

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MATSUNOKI GROUP, INC., dba HAIKU  
HOUSES,

Plaintiff,

v.

TIMBERWORK OREGON, INC.; TIMBERWORK,  
INC.; JOAN L. SHUELL; EARL MAURY  
BLONDHEIM; DON PAUL; ILENE ENGLISH-  
PAUL and DOES 1 through 10,  
inclusive,

Defendants.

No. C 08-04078 CW

ORDER GRANTING  
MATSUNOKI'S MOTION  
FOR RELIEF FROM  
JUDGMENT

Matsunoki Group, Inc. moves for relief from judgment which was entered on the Court's Order granting Defendants' motion for summary judgment. Matsunoki argues that it presents "newly discovered evidence" concerning ownership of the copyrights at issue. Defendants oppose the motion. Having considered all of the papers filed by the parties the Court grants Matsunoki's motion.

BACKGROUND

On April 16, 2010, the Court granted Defendants summary judgment against Matsunoki on all of its claims, including the copyright claim. The parties disputed whether Matsunoki could prove ownership of the copyrights for the following seven publications: the 1989, 1994, 1996 and 1999 editions of Haiku Houses Country Houses of 16th Century Japan; the 1996 and 2001

1 editions of the Haiku Houses Buyer's Guide; and the Haiku Houses  
2 Country Houses of 16th Century Japan website, first published in  
3 1999. Matsunoki presented evidence that its predecessor Landmark  
4 Architecture and Design owned the copyrights, but not that those  
5 copyrights were transferred to Matsunoki. Landmark was  
6 administratively dissolved as a corporation on November 6, 2006.  
7 In its surreply in opposition to Defendants' motion, Matsunoki  
8 represented that its president, Charla Honea, planned to take  
9 future action to assign the copyrights to Matsunoki. In a  
10 declaration signed on January 6, 2010, Honea stated that she would  
11 apply to the Tennessee Secretary of State for reinstatement of  
12 Landmark on January 7, 2010. Matsunoki argued that, once the  
13 reinstatement became effective, Honea, as the president of  
14 Landmark, would officially assign the copyrights to Matsunoki.

15 The Court concluded:

16 Applying for reinstatement is not the same thing as  
17 being reinstated. Honea must satisfy the Tennessee  
18 Secretary of State that Landmark has met the requirements  
19 for reinstatement under Tennessee Code Annotated section 48-  
20 24-203(a), which include obtaining "a certificate from the  
21 commissioner of revenue reciting that the corporation has  
22 properly filed all reports and paid all taxes and penalties  
23 required by the revenue laws of this state." Honea has made  
no showing that she has met these reinstatement  
requirements. Because Matsunoki presents no evidence that  
it currently owns the copyrights at issue, and it is not  
clear when and if it will obtain those copyrights by  
assignment, the Court concludes that Matsunoki cannot bring  
any claims for copyright infringement. Therefore,  
Matsunoki's copyright claims fail.

24 Order at 12.

25 Matsunoki now presents the following subsequent developments:

26 (1) on January 7, 2010, the Tennessee Secretary of State reinstated  
27 Landmark as a corporation in good standing, Honea Decl. ¶ 2, Ex. A;

1 (2) on February 26, 2010, Landmark assigned in writing all of its  
2 intellectual property to Matsunoki. Matsunoki did not present any  
3 of this evidence to the Court before its April 16, 2010 Order on  
4 Defendants' motion for summary judgment.

5 DISCUSSION

6 I. Motion for Relief From Judgment

7 Federal Rule of Civil Procedure 60(b) provides that, "upon  
8 such terms as are just," a court may relieve a party from final  
9 judgment for the following reasons:

10 (1) mistake, inadvertence, surprise, or excusable  
11 neglect; (2) newly discovered evidence which by due  
12 diligence could not have been discovered in time to move  
13 for a new trial under Rule 59(b); (3) fraud (whether  
14 heretofore denominated intrinsic or extrinsic),  
misrepresentation, or other misconduct of an adverse  
party; (4) the judgment is void; (5) the judgment has  
been satisfied, released or discharged; (6) any other  
reason justifying relief from operation of the judgment.

15 Fed. R. Civ. P. 60(b). "Relief from judgment on the basis of newly  
16 discovered evidence is warranted if (1) the moving party can show  
17 the evidence relied on in fact constitutes "newly discovered  
18 evidence" within the meaning of Rule 60(b); (2) the moving party  
19 exercised due diligence to discover this evidence; and (3) the  
20 newly discovered evidence must be of 'such magnitude that  
21 production of it earlier would have been likely to change the  
22 disposition of the case.'" Feature Realty, Inc. v. City of  
23 Spokane, 331 F.3d 1082, 1093 (9th Cir. 2003) (quoting Coastal  
24 Transfer Co. v. Toyota Motor Sales, U.S.A., Inc., 833 F.2d 208, 211  
25 (9th Cir. 1987).

26 As noted above, evidence of Landmark's reinstatement and the  
27 assignment of its assets to Matsunoki was not provided to the Court  
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1 before the April 16, 2010 Order on Defendants' motion for summary  
2 judgment. Matsunoki claims that it did not have the opportunity to  
3 present this evidence to the Court after "the briefing had closed."  
4 Motion at 6. Civil Local Rule 7-3(d) provides that "once a reply  
5 is filed, no additional memoranda, papers or letters may be filed  
6 without prior Court approval." This rule did not stop Matsunoki  
7 from filing a motion for leave to file a surreply on January 6,  
8 2010, or Defendants from filing a motion for leave to file a reply  
9 to the surreply on January 12, 2010. With leave of court,  
10 Matsunoki certainly could have filed documentation to support  
11 further its claim of ownership of the copyrights in question.  
12 Nevertheless, Matsunoki's failure to seek leave of court to file  
13 these documents does not preclude granting relief under Rule 60(b).  
14 At the time that Matsunoki filed its opposition and surreply, the  
15 evidence that it seeks presently to put before the Court did not  
16 exist. Once Matsunoki understood that there was an issue  
17 concerning ownership of the copyrights, it took steps to establish  
18 ownership. Evidence of those corrective steps constitute new  
19 evidence under Rule 60(b)(2).

20 The Court next considers is whether the new evidence was of  
21 such magnitude that it would have changed the outcome of the case.  
22 Defendants claim that, even if Matsunoki can prove ownership of the  
23 copyrights at issue, they made other arguments that would support  
24 summary judgment on the copyright claim. Defendants had argued  
25 that Matsunoki's copyright registration was not valid.

26 Copyright "registration made before or within five years after  
27 first publication of the work shall constitute prima facie evidence  
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1 of the validity of the copyright and of the facts stated in the  
2 certificate." 17 U.S.C. § 410(c). The district court has  
3 discretion regarding the weight to accord registrations made more  
4 than five years after the first publication. Id.

5 Of the seven copyright registrations that Matsunoki claims to  
6 own, only three were made within five years after the first  
7 publication of the work -- the 1999 Catalog, the 2001 Builder's  
8 Guide, and the Haiku Houses Country Houses of 16th Century Japan  
9 website. Therefore, the remaining four are not presumptively  
10 valid.

11 Defendants allege that these three more recent publications  
12 are merely duplications of the earlier works and, therefore,  
13 copyright registrations of them are not presumptively valid either.  
14 After carefully reviewing these publications, the Court agrees.  
15 The 1999 Catalog, the 2001 Builder's Guide and the website are  
16 virtually identical to the 1996 Catalog. Therefore, none of  
17 Matsunoki's copyright registrations are presumptively valid.

18 Defendants next argue that Matsunoki's copyrights are not  
19 valid because Matsunoki did not accurately identify the author of  
20 the works. Under federal law, copyright initially vests in a  
21 work's author. 17 U.S.C. § 201(a). The copyright registration  
22 forms for the 1989, 1994 and 1996 Catalogs and the 1996 and 2001  
23 Builder's Guides state that Haiku Houses Limited is the author, and  
24 the forms for the 1999 Catalog and website state that Landmark is  
25 the author. Defendants argue that, because Charla Honea, the  
26 president of Matsunoki, could not name the author of the works  
27 during her deposition, the registration forms contain false

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1 authorship information. However, the evidence does not indicate  
2 that Honea ever knew or had any way of knowing the author of the  
3 works. Thus, her inability to recall authorship at the deposition  
4 does not mean that the registration forms are inaccurate.

5 Defendants also assert that the seven registered copyrights  
6 are invalid because they were obtained by fraud. An infringement  
7 action is barred if a "claimant intended to defraud the Copyright  
8 Office by making [a] misstatement." Urantia Found. v. Maaherra,  
9 114 F.3d 955, 963 (9th Cir. 1997). However, "inadvertent mistakes  
10 on registration certificates do not invalidate a copyright and thus  
11 do not bar infringement actions." Id. Defendants assert that  
12 Matsunoki purposely misrepresented the authorship of the copyrights  
13 and the manner in which it obtained these copyrights. Even if  
14 Defendants are correct that Matsunoki placed incorrect information  
15 on the registration forms, they have not proved that Matsunoki  
16 fraudulently misled the Copyright Office.

17 In sum, Defendants have not established alternative grounds to  
18 grant summary judgment on Matsunoki's copyright claim. Therefore,  
19 the new evidence regarding ownership of the copyrights would change  
20 the outcome of the summary judgment motion. Accordingly, the Court  
21 vacates the judgment in this case and allows Matsunoki to pursue  
22 its copyright claim against Defendants.

23 CONCLUSION

24 For the foregoing reasons, the Court grants Defendants' motion  
25 to set aside the judgment. Docket No. 137. The Court reopens the  
26 case to allow Matsunoki to pursue its copyright claim against  
27 Defendants. Because the judgment has been vacated, the Court

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1 denies without prejudice Defendants' motion for attorneys' fees.  
2 Docket No. 122. The parties shall attend a further case management  
3 conference on September 21, 2010 at 2:00 p.m.

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5 IT IS SO ORDERED.

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7 Dated: 09/03/10

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*Claudia Wilken*

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CLAUDIA WILKEN  
United States District Judge