IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

KAVEH SARI, Plaintiff, v. AMERICA'S HOME PLACE, INC., Defendant.	)	Case No. 1:14-cv-1454 (GBL)

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on Defendant America's Home Place, Inc. ("AHP")'s Motion for Summary Judgment (Doc. 66). This case involves Plaintiff Kaveh Sari ("Sari")'s claim that AHP infringed on his copyright in architectural plans in violation of the Copyright Act, 17 U.S.C. § 101, *et seq* and AHP's Counterclaims.

There are six issues before the Court. First, whether the Court should grant AHP's Motion for Summary Judgment where AHP argues that Sari does not meet the first element of a copyright infringement claim because no reasonable jury could find that Sari owns a valid copyright. Second, whether the Court should grant AHP's Motion for Summary Judgment where AHP argues that no reasonable jury could find that Sari provided the required notice for copyright protection. Third, whether the Court should grant AHP's Motion for Summary Judgment where AHP argues that Sari should be estopped from bringing his claim because he deliberately concealed his belief that he owned a copyright and AHP reasonably relied on that misrepresentation. Fourth, whether the Court should grant AHP's Motion for Summary Judgment where AHP argues that no reasonable jury could find that Sari meets the second

element of a copyright infringement claim because AHP's work is not substantially similar to Sari's work. Fifth, whether, provided AHP prevails on summary judgment, AHP is entitled to reasonable attorneys' fees. Sixth, whether, provided AHP prevails on summary judgment, AHP is entitled to a permanent injunction.

The Court finds that (1) because AHP effectively rebuts the presumption of validity that Sari's copyright registration carries, no reasonable jury could find that Sari owns a valid copyright, and thus, the Court must grant AHP's Motion for Summary Judgment; (2) Sari's lack of notice is not dispositive because copyrights created after March 1, 1989 do not require notice; (3) Sari is not equitably estopped from bringing his claim; (4) no reasonable jury could find that AHP's architectural work is similar to Sari's, and thus, the Court must grant AHP's Motion for Summary Judgment; (5) Sari's belief that he owned a valid copyright was not so objectively unreasonable as to warrant the award of attorneys' fees; and (6) AHP did not suffer irreparable harm such that it would be entitled to a permanent injunction. Therefore, the Court GRANTS AHP's Motion for Summary Judgment and the Court DENIES AHP's request for attorneys' fees and a permanent injunction.

I. BACKGROUND

Plaintiff Kaveh Sari is a Virginia businessman who owns an IT consulting company. (Doc. 66-1 at 32–33). Defendant America's Home Place, Inc. is a custom home builder domiciled in the state of Georgia. (Am. Compl. ¶¶ 6–7). Sometime in January 2013, Sari began discussions with Keith Hewston ("Hewston"), a building consultant with AHP, about the possibility of building a home in Lorton, Virginia. (Doc. 68-1 at 2). In March 2013, Sari contracted with architect Ken Reed ("Reed") who visited the home of Sari's former neighbor,

Mr. Lee, and used the site visit to draw up plans ("Reed Plans")[1] for a home identical to Mr. Lee's house. (Doc. 66-3 at 18, 21; Doc. 66-4 at 20).

Sari forwarded the Reed Plans to AHP on April 19, 2013 (Doc. 68-1 at 36–37; Doc. 68-10) and on May 25, 2013, Hewston sent Sari preliminary plans for the proposed house. (Doc. 68-12 at 4–11). On August 17, 2013, Sari and AHP entered into a contract to build his home. (Doc. 68-1 at 9; Doc. 68–13). Afterwards, Sari made ten changes to the Reed Plans.

1. Added stone and stucco to the façade. (Doc. 66-3 at 11).
2. Replaced the two first-floor center windows on the front of the house with one large window. (*Id.* at 8).
3. Adjusted the sloping lot and added two small basement windows on the right side of the front of the house. (*Id.* at 11).
4. Added an interior door leading to the study where originally there was an open entrance. (*Id.* at 10).
5. Added eight windows arranged in a tic-tac-toe pattern on the rear of the house where the fireplace was located. (*Id.* at 12).
6. Moved the fireplace to an interior wall. (*Id.* at 12–13).
7. Added French doors on the basement level creating a walkout basement. (*Id.* at 12).
8. Added a pantry to the backside of the kitchen where the laundry room was located. (*Id.* at 13).
9. Moved the laundry room to the second floor. (*Id.*).
10. Extended the left-exterior wall at the rear of the house so that it was flush with the garage. (*Id.* at 14).

On March 11, 2014, AHP sent Sari the building plans with Sari's requested changes ("Highlighted Plans"). (Doc. 68-16). By April 2014, the relationship between Sari and AHP

[1] Reed may have also used a set of plans—the "Rothschild Plans" (Doc. 68-4)—from another of Sari's former neighbors when drafting the Reed Plans. (Doc. 68-6). It is immaterial, however, whether Reed exclusively used the site visit to draft the Reed Plans, or if he also used the Rothschild Plans, as they were the same layout. (*See* Doc. 66-3 at 19 ("[T]hey're all the same. Mine was a Rothschild, Mr. Lee's was a Rothschild.")).

began to dissolve over disputes regarding the project's cost, and the parties eventually ended their agreement through arbitration. (Am. Compl. ¶¶ 9–10). On September 30, 2014, AHP finalized building plans ("Chen Plans") for another family, the Chens. (Doc. 69-1; Doc. 69-2). On October 15, 2014, Sari sent an email to AHP employees and others indicating that he believed AHP was infringing on his copyright of the Highlighted Plans by building the house described in the Chen Plans. (*See* Doc. 70-1).

On November 17, 2014, upon Sari's request, Reed signed any rights he owned in the Reed Plans over to Sari. (Doc. 75-1 at 18). Reed voiced doubts about whether Sari could enforce a copyright in the Reed Plans, though, and he expressly declined to be a part of Sari's lawsuit. (Doc. 66-4 at 19–20; Doc. 70-2; Doc. 70-3). On November 18, 2014, Sari applied for copyright registration on the Reed Plans. (Doc. 75-1 at 20). After the Copyright Office emailed Sari expressing confusion as to what exactly Sari was attempting to register (*see* Doc. 70-6), Sari sent the Copyright Office the Highlighted Plans. (Doc. 66-2 at 1–4). On February 9, 2015, the Copyright Office registered Sari's copyright in the Highlighted Plans as a derivative work. (Doc. 75-1 at 49).

On October 31, 2014, Sari, proceeding pro se, filed a complaint against AHP alleging copyright infringement in violation of the Copyright Act, 17 U.S.C. § 101, *et seq*. Sari filed an amended complaint on December 31, 2014 (Doc. 21), and AHP filed its Answer on January 14, 2015 asserting counterclaims for (1) declaratory relief, (2) fraud on the copyright office, (3) injunctive relief, and (4) attorneys' fees. (Doc. 24). Following discovery, AHP filed its Motion for Summary Judgment (Doc. 66) on June 22, 2015.

II. STANDARD OF REVIEW

Under Federal Rule of Civil Procedure 56, the Court must grant summary judgment if the moving party demonstrates that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).

In reviewing a motion for summary judgment, the Court views the facts in a light most favorable to the non-moving party. *Boitnott v. Corning, Inc.*, 669 F.3d 172, 175 (4th Cir. 2012) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)). Once a motion for summary judgment is properly made and supported, the opposing party has the burden of showing that a genuine dispute exists. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986); *Bouchat v. Baltimore Ravens Football Club, Inc.*, 346 F.3d 514, 522 (4th Cir. 2003) (citations omitted). "[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Emmett v. Johnson*, 532 F.3d 291, 297 (4th Cir. 2008) (quoting *Anderson*, 477 U.S. at 247–48).

A "material fact" is a fact with the propensity to affect the outcome of a party's case. *Anderson*, 477 U.S. at 248; *JKC Holding Co. v. Wash. Sports Ventures, Inc.*, 264 F.3d 459, 465 (4th Cir. 2001). Whether a fact is considered to be "material" is determined by the substantive law, and "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson*, 477 U.S. at 248; *Hooven-Lewis v. Caldera*, 249 F.3d 259, 265 (4th Cir. 2001).

A "genuine" issue concerning a "material" fact arises when the evidence is sufficient to allow a reasonable jury to return a verdict in the nonmoving party's favor. *Resource Bankshares Corp. v. St. Paul Mercury Ins. Co.*, 407 F.3d 631, 635 (4th Cir. 2005) (quoting *Anderson*, 477

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