

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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MACKENZIE ARCHITECTS, PC

Plaintiff,

v.

1:15-CV-1105

VLG REAL ESTATES DEVELOPERS, LLC;  
VICTOR GUSH; FGR ASSOCIATES, LLC;  
CAPTAINS LOOKOUT DEVELOPMENT, LLC;  
DESIGN LOGIC ARCHITECTS, PC;  
CLARK REALTY, LLC; PAUL CLARK;  
FRANK TATE; and ROBERT BUCHER

Defendants.

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THOMAS J. McAVOY  
Senior United States Judge

DECISION and ORDER

Before the Court are a number of motions in this case concerning Plaintiff Mackenzie Architects, PC's claims that Defendants breached various copyright and contract rights. Defendants seek judgment on the pleadings on Plaintiff's claims, as well as attorney's fees. See dkt. ##s 43, 46, 49. Plaintiff moves to strike certain Defendants' answers and counterclaims. See dkt. # 59. The parties have briefed the issues and the court will resolve them without oral argument.

**I. BACKGROUND**

This matter involves alleged copyright infringement and breach of contract between an architect and several groups of developers, builders, and another architect. Relating the role of the various parties will help explain the dispute at the center of this case.

**A. The Gush Defendants: VLG, Victor Gush, and FGR.**

The Plaintiff in this case is Mackenzie Architects, PC (“Mackenzie”). In December of 2007, Mackenzie entered into a building agreement with three of the above-named defendants: VLG Real Estate Developers, LLC; Victor Gush (controlling member of VLG); and FGR Associates, LLC (collectively, the “Gush Defendants”) Mackenzie provided to the Gush Defendants a set of architectural designs and technical drawings for use on the development of a multi-family residential building called “Captain’s Lookout.” The apartment building would be located on the Hudson River in Cohoes, New York. The agreement fell through shortly thereafter. The parties dispute the reasons why.

Mackenzie claims that the Gush Defendants failed to obtain financing for the project. See First Amended Complaint, dkt. # 41, at ¶ 30. The Gush Defendants claim that Mackenzie’s designs were too complex and expensive. See FGR’s Answer to First Amended Complaint, dkt. # 45, at ¶ 32; VLG’s Answer to First Amended Complaint, dkt. # 48, at ¶ 29. Regardless, the Gush Defendants parted ways with Mackenzie.<sup>1</sup> Despite being unable to use Mackenzie’s specific designs, Gush was still interested in building a large apartment building on the Hudson River in Cohoes, New York. See Complaint, dkt. # 41, at ¶ 31.

**B. The Captain’s Lookout Defendants: Clark Realty, Paul Clark, Frank Tate, Captain’s Lookout Development, LLC.**

After the agreement with Mackenzie fell through, Mr. Gush looked elsewhere to complete the project. Id. Mackenzie claims that “[w]ithout any notice to Mackenzie,

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<sup>1</sup> Mackenzie claims that VLG and FGR did not satisfy payment obligations. See Complaint, dkt. # 41 at ¶ 30. FGR claims that Mackenzie was compensated more than the prevailing market rate for its services. See FGR’s Answer, dkt. # 45 at ¶ 36.

without Mackenzie’s authorization or permission, and without any compensation . . . to Mackenzie . . . , Mr. Gush sold the project site, along with the Designs to Clark Realty.”<sup>2</sup> Id. Clark Realty’s principal owner is Paul Clark. Clark is also the CEO of the building group called “Captain’s Lookout Development, LLC.” Frank Tate is a member of the Captain’s Lookout Development group. Now in charge of the project, these Defendants (the “Captain’s Lookout Defendants”) began work in the Fall of 2013. See First Amended Complaint, dkt. # 41 at ¶ 37.

**C. The Design Logic Defendants: Design Logic and Robert Bucher**

The Captain’s Lookout Defendants retained a new architect, Robert Bucher of Design Logic, to create and design an apartment building to be located on the same project site for which Mackenzie had originally designed Captain’s Lookout. Design Logic submitted its design to the City of Cohoes Building and Planning Department in September 2013. Id. at ¶ 33. The record is in the name of Design Logic, with a copyright notice attributable to Design Logic only. Id. Design Logic contends that it “created an entirely original plan for Captain’s Lookout which bears little resemblance to the Mackenzie Plain.” See Design Logic’s Motion for Judgment on the Pleadings, Memorandum of Law, dkt. # 43-7, at 2. Mackenzie claims that Design Logic infringed on its design, as the “overall look and feel of the Captain’s Lookout Design is nearly identical.” See First Amended Complaint, dkt. # 41, at ¶ 36. Mackenzie claims that it is the owner of valid copyrights of the original Captain’s Lookout design, and that Design

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<sup>2</sup> The Gush Defendants claim that Mackenzie conveyed a license to use the drawings for the Captain’s Lookout project. See FGR’s Answer, dkt. # 45 at ¶ 39; VLG’s Answer, dkt. # 48, at ¶ 36.

Logic had access to and infringed on those copyrights. Upon learning that its architectural designs and technical drawings were possibly misappropriated by others, “Mackenzie . . . applied to register the copyright with the United States Copyright Office.” *Id.* at ¶ 35.

#### **D. Mackenzie’s Complaint**

Mackenzie’s Amended Complaint raises fifteen causes of action:

- 1) Direct Copyright Infringement against the Clark Defendants and Design Logic Defendants. (1,2)
- 2) Vicarious Copyright Infringement against the Gush Defendants, the Clark Defendants, and the Design Logic Defendants. (3,4,5)
- 3) Contributory Copyright Infringement against the Gush Defendants, the Clark Defendants, and the Design Logic Defendants. (6,7,8)
- 4) Removing Copyright Management Information and Providing False Management Information against the Gush Defendants, the Clark Defendants, and the Design Logic Defendants. (9,10,11,12,13,14)
- 5) Breach of Contract against VLG Real Estate and FGR Associates, LLC. (15)

After being served with the Complaint, the Defendants answered and then filed the instant motions for judgment on the pleadings. Plaintiff likewise moved for judgment on the pleadings on the Gush and Captain’s Lookout Defendants’ counterclaims, while also seeking to strike portions of their answers and counterclaims. The parties briefed the issues, bringing the case to its present posture.

#### **II. LEGAL STANDARD**

Defendants have moved for judgment on the pleadings. Federal Rule of Civil Procedure 12(c) provides that “[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.” FED. R. CIV. P. 12(c). “In

deciding a Rule 12(c) motion, [a court will] apply the same standard as that applicable to a motion under Rule 12(b)(6), accepting the allegations contained in the complaint as true and drawing all reasonable inferences in favor of the nonmoving party.” Mantena v. Johnson, 809 F.3d 721, 727-28 (2d Cir. 2015) (quoting Burnette v. Carothers, 192 F.3d 52, 56 (2d Cir. 1999)). Under this standard, the “complaint must contain sufficient factual material, accepted as true, to state a claim to relief that is plausible on its face.” Johnson v. Rowley, 569 F.3d 40, 44 (2d Cir. 2009) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal quotations omitted)). Plaintiff has moved to dismiss Defendants’ counterclaims.

In addressing such motions, the Court applies the same standard as used in 12(b)(6) and 12(c) motions. Holmes v. Grubman, 568 F.3d 329, 335 (2d Cir. 2009).

### III. ANALYSIS

The Court will address each of the various motions in turn.

#### A. Design Logic’s Motion for Judgment on the Pleadings

As a general matter, Plaintiff alleges that Design Logic infringed on its Captain’s Lookout design. Plaintiff alleges “while having such access and possession, [Design Logic], without authorization from Plaintiff, with knowledge that such authorization was required, and with good reason to believe that no such authorization existed, copied Plaintiff’s copyrighted design.” See First Amended Complaint, dkt. #41, ¶ 62. Plaintiff argues that its original designs were copied, and used by the Clark Defendants and Design Logic to complete the Captain’s Lookout project. Id. Plaintiff alleges that the “filed drawings and finished project are nearly identical to Plaintiff’s designs.” Id. at ¶

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