

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

July 16, 2024

Lyle W. Cayce  
Clerk

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No. 23-50081

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CANADIAN STANDARDS ASSOCIATION,

*Plaintiff—Appellee,*

*versus*

P.S. KNIGHT COMPANY, LIMITED; PS KNIGHT AMERICAS,  
INCORPORATED; GORDON KNIGHT,

*Defendants—Appellants.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 1:20-CV-1160

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Before KING, WILLETT, and DOUGLAS, *Circuit Judges.*

KING, *Circuit Judge:*

This international copyright case considers the alleged infringement of seven of Plaintiff-Appellee’s model codes, all of which were created and copyrighted in Canada. The district court, finding that Defendants-Appellants infringed Plaintiff-Appellee’s copyrights, denied Defendants-Appellants’ motion for summary judgment, granted Plaintiff-Appellee’s motion for summary judgment, and issued a permanent injunction against Defendants-Appellants. Because we find that the district court improperly applied the explicit and controlling holding of *Veck v. Southern Building Code*

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*Congress International, Inc.*, 293 F.3d 791 (5th Cir. 2002) (en banc), we REVERSE the district court’s summary judgment decisions, VACATE the district court’s grant of injunctive relief, and REMAND with instructions to grant summary judgment in favor of Defendants-Appellants and to dismiss Plaintiff-Appellee’s copyright infringement claim.

## I.

Canadian Standards Association (“CSA”) is a Canadian not-for-profit corporation. It has developed over 3,000 voluntary standards and codes in Canada, and it holds Canadian copyright registrations in its model codes and standards. CSA sells these codes to relevant tradespeople working in industrial fields in Canada. Forty percent of CSA’s works have been incorporated by reference into different regulations or statutes in Canada.

Seven of CSA’s copyrighted model codes are at issue in this case.<sup>1</sup> All seven of these model codes have been fully incorporated by reference into at least one Canadian statute or regulation. There is no evidence to suggest that any of these seven works have been incorporated by reference into any United States federal, state, or city law, rule, or regulation.

Gordon Knight is the president and sole shareholder of the Canadian company P.S. Knight Co., and the sole corporate director of the American company P.S. Knight Americas, Inc. (hereinafter, collectively, “Knight”). Knight is also the owner and operator of the website “Deep 6 Project,” formerly “restorecsa.com,” dedicated to discussing the copyright litigation between CSA and Knight. Knight, through his companies, sells competing

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<sup>1</sup> Those seven model codes are the 2015, 2018, and 2021 editions of CSA’s Canadian Electrical Code; the 2015 and 2020 editions of CSA’s Propane Storage and Handling Code; and the 2015 and 2019 editions of CSA’s Oil and Gas Pipeline Systems Code.

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versions of CSA’s seven copyrighted works, which Knight describes as, “Same Code[s]—Different Price,” and, “All the Code[s] at less than ½ the cost!”

A.

The dispute between CSA and Knight originated in 1985, when Knight’s father, Peter Knight, published the first “Electrical Code Simplified” book, which included references to CSA’s Canadian Electrical Code. CSA alleges that over time, the “Electrical Code Simplified” transformed from an annotated, shorter version of CSA’s model code to an exact replica. CSA attempted to acquire Peter Knight’s business, but in 2005, after negotiations broke down, CSA wrote a letter to Gordon Knight stating that “it wanted its copyright in the Canadian Electrical Code respected.” In 2011, after Gordon Knight officially assumed control of the company from his father, CSA again informed Knight that he had “no license [in the Canadian Electrical Code]” and even if there ever was a license, it “had been terminated since at least 2005.”

After Knight failed to oblige, CSA filed suit against Knight in Canadian federal court, alleging copyright infringement of its 2015 Canadian Electrical Code. The Canadian trial court ruled in favor of CSA,<sup>2</sup> and it enjoined Knight from reproducing, distributing, or selling any publication that infringes upon CSA’s copyright in its 2015 Canadian Electrical Code. On December 7, 2018, this judgment was affirmed on appeal.

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<sup>2</sup> The Canadian trial court held that (1) CSA owned a valid copyright in its 2015 Canadian Electrical Code under Canadian law; (2) Knight presented no valid evidence to support his defense that he was a co-author of the code; (3) Knight had no license to reproduce the code; and (4) Knight infringed CSA’s copyright.

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On June 17, 2020, Knight formed P.S. Knight Americas, Inc. in the State of Texas. On September 1, 2020, Knight applied for, and successfully registered, a U.S. Copyright for “Knight’s Canadian Electrical Code, Part One: 24th Code Edition, 2018-2021” under the name “Canadian Electrical Code.”<sup>3</sup> Knight then began to produce his own versions of other CSA model codes. By June 18, 2021, Knight offered four competing versions of CSA’s codes.<sup>4</sup>

On May 9, 2021, Knight authored a blog post explaining that he had “fled the Country” because “both sides of the Civil Service were now moving rapidly to imprison [him] and take all that [he] own[ed].” The blog post specified, however, that Knight’s codes would be “unaffected” and that “[f]or months, [Knight] had been quietly transferring [his] assets out of Canada . . . to ensure continuity of service.” On July 20, 2021, CSA requested that the Canadian federal court issue a contempt order against Knight. The Canadian court found Knight in contempt and extended its previous injunction.

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<sup>3</sup> In a blog post published on October 18, 2020, Knight explained: “Next, we checked US copyright on the Electrical Code. It turns out that the Canadian Standards Association (CSA) somehow forgot to register copyright over this document, even while it was under litigation in Canada. Seriously. They spent well over a million dollars in Canadian Courts, arguing that they own all our electrical laws and they feverishly pointed to their registration of copyright in Canada but, amazingly, didn’t bother to lock down copyright in the US. So we did. As you read this, the Canadian Electrical Code is the private property of PS Knight Americas Inc in the US. Can you just imagine the fuming at CSA headquarters as they read that last sentence? All that taxpayer money, all that time, and frustration and, frankly, embarrassment in the industry for their conduct -all of that to no avail. Wow. Must be a difficult day over there.”

<sup>4</sup> The four competing versions were: (1) Knight’s Canadian Electrical Code, Part One: 24th Code Edition, 2018-2021; (2) Knight’s Canadian Electrical Code – 25th Edition, 2021-2024; (3) Knight’s Propane Storage & Handling Code – 2015 Edition; and (4) Knight’s Oil & Gas Pipeline Systems Code – 2019 Edition.

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On November 5, 2021, the Canadian federal court permanently enjoined Knight from infringing CSA's copyrights by selling certain electrical, oil and gas pipeline systems, and propane codes.<sup>5</sup> The Canadian court also prohibited Knight from "importing into Canada [any infringing works]" and operating any website for the purpose of infringing CSA's copyrights, and it awarded CSA \$100,000 in statutory damages and \$75,000 in punitive damages.

## B.

While this Canadian litigation was occurring, on November 20, 2020, CSA filed suit against Knight in federal district court in the Western District of Texas. In its amended complaint, CSA alleged that Knight infringed seven of CSA's copyrights in its model codes. CSA sought a declaratory judgment of invalidity and non-ownership of Knight's United States copyright registration. Knight responded by asserting counterclaims of invalidity or unenforceability of CSA's seven Canadian-copyrighted works.<sup>6</sup> Both parties moved for summary judgment on their claims, defenses, and counterclaims.

On January 4, 2023, the district court granted CSA's motion for summary judgment in its entirety and denied Knight's motion for summary judgment in its entirety. The district court also granted declaratory judgment in favor of CSA, holding Knight's copyright registration invalid as a matter

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<sup>5</sup> More specifically: (1) Knight's 2021 Canadian Electrical Code, in violation of CSA's copyright C22.1.21: Canadian Electrical Code, Part 1; (2) Knight's 2015 Oil & Gas Code, in violation of CSA's copyright CSA Z662-15: Oil and Gas Pipeline Systems; (3) Knight's 2019 Oil & Gas Code, in violation of CSA's copyright Z662-19: Oil and Gas Pipeline Systems; (4) Knight's 2015 Propane Code, in violation of CSA's copyright B-149.2-15: Propane Storage and Handling Code; and (5) Knight's 2020 Propane Code, in violation of CSA's copyright B149.2-20: Propane Storage and Handling Code.

<sup>6</sup> Knight also sought declaratory judgment that he was a co-owner or co-author in CSA's Canadian Electrical Code, but that issue was not appealed.

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