


Farnan, District Judge.

Presently before the Court is the Motion For Summary Judgment That Plaintiff's Unjust Enrichment And Conversion Claims Are Preempted By The Copyright Act (D.I. 30) filed by Defendants Clemens, Inc. and Southridge, Inc. For the reasons discussed, the Motion will be granted in part and denied in part.

BACKGROUND

On December 17, 2003, Plaintiff Victoria Schult Peirson brought this action against Clemens alleging, inter alia, copyright infringement, unjust enrichment, and conversion. These claims are based on Ms. Peirson's allegations that Defendants wrongfully copied and used a floor plan that she created. Ms. Peirson seeks Defendants' profits from building and selling two homes in the Southridge development in Kennett Square, Pennsylvania, as damages for her copyright infringement, conversion, and unjust enrichment claims. Ms. Peirson also seeks compensation for the alleged diminution in value of her home as damages for her copyright and conversion claims.

Defendants have moved for summary judgment, arguing that Ms. Peirson's unjust enrichment and conversion claims are preempted by the Copyright Act.

STANDARDS OF LAW

I. Summary Judgment

In pertinent part, Rule 56(c) of the Federal Rules of Civil

Procedure provides that a party is entitled to summary judgment if a court determines from its examination of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). In determining whether there is a triable dispute of material fact, a court must review all of the evidence and construe all inferences in the light most favorable to the non-moving party. Valhal Corp. v. Sullivan Assocs., Inc., 44 F.3d 195, 200 (3d Cir. 1995). However, a court should not make credibility determinations or weigh the evidence. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000). To properly consider all of the evidence without making credibility determinations or weighing the evidence, a "court should give credence to the evidence favoring the [non-movant] as well as that 'evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses.'" Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 151 (2000).

To defeat a motion for summary judgment, the non-moving party must:

do more than simply show that there is some metaphysical doubt as to the material facts. . . . In the language of the Rule, the non-moving party must come forward with "specific facts showing that there is a genuine issue for trial."

Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S.

574, 586-87 (1986). However, the mere existence of some evidence in support of the non-movant will not be sufficient to support a denial of a motion for summary judgment; there must be enough evidence to enable a jury to reasonably find for the non-movant on that issue. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). Thus, if the evidence is "merely colorable, or is not significantly probative," summary judgment may be granted. Id.

II. Preemption By The Copyright Act

Section 301(a) of the Copyright Act provides that:

[A]ll legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright as specified by sections 102 and 103 ... are governed exclusively by this title. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State.

17 U.S.C.A. § 301(a).

However, subsection b(1) makes explicit that the preemption provision does not apply if the subject matter of the claim does not come within the subject matter of copyright as specified by sections 102 and 103. 17 U.S.C. § 301(b)(1). Subsection 301(b)(3) imposes a further limitation - that "[n]othing in this title annuls or limits any rights or remedies under the common law or statutes of any State with respect to activities violating legal or equitable rights that are not equivalent to any of the exclusive rights within the general scope of copyright as specified by

section 106." 17 U.S.C. § 301(b)(3). Section 106 gives the owner of a copyright the exclusive rights to carry out and to authorize, inter alia, the reproduction of the copyrighted material, the preparation of derivative works, and the distribution of copies. 17 U.S.C. § 106.

In the Third Circuit, the Copyright Act preempts a state law claim if the work at issue is the type protected by the copyright laws, and if the right claimed is equivalent to one of the exclusive rights protected by copyright law - reproduction, preparation of derivative works, distribution, and display. Dun & Bradstreet Software Servs., Inc. v. Grace Consulting, Inc., 307 F.3d 197, 217 (3d Cir. 2002). A right claimed under state law is not equivalent to a right protected by the copyright laws only if it requires an extra element beyond one of the exclusive rights protected by copyright law. Id. at 218 (citing Data Gen. Corp. v. Grumman Sys. Support Corp., 36 F.3d 1147, 1164 (1st Cir. 1994)).

DISCUSSION

A. Whether The Unjust Enrichment Claim Is Preempted By The Copyright Act

Consistent with their initial burden on summary judgment, Defendants have set forth the basis for their motion and have demonstrated the absence of a genuine issue of material fact. Defendants contend that Ms. Peirson's unjust enrichment claim should be preempted by the Copyright Act because it is based on the same facts, and seeks the same damages, as her copyright claim.

In response, Ms. Peirson claims that, pursuant to Pennsylvania law, the elements of the doctrine of unjust enrichment include "improper benefits," and that this element differentiates a claim of unjust enrichment from one of copyright infringement.

To succeed on a claim of unjust enrichment pursuant to Pennsylvania law, one "must show that the party against whom recovery is sought either wrongfully secured or passively received a benefit that would be unconscionable for the party to retain without compensating the provider." Benefit Trust Life Ins. Co. v. Union Nat'l Bank of Pittsburgh, 776 F.2d 1174, 1177 (3d Cir. 1985). In her Complaint, Ms. Peirson alleges that "[b]enefits have been conferred upon Defendants by Defendants' receipt and retention of Plaintiff's Copyrighted Architectural Plan and Defendants' subsequent use thereof." (D.I. 1 at 5.) However, the Court finds that the right to create derivative works from copyrighted material or to reproduce copyrighted material is specifically protected by the Copyright Act. Thus, to the extent that Ms. Peirson asserts an exclusive right to use of her floor plans, the Court concludes that her claim for unjust enrichment is preempted. See 1 Melville B. Nimmer & David Nimmer, Nimmer On Copyright § 1.01[B][1][g].

B. Whether The Conversion Claim Is Preempted By The Copyright Act

Defendants contend that Ms. Peirson's conversion claim should be preempted by the Copyright Act because it is based on the same facts and conduct as her copyright claim.

However, the Court finds that Ms. Peirson has offered evidence sufficient to enable a jury to find for her on the conversion claim with regard to whether Defendant's retention of her original architectural drawings constitutes the unlawful retention of a tangible item sufficient to satisfy a conversion claim. (D.I. 32 at 7.)

The tort of conversion relates to interference with tangible rather than intangible property. Nothing in section 301 precludes the owner of the physical embodiment of a copyrighted work from enforcing a claim for conversion against a party who takes possession of the physical embodiment without permission. See 1 Nimmer On Copyright § 1.01[B][1][i].

Thus, the Court concludes that the Copyright Act does not preempt Ms. Peirson's claim for conversion.

CONCLUSION

In sum, the Court concludes that Ms. Peirson has not offered evidence sufficient to demonstrate a genuine issue of material fact or to enable a jury to find for her on the unjust enrichment claim alleged in her Complaint, and that Defendants are entitled to judgment as a matter of law with regard to that claim. Further, the Court concludes that Ms. Peirson has offered evidence sufficient to enable a jury to find for her on the conversion claim in her Complaint. Accordingly, the Court will grant the Motion For Summary Judgment That Plaintiff's Unjust Enrichment And Conversion Claims Are Preempted By The Copyright Act (D.I. 30) filed by

Defendants with regard to the unjust enrichment claim, and deny the motion with respect to the conversion claim.

An appropriate Order will be entered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VICTORIA SCHULT PEIRSON, :
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 Plaintiff, :
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 v. : Civil Action No. 03-1145 JJF
 :
 CLEMENS, INC. and SOUTHRIDGE :
 INC., :
 :
 Defendants. :

O R D E R

At Wilmington, this 23 day of March 2005, for the reasons set forth in the Memorandum Opinion issued this date,

IT IS HEREBY ORDERED that the Motion For Summary Judgment That Plaintiff's Unjust Enrichment And Conversion Claims Are Preempted By The Copyright Act (D.I. 30) filed by Defendants Clemens, Inc. and Southridge, Inc. is **GRANTED** with respect to the unjust enrichment claim and **DENIED** with respect to the conversion claim.


UNITED STATES DISTRICT JUDGE