

Seventh Circuit Court of Appeals' Decision Reins in Copyright Infringement Claims Relating to Home Designs

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Practice Area: Construction Law and Litigation

Design Basics, LLC ("Design Basics") initiated an action against Lexington Homes, Inc. ("Lexington"), alleging that Lexington wrongfully copied Design Basics' home plans and constructed approximately 50 homes using those plans. Design Basics was represented by Attorney Dana A. LeJune, of LeJune Law Firm, and Michael T. Hopkins, of IP-Litigation US, LLC. Lexington was one of approximately 100 such defendants, sued by Design Basics, since 2009. Lexington was represented by Attorney Frank W. Kowalkowski, of von Briesen & Roper, s.c. The District Court dismissed all of Design Basics' claims on summary judgment.

In *Design Basics, LLC v. Lexington Homes, Inc.*, 2017 U.S. App. LEXIS 9985, the Seventh Circuit Court of Appeals affirmed the District Court's decision. Prior to this decision, the Seventh Circuit had not previously considered the intersection between its cases on substantial similarity and copyright claims involving home designs. As part of this analysis, it noted that the opportunity for originality, justifying copyright protection, in the design of home plans, is constrained by functional requirements, consumer demands, and the vast body of similar designs already available. The Court also made it a point to confirm that when comparing a protected plan with the allegedly infringing plan, the only similarities that should be considered are those that relate to "protectable expression." As the Court noted, there are only so many ways to arrange a few bedrooms, a kitchen, some common areas, and an attached garage. The final conclusion being that in this field "the substantial similarity requirement, necessary to be successful with a copyright infringement claim, is particularly hard to satisfy."

The Seventh Circuit endorsed the District Court's use of the defendants' expert who pointed out many differences in the plans as "an analytical tool." The Court concluded that to whatever extent the parties' plans resembled one another, they likewise resemble countless other home designs in a crowded market.

The plaintiff's burden of proving that the defendant had access to the protected work was also addressed in this decision. The Seventh Circuit agreed with the District Court in its conclusion that the plaintiff did not provide sufficient evidence to prove access. The Court then noted that it had not previously considered whether an internet presence, without more, can satisfy the access element of a copyright infringement claim. After considering this point, the Court held the existence of a plaintiff's materials on the internet, even on a public and "user friendly" site, cannot by itself justify an inference that the defendant accessed the protected materials.

Builders and homeowners alike need to be very cautious relative to the origin of the plans being utilized for their projects. For custom built homes, both the builder and the homeowner could be sued for copyright infringement. Builders who are asked to construct a home pursuant to plans provided by someone else should confirm that individual has a license to use those plans and obtain an indemnification and hold harmless agreement from the homeowner or other supplier of the plans relative to any potential copyright infringement claims asserted by a third party. Homeowners must also make sure that they have proper written permission to use any plans. If they switch designers or builders during the course of the project, they should obtain a release from the previous company.

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