

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF EDMONTON

BETWEEN:

EARL BRODER, GEORGE BRODER, RICHARD BRODER, MARGARET MACPHEE,
DORIS BIBAUD, LUELLE ADAM, AND DORIS BIBAUD AND GEORGE BRODER,
PERSONAL REPRESENTATIVES OF THE ESTATE OF EDMUND BRODER, ALSO
KNOWN AS ED BRODER, DECEASED

PLAINTIFFS

- and -

DON BRODER AND CRAIG BRODER

DEFENDANTS

Donald Broder

2

December 09
W. Bratkeuz

**AMENDED STATEMENT OF DEFENCE TO
AMENDED AMENDED STATEMENT OF CLAIM**

1. Except where specifically admitted, the Defendants deny each and every allegation of fact set out in the Amended Amended Statement of Claim herein as if traversed seriatim, and put the Plaintiffs to the strict proof thereof.
2. The Defendants admit that the Defendants and Plaintiffs are all residents of the Province of Alberta, paragraph 3 of the Amended Amended Statement of Claim and agree to the proposal set out in paragraph 9 of the Amended Amended Statement of Claim.
3. Don Broder admits that he has had actual physical possession of the world record mule deer trophy (hereinafter "the Trophy") since 1973, and since that time has physically possessed and held the trophy as his own. At no time did Don Broder ever agree that the Trophy would be held by him as a custodian for the benefit and on behalf of the Plaintiffs Earl Broder, George Broder, Richard Broder, Margaret MacPhee, Doris Bibaud and Luella Adam, or for the estate of Edmund Broder.
4. In the alternative if there was an agreement that Don Broder would hold the Trophy as a custodian for the benefit and on behalf of the Plaintiffs Earl Broder, George Broder, Richard Broder, Margaret MacPhee, Doris Bibaud and Luella Adam, which is not admitted and specifically denied, the agreement is void for uncertainty and is contrary to the Statute of

56420.0001;1123134.WPD.1

FIAT: That the Amended Statement of Defence to Amended Amended Statement of Claim be filed notwithstanding that the 15 day time limit set out in paragraph 4 of Justice R.P. Marceau's Order dated November 10, 2003 has expired.

DATED this 9th day of January, 2003.

W. Bratkeuz

AMENDED THIS 9 DAY OF JAN. 04
 PRESENT TO THE COURT BY THE PLAINTIFFS
 10th DATE NOV 17 2003
 CLERK OF COURT

Frauds. Don Broder further states that there was no consideration for the said agreement.

5. In the further alternative, if there was an agreement that Don Broder would hold the Trophy as a custodian for the benefit and on behalf of the Plaintiffs Earl Broder, George Broder, Richard Broder, Margaret MacPhee, Doris Bibaud and Luella Adam, which is not admitted and specifically denied, the Plaintiffs Earl Broder, George Broder, Richard Broder, Margaret MacPhee, Doris Bibaud and Luella Adam, agreed to compensate Don Broder for taking care of the Trophy.
6. In the further alternative if there was an agreement that Don Broder would hold the Trophy as a custodian for the benefit and on behalf of the Estate of Edmund Broder, which is not admitted and specifically denied, the agreement is void for uncertainty and is contrary to the Statute of Frauds. Don Broder further states that there was no consideration for the said Agreement.
7. In the further alternative, if there was an agreement that Don Broder would hold the Trophy as a custodian for the benefit and on behalf of the Estate of Edmund Broder, which is not admitted and specifically denied, the Estate of Edmund Broder agreed to compensate Don Broder for taking care of the Trophy.
8. The Defendants say that George Broder agreed to be the administrator of the Estate of Edmund Broder and was elected the administrator in 1969, and as such the Estate of Edmund Broder was under no disability, and was able to pursue any claim which it believed it had.
9. From 1973 until the filing of the statement of claim, the Plaintiffs made no enquiries of Don Broder as to the condition of the Trophy, the whereabouts of the Trophy, or the expenses incurred by Don Broder in restoring, preserving and taking care of the Trophy.
10. In the further alternative, the Defendants say and the fact is that if the Plaintiffs Earl Broder, George Broder, Richard Broder, Margaret MacPhee, Doris Bibaud and Luella Adam had any interest in the Trophy which is not admitted and specifically denied, they failed to commence any action or to attempt to recover the Trophy within a reasonable period of time, and as such are guilty of laches, and are estopped from claiming any right or interest in the Trophy. Don Broder further states that the Plaintiffs by their failure to make any enquiries about the Trophy and the cost of restoring, preserving, and promoting the Trophy led Don Broder to believe that the Trophy was his, and they are estopped from claiming otherwise.
11. In the further alternative, the Defendants say and the fact is that if there was an agreement between the Don Broder and his siblings or between Don Broder and the Estate of Edmund Broder, which is not admitted and specifically denied, in relation to the Trophy, Don Broder and his siblings agreed, inter alia, that Don Broder would keep the Trophy for himself, that

Earl Broder would keep the chaps, saddle and rifle, which belonged to Edmund Broder immediately at the time of his death. Earl Broder displayed the saddle, rifle and chaps in his home as his own, dyed the saddle, without the consent of his siblings, and permitted his son to use the rifle for hunting and keep it at his home, without the consent of his siblings.

12. In the further alternative, the Defendants say and the fact is that if there was an agreement between the Don Broder and his siblings or between Don Broder and the estate, which is not admitted and specifically denied, in relation to the Trophy, the Trophy at the time of the death of Edmund Broder only had sentimental value, and the Trophy was given to Don Broder, the same as other items of Edmund Broder which had sentimental value.
13. Don Broder has always maintained that he was the sole owner of the Trophy, and the Plaintiffs have had knowledge of this since 1973.
14. The Defendants specifically deny that the Plaintiffs Earl Broder, George Broder, Richard Broder, Margaret MacPhee, Doris Bibaud and Luella Adam have any interest in the Trophy.
15. The Defendants specifically deny that the Estate of Edmund Broder has any interest in the Trophy.
16. The Defendants deny that the Defendant Craig Broder has asserted any rights of ownership of the Trophy, and puts the Plaintiffs to the strict proof thereof.
17. The Defendants deny that they have received any funds from the display of the Trophy as alleged or at all.
18. Craig Broder further states that everything he did with the Trophy was done as the President of King's Outdoor World a Division of Cradon Developments Ltd., which had been requested by Don Broder to help restore the Trophy and to display without remuneration. Craig Broder further states that the Trophy was displayed once for the benefit of the community, and that all siblings were invited to participate, at the showing. The Plaintiff, Richard Broder, attended however he was forcibly removed because he was intoxicated.
19. In the further alternative, if either the siblings of Don Broder or the Estate of Edmund Broder have any interest in the Trophy, which is not admitted and specifically denied, Don Broder states that he has not deprived them of the Trophy, and has kept the Trophy in his possession because the Plaintiffs would not take care of the Trophy properly.
20. In the alternative, the Plaintiffs, Earl Broder, George Broder, Richard Broder, Margaret MacPhee, Doris Bibaud and Luella Adam, subsequent to the passing of Edmund Broder agreed to distribute his personal effects and property among in the settlement of his estate.

It was agreed that Don Broder would receive full right, title and interest in the Trophy without any further claim to such property by the Plaintiffs, Earl Broder, George Broder, Richard Broder, Margaret MacPhee, Doris Bibaud and Luella Adam. The Plaintiffs, Earl Broder, George Broder, Richard Broder, Margaret MacPhee, Doris Bibaud and Luella Adam, agreed to accept and divide among them a Model T, saddle, chaps rifle and other personal possessions of Edmund Broder. The Plaintiffs are estopped from making any further claim to the Trophy.

21. In the further alternative, if the Plaintiffs, Earl Broder, George Broder, Richard Broder, Margaret MacPhee, Doris Bibaud, Luella Adam, and Doris Bibaud and George Broder, personal representatives of the estate of Edmund Broder, also known as Ed Broder, deceased, have any interest in the Trophy, they misled Don Broder into believing that the Trophy was his to use as he wished.
22. Don Broder states that the Plaintiffs, Earl Broder, George Broder, Richard Broder, Margaret MacPhee, Doris Bibaud and Luella Adam, made no demand upon him for the return of the Trophy.
23. Craig Broder states that the Plaintiffs, Earl Broder, George Broder, Richard Broder, Margaret MacPhee, Doris Bibaud and Luella Adam, made a demand upon him for the return of the Trophy, but because it was not his and he cannot do with it as he pleases, he is unable to return to the Plaintiffs Earl Broder, George Broder, Richard Broder, Margaret MacPhee, Doris Bibaud and Luella Adam.
24. Craig Broder is not responsible for what was written in the Edmonton Sun about the ownership of the Trophy, and at no time did he represent that he was the owner of the Trophy.
25. In the further alternative, if the Trophy is jointly owned by Don Broder and his siblings, which is not admitted and specifically denied, Don Broder is entitled to use and display the Trophy, and that the attempts made by the Plaintiffs, Earl Broder, George Broder, Richard Broder, Margaret MacPhee, Doris Bibaud and Luella Adam, to get the Trophy away from him are for the purposes of keeping him away from, using or displaying the Trophy.
26. The Defendants say that the Plaintiffs, Earl Broder, George Broder, Richard Broder, Margaret MacPhee, Doris Bibaud and Luella Adam, treated the Trophy as having no value for the purposes of the Income Act of Canada, as amended from time to time.
27. In the further alternative, if the Trophy is jointly owned by Don Broder and his siblings, or if there was an agreement that Don Broder was to take care of the Trophy for the benefit of Don Broder and his siblings or the estate of Edmund Broder, which is not admitted and

specifically denied, the value of the Trophy was increased from sentimental value to some monetary amount, as a result of the effort of and money spent by Don Broder, and that they are responsible for their proportionate share of the expenses and to compensate Don Broder for the effort he spent to preserve, restore, and take care of the Trophy and to promote it.

28. In the further alternative, if Don Broder was holding the Trophy for the benefit of Don Broder and his siblings or the Estate of Edmund Broder, Don Broder incurred expenses to preserve and restore the Trophy, and expenses for travel, lodging and accommodations incurred in showing the Trophy and replicas, and the Plaintiffs are severally and jointly responsible for these expenses.
29. The Defendants plead the provisions of the Limitations Act, c. L- 15, R.S.A. 1980, and amendments thereto, and the Limitations Act, c. L12, R.S.A. 2000.
30. The Defendants did not receive, within the limitation period applicable to the added claim plus the time provided by law for service of process, sufficient knowledge of the added claim that the defendant will not be prejudiced in maintaining a defence to it on the merits.
31. The Defendants plead the provisions of the Statute of Frauds, 1677, 29 Car. 2, c.3

WHEREFORE THE DEFENDANTS PRAY THAT THE AMENDED AMENDED STATEMENT OF CLAIM BE DISMISSED WITH COSTS ON A SOLICITOR AND OWN CLIENT BASIS.

AND BETWEEN:

DON BRODER

PLAINTIFF BY COUNTERCLAIM

- and -

EARL BRODER, GEORGE BRODER, RICHARD BRODER, MARGARET MACPHEE,
DORIS BIBAUD, LUELLA ADAM, AND DORIS BIBAUD AND GEORGE BRODER,
PERSONAL REPRESENTATIVES OF THE ESTATE OF EDMUND BRODER, ALSO
KNOWN AS ED BRODER, DECEASED

DEFENDANTS BY COUNTERCLAIM

COUNTERCLAIM of DON BRODER

32. Paragraphs 1 through 29 of the Defence are repeated and adopted.
33. Don Broder states that if the Defendants by Counterclaim, Earl Broder, George Broder, Richard Broder, Margaret MacPhee, Doris Bibaud, Luella Adam, and Doris Bibaud and George Broder, personal representatives of the estate of Edmund Broder, also known as Ed Broder, deceased, or anyone of them have any interest in the Trophy, they have been unjustly enriched as a result of the time, effort and money spent by Don Broder in restoring, preserving, and promoting the Trophy, and Don Broder is entitled to be compensated by the Defendants and each one of them for the time, effort and money he spent thereon.
34. Don Broder states that the Defendants by Counterclaim, Earl Broder, George Broder, Richard Broder, Margaret MacPhee, Doris Bibaud, Luella Adam, and Doris Bibaud and George Broder, personal representatives of the estate of Edmund Broder, also known as Ed Broder, deceased, or any one of them "waited in the weeds", while he restored, preserved and promoted the Trophy, with the intention that when the Trophy became valuable, they would claim the Trophy as their own and obtain any benefits associated with the Trophy which Don Broder received, without ever having to account for the time, effort and money spent by Don Broder in restoring, preserving and promoting the Trophy, and did thereby mislead Don Broder into believing that the Trophy was his property to do with as he pleased.
35. The Defendants by Counterclaim, Earl Broder, George Broder, Richard Broder, Margaret

MacPhee, Doris Bibaud, Luella Adam, and Doris Bibaud and George Broder, personal representatives of the estate of Edmund Broder, also known as Ed Broder, deceased, or anyone of them have acted in a malicious manner, whereby they have set one standard for themselves in that they allowed, Earl Broder to treat and use the saddle, chaps and rifle as his own, and they misled Don Broder into believing that the Trophy was his to use as he wished, and they prevented Don Broder from obtaining all of the assets of the estate which had been distributed to him, except for the Trophy, which were all stored at the home of the Defendant by Counterclaim, Richard Broder.

36. The Defendants by Counterclaim's actions are such that they warrant the award of punitive and/or exemplary damages, and costs on a solicitor client basis.
37. The Plaintiff by Counterclaim will seek leave of the Court to prove additional damages
38. The Plaintiff proposes that the trial of this action be held at the Court House, in the City of City Edmonton, in the Province of Alberta, and in our opinion the trial of this action will not exceed 25 days in duration.

WHEREFORE THE PLAINTIFF BY COUNTERCLAIM CLAIMS AS AGAINST THE DEFENDANTS EARL BRODER, GEORGE BRODER, RICHARD BRODER, MARGARET MACPHEE, DORIS BIBAUD, LUELLE ADAM, AND DORIS BIBAUD AND GEORGE BRODER, PERSONAL REPRESENTATIVES OF THE ESTATE OF EDMUND BRODER, ALSO KNOWN AS ED BRODER, DECEASED, AND EACH OF THEM:

- (a) Judgement for the time, effort and money spent by the Plaintiff by Counterclaim to restore, preserve, take care of and otherwise promote the Trophy in the amount of \$250,000.00.
- (b) Punitive and/or exemplary damages for misleading the Plaintiff by Counterclaim.
- (c) Such further and other relief as this Honourable Court may deem meet, just, and appropriate having regard to all of the circumstances.
- (d) Costs on a solicitor and own client basis.

Or in the alternative:

- (e) Judgement for the time, effort and money spent by the Plaintiff by Counterclaim to restore, preserve, take care of and other promote the Trophy pursuant to the agreement between the Plaintiff and the Defendants, Earl Broder, George Broder, Richard Broder, Margaret MacPhee, Doris Bibaud, Luella Adam, and Doris

Bibaud and George Broder, personal representatives of the estate of Edmund Broder, also known as Ed Broder, deceased in the amount of \$250,000.00.

- (f) Punitive and/or exemplary damages.
- (g) Such further and other relief as this Honourable Court may deem meet, just, and appropriate having regard to all of the circumstances.
- (h) Costs on a solicitor and own client basis.

DATED at the City of Edmonton, in the Province of Alberta, this 21st 25th day of October ~~November~~
2002 ~~2003~~ AND DELIVERED by Miller Thomson LLP, solicitors for the Plaintiff by Counterclaim
whose address for service is in care of the said solicitors at 2700 Commerce Place, 10155 - 102
Avenue, Edmonton, Alberta, T5J 4G8, Attention: Bryan J. Kickham.