UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

SCHUMACHER HOMES OF LOUISIANA, INC., et al., Plaintiffs	*	**CIVIL ACTION NO. 2:16-cv-00423**
	*	**JUDGE MINALDI**
v.	*	
R.E. WASHINGTON CONSTRUCTION LLC, et al., Defendants	*	**MAGISTRATE JUDGE KAY**

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MEMORANDUM RULING

Before the court is a Motion to Dismiss Plaintiffs' Claims (Rec. Doc. 14) filed by defendants Angel and Michael Carroll (the Carrolls), an Opposition to the Motion to Dismiss Plaintiffs' Claims (Rec. Doc. 22) filed by plaintiffs Schumacher Homes of Louisiana, Inc. and Schumacher Homes Operations, Inc. (collectively Schumacher), and a Reply (Rec. Doc. 23) filed by the Carrolls. Also before the court is a Motion to Dismiss Cross-Claims (Rec. Doc. 15) filed by the Carrolls, an opposition to the Motion to Dismiss Cross-Claims (Rec. Doc. 19) by R.E. Washington Construction, LLC and Roy Washington (collectively Washington), and a reply (Rec. Doc. 20) filed by the Carrolls. For the following reasons, the Carroll's Motion to Dismiss Plaintiffs' Claims (Rec. Doc. 14) will be **DENIED** in part and **GRANTED** in part. And the Carrolls' Motion to Dismiss Cross-Claims (Rec. Doc. 15) will be **DENIED** in part and **GRANTED** in part.

FACTS & PROCEDURAL HISTORY[1]

In 2012, the Carrolls visited a Schumacher showroom, and shortly after, Schumacher prepared a custom home plan for the Carrolls, the Highpoint Custom Design. The Highpoint Custom Design is based on two registered copyrights owned by Schumacher: the "Homestead

[1] All facts are based on the plaintiffs' complaint (Rec. Doc. 1) unless otherwise noted.

1/99" architectural work and the "Homestead House Plan" technical drawings copyrights. Schumacher provided the Carrolls access to the Highpoint Custom Design, and the Carrolls then gave the custom-made plans to Washington and an unknown draftsperson. Washington maintains that it was unaware that the plans were inspired by or created by Schumacher.[2] The defendants used Schumacher's plans to design and construct a home that is substantially similar to the Highpoint Custom Design and the two registered copyrights. In March 2016, Schumacher filed suit against the Carrolls, Washington, and an unknown draftsperson, alleging five main claims: copyright infringement of an architectural work, copyright infringement of technical drawings, unfair competition under 15 U.S.C. § 1125, conversion under Louisiana state law, and unjust enrichment under Louisiana state law.[3] Washington filed an answer which included a cross-claim against the Carrolls, seeking indemnity for any liability it might incur.

The Carrolls filed a Motion to Dismiss all claims alleged against them by Schumacher (Rec. Doc. 14) and a Motion to Dismiss Cross-Claims alleged against them by Washington (Rec. Doc. 15) regarding indemnity for the copyright infringement claims, the conversion claim, and the unjust enrichment claim.

LAW & ANALYSIS

An action can be dismissed under Rule 12(b)(6) of the Federal Rules of Civil Procedure if the claimant fails "to state a claim upon which relief can be granted." Motions to dismiss are generally "viewed with disfavor and [should be] rarely granted." *Harrington v. State Farm Fire & Cas. Co.*, 563 F.3d 141, 147 (5th Cir. 2009) (quoting *Gregson v. Zurich Am. Ins. Co.*, 322 F.3d 883, 885 (5th Cir. 2003)). "[The] Court construes the [claims] liberally in favor of the [claimant], and takes all facts pleaded … as true." *Id.* (quoting *Gregson*, 322 F.3d at 885). To

[2] Answer (Rec. Doc. 10), para. 74.
[3] Compl. (Rec. Doc. 1). All of the claims were filed against all defendants, except for the unfair competition claim, which was filed against Washington only.

survive a motion to dismiss, a claimant must plead "enough facts to state a claim to relief that is plausible on its face," making the right to relief more than merely speculative. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007). "Determining whether a complaint [or counterclaim] states a plausible claim for relief [is] a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

A. Schumacher's Copyright Claims

First, the Carrolls argue that Schumacher's copyright infringement claims should be dismissed. For the following reasons, the Motion to Dismiss the copyright claims will be denied. Before bringing a copyright infringement action, a plaintiff must register or preregister its copyright. 17 U.S.C. § 411(a). This registration requirement also applies to owner-created derivative works, which are adaptations of original copyrighted material. *See Creations Unlimited, Inc. v. McCain,* 112 F.3d 814, 816 (5th Cir. 1997), abrogated on other grounds by *Reed Elsevier, Inc. v. Muchnic*, 559 U.S. 154 (2010). Therefore, to determine whether the defendant infringed on a copyright when the action involves an unregistered derivative work, the factfinder may only compare the allegedly infringing material to the registered, copyrighted material. *See id.*

To present a valid a copyright infringement claim, a plaintiff must allege "(1) ownership of a valid copyright and (2) unauthorized copying." *Peel & Co. v. The Rug Mkt.*, 238 F.3d 391, 394 (5th Cir. 2001) (citing *Alcatel USA, Inc. v. DGI Technologies, Inc.*, 166 F.3d 772, 790 (5th Cir. 1999); *Norma Ribbon & Trimming, Inc. v. Little*, 51 F.3d 45, 47 (5th Cir.1995)). The factfinder can infer unauthorized copying from "(1) proof that the defendant had access to the copyrighted work prior to creation of the infringing work and (2) probative similarity." *Id.* The copying is legally actionable, if the factfinder, after conducting a side-by-side comparison

between the original and the copy, determines that a layman would consider the works "substantially similar." *Id.* This comparison can be made in a 12(b)(6) Motion to Dismiss if both the original and the copy are submitted with the pleadings. *Randolph v. Dimension Films*, 634 F. Supp. 2d 779, 787 (S.D. Tex. 2009) (citing several cases including, *Taylor v. IBM*, 54 F. App'x 794 (5th Cir. 2002)).

Here, Schumacher sufficiently alleged that its infringed copyrights are registered. Based on the complaint, the Highpoint Custom Design[4] created for the Carrolls by Schumacher is a nonregistered derivative of Schumacher's registered "Homestead 1/99"[5] architectural work and "Homestead House Plan"[6] technical drawings. Therefore, the allegedly copied blueprints created by the defendants must be compared to the registered "Homestead 1/99" architectural work and "Homestead House Plan"[7] technical drawings and cannot be compared with the Highpoint Custom Design. *See Creations Unlimited, Inc.,* 112 F.3d at 816. While the Carrolls contend that the Highpoint Custom Design is too different from the registered copyrights to be a derivative work,[8] this highly factual question cannot properly be resolved during a motion to dismiss where the court must take all facts pleaded as true. *See Harrington.*, 563 F.3d at 147. Furthermore, whether the custom design was a derivative work is largely irrelevant to Schumacher's copyright claims because the alleged unauthorized copies must be compared to the registered copyrights and not the Highpoint Custom Design. *See Creations Unlimited, Inc.,* 112 F.3d at 816.

Schumacher also sufficiently alleged copyright infringement claims—that (1) it is the owner of the copyrights and (2) the defendants copied them without authorization. *See Peel & Co.*, 238 F.3d at 394. Based on the complaint, Schumacher is the owner of valid copyrights to the

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[4] (Rec. Doc. 1-4).
[5] (Rec. Doc. 1-2).
[6] (Rec. Doc. 1-3).
[7] (Rec. Doc. 1-3).
[8] Memo. in Support (Rec. Doc. 14-1), pp. 8-10.

"Homestead 1/99" architectural work and "Homestead House Plan" technical drawings.[9] The complaint also alleges that the defendants copied these designs when they developed the blueprints for the Carrolls' new home because the defendants had access to the copyrights through the Highpoint Custom Design and the home has substantial similarities to Schumacher's registered copyrighted designs.[10] *See id.* In a 12(b)(6) Motion, the court must take these facts pleaded as true. *Harrington.*, 563 F.3d at 147. Furthermore, the court cannot complete a side-by-side comparison of the original designs and the allegedly copied design because the allegedly copied designs are not included in the pleadings.[11] Therefore, the Carrolls' Motion to Dismiss the copyright infringement claims will be denied.

B. Schumacher's State Law Claims

Second, the Carrolls argue that Schumacher's state law claims of conversion and unjust enrichment should be dismissed because (1) federal copyright laws preempts the claims and (2) Schumacher failed to allege facts that support the claims. For the following reasons, the Motion to Dismiss the conversion claim will be denied and the Motion to Dismiss the unjust enrichment claim will be granted.

1. Preemption

Regarding the Carrolls' preemption argument, "[t]he Copyright Act expressly preempts all causes of action falling within its scope, with a few exceptions." *Daboub v. Gibbons*, 42 F.3d 285, 288 (5th Cir. 1995). A cause of action is preempted if (1) it falls "within the subject matter of copyright" and (2) "it protects rights that are 'equivalent' to any of the exclusive rights of a federal copyright." *Id.* at 289. A state conversion claim that is based on the interference of

[9] *See* Compl. (Rec. Doc. 1), para. 16-17.
[10] See Compl. (Rec. Doc. 1), para. 21-26.
[11] The complaint does include external pictures of the Carrolls' finished house, but because this is not the complete copy, the pictures cannot be used for a side-by-side comparison. Exhibit Photos (Rec. Doc. 1-5).

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