

**Tunick v Shaw**

2009 NY Slip Op 32996(U)

December 3, 2009

Supreme Court, New York County

Docket Number: 116636/03

Judge: Shirley Werner Kornreich

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: KORNREICH  
Justice

PART 54

JEFFREY TUNICK  
- v -  
LARRY SHAW

INDEX NO. 116636/03  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 9  
MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1</u>
Answering Affidavits — Exhibits _____	<u>2</u>
Replying Affidavits _____	<u>3, 4</u>

Cross-Motion: Yes  No

Upon the foregoing papers, it is ordered that this motion is denied in accordance with the annexed decision/order.

**FILED**  
DEC 15 2009  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 12/3/09 JUSTICE SHIRLEY WERNER KORNREICH  
J.S.C.

Check one: FINAL DISPOSITION  NON-FINAL DISPOSITION   
Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 54

-----X  
JEFFREY P. TUNICK,

Plaintiff,

-against-

LARRY SHAW, EDITH SHAW MARCUS, META  
SHAW STEVENS, MYRON BELDOCK, ESQ.,  
WILLIAM S. GREENAWALT, ESQ., MARTIN  
BRESSLER, ESQ., SHAW FAMILY ARCHIVES, LTD.,  
TRUCOLOR, INC., & GAB ROBBINS NORTH  
AMERICA, INC.,

Defendants.

-----X  
KORNREICH, SHIRLEY WERNER, J.:

DECISION & ORDER  
Index No.: 116636/03

**FILED**  
DEC 15 2009  
NEW YORK  
COUNTY CLERK'S OFFICE

Edith Shaw Marcus, Meta Shaw Stevens (collectively "the Shaw sisters") and SFA now move to: sanction William Greenawalt, Esq., and his attorney, Joel Martin Aurnou, Esq., pursuant to 22 NYCRR 130-1.1; retrieve documents improperly subpoenaed from non-parties; quash the non-party subpoenas; strike the testimony of Jeffrey Rubin, Esq., who was permitted to testify by Special Referee Crespo; hold Greenawalt in contempt for failing to return the photographic material as ordered; and direct Greenawalt to provide an accounting of the property and a sworn statement as to the manner of their maintenance.

This is an action to recover counsel fees. The underlying action in this case, *Edith Shaw Marcus and Meta Shaw Stevens, as Temporary Administrators of the Estate of Sam Shaw, deceased v Martin Bressler and Larry Shaw, et al*, Index No.123783/94, Sup.Ct., N.Y.County (the Shaw action) was commenced in 1994 and involved a family dispute over the rightful ownership of photographic prints, negatives and transparencies belonging to Sam Shaw. The

Shaw action was commenced by Sam Shaw against his son, Larry Shaw. Edith Shaw Marcus and Meta Shaw Stevens are Sam Shaw's daughters. Sam Shaw died in 1999, the Shaw sisters were appointed temporary administrators of his estate and Myron Beldock was appointed receiver of the photographs in his collection. The action settled in 2002, but not before lengthy proceedings took place before Justice Goodman and JHO Martin Evans, in which photographic images and documents were introduced as exhibits. The settlement of the action, *inter alia*, created the Shaw Family Archives, LTD. (SFA) to take possession and ownership of the disputed photographs. Larry Shaw received a 50% ownership in SFA, and each Shaw sister received a 25% ownership. Larry Shaw now is deceased, and his wife Susan Shaw has inherited his interest.

The instant action, commenced by Jeffrey Tunick, Larry Shaw's attorney, sought counsel fees pursuant to Judiciary Law §475 for his representation of Larry Shaw.<sup>1</sup> Mr. Greenawalt also sought fees from the Shaw sisters. Justice Goodman granted both attorneys liens on the "Collection" and ordered Greenawalt to return to SFA, all images and documents used as exhibits in the action. The Appellate Division, First Department, ruled that the charging liens attached to the SFA photographic collection and to insurance proceeds due SFA when photographs in possession of Mr. Beldock, the receiver, were damaged. 45 AD3d 145, *lv denied* 10 NY3d 930 (2008). It set the Tunick charging lien at \$557,505.77, remanded the Greenawalt matter for a hearing on his reasonable attorney fees and affirmed the order directing that exhibits in Greenawalt's possession be returned to SFA. On remand, Justice Goodman directed that the

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<sup>1</sup> A number of other attorneys for the Shaws had previously sought fees.

amount of the Greenawalt lien and any relevant discovery issues were to be determined by Special Referee Louis Crespo.

#### *Photographic Documents*

On July 14, 2008, counsel for SFA wrote Greenawalt asking that he comply with Justice Goodman's order directing him to return to SFA, the prints, negative, transparencies, posters and books in his possession and control. Nothing was returned.

#### *Proceedings Before Special Referee Crespo*

Once before the Special Referee, the Shaw sisters requested discovery. Greenawalt opposed any discovery, but argued that if discovery were to be granted, he should be given "the recent and present income of SFA, what is being done with the proceeds, and exactly where are all the parts of the Collection." July 29, 2008 Greenawalt aff. Special Referee Crespo granted some of the Shaw sisters' discovery requests; however, he did not address Greenawalt's request. Aug. 20, 2008 Crespo Order. Special Referee Crespo pointed to the summary nature of the proceeding, described the issue before him as "the reasonableness of Greenawalt's fees" and ruled:

[t]he only relevant proof to be weighed in determining reasonable counsel fees are: the difficulty of the questions involved; the skill required to handle the problem; the time and labor required, the lawyer's experience, ability and reputation; the customary fee charged by the Bar for similar services, and the amount involved.

*id.*

#### *Subpoenas*

The hearing before Special Referee Crespo was to take place on July 29, 2009. Mr. Aurnou, Greenawalt's attorney, issued a subpoena duces tecum, dated July 24, 2009, to Joseph

H. Adams Esq., an attorney for non-party Susan Shaw, Larry Shaw's widow. The subpoena directed Adams to testify and bring to court financial records of SFA and associated and related companies, including: federal and state tax returns, balance sheets, bank records and summaries showing assets and liabilities, income, expenses and distributions of assets and properties, from June 5, 2002 to the present; records of assignments and transfers of interest of assets, shares, distributions and tax forms of SFA, from June 5, 2002 to the present; and all corporate documents and documents evidencing monetary payments made by SFA to related entities, Shaw family members, lawyers, Martin Bressler,<sup>2</sup> Myron Beldock or any other third party, from June 5, 2002 to the present. Similar subpoenas duces tecum were issued to Mr. Breiter, SFA's former accountant, Carl Cronheim, CPA, and the Shaw sisters. Jeffrey Rubin, Esq., an attorney who previously had represented the Shaw sisters was subpoenaed to testify. Copies of the subpoenas were not served on the attorneys for the other side.

*Motion*

In his affirmation, David Marcus, Meta Shaw Stevens' attorney and the grandson of Edith Marcus, states that in response to the subpoena upon Adams, Adams had produced by facsimile to Mr. Aurnou's office, not to the court, SFA tax returns, license account statements and other confidential SFA documents. Moreover, Breiter, in response to the subpoena upon him, had produced to Mr. Aurnou, not to the court, 162 pages of documents, which included tax returns, SFA spread sheets, bank statements and W-2's for the Shaw sisters and Melisa Stevens, a non-party. Mr. Marcus avers that he learned of the Adams and Breiter subpoenas and the documents

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<sup>2</sup> Mr. Bressler is one of a number of attorneys who represented the Shaws in the litigation, and who is owed fees.

turned over, on July 30, when Mr. Aurnou sought to put Adams on the stand and use his testimony and the subpoenaed documents to demonstrate that the Shaw sisters “defrauded Susan Shaw,” Larry Shaw’s widow. Marcus aff., p. 14-15. Mr. Marcus further avers that on July 30, 2009, during settlement negotiations, Mr. Aurnou used information gleaned from the financial documents subpoenaed, to threaten the Shaw sisters with claims for fraud and improper financial dealings. *Id.* at 14.

On August 10, 2009, counsel for the Shaw sisters wrote Mr. Aurnou, requesting that he withdraw the subpoenas. The letter stated that the subpoenas violated CPLR §§408, 2301, 3120 and 3101(a)(4) and were improperly used as a discovery device. Mr. Aurnou agreed to withdraw the third-party subpoenas issued to Breiter, Adams and Cronheim, but refused to withdraw the subpoenas duces tecum served upon the Shaw sisters.

#### *August 18, 2009 Hearing*

By order of this court at the August 18, 2009 hearing, movants’ application for the return of the subpoenaed documents to the parties from whom they were obtained, was granted. The court ordered that no copies were to be retained by Aurnou or Greenawalt. The court further ruled that Special Referee Crespo, who was conducting the hearing, was to rule on whether any information obtained from the documents could be used at the hearing and whether Mr. Ruben’s testimony would stand. Aurnou and Greenawalt, then, were given time to answer the sanction and contempt motions, and the remainder of the motion was adjourned for a hearing.

#### *Greenawalt and Aurnou Responses*

Greenawalt submitted an affidavit opposing contempt and sanctions. He began by averring that in 2005, Mr. Tunick had imposed a charging lien on the 114 photographs in

Greenawalt's possession and photographs loaned to him by three trial witnesses. He annexes letters he had written to Justice Goodman and Mr. Marcus asking for clarification regarding what do about the lien. He further avers that on or before December 9, 2002, the Shaw sisters and Charles Marcus had removed prints, negatives, transparencies, posters and books from his office. Greenawalt aff. para. 2. He states that he has not possessed any prints, negatives, transparencies, posters or books since December 9, 2002, other than the 114 photographs and the trial witness's images he had mentioned.

Greenawalt annexes a January 4, 2005 letter to Myron Beldock (the receiver), copied to the other attorneys – the Tunick firm, Martin Bressler, Saul Rudes and David Marcus, in which he referred to the 114 photographs, which had been collateral in Mr. Bressler's counsel fees claim against the Shaws. The letter also made reference to the fact that the Shaw sisters, on December 9, 2002, took "all the photographs, transparencies, negatives, contact sheets and prints which were then in his office," except for the Bressler prints. A handwritten receipt sheet, allegedly signed by the Shaw sisters, was annexed. In addition, the letter referred to "a 171-page red loose-leaf binder" of photographs taken by Jessica Burstein and belonging to her which Greenawalt wished to return to Ms. Burstein.

Greenawalt further avers that his partner J. Edward Meyer, who had previously represented the Shaw sisters, had notified him by memo that some Shaw files were missing and assumed to be taken by Charles Marcus<sup>3</sup> and the Shaw sisters, who had gone through his files several times. The May 31, 2000 memo is annexed. The memo spoke to "specific images"

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<sup>3</sup> Although no one identifies Charles Marcus, the court assumes he is Edith Shaw Marcus' husband and David Marcus' father.

shipped by "Receiver to Edie." Greenawalt further annexes a June 29, 2000 letter from Mr. Meyer to the Tunick firm which addressed "about half a dozen 'pizza boxes' in my office containing images" which he was going to ship to Edie or put in home storage.

The settlement of the Bressler matter was annexed. Bressler was to be paid by SFA, over time, from 40% of SFA's net income. The 114 photographs were to be held by Greenawalt as collateral. The monies have not been paid, and the Tunick firm, who had a charging lien, objected to the transfer of the 114 photographs from Greenawalt's possession to Bressler. Mr. Marcus and the Shaw sisters were aware of these claims. Furthermore, the Tunick firm claimed a lien on photographs in Greenawalt's possession shot by or belonging to third parties Burstein, Maureen Lambray and Sophie Kahn. Greenawalt ends his affidavit by stating that he has items in his possession that do not belong to the Shaws or SFA and are not of any commercial value, that he does not possess photographic material other than the 114 photographs and the third party images and that he never wilfully disobeyed a court order.

An affirmation was submitted by Mr. Aurnou. He admits that he did not give notice to the other side regarding the subpoenas and that the other side learned of the subpoenas during the hearing. Aurnou aff. p. 4-5. However, he avers that no documents were obtained from Cronheim or the Shaw sisters, that none of the documents received by him were introduced as evidence at the hearing or used and that the subpoenas issued to Breiter, Cronheim and Adams were voluntarily withdrawn. He argues that the "amount" of the case -- the Shaw photographs and their appreciation -- was relevant to the fee hearing and that the subpoenas were, consequently, relevant and issued in good faith. *See Matter of Freeman*, 34 NY2d 1, 9 (1974)(some of factors to consider in fixation of lawyers' fees are amount involved, benefit

resulting to client and results obtained); accord *Matter of Thompson*, 2009 NY Slip Op 7855, p. 2 (2d Dept 2009); *Bankers Fed. Sav. Bank FSB v Off W. Broadway Developers*, 224 AD2d 376, 377 (1st Dept 1996). Moreover, he contends, Tunick's and Greenawalt's fees were to be paid out of SFA profits, which the Shaw sisters were looting, thus making the Shaw sisters' conduct relevant (*Id.* at 12-13,16). In addition, he avers that Adams supplied Greenawalt with SFA documents in August 2008, long before the subpoena to Adams was issued and that the other side know of this. Apparently, since Larry Shaw's death, there has been much discord between the Shaw sisters and Larry's widow, Susan, and Susan claims that she has been frozen out of SFA. Mr. Aurnou argues that Adams "had the right, on behalf of his client, to disclose his SFA correspondence and the documents in his possession as he thought best in [Susan Shaw's] interests." *Id.* p. 14. Mr. Aurnou contends that he wished to present Adams' testimony as to the Shaw "sisters' unauthorized usurption of SFA and misappropriation of its profits," facts of which counsel for the other side were cognizant and which were relevant to the fee dispute.

In support of his affirmation, Aurnou submits a number of documents, among which are a December 4, 2008 decision by Judge McMahon, *Shaw Family Archives, Ltd, Edith Marcus & Meta Stevens v CMG Worldwide, Inc., & Marilyn Monroe, LLC*, 05 Civ. 3939 (SDNY 2008), in *inter alia*, a copyright infringement case; letters from Adams to SFA and counsel for the Shaw sisters and responses thereto; and letters to Greenawalt from Adams.

In her decision, Judge McMahon addressed Mr. Marcus' request for attorney's fees. She noted that Mr. Marcus, who represented plaintiffs, owns 7.5% of SFA (at p.6), that he used his cousin Melissa Shaw, another shareholder of SFA, as a paralegal, (*id.*), that he brought Mr. Serbagi in to help him with the case (p. 8), and that Mr. Marcus and Ms. Stevens "viewed [the]

lawsuit as an opportunity to enrich themselves” (*id.*). She further found that Mr. Serbagi’s fees were inflated, that the fees charged SFA by Mr. Marcus were double his customary fee (p. 9) and that Mr. Marcus overbilled hours and expenses (pp. 10-11).

The February 23, 2009 letter of Adams to SFA complained of threatening letters to Susan Shaw from Ms. Stevens, an SFA Board allegedly controlled by the Shaw sisters, failure to elect officers for SFA and the alleged taking of all money earned by SFA by the Shaw sisters and their families, including “enormous fees to David Marcus” in the Federal litigation mentioned above. He spoke to the failure of SFA to set up a “reserve fund” to pay all of the attorney liens which grew out of the Shaw case and stated “that the current ‘management’ of SFA is engaged systematically in bad faith attempts to impede, hinder and delay the enforcement of the attorney’s [sic] liens on the SFA archive.” p. 2. He also accused the Shaw sisters of attempting to defraud the SFA creditors by claiming they own the copyrights to the SFA photographs. p. 3. Adams asked for an inventory of the SFA collection and access to the collection and financial papers, requests he said had repeatedly been denied. p. 4.

An August 8, 2008 note from Adams to Greenawalt indicated documents were being sent to Greenawalt. In that FAX, Adams wrote: “Enclosed are documents that I think you are entitled to see on a background basis. In multiple ways, I think that your former clients [the Shaw sisters] are attempting to structure legal rights in such a way as to violate the Debtor/Creditor laws against fraudulent conveyances, and I object to it.” An August 11, 2008 note to Greenawalt from Adams stated:

I do not really claim an interest in the determination of the absolute amount of your fees on the fee lien, but I do take the position, as will any board or any receiver appointed re to take control of SFA’s affairs, that the corporation must have an

orderly plan to pay the outstanding attorney's liens. It may interest you that Adelman denied emphatically in a letter to me that he appeared for Edie and Meta [the Shaw sisters] in the lien case, so that discovery demand you sent me appeared quite helpful.

It is my hope that once some rational controls are imposed on SFA's management, we will be able to work out a reasonable plan to get your firm and Mr. Marino and Mr. Tunick paid their legal fees.

He continued by assuring Greenawalt that he wanted to help insure that SFA pays its debts and asked that Greenawalt keep him apprised of the lien proceedings.

Mr. Marcus submits an affirmation in reply re-asking for sanctions and contempt. He calls the allegations against the "Shaw Family" false. Although he is part of that family and a subject of many of the allegations, he neither specifically refutes the allegations nor submits an affidavit, rather than an affirmation. Affidavits of the Shaw sisters, Melissa Stevens and Charles Marcus are annexed.

Edith Shaw Marcus alleges that Greenawalt is in possession of her "personal property" and property belonging to Sophie Kahn and Jessica Burstein. No affidavit of either Ms. Kahn or Ms. Burstein is submitted. She recounts that Sam Shaw, her father, commenced the lawsuit against her brother Larry and that he was originally represented by three different firms, before his representation by Mr. Meyer. She states that "the lawyers obtained from Sam Shaw and myself hundreds of" items "bearing [Sam]'s images to be used as evidence in the case. Edith aff., p. 2. She claims the evidence remained "in the possession, custody and control of Sam Shaw's attorneys at all times."

Edith continues by explaining that after her father's death in 1999, the Shaw sisters obtained the rights to their father's collection and Mr. Meyer continued as counsel for the Estate. Greenawalt took over representation in May of 2000 She claims the photographic evidence was

transferred from firm to firm, that the photographic evidence came from the receiver or Edith's home and that Greenawalt kept a list of the items. She further claims that after the case settled, Greenawalt told her he wished to keep all of the items for settlement purposes. She admits that she and her sister removed a number of items from Greenawalt's office on December 9, 2002 but claims many remain there, including photographs belonging to Sophie Kahn and Jessica Burstein. She contends that the photographs obtained from Maureen Lambray belonged to Sam Shaw. Although she does not directly contradict the Meyer allegation that she, her sister and Charles Marcus took items from Meyer's office, she states that they "never moved any of the trial exhibits, photographs, prints, negatives, transparencies from Mr. Meyer's office while the case was proceeding." She admits that they removed photographic images from the office after the case was over and that they then signed the inventory sheet submitted by Greenawalt. *Id.* at para. 9.

Melissa Stevens avers that she is the Operations Manager of SFA. She repeats an alleged conversation she overheard between Greenawalt and Mr. Marino (the attorney from the Tunick firm), states that SFA has incurred expenses due to the subpoenas and this motion, and without stating any basis for her knowledge, alleges that Greenawalt has items belonging to the SFA collection.

Meta Shaw Stevens generally alleges that Greenawalt is in possession of her "personal property" and property belonging to Sophie Kahn and Jessica Burstein. No affidavit from Ms. Kahn, Ms. Burstein or Ms. Lambray is submitted, but an affidavit from Ms. Kahn's daughter was produced at argument. In that affidavit, Ms. Kahn states that her mother is ill and asks for the return of her mother's photographs through the Shaw sisters.

Charles Marcus avers that he never removed "a single photograph, negative or transparency from Mr. Meyer's office."

*October 8, 2009 Hearing*

At the October hearing, Mr. Aurnou produced a transcript which demonstrated that the Shaws and SFA were made aware of the subpoenas duces tecum on the first day of the July 29 hearing and given copies for them. He repeated that Adams had turned over the subject documents prior to issuance of the subpoena to him and that the Shaws knew of this.

Mr. Greenawalt addressed the photographs in his possession, identifying them as the 114 photographs which were collateral for the fees owed Mr. Bressler and the images belonging to the third-parties; Mr. Bressler was not paid and died in 2007. He explained that the Tunick firm had a lien on all of these photographs and that due to the dissension between Susan Shaw and the other Shaws, he feared suit from her were he to return the photographs. He also stated that the Shaw sisters and Charles Marcus took all else they wanted from his office and that they now are claiming other items that they previously did not want.

Mr. Marcus, on behalf of the Shaw sisters, claimed ownership interest in some of the Burstein photographs and in the Lambray photographs.

At the close of the hearing, the court ordered: the 114 photographs be turned over to the Shaws; the Kahn photographs be returned to her; and the Burstein photographs which were not in dispute, be returned to Ms. Burstein. In addition, the court ordered that Ms. Burstein's counsel be given notice regarding the disputed Burstein photographs. Greenawalt was directed to turn over to the Shaws a list of all items in his possession.

*Decision*

A subpoena may be used to compel an individual to testify; a subpoena duces tecum, on the other hand, is used to order production of documents. CPLR §2301. Specifically, a subpoena duces tecum is used to compel the production of relevant and material documents in a pending judicial proceeding. *In re State Police Admin. Disciplinary Hearing on April 27, 2004*, 13 AD3d 884, 885 (3d Dept 2004). A trial subpoena duces tecum must state on its face that it is to be produced to court with a copy of the subpoena. CPLR §2301. Furthermore, a copy of a subpoena duces tecum must be served on all parties who have appeared in the litigation, so that the other parties receive copies before the documents are produced. CPLR §2303(a).

22 NYCRR 130-1.1 authorizes a court, in its discretion, to impose sanctions upon an attorney or litigant for frivolous and harassing conduct. *Matter of Ernestine R. v John R.*, 2009 NY Slip Op 3179, 2 (2d Dept). Thus, litigation conduct which is without legal merit or undertaken to delay, harass or injure another party is sanctionable. *Id.* In making a sanctions determination, “the court must consider ‘the circumstances under which the conduct took place,’ and ‘whether or not the conduct was continued when its lack of legal or factual basis was apparent [or] should have been apparent.’” [citations omitted]. *Id.*

Here, Special Referee Crespo was tasked with conducting a hearing as to reasonable attorney fees and discovery at issue. He ruled that the hearing was summary and delimited discovery to a few particular issues. One of the issues he cited as important was “the amount involved” in the underlying case. Although Mr. Aurnou did not press for financial discovery from the other side, he subpoenaed such discovery in both testimonial and documentary form. In doing so, he did not delineate the trial subpoenas as *ad testificandum*, but demarcated them as *duces tecum*. Although the subpoenas rightly asked that the documents be produced to the court, in at

least one instance, the documents were produced to him. Moreover, no notice of the subpoenas was given to the other side. Mr. Aurnou's actions, thus, contravened CPLR §§ 2301 and 2303(a).

After hearing from the parties and reviewing the papers submitted, it is clear to the court that Mr. Aurnou did not intentionally violate any direction from Special Referee Crespo. Nor was his conduct intentionally surreptitious. Notice and copies of the subpoenas and documents were turned over to opposing counsel at the start of the hearing, and the third party subpoenas were withdrawn shortly thereafter. Clearly, Mr. Marcus knew of the subpoenas served on his mother and aunt. Moreover, many of the documents received were already in Mr. Aurnou's possession, having been given to him by Adams. The Shaw family was aware of this, yet failed to present this important fact to the court. The court does not believe that the circumstances of this case militate in favor of sanctioning Mr. Aurnou or Mr. Greenawalt. *See Glenn v Annunziata*, 53 AD3d 565, 566 (2d Dep't 2008)(court must consider circumstances under which conduct took place). Given the lack of intent on Mr. Aurnou's part, the rancor of this case, the many disputed issues, the complexity that is engendered by the litigiousness of the parties, the ill will of the litigants and their counsel and the fees owed to the multiple attorneys sucked into this fifteen year-old litigation, the court denies the request for sanctions.<sup>4</sup>

Nor is the court granting a contempt order. Although Greenawalt was and may still be in possession of the 114 photographs and the images allegedly belonging to Kahn, Burstein and Lambray, it is not apparent who the rightful owners of these items are. Greenawalt was holding the 114 photographs as collateral for fees owed Mr. Bressler, which were to be paid by SFA.

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<sup>4</sup> The court finds that Mr. Marcus and his co-counsel have been less than candid with the court. If the court were to entertain a sanctions, they too might be the target. 22 NYCRR §130-1.1.

Those fees were never paid. Moreover, the Tunick firm placed a lien on these very same photographs. Greenawalt, as escrow agent may well have been justified in retaining the photographs. The 114 photographs, although returned to SFA as ordered by Justice Goodman, should not be transferred and any profits obtained from them should be kept in a separate account by counsel for the defendants.

As to the photographs of Ms. Kahn and Ms. Burstein, again, it is not clear whether the Tunick lien applied to them. Indeed, at the October hearing, Mr. Marcus claimed that the Shaw sisters had an interest in some of the Burstein images. He also claimed they owned the Lambray images.<sup>5</sup> The Kahn photographs and the photographs of Burstein which were not disputed, have been returned. The rightful owners of the remaining Burstein photographs and the Lambray photographs still must be ascertained.

Similarly, unclear is what if anything belonging to SFA remains in Greenawalt's possession and what if anything that is claimed missing is in Edith Shaw Marcus' possession. Accordingly, it is

ORDERED that the parties are to appear on January 14, 20010, at 11:30 in the forenoon, in Part 54, 60 Centre Street, New York, N.Y., for a hearing as to the ownership of: the 114 photographs, the remaining Burstein photographs, the Lambray photographs and whatever items remain in Greenawalt's possession; and it is further

ORDERED that defendants' counsel send notice to the Bressler Estate, the Tunick firm, Susan Shaw, Ms. Burstein and Ms. Lambray of the hearing and provide each with a copy of this

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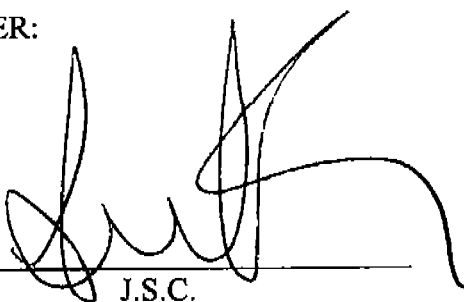
<sup>5</sup> Interestingly, Mr. Marcus argues that his aunt and mother, not SFA, have an interest in these photographs, yet the order directs the photographs belonging to Sam Shaw be turned over to SFA.

decision/order; and it is further

ORDERED that defendants' counsel are to serve a copy of this decision/order upon Special Referee Crespo, who is to direct discovery of any documents necessary to prove the amount involved in the underlying case and the benefit which resulted to Sam Shaw and his Estate from Greenawalt's representation.

Dated: December 3, 2009

ENTER:



J.S.C.

**FILED**  
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