



Lensman's Estate Wins Battle Over Monroe Images

BY TOM PERROTTA

A FEDERAL JUDGE in Manhattan has sided with the family of late photographer Sam Shaw in a dispute over the rights to images of Marilyn Monroe.

Southern District Judge Colleen McMahon rejected a claim that the estate of Mr. Shaw had violated Ms. Monroe's right of publicity by selling photos without the consent of Marilyn Monroe LLC, a company founded by the Hollywood icon's heirs.

The judge, writing in *Shaw Family Archives Ltd. v. CMG Worldwide, Inc.*, 05-CV-3939, said the laws of New York, California and



Judge McMahon

Indiana, which were at the heart of the dispute, did not grant a retroactive right of publicity to Ms. Monroe after her death.

"Ms. Monroe could not devise by will a property right she did not own at the time of her death in 1962," the judge wrote.

The ruling is the first of its kind involving the image of the legendary sex symbol. The attorneys who represent the Shaw estate, David M. Marcus and Christopher Serbagi, said "tens of millions" of dollars are at stake because of the ruling. They will pursue counterclaims against Ms. Monroe's heirs for interfering with licensing relationships.

Orin Snyder of Gibson, Dunn & Crutcher, which represents Marilyn Monroe LLC and its licensing company, CMG Worldwide, said his clients were considering an appeal.

Mr. Shaw, who died in 1999, took some of the most famous pictures of Ms. Monroe, including several of her standing over a subway grate for the 1955 film "The Seven Year Itch."

Ms. Monroe's will left most of her estate to Lee Strasberg, the acclaimed director and producer, and a teacher of Ms. Monroe's. Mr. Strasberg in turn made his wife, Anna, the sole beneficiary of his will.

At the time of Ms. Monroe's death she was either a resident of New York or California, neither of which recognized descendible postmortem publicity rights at the time.

But Ms. Strasberg's licensing company alleged that a subsequent California statute granting a postmortem right of publicity, passed in 1984, applied to Ms. Monroe.

The company also contended that a T-shirt sold at a Target in Indiana last year violated Indiana's Right of Publicity Act, which was passed in 1994. The law creates a descendible and freely transferable right of publicity for 100 years after death. The statute claims to apply to any act or event that occurs in the state, regardless of a person's domicile.

Judge McMahon rejected these claims in an 18-page opinion issued Wednesday. She said it was impossible for Ms. Monroe's will to recognize future rights that did not exist at the time of her death and pass them along to her heirs.

"At the time of her death in 1962 Ms. Monroe did not have any postmortem right of publicity under the law of any relevant state," Judge McMahon wrote. "As a result, any publicity rights she enjoyed during her lifetime were extinguished at her death by operation of law."

The judge did not accept the claim that language of Ms. Monroe's will, which cited all property "to which [she] shall be in any way entitled," could apply to publicity rights created 22 years later.

"In the absence of any other evidence concerning Ms. Monroe's intent, this boilerplate language is much too slender a reed on which to hang a devise of postmortem publicity rights that did not come into being until 22 years after her death," the judge wrote.

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NEWSCOM/AFP/SAM SHAW

An undated photograph by Sam Shaw of Marilyn Monroe in Central Park

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