) Damages for out-of-pocket expenses in the amount of \$10,000.00;
 - (c) In the alternative, damages in the amount of \$25,275.00 plus GST for negligent misrepresentation, breach of contract and/or breach of warranty;
 - (d) Pre-judgment interest, in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990 c. C. 43, as amended;
 - (e) Post-judgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990 c. C. 43, as amended;
 - (f) The costs of this action on a substantial indemnity basis together with Goods and Services Tax; and
 - (g) Such further and other relief as this Honourable Court may deem just.

2. The Plaintiff, Dr. Jonathan Brown, is an individual resident of the City of Ottawa in the Province of Ontario.

3. The Defendant, Jackie Bugera, is an individual businesswoman who at all material times carried on business as Bearclaw Gallery in the City of Edmonton in the Province of Alberta.

4. The Defendant, Bugera Holdings Ltd. is a corporation incorporated under the laws of the Province of Alberta and at all material times also carried on business in the City of Edmonton in the Province of Alberta, as Bearclaw Gallery.
5. In or about April of 2007, the Defendant offered for sale via the World Wide Web on the Internet, a certain acrylic on canvass, original painting, dated 1977, entitled "Grandfather Speaks of Great Ancestral Warriors" (the "Painting").
6. The Painting was specifically represented by the Defendants as a valuable work of art painted by the famous artist, Norval Morrisseau.
7. The Painting was listed for sale on a web site owned and operated by the Defendants, and was thereby offered to potential customers located all over the world, including the Plaintiff, who viewed the web site in and from Ontario. Accordingly, the Defendants purposefully directed their activities to persons resident in the Province of Ontario, including the Plaintiff.
8. In or about early April of 2007, the Defendants and the Plaintiff discussed the possible purchase of the Painting by the Plaintiff from the Defendants.
9. In the course of those discussions, the Defendants repeated their representation that the Painting was an original and valuable work of art painted by Norval Morrisseau, and in addition, specifically represented to the Plaintiff that the Painting came with 'excellent provenance'.

10. The Defendants represented to the Plaintiff that the 'excellent provenance' of the Painting gave the Painting substantial value.
11. Furthermore, the Defendants specifically represented to the Plaintiff that the ownership of the Painting was traceable back to the original owner and artist, i.e. Norval Morrisseau himself.
12. The Defendants specifically represented to the Plaintiff that the authenticity of the Painting had been established and was beyond question.
13. As a novice art collector, the Plaintiff was entitled to and did in fact rely upon the Defendants' representation of expertise in the appraisal and authentication of works of art by Norval Morrisseau.
14. At no time did the Defendants disclose to the Plaintiff that the Painting had in fact been withdrawn from an auction held by Heffels auctioneers, as a result of Heffels having been advised by Norval Morrisseau that the painting was in fact a fake.
15. It was on the basis of the aforementioned representations upon which the Plaintiff relied, that Defendants induced the Plaintiff into contracting for the purchasing the Painting (the "contract") for the sum of \$25,000.00 plus shipping of \$275.00, plus GST (the "Purchase Price").
16. The Plaintiff paid the Purchase Price to the Defendants by way of several instalments, the last one being in the amount of \$7,049.00 on November 21, 2007,

pursuant to the contract. All the instalments towards the Purchase Price were paid by Visa on behalf of the Plaintiff.

17. In consideration of the Purchase Price, the Defendant also agreed to provide the Plaintiff with a Certificate of Appraisal and Provenance for the Painting.

18. The Plaintiff took delivery of the Painting subsequent to the payment of the Purchase Price, in or about December of 2007.

19. The Defendants subsequently, in or about January of 2008, provided the Plaintiff with a Certificate of Appraisal and Provenance. This certificate repeated and confirmed the aforementioned representations.

20. On or about July 24, 2008, the Plaintiff discovered that the Painting had in fact been withdrawn from auction, on or about September 12, 2006, by Heffels auctioneers, as a result of being advised by the artist, Norval Morrisseau, that the painting was in fact, a fake.

21. Accordingly, the 'excellent provenance' that the Defendants had represented to the Plaintiff, was in fact a misrepresentation, as the provenance that the Defendants represented to the Plaintiff omitted the crucial facts that an allegation had been made from a credible source which questioned the authenticity of the painting, and that the Painting had been withdrawn from auction.

22. The fact that the painting had been identified by Morrisseau himself as a fake and withdrawn from auction, served to destroy all, or substantially all, the value of the Painting to the Plaintiff, and to any other subsequent purchasers.
23. The impugned authenticity and withdrawal from auction constituted a latent defect in the Painting.
24. The Plaintiff pleads that it is the fact that an allegation questioning the authenticity of the Painting was made by Norval Morrisseau, and the fact that it was withdrawn from auction, which constitute the latent defects, and not necessarily that the Painting is actually a fake, as has been claimed.
25. The purported 'excellent provenance' of the Painting constituted either a condition or a warranty of the Painting's quality, which was breached as a result of the fact that the painting's authenticity had been questioned by the artist, Norval Morrisseau, and had also been withdrawn from auction.
26. Accordingly, the Plaintiff states that the Defendants innocently misrepresented the quality of the Painting by failing to disclose the latent defect in the painting, and by representing that the Painting had 'excellent provenance', that its authenticity was unquestionable, and by omitting that the Painting had been withdrawn from auction after being identified as a fake by Norval Morrisseau.
27. As a result of the Defendants' innocent misrepresentation, the Plaintiff is entitled to the rescission of the contract for the sale of the painting.

28. In the alternative, the Plaintiff states that the Defendants' misrepresentations were negligent, in that the Defendants failed to exercise reasonable care in determining the actual and complete provenance of the Painting, without fundamental omissions. The Defendants owed a duty of care towards the Plaintiff that resulted from the relationship created between the Defendants as purported art experts, and the Plaintiff customer. The Plaintiff relied upon the Defendants negligent misrepresentations and was thereby induced into the purchase of the Painting.

29. The Plaintiff further, and in the alternative, claims damages against the Defendants for breach of contract and breach of warranty. Particulars of the breaches are as follows:

- a) The Painting was not reasonably fit for the purposes for which it was sold, in that its value had been all but eradicated as a result of the questioned authenticity and withdrawal from auction;
- b) The painting was defective and not of merchantable quality and such defects were not capable of being readily ascertained by the Plaintiff;
- c) The Painting did not correspond with the warranties and representations made by the Defendants.

30. The Plaintiff pleads and relies upon the provisions of the Sale of Goods Act, R.S.O. 1990, Chapter S.1, as amended, and, in particular, the implied conditions and warranties that the Painting would be reasonably fit for such purpose and be of merchantable quality, as contained in Section 15 of the Act.

31. The Plaintiff claims a rescission of the contract together with damages for out-of-pocket expenses incurred, the full particulars of which will be provided prior to trial. In the alternative, the Plaintiff is entitled to damages corresponding to the substantial depletion in value of the Painting.

32. Despite numerous and repeated attempts by the Plaintiff to have the Defendants refund the Purchase price in exchange for return of the Painting, the Defendants have failed, refused or neglected to agree to same.

33. The Plaintiff is entitled to serve this claim under the provisions of Rule 17.02(a) as the proceeding consists of claims in respect of personal property, i.e. the Painting, which is located in Ontario. In the alternative, the Plaintiff is entitled to serve this claim pursuant to Rule 17.02(f) because the claim is in respect of a contract that was made in Ontario. In the further alternative, the Plaintiff is entitled to serve this claim pursuant to Rule 17.02(h), because damages were sustained in Ontario.

34. The Plaintiff proposes that the trial of this action be held at Ottawa, Ontario.

Date: January 15, 2009

ZAK A. MUSCOVITCH
The Muscovitch Law Firm
101 Scollard Street
Toronto, Ontario
Canada M5R 1G4

TEL: (416) 924-5084
FAX: (416) 920-6306

LSUC # 417400

Solicitor for the Plaintiff

CU-09-00370363

ONTARIO SUPERIOR COURT OF JUSTICE

Commenced at Toronto

STATEMENT OF CLAIM

Zak Muscovitch
The Muscovitch Law Firm
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M5R 1G4

Tel: 416-924-5084
Fax: 416-920-6306
LSUC # 417400

Solicitor for the Plaintiff

Court File No. CV-08-00366828

**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

**AFFIDAVIT OF JACKIE BUGERA
Sworn November 21, 2008**

I, Jackie Bugera, of the City of Edmonton in the Province of Alberta make oath and say as follows:

1. I am the sole shareholder, Director and Officer of Bugera Holding Ltd., operating as Bearclaw Art Gallery ("Bearclaw"). Bearclaw is located at 10403 124 Street, Edmonton Alberta. I began working in this gallery twenty-eight years ago (in 1980). I purchased the gallery from my parents in June 2007.
2. Bearclaw's business consists of buying and selling artwork, including the paintings of Norval Morrisseau. Bearclaw buys and sells Morrisseau paintings in the secondary art market. What this means is that we buy Morrisseau paintings from other collectors and re-sell them. Until 1996, Bearclaw also worked through an agent to obtain Morrisseau paintings from Norval Morrisseau (the primary

market). Currently, the gallery does not obtain paintings directly from Morrisseau or his estate.

3. Bearclaw sells art to the public. Currently, Bearclaw has approximately 45 Morrisseau paintings in the gallery for sale. The total retail value of these paintings is approximately \$750,000. Bearclaw keeps careful records of all art purchased and sold.

4. I only obtain Morrisseau paintings from select suppliers who have excellent reputations and extensive experience buying and selling Morrisseau paintings. Some of the Morrisseau paintings that Bearclaw has bought and/or sold have been authenticated by experts on Morrisseau's artwork. In other cases, Bearclaw has authenticated the paintings by carefully investigating their provenance. I believe that every Morrisseau painting that Bearclaw has bought and/or sold is an original work of art by Norval Morrisseau.

Ritchie Sinclair

5. Although I have been involved in the business of purchasing and selling paintings, including the works of Norval Morrisseau, since 1980, I do not know Sinclair and have had no dealings with him. I am not aware of anyone in the art community who recognizes Sinclair as an expert in the artwork of Norval Morrisseau.

Discovery of Morrisseau.com website

6. On or around October 11, 2008, Joe Otavnick, a fellow art collector in the Canadian art community, contacted me to tell me that the Defendant, Ritchie Sinclair, had created the website, www.morrisseau.com. Otavnick informed me and I do believe that on or after September 16, 2008, Sinclair began posting images on the website of paintings which Bearclaw owns, has sold, or is attempting to sell. Sinclair alleged that the paintings were forgeries, counterfeits or otherwise inauthentic.

7. On or around October 11, 2008, I visited the website and confirmed that it contained numerous images of paintings which Bearclaw owns, has sold, or is

attempting to sell. The website describes those paintings as being forgeries, counterfeits or otherwise inauthentic.

Description of the Defamatory Statements

8. There are currently over one thousand images of Norval Morrisseau paintings posted on the website which Sinclair claims are counterfeits, forgeries, frauds, stolen or otherwise authentic. The site is updated several times a day with new images of alleged counterfeit Morrisseau paintings being added.

9. Due to the updating of the site, it is virtually impossible to make a complete list of all the paintings related to Bearclaw that are posted on the site. As a representative sample I have identified 45 paintings posted on the website which are either owned, consigned or have been sold by Bearclaw. The images were posted on morrisseau.com accompanied by statements which alleged that the various paintings were stolen, forgeries, counterfeit or otherwise inauthentic. The total retail value of the paintings in question is \$563,300. Attached as Exhibit A is a chart setting out the 45 images that were posted on the website, with their retail value and an indication of whether they have been sold. I have reviewed this chart and I confirm that this information is correct.

10. Each and every one of these numbered images on morrisseau.com was given a title "Inferior Counterfeit Morrisseau" and a number, for example, "Inferior Counterfeit Morrisseau # 808". This was displayed on the web-page within the site entitled "photos". On the main page, 24-120 images could be displayed at once. Attached as Exhibit B are screen-captures of the "thumbnail" images and statements on morrisseau.com relating to art described in Exhibit A. The images in Exhibit B that relate to Bearclaw have been circled by hand.

11. When I selected one of the images on the website, a new page opened with a larger image of the selected painting, and a commentary. On this sub-page, Sinclair provided a description stating:

INFERIOR COUNTERFEIT NORVAL MORRISSEAU...In the opinion of Norval Morrisseau protégé, Ritchie "Stardreamer" Sinclair this is an image of an INFERIOR COUNTERFEIT NORVAL MORRISSEAU painting. Inferior counterfeit... Means counterfeit, fake, false, falsified, unauthorized, ungentuine, unreal, forged, forgery,

descending into the inferior regions of the earth, poor in quality, substandard, less important, valuable or worthy, bottom-rung, less, lesser, lower, nether, peon, subordinate, under underneath, bent, bogus, copy, crock, deceptive, delusive, illusory, faked, fishy, fraudulent, imitation, misleading, mock, pseudo, sham...

12. These untrue statements damage my reputation, my business and my livelihood.

13. In an attempt to have the images and statements removed from the morrisseau.com website, I instructed my counsel to contact the host of the website, morriseau.com, GoDaddy.com, to ask them to remove the offending photographs. Attached as Exhibit D is a copy of the letter sent by Symes & Street to GoDaddy.com dated November 4, 2008. I am informed by my counsel that as the host is governed by U.S. law, and the images had been improperly taken from the Bearclaw website, it was possible pursuant to a Takedown Notice procedure set out in the *Digital Millennium Copyright Act*, 112 Stat. 2860 (1998), to have the images removed from the website. On November 5, 2008 the website host advised Symes & Street that it would be suspending the morrisseau.com website. Attached as Exhibit C1 is a copy of the email confirmation from GoDaddy.com dated November 5, 2008.

14. On November 5, 2008 I went to the morriseau.com website and observed that the photographs from Bearclaw Gallery had been removed from the website.

15. On November 8, 2008 I went again to the morriseau.com website and observed that Sinclair had posted new and more harmful images and text relating to Bearclaw.

16. I observed on the website that Sinclair had posted new images labeled "Inferior Counterfeit" at numbers 107-118, 202, 280, 282, 302, 320, 326, 575, 576, 579, 584, 589, 665, 666, 669, 696, 700 – 704, 706, 707, 808, 814 on the website. Sinclair replaced most of the previous images of the paintings with a "stop sign" image which read as follows:

IMAGE COPYRIGHT – BEARCLAW GALLERY- THIS IMAGE HAS BEEN REMOVED.
THERE ARE SO MANY INFERIOR COUNTERFEIT MORRISSEAUS TO CHOOSE
FROM... AND IT SEEMED SO IMPORTANT TO THIS GALLERY THAT THEY SWORE

UNDER PENALTY OF PERJURY, THAT THEY HOLD EXCLUSIVE COPYRIGHT TO THIS IMAGE THAT... IT SEEMED WISE TO COMPLY. IMAGE COPYRIGHT – BEARCLAW GALLERY

17. Attached as Exhibit D are the screen captures I saw on the morrisseau.com website on November 8, 2008 of the “thumbnail” images of the “stop sign” postings relating to Bearclaw. Attached as Exhibit D1 are screen captures of the full sized “stop-sign” images I observed on November 8, 2008 on the website.

18. Next to each “stop sign” image I saw the same description “Inferior Counterfeit Morrisseau” which had previously been posted next to the numbered image of a Bearclaw-owned painting. The damage in posting the new statements is even greater to Bearclaw, in that the name of the gallery is written next to the allegation that “there are so many inferior counterfeit Morrisseaus to choose from”, and the description of an “Inferior Counterfeit Morrisseau”.

Identification of Bearclaw

19. As noted, the Sinclair has specifically identified Bearclaw Gallery in dozens of images as set out in Exhibit D and Exhibit D1.

20. With respect to the earlier postings that did not identify Bearclaw explicitly, the images in question are of one-of-a-kind paintings that were sold or are currently for sale by Bearclaw. Even without naming Bearclaw, anyone in the Canadian art community, and particularly anyone who deals with Norval Morrisseau artwork, could easily determine that these paintings are owned or were sold by me and/or Bearclaw. Anyone with knowledge of Morrisseau art or who would consider purchasing such art would associate the image on the website with me and my gallery. Thus, the allegations of fraud, forgery, and theft taint my reputation and the reputation of Bearclaw even if we are not explicitly named in relation to each image.

Damage to My Business

21. In my business, I am only successful if Bearclaw and I have the trust of my clients and colleagues. My business depends entirely on my reputation for honesty and upon my clients' trust that Bearclaw sells authentic paintings. If

collectors, colleagues or other members of the public come to believe or suspect that Bearclaw sells inauthentic artworks, my reputation will be ruined and my business will be permanently destroyed.

22. The Canadian art community is a small one. The dealers, galleries and purchasers involved with the purchase and sale of Norval Morrisseau paintings is even smaller. Very few individuals are involved and as a rule, these persons know and rely on one another for business.

23. The images and the statements that Sinclair posted on the website, as set out in Exhibits B, D and D1, have damaged my reputation, my business and my livelihood. These statements wrongly inform all visitors to the website that the paintings owned, sold, or displayed by Bearclaw are forged, counterfeit or inauthentic. These statements are untrue. If these statements continue to be published they will destroy my business and my livelihood.

24. As set out in Exhibit A, the morrisseau.com website makes allegations of fraud about at least 30 Morrisseau paintings which Bearclaw had already sold, valued at approximately \$389,300. I fear that the purchasers of these paintings may attempt to sue me or seek a refund for their purchases as a result of the comments on morrisseau.com.

25. As set out in Exhibit A, the morrisseau.com website makes allegations of fraud about at least 15 Morrisseau paintings which Bearclaw currently has for sale, valued at approximately \$174,000. I believe that the statements on this website are negatively impacting my business and will make it difficult or impossible to sell these paintings.

26. The untrue statements on the website have been read by members of the public. In the screen captures attached at Exhibits B, D and D1, each numbered image has a view counter which shows that each of the listed images and the accompanying commentary had been viewed dozens of times.

27. As noted, my colleagues such as Joe Otavnick have viewed the website and have contacted me regarding the untrue statements about me and Bearclaw which are contained on the website.

28. If the allegations and untrue statements on the website continue to be published, I expect that my reputation and my business will be permanently and irreparably destroyed.

Notice of Defamation

29. On October, 31, 2008, I retained the law firm Symes & Street to represent me, Bearclaw, and Bugera Holdings Ltd. in this matter. On November 4, 2008 my counsel sent a notice of defamation to Ritchie Sinclair. Attached as Exhibit E is a copy of that letter and attached as Exhibit E1 is the affidavit of service from the process server who delivered the notice.

30. To date, Sinclair has not responded to this Notice of Defamation, and has not removed the untrue allegations relating to me and White Distribution from his website.

31. Sinclair has continued to post additional untrue statements and allegations relating to me and my business on his website despite being served with a Notice of Defamation and a Takedown Notices under the U.S. *Digital Millennium Copyright Act*. Given this persistent and unrepentant conduct, I believe that Sinclair will continue to post these untrue statements on his website in an effort to permanently destroy my reputation, my business and my livelihood.

Undertaking to Pay

32. I make this affidavit in support of this motion for an interlocutory injunction and other relief, and for no other improper purpose. I undertake to abide by any order concerning damages that the Court may make if it ultimately appears that the granting of the order requested has caused damage to Sinclair for which the moving parties ought to compensate Sinclair.

SWORN BEFORE ME at the
City of Edmonton, in the
Province of Alberta
This 21st day of November, 2008

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Michael J. Hughes

COMMISSIONER FOR TAKING AFFIDAVITS

Jackie Bugera

JACKIE BUGERA

Michael J. Hughes
Student-at-Law

