United States District Court
Southern District of Texas
ENTERED
June 06, 2018
David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PRESTON WOOD & ASSOCIATES, LLC, Plaintiff,	§	
v.	§	CIVIL ACTION NO. H-16-1427
RZ ENTERPRISES USA, INC., *et al.*, Defendants.	§	

MEMORANDUM AND ORDER

This architectural copyright case is before the Court on the Motion for Partial Summary Judgment ("Motion") [Doc. # 109] filed by Plaintiff Preston Wood & Associates, LLC ("Preston Wood"). Defendants UL, Inc. d/b/a Urban Living ("Urban Living") and Vinod Ramani filed a Response [Doc. # 117], and Plaintiff filed a Reply [Doc. # 120].[1] Having reviewed the record and the applicable legal authorities, the Motion is **granted in part and denied in part**.

I. BACKGROUND

Preston Wood is an architectural design firm. Urban Living is a real estate development firm, and Ramani is its Chief Executive Officer ("CEO"). Preston Wood alleges that it owns valid copyrights in architectural works and technical drawings.

[1] Plaintiff also filed Objections to portions of Defendants' Summary Judgment Evidence [Doc. # 118]. Defendants filed a Response [Doc. # 124], and Plaintiff filed a Reply [Doc. # 125].

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Preston Wood and Urban Living entered into a "Design Only/Stock Plan License Agreement" (the "Agreement") in January 2014. The Agreement had a one-year term, with a provision for renewal for an additional year if requested in writing by Urban Living at least thirty days prior to the scheduled termination date. *See* Agreement, Exh. 14 to Motion, ¶ 1.b. The parties did not renew the Agreement for the second year.

Plaintiff alleges that Urban Living and Cameron Architects, Inc. ("Cameron") entered into a partnership in February 2014. Plaintiff alleges that beginning in March 2014, the Urban Living/Cameron partnership was entering into contracts with customers under which Cameron would create derivatives of Preston Wood's architectural works.

Preston Wood alleges that Urban Living failed to comply with certain conditions precedent and, therefore, Urban Living's use of Preston Wood's copyrighted works constitutes copyright infringement. Defendants dispute that the Agreement terms at issue were conditions precedent, and they have asserted the affirmative defenses of (1) implied license and (2) innocent infringement.

Plaintiff moves for summary judgment on Defendants' affirmative defenses and various legal or factual issues in the case, but does not seek summary judgment on any of its claims entirely. The Motion has been fully briefed and is now ripe for decision.

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II. STANDARD FOR SUMMARY JUDGMENT

Rule 56 of the Federal Rules of Civil Procedure provides for the entry of summary judgment against a party who fails to make a sufficient showing of the existence of an element essential to his case and on which he will bear the burden of proof at trial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Curtis v. Anthony*, 710 F.3d 587, 594 (5th Cir. 2013); *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (*en banc*). Summary judgment "should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a); *Celotex*, 477 U.S. at 322-23; *Curtis*, 710 F.3d at 594.

For summary judgment, the initial burden falls on the movant to identify areas in which there is an "absence of a genuine issue of material fact." *ACE Am. Ins. Co. v. Freeport Welding & Fabricating, Inc.*, 699 F.3d 832, 839 (5th Cir. 2012). The moving party may meet its burden by pointing out "the absence of evidence supporting the nonmoving party's case." *Malacara v. Garber*, 353 F.3d 393, 404 (5th Cir. 2003) (citing *Celotex*, 477 U.S. at 323; *Stults v. Conoco, Inc.*, 76 F.3d 651, 656 (5th Cir. 1996)).

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If the moving party meets its initial burden, the non-movant must go beyond the pleadings and designate specific facts showing that there is a genuine issue of material fact for trial. *See Gen. Universal Sys., Inc. v. Lee*, 379 F.3d 131, 141 (5th Cir. 2004); *Littlefield v. Forney Indep. Sch. Dist.*, 268 F.3d 275, 282 (5th Cir. 2001) (internal citation omitted). "An issue is material if its resolution could affect the outcome of the action." *Spring Street Partners-IV, L.P. v. Lam*, 730 F.3d 427, 435 (5th Cir. 2013). "A dispute as to a material fact is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *DIRECT TV Inc. v. Robson*, 420 F.3d 532, 536 (5th Cir. 2006) (internal citations omitted).

In deciding whether a genuine and material fact issue has been created, the court reviews the facts and inferences to be drawn from them in the light most favorable to the nonmoving party. *See Reaves Brokerage Co. v. Sunbelt Fruit & Vegetable Co.*, 336 F.3d 410, 412 (5th Cir. 2003). "'Conclusional allegations and denials, speculation, improbable inferences, unsubstantiated assertions, and legalistic argumentation do not adequately substitute for specific facts showing a genuine issue for trial.'" *Pioneer Exploration, L.L.C. v. Steadfast Ins. Co.*, 767 F.3d 503, 511 (5th Cir. 2014) (quoting *Oliver v. Scott*, 276 F.3d 736, 744 (5th Cir. 2002)); *accord Delta & Pine Land Co. v. Nationwide Agribusiness Ins. Co.*, 530 F.3d 395, 399 (5th Cir. 2008). In the absence of any proof, the court will not assume that the non-movant

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could or would prove the necessary facts. *Little*, 37 F.3d at 1075 (citing *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888 (1990)).

The Court may make no credibility determinations or weigh any evidence. *See Chaney v. Dreyfus Serv. Corp.*, 595 F.3d 219, 229 (5th Cir. 2010) (citing *Reaves Brokerage*, 336 F.3d at 412-13). The Court is not required to accept the nonmovant's conclusory allegations, speculation, and unsubstantiated assertions which are either entirely unsupported, or supported by a mere scintilla of evidence. *Id*. (citing *Reaves Brokerage*, 336 F.3d at 413); *accord, Little*, 37 F.3d at 1075. Affidavits cannot preclude summary judgment unless they contain competent and otherwise admissible evidence. *See* FED. R. CIV. P. 56(c)(4); *Love v. Nat'l Med. Enters.*, 230 F.3d 765, 776 (5th Cir. 2000).

III. COPYRIGHT INFRINGEMENT CLAIM

To prevail on a claim of copyright infringement, "a party must show that (1) he owns a valid copyright and (2) the defendant copied constituent elements of the plaintiff's work that are original." *Baisden v. I'm Ready Productions, Inc.*, 693 F.3d 491, 499 (5th Cir. 2012) (internal quotations and citation omitted). Plaintiff seeks summary judgment only on the first element – that it owns valid copyrights in its architectural works and technical drawings.

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