

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

PACESETTER HOMES, INC., :
 :
 Plaintiff, :
 :
 v. : Civil Action No. GLR-20-2478
 :
 GBL CUSTOM HOME DESIGN, INC., :
 et al., :
 :
 Defendants.

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant CRH Contracting, LLC's ("CRH") Motion Pursuant to Fed. R. Civ. P. 12(b)(6) to Dismiss Complaint Count II's Request for Statutory Damages and Attorneys' Fees and Counts III and IV in Their Entirety or, in the Alternative, for Partial Summary Judgment on Count II's Request for Statutory Damages and Attorneys' Fees (ECF No. 15); Defendant GBL Custom Home Design, Inc.'s ("GBL") Motion to Dismiss Plaintiff's Claims for Statutory Damages and Attorney's Fees, or in the Alternative, Motion for Partial Summary Judgment (ECF No. 16); and Defendant Garceau Realty Inc.'s ("Garceau") Motion to Dismiss Complaint Count V's Request for Statutory Damages and Attorneys' Fees and Counts VI and VII in Their Entirety or, in the Alternative, for Partial Summary Judgment on Count V's Request for Statutory Damages and Attorneys' Fees (ECF No. 19). The Motions are ripe for disposition, and no hearing is necessary. See Local Rule 105.6 (D.Md. 2021). For the reasons outlined below, the Court will deny GBL's Motion and grant in part and deny in part CRH's and Garceau's Motions.

I. BACKGROUND¹

A. Factual Background

Plaintiff Pacesetter Homes, Inc. (“Pacesetter”) is a corporation engaged in the design and construction of residential homes. (Compl. ¶¶ 1, 14). Like Pacesetter, Defendant CRH is in the business of home design and construction. (Id. ¶ 75). Defendant GBL provides custom home design services. (Id. ¶ 54). Finally, Defendant Garceau is a realty company that provides real estate services. (Id. ¶ 81).

In 2017, Pacesetter completed architectural plans for a work entitled “Pacesetter Homes Charlotte Model” (the “Charlotte Model”). (Id. ¶ 11). Pacesetter subsequently filed the architectural plans for the Charlotte Model with the Baltimore County Building Plans Review in preparation to construct a residence at 4112 Baltimore Street in Baltimore, Maryland. (Id. ¶ 12). Pacesetter also listed the Charlotte Model on a Multiple Listing Website (“MLS”) on December 7, 2017 (the “2017 Listing”). (Id. ¶ 13).

In December 2019, Pacesetter became aware of an MLS listing for a house under construction at 2808 New York Avenue in Baltimore that showed “substantially the same” plans as the Charlotte Model, as well as unauthorized copies of a floorplan and photographs of interior rooms that had appeared in Pacesetter’s 2017 Listing. (Id. ¶¶ 16–17). According to the MLS listing, CRH was the owner of the property and Garceau was the “listing office.” (Id. ¶ 16).

¹ Unless otherwise noted, the Court takes the following facts from Pacesetter’s Complaint and accepts them as true. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555–56 (2007)).

In January 2020, Pacesetter discovered listings for houses located at 5415 W. North Avenue and 5411 W. North Avenue in Baltimore that once again showed “substantially the same” plans as the Charlotte Model and included unauthorized copies of a floorplan and photographs that had appeared in Pacesetter’s 2017 Listing. (Id. ¶¶ 18–19, 20–21). Once again, CRH was identified as the owner of the properties and Garceau was identified as the “listing office.” (Id. ¶¶ 19, 21).

Pacesetter registered its copyright of the Charlotte Model on January 28, 2020. (Id. ¶ 8; see also Copyright Documents at 2, ECF No. 1-2).² On or about January 29, 2020, Pacesetter’s counsel prepared and sent CRH a letter instructing it to cease and desist from infringing activities, including construction of the house at 2808 New York Avenue. (Compl. ¶ 22). Pacesetter did not receive a response. (Id. ¶ 23).

In July 2020, Pacesetter went to the offices of the Baltimore County Building Plans Review to inspect the original building plan filing for the 2808 New York Avenue property (the “New York Avenue Plans”). (Id. ¶ 24). The New York Avenue Plans were dated July 2019 and identified GBL as the designer. (Id. ¶ 26). According to Pacesetter, the New York Avenue Plans are “substantially the same” as the Charlotte Model. (Id. ¶ 27).

At some point thereafter, Pacesetter discovered a listing for a house located at 1827 Woodside Avenue in Lansdowne, Maryland, which once again showed “substantial similarities” to Pacesetter’s Charlotte Model. (Id. ¶¶ 28–30). The listing indicated that the property was currently under construction, and once again identified the builder as CRH

² Page references to the Copyright Documentation refer to the numbers assigned by the Court’s Case Management/Electronic Case Filing system.

and the listing office as Garceau. (Id. ¶ 29). Pacesetter later discovered that the property plans for 1827 Woodside Avenue were the same as the New York Avenue Plans. (Id. ¶ 32). Indeed, according to Pacesetter, “CRH had requested that the New York Avenue [P]lans be made ‘Permanent Plans’ which could be used for future houses embodying the same plans without the necessity of having the proposed plans further reviewed and approved.” (Id.).

Pacesetter alleges that GBL “copied” and “substantially reproduced” the Charlotte Model to create the New York Avenue Plans and the plans for 1827 Woodside Avenue. (Id. ¶ 34). Pacesetter also alleges that CRH submitted these “copied” plans to the Baltimore County Building Plans Review for approval and that Garceau caused the homes to be listed on an MLS website. (Id. ¶¶ 40–43, 48–50). Pacesetter also alleges that CRH and Garceau used the Charlotte Model and photos that appeared in the 2017 Listing in the listings for the properties at 5411 W. North Avenue and 5415 W. North Avenue. (Id. ¶¶ 44–47, 51–52).

B. Procedural History

Pacesetter commenced this action against CRH, GBL, and Garceau on August 27, 2020. (ECF No. 1). Pacesetter’s seven-count Complaint alleges: copyright infringement in violation of the federal Copyright Act, 17 U.S.C. § 101 et seq., against all Defendants (Counts I, II, V); violation of the Maryland Deceptive Trade Practices Act (“MDTPA”), Md. Code Ann., Comm. L. [“CL”] § 13-301 et seq., against Defendants CRH and Garceau (Counts III and VI); and unfair competition against Defendants CRH and Garceau (Counts

IV, VII). (Compl. ¶¶ 89–136). Pacesetter seeks injunctive relief, actual damages, and statutory damages. (See, e.g., ¶¶ 95–99).

CRH and GBL filed their Motions on October 26, 2020. (ECF Nos. 15, 16). Garceau filed its Motion on November 5, 2020. (ECF No. 19). Pacesetter filed its Oppositions to CRH’s and GBL’s Motions on November 9, 2020, (ECF Nos. 20, 21), followed by its Opposition to Garceau’s Motion on November 19, 2020, (ECF No. 22). CRH and GBL filed their Replies on November 23, 2020. (ECF No. 23, 24). Garceau filed its Reply on December 7, 2020. (ECF No. 28).

II. DISCUSSION

A. Standard of Review

The purpose of a Rule 12(b)(6) motion is to “test[] the sufficiency of a complaint,” not to “resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses.” King v. Rubenstein, 825 F.3d 206, 214 (4th Cir. 2016) (quoting Edwards v. City of Goldsboro, 178 F.3d 231, 243 (4th Cir. 1999)). A complaint fails to state a claim if it does not contain “a short and plain statement of the claim showing that the pleader is entitled to relief,” Fed.R.Civ.P. 8(a)(2), or does not “state a claim to relief that is plausible on its face,” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A claim is facially plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Id. (citing Twombly, 550 U.S. at 555). Though the plaintiff is

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