

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

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

v.

Case No. _____

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

**AMENDED COMPLAINT FOR COPYRIGHT INFRINGEMENT
DEMAND FOR JURY TRIAL AND
REQUEST FOR INJUNCTIVE RELIEF**

Plaintiff hereby sues Defendants, 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, HELAINÉ CIANCIMINO, an individual, for copyright infringement and alleges the following in support thereof:

JURISDICTION AND PARTIES

1. This is an action for copyright infringement arising under the Copyright Act of 1976, 17 U.S.C. section 101 *et seq.* as amended in 1990.
2. This court has jurisdiction pursuant to 28 U.S.C. sections 1338(a) and 1338(b).
3. Venue of this action is in this judicial district and venue pursuant to 28 U.S.C. section 1400(a).

4. Plaintiff ALFRED J. BELNIAK, D/B/A HAMMERHEAD CONSTRUCTION, hereinafter referred to as HAMMERHEAD, has a place of business at 5026 Cumberland Lane, Hernando County, Spring Hill, Florida 34607.
5. Upon information and belief, MODERN DAY CONSTRUCTION INC., hereinafter referred to as MODERN, having a principal place of business at 8240 Shorecrest Court, Spring Hill, Florida 34608 in Hernando County.
6. Upon information and belief, MARC DELAPE, hereinafter referred to as DELAPE, is an individual who was at pertinent times an officer, shareholder, and/or director of MODERN. Upon information and belief, DELAPE at pertinent times owned, operated, or otherwise controlled MODERN. Upon information and belief, DELAPE (a) personally participated in and/or had the right and ability to direct and control the wrongful conduct alleged in this Complaint, and (b) derived direct financial benefit from that wrongful conduct. Upon information and belief, DELAPE is a resident of Hernando County, Florida with a residential address of 8240 Shorecrest Court, Spring Hill, Florida 34608.
7. Upon information and belief, MICHAEL CIANCIMINO and HELAINE CIANCIMINO hereinafter referred to jointly as CIANCIMINO, are husband and wife and are residents of Hernando County, Florida with a current and present address of 14001 Tyringham Street, Spring Hill, Florida 34609.
8. Upon information and belief, P.A.R. CUSTOM DRAFTING INC., hereinafter referred to as PAR, is a Florida Corporation with a current principle business address in Hernando County at 13005 Spring Hill Drive, Spring Hill, Florida 34609.

9. Upon information and belief, PHILLIP ROUSH, hereinafter ROUSH, is an individual who was at pertinent times an officer, shareholder, and/or President of PAR. Upon information and belief, ROUSH at pertinent times owned, operated, or otherwise controlled PAR. Upon information and belief, ROUSH (a) personally participated in and/or had the right and ability to direct and control the wrongful conduct alleged in this Complaint, and (b) derived direct financial benefit from that wrongful conduct. Upon information and belief, ROUSH has a current residential address in Hernando County, Florida at 15331 Woodcrest Road, Spring Hill, Florida 34604.

10. Upon information and belief, CINDY ROUSH, hereinafter referred to as CINDY ROUSH, is an individual who was at pertinent times an officer, shareholder, and/or Vice President of PAR. Upon information and belief, CINDY ROUSH at pertinent times owned, operated, or otherwise controlled PAR. Upon information and belief, CINDY ROUSH (a) personally participated in and/or had the right and ability to direct and control the wrongful conduct alleged in this Complaint, and (b) derived direct financial benefit from that wrongful conduct. Upon information and belief, CINDY ROUSH has a current residential address in Hernando County, Florida at 15331 Woodcrest Road, Spring Hill, Florida 34604.

FACTS

11. HAMMERHEAD re-alleges and incorporates by reference paragraphs 1 through 9 as though fully set forth herein.

12. HAMMERHEAD is the author and sole owner of the architectural drawings for a residential structure entitled **The Abbey** and is a citizen of the United States of America. (copy attached as Exhibit 1 hereto)

13. **The Abbey** architectural drawings contains material original with the author and is a copyrightable subject matter under the Copyright Act of 1976 as amended in 1990.
14. HAMMERHEAD applied to the Register of Copyrights for a Certificate of Registration and complied with all of the statutory requirements by providing the requisite deposit, registration application, and the payment of necessary registration fees and received from the Register of Copyrights a Certificate of Registration bearing registration number **VA 1-164-301** for **The Abbey** which has an effective date of registration of August 1, 2002. (copy attached as Exhibit 2 hereto)
15. HAMMERHEAD has been at all relevant times the author and still is the sole proprietor of all rights, title, and interest in and to the copyright in **The Abbey** for the architectural drawing.
16. Since the year 2002, **The Abbey** architectural drawings have been published by HAMMERHEAD, and all copies made by HAMMERHEAD or under HAMMERHEAD's authority have been published in strict conformity with Title 17 U.S.C. section 401 of the Copyright Act of 1976 as amended.
17. HAMMERHEAD has complied in all respects with the Copyright Act of 1976 (as amended) and the exclusive rights and privileges in and to the copyrights for **The Abbey** architectural drawings have been conferred on HAMMERHEAD by operation of law.
18. HAMMERHEAD has been engaged in and is currently engaged in the construction of residential structures, including but not limited to homes constructed in accordance with the copyrights for **The Abbey**.

19. In or around the year of 2002, HAMMERHEAD constructed a model home in accordance with **The Abbey** architectural drawings at 13441 Whitehaven Ct., Hernando County, Spring Hill, Florida 34604.
20. Since opening **The Abbey** model home to the public in or around March 2002, HAMMERHEAD began providing potential buyers with brochures which included **The Abbey** architectural drawing.
21. **The Abbey** model brochure has maintained affixed to it a copyright notice in strict compliance with Title 17 U.S.C. section 401 since its initial distribution.
22. HAMMERHEAD's brochures of **The Abbey** were available in HAMMERHEAD's Model Center located at 13441 Whitehaven Ct., Hernando County, Spring Hill, Florida 34604 from in or around the year of 2002 until April 19, 2006.
23. In the year of 2003, 2004, and 2006, HAMMERHEAD provided a copy of **The Abbey** architectural drawings to the Hernando Builders Association for use and dissemination in the Parade of Homes.
24. The advertised and disseminated Parade of Homes Official Publication maintained affixed to it a copyright notice in compliance with Title 17 U.S.C. section 401 in HAMMERHEAD's advertised **The Abbey**.
25. Upon information and belief, the Official Program for the Parade of Homes was widely disseminated in Hernando County, Florida, Pasco County Florida, and several other counties in the State of Florida in the year of 2003, 2004, and 2005.

26. Further, since the year of 2002, HAMMERHEAD has constructed approximately fifteen (15) residences in Hernando County, Florida in accordance with **The Abbey** architectural drawings.
27. While under construction, a complete set of **The Abbey** technical drawings were kept at each and every construction cite as required by the Hernando County Building Department and bore a copyright notice in compliance with Title 17 U.S.C. section 401.
28. Upon information and belief, DELAPE has owned a residence and/or real property in Hernando County, Florida since in or around the year of 1993.
29. Upon information and belief, ROUSH has owned a residence in Hernando County, Florida since in or around the year of 1992.
30. Thus, MODERN and/or DELAPE, and PAR and/or ROUSH knew or should have known of HAMMERHEAD's copyrights.
31. Upon information and belief, in or around the ending months of the year of 2004 and the beginning months of the year of 2005, CIANCIMINO visited HAMMERHEAD's model home located at 13441 Whitehaven Ct. Spring Hill, Florida 34604, viewed **The Abbey** model home and received a brochure which included **The Abbey** architectural drawing.
32. Upon information and belief, CIANCIMINO contacted MODERN and/or DELAPE regarding constructing the copyrighted **The Abbey** and provided MODERN and/or DELAPE with HAMMERHEAD's copyrighted **The Abbey** architectural drawings and/or brochure and/or drawings derived from HAMMERHEAD's **The Abbey**.

33. Upon information and belief, MODERN and/or DELAPE contacted PAR and/or DELAPE regarding preparation of construction drawings of HAMMERHEAD's copyrighted **The Abbey** model home.
34. Upon information and belief, MODERN and/or DELAPE and/or CIANCIMINO provided PAR with the architectural drawing and/or brochure of HAMMERHEAD's copyrighted **The Abbey** and/or drawings derived from HAMMERHEAD's copyrighted **The Abbey**.
35. Upon information and belief, PAR and/or ROUSH previously infringed HAMMERHEAD's copyrighted **The Abbey**. (See Exhibit 3)
36. Thus, ROUSH as President of PAR copied HAMMERHEAD's **The Abbey** with willful blindness and in reckless disregard of HAMMERHEAD's copyrights.
37. Upon information and belief, PAR drafted a floor plan and/or architectural drawing for MODERN and/or DELAPE and/or CIANCIMINO.
38. Upon information and belief, PAR and/or ROUSH substantially copied HAMMERHEAD's **The Abbey** in drafting the CIANCIMINO residential floor plan. (See attached copy of blueprint as Exhibit 4)
39. Upon information, CIANCIMINO, MODERN and/or DELAPE and PAR and/or ROUSH induced, aided, or materially caused HAMMERHEAD's **The Abbey** to be copied.
40. Upon information and belief, the CIANCIMINO residence and the blueprint and/or architectural drawings utilized in the initial construction are substantially similar to that of HAMMERHEAD's copyrighted **The Abbey**.

41. Upon information and belief, on or about May of 2005 MODERN and/or DELAPE commenced construction on the CIANCIMINO residence and began to build the residence in accordance with HAMMERHEAD's copyrighted **The Abbey**. (See attached Exhibit 5)
42. Upon information and belief, on or around December of 2005, construction on the CIANCIMINO residence ceased after the block was laid.
43. Upon information and belief, PAR and/or ROUSH, MODERN and/or DELAPE, and CIANCIMINO induced, caused or materially contributed to modifying the original CIANCIMINO floor plan.
44. Upon information and belief, several portions of the block on the CIANCIMINO residence were torn down in order to accommodate the newly created floor plan and/or architectural drawings.
45. Upon information and belief, PAR and/or ROUSH illicitly created a derivative of HAMMERHEAD's **The Abbey** in drafting the second set of CIANCIMINO residential floor plans and/or architectural drawings.
46. Upon information and belief, the residential dwelling being constructed by MODERN and/or DELAPE is located in Hernando County at 11044 Baywind Court, Brooksville, Florida 34613.

COPYRIGHT INFRINGEMENT

47. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 9 and paragraphs 10 through 45 above as though fully set forth herein.
48. HAMMERHEAD has neither granted MODERN and/nor DELAPE, CIANCIMINO, nor PAR and/nor ROUSH, a license to copy, and/or draft

and/or draw architectural drawings and/or construct a residential structure utilizing the copyrighted **The Abbey** architectural drawings.

49. Upon information and belief, and with full notice and existence of HAMMERHEAD's copyright, MODERN and/or DELAPE, CIANCIMINO, and PAR and/or ROUSH violated HAMMERHEAD's copyrighted **The Abbey** by causing HAMMERHEAD's copyrighted architectural drawings to be copied and caused such copies to be distributed, published, and otherwise to be utilized in the construction of a residential dwelling embodying such copyrighted architectural drawing.
50. Upon information and belief, and with full notice and existence of HAMMERHEAD's copyright, MODERN and/or DELAPE, CIANCIMINO, and PAR and/or ROUSH violated HAMMERHEAD's copyrighted **The Abbey** by creating a derivative of HAMMERHEAD's copyrighted architectural drawings caused such derivative copy to be distributed, published, and otherwise to be utilized in the construction of a residential dwelling embodying such copyrighted architectural drawing.
51. The acts of MODERN and/or DELAPE, CIANCIMINO, and PAR and/or ROUSH are and were willful, and in reckless disregard of HAMMERHEAD's copyrights.
52. The acts of MODERN and/or DELAPE, CIANCIMINO, and PAR and/or ROUSH have caused HAMMERHEAD to sustain irreparable harm, substantial injury, economic loss and damage.
53. HAMMERHEAD is entitled to an injunction restraining MODERN and/or DELAPE, CIANCIMINO, and PAR and/or ROUSH and all persons acting in concert with MODERN and/or DELAPE, CIANCIMINO, and PAR and/or

ROUSH from infringing HAMMERHEAD's copyrighted **The Abbey** architectural drawings.

54. As a result of their wrongful conduct, MODERN and/or DELAPE, CIANCIMINO, and PAR and/or ROUSH are liable to HAMMERHEAD for copyright infringement. HAMMERHEAD has suffered damages. HAMMERHEAD is entitled to recover actual damages, which include any and all profits that MODERN and/or DELAPE and PAR and/or ROUSH have made as a result of their wrongful conduct. Alternatively, HAMMERHEAD is entitled to elect statutory damages under Title 17 U.S. C section 504(c).
55. In addition, because MODERN's and/or DELAPE's, CIANCIMINO's, and, PAR's and/or ROUSH's acts have been willful within the meaning of the Copyright Act, the award of statutory damages should be enhanced in accordance with Title 17 U.S.C section 504(c)(2).

PRAYER

WHEREFORE, HAMMERHEAD demands relief and judgment as follows:

- a. An injunction permanently enjoining and restraining either and restraining either MODERN and/or DELAPE, CIANCIMINO, and PAR and/or ROUSH and all persons in active concert or participation with, through or under MODERN and/or DELAPE, or CIANCIMINO or PAR and/or ROUSH from further infringement of HAMMERHEAD's copyright **VA 1-164-301** in any manner or from inducing others to infringe such copyrights, or from contributing to such infringement;
- b. MODERN and/or DELAPE, CIANCIMINO, and PAR and/or ROUSH their attorneys and those persons in active concert or participation with, through or under MODERN and/or DELAPE, CIANCIMINO, or

PAR and/or ROUSH or with any of the foregoing be temporarily restrained and enjoined preliminarily during the pendency of this action and permanently thereafter from further infringement of HAMMERHEAD's copyright **VA 1-164-301** in any manner or from inducing others to infringe such copyrights, or from contributing to such infringement;

- c. MODERN and/or DELAPE and PAR and/or ROUSH be enjoined during the pendency of this action from advertising, promoting, offering for sale, selling, transferring, leasing, renting or distributing copies of construction drawings embodying **VA 1-164-301** which infringe HAMMERHEAD's copyrights in violation of HAMMERHEAD's rights;
- d. Damages sustained by HAMMERHEAD in consequences of MODERN's and/or DELAPE's willful infringement of HAMMERHEAD's copyrights plus interest;
- e. An accounting for all gains, profits, and advantages derived by MODERN and/or DELAPE as a result of MODERN's and/or DELAPE's willful infringement of HAMMERHEAD's copyrights plus interest;
- f. MODERN and/or DELAPE be enjoined during the pendency of this action from destroying, moving, altering, or disposing of any and all records, photographs, or documents reflecting the design, production, sales and distribution of the technical drawings in violation of HAMMERHEAD's rights;
- g. Damages sustained by HAMMERHEAD in consequences of CIANCIMINO's willful infringement of HAMMERHEAD's copyrights plus interest;
- h. An accounting for all gains, profits and advantages derived by CIANCIMINO as a result of CIANCIMINO's willful infringement of HAMMERHEAD's copyrights plus interest;

- i. CIANCIMINO be enjoined during the pendency of this action from destroying, moving, altering, or disposing of any and all records, or photographs, which are involved with the infringement alleged in this Complaint;
- j. Damages sustained by HAMMERHEAD in consequences of PAR's and/or ROUSH's willful infringement of HAMMERHEAD's copyrights plus interest;
- k. An accounting for all gains, profits, and advantages derived by PAR and/or ROUSH as a result of PAR's and/or ROUSH's willful infringement of HAMMERHEAD's copyrights plus interest;
- l. PAR and/or ROUSH be enjoined during the pendency of this action from destroying, moving, altering, or disposing of any and all records, photographs, or documents reflecting the design, production, sales and distribution of the technical drawings in violation of HAMMERHEAD's rights;
- m. Costs of this action and HAMMERHEAD's reasonable attorney's fees incurred by it in prosecuting this action; and
- n. Such other and additional relief as this Court deems just and equitable.
- o. Plaintiff hereby demands a trial by jury.

/S/ Debra B. Tuomey

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