

RECOMMENDED FOR PUBLICATION  
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 20a0366p.06

**UNITED STATES COURT OF APPEALS**

FOR THE SIXTH CIRCUIT

---

RJ CONTROL CONSULTANTS, INC.; PAUL E. ROGERS,  
*Plaintiffs-Appellants,*

v.

MULTIJECT, LLC; RSW TECHNOLOGIES, LLC; JACK  
ELDER,  
*Defendants-Appellees.*

No. 20-1009

Appeal from the United States District Court  
for the Eastern District of Michigan at Detroit.  
No. 2:16-cv-10728—Avern Cohn, District Judge.

Decided and Filed: November 23, 2020

Before: DAUGHTREY, DONALD, and READLER, Circuit Judges.

---

**COUNSEL**

**ON BRIEF:** Eric D. Scheible, FRASCO CAPONIGRO WINEMAN SCHEIBLE HAUSER & LUTTMANN, PLLC, Troy, Michigan, for Appellants. Richard L. McDonnell, INTREPID LAW GROUP, PLC, Rochester, Michigan, for Appellees Multiject and Jack Elder. David C. Purdue, PURDUE LAW OFFICES, LLC, Toledo, Ohio, for Appellee RSW Technologies.

---

**OPINION**

---

BERNICE BOUIE DONALD, Circuit Judge. This is a copyright dispute over the use of software code and technical drawings for an industrial control system related to plastic injection molding. The district court held that Plaintiff-Appellant RJ Control Consultants, Inc. and its sole shareholder, Paul Rogers, (collectively, “Plaintiffs”) failed to establish copyright infringement

because the use of a design to manufacture a control system does not constitute copyright infringement. The district court accordingly granted summary judgment against Plaintiffs on their copyright infringement claim. The district court further granted summary judgment against Plaintiffs as to their Lanham Act claim, declined to exercise supplemental jurisdiction over the remaining state law claims, and denied as moot Plaintiffs' motion to compel discovery. Plaintiffs appeal the order denying reconsideration of the district court's grant of summary judgment as to the copyright claim as well as the denial of their motion to compel as moot.

## I.

The district court characterized this as a “business dispute which soured a friendship.” That friendship was between Plaintiff-Appellant Paul Rogers and Defendant-Appellee Jack Elder. Rogers was the principal and sole shareholder of RJ Control Consultants, Inc. (“RJ Control”), a Michigan company that creates industrial control systems. Elder is the sole owner of Defendant-Appellee Multiject, LLC (“Multiject”), a Michigan business which engineers and sells various industrial accessories related to plastic injection molding. Their friendship turned into a business relationship when Elder approached Rogers seeking Rogers's expertise and assistance in developing a control system for an injection molding machine.

In 2008, Rogers and Elder entered into an oral agreement whereby Rogers would develop a rotary turntable control system for Elder and Multiject. This turntable control system is the “brain” of the turntable, allowing the turntable to move and operate. RJ Control, through Rogers's work, updated the control system design in 2013, labeling the newest iteration as “Design 3.” The parties dispute the invoicing for Design 3.<sup>1</sup>

In March of 2014, Elder asked Rogers for copies of Design 3's diagrams as well as the software source code “in case something happened” to Rogers. Rogers disclosed that information to Multiject, believing that Multiject and Elder would not improperly use or disclose the information to third parties. Three days after providing that information to Multiject, Elder informed Rogers and RJ Control that Elder and Multiject would no longer need Rogers's

---

<sup>1</sup>In their briefing, the parties explain in detail the various contractual disputes raised in the district court. Because Rogers and RJ Control do not appeal the district court's dismissal of the state law claims—the only claims for which these facts are relevant—we do not address those facts here.

services and would instead use Defendant-Appellee RSW Technologies, LLC (“RSW”) for the assembly and wiring of the control systems. Elder said that Multiject would like to continue working with Rogers as a technical consultant for the system design and that Multiject appreciated his expertise but that “this comes down to a business decision.”

Multiject and RSW—RJ Control’s replacement—had a long-standing business relationship with each other, and Multiject was already considering switching to RSW when it asked Rogers for the design diagrams. Elder claims that Multiject was increasingly concerned with Rogers’s pricing, worrying that Rogers was charging Multiject too much relative to competitors, at least to the extent Rogers was performing manual labor rather than designing the systems. For that reason, Elder and Multiject decided to “switch out” RJ Control and Rogers for RSW, for purposes of manufacturing rotary tables.

On the same day that Elder informed Rogers that Multiject would be using RSW to assemble and wire the control systems, RSW sent Elder a quote that explicitly referenced the assembly and wiring of “RJ Table Control.” Elder, Multiject, and RSW used Design 3—both the software code and the technical drawings—in the assembly and wiring of new control systems. RSW did not make any changes in the design when it used Design 3. RSW claims that it did not know Rogers and RJ Control had separately designed Design 3 and did not know there was dispute as to whether Elder properly paid Rogers for that work; that is to say, RSW believed Multiject had permission to build the control systems using the software and technical drawings.

On February 17, 2016—nearly two years after Rogers initially supplied the software code and technical drawings to Elder—Rogers obtained two Copyright Certificates of Registration: one for the “Control System Turn Table Software: Design 3” (i.e., the software code) and another for “Control System Turn Table Schematics: Design 3” (i.e., the technical drawings).

Nearly two weeks after receiving those copyrights, RJ Control brought suit against Multiject, Elder, and RSW. Over a year later, RJ Control filed an amended complaint, adding Rogers as a plaintiff. That amended complaint brought several federal and state law claims: (1) copyright infringement, (2) trademark infringement, (3) violation of the Michigan Consumer Protection Act, (4) breach of contract, (5) unjust enrichment, (6) conversion, and (7) tortious

interference with contract/business expectancy. RSW and Elder/Multiject separately brought motions for summary judgment on all claims. Before the district court ruled on those motions, Plaintiffs brought a motion to compel discovery responses. On November 8, 2018, the district court granted Defendants' motions for summary judgment. In doing so, the court dismissed the two federal claims (copyright and trademark infringement) with prejudice. The court dismissed the state law claims without prejudice, declining to exercise supplemental jurisdiction after the dismissal of the federal claims. Finally, the court denied as moot Plaintiffs' motion to compel. That same day, the district court entered its final judgment dismissing the case.

That was not, however, the end of the matter. Plaintiffs thereafter filed a motion for reconsideration of the dismissal of the copyright claim and denial as moot of their motion to compel. The district court denied that motion on January 18, 2019, but a week later set a hearing on the motion. Nearly two weeks later, the district court vacated its prior denial of the motion. At the hearing on February 11, 2019, the district court expressed interest in seeing the entire software code as it reconsidered its decision, also noting that the court may need an expert in making its determination regarding the software's copyrightability. Plaintiffs thereafter supplied the full code to the court. Ten months later, the district court denied the motion for reconsideration, finding that nothing in the papers supplied to the court—the full source code—revealed that the court erred in its original dismissal of the copyright-infringement claim. The district court provided no further explanation.<sup>2</sup> Plaintiffs then brought this appeal.

## II.

We review a district court's grant of summary judgment de novo. *Gillis v. Miller*, 845 F.3d 677, 683 (6th Cir. 2017).<sup>3</sup> Summary judgment is proper "if the movant shows that

---

<sup>2</sup>The district judge, Avern Cohn, retired weeks after his denial of Plaintiffs' motion for reconsideration.

<sup>3</sup>The notice of appeal itself is limited to appealing the denial of Plaintiffs' motion for reconsideration. Nonetheless, "where it can be reasonably inferred from the notice of appeal that the intent of the appellant was to appeal from the final judgment" rather than merely the denial of the motion for reconsideration, we may treat the appeal as an appeal from the final judgment, particularly where the appellee has not been misled. *Peabody Coal Co. v. Local Union Nos. 1734, 1508, & 1548, UMW*, 484 F.2d 78, 81 (6th Cir. 1973). Here, the appellees have not been misled, particularly considering that both parties have briefed the merits of the underlying motion for summary judgment rather than constraining themselves to the motion for reconsideration. See also *Boburka v. Adcock*, 979 F.2d 424, 426 (6th Cir. 1992).

there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The moving party bears the burden of showing that no genuine issues of material fact exist. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). The nonmoving party “must set forth specific facts showing that there is a genuine issue for trial,” and in turn, the reviewing court must determine “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-52 (1986). In copyright infringement cases, “granting summary judgment, particularly in favor of a defendant, is a practice to be used sparingly.” *Wickham v. Knoxville Int’l Energy Exposition, Inc.*, 739 F.2d 1094, 1097 (6th Cir. 1984).

### III.

On appeal, Rogers and RJ control argue that the district court erred in granting summary judgment as to the copyright claim and in denying their motion to compel as moot. Considering first the copyright claim, they argue that Defendants’ access to the copyright, combined with the substantial similarity between the control systems, at minimum raises a genuine dispute as to whether Defendants copied their works. They argue that the “useful article” exception does not apply where the alleged infringer *directly* copied the article, as they allege Defendants did here. Finally, RJ Control and Rogers argue that the district court erred in not considering the copying of the software code, instead analyzing only the copying of the technical drawings.

In their responses, Defendants address the two copyrighted works separately. First, considering the software copyright, they argue that “copyright protection does not extend to the control system software at issue because it embodies a procedure, a system[,] and a method of operating an injection molding machine” and that “[n]o[t] one of these is eligible for copyright protection.” Thus, even if the district court did not specifically address the software code in its initial opinion granting summary judgment, Plaintiffs cannot claim copyright protection in the software code. Second, considering the technical drawings—which the district court did address at length—Defendants claim that the use of copyrighted technical drawings to produce a control system does not constitute copyright infringement of the technical drawings in the same way that making a recipe out of a copyrighted cookbook does not constitute copyright infringement of the

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.