

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

Harry F. Lutz Homes, Inc.)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 04-1029-CV-W-ODS
)	
D.L. Kirby Properties Incorporated,)	
Dean L. Kirby,)	
A. H. D. Construction, Inc.,)	
Matthew W. Davis,)	
Jerry Maloney,)	
Kelly Maloney, and)	
John Does I-V)	
)	
Defendants.)	

**CONSENT JUDGMENT REGARDING
MATTHEW W. DAVIS AND A.H.D. CONSTRUCTION, INC.**

This Consent Judgment is for the purpose of terminating the legal claims now pending before this Court in the above-captioned civil action between Plaintiff Harry F. Lutz Homes, Inc. (hereinafter “Lutz” or “Plaintiff”) and Defendants Matthew W. Davis and A.H.D. Construction, Inc. (collectively hereinafter the “Davis Defendants”). As reflected by the endorsement hereto, Plaintiff Lutz and the Davis Defendants have agreed upon the entry of this Consent Judgment, it being noted that, as of the date of the endorsement of this Consent Judgment by and between Plaintiff and the Davis Defendants, a Consent Judgment has been entered with respect to Defendants D.L. Kirby Properties Incorporated and Dean L. Kirby, and an Order Granting Plaintiff’s Motion for Default Judgment has been entered with respect to Defendant A.H.D. Construction, Inc. The remaining defendants are not a part of this Consent Judgment.

ECF

NOW, THEREFORE, IT IS


ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. This Court has jurisdiction of the subject matter of this action for copyright infringement and personal jurisdiction over the Davis Defendants, and venue is proper in this District.
2. Plaintiff Lutz is the owner of U.S. Certificate of Copyright Registration No. VA 867-767 issued as of October 24, 1997 for an architectural work entitled Plan No. 7690, an architectural work entitled "Winterset Park - 2630 Winter Valley Drive," registered August 25, 2004 as Registration No. VA1-265-426, and technical drawings entitled "Winterset Park - 2630 Winter Valley Drive," registered on August 25, 2004 as Registration No. 1-265-427 (collectively hereinafter "the Works"). Such works are original works and the copyright registrations thereof are not cancelled or expired.
3. Commencing in about 2003, Defendant Kirby began constructing a residence for Jerry and Kelly Maloney, 318 NW Rockhill Circle, Lee's Summit, Missouri 64081 (hereinafter the "Maloney Residence") and construction on the residence was completed in 2004. The Davis Defendants designed and prepared plans for the Maloney Residence which were derived from the Works, and were known by the Davis Defendants to be intended for use in the construction of the Maloney Residence.
4. The Maloney Residence was designed and constructed with the contribution and approval of the Maloney Defendants without the permission of Lutz or its predecessors in interest to the aforementioned copyright registrations.

5. The creation of the drawings by the Davis Defendants with the knowledge and intention that such drawings had no substantial use other than in connection with and contributory to the design and construction of the Maloney Residence by the Davis Defendants constitutes direct and contributory copyright infringement under the provisions of 17 U.S.C. §101 et seq., in that the plans for, and the Maloney Residence as designed and constructed is a copy of or a derivative work of the architectural work covered by Copyright Registration Nos. VA 867-767, VA1-265-426, and 1-265-427.
6. The Davis Defendants, their agents, servants, employees and attorneys, and all persons in active concert or participation with him, and each of them, are hereby permanently enjoined and restrained from:
 - a. Making any further copies of the Maloney Residence plans or home as constructed, except as may be expressly authorized by Lutz in writing;
 - b. Making any derivative works of the architectural work or technical drawings which are the subject of Copyright Registration Nos. VA 867-767, VA1-265-426, and 1-265-427, except as may be expressly authorized by Lutz in writing;
 - c. From committing any other acts of copyright infringement relative to the Works.
7. The Davis Defendants shall deliver to Plaintiff's attorneys all copies and records of the plans of the Maloney Residence, any materials from which the plans of the Maloney Residence were derived, and any records reflecting requests for, creation

of, or distribution of any plans for residential construction based in whole or in part on the Works, including but not limited to the Maloney Residence, including electronic records, except that the Davis Defendants may retain one complete set of the plans for archival purposes and no other purposes.

8. The parties having settled between them the matter of monetary relief, no damages are hereby awarded by the Court.
9. Each party shall bear his or its own costs and attorney's fees, if any.
10. Jurisdiction is retained by this Court with respect to this civil action for the purpose of enabling Plaintiff to apply to this Court at any time for such further orders and directions as may be necessary and appropriate in order to carry out the provisions of this Consent Judgment, and for the enforcement of compliance therewith.

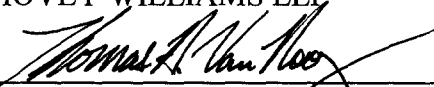

The Honorable Ortrie D. Smith
United States District Judge

Date: 4/12/05

Plaintiff, by its attorneys, hereby consents to and requests the issuance and entry of a Consent Judgment in the form and content as set forth above, without further notice.

Respectfully submitted,

HOVEY WILLIAMS LLP



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ATTORNEYS FOR PLAINTIFF

Defendants Matthew Davis and A.H.D. Construction, Inc., not represented by counsel but having consulted with counsel prior to execution of this Consent Judgment, hereby consent to and request the issuance and entry of a Consent Judgment in the form and content as set forth above, without further notice.

MATTHEW DAVIS



On his individual behalf

Date: 4/11/05

A.H.D. CONSTRUCTION, INC.

By



Matthew Davis

President (in his capacity for resolving matters of a corporation administratively dissolved)

Date: 4/11/05