

-
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.,)	
Defendant.)	

DEFENDANT’S PRELIMINARY OBJECTION TO
PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendant, Vermont Timber Works, Inc. (“VTW”), objects to plaintiffs’ motion for partial summary judgment and submits the following memorandum in opposition.¹

STATEMENT OF DISPUTED FACTS

There is, at least,² a genuine issue as to the following material facts:

1. Whether VTW had access to the registered plans, those five pages registered with the Copyright Office and dated 4/20/01. (Plaintiffs improperly try to suggest that VTW’s access to the earlier, different, unregistered plans of December 1999 gave VTW access to the 4/20/01 plans.)
2. Whether plaintiff created any plan for a timberframe at all. (The undisputed evidence indicates it did not.)

¹ Since the motion is based on expert testimony and plaintiffs have delayed the scheduled deposition of their experts, VTW is simultaneously seeking leave to supplement this objection until November 12 to allow them to depose those experts and respond. This skeletal objection is filed to preserve VTW’s rights, particularly in light of plaintiffs’ refusal to assent to an extension.

² As noted in VTW’s memo supporting its own motion for summary judgment, there is more than merely a genuine dispute; these facts are undisputed in VTW’s favor.

3. Whether VTW's Friant "admitted, on a wall by wall basis, the footprint reflected in his shop drawings matches timberframed portion of the footprint in the Timberpeg architectural drawings." (An actual reading of Friant's deposition testimony, quoted in VTW's MSJ Reply Memo but only summarized (incorrectly) by plaintiffs, demonstrates that he made no such "admission" and that he testified to just the opposite.)

4. Whether VTW's three counsel admitted that VTW had copied plaintiffs' architectural plans. (An actual reading demonstrates that they in no way did so, and that plaintiffs attempt to confuse a reference to the earlier, different, non-registered, 1999 plans with the plans which are the subject of this case.)

5. Whether the timber frame designed and erected by VTW is "substantially similar" to the registered whole-house floorplan (which contained no timber frame drawing at all). (As demonstrated in VTW's memos supporting its summary judgment motion, they are not substantially similar at all.)

ARGUMENT

VTW incorporates by reference its arguments in its principal and reply memoranda in support of its own motion for summary judgment.

In addition, VTW anticipates supplementing this memorandum after deposing plaintiffs' experts and having its own expert finalize his opinions, and has separately requested until November 12 to do this.

Date: October 19, 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

CERTIFICATE OF SERVICE

I hereby certify that on October 13, 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
W.E. Whittington