

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

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

DEFENDANT VERMONT TIMBER
WORKS' MOTION TO COMPEL

Defendant Vermont Timber Works, Inc. ("VTW") moves to compel production of certain discovery withheld by plaintiffs Timberpeg East, Inc. and T-Peg, Inc. ("Timberpeg"), particularly the following:

- (1) Request To Produce 13. All documents, including court pleadings, draft complaints, and letter to purported infringers, relating to any claim by either plaintiff, or by Timberpeg South, Inc., Timberpeg West, Inc. or Timberpeg Pacific, Inc., that any person has infringed a copyright owned by any of them.¹ Ex. 1
- (2) Oral request during deposition. "[T]he Timberpeg revised copyright language in the border of Timberpeg drawings and all drafts thereof and documents relating thereto." Ex. 3
- (3) Deposition of Stephen Woods, agent of Timberpeg, noticed on February 26, 2004. Ex. 4

Timberpeg refuses as to each.

¹ Timberpeg "objects to this request as overly broad, unduly burdensome, excessive in its timeframe and [relevancy]. Ex. 2.

In subsequent correspondence dated April 2, 2004, VTW offered to limit this request to documents created after June 1999. (Ex. 3) VTW has subsequently learned that Timberpeg litigated copyright issues in the late 1990's, and therefore now requests that the time frame go back to December 1995, or four years before the date of Timberpeg's first alleged drawings for customer in this case.

VTW submits its Memorandum In Support, below.

MEMORANDUM IN SUPPORT

Preliminary Statement

Both Timberpeg and VTW are in the timber framing business, although there are certain differences in what services and products they provide. This is Timberpeg's action against VTW alleging that ^{VTW} ~~Timberpeg~~ infringed Timberpeg's copyrighted plans dated 4/20/01 and registered with the Copyright Office on May 8, 2001.² In addition to copyright infringement, Timberpeg asserts claims against VTW for unjust enrichment, unfair competition and alleged violation of the N.H. Consumer Protection Act.

Court Pleadings And Threat Letters In Other Cases

Timberpeg itself raised the issue of its own litigious conduct by bragging to VTW of its "resolve" to litigate and hinting at its successes with others. In a June 23, 2003 letter to VTW (Ex. 5), it stated

Timberpeg is prepared to file suit in New Hampshire Federal District Court to defend its copyright interests and collect damages, including attorneys' fees. You or your attorneys can certainly confirm Timberpeg's resolve to pursue this matter in court (if necessary) by researching filings in Federal Court databases.

Ex. 5 (emphasis added). However, a check of reported decisions reflects that there is no reported case involving Timberpeg. Presumably, then, the hinted cases are all unreported cases, mere

² Because Timberpeg failed to attach the plans to its complaint and refused VTW's request to voluntarily provide the plans it claims were infringed, VTW has only learned which plans Timberpeg accuses it of infringing on March 2, 2004 in connection with discovery in the case.

filings which were later dismissed, or mere threats.³ Having raised the issue, Timberpeg cannot now refuse to disclose such information as it has.

In addition, these documents and information are relevant to many issues in the case, including:

- Plaintiffs' "business reputation," which plaintiffs claim in their Mandatory Disclosures to have been damaged by VTW's conduct.
- Other court determinations of the validity of Timberpeg's copyright language at issue here.
- Other court determinations with respect to the originality and copyrightability of Timberpeg's drawings.
- Other court determinations with respect to the ability of Timberpeg East to claim rights under T-Peg's copyright, or T-Peg's ability to assert ownership of designs it did not draw.
- Other court determinations with respect to the issues of preemption of the state law claims.
- Other court determinations with respect plaintiffs' consumer protection and unfair competition claims.
- Other court determinations which may have relevance in this case.
- Plaintiffs' good or bad faith in asserting claims or issues which it has lost in other jurisdictions or which are contrary to positions it asserted in other cases.

The documents and information should be produced.

The "Border" of the Copyrighted Drawings.

Timberpeg drawings are printed on a standard "border" which contains its copyright notice. On the drawings at issue in this case, the border reads:

³ The PACER "Cases/Parties" Index – a mere partial list according to PACER's web page information - reflects approximately eight federal cases in which one or both plaintiffs have asserted copyright claims. In most cases the documents are not available through PACER, and it is unknown what other cases exist involving plaintiffs which are not identified through PACER.

“This drawing may not be reproduced or copied, in whole or in part, without the expressed written permission of T-Peg, Inc.”

Ex. 6 (emphasis added).

VTW claims this notice failed to put the public, and VTW, on notice that Timberpeg was claiming rights to the underlying architectural work as opposed to the drawing itself, and that the notice related at most to T-Peg, Inc., not Timberpeg East, Inc. See Affirmative Defenses E, F, G, H & L.

In addition, Timberpeg specifically relied on the above language in a threatening letter it sent to VTW on June 23, 2003. Ex. 5.

At depositions on March 29, 2004, Timberpeg’s agent admitted that Timberpeg changed the above standard language on its all its drawings, apparently as the result of discussions with VTW in connection with this case, but refused to disclose information concerning the change or to produce documents relating thereto. Timberpeg’s refusal was based on relevancy.

The information is discoverable under FRCP 26 in that it is calculated to lead to discoverable evidence. It may even be admissible -- which need not be determined at this time, of course -- as the change is not to prevent injury or harm and therefore not governed by FRE 407.

Timberpeg’s modified language and the process of changing it may be relevant to the issues of what copyright interests were claimed; whether Timberpeg was merely protecting the expression of the idea embodied in the drawings or the underlying architectural work which was the structure contemplated by the drawings; whether it understood the copyright to be on behalf of T-Peg only or both plaintiffs; whether it has acted in good faith; and whether VTW acted in good faith.

Stephen Woods' Deposition

VTW properly noticed Stephen Woods' deposition on February 26, 2004, and Timberpeg refuses to produce him for deposition. Mr. Woods is apparently employed by Traditional Management, Inc., a firm apparently related to plaintiffs, and claims to be "General Counsel" of Timberpeg, East, Inc. (Ex. 4). He is not the lead attorney of record in the case. He has performed many non-privileged and non-legal functions in connection with the matter, including negotiating with an outside party, the Sugar River Savings Bank, to force the Bank to pay sums to Timberpeg in order to complete the project allegedly contemplated by the Timberpeg documents; computing Timberpeg's damages; and speaking directly with VTW's principal and, later, its Vermont counsel, long before suit was filed here. He also was apparently involved in filings with the U. S. Copyright Office and with the process of placing warnings on the drawings, and framing the particular copyright claims asserted by plaintiffs. He also is knowledgeable about Timberpeg's other suits -- he indeed boasted of Timberpeg's apparent successes against others -- and can likely lead VTW to important evidence from them.

Attorney-client privilege is not the issue here, at least currently. VTW has accepted for now Woods' role as counsel to the plaintiffs, and intends to honor assertions of attorney-client privilege as to communications between attorney and client rendered as part of the attorney-client relationship.

VTW is entitled to take Mr. Woods' deposition as to all non-privileged information.

Efforts To Obtain Compliance

The undersigned certifies under Rule 7.1(c) of this court that he has made a good faith effort to obtain concurrence in the relief sought. That consisted of sending a letter of particulars

on April 2, 2004, explaining the relevancy of the requested information, and delaying this motion for two weeks which Timberpeg considered its positions. Timberpeg does not concur.

WHEREFORE, VTW requests that the Court compel the above discovery and award it its reasonable attorneys fees and costs incurred in making this motion and making the numerous unsuccessful requests to obtain this information without motion practice.

Date: April 15, 2004

VERMONT TIMBER WORKS, INC.
Defendant,

By: W. E. Whittington
Its Attorney

W. E. Whittington (Bar No. 6916)
Whittington Law Associates, PLLC
35 South Main Street
Hanover, NH 03755
(603) 643-2755

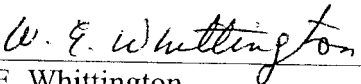
- Ex. 1 - Document List -- Accompanying Notice of Depositions dated 02/26/04
- Ex. 2 - Plaintiff's response to Document List attached to NOD and Privilege Log -- 03/31/04
- Ex. 3 - WLA letter to D. Will dated 04/02/04
- Ex. 4 - Notice of Depositions dated 02/26/04
- Ex. 5 - Timberpeg letter to VTW re Copyright Infringement dated 06/23/03
- Ex. 6 -- Timberpeg drawing

CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2004, I served the foregoing pleading on the following counsel of record, by first class mail:

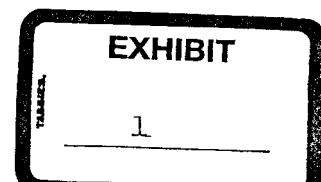
Daniel E. Will, Esq.
Devine, Millimet & Branch, P.A.
111 Amherst Street
Manchester, NH 03105

Stephen S. Woods, Esq.
Traditional Management Company
68 Lyme Road
Hanover, NH 03755


W.E. Whittington

DOCUMENT LIST
ACCOMPANYING NOTICE OF DEPOSITIONS DATED 2/26/04

1. All sketches, preliminary drawings, drawings, designs or other graphic representations relating to any project or proposed project of Stanley Isbitski.
2. All sketches, preliminary drawings, drawings, designs or other graphic representations, including all versions, revisions, or iterations, drawn by or for either plaintiff for Stanley Isbitski.
3. All sketches, preliminary drawings, drawings, design, graphic representations given by Stanley Isbitski to either plaintiff.
4. All documents relating to Stanley Isbitski.
5. All documents relating to communications between Stanley Isbitski and either plaintiff.
6. All documents relating to communications between either plaintiff and VTW.
7. All documents relating to communications between either plaintiff and any other person, including Old Hampshire Designs, relating to Stanley Isbitski.
8. All documents relating to Stanley Isbitski's requests for a building permit in Salisbury, New Hampshire.
9. All photos, drawings, or other documents relating to property owned or formerly owned by Stanley Isbitski in Salisbury, New Hampshire.
10. All documents relating to communications between either plaintiff and any third party concerning Stanley Isbitski.
11. All documents relating to communications between plaintiffs concerning Stanley Isbitski.
12. All documents relating to either plaintiff's communications with the United States Copyright Office concerning registration of any design relating to Stanley Isbitski.
13. All documents, including court pleadings, draft complaints, and letters to purported infringers, relating to any claim by either plaintiff, or by Timberpeg South, Inc., Timberpeg West, Inc. or Timberpeg Pacific, Inc., that any person has infringed a copyright owned by any of them.
14. All documents relating to any denial of copyright registration of any copyright claimed by either plaintiff, or by Timberpeg South, Inc., Timberpeg West, Inc. or Timberpeg Pacific, Inc.



DEVINE
MILLIMET

ATTORNEYS AT LAW

March 31, 2004

By Hand

W.E. Whittington
Whittington Law Associates, PLLC
35 South Main Street
Hanover, NH 03755

**Re: T-Peg, Inc. and Timberpeg East, Inc. v.
Stanley J. Isbitski, and Vermont Timber Works, Inc.**

Dear Ned:

Please accept this as the plaintiff's response to the document request attached to your deposition notice.

Along with this letter, which contains our responses to your document request below, I am enclosing a log of documents withheld on the basis of a privilege, as well as documents numbered TIM000460 through TIM000474, which constitute the remaining, non privileged documents responsive to your request that were not produced as part of our mandatory initial disclosures.

The response to each of your document requests is as follows, numbered to correspond with the request to which it responds:

1. With the exception of documents protected by attorney-client privilege and/or attorney work-product (see attached Privilege Log), Timberpeg refers VTW to the documents produced with Timberpeg's Mandatory Disclosure and the documents produced hereto.
2. With the exception of documents protected by attorney-client privilege and/or attorney work-product (see attached Privilege Log), Timberpeg refers VTW to the documents produced with Timberpeg's Mandatory Disclosure and the documents produced hereto.
3. Except to the extent Isbitski may have marked up or annotated any Timberpeg plans and then returned those Timberpeg plans to Timberpeg (see documents produced with Mandatory Disclosure), Timberpeg is not aware of any sketches, preliminary drawings, drawings, design, or graphic representations given by Isbitski to Timberpeg.

DEVINE, MILLIMET
& BRANCH
PROFESSIONAL
ASSOCIATION

111 AMHERST STREET
MANCHESTER
NEW HAMPSHIRE
03101

T 603.669.1000
F 603.669.8547
DEVINEMILLIMET.COM

MANCHE
ANDOVE
CONCOR
NORTH

EXHIBIT

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4. Timberpeg objects to this request as seeking information protected by attorney-client privilege and/or attorney work-product – please see Privilege Log. To the extent not protected by privilege, Timberpeg refers VTW to the documents produced with Timberpeg’s Mandatory Disclosure and the documents produced hereto.

5. Timberpeg objects to this request as seeking information protected by attorney-client privilege and/or attorney work-product – please see Privilege Log. To the extent not protected by privilege, Timberpeg refers VTW to the documents produced with Timberpeg’s Mandatory Disclosure.

6. Timberpeg objects to this request as seeking information protected by attorney-client privilege and/or attorney work-product – please see Privilege Log. To the extent not protected by privilege, Timberpeg refers VTW to the documents produced with Timberpeg’s Mandatory Disclosure.

7. Timberpeg objects to this request as irrelevant, overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Timberpeg further objects to this request as seeking information protected by attorney-client privilege and/or attorney work-product – please see Privilege Log. Without waiving said objections, Timberpeg refers VTW to the documents produced with Timberpeg’s Mandatory Disclosure and the documents produced hereto.

8. Timberpeg objects to this request as seeking information protected by attorney-client privilege and/or attorney work-product – please see Privilege Log. To the extent Timberpeg has any such documents not protected by privilege, Timberpeg refers VTW to Timberpeg’s documents produced with Timberpeg’s Mandatory Disclosure.

9. Timberpeg objects to this request as seeking information protected by attorney-client privilege and/or attorney work-product –see Privilege Log. Without waiving said objection, and to the extent such documents are not privileged, Timberpeg refers VTW to the documents produced with Timberpeg’s Mandatory Disclosure.

10. Timberpeg objects to this request as seeking information not relevant to this litigation nor reasonably calculated to lead to the discovery of relevant information. Timberpeg further objects to this request as seeking information protected by attorney-client privilege and/or attorney work-product – please see Privilege Log. Without waiving said objections, Timberpeg refers VTW to the documents produced with Timberpeg’s Mandatory Disclosure and the documents produced hereto.

11. Timberpeg objects to this request as seeking information protected by attorney-client privilege and/or attorney work-product –see Privilege Log. Without waiving said objection, and

to the extent such documents are not privileged, Timberpeg refers VTW to the documents produced with Timberpeg's Mandatory Disclosure and the documents produced hereto.

12. Timberpeg objects to this request as seeking information protected by attorney-client privilege and/or attorney work-product—see Privilege Log. Without waiving said objection, and to the extent such documents are not privileged, Timberpeg refers VTW to the documents produced with Timberpeg's Mandatory Disclosure and the documents produced hereto.

13. Timberpeg objects to this request as overly broad, unduly burdensome, excessive in its requested timeframe, and as seeking the disclosure of information that is not relevant to this litigation nor reasonably calculated to lead to the discovery of admissible evidence.

14. Timberpeg objects to this request as vague and ambiguous in that VTW does not define what is meant by "denial of copyright registration" or by whom such denial would be made. Timberpeg further objects to this request as overly broad, excessive in its timeframe, and not seeking information relevant to this litigation nor seeking information reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objections, Timberpeg is unaware of any documents by which the United States Copyright Office has denied a copyright registration by Timberpeg.

I trust you will let me know if you have any questions or concerns.

Very truly yours,



Daniel E. Will

DEW/ljm

Enclosure

cc: Stephen S. Woods (w/o enc.)

Whittington Law Associates PLLC
35 South Main Street
P. O. Box 869
Hanover, NH 03755

W.E. "Ned" Whittington*

* Admitted in NH, VT, IL

Web: www.whittington-law.com
E-mail: ned@whittington-law.com

Tel: (603) 643-2755
Fax: (603) 643-6490

Also in Woodstock, VT

April 2, 2004

Daniel E. Will, Esq.
Devine, Millimet & Branch, P.A.
111 Amherst Street
Manchester, NH 03105

Re: T-Peg, Inc., et al. v. Isbitski, et al., No. 03-CV-462-M

Dear Dan:

This will follow up several outstanding issues.

First, I'm confirming my request during the depositions on Wednesday to receive a copy of the Timberpeg revised copyright language in the border of Timberpeg drawings and all drafts thereof and documents relating thereto.

Second, I'm confirming that you (Steve) took the Sugar River documents, Nos. 3001-3390, for copying, and will return them to me so that they can be returned to the bank, together with a set for me (at my expense) of anything he copies for your side.

Third, I'm confirming that you (Steve) have my oversized VTW documents for copying and will return to me.

Fourth, I'm sending today, in this same packet, our First Interrogatories and Requests to Produce to the plaintiffs.

Fifth, please consider this an attempt to resolve differences without court intervention concerning Category 13 in the Document List Accompanying Notice Of Depositions Dated 2/26/04, to which you object on grounds of overbreadth, undue burden, excessive timeframe and relevancy. We're willing to limit the request to documents created after June 1999. The documents are directly relevant, at least, to VTW's counterclaim and to plaintiffs' claims of damage to their business reputation. If I do not hear from you by Tuesday (if that time frame is not feasible, please explain what

EXHIBIT

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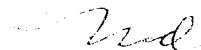
Daniel E. Will, Esq.
April 2, 2004
Page 2

do not hear from you by Tuesday (if that time frame is not feasible, please explain what is) withdrawing your objection or responding adequately to these concerns, I will proceed with an appropriate motion.

Sixth, please consider this an attempt to resolve differences without court intervention concerning my request to take the deposition of Stephen Woods, to which you object on the ground he has nothing to offer which is relevant and not privileged. We believe he has non-privileged information which may be admissible or lead to admissible evidence, at least, as to his communications to VTW and its Vermont counsel, his communications with Sugar River Savings Bank, his communications with other third parties relating to the Isbitski project, and other copyright enforcement activities, suits and threats made by the plaintiffs, complaints made against the plaintiffs, the relationship of plaintiffs to related companies and independent representatives, and the organization of the plaintiffs and their affiliates and related companies. If I do not hear from you by Tuesday (if that time frame is not feasible, please explain what is) agreeing to produce him or responding adequately to these concerns, I will proceed with an appropriate motion. I would like to re-schedule Steve's deposition for early May, assuming we have the disputed documents and responses to our interrogatories and requests to produce by then. Please provide possible dates.

It was nice to meet you Wednesday. Best regards.

Sincerely,


W.E. Whittington

WEW/ffw

Enclosures

cc: Stephen S. Woods, Esq.
Doug Friant (e-mail)

File
submitted
1/11/04

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

T-PEG, INC and)	
TIMBERPEG EAST, INC.,)	
Plaintiffs,)	
)	
vs.)	No. 00-CV-111-M
)	
STANLEY J. ISBITSKI and)	
VERMONT TIMBER WORKS, INC.,)	
Defendants.)	

NOTICE OF DEPOSITIONS

To: T-Peg, Inc.
Timberpeg East, Inc.
c/o Daniel E. Will, Esq.

Notice is hereby given under FRCP 30(b)(1) that defendant Vermont Timber Works, Inc. ("VTW") will take the following depositions, at the listed times and places:

<u>Deponent</u>	<u>Date & Time *</u>	<u>Place **</u>
Plaintiffs, by D. L. Downey	March 16, 2004 @ 9:00 am, continuing from day to day until completed.	Whittington Law Assoc., PLLC 35 South Main Street Hanover, NH
Under FRCP 30(b)(6), person(s) who created the plans registered with the U.S. Copyright Office as No. Vau 510-781.	Immediately following prior deposition, continuing from day to day until completed.	Whittington Law Assoc., PLLC 35 South Main Street Hanover, NH
Under FRCP 30(b)(6), person(s) most knowledgeable of drawings and/or plans made for Stanley Isbitski.	Immediately following prior deposition, continuing from day to day until completed.	Whittington Law Assoc., PLLC 35 South Main Street Hanover, NH
Under FRCP 30(b)(6), person(s) most knowledgeable of dealings and negotiations between plaintiff(s) and Stanley Isbitski.	Immediately following prior deposition, continuing from day to day until completed.	Whittington Law Assoc., PLLC 35 South Main Street Hanover, NH

Under FRCP 30(b)(6), person(s) who visited Isbitski property in Salisbury, Vermont and/or Salisbury Town Offices on behalf of plaintiffs. Immediately following prior deposition, continuing from day to day until completed. Whittington Law Assoc., PLLC
35 South Main Street
Hanover, NH

Plaintiffs, by Stephen Woods Immediately following prior deposition, continuing from day to day until completed. Whittington Law Assoc., PLLC
35 South Main Street
Hanover, NH

* VTW is willing to discuss alternate dates by agreement, and is currently available March 3, 4, 5, 29, or 30, 2004. We anticipate two days should be sufficient for all these depositions.

** VTW is willing to take these either at plaintiff's place of business in Hanover or at counsel's offices in Manchester.

The depositions will be taken before an officer authorized to administer oaths under FRCP 28 and shall be recorded by stenographic means, and possibly also sound and/or visual means. You are directed to produce the deponents and are invited to participate under the rules.

The deponents are requested to produce at the depositions for inspection and copying the documents and tangible things listed on the attached Document List.

Date: February 26, 2004

VERMONT TIMBER WORKS, INC.
Defendant,

By: W. E. Whittington
Its Attorney

W. E. Whittington (Bar No. 6916)
Whittington Law Associates, PLLC
35 South Main Street
Hanover, NH 03755
(603) 643-2755

TIMBERPEG

The Artisans of Post & Beam.

June 23, 2003

Certificate of Mailing:

Mr. Stanley Isbitski
2 E. Main Street
Mendham, NJ 07945-1505

86 Freedom Terrace
Easton, PA 18045-7442

PO Box 244
Salisbury, NH 03268

Vermont Timber Works, Inc.
Daniel Kelleher, III
PO Box 856
Springfield, VT 05156

Certified Mail, Return Receipt Requested:

Vermont Timber Works, Inc.
William E. Dakin, Jr., Registered Agent
PO Box 2002
South Londonderry, VT 05143

RE: Copyright Infringement

Dear Gentlemen:

On November 1, 1999, Stanley Isbitski signed a "Deposit Agreement For TIMBERPEG® Preliminary Plans And Drawings" with Timberpeg East, Inc. ("Timberpeg"). I have enclosed a courtesy copy for your review. As a result, Timberpeg designed a home for Mr. Isbitski and provided Mr. Isbitski with a detailed set of Plans. Apparently, Mr. Isbitski decided not to purchase a pre-cut TIMBERPEG® brand post and beam package from Timberpeg.

It has now come to our attention, based upon a review of plans on file with the local building department in Salisbury, New Hampshire and a view of the construction site, that Mr. Isbitski and Vermont Timber Works, Inc. have built a home (provided a timber frame) in Salisbury, New Hampshire that is substantially similar, if not virtually identical, to the home designed for Mr. Isbitski by Timberpeg. As the Design Deposit

EXHIBIT

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Page Two

June 23, 2003

makes clear, despite Mr. Isbitski's decision not to purchase a TIMBERPEG® brand package, Timberpeg retained all rights, including all copyright interests, to its Plans and the underlying design. I have highlighted the pertinent part of the Design Agreement for your convenience. The Plans provided to Mr. Isbitski also included a copyright notice, a copy of which is attached.

Given the above-referenced facts and our investigation of this matter, Timberpeg has concluded that each of you (Stanley Isbitski and Vermont Timber Works, Inc.) have violated federal copyright law by building the Isbitski house (or providing the timber frame) based upon plans identical to or substantially the same as the copyrighted Plans provided to Mr. Isbitski by Timberpeg. Pursuant to the Architectural Works Copyright Protection Act of 1990, architectural plans and designs are subject to federal copyright protection.

The essential elements of any copyright infringement claim are the plaintiff's ownership of a valid copyright and the defendants' "illicit copying" of the copyrighted work. Illicit copying may be proven with direct or "indirect" evidence of copying. If defendants have "access" to the copyrighted work and there is a substantial similarity between the copyrighted work and the infringing "work," which with respect to an architectural work includes the structure/home itself, then illicit copying is presumed.

Regarding the first element of a copyright infringement claim, the Plans Timberpeg prepared for Mr. Isbitski were registered with the United States Copyright Office on May 18, 2001 (Certificate of Registration No. VAu 510-781). Timberpeg's Certificate of Registration is prima facie evidence of valid copyright ownership. In addition, because Timberpeg's copyright registration predates the copyright infringement, Timberpeg may claim statutory damages of up to \$100,000 plus attorneys' fees. As to the second element, Timberpeg can prove illicit copying of Timberpeg's copyrighted Plans with evidence of the defendants' access to the Plans (e.g., Plans on file with the building department and Mr. Isbitski's signature on a set of Plans) and the substantial similarity between Timberpeg's copyrighted Plans and the infringing work. In fact, a court will presume access when there is, as here, a striking similarity between the copyrighted work and the infringing work. The Isbitski home as built is strikingly similar if not virtually identical to the design embodied in the Timberpeg Plans. Under similar circumstances, courts have held persons liable for using copyrighted plans as the basis for constructing a building. Eales v. Environmental Life Styles, Inc., 958 F.2d 876 (9th Cir. 1992); Richmond Home Management, Inc. v. Raintree, Inc., 862 F.Supp. 1517 (W.D.Va. 1994); CMS Investors, Inc. v. Everest Development, Ltd., 840 F.Supp. 1304 (D. Minn. 1994).

Consequently, Timberpeg must insist upon being compensated for the infringement of its copyrighted Plans. In the event Timberpeg cannot satisfactorily resolve its copyright claims against both Mr. Isbitski and Vermont Timber Works, Inc., Timberpeg is prepared to file suit in New Hampshire Federal District Court to defend its

Page Three

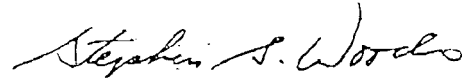
June 23, 2003

copyright interests and collect damages, including attorneys' fees. You or your attorneys can certainly confirm Timberpeg's resolve to pursue this matter in court (if necessary) by researching filings in Federal Court databases. If, however, you are interested in settling this matter by fairly compensating Timberpeg for your copyright infringement, please so advise me within 25 days of the date of this letter. I recommend you seek the advice of an attorney.

Should you or your attorneys have any questions regarding this issue, please do not hesitate to call me at (603) 643-6200.

Sincerely,

Timberpeg East, Inc.



Stephen S. Woods, Esq.
General Counsel
N.H. Bar No. 8240

SSW:jf
Enclosures

Please reply to:

Stephen S. Woods, Esq.
Timberpeg East, Inc.
c/o 98 Lyme Road
Hanover, NH 03755



CTIONS:
ONE SIDE

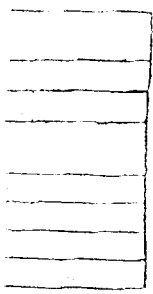
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IN
TABLET



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OBJECT

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TIMBERPEG EAST INC. CLAREMONT, NH.
TIMBERPEG SOUTH INC. FLETCHER, NC.
TIMBERPEG WEST INC. FT. COLLINS, CO.
TIMBERPEG PACIFIC INC. RENO, NV.

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EXPRESSED WRITTEN PERMISSION OF T-PEG, INC.
COPYRIGHT © 2001 T-PEG, INC.

DWG. NO.

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PROJ. NAME

ISBITSKI

PROJECT NO.

1834

TIMBER
EXHIBIT
6