

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

ALFRED J. BELNIAK, D/B/A
HAMMERHEAD CONSTRUCTION,

Plaintiff,

v

Case No.8:07-CV-00032-T-24TGW

MODERN DAY CONSTRUCTION INC., a Florida Corporation,
MARC DELAPE, an individual, P.A.R. CUSTOM
DRAFTING INC., a Florida Corporation, PHILLIP ROUSH, an individual
MICHAEL CIANCIMINO, an individual and
HELAINÉ CIANCIMINO, an individual.
Defendants.

**PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO
DEFENDANTS MODERN DAY CONSTRUCTION, INC. AND/OR
MARC DELAPE**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff ALFRED J. BELNIAK, d/b/a HAMMERHEAD CONSTRUCTION, hereinafter referred to as HAMMERHEAD, requests that Defendant MODERN DAY CONSTRUCTION, INC., hereinafter MODERN, and MARC DELAPE, hereinafter DELAPE produce for inspection and copying the following documents hereinafter described.

1. DEFINITIONS

The following definitions apply to this Request for Production of Documents:

- a. The word MODERN shall mean, all parent, subsidiary and affiliated companies or divisions of, MODERN's predecessors in interest, all of MODERN's past and present directors, officers, employees, agents, or

representatives of any of them, as well as all other persons acting or purporting to act on MODERN and/ or DELAPE's behalf during the time period referred to hereinafter, representatives of any of them, as well as all other persons acting or purporting to act on MODERN and/or DELAPE's behalf during the time period referred to hereinafter.

- b. CIANCIMINO shall mean Michael Ciancimino and Helaine Ciancimino collectively.
- c. The word "person" shall mean any person and includes natural person, corporations, partnerships, associations, joint ventures, firms and other enterprises or legal entities, and includes both the singular and plural, the masculine and the feminine.
- d. The word "files" shall mean all methods of arranging or storing papers, records, documents or other recordings of data whether contained in folders, cabinets or other containers, whether recorded on magnetic cards, tapes or discs, or any other media, which are or have been maintained by MODERN and/or DELAPE for MODERN and/or DELAPE's use or on MODERN and/or DELAPE's behalf for preservation or reference.
- e. The word "communication" shall mean any oral statement, dialogue, colloquy, discussion, correspondence or conversation, and also means any transfer of thoughts or ideas between persons by means of

documents, and includes any transfer of data from one location to another by electrical or similar means.

- f. The words “document” or “documents” “paper” or “papers” shall mean the original, or, if the original is not available, then a copy, and each copy or draft of all written, printed, typed, reported, recorded or graphic matter, and all photographic matters or sound reproduction tapes, records or other devices, however produced or reproduced, now or formerly within MODERN and/or DELAPE’s actual or constructive possession, custody or control or of which MODERN and/or DELAPE has knowledge of. “Document” or “documents” shall also include, but is not limited to all correspondence, telegraphs, telexes, cables, telephone records, memoranda, memoranda of telephone conversations or meetings, reports tests, samples, studies, compilations of data, filings, records, charts, lists, analyses, graphs, diagrams, drawings, tables, schedules, cost estimates, worksheets, books, expenses, reports, reports pertaining to visits or telephone calls to consultants, labor organizations, or suppliers; notebooks, diaries, calendars, books of account, ledgers, journals and financial statements, other financial records, audits, profit and loss statements, annual reports, state and federal tax returns, checkbooks, cancelled checks, personnel files, payroll records, billings, invoices or statements, price lists, price quotations, credit memoranda, purchase orders, receipts, all press releases, photographs, newspaper clippings, handbills or written

advertisements, all contracts or agreements and any drafts, copies or reproductions of the foregoing, and any intracompany drafts of the foregoing upon which notations in writing have been made which do not appear on the originals. Without limitation the term “control” as used in the preceding sentences, a document is deemed to be in the control of MODERN and/or DELAPE if MODERN and/or DELAPE have the right to secure the document or a copy thereof.

- g. If any document requested was, but is no longer in MODERN and/or DELAPE’s possession or subject to MODERN and/or DELAPE’s control as defined herein, state what disposition was made of it, and the date or dates, or approximate date or dates, on which such disposition was made.
- h. The word “produce” means to make available the documents requested herein for inspection and copying and to separate such documents into categories set forth in this request if MODERN and/or DELAPE declines to produce any documents requested hereinafter on the basis of any asserted privilege, at the time of production please provide HAMMERHEAD with the following information pertaining to such documents:
 - i. Its date, or if not dated, the date it was prepared or received;
 - ii. The type of document, for example, letter, memorandum;
 - iii. The author and addressee;
 - iv. Its present location;

- v. The identity of the person or person presently the custodian or custodians thereof;
- vi. A general description of its contents;
- vii. The identify of each person who received a copy of such document and the relationship to MODERN and/or DELAPE;
- viii. Whether such documents contain or relate to facts or opinions, or both;
- ix. The nature of the privilege, for example work product or attorney-client that MODERN and/or DELAPE claims with respect to such documents.

2. TIME PERIOD TO WHICH THIS REQUEST PERTAINS

Unless otherwise specifically stated, the documents sought to be produced herein are those that are dated, prepared, sent, received, made or entered into from January 1, 2002 to the date of this Request for Production of Documents.

3. PLACE AND TIME OF PRODUCTION

MODERN and DELAPE are requested to produce the documents designated herein at a place mutually agreeable to the parties within thirty (30) days after service of this Request for Production of Documents.

4. CATEGORIES OF DOCUMENTS TO BE PRODUCED

- a. Any and all correspondence, letters, notes, memos, or documents of any kind or nature concerning, referencing, passing upon, evidencing, or in any way connected with or referring to the copyright infringement alleged in HAMMERHEAD's Complaint.
- b. All memoranda, notes, sketches, architectural drawings, technical drawings, architectural prints, architectural renderings, or other documents which in any way portray or depict, or represent any of

HAMMERHEAD's residential plans, brochures, advertisements and/or any of HAMMERHEAD's residential structures.

- c. All memoranda notes, sketches, architectural drawings, technical drawings, architectural prints, architectural renderings, or other documents which were used in connection with the creation of the architectural prints and/or plans exemplified by Exhibit 4 to the Complaint herein which are the subject of this litigation.
- d. All advertisements and brochures that portray, depict or represent architectural prints and/or plans exemplified by Exhibit 4.
- e. All advertisements and brochures that portray, depict or represent architectural prints and/or plans of MODERN's model homes or residential structures.
- f. All correspondence and documents between MODERN and/or DELAPE and any architectural firm and/or architect and/or home designer which created the designs for the residence which is the subject of this litigation.
- g. All correspondence and documents between MODERN and/or DELAPE and PAR and/or PHILLIP ROUSH and/or CIANCIMINO which were used to create the designs for the residence which is the subject of this litigation.
- h. All correspondence and documents between MODERN and/or DELAPE and/or drafting firms and/or draftsmen and documents which created the designs for the residence which is the subject of this litigation.
- i. All correspondence relating in any way to either the drafting of the architectural prints or plans and/or the construction of the residence which is the subject of this litigation.
- j. All contracts, agreements, subcontracts and purchase orders with any subcontractor and/or architect and/or material man involved in constructing the residence that is the subject of this litigation.
- k. All architectural or engineering drawings, renderings, show drawings and similar documents used to construct the residence that is the subject of this litigation.

- l. All documents that summarize, record, audit and/or analyze the costs incurred in constructing the residence which is the subject of this litigation.
- m. All documents that summarize, record, audit and/or analyze the price that CIANCIMINO paid in purchasing the residence that is the subject of this litigation.
- n. All communications between MODERN and/or DELAPE and any other party to this action, any other architect or engineer and draftsman, any subcontractor, any material man, any other contractor, including, but without limitation, correspondence, memoranda and notes relating to the residence which is the subject of this litigation.
- o. All photographs taken of or in connection with the construction of the residence which is the subject of this litigation.
- p. All photographs of any HAMMERHEAD model home.
- q. All contracts with any other person or persons for labor, services, and/or material on any part or all of the construction of the residence which is the subject of this litigation not covered by another or other category in this list.
- r. All copyright registration certificates and registrations forms and deposits made with the United States Copyright Office that relate to the technical drawings and/or architectural works that were used to construct the residence that is the subject of this litigation.
- s. All written contracts entered into with the CIANCIMINO and PAR and/or ROUSH.
- t. All communications between MODERN and/or DELAPE and CIANCIMINO relating to the residence which is the subject of this litigation.
- u. All contracts with any other person or persons in connection with the preparation of the architectural prints and/or plans that are the subject of this litigation.
- v. All memoranda, notes, sketches, architectural drawings, technical drawings, architectural prints, architectural renderings, or other documents which in any way portray or depict, represent any of

MODERN and/or DELAPE's residential plans, brochures, advertisements and/or residential structures including, but not limited to model homes.

- w. All advertisements and brochures that portray, depict or represent any of MODERN and/or DELAPE's model home(s).
- x. All correspondence and documents between MODERN and/or DELAPE and architectural firms and/or architects and documents which created the designs for any residence offered and/or constructed by MODERN and/or DELAPE.
- y. All correspondence and documents between MODERN and/or DELAPE and drafting firms and/or draftsmen and documents which created the designs for any residence offered and or constructed by MODERN and/or DELAPE.
- z. All contracts, agreements, subcontracts and purchase orders with any subcontractor and/or architect involved in constructing any residence offered and/or constructed by MODERN and/or DELAPE.
- aa. All architectural or engineering drawings, renderings, show drawings and similar documents used to construct any residence constructed by MODERN and/or DELAPE.
- bb. All documents that summarize, record, audit and/or analyze the costs incurred in constructing any residence offered and/or constructed by MODERN and/or DELAPE.
- cc. All documents that summarize, record, audit and/or analyze the price that MODERN and/or DELAPE was asking for any residence offered and/or constructed by MODERN and/or DELAPE.
- dd. All documents that summarize, record, audit or analyze the price that any party paid in purchasing any residence offered and/or constructed by MODERN and/or DELAPE.
- ee. All communications between MODERN and/or DELAPE and any other party to this action, any other architect or engineer and draftsman, any subcontractor, and material man, any other contractor, including but without limitation, correspondence, memoranda and notes for any residence offered and/or constructed by MODERN and/or DELAPE.

- ff. All contracts with any other person or persons for labor, services, or material on any part or all of the construction of any residence offered and/or constructed by MODERN and/or DELAPE.
- gg. All copyright registration certificates, registration forms, and deposits to the United States Copyright Office which relate to any technical drawings and/or architectural works of MODERN and/or DELAPE.
- hh. All documents including but not limited to technical drawings, brochures, and/or advertisements bearing a copyright notice of MODERN and/or DELAPE.
- ii. All order confirmations, invoices, bills, or other documents created by MODERN and/or DELAPE, confirming the construction by MODERN and/or DELAPE for the future construction, or request for payment for construction of the residence which is the subject of this litigation.
- jj. All order confirmations, invoices, bills, or other documents created by MODERN and/or DELAPE, confirming the construction by MODERN and/or DELAPE for the future construction, or request for payment for construction of a residence similar to the residence which is the subject of this litigation.
- kk. All order confirmations, invoices, bills, or other documents created by MODERN and/or DELAPE, confirming the construction by MODERN and/or DELAPE for the future construction, or request for payment for any construction of MODERN and/or DELAPE.
- ll. All accounts, journals, ledgers, reports, bank statements or other documents evidencing any payment received by MODERN and/or DELAPE for the sale, or other distribution of copies of technical drawings or architectural works for the residence which is the subject of this litigation.
- mm. All accounts, journals, ledgers, reports, bank statements or other documents evidencing any payment received by MODERN and/or DELAPE for the sale, or other distribution of copies of technical drawings or architectural works for any residence similar to the residence which is the subject of this litigation.
- nn. All accounts, journals, ledgers, reports, bank statements or other documents evidencing any payment received by MODERN and/or

DELAPE for the sale, or other distribution of copies of technical drawings or architectural works for any residence constructed by MODERN and/or DELAPE.

- oo. All financial statements, audited and/or unaudited, of MODERN and/or DELAPE reflecting gross and/or net income from the sale of any residence similar to the residence which is the subject of this litigation.
- pp. All financial statements, audited and/or unaudited, of MODERN and/or DELAPE reflecting all expenditures made in connection with the creation of Defendant's Work, including all expenditures made in connection with the construction of the CIANCIMINO residence on 11044 Baywind Court, Brooksville, Florida 34613.
- qq. All financial statements, audited and/or unaudited, of MODERN and/or DELAPE reflecting gross and/or net income from the sale of any residence constructed by MODERN and/or DELAPE.
- rr. All documents reflecting the number of copies of the technical drawings and/or architectural works reflecting the residence which is the subject of this litigation on hand, sold and/or returned to MODERN and/or DELAPE, including, without limitation, all orders, order confirmations, invoices, bills, canceled checks, receipts, bills of lading, freight receipts, warehouse receipts, inventory records or packing lists.
- ss. All documents, papers, files, and materials relating to HAMMERHEAD's copyright registration as being invalid, defective, or not enforceable.
- tt. All documents, papers, files, and materials that show that HAMMERHEAD's work lacks originality.
- uu. All documents, papers, files, and materials that show that HAMMERHEAD's work is not copyrightable.
- vv. All documents, papers, files, and materials that show that HAMMERHEAD's work is not substantially similar to Defendant's Work.

- ww. All documents, papers, files, and materials that show that Defendant's Work is an original independent creation.
- xx. All documents, papers, files, and materials that HAMMERHEAD's work was derived from prior works of third parties or from works in the public domain.
- yy. All documents, papers, files, and materials that show that the infringement alleged in the Complaint is de minimis.
- zz. All documents, papers, files, and materials that show that HAMMERHEAD's claim for relief should be barred because HAMMERHEAD failed to properly place notice of there copyright in accordance with the Federal Copyright Act of 1976 (as amended).
- aaa. All documents, papers, files, and materials that show why and how the original floor plan and/or blueprint in Exhibit 4 was altered during the construction of the CIANCIMINO residence.
- bbb. Produce copies of all complaints or petitions in any action filed by or against MODERN and/or DELAPE in which the allegations are similar to those of this suit.
- ccc. Produce copies of any and all claims made by or against MODERN and/or DELAPE for damages similar to those alleged in this suit.

Debra B. Tuomey, Esq.
Florida Bar No. 0496781
Debra B. Tuomey, Attorney at Law
15187 Woodcrest Road
Brooksville, FL 34604
Telephone: (352) 584-0020
Fax: (352) 797-4868
Trial counsel for Plaintiff
Date: _____

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of Plaintiff's First Request for Production of Documents to Defendant's Modern and Delape has been furnished by regular U.S. Mail on this _____ day of _____, 2007 to the following individuals:

Scott D. Clay, Esq.
The Clay Law Firm, P.A.
201 E. Kenndey Blvd., Ste. 950
Tampa, Florida 33602
(813) 222-8606
(813) 222-8609 (fax)
sclay@claylawgroup.com
counsel for Defendants
Michael and Helaine Ciancimino

Frank A. Miller, Esq.
Caglianone, Miller & Anthony, P.A.
703 Lamar Avenue
Brooksville, Florida 34601
(352) 796-6733
(352) 796-7506 (fax)
fmiller@cagmil.com
counsel for Defendants
Modern Day Construction and
Marc Delape

Shannon Rosser, Esq.
Wicker, Smith, O'Hara et al., P.A.
100 North Tampa Street Ste. 3650
Tampa, Florida 33602
(813) 222-3939
(813) 222-3938 (fax)
Counsel for Defendants Phillip Roush and
PAR Custom Drafting Inc.

By regular United States mail on the _____ day of _____ 2007.

Debra B. Tuomey, Esq.

