

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,)	
VERMONT TIMBER WORKS, INC.,)	
And DOUGLAS S. FRIANT,)	
Defendants.)	

DEFENDANT DOUGLAS S. FRIANT’S ANSWER,
AFFIRMATIVE DEFENSES, AND JURY DEMAND

Defendant Douglas S. Friant (“Friant”) answers the complaint of T-Peg, Inc. (“T-Peg”) and Timberpeg, East, Inc. (“Timberpeg”) as follows:

1. Insufficient knowledge to admit or deny.
2. Insufficient knowledge to admit or deny.
3. Insufficient knowledge to admit or deny.
4. Admitted.
5. Admitted.
6. Denied.
7. Denied.
8. Denied.
9. Denied.
10. Insufficient knowledge to admit or deny.
11. Insufficient knowledge to admit or deny.
12. Insufficient knowledge to admit or deny.

13. Insufficient knowledge to admit or deny.
14. Insufficient knowledge to admit or deny.
15. Insufficient knowledge to admit or deny.
16. Insufficient knowledge to admit or deny.
17. Insufficient knowledge to admit or deny.
18. Insufficient knowledge to admit or deny.
19. Insufficient knowledge to admit or deny.
20. Insufficient knowledge to admit or deny.
21. Denied.
22. Denied. Answering further, VTW designed and manufactured its own timber frame, which is a standard saltbox design, to fit Isbitski's requirements.
23. Admitted, except the number of employees varies from time to time.
24. Admitted.
25. Admitted, that VTW constructed its own timber frame on Isbitski's property at 289 New Road, Salisbury, New Hampshire.
26. Denied.
27. Insufficient knowledge to admit or deny.
28. Denied. Although VTW had no contact with plaintiffs, T-Peg's copyright notice authorized any user to use the documents so long as it did not reproduce or copy the drawing.
29. Admitted.
30. Admitted, except as to manufacture, which is denied.

Count I
Copyright Infringement Against Isbitski

31. Friant incorporates his prior responses.

32. Insufficient knowledge to admit or deny. Answering further, the “Plans” are not attached or identified in the Complaint.

33. Insufficient knowledge to admit or deny. Answering further, the “Plans” are not attached or identified in the Complaint.

34. Insufficient knowledge to admit or deny.

35. Insufficient knowledge to admit or deny.

36. Insufficient knowledge to admit or deny.

37. Insufficient knowledge to admit or deny.

38. Insufficient knowledge to admit or deny.

39. Insufficient knowledge to admit or deny.

40. Insufficient knowledge to admit or deny.

41. Insufficient knowledge to admit or deny.

Count II
Copyright Infringement Against VTW

42. Friant incorporates his prior responses.

43. Insufficient knowledge to admit or deny. Answering further, the Complaint fails to attach or identify the “Plans.” VTW did not view any plans on file with the Town of Salisbury.

44. Denied.

45. Denied.

46. Denied. Answering further, at the time this action was commenced there was not, nor had there ever been, a ‘house’ on Isbitski’s land.

47. Denied.

48. Denied.

Count III - VII
Counts Not Relating To Friant

46-72. As Counts III-VII, and paragraphs 49-72 contained in them, do not relate to Friant, no response is required.

Count VIII
Copyright Infringement Against Friant

- 73. Friant incorporates his prior responses.
- 74. Admitted.
- 75. Insufficient knowledge.
- 76. Admitted.
- 77. Denied.
- 78. Admitted.
- 79. Denied.
- 80. Denied.
- 81. Denied. Answering further, plaintiffs have been barred from seeking damages by the Court's Order of November 19, 2004.

AFFIRMATIVE DEFENSES

For its affirmative defenses, Friant states:

- A. Failure to state a cause of action for which relief may be granted.
- B. Friant/VTW designed and constructed its timber frame independently of plaintiffs' work.
- C. The portion of plaintiffs' work that relates to the Isbitski frame is not copyrightable, because (a) it is simply a copy of a standard architectural form which has been in use in America for hundreds of years ("salt box" with a wing) and is not an original work of

authorship, (b) the frame provided by VTW/Friant consists of individual standard features and/or functional elements whose design or placement is dictated by utilitarian concerns, (c) the plaintiffs' "work" is too preliminary and lacking detail to define an objective frame so as to guide construction and thus constitute an architectural work, (d) plaintiffs' "work" constitutes a mere idea, procedure, process, system, method of operation, concept, or principle, and (e) the structure erected on Isbitski's land is not even substantially similar to a "house" in that it has no rooms, windows, doors, partitions, plumbing, roofing, siding, trim, electrical work, floors or many exterior walls. It remains an architectural open book. It only has a foundation and a partial frame. The overall form of the building remains to be defined.

D. To the extent the Isbitski building embodied or embodies a copyrighted architectural work of plaintiffs, any design, fabrication or construction by VTW/Friant relating to the building was in accordance with proper consent of Isbitski under 17 U.S.C. Section 120(b).

E. The copyright notice did not assert any protection in the now-claimed "architectural work," nor did it advise that the Plans constituted an "architectural work," but claimed only a right against reproduction or copying of the drawings.

F. Timberpeg did not properly assert any copyright.

G. Timberpeg did not own any copyright.

H. T-Peg did not own copyright in the asserted work.

I. Friant's conduct was not subject to New Hampshire law.

J. Friant incorporates by reference all the defenses set forth in VTW's Motion To Dismiss.

K. Plaintiffs licensed, authorized or waived the use of its plans through its copyright notice which restricted only the unauthorized reproduction or copying of the drawings.

L. Plaintiffs' design, or the components allegedly copied, were not copyrightable.

M. Plaintiffs authorized the use of any components, such as the foundation, which Friant allegedly used or copied.

N. Friant reserves the right to plead additional affirmative defenses at such times as he discovers them.

Date: December 4, 2004

DOUGLAS FRIANT,
Defendant,

By: W E Whittington
His Attorney

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JURY DEMAND

Friant demands trial by jury on all issues.

CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2004, I served the foregoing pleading on the following counsel of record, by first class mail:

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