

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

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	:
MARTHA G. FOSTER and MATTHEW FOSTER,	: Index No. _____
Individually and on Behalf of Their Minor Children	:
DELANEY FOSTER and JAMES FOSTER,	:
	: <b>VERIFIED</b>
Plaintiffs,	: <b><u>COMPLAINT</u></b>
	:
- against -	:
	:
ARNE SVENSON,	:
	:
Defendant.	:
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Plaintiffs Martha G. Foster and Matthew Foster (“plaintiffs” or the “Fosters”), individually and on behalf of their minor children Delaney Foster (age 4) and James Foster (age 2), by their attorneys Menaker & Herrmann LLP, for their verified complaint against defendant Arne Svenson (“defendant” or “Svenson”) allege as follows:

1. The Fosters and their children are individuals residing at 475 Greenwich Street, New York, New York 10013.
2. Upon information and belief, defendant Arne Svenson is an individual residing at 125 Watts Street, Apt. 2, New York, New York 10013.
3. Plaintiffs’ apartment is on the fourth floor in an apartment building in downtown Manhattan.

4. Upon information and belief, defendant's studio and apartment is located on the second floor in an apartment building across the street from plaintiffs' apartment building.

5. On or about April 29, 2013, plaintiffs learned that an article had appeared in the *Tribeca Citizen*, a weekly news journal covering their neighborhood, which included a photograph of plaintiff Martha Foster holding her daughter Delaney inside their apartment. Upon information and belief, defendant had taken that photograph with a telephoto lens attached to a camera through the window of plaintiffs' apartment and had intended to feature it in his May 9, 2013, exhibition at a Manhattan gallery.

6. Upon information and belief, defendant began surreptitiously photographing plaintiffs and other residents of their apartment building in 2012. Defendant used a camera with a telephoto lens to view inside plaintiffs' apartment and photograph them continuously for over a year. Upon information and belief, defendant may have taken thousands of such unauthorized photographs of plaintiffs and others residing in plaintiffs' building.

7. Defendant photographed plaintiffs and their children without their knowledge or consent. Had Svenson sought plaintiffs' consent, plaintiffs would have refused.

8. Plaintiffs were deeply distressed by the photographs and by the information contained in the *Tribeca Citizen* article. The article made it clear which building plaintiffs live in and the children's faces were clearly recognizable in the photographs. Plaintiffs' children are part of a handful of children residing in this building

and could well be recognized in the neighborhood as the subjects of the photographs even if their faces weren't clearly shown. Plaintiffs were extremely concerned that this unwanted publicity could attract the attention of undesirable and potentially dangerous people to Delaney and James, thereby compromising their safety and security.

9. Plaintiffs were also greatly frightened and angered by defendant's utter disregard for their privacy and the privacy of their children. Plaintiffs now fear that they must keep their shades drawn at all hours of the day in order to avoid telephoto photography by a neighbor who happens to be a professional photographer.

10. By reading the article in the *Tribeca Citizen*, plaintiffs learned that defendant was promoting a commercial venture. The pictures of plaintiffs' children were part of a group of photographs Svenson had labeled "The Neighbors." They would be put up for sale at an exhibition scheduled to open at a Manhattan gallery on May 9, 2013.

11. Through further review of the Internet, plaintiffs learned that "The Neighbors" had previously been presented for sale at a Los Angeles gallery exhibition from January 12, 2013, through February 9, 2013, and the photographs were also being offered at an online site called ArtSy, where the images of plaintiffs' children could be purchased for the price of \$5,000-\$7,500 each. Upon information and belief, Svenson intends to sell five prints of "Neighbors #6" and "Neighbors #12" for a total of \$50,000-\$75,000.

12. Neighbors #6 shows Martha Foster holding her son James, with her daughter Delaney standing beside her. Delaney is wearing a bathing suit and James is wearing a diaper.

13. Neighbors #12 shows Martha Foster holding Delaney in her arms. Delaney is wearing a bathing suit.

14. Plaintiffs reviewed defendant's own website on or about May 1, 2013, and found extensive promotion of "The Neighbors," including Neighbors #6 and Neighbors #12. In Svenson's own description of the project, he acknowledged his failure to obtain consent and stated his disregard the privacy of his neighbors: "For my subjects there is no question of privacy...The neighbors don't know they are being photographed; I carefully shoot from the shadows of my home into theirs. I am not unlike the birder, quietly waiting or hours, watching for the flutter of a hand or the movement of a curtain as an indication that there is life within."

15. On or about May 1, 2013, plaintiffs found Neighbors #6 and Neighbors #12 published and offered for sale on at least five websites – the electronic version of the *Tribeca Citizen*, the ArtSy sales site, the websites of the Los Angeles and Manhattan galleries, and Svenson's own website. Moreover, the Manhattan gallery was scheduled to open for display of the prints in hard copy on May 9, 2013.

16. Greatly concerned for the safety and security of her children, plaintiff Martha Foster contacted Svenson on or about May 2, 2013, to express her concerns and attempted to resolve the situation amicably. Defendant was unwilling to completely stop selling and displaying images of plaintiffs' children.

17. On or about May 3, 2013, plaintiffs retained the firm of Menaker & Herrmann LLP, which sent cease and desist letters to both Svenson and the Manhattan gallery. The gallery responded promptly and agreed not to sell or display the photographs

of plaintiffs' children in its exhibition. Svenson responded through counsel on or about May 6, 2013, defending his artistic choices and perceived right to take, publish, and sell the photographs, but nevertheless agreed to remove Neighbors #6 and Neighbors #12 from his website and stated that he would direct the Manhattan gallery to do the same.

18. Upon information and belief, following the May 6, 2013 letter from Svenson's attorney, the online picture sale site, ArtSy, ceased its display of Neighbors #6 and Neighbors #12 and appeared not to be selling the photographs any longer. The Los Angeles gallery also no longer showed individual images of #6 and #12. Plaintiffs believed that defendant had decided to respect their concerns and mitigate the harm to their children.

19. However, on or about May 16, 2013, CBS-New York broadcast a video segment on "The Neighbors" and displayed Neighbors #12 during the broadcast. Upon information and belief, the video remains available on CBS-New York's website along with an accompanying article containing the exact address of plaintiffs' building.

20. On or about May 17, 2013, the Today Show broadcast a similar story on national television and displayed Neighbors #12. Upon information and belief, the video remains available on the Today Show's website as well as the websites for other NBC affiliates, although Delaney's face has now been blurred (although it was not blurred during the broadcast).

21. Svenson's "The Neighbors" and the public reaction to his method of photography have received extensive and increasing national and international coverage, including television broadcasts on major networks such as NBC, CBS, and ABC, and

articles on major news websites such as the Washington Post, the Los Angeles Times, the New York Post, and the Huffington Post. These videos and articles include photographs that clearly picture plaintiffs' apartment building and many provide its address. Neighbors #12 continues to be displayed on a Facebook web page attributed to Svenson.

22. Plaintiffs have been dismayed and deeply emotionally upset by defendant's continued use of photographs of their children to advertise and promote "The Neighbors" despite their clear objection and stated concern for the safety and security of their children.

**AS AND FOR A FIRST CAUSE OF ACTION  
(Violation of New York Civil Rights Law §§ 50 and 51)**

23. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 22 as if fully set forth at length herein.

24. As described above, defendant used a camera with a telephoto lens to photograph plaintiffs and their minor children through the windows of their Tribeca apartment without their consent.

25. Defendant offered two of these photographs, Neighbors #6 and Neighbors #12, for purposes of trade and sale online through artsy.net, his own website, and the websites of certain Los Angeles and Manhattan galleries. Svenson intended to sell sets of five prints of each photograph at the price of \$5,000 - \$7,500 per photograph, depending on the size, for a total of \$50,000-\$75,000 per edition.

26. In addition to selling images of plaintiffs' children, defendant used Neighbors #6 and #12 to advertise and promote his exhibition of "The Neighbors" in New York.

27. Defendant did not seek or receive plaintiffs' written consent to sell their images.

28. Once plaintiffs learned of the photographs, they objected in writing to all photography of their family and all sale and publication of their images.

29. Despite the Fosters' demand that Svenson cease and desist from all sale and display of their images, Svenson has continued to use Neighbors #12 for promotional purposes, including publication on major news networks and websites covering his exhibition of "The Neighbors." Both Neighbors #6 and Neighbors #12 continue to appear in promotional materials for Svenson's Manhattan exhibition of "The Neighbors," and defendant continues to display Neighbors #12 on his Facebook page.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**(Intentional Infliction of Emotional Distress)**

30. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 22 as if fully set forth at length herein.

31. For over a year, defendant hid in the shadows of his apartment and used a camera with a telephoto lens to zoom in on plaintiffs and to surreptitiously photograph them inside their homes. He did not attempt to obtain the consent of plaintiffs, who did not know that they were being watched or photographed. Defendant photographed children in bathing suits and underwear and then sold their images for

personal profit and exhibited them to a national audience for self-promotion over their parents' strong objection.

32. Defendant's telephoto photography of plaintiffs within the confines of their apartment exhibited his complete disregard for their privacy in the seclusion and solitude of their homes.

33. As of May 6, 2013, defendant was fully aware of the distress his intrusive photographs had caused to the Foster parents, and he indicated he would take appropriate steps to cure. As it turns out, he simply used other means to continue to disseminate at least one of the images (#12) to promote and advertise his overall sale of "The Neighbors" group of photographs.

34. The above described conduct of defendant so shocks the conscience and is so out of keeping with the standards of morality in the community as to evince an intentional or reckless disregard of its likelihood to cause severe emotional distress to the Fosters.

35. Defendant's intentional, reckless and grossly improper acts are continuing, have proximately resulted in, and will proximately result in, irreparable emotional injury to plaintiffs.

36. Neither the relief requested herein, nor any similar relief, has previously been sought by plaintiffs against defendant.

**WHEREFORE**, plaintiffs demand judgment,

(a) granting a preliminary injunction and a temporary restraining order pursuant to CPLR §§ 6301, 6311 and 6313 that directs defendant (i) to cease and desist

forthwith from all further dissemination and display in any medium whatsoever photographs Neighbors # 6 and Neighbors # 12 and any other image of the Foster minor children, (ii) to remove totally from his possession, custody and control and to immediately put into the Court's possession pending determination of the action all photographs and images, including all those that are stored in any electronic form on his various computing and storage devices, of the Foster minor children that he has taken during the period that he has been photographing through their apartment windows, and (iii) to take all reasonable efforts to remove from current dissemination, display or sale in any and all media including but not limited to electronic media, print media and broadcast media, all such photographs and images of the Foster minor children

(b) a permanent injunction barring defendant from further photographic intrusions into plaintiffs' home and requiring divestiture of remaining images of plaintiffs in defendant's possession, custody and control,

(c) actual and exemplary damages for defendant's wrongful acts in an amount to be determined at trial,

(d) an award of plaintiffs' costs and expenses (including plaintiffs' reasonable attorneys' fees) incurred in enforcing their rights, and

(e) such other and further relief as to the Court may seem just and proper.

Dated: New York, New York  
May 20, 2013

MENAKER & HERRMANN LLP

By:   
Richard G. Menaker

Attorneys for plaintiffs  
10 East 40<sup>th</sup> Street  
New York, NY 10016  
(212) 545-1900

VERIFICATION

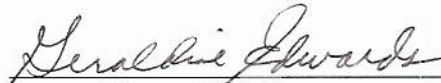
STATE OF NEW YORK            )  
  )  
COUNTY OF NEW YORK        )       ss.:

Martha G. Foster, being duly sworn, deposes and says that she has read the foregoing Verified Complaint and knows the contents thereof; and that the same is true of her own knowledge, except as to those matters therein stated to be on information and belief, and that as to those matters she believes it to be true.

  
\_\_\_\_\_  
Martha G. Foster

Subscribed and sworn to before me

this 2<sup>nd</sup> day of May, 2013

  
\_\_\_\_\_  
Notary Public

