

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

NASON HOMES, LLC,

Plaintiff,

v.

Case No. 3:14-cv-1656

**SINGLETARY CONSTRUCTION, LLC
and BERT SINGLETARY,**

Defendants.

**RESPONSE OF THE REGISTER OF COPYRIGHTS
TO REQUEST PURSUANT TO 17 U.S.C. § 411(b)(2)**

On March 23, 2016, pursuant to 17 U.S.C. § 411(b)(2), the Court requested a response from the Register of Copyrights (“Register”) by April 20, 2016, to the following question (“Request”):

Would the Register of Copyrights have refused Nason Homes’ Registration No. VA 1-888-774 for an architectural work (“The Adler,” registered January 23, 2014) if the Register of Copyrights had known that Stuart Beattie, on behalf of Nason Homes, had intentionally misrepresented that (1) author John Helmick, Jr. had transferred his copyright to Nason Homes by written agreement; and (2) author John Helmick, Jr. had previously transferred his copyright to Nason Homes by oral agreement?¹

Because the Register did not receive a copy of the Court’s Request until April 18, 2016, the Register requested, and the Court granted, an extension to respond to the Request until June 10, 2016.² The Register hereby submits her response.

¹ Request at 1. On January 29, 2016, the court granted defendant’s motion to dismiss, finding that “Plaintiff ... failed to show that it owned a valid copyright in the Alder.” Order on Motion to Dismiss, Nason Homes, LLC. v. Singletary Constr., LLC, No. 3:14-cv-1656 (M.D. Tenn. Jan. 29, 2016). On February 25, 2016, the plaintiff filed a Motion to Alter Judgment, which the court granted on March 23, 2016, stating that only one of plaintiff’s arguments in the Motion to Alter “has merit”—“that the Court should have requested an opinion from the Register of Copyrights before invalidating the Plaintiff’s copyright.” Nason Homes, LLC’s Motion to Alter or Amend the Judgement and Memorandum in Support of its Motion to Alter or Amend the Judgment, Nason Homes, LLC. v. Singletary Constr., LLC, No. 3:14-cv-1656 (M.D. Tenn. Feb. 25, 2016); Order on Motion to Alter Judgment, Nason Homes, LLC. v. Singletary Constr., LLC, No. 3:14-cv-1656 (M.D. Tenn. Mar. 23, 2016).

² Unopposed Motion of the Copyright Office for an Enlargement of Time to Respond to the Court’s Order of March 23, 2016, Nason Homes, LLC. v. Singletary Constr., LLC, No. 3:14-cv-1656 (M.D. Tenn. Apr. 20, 2016).

BACKGROUND

A review of the Copyright Office's records shows the following:

On January 23, 2014, the U.S. Copyright Office ("Copyright Office" or "Office") received an application to register an architectural work entitled "The Alder – construction date 9-30-2012." The application identified John Helmick, Jr., as the author, and Nason Homes, LLC, as the copyright claimant "by written agreement." The application made no mention of an oral agreement to transfer copyright. The application stated that the work was completed in 2012, and that it was published in the United States on January 20, 2013. The Office registered the work with an effective date of registration ("EDR")³ of January 23, 2014, and assigned registration number VA 1-888-774. Apart from calling Nason Home's contact on the application to verify the date of construction of the home, the Office did not question, or find reason to question, the representations in the application, and accepted them as true and accurate.⁴

ANALYSIS

An application for copyright registration must comply with the requirements of the Copyright Act set forth in 17 U.S.C. §§ 408(a), 409, and 410. Regulations governing applications for registration are codified in title 37 of the Code of Federal Regulations at 37 C.F.R. §§ 202.1 to 202.21 (2015). The principles that govern how the Office examines registration applications are found in the *Compendium of U.S. Copyright Office Practices, Third Edition* ("*Compendium*"). The statutory requirements, regulations, and *Compendium* practices most relevant to the Court's inquiry are as follows:

The statutory requirements for copyright registration require the application for copyright registration to include "the name and address of the copyright claimant."⁵ The statute further provides that "if the copyright claimant is not the author," the application must include "a brief statement of how the claimant obtained ownership of the copyright."⁶ In addition, for works created and/or first published on or after January 1, 1978, the statute states that "[a] transfer of copyright ownership, other than by operation of law, is not valid unless an instrument of conveyance, or a note or memorandum of the transfer, is in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent."⁷

Based on the foregoing governing statutory and regulatory standards, and its examining practices, had the Office been aware at the time of application that the copyright in the work

³ The EDR is the date that the Office received a completed application, the correct deposit copy, and the proper filing fee.

⁴ The principles that govern how the Office examines registration applications are found in the *Compendium of U.S. Copyright Office Practices, Third Edition*. The application for registration number VA 1-888-774 was filed in January 2014. The governing principles that the Office would have applied at the time of application are set forth in the *Compendium of U.S. Copyright Office Practices, Second Edition*. Throughout this response, however, the Office cites the third edition of the *Compendium* because, insofar as relevant here, the Office's practices have not changed.

⁵ 17 U.S.C. § 409(5). As Copyright Office regulations explain, the claimant is either "[t]he author of a work," or a "person or organization that has obtained ownership of all rights under the copyright initially belonging to the author." 37 C.F.R. § 202.3(a)(3).

⁶ 17 U.S.C. § 409(5).

⁷ 17 U.S.C. § 204(a); see also COMPENDIUM (THIRD) § 608 (listing "examples of situations where the Office will refuse to register a claim" including when "[t]he claimant named in the application is not a proper copyright claimant.").

registered under VA 1-888-774 had not in fact been transferred from the author, John Helmick, Jr., to Nason Homes, LLC via a signed writing, the Office would have refused to register the work pursuant to the application submitted because the application failed to identify the correct copyright claimant.⁸ Further, regardless of whether the Office was or was not aware of a misrepresentation concerning an earlier purported oral transfer, the Office would have refused registration of the work to Nason Homes, LLC as the copyright claimant because, as noted above, an oral transfer does not satisfy the writing requirement of the Copyright Act.⁹

In supplying this response, the Office notes that it is not unusual for an examiner to correspond with an applicant about factual assertions if the assertions appear to conflict with other information provided in the application materials.¹⁰ Accordingly, if the Office becomes aware of an error at the time of application—such as an unacceptable transfer statement—or has a question about a fact asserted in the application, it may provide the applicant an opportunity to correct the error or verify the fact within a specified period of time.¹¹ If the applicant responds in a timely fashion to the satisfaction of the Office, the Office may then proceed with the registration based on the corrected or verified information (*e.g.*, by substituting the correct copyright claimant). The Register's response herein, however, is premised on the fact that the erroneous information identified in the Court's question was not timely corrected through such a process.

Dated: May 23, 2016



Maria A. Pallante
Register of Copyrights

⁸ See COMPENDIUM (THIRD) § 608.

⁹ See COMPENDIUM (THIRD) § 608 (“[T]he Office will refuse to register a claim ... [when t]he claimant named in the application is not a proper copyright claimant.”).

¹⁰ COMPENDIUM (THIRD) § 602.4(D).

¹¹ Generally, an applicant has 20 calendar days to respond via email, and 45 calendar days to respond via U.S. mail to questions concerning issues in the application materials. See COMPENDIUM (THIRD) §§ 605.6(B), 605.6(D).