

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

INNOVATIVE HABITAT, LLC,

Plaintiff,

v.

CASE NO.: 8:21-cv-00922-CEH-AEP

FLEISCHMAN AND GARCIA
ARCHITECTS AND PLANNERS, A.I.A.,
P.A., and ATCO, INC.,

Defendants.

ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANTS

Defendant, Fleischman and Garcia Architects and Planners, A.I.A., P.A. (hereinafter referenced as “FleischmanGarcia”), by and through the undersigned counsel hereby files and serves its Answer and Affirmative Defenses to the Complaint of Innovative Habitat, LLC (“Innovative Habitat”), stating as follows:

ANSWER

Jurisdiction and Venue

1. Admitted for jurisdictional purposes only.
2. Admitted for the limited purpose of establishing venue.
3. Paragraph 3 of the Complaint does not contain any factual allegations directed to the FleischmanGarcia that may be either admitted or denied. To the extent a response is required, FleischmanGarcia would state it is without knowledge and would thusly deny the allegations contained in paragraph 3.
4. Admitted.
5. Paragraph 5 of the Complaint does not contain any factual allegations directed to the FleischmanGarcia that may be either admitted or denied. To the extent a response is

required, FleischmanGarcia would state it is without knowledge and would thusly deny the allegations contained in paragraph 5.

Background

6. Paragraph 6 of the Complaint does not contain any factual allegations directed to the FleischmanGarcia that may be either admitted or denied. To the extent a response is required, FleischmanGarcia would state it is without knowledge and would thusly deny the allegations contained in paragraph 6.

7. Paragraph 7 of the Complaint does not contain any factual allegations directed to the FleischmanGarcia that may be either admitted or denied. To the extent a response is required, FleischmanGarcia would state it is without knowledge and would thusly deny the allegations contained in paragraph 7.

8. Paragraph 8 of the Complaint does not contain any factual allegations directed to the FleischmanGarcia that may be either admitted or denied. To the extent a response is required, FleischmanGarcia would state it is without knowledge and would thusly deny the allegations contained in paragraph 8.

9. Paragraph 9 of the Complaint does not contain any factual allegations directed to the FleischmanGarcia that may be either admitted or denied. To the extent a response is required, FleischmanGarcia would state it is without knowledge and would thusly deny the allegations contained in paragraph 9.

10. Paragraph 10 of the Complaint does not contain any factual allegations directed to the Defendants that may be either admitted or denied. To the extent a response is required, FleischmanGarcia would state it is without knowledge and would thusly deny the allegations contained in paragraph 10.

11. Paragraph 11 of the Complaint, including the affixed footnote 2, does not contain any factual allegations directed to the FleischmanGarcia that may be either admitted or denied. To the extent a response is required, FleischmanGarcia would state it is without knowledge and would thusly deny the allegations contained in paragraph 11. Further, to the extent Innovative Habitat alleges “designed the Bradenton Rogers Market from the ground up,” FleischmanGarcia would specifically deny such allegation.

12. Paragraph 12 of the Complaint does not contain any factual allegations directed to the Defendants that may be either admitted or denied. To the extent a response is required, FleischmanGarcia would state it is without knowledge and would thusly deny the allegations contained in paragraph 12. Further, FleischmanGarcia specifically denies that Innovative Habitat is the author of the architectural design for the Bradenton Rogers Market for which copyright registration number VAu001395750 was issued.

13. Denied insofar as it is alleged that the “architectural design of the Bradenton Rogers Market includes numerous unique and original design features.” The balance of the allegations set forth in paragraph 13 does not contain any factual allegations directed to the FleischmanGarcia that may be either admitted or denied. To the extent a response is required, FleischmanGarcia would state it is without knowledge and would thusly deny the allegations contained in paragraph 13.

14. Paragraph 14 of the Complaint does not contain any factual allegations directed to FleischmanGarcia that may be either admitted or denied. To the extent a response is required, FleischmanGarcia would state it is without knowledge and would thusly deny the allegations contained in paragraph 14.

15. Paragraph 15 of the Complaint does not contain any factual allegations directed to FleischmanGarcia that may be either admitted or denied. To the extent a response is required, FleischmanGarcia would state it is without knowledge and would thusly deny the allegations contained in paragraph 15.

16. Paragraph 16 of the Complaint does not contain any factual allegations directed to FleischmanGarcia that may be either admitted or denied. To the extent a response is required, FleischmanGarcia would state it is without knowledge and would thusly deny the allegations contained in paragraph 16.

17. Paragraph 17 of the Complaint does not contain any factual allegations directed to FleischmanGarcia that may be either admitted or denied. To the extent a response is required, FleischmanGarcia would state it is without knowledge and would thusly deny the allegations contained in paragraph 17.

18. Paragraph 18 of the Complaint does not contain any factual allegations directed to FleischmanGarcia that may be either admitted or denied. To the extent a response is required, FleischmanGarcia would state it is without knowledge and would thusly deny the allegations contained in paragraph 18.

19. Paragraph 19 of the Complaint does not contain any factual allegations directed to FleischmanGarcia that may be either admitted or denied. To the extent a response is required, FleischmanGarcia that would state it is without knowledge and would thusly deny the allegations contained in paragraph 19.

20. Denied.

21. Admitted.

22. Admitted insofar as it is alleged that Innovative Habitat sent a correspondence to FleischmanGarcia, wherein Innovative Habitat, through its counsel, attempted to claim a possessory interest in and to the architectural design for the Bradenton Rogers Market, but denied as to the sum and substance of Innovative Habitat's assertions therein.

23. Paragraph 23 of the Complaint does not contain any factual allegations directed to FleischmanGarcia that may be either admitted or denied. To the extent a response is required, FleischmanGarcia would state it is without knowledge and would thusly deny the allegations contained in paragraph 23.

Count 1 – Copyright Infringement

24. FleischmanGarcia re-alleges and incorporates its responses to paragraphs 1 through 23 of the Complaint, above, in full.

25. Denied.

26. Denied.

27. Paragraph 27 of the Complaint does not contain any factual allegations directed to FleischmanGarcia that may be either admitted or denied. To the extent a response is required, FleischmanGarcia would state it is without knowledge and would thusly deny the allegations contained in paragraph 27.

28. Paragraph 28 of the Complaint does not contain any factual allegations directed to FleischmanGarcia that may be either admitted or denied. To the extent a response is required, FleischmanGarcia would state it is without knowledge and would thusly deny the allegations contained in paragraph 28.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

33. Denied insofar as it is alleged that Innovative Habitat is entitled to any relief under 17 U.S.C. § 502. Additionally, paragraph 33 of the Complaint does not contain any factual allegations directed to FleischmanGarcia that may be either admitted or denied. To the extent a response is required, FleischmanGarcia would state it is without knowledge and would thusly deny the allegations contained in paragraph 33. Lastly, to the extent paragraph 33 contains any allegations as to the contents of 17 U.S.C. § 502, FleischmanGarcia would state the referenced statute speaks for itself.

34. Denied insofar as it is alleged that Innovative Habitat is entitled to any relief under 17 U.S.C. § 503. Additionally, paragraph 34 of the Complaint does not contain any factual allegations directed to FleischmanGarcia that may be either admitted or denied. To the extent a response is required, FleischmanGarcia would state it is without knowledge and would thusly deny the allegations contained in paragraph 34. Lastly, to the extent paragraph 34 contains any allegations as to the contents of 17 U.S.C. § 503, FleischmanGarcia would state the referenced statute speaks for itself.

35. Denied insofar as it is alleged that Innovative Habitat is entitled to any relief under 17 U.S.C. § 504. Additionally, paragraph 35 of the Complaint does not contain any factual allegations directed to FleischmanGarcia that may be either admitted or denied. To the extent a response is required, FleischmanGarcia would state it is without knowledge and would thusly deny the allegations contained in paragraph 35. Lastly, to the extent paragraph 35 contains any allegations as to the contents of 17 U.S.C. § 504, FleischmanGarcia would state the referenced statute speaks for itself.

36. Paragraph 36 of the Complaint does not contain any factual allegations directed to FleischmanGarcia that may be either admitted or denied. To the extent a response is required, FleischmanGarcia would state it is without knowledge and would thusly deny the allegations contained in paragraph 36, and further, FleischmanGarcia would state that it is employed the services of Shumaker, Loop & Kendrick, LLP, in this action and has agreed to pay said counsel for its services in this action. Accordingly, pursuant to 17 U.S.C. § 504, FleischmanGarcia would request the entry of an order to award a reasonable attorney's fee to FleischmanGarcia, as the prevailing party, as part of the costs of defense in this action.

AFFIRMATIVE DEFENSES

First Affirmative Defense

As its First Affirmative Defense, FleischmanGarcia would state that Innovative Habitat's Complaint is barred by the fact that the alleged copyright-protected work was created in collaboration with others, and therefore, Innovative Habitat is not the author and/or owner of the subject work.

Second Affirmative Defense

As its Second Affirmative Defense, FleischmanGarcia would state that Innovative Habitat's claims are barred by the doctrine of fair use.

Third Affirmative Defense

As its Third Affirmative Defense, FleischmanGarcia would state that Innovative Habitat's claims are barred by the doctrine of unclean hands.

Fourth Affirmative Defense

As its Fourth Affirmative Defense, FleischmanGarcia would state that Innovative Habitat's claims are barred due to an implied license.

Fifth Affirmative Defense

As its Fifth Affirmative Defense, FleischmanGarcia would state that Innovative Habitat's claims are barred by the fact that the requested relief would constitute a prior restraint in violation of the First Amendment of the United States Constitution.

Reservation of Right to Assert Additional Affirmative Defenses

FleischmanGarcia reserves the right to assert additional affirmative defenses based upon further investigation and discovery.

WHEREFORE, Defendant, Fleischman and Garcia Architects and Planners, A.I.A., P.A., requests the entry of an order from this Court dismissing the Plaintiff Innovative Habitat, LLC's Complaint with prejudice, awarding Defendant, FleischmanGarcia, its reasonable attorneys' fees and costs in defense of this action, and granting such further relief in favor of FleischmanGarcia as this Court deems just and proper.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of May, 2021, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day upon Bailey Lowther, Esq., LOWTHER LAW PLLC, 1801 Field Club Road, Sarasota, Florida 34231 via transmission of Notice of Electronic Filing generated by CM/ECF.

By: /s/ Christopher A. Staine
Christopher A. Staine
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