

John C. ...

Court File No. CV-12-455650

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

KEVIN HEARN

Plaintiff

-and-

JOSEPH BERTRAM MCLEOD and MASLAK-MCLEOD GALLERY INC.

Defendants

STATEMENT OF DEFENCE

1. The defendants admit the allegations contained in paragraphs 2, 3 (except for the allegation that the corporate defendant is a personal agent for Mr. McLeod), 4, 5, 9, (other than the word "alleged") 11 (other than to what representations Mr. Hearn relied upon), and 16-18 of the statement of claim.
2. The defendants deny the allegations contained in paragraphs 1, 7, 8, 10-15, 19-22, and 24-32 of the statement of claim.
3. The defendants have no knowledge of the allegations contained in paragraphs 6 and 23 of the statement of claim.
4. The defendants deny that Mr. Hearn is entitled to the relief claimed, or at all, and Mr. Hearn is put to the strict proof of the entitlement to the relief claimed in paragraph 1 of the statement of claim.

Mr. Hearn falsely alleges fraud

5. The allegations of fraud as set out in paragraphs 14, 15, 24, 25, 28, 30 and 31 of the statement of claim are scandalous, frivolous and vexatious.
6. Mr. Hearn is a famous Canadian. He is a member of the musical band the Barenaked Ladies. He publicized his statement of claim in this proceeding. As a result of his fame his allegations in the statement of claim have received widespread notoriety in the press. Mr. Hearn is also extremely well liked and respected as a musician and the public would never believe him to make unsubstantiated allegations. As a result, the public assumes the allegations of fraud made in his statement of claim are true.
7. The allegations of fraud and, more particularly, of taking part in a widespread criminal fraud scheme as alleged in paragraph 14 of the statement of claim, are entirely false and have irreparably damaged the business of the defendants. Mr. Hearn should be condemned to pay to the defendants their substantial indemnity costs of this action. Mr. Hearn's conduct in this regard was reckless and showed a total disregard for the reputation and livelihood of the defendants.

The defendants are experts in authenticating Morrisseau's art

8. The defendant gallery has significant experience and expertise in the field of native art and has exhibited numerous native artists throughout Canada.
9. Mr. McLeod has been qualified by the Federal Court of Canada as an expert who may provide opinion evidence regarding works of art by the late artist Norval Morrisseau ("Morrisseau"). Mr. McLeod has been a student of Morrisseau's art for more than 50 years, has exhibited his art and has a particular expertise in the content and form of Morrisseau's paintings in the period from 1960 to 1980.

10. Mr. McLeod has extensive experience buying, consigning and selling the art of Morrisseau and has a profound respect for the legacy of the artist. He would never knowingly sell any painting that was a forgery or a fake. Neither of the defendants has in fact knowingly, or otherwise, sold paintings that were represented to be paintings by Morrisseau when they were not.
11. To this day, Mr. McLeod maintains a relationship with Morrisseau's children and has attempted to assist them in benefiting financially from their father's legacy.

The provenance of Morrisseau's art

12. Norval Morrisseau was a prolific artist. By some accounts he painted as many as 15,000 works of art in his lifetime. The exact number is unknown and will never be known. He painted from the late 1950s until some time in the 1990s. The exact date when he could no longer paint due to his ill health is unknown.
13. Morrisseau was an alcoholic who was burned over a significant percent of his body in a fire in 1972 and suffered two strokes in the 1980s. By 1985 Morrisseau was confined to a wheelchair. In or about 1995, Morrisseau was diagnosed with Parkinson's disease. By the time of his death in 2007, Morrisseau had no use of his hands, could not speak and was being carted around by his supposed caregivers who used and abused him for their personal financial gain.
14. During his lifetime, Morrisseau lived and worked in many places. He painted while living on the street, in jail and in many communities around Northern Ontario. At times, he traded paintings for sustenance or alcohol. He could paint many paintings at one time. Much of the art he produced was masterful. However, many of the paintings he produced were inferior and simply uninspiring. He signed the front of his paintings using Cree syllabics to spell out his native name Copper Thunderbird