

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

T-PEG, INC and)
TIMBERPEG EAST, INC.,)
Plaintiffs,)
)
vs.) No. 03-CV-462-M
)
VERMONT TIMBER WORKS, INC. and)
DOUGLAS FRIANT,)
Defendants.)

PLAINTIFFS' AND DEFENDANTS' JOINT MOTION TO CONTINUE TRIAL,
FINAL PRETRIAL CONFERENCE AND ALL PRETRIAL DEADLINES [ASSENTED]

Plaintiffs, T-Peg, Inc. and Timberpeg East, Inc., and defendants, Vermont Timber Works, Inc. ("VTW") and Douglas Friant ("Friant"), being all the parties in the case, respectfully move to continue the trial, all pretrial deadlines and the final pretrial conference, to enable the Court to rule on outstanding dispositive or issue-narrowing motions so that the parties can submit more meaningful pre-trial materials.

In support of this motion, the parties state as follows:

1. Currently this case is set for trial on January 8, 2008, for final pre-trial conference on December 17, 2007, and for Pre-Trial Statements and materials on December 3, 2007.

2. Several motions – potentially dispositive of some or all of the issues in the case – remain pending. This Court's disposition of the pending motions will impact what issues need to be tried, and whether any issues will be tried. In light of that, the parties believe that the current trial schedule will likely require the expenditure of resources on issues, or an entire case, that may not be tried. Pending motions include:

a. Defendants' MSJ I, Headings I (D) & (E) (Document 23, fully briefed and pending decision).

b. Defendants' MJOP I as to Damages, Profits Remedies (Document 33, fully briefed and pending decision). After the 1st Circuit ruling on other grounds, this Court reopened this motion (Order dated 3/9/07). This motion is ready for ruling.

c. Defendants' MSJ II on (1) Non-Copyrightability and (2) VTW's Lack Of Profits (Document 44, fully briefed and pending decision). After the 1st Circuit ruling on other grounds, this Court reopened this motion (Order dated 3/9/07).

d. Plaintiffs' Motion for Partial Summary Judgment , as to (1) originality of the copyrighted architectural work and (2) defendants' access to the copyrighted architectural plans, (Document 125, fully briefed, and pending decision).

e. Defendants' MSJ III Based On Plaintiffs' Lack of Standing, (Document 126, fully briefed and pending decision).

3. Accordingly, the parties request that this Court continue the trial, pretrial conference and all pretrial filing deadlines until after disposition of the pending motions. The parties believe that continuing the trial and pretrial deadlines would serve judicial and legal economy for this Court and for the parties by preventing the preparation and submission of pretrial materials to which this Court's disposition of any or all of the pending motions may render unnecessary. The parties further request that this Court reschedule the trial to occur no sooner than one month after this Court's disposition of the final motion so as to allow the parties adequate time to prepare for trial as shaped by this Court's orders on the motions.

4. After reviewing schedules, the parties and counsel request that trial not be scheduled for any days during February 15-29, 2008, March 3-7, 14-23, 2008, or April 11-30, 2008, or the days of May 13 or May 21, 2008.

5. In accordance with Rule 7.2(d) of this Court, the undersigned certify that their respective principals have been notified of this request and concur in it.

6. Due to the discretionary nature of the relief requested herein, no accompanying memorandum of law is necessary.

WHEREFORE, the parties respectfully request that this Court:

A. Continue the trial, pretrial conference and all pretrial deadlines until no sooner than one month after disposition of the last pending motion; and

B. Grant such further and other relief as this Court deems just, equitable and proper.

Respectfully submitted,

VERMONT TIMBER WORKS, INC.
and DOUGLAS FRIANT, Defendants,

T-PEG, INC and TIMBERPEG
EAST, INC., Plaintiffs,

/s/ W. E. Whittington
W.E. Whittington

/s/ Daniel E. Will
Daniel E. Will

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Dated: November 16, 2007

CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2007 I served the foregoing pleading on all counsel of record, by causing it to be filed electronically via the CM/ECF filing system or mailed by first-class United States Mail, postage pre-paid, or in such other manner as may be indicated:

/s/ Daniel E. Will
Daniel E. Will