

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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NICHOLAS SANDS et al,

Plaintiffs,

07 Civ. 9824

-against-

OPINION

LEONARD BERNSTEIN & JANE HOLMES BERNSTEIN,

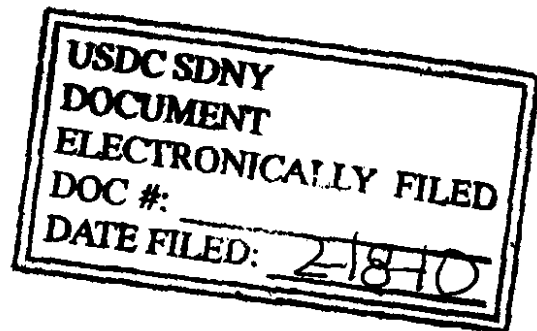
Defendants.

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A P P E A R A N C E S:

Attorney for Plaintiff

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Attorney for Defendant

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**Sweet, D.J.**

Defendants have moved to quash the subpoena of Susan Forester issued by Plaintiff. Forester was an art appraiser who appraised Andy Warhol's "Martinson Coffee" ("Martinson") for Defendants, which they eventually auctioned off through Sotheby's. In light of her involvement with the instant dispute, the relevant material which Forester could provide would be limited to her knowledge, if any, about the sale of Martinson and the Defendants' arrangement with Sotheby's in connection with that sale.

However, under Rule 45, Fed. R. Civ. P., this Court lacks jurisdiction to decide the instant motion. That rule provides that a motion to quash "is to be granted by 'the issuing court'" rather than the court in which the case is pending, if the two are different. Moore's Fed. Practice § 45.50[4]. The District Court for the District of Massachusetts has issued the subpoena the Defendants seek to quash and Defendants must therefore move for quashal in that court, not this one.

The motion is denied. It is so ordered.

New York, NY  
February 16, 2010

  
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ROBERT W. SWEET  
U.S.D.J.