

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.)	

DEFENDANTS’ MOTION IN LIMINE
TO PRECLUDE PLAINTIFFS FROM OFFERING
EVIDENCE OF NON-REGISTERED PLANS

Defendants, Vermont Timber Works, Inc. (“VTW”) and Douglas Friant (“Friant”), move in limine to preclude plaintiffs from offering evidence of plaintiffs’ “other plans” – those not comprising the registered documents at issue in this case – on grounds of relevancy, prejudice and confusion.

In support of this motion, defendants state:

This is plaintiffs’ case alleging infringement of their registered architectural work which consists of five pages only, marked as TIM 454, 455, 456, 457 and 458. These were dated April 2001 and registered with the Copyright Office on May 8, 2001.

Plaintiffs admitted that these five pages constitute the only Isbitski design they ever registered with the Copyright Office. [Req. to Admit Nos. 1 & 2, Ex. 1]

The infringement claim is necessarily limited to plaintiffs’ plans which were registered with the Copyright Office. That is because 11 U.S.C. §411 explicitly provides that “no action for infringement of the copyright in any work shall be instituted” until the work has been registered.

The Irrelevant Drawings

In addition to the five registered pages at issue [TIM 454-458],* plaintiffs have produced various un-registered drawings relating to the Isbitski project, as follows:

<u>Description</u>	<u>Date of Drawings</u>	<u>Control Number</u>	<u>Comment</u>
Sketch	03/26/01	TIM 058-069	12 pages
Preliminary Plans	12/28/99	TIM 396-403	8 sheets
Preliminary Plans	04/20/01	TIM 431-439* **	9 sheets
Frame isometric	08/31/01	TIM 084-085	2 sheets
Preliminary Plans	09/05/01	TIM 440-453	14 sheets
Preliminary Plans	09/18/01	TIM 421-430	10 sheets

* The five sheets of these which were registered, TIM 454-458, do come into evidence, of course.

** Defendants intend to introduce TIM 438 & 439 for a different purpose. These two pages constitute the only rendering of a timber frame in any of plaintiffs' drawings pre-dating the VTW frame drawings, and these drawings demonstrate in dramatic form that the VTW frame design is completely different from plaintiffs' frame design.

The First Circuit noted that plaintiffs had made numerous other drawings or designs which they did not register in the Copyright Office, and emphasized that it was only the plans registered which are at issue:

Timberpeg created a first set of preliminary plans on December 29, 1999 [TIM 396-403] and gave them to Isbitski. . . . [T]hese plans were never registered with the Copyright Office.

In early 2001, Isbitski met again with Timberpeg, saying that he was unsatisfied . . . Timberpeg completed a new design for Isbitski on April 20, 2001 [and] these second preliminary plans [actually, only 5 sheets thereof, TIM 454-458] were registered as an "architectural work." It is only this second, registered set of preliminary plans that is at issue here.

* * *

The Timberpeg construction plans [TIM 084-085] showed a bent frame but were not registered with the Copyright Office.

It serves no legitimate purpose for the un-registered drawings to come into evidence and, if they were to come in they would do nothing but confuse the jury in its attempt to compare numerous complex plans to determine “substantial similarity.” The Court should exclude these “other” drawings under FRE 403, prejudice and confusion.

WHEREFORE, defendants respectfully request that the Court preclude plaintiffs from offering evidence of plaintiffs’ “other plans” – those not comprising the registered documents at issue in this case – on grounds of relevancy, prejudice and confusion.

Date: August 14, 2009

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

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

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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2009, I served the foregoing pleading on the following counsel of record, by causing it to be filed electronically via the CM/ECF filing system.

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