

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' OBJECTION  
TO PLAINTIFFS' MOTION IN LIMINE No. 7  
(TO EXCLUDE EVIDENCE OF THE LICENSING OF THE WORK FOR \$4,000)

Defendants object to plaintiffs' motion in limine No. 7 (Doc. 189) to exclude evidence and reference to plaintiffs' subsequent licensing of the architectural work to Sugar River Savings Bank for \$4,000.

The evidence is relevant, *inter alia*, on the following issues:

1. It is evidence of the value of the work as a whole: since the "architectural work" as a whole (including the stick-built portion, the walls, the garage, etc) was sold for \$4,000, the jury may well conclude that the value of the frame elements allegedly copied by defendants (essentially the footprint and post-locations are what is claimed) was worth substantially less than \$4,000. The value of the "architectural work" is one of many factors which the jury can properly consider in determining statutory damages.

2. It demonstrates that plaintiffs did not suffer any damage but made a profit on the drafting component of the project, and on the Isbitski project as a whole, which are factors the jury can consider in determining statutory damages.

3. It has bearing on who the owner of the copyright is.

WHEREFORE, plaintiffs' Motion In Limine No. 7 should be denied.

Date: August 28, 2009

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

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

W. E. Whittington (Bar No. 6916)  
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CERTIFICATE OF SERVICE

I hereby certify that on August 28, 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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/s/ W. E. Whittington  
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