

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

Innovative Habitat, LLC,

Plaintiff,

vs.

CASE NO.: _____

**Fleischman and Garcia
Architects and Planners,
A.I.A, P.A. and Atco, Inc.,**

**Injunctive Relief Requested
Jury Trial Demanded**

Defendants.

COMPLAINT

Plaintiff Innovative Habitat, LLC, (“Plaintiff” or “Innovative Habitat”) brings this action against Defendants Fleischman and Garcia Architects and Planners, A.I.A., P.A. (“FleischmanGarcia”) and Atco, Inc. (“Atco”) (collectively “Defendants”) for copyright infringement and alleges:

JURISDICTION AND VENUE

1. This action arises under the federal Copyright Act of 1976, Title 17, United States Code. Jurisdiction arises from 28 U.S.C. § 1338(a).
2. Venue is proper under 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(a).

THE PARTIES

3. Innovative Habitat is a Florida limited liability company in Sarasota, Florida.
4. FleischmanGarcia is a Florida corporation with its principal place of business in Tampa, Florida.

5. Atco is a Florida corporation with its principal place of business in Sarasota, Florida.

BACKGROUND

6. Innovative Habitat is an architecture and design firm.

7. Atco owns and operates numerous gas stations and convenience stores, primarily along the West Coast of Florida.

8. In 2019, at the behest of Gigi Rogers, the daughter of Atco's founder and an interior designer, Atco launched a new convenience store brand, known as Rogers Market, focusing on "an aesthetically pleasing atmosphere [and] high-quality chef-made food."¹

9. In or about February of 2019, Innovative Habitat and Atco entered into an agreement pursuant to which Innovative Habitat provided architectural design services for a new Rogers Market to be constructed at 2415 63rd Avenue East, Bradenton, Florida 34203 (the "Bradenton Rogers Market").

10. The Bradenton Rogers Market was the first store that Atco built specifically to be a Rogers Market, as opposed to remodeling an existing convenience store.

11. Architect Bradley J. Smith ("Smith"), the principal of Innovative Habitat, designed the Bradenton Rogers Market from the ground up, translating Gigi Rogers's vision of an aesthetically pleasing atmosphere and "a place where both a trucker and a soccer mom can choose between charred avocado toast with ricotta cheese or a Philly cheese steak"² into an original and distinctive architectural design embodied in his plans and drawings.

¹ Laura Finaldi, *Sarasota-Bradenton getting Rogers Market, a new high-end convenience store concept*, Sarasota Herald-Tribune, Sept. 14, 2020, <https://www.heraldtribune.com>.

² Mark Gordon, *Entrepreneur takes "the yuck out" of convenience stores*, Business Observer, Jan. 29, 2021, <https://businessobserverfl.com>.

12. Innovative Habitat registered its architectural design for the Bradenton Rogers Market with the United States Copyright Office, which on or about February 4, 2020 issued copyright registration number VAu001395750.

13. The architectural design of the Bradenton Rogers Market includes numerous unique and original design features, which are intended to distinguish Rogers Market from, in the words of Gigi Rogers, “yucky” convenience stores and therefore depart from customary styles and industry standards.

14. Innovative Habitat provided Atco with drawings, blueprints, schematics and CAD and Revit files containing its architectural designs in order for Atco to obtain permits and build the Bradenton Rogers Market.

15. Architect Smith, the principal of Innovative Habitat, is shown as the principal architect of record on building permit drawings recorded in Manatee County, Florida in connection with the construction of the Bradenton Rogers Market.

16. Innovative Habitat did not transfer its copyright in the architectural design of the Bradenton Rogers Market to Atco.

17. The Bradenton Rogers Market was completed and opened for business in or about September of 2020.

18. In February of 2021, Smith noticed a Rogers Market being built at 1155 Beneva Road, Sarasota, Florida 34232 (the “Beneva Rogers Market”) that appeared to be substantially similar to and include many of the unique and original design features included in the Bradenton Rogers Market.

19. Smith obtained copies of the building permit drawings submitted by or on behalf of Atco to Sarasota County in connection with the construction of the Beneva Rogers Market.

20. The architectural design embodied in the building permit drawings for the Beneva Rogers Market is effectively identical to the original and copyrighted architectural designs created by Smith on behalf of Innovative Habitat and incorporates the same distinctive design elements and details as the Bradenton Rogers Market.

21. Architect Douglas J. Watters (“Watters”), an employee of FleischmanGarcia, is shown as the principal architect of record on the building permit drawings on file with Sarasota County for the Beneva Rogers Market.

22. Innovative Habitat notified Watters and FleischmanGarcia of its copyrighted architectural design for the Bradenton Rogers Market and the substantial and significant similarities in the Bradenton and Beneva Rogers Markets.

23. Watters and FleischmanGarcia did not respond; instead, Atco responded by letter dated March 12, 2021, in which it stated the architectural design for the Bradenton Rogers Market came from Atco and Gigi Rogers, not Innovative Habitat.

COUNT I – COPYRIGHT INFRINGEMENT

24. Plaintiff realleges and incorporates paragraphs 1 through 23 as if set forth fully herein.

25. Plaintiff is the owner of the entire right, title and interest in and to and the creator of the original architectural designs for the Bradenton Rogers Market (the “Copyrighted Work”).

26. The Copyrighted Work is an original work of authorship, fixed in tangible mediums, created by Smith in his capacity as the principal and owner of Innovative Habitat.

27. The Plaintiff registered its original architectural design with the United States Copyright Office on or about February 4, 2020.

28. Plaintiff published and distributed the Copyrighted Work in strict conformity with the provision of the Copyright Act and has met all conditions precedent to the filing of this action.

29. Defendants Atco and FleischmanGarcia infringed the Plaintiff's copyright by copying the Copyrighted Work, submitting building permit drawings containing the Copyrighted Work to Sarasota County to obtain construction and other permits and/or constructing and participating in the construction of the Beneva Rogers Market, which is effectively a duplicate of the Bradenton Rogers Market and contains identical design elements and details.

30. Defendants had access to the Plaintiff's Copyrighted Work and actual notice that the Plaintiff's Copyrighted Work is the subject of copyright registrations prior to the infringement.

31. Defendants knowingly and willfully infringed on the Plaintiff's copyright and have gained an economic benefit through their infringement.

32. Defendants' actions cause irreparable harm to the Plaintiff and give rise to this cause of action pursuant to 17 U.S.C. § 501.

33. Pursuant to 17 U.S.C. § 502, this Court may grant temporary and final injunctions restraining Defendants, their officers, agents and employees, and all persons acting in concert with Defendants, from engaging in further acts in violation of the Copyright Act as set forth in Title 17 of the United States Code.

34. Pursuant to 17 U.S.C. § 503, this Court may order the seizure and impounding by the Court of all copies made or used in violation of the Plaintiff's copyrights as alleged herein,

together with all files, copies or other articles by means of which such copies may be reproduced by Defendants.

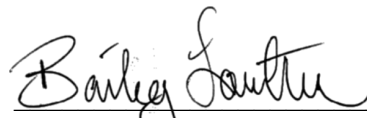
35. Pursuant to 17 U.S.C. § 504, Defendants are liable for Plaintiff's actual damages and any additional profits of the Defendants or statutory damages resulting from Defendants' infringement of the Copyrighted Work.

36. Plaintiff has employed the services of attorney Bailey Lowther and agreed to pay a reasonable fee for her services.

WHEREFORE, Plaintiff demands a trial by jury and asks this Court to order that Defendants: be preliminarily enjoined from infringing the Plaintiff's copyright by *inter alia* constructing any building embodying or containing the Plaintiff's original architectural work; turn over to the Court all copies made or used in violation of the Plaintiff's copyright as alleged herein, together with all files, copies or other articles by means of which such copies may be reproduced by Defendants; pay to Plaintiff such damages as Plaintiff has sustained as a result of Defendants' infringement of Plaintiff's copyright and account for and disgorge all gains, profits and advantages obtained by Defendants through their infringement of Plaintiff's copyright, or, alternatively, be required to pay statutory damages for the infringement, willful and otherwise, of Plaintiff's copyright; pay Plaintiff for the costs of this action and Plaintiff's reasonable attorney fees in prosecuting this action; and for such other and further relief as is equitable and just under the circumstances.

April 19, 2021.

Respectfully submitted,

A handwritten signature in black ink, reading "Bailey Lowther", is positioned above a horizontal line.

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