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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NORTHWEST HOME DESIGNING, INC.,

Plaintiff,

v.

GOLDEN KEY CONSTRUCTION, INC., et
al.,

Defendant.

CASE NO. 11-cv-05289 RBL

ORDER GRANTING
DEFENDANT’S MOTION TO
COMPEL DISCOVERY

Defendants Golden Key Construction, Inc. and Doug Bateman’s Motion to Compel Discovery (ECF No. 64) has been referred to the undersigned Magistrate Judge (ECF No. 71) pursuant to 28 U.S.C. §§ 636(b)(1)(A) and (B) and Magistrate Judge Rules MJR 1, MJR 3 and MJR 4.

The Court has reviewed Defendants’ Motion to Compel Discovery (ECF No. 64), the Declaration of Michelle A. Alig (ECF No. 65), Plaintiff’s Response in Opposition to Golden Key’s and Bateman’s Motion to Compel Discovery (ECF No. 66), the Declaration of Anthony J. Biller in Support of Plaintiff’s Response (ECF No. 67), and the Reply in Support of Defendants Golden Key Construction, Inc.’s and Defendant Doug Bateman’s Motion to Compel Discovery (ECF No. 68).

1 BACKGROUND

2 Plaintiff claims that Golden Key’s house-design plans violate its copyrights. In August
3 2011, Defendant sent its first set of interrogatories and requests for production to Plaintiff, to
4 which Plaintiff responded one month later. On January 27, 2012, Defendant sent correspondence
5 to Plaintiff, discussing why some of Plaintiff’s responses were deficient. Defendant argues that
6 some of Plaintiff’s answers were general and nonspecific, and thus, nonresponsive.

7 On February 16, 2012, the parties conferred again, and Plaintiff objected to providing a
8 supplemental response to Interrogatory No. 2, claiming that such information was not relevant
9 under Ninth Circuit case law. The following day, after reviewing the cited case law, Defendant
10 wrote to Plaintiff, stating that Interrogatory No. 2 sought relevant information, and requested a
11 supplemental response by March 1, 2012. On March 2, 2012, Defendant received Plaintiff’s
12 supplemental responses to other requested discovery, but not to Interrogatory No. 2.

13 Interrogatory No. 2 and Plaintiff’s response are as follows:

14 **INTERROGATORY NO. 2:** Please identify with specificity each and every
15 element of your plans at issue in this litigation that you allege are protected by
16 copyright.

17 **RESPONSE:** NHD objects to this interrogatory to the extent that it asks NHD to
18 dissect the home designs into protected elements. NHD’s protectable expressions
19 in its designs exist in the selection, coordination, and arrangement of individual
20 elements into a whole. The protectable expression in the designs include, without
21 limitation, the overall form of the building, the arrangement and composition of
22 spaces in the building, the roof design, the shape of the envelope, the exterior
23 design, the fenestration patterns, the floor plan, the relationship between the
24 rooms, and the circulation patterns.

Alig Decl., Exh. 1. Defendant argues that the answer above remains general and nonspecific.

Plaintiff argues that they should not be compelled to supplement their response because they
fully and reasonably responded, and a more specific response is contrary to law and impossible
to implement.

1 5053, 2009 WL 1835916, at *2 (W.D. Wash. June 26, 2009) (citing 17 U.S.C. § 501). It is not
2 impossible—as the Plaintiff claims—to dissect every element that makes Plaintiff’s work
3 copyrightable. In fact, in order for the Plaintiff to establish copyright infringement, the Plaintiff
4 must satisfy the extrinsic test, which requires analytic dissection. If Plaintiff fails to identify the
5 specific elements, not only does Plaintiff fail the extrinsic test, but the Court will not be able to
6 determine whether Plaintiff’s work survives the intrinsic test.

7 In addition, the mere fact that Plaintiff’s work is copyrighted does not mean that every
8 element of the work is protected. Feist Publ’ns, Inc., 499 U.S. at 348–49. If Plaintiff’s work is
9 composed largely of unprotectable elements or elements limited by law, the protection it receives
10 may be broad or narrow. Id. at 357–58. Thus, Plaintiff must identify the protected elements of
11 its work to determine what level of protection to which it is entitled. Plaintiff’s response merely
12 identifies the general similarities between the two works, but it does not specify the protected
13 elements.

14 If Plaintiff were correct, and it was impossible to identify each element of its plans that it
15 alleges is copyright protected, then Plaintiff may not later at trial argue that additional or more
16 specific elements of its plans are protected by copyright. Herbert v. Lando, 441 U.S. 153, 177
17 (1979).

18 CONCLUSION

19 For the foregoing reasons, the Defendant’s Motion to Compel (ECF No. 64) is
20 GRANTED. Plaintiff is to supplement its response to Interrogatory No. 2 within twenty days of
21 this order. IT IS SO ORDERED.

22 Dated this 11th day of April, 2012.

23 

24 J. Richard Creatura
United States Magistrate Judge