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Architectural Copycats—“Whose House Are You Building, Anyway?”

By Paul J. Weinberg

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In an era of mass building and replication of tracts of homes, with the supply of land in desirable areas rapidly dwindling, how do governmental entities regulate and protect the uniqueness of architecture?

The issue comes up in several contexts, mostly identified by the person or entity that is aggrieved by the theft of architectural ideas. The primary ones, though, are the architect and the builder who design and build custom homes, and the tract planner and builder. Their concerns are the same, but how each one approaches the problem and how the law treats it are very different.

Probably the best place to start in reviewing the law's treatment of protecting an architectural idea is to profile a very high-visibility dispute winding its way through both the state and federal courts in California. The dispute involves the architectural firm of William Hablinski Architecture, a firm with a staff of 25 and offices in Beverly Hills, California and Austin, Texas. The lawsuit

that grew out of the dispute revolved around the alleged theft of the design of an enormous \$20 million mansion custom-built for a real estate magnate, with details and unique designs created for this particular client.

According to architect Hablinski's complaint filed in the U.S. District Court for the Central District of California, his firm

has a growing international reputation, as recognized by the Franklin Report, a reference guide to high-end residential services. (The Franklin Report noted that WHA had “created a niche in the Southern California market” and was “responsible for some of L.A.'s more extraordinary properties.”) Its architectural works have been featured in numerous magazines and noted publications (including *The Classicist*, the journal of the Institute of Classical Architecture). WHA's works have earned the firm numerous design awards, including citations from

the American Institute of Architecture (AIA) ... The firm has designed dozens of exclusive, luxury homes for clients, many of which are in the 15,000 to 20,000 square foot range. The total cost of these homes is millions of dollars.... WHA's charges for designs and related services generally range from \$300,000 to \$500,000 ... WHA clients include famous actors and television personalities (such as Warren and Annette Beatty and Arnold Schwarzenegger and Maria Shriver), business people and other celebrities, most of whom require confidentiality from WHA about their projects. WHA clients expect that WHA will create for them a one-of-a-kind home based on WHA's unique designs.¹

This is potentially incendiary information; if architects know that someone can misappropriate a custom residential home design and get away with it, the sanctity of their copyright to the unique architectural ideas and plans is in jeopardy.

A *Los Angeles Times* article dated September 18, 2003, detailing the situation and explaining its ramifications, laid out just how similar in design and content the plans for the new house that the defendants had allegedly copied and misappropriated were:

Two of Hablinski's employees—Dave Hogan and Richard Giesbret—in April [2003] happened to drive by a construction site on Marilyn Drive in Beverly Hills. Hogan commented on the fine detailing on a pediment piece over a doorway. The men decided to take a closer look.

"I looked at the whole façade and said, 'This is the Fred Sands house,'" Hogan said.

Stunned, the men ventured inside and found what they considered striking similarities to the Sands' residence in the floor plan and within individual rooms, including the dining room, the media room, the library and the gym.

During their tour, a worker laid drawings for the house on the floor. The size of the sheets appeared to be identical to that of the plans for the Sands' residence, which is now nearing completion seven miles to the West.

There were variations, to be sure, because the Beverly Hills lot was much smaller than the Sands'. The garage wing, for example, was different, but Hogan said he realized that later that it was just like a wing design for a previous Hablinski project.

Then Hogan noticed that a logo and website for MSH Design appeared in the same place where the William Hablinski Architecture logo was positioned on the original Hablinski drawings. MSH Design

is the firm of Mehran Shahverdi, who once worked for Hablinski.²

The immediate damage that can be caused to an architect of the reputation that William Hablinski and his firm have is clear—a misappropriation like the one he's alleged damages his and his firm's credibility with a good professional client. Clients at that economic level pay for a unique design tailored to their needs and wants, particularly in an atmosphere like that of Beverly Hills, where status, social position, and the desire for a unique "architectural statement" drive the decision about which architect to hire and, more importantly, the value and worth of the work once it is completed.

Hablinski, and architects like him, have a great deal to lose if this conduct proliferates. The conduct that Hablinski and his partner Manion are complaining about is that defendant Shahverdi, while employed as a "job captain" with Hablinski's office, learned of the Sands' residence and got access to the Sands' design drawings and plans because he was assigned to do work on them. As Hablinski himself explained it: "He was titled a 'job captain.' He worked with the project's superintendent and produced working drawings and technical drawings and performed a period apprenticeship with us."³

Hablinski went on to indicate his aesthetic complaint: "One of the big differences between the Shahverdi house and what we are doing is the lack of depth of authenticity and the lack of level of detail."⁴ Hablinski's lawyer, Peter J. Bezek noted, "My client has the understandings and expectations of trust and confidence from his clients. He is using trade secrets, not exposing the clients in his homes to outside scrutiny. Confidentiality is his hallmark ... Someone's making a great deal of money on the plans of someone else."⁵

These issues and concerns go to the heart of what makes an architect both unique and successful: the ability to design and construct works that people are willing to pay large sums for *and that the architect can retain rights to*.

The owner of the structure also is deeply affected:

[Sands] and his wife, Carla, were quite unsettled when Hablinski told them of the situation. "My wife and I didn't sleep for three nights," Sands said. A prominent broker has put the value of his house at \$20 million dollars. "After spending \$500,000 for the architecture, for somebody to come along and knock off those plans is not comprehensible," Sands said. "I could see using this as your point of inspiration. But to have my wife's bathroom be the same and the molding in the dining room be the same and to have somebody put those renderings on their website is unbelievable."⁶

Against this backdrop of concerns by both owners and architects, how does the law protect this work? Most of the protection is statutory, in the form of a law enacted in 1990 by the U.S. Congress and known as the Architectural Works Copyright Protection Act of 1990 (P.L. No. 101-650, 701, 703, 104 Stat. 5128, 5133). The Act is codified in scattered sections of Title 17 of the United States Code, including §§101(5), 102(a)(8), and 120.

This law, though, really provided architects only limited protection:

Despite the Act's good intentions, it provides inadequate guidance for determining exactly what architectural works should be protected. While the legislative history might have provided some basis for filling in this gap, it in fact created further confusion. Three major problems exist with the Act and its legislative history. First, the legislative history's definition of what is protected under the Act is too restrictive and may exclude works deserving architectural protection. Second, the legislative history's equivocal wording leads to confusion as to whether architectural works can receive dual protection as both sculptural and architectural works. Finally, the Act's legislative history proposes a "functionality test" to determine what aspects of a constructed architectural work are protected. Under this test, *if design elements are determined by functional considerations, they are not copyrightable*. Hence, the functionality test could exclude most architectural works from protection if it is interpreted narrowly or restrictively.⁸

The best way to independently determine how narrow this Act is, though, is to go back and look at how it defines the critical terms and what remedies it provides. 17 U.S.C.A. § 101 defines an architectural work as "The design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, *but does not include* individual standard features." (Emphasis added.)

17 U.S.C.A. § 102(a) gives direct copyright protection of architectural works: "Copyright protection subsists ... in original works of authorship[.] Works of authorship include ... architectural works."

17 U.S.C.A. § 120 gives an out to people wanting to make pictorial representations of an architectural work, and to an owner who may wish to alter or demolish the work:

(a) Pictorial representations permitted.—The copyright in an architectural work that has been constructed does not include the right to prevent the making, distributing, or public display of pictures,

paintings, photographs, or other pictorial representations of the work, if the building in which the work is embodied is located in or ordinarily visible from a public place.

(b) Alterations to and destruction of buildings.—Notwithstanding the provisions of Section 106(2), the owners of a building embodying an architectural work may, without the consent of the author or copyright owner of the architectural work, make or authorize the making or alterations to such building, and destroying or authorize the destruction of such building.

Now we know that federal law will give an architect copyright protection, at least as far as making sure that both the plans and the building itself get copyright protection. So now the question arises, how far can someone go in modifying a design to escape the clutches of Architectural Works Copyright Protection Act? That depends on how "substantially similar" the allegedly purloined design and the original one are. The latest expression of that issue is the 2002 case of *Sturdza v. United Arab Emirates*.⁹

This case involved a dispute between two architects, one of whom, Elena Sturdza, accused the other, Angelos Demetriou, of stealing her design for an embassy for the United Arab Emirates. In 1993, the UAE held a competition for the architectural design of a new embassy and chancery building that it planned to building in Washington, D.C. It provided competitors with a "program manual" detailing requirements for various aspects of the design. The manual indicated that the UAE sought a

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“modern, sophisticated multi-use facility expressing the richness and variety of traditional Arab motifs.”

Sturdza and Demetriou both submitted designs. A jury comprised of architects and civil engineers judged the competition entries, and in late 1993, the UAE informed Sturdza that she had won.

Sturdza and the UAE then began contract negotiations, exchanging eight contract proposals over the course of the next two years. Over the course of the three years following the announcement that she'd won, the UAE asked Sturdza to make a number of changes in the design. At the conclusion of all of this work, according to Sturdza's lawsuit, the UAE then decided not to sign the architectural services agreement with her, and broke off its contacts with her. This all took place in late 1996.

In late 1997, Sturdza learned that the UAE had presented an embassy design to the National Capital Planning Commission. Visiting the Commission and obtaining a copy of the design, Sturdza discovered that not only was it Demetriou's design, but also that it differed from his 1993 competition entry and, according to Sturdza, “copied and appropriated many of the design features that had been the hallmark of her design.”¹⁰

Sturdza filed suit in the U.S. District Court for the District of Columbia against both the UAE and Demetriou and claimed, among other counts, violation of copyright. The lower court threw the matter out on a summary judgment motion, finding that there were enough differences between the Demetriou design and the Sturdza design to make it unlikely that any court or jury could find that any copyright protection was breached. Sturdza appealed, and found a more sympathetic appellate court.

The appellate court gave an excellent summary of the “substantial similarity” test that is surely going to be important in deciding the Hablinski matter, and a host of others that have now been brought around the country:

To prevail on a copyright claim, plaintiff must prove both ownership of a valid copyright and that the defendant copies original or ‘protectible’ aspects of the copyright work. [Citations omitted.] The plaintiff must show not only that the defendant actually copied the plaintiff's work, but also that the defendant's work is ‘substantially similar’ to protectible elements of the plaintiff's work. [Citations omitted.] ...

The substantial similarity inquiry consists of two steps. The first requires identifying which aspects of the artists work, if any, are protectible by copyright. “[N]o author may copyright facts or ideas. The copyright is limited to those aspects of the work—termed ‘expression’—that displays the

stamp of the author's originality.” [Citation omitted.] Using Shakespeare as an example, Judge Learned Hand explained the distinction between protectible expression and unprotectible ideas:

If Twelfth Night were copyrighted, it is quite possible that a second comer might so closely imitate Sir Toby Belch or Malvolio as to infringe, but it would not be enough that for one of his characters he cast a riotous knight who kept wassail to the discomfort of the household, or a vain and foppish steward who became amorous of his mistress. These would be no more than Shakespeare's “ideas” in the play, as little capable of monopoly as Einstein's Doctrine of Relativity, or Darwin's theory of the Origin of Species.¹¹

The appellate court described another aspect or portion of the architectural ideas that were not protected either: “Also relevant to this case, copyright protection does not extend to what are known as ‘*scènes à faire*,’ i.e., ‘incidents, characters, or settings which are as a practical matter indispensable, or at least standard, in the treatment of a given topic[.]’¹²

The court continued its explanation:

Once unprotectible elements such as ideas and *scènes à faire* are excluded, the next step of the inquiry involves determining whether the allegedly infringing work is “substantially similar” to protectible elements of the artist's work. “Substantial similarity” exists where “the accused work is so similar to the plaintiff's work than an ordinary reasonable person would conclude that the defendant unlawfully appropriated the plaintiff's protectible expression by taking material of substance and value.” [Citation omitted.] Substantial similarity turns on the perception of the “ordinary reasonable person” or “ordinary observer” [Citation omitted.]¹³

At this point in the opinion, the *Sturdza* court was focusing on trying to enunciate a test of what goes to the essence of what is protectible. If ideas in generic elements of an architectural design aren't, then what is? And perhaps more importantly, who would be in a position to make that decision? Here is what the court had to say:

The substantial similarity determination requires comparison not only of the two works' individual elements in isolation, but also of their “overall look and feel.” [Citation omitted.] “[A]n allegedly infringing work is considered substantially similar to a copyrighted work if the ordinary observer, unless he set out to detect the disparities, would be disposed to

overlook them, and regard their aesthetic appeal as the same.” [Citation omitted.] *Put another way, “[t]he touchstone of the analysis is the overall similarities rather than the minute differences between the two works.”* [Citation omitted.] Considering the works as a whole is particularly important because protectible expression may arise through the ways in which artists combine even unprotectible elements. *For example, while color is not protectible, the manner in which an artist “selects, coordinates, and arranges” color may be.*¹⁴

So now we know that case law indicates that the analysis is to be done *based not on differences, but similarities*. So what generic ideas did the *Sturdza* court throw out in getting to the point of whether Sturdza had a protectable interest?

The district court ... “filter[ed] out” those elements of Sturdza’s design it viewed as unprotectible ideas: “domes, wind-towers, parapets, arches and Islamic patterns.” [Citation omitted.] According to the district court, Sturdza’s expression of these elements, but not her use of them, is protectible. We agree with this aspect of the district court’s decision. In and of themselves, domes, wind-towers, parapets, and arches represent ideas, not expression. [Citations omitted.] ... Particular shapes such as diamonds or circles that comprise a given pattern, however, do not constitute ideas.¹⁵

Proceeding item by item, the district court then meticulously compared how the concepts of domes, wind-towers, parapets, arches and decorative patterns (referred to by the district court as “Islamic” patterns) are expressed in the two designs. At the level of protectible expression, the district court concluded, the designs were decidedly different. But the Court of Appeals disagreed:

Here we part company with the district court. Although we agree that Demetriou’s design differs from Sturdza’s, we think the district court overlooked several important respects in which Demetriou’s design expresses particular architectural concepts quite similarly to Sturdza’s. *We also see significant similarities in the “overall look and feel” of the two designs. . . .*

We begin with the ways in which Demetriou’s expression of architectural concepts mirrors Sturdza’s. Consider the domes. Although we agree that Demetriou’s dome differs from Sturdza’s in some respects—Demetriou’s is opaque and positioned toward the front of the building, while Sturdza’s rises directly over the building’s central section and is made of “glass[,] ... allowing light in

through the pattern,” [citation omitted]—in other respects, Demetriou’s dome appears quite similar. Viewed from the front, both domes appear to rise from the center and toward the front of the buildings. Both domes rise to essentially the same height, correspond in width to the buildings’ midsections, and taper gently upward to a point. Although the domes have different decorative patterns, the patterns create a similar effect. Sturdza encircles her dome with three bands of pointed arches, largest at the dome’s base and becoming progressively smaller toward its top. Her arches’ decreasing size and pointed shape create a feeling of upward movement from the dome’s base towards its top. Demetriou creates a similar effect by covering his dome with diamonds whose upper points correspond with Sturdza’s pointed arches and that (like Sturdza’s arches) become progressively smaller toward the top of the dome. Finally, Sturdza gives her domes a ribbed effect by raising the edges of the arches above the dome’s surface; Demetriou creates a similar effect by accenting his diamonds’ edges.¹⁶

This is a mouthful at best, and a very vague and ambiguous standard at worst. It does not really give an architect a “safe harbor” to know when and how his designs and plans are protected. However, the one thing that the Act does is give the architect some tremendous damages ammunition. As a recent National Law Journal article indicated, damages awards in these kinds of cases can be substantial:

Defendants can get slammed because the law allows for statutory damages, designed to deter future infringement, as high as \$100,000 for willful violations. Damages add up when they include disgorged profits from the copycats.

Take, for example, the \$1.5 million dollar settlement in *Humphries*. The architectural fee would have been only a couple of hundred thousand dollars ... factoring in the profits of a large, high-end rental property takes the potential damages into the tens of millions . . .

The prospect of taking a heavy hit is what prompts most defendants to settle[.]¹⁷

The damages awards, though, are more substantial when a tract or mass builder misappropriates a set of plans and then replicates it on a mass basis. The National Law Journal article discusses in brief the signature case, *Kipp Flores Architects, LLC v. Signature Homes, LLC*.¹⁸ As the article put it:

Before the 1990 law, building plans could be copyrighted because they were drawings ... The buildings

they depicted could not be protected, however, because they were considered utilitarian. Now buildings are no longer nearly functional, under the law. Disputes over them are ending in multi-million dollar verdicts. In September, a Norfolk, VA jury awarded \$5.2 million to an Austin, TX architectural firm whose designs were used by Virginia builders to construct more than 300 homes. . . The verdict is believed to be among the largest in architectural right cases, says plaintiff's co-counsel Louis K. Bonham, of counsel at Houston's Rosenthal & Osha. The damages are second only to the \$7.7 million awarded last year by a California jury in a dispute over a truck stop's floor plan, Bonham says.¹⁹

The *Kipp Flores* case involved a large architectural firm in Austin, Texas that creates and generates plans for mass builders. They also take pains to copyright them; the complaint in the *Kipp Flores* case went into great detail specifying just how many copyrights had been issued on their plans.²⁰

The lawsuit went on to indicate that defendant Signature Homes and its co-defendant, Residential Concepts, are homebuilders in Virginia. Kipp Flores typically licenses its architectural works on a "design fee plus re-use fee" basis. Under this arrangement, the customer initially acquires the right to build on the Kipp Flores plan only once. If it is to be re-used, the customer must pay a fee to re-use it.

One of Kipp Flores' customers, Residential Concepts, acquired the right to build the design only once, and then to re-use it upon payment. Two of the principles of Residential Concepts formed another entity, Signature Homes. Signature tried to license some of Kipp Flores' architectural works, and Kipp Flores agreed, but indicated that the fees would be on the design fee plus re-use basis. Signature made the initial design payment, but did not return the contracts or make any subsequent payments.

Several years later, Kipp Flores was contacted by counsel for another Virginia builder, Commonwealth, and learned that Signature had apparently willfully and/or negligently claimed, falsely, that it (Signature Homes) was the creator and sole owner of one of Kipp Flores' architectural plans, and was suing for infringement of the copyright!

When Kipp Flores notified Commonwealth of the existence of its copyright, Signature dropped its lawsuit against Commonwealth and Residential Concepts settled two other cases that they had apparently brought using Kipp Flores' plans.²¹

Here, a mass builder was copying and re-using mass plans in violation of an explicit agreement that the builder and its predecessors had made with the architect to pay both the initial use and the re-use fee. As the National

Law Journal article points out, the damages are not inconsiderable. The trial attorney, Louis Bonham, shed further light on the point:

I don't understand why a builder, who will pay a 6% sales commission, will not pay a \$500.00 re-use fee for a set of plans. Stock plans can actually be bought for \$1,500.00. In a case that I just worked on in North Carolina, the builder of million dollar plus homes obtained plans and photocopied them. He simply could have just called to find out the cost of a re-use fee.

I think it is getting worse; anyone with a personal computer and a [computer-aided design] program can take a promotional sketch and then put out a set of working drawings—this is completely illegal. The jury awarded \$5.25 million, but \$6.25 million was eventually paid, since the defendants still had houses in different stages of construction and were thus still infringing. A criminal copyright issue under [17 U.S.C.A. § 506(c)] also would come up. If the matter had been adjudicated, then if they keep doing it, this raises the issues of criminal conduct.

The number of lawsuits against mass builders who knowingly infringe on copyrights is increasing, too, as word gets out of the existence of the Architectural Works Copyright Protection Act and, in particular, the large damages that are available to someone who pleads and proves it. Not surprisingly, this has caused problems for insurance carriers, too. Insurance carriers now are going to be required to defend copyright claims arising from architectural plans. A December 2000 article in the Insurance Industry Litigation Reporter lays out the facts and also clearly limns the liability that the carriers now face:

In August 1999, ... Kipp Flores Architects sued Ryland in U.S. District Court for the Western District of Texas, contending that Ryland wrongfully constructed and sold houses based on KFA's copyrighted architectural plans. The complaint specifically alleged that Ryland used non-pictorial depictions of KFA's copyrighted works in its promotional and advertising materials. KFA further alleged that Ryland falsely claimed that it owned the blueprints from which certain Ryland homes were constructed, when in fact they were owned by KFA, in violation of the Lanham Act, 15 U.S.C. Section 1125.

Ryland sought a defense against the underlying action from its primary CGL carriers, Travelers Indemnity Co. of Illinois and Lumberman's Mutual Casualty Co., shortly after the KFA suit was filed. The carriers refused to defend under the policies, and Ryland ultimately settled with KFA. In

August 2000, following settlement of the underlying matter, Ryland filed the instant action, seeking a declaration of coverage under the Travelers and Lumberman's policies.

... Judge Nowlin held that *Ryland sufficiently established a causal connection between the copyright claim and its advertising activities*, observing:

KFA specifically alleged that Ryland's advertisements and promotional materials—independent from the separate claims that Ryland built homes based on KFA's copyrighted plans—infringed on KFA's copyrights. Specifically, KFA alleged that the advertising itself infringed on the copyrights owned by KFA because the advertisements were contained in the 'non-pictorial depictions' of the wrongfully appropriated copyrighted architectural plans. Thus, the advertisements and promotional materials infringed KFA's copyright and did not merely "expose" the infringement. Accordingly, the court finds that there is a causal connection between the advertising activity and KFA's claim for copyright infringement.²²

If architects can take advantage of a builder's insurance policy in obtaining a settlement or satisfaction of judgment on an architectural works copyright claim, this liability is a tremendous incentive to the bringing of such litigation.

Other examples of the mass builder type of infringement lawsuits abound. For example, another high-profile action, *Humphreys & Partners, LP v. Gibraltar Properties, Inc.*,²³ involved an interesting re-use of a novel idea created by a large Texas architecture firm, Humphreys & Partners, Architects. HPA and its principal, Mark Humphreys, gained national prominence for a particular style of multi-family housing known as "The Big House." The "big house" style involves a number (typically 6 to 10) of apartment or condominium units in a single structure, but with the exterior features designed and arranged so that the structure appears to be a large, upscale, single-family house, rather than a block of apartment or townhouse units. Typically, each unit has an enclosed garage and an entry door at ground level, but the features are arranged so that the structure appears to have a single front door and a three-car garage, and thus appears to be a large single-family house rather than a multi-family structure.²⁴

The *Humphreys* lawsuit had in it a great deal of specifics as to the degree and nature of Humphreys' attempt to copyright HPA's works.²⁵ According to the complaint, Gibraltar, a developer in Indiana, and Gibraltar Design, its in-house design firm, were working with another development firm, Flaherty & Collins, in 1997. They wanted to develop multi-family housing projects in the

Indiana market. They had Flaherty & Collins contact Humphreys to express interest in the "big house" plans and architectural details. Humphreys' representatives met with Gibraltar and Flaherty and made a proposal. During that process, Humphreys tendered drawings depicting the copyrighted works for demonstrative purposes. Those drawings bore Humphreys' title block, seals, and copyright legend.

According to the complaint, Gibraltar decided to "simply steal HPA's intellectual property and thereby deprived HPA of the revenues it would have earned from the creation and licensing of derivatives of the copyright works."²⁶ The complaint then went into great detail showing the infringements and identifying the projects that Gibraltar was building based on the "big house" plans.

The lawsuit resolved with damages, including rentals over the life of the asset as an additional item; the infringer was operating the properties as apartment complexes. Witnesses saw the plaintiff's plans side-by-side with the ones that an architect working for the defendants was working on. The damages rendered the asset essentially useless; no future income could be earned unless it was transmitted on to the architects.²⁷

The commercial enforceability of these types of copyrights cannot be overstated; Humphreys' "big house" design is gaining notoriety all over the United States. In a 1997 news story in *Multi-Housing News*, Humphreys had more than ten of the "big house designs" under construction from Florida to Nebraska, with more planned. Quoting Humphreys, the article indicated "So far, almost every single client has a site that is having difficulty being approved for multi-family," said Humphries, noting that the single-family look can help obtain approvals in communities opposed to multi-family.²⁸

The expansion is not lost on Humphreys, either. In a September 18, 2002 news article in the *Los Angeles Business Journal*, Humphreys announced that it was opening a regional office in Santa Monica, California. The planning and design problem that Humphries solved both in Texas and Indiana apparently can be solved in California, too.

What we have learned from this review of the activity in the creation of and enforcement of the Architectural Works Copyright Protection Act is that, while the law itself may be nebulous, the stakes are very high and judges and juries are willing to give awards, nebulous standards or not. The Act itself was designed to bring the United States into compliance with European standards under the Berne Convention; most writers agreed that it did, at best, an imperfect job of doing that. In particular, as an author indicated in a recent law review article:

Under the AWCPA's provisions, the architect must forgo the exclusive right to adapt her design, as

embodied in a building, in favor of the building's owner. Congress recognized that, to fully utilize the built structure, a building owner must be able to freely adapt and change the building. Consequently, Congress gave building owners the right to modify and to alter the building's design, and even to destroy the building, without the copyright owner's permission.²⁹

Congress has given architects a relatively simple, straightforward form to follow to protect their copyrights. It is embodied in a short, three-page circular entitled "Circular 41—Copyright Claims and Architectural Works," available from the U.S. Copyright Office. The form that it relies on, Form VA, is two pages long, with two pages of instructions and a \$30 fee. Whether the architect is a mass builder or a designer of high-end custom homes, this would seem a very cheap price to pay to ensure the protection of designs from unauthorized use and copying. In this arrangement, imperfect as it may be, a remedy exists to protect the architect. With the proliferation of abuse, the architects need it.

In the long run, though, if the architects don't know about their rights or lack the resources to enforce them, they'll be deprived of the essence of their livelihood—reward for their creativity. This may be a sufficiently unique situation, as unique as the ideas that spawned it, for Congress and the courts to take a second look at this problem to see if additional remedies exist to curb it. Since architects generally do not have economic parity with developers and builders, the system may have to work harder here to balance the scales.

NOTES

1. Complaint for copyright infringement and related causes of action, *William Hablinski Architecture, a California partnership v. Amir Construction, Inc., et al.*, filed in U.S. District Court for the Central District of California on September 5, 2003, p. 6, lines 5-28.

2. Los Angeles Times, September 8, 2003, "Architect Less Than Flattered; Lawsuits Contend that Ex-Employee Used Pilfered Plans for Real Estate Mogul's Mansion; Martha Groves, Times Staff Writer, Metro Section, Part B, p. 1, lines 10-23.

3. Interview with William Hablinski of January 14, 2004 at Hablinski's offices in Beverly Hills, California.

4. Interview with William Hablinski of January 14, 2004.

5. Interview with Peter J. Bezek of February 3, 2004.

6. Los Angeles Times article of September 18, 2003. One of Hablinski's other homes built in the Newport Coast area of

Orange County, California was featured as a Home of the Week in the Los Angeles Times of Sunday, February 15, 2004. Pictures of the interior and detailed photos of the exterior were contained in the article. (Los Angeles Times, Sunday, February 15, 2004, Real Estate Section "K," p. 14.)

7. Clark T. Thiel, The Architectural Works Copyright Protection Gesture of 1990, or "Hey, That Looks Like My Building!", 7 Depaul-LCA Journal of Art & Entertainment Law 1 (Fall 1996).

8. Vanessa N. Scaglione, Building Upon the Architectural Works Protection Copyright Act of 1990, 61 Fordham. L. Rev.193 (Oct. 1992) (emphasis added).

9. *Sturdza v. United Arab Emirates*, 281 F.3d 1287, 62 U.S.P.Q.2d (BNA) 1071 (D.C. Cir. 2002).

10. *Sturdza*, 281 F.3d at 1292 (emphasis added).

11. *Sturdza*, 281 F.3d at 1295 (emphasis added), quoting *Nichols v. Universal Pictures Corporation*, 45 F.2d 119, 121, 7 U.S.P.Q. (BNA) 84 (C.C.A. 2d Cir. 1930).

12. *Sturdza*, 281 F.3d at 1296.

13. *Sturdza*, 281 F.3d at 1296.

14. *Sturdza*, 281 F.3d at 1296 (emphasis added). See also Wick, *Infringing Buildings: Protection of Architecture Rights in the US after Sturdza v. United Arab Emirates*; 120 Copyright World 13-15 (May 2002).

15. *Sturdza*, 281 F.3d at 1297.

16. *Sturdza*, 281 F.3d at 1297-98.

17. National Law Journal, 11/5/01, page A-1, "Building a Case: Copyrights Apply to Buildings, and Suits are Growing," Emily Heller.

18. *Kipp Flores Architects, LLC v. Signature Homes, LLC* (U.S. Dist. Ct. E. D. Va. No. 2:00CV831).

19. Heller, *supra* n. 17.

20. *Kipp Flores Architects*, complaint at page 4, lines 4-17.

21. *Kipp Flores Architects*, complaint at 5, line 2 through page 8, line 5.

22. Carriers Required to Defend Copyright Claim Arising From Architectural Plans, 16 Insurance Industry Litigation Rep. 5.

23. *Humphreys & Partners, LP v. Gibraltar Properties, Inc.* (U.S. Dist. Ct. S.D. Ind., No. IP00-0854 C-H/G, filed 5/25/2000).

24. *Humphreys & Partners*, complaint at page 2, line 15, through page 3, line 4.

25. *Humphreys & Partners*, first amended complaint at page 3, paragraph 13 through page 4, paragraph 14.

26. *Humphreys & Partners*, complaint at page 5, lines 6-8.

27. Interview with Louis Bonham by the author of January 22, 2003.

29. "Just Like a Big House," L. Keat Foong; Multi-Housing News, 1/97.

29. Thiel, *supra* n. 7 at 20-21.

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