IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DESIGN BASICS, LLC,	)	Case No. 1:14-CV-01966
	)	
Plaintiff,	)	
	)	
v.	)	MAGISTRATE JUDGE
	)	THOMAS M. PARKER
PETROS HOMES, INC., et al.,	)	
	)	
Defendants.	)	**MEMORANDUM OPINION & ORDER**
	)	

Plaintiff, Design Basics, LLC, holds United States Copyright Office-issued certificates of copyrights on plans for residential homes. It instituted this action for damages contending that defendants used the designs without permission. Plaintiff has moved for partial summary judgment (ECF Doc. No. 61), claiming that there is no genuine dispute of material fact that it is the owner of a valid copyrights on the home plans at issue. If the court so finds, plaintiff will have established one of the elements of its copyright infringement claim. Plaintiff also seeks summary judgment on several of defendant's affirmative defenses. The parties have consented to my jurisdiction.[1]

The court will GRANT, in part, and DENY, in part, plaintiff's motion for partial summary judgment.

[1] ECF Doc. No. 57, Page ID# 280.

I. Undisputed Facts and Case Posture

The undisputed record evidence before the court establishes that Plaintiff Design Basics, LLC, is a building design firm that creates, markets, publishes, and sells licenses for the use of architectural designs. It also is not disputed that plaintiff holds certificates of copyright registration issued by the United States Copyright Office for the designs at issue here: (1) Plan No. 2408 – Crawford; (2) Plan No. 2326 – Greensboro; (3) Plan No. 2355 – Waverly; (4) Plan No. 4998 – Holden; (5) Plan No. 7614 – Southwick; (6) Plan No. 8108 – Rose Hollow; and (7) Plain No. 2377 – Leighton. Plaintiff asserts a single cause of action in its amended complaint: copyright infringement. Plaintiff alleges that several of the drawings, plans and/or houses constructed by defendants were derived from the copyrighted works of plaintiff. Plaintiff argues that several of defendants' affirmative defenses should be dismissed because they are either not true affirmative defenses or that there is no evidence to support them.

Defendants argue[2] that plaintiff is not entitled to summary judgment on the validity of its copyrights because it failed to produce evidence establishing the originality of its designs. Defendants also question whether the elements of plaintiff's designs are even protectable under copyright law or if they are standard features not entitled to protection.

Regarding their affirmative defenses, defendants withdraw the defenses of: 1) failure to state a prima facie case; 2) copyrights are invalid; 3) ownership of valid copyrights/originality/copyrightability; 4) actions do not constitute infringement; 5) no access to copyrighted works prior to independent creation; 6) no substantial similarity; 7) independently created plans and/or houses; and 8) no direct infringement.[3] Defendants oppose summary

[2] ECF Doc. No. 65, Page ID# 938.
[3] ECF Doc. No. 65, Page ID# 951.

judgment on the affirmative defenses of innocent infringement, copyright misuse, fair use, laches and license.

II. Standard of Review

Under Fed. R. Civ. P. 56, summary judgment is warranted if "the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A dispute of fact is "genuine" if "the [record] evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct.2505, 91 L.Ed. 2d 202 (1986). As a result, "[c]onclusory allegations, conjecture and speculation . . . are insufficient to create a genuine issue of fact." *Kerzer v. Kingly Mfg.*, 156 F.3d 396, 400 (2d Cir. 1998) (citation omitted); *see also* Fed. R. Civ. P. 56 (e)(2). As the Supreme Court has explained, "[the non-moving party] must do more than simply show that there is metaphysical doubt as to the material facts." *Matsushita Elec., Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 585-86, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). As for the materiality requirement, a dispute of fact is "material" if it "might affect the outcome of the suit under the governing law." *Anderson*, 477 U.S. at 248. "Factual disputes that are irrelevant or unnecessary will not be counted." *Id.*

In determining whether genuine issues of material fact exist, the court must resolve all ambiguities and draw all reasonable inferences against the moving party. *Anderson*, 477 U.S. at 255. In addition, "[the moving party] bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the [record] which it believes demonstrate the absence of any genuine issue of material fact." *Celotex v. Catrett*, 477 U.S. 317, 323-24, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *see also* Fed. R. Civ. P. 56(c), (e). However, when the moving party has met this initial burden of establishing the absence of any genuine

issue of material fact, the nonmoving party must come forward with specific facts showing a genuine dispute of material fact for trial. Fed R. Civ. P. 56(c), (e).

III. Law & Analysis

A. Whether Plaintiff's Designs are Protected by a Valid Copyright

There are two elements of an architectural copyright infringement claim: (1) the work must be shown to be protected by a valid copyright; and (2) it must be proven that the defendant copied original or protectable aspects of the copyrighted work. *Feist Publ'ns, Inc. V. Rural Tel. Serv. Co.*, 449 U.S. 340, 348, 111 S.Ct. 1282, 113 L.Ed.2d 358. The first prong tests the originality and non-functionality of the work. *See M.M. Bus Forms Corp. v. Uarco, Inc.*, 472 F.2d 1137, 1139 (6th Cir. 1973). A fundamental rule of copyright law is that it protects only "original works of authorship," those aspects of the work that originate with the author himself. 17 U.S.C. § 102(b); *Zalewski v. Cicero Builder Dev. Inc.*, 754 F.3d 95, 100, 2014 U.S. App.LEXIS 10609 (2nd Cir. June 5, 2014).

Establishing proof of the first element of the claim can be straightforward. The ownership of certificates of registration of copyrighted material constitutes *prima facie* evidence of the copyright's validity. *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 387 F.3d 522, 2004 U.S. App. LEXIS 22250 (6th Cir. 2004). And, while originality is required for copyright protection, courts have not required an "especially elevated" level of originality in the architectural realm. *Ranieri v. Adirondacck Dev. Group*, 164 F.Supp.3d 305, 329, 2016 U.S. Dist. LEXIS 20884 (N.D.N.Y. Feb. 22, 2016); *see also Axelrod & Cherveny Architects, P.C. v. Winmar Homes*, 2007 U.S. Dist. LEXIS 15788 (E.D.N.Y. Mar. 6, 2007). In *Feist*, supra, the Supreme Court indicated that

> The requisite level of creativity is extremely low; even a slight amount will suffice. The vast majority of works make the grade quite easily, as they possess

> some creative spark, "no matter how crude, humble or obvious" it might be … Originality does not signify novelty; a work may be original even though it closely resembles other works so long as the similarity is fortuitous, not the result of copying.

Feist Publ'ns, Inc., 449 U.S. at 345. Nonetheless, standard features "such as windows, doors, and other stable building components" are not copyrightable. 37 C.F.R. §202.11(d)(2); *Zitz v. Pereira*, 119 F. Supp.2d 133, 147 (E.D.N.Y. 1999). "In the case of more mundane residential designs, it is obvious that the use of porches, porticos, dormers, and bay windows, for example, is not protected, but the particular expression of those ideas and their combination in one house, may be protected." *Frank Betz Assoc, Inc. v. J.O. Clark Constr., LLC*, 2010 U.S. Dist. LEXIS 117961 (M.D. Tenn. Nov. 5, 2010).

Plaintiff moves for partial summary judgment on the first element of its copyright infringement claim – an element that is presumptively satisfied by a certificate of registration and a minimal showing of creativity in assembling even standard elements of architectural design. Plaintiff contends, and defendants do not dispute, that plaintiff is the owner of certificates of registration for the house design plans involved in this lawsuit. Plaintiff submits the affidavit of Carl Cuozzo, a senior designer, who has worked for plaintiff for thirty years.[4] Mr. Cuozzo attests that Design Basics is the sole author and owner of plaintiff's design plans.[5] Paragraph 7 of his affidavit states:

> Design Basics independently created all seven of these plans "from scratch," in a collaborative process used by Design Basics since the mid-1980s. In other words, Plaintiff's employee-design professionals would brainstorm new designs, which would be created internally, beginning with floor plans and elevation drawings, and proceeded to the creation of construction drawings. At no time would Design Basic's personnel use third-party designs or drawings as a basis for creating its new designs.

[4] ECF Doc. No. 61-5, Page ID# 402.
[5] ECF Doc. No. 61-5, Page ID# 403.

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