

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

_____	)	
T-Peg, Inc. and Timberpeg East, Inc.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. C-03-462-M
	)	
Vermont Timber Works, Inc. and Douglas Friant	)	
	)	
Defendants.	)	
_____	)	

**OBJECTION TO DEFENDANTS’ MOTION FOR LEAVE TO FILE ADDITIONAL  
CITATIONS SUPPORTING THEIR MOTION FOR SUMMARY JUDGMENT BASED  
ON PLAINTIFFS’ LACK OF STANDING**

NOW COME Plaintiffs, T-Peg, Inc. and Timberpeg East, Inc. (collectively, “Timberpeg”), and respectfully object to Defendants’ Motion for Leave to File Additional Citations Supporting Their Motion for Summary Judgment Based on Plaintiffs’ Lack of Standing and state as follows:

1. On June 26, 2007, Defendants Vermont Timber Works, Inc. and Douglas Friant (collectively, “VTW”) moved for summary judgment on the grounds that the named plaintiffs allegedly do not own the copyright to the architectural plans at issue and, therefore, lack standing to prosecute this infringement action. VTW contends that the copyright is owned by Timberpeg Services, Inc. (“Timberpeg Services”) under the work-made-for-hire doctrine, not by T-Peg, Inc. (“T-Peg”) and Timberpeg East, Inc. (“Timberpeg East”).

2. Timberpeg objected to VTW’s motion because the Timberpeg family of companies have long-standing agreements in which T-Peg and Timberpeg East have equal, undivided ownership in the rights to all copyrighted and copyrightable material generated on

behalf of Timberpeg East and Timberpeg Services. As such, T-Peg and Timberpeg East are the proper parties to prosecute this copyright infringement action. Timberpeg also objected because VTW itself lacks standing to challenge the transfer of copyright ownership between the Timberpeg family of companies. Billy-Bob Teeth, Inc. v. Novelty, Inc., 329 F.3d 586, 592 (7th Cir. 2003).

3. VTW now seeks leave to submit two additional case citations in further support of its motion for summary judgment, Silvers v. Sony Pictures Entertainment, Inc., 402 F.3d 881 (9th Cir. 2005) (en banc) and Auscape Int'l v. National Geographic Society, 409 F.Supp.2d 235, 239 n. 16 (S.D.N.Y. 2004).

4. Timberpeg objects to VTW's motion for leave because VTW provides no explanation for why the additional citations are warranted. Neither Silvers nor Auscape constitute "new" authority since they were both decided years before VTW filed its motion for summary judgment. VTW did not reference these cases in its motion for summary judgment or its reply, VTW does not explain why it failed to do so, and VTW should be precluded from supplementing its argument well past the close of the briefing period in the absence of any reason.

5. Equally importantly, Timberpeg objects to VTW's motion because Silvers and Auscape are simply irrelevant. Both cases stand for the proposition that a bare assignment of an accrued cause of action for copyright infringement is impermissible under the Copyright Act. Silvers, 402 F.3d at 890; Auscape, 409 F.Supp.2d at 239 n. 16. Beyond generally touching on the issue of standing, Silvers and Auscape share no similarity with the facts of this action or the standing argument VTW has raised. VTW contends that the copyrighted architectural plans at issue are owned by Timberpeg Services, not that the accrued cause of action for copyright infringement has been improperly assigned to T-Peg and Timberpeg East. The factual predicate

to applicability of Silvers and Auscape does not exist in this action and VTW's underlying motion in no way suggests that it does.

6. Timberpeg has already fully responded to and dispatched VTW's standing argument and it should not be required months after the close of the briefing period to chase down and dispel additional authority that is irrelevant to that motion.

7. For these reasons, VTW's motion for leave to file additional citations should be denied.

WHEREFORE, Timberpeg respectfully requests that this Honorable Court:

- A. Deny Defendants' Motion for Leave To File Additional Citations Supporting Their Motion for Summary Judgment Based on Plaintiffs' Lack of Standing; and
- B. Grant to Timberpeg such further relief as this Court deems just and equitable.

Respectfully submitted,

T-PEG, INC. AND  
TIMBERPEG EAST, INC.

By their attorneys,

DEVINE, MILLIMET & BRANCH,  
PROFESSIONAL ASSOCIATION

Dated: November 19, 2007

/s/ Jonathan M. Shirley  
Daniel E. Will (Bar No. 12176)  
Jonathan M. Shirley (Bar No. 16494)  
111 Amherst Street  
Manchester, NH 03105-0719  
(603) 669-1000

Of Counsel:

Stephen S. Woods, Esquire (#8240)  
General Counsel for Plaintiffs  
Timberpeg East, Inc.  
c/o 68 Lyme Road  
Hanover, NH 03755  
(603) 643-6200

**CERTIFICATE OF SERVICE**

I hereby certify that on this day, November 19, 2007, a copy of the foregoing was transmitted to W.E. Whittington, Esquire in accordance with the Court's Administrative Procedures of Electronic Filing.

/s/ Jonathan M. Shirley