

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIAM A. GRAHAM COMPANY : CIVIL ACTION
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THOMAS P. HAUGHEY, et al. : NO. 05-612

MEMORANDUM

Bartle, C.J.

June 14, 2006

This is an action for copyright infringement and breach of contract. Before the court is the motion of plaintiff William A. Graham Company ("Graham") for reconsideration of our Memorandum and Order dated May 4, 2006. William A. Graham Co. v. Haughey, No. Civ.A. 05-612, 2006 WL 1214784 (E.D. Pa. May 4, 2006). In that Order we denied Graham's motion for partial summary judgment and granted in part and denied in part the cross-motion of defendants Thomas P. Haughey ("Haughey") and USI MidAtlantic for summary judgment.

A motion for reconsideration is appropriate only "to correct manifest errors of law or fact or to present newly discovered evidence." Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985). A court may grant such a motion if the party seeking reconsideration shows either: "(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion for summary judgment; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." Max's Seafood Café v.

Quinteros, 176 F.3d 669, 677 (3d Cir. 1999). A motion for reconsideration "should be granted sparingly and may not be used to rehash arguments which have already been briefed by the parties and considered and decided by the Court." Ciena Corp. v. Corvis Corp., 352 F. Supp. 2d 526, 527 (D. Del. 2005). We have detailed the extensive factual background of this case in our Memorandum dated May 4, 2006 and we will not repeat it here. Graham, 2006 WL 1214784.

First, Graham asserts in its pending motion that we did not rule whether the certificates of registration issued to it in 2000 for the Works provide it with a presumption of validity of the copyrights in material created and revised in 1990 through 1994. Graham contends that it is entitled to such a presumption and that we incorrectly assigned to it the burden of proving that the material at issue was protected by copyright law as derivative of language we held to be in the public domain.

The burden of proving the validity of a copyright in a work always rests upon the owner. Feist Publ'n, Inc. v. Rural Tel. Serv. Co., Inc., 499 U.S. 340, 361 (1991). However, as we noted in our Memorandum, a certificate of registration obtained "before or within five years after publication of the work shall constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate." Graham, 2006 WL 1214784, at *6 (quoting 17 U.S.C. § 410(c)). A timely obtained certificate creates a rebuttable presumption that shifts to the alleged infringer the burden of production of evidence of the

invalidity of a copyright. Masquerade Novelty, Inc. v. Unique Indus., Inc., 912 F.2d 663, 668 (3d Cir. 1990). The burden of proof, however, always remains with the plaintiff.

Graham obtained original certificates of registration for the Works in 1995 in which it declared that all material had been published at various times, with material highlighted in green having entered the public domain. In 2000 Graham acquired supplementary certificates of registration in which it corrected what it characterized as errors, declaring that no language in the Works had entered the public domain or had ever been published.

With respect to material in the Works that Graham highlighted in green, we determined that it could not benefit from any presumption of validity because it refused to explain the inconsistencies between the certificates of registration as required by the Supreme Court. Graham, 2006 WL 1214784, at *7 (citing Cleveland v. Policy Mgmt. Sys. Corp., 526 U.S. 795, 806-07 (1999)). The inconsistencies were not trivial. Rather, they pertained to the very issue of whether the material highlighted in green could be protected by copyright law at all. Thus, Graham could not rely upon the 2000 supplementary certificates of registration as prima facie evidence that the copyrights in the material highlighted in green were valid.

Graham argues that we were silent as to whether it could take advantage of the presumption of validity with respect to the rest of the Works, that is, the material highlighted in

colors other than green and revised throughout the 1990's. It maintains that it is entitled to the presumption because it never stated in the 1995 certificates of registration that this material had entered the public domain.

Our opinion concentrated on the validity of any copyright in the material highlighted in green, which was the focus of the parties' summary judgment briefs. We made no ruling on the applicability of the presumption with respect to the revised material because its copyrightability presented a triable issue. Graham distributed a number of proposals prior to March 1, 1989 without notice of copyright and we held that the material contained therein had entered the public domain. Graham, 2006 WL 1214784, at *10. Some of this language, which cannot be copyrighted, may be found in the portions of the Works revised in the 1990's. Thus, there remains a question whether the revised language is sufficiently distinguishable from the language in the public domain in order to qualify for copyright protection as derivative works. Because Graham had not provided us with a copy of the proposals, this determination was to be left to the jury. Dam Things from Denmark v. Russ Berrie & Co., Inc., 290 F.3d 548, 566 (3d Cir. 2002).

The determination of whether Graham is entitled to any presumption of validity with respect to the revised material, and whether it has been sufficiently rebutted by defendants, await the trial. Because Graham has not met any of the grounds for

reconsideration, its motion on this issue will be denied. Max's Seafood Café, 176 F.3d at 677.

The next three arguments set forth by Graham relate to its breach of contract claim. In the amended complaint, Graham sued Haughey for breach of restrictive covenants contained in an employment agreement dated January 1, 1989 (the "1989 Employment Agreement") and reiterated in two agreements dated September 11, 1991 (the "1991 Termination Agreement" and the "1991 Consulting Agreement"). We held that the restrictive covenants in a later agreement dated November 25, 1991 (the "1991 Purchase Agreement") superseded those in the earlier agreements. Graham, 2006 WL 1214784, at *14, 15. As a result, Graham may no longer pursue a claim for liquidated damages against Haughey because the 1991 Purchase Agreement contained no such provision. Graham insists that it should be permitted to pursue a breach of contract claim against Haughey, along with the associated liquidated damages, under the 1989 Employment Agreement, the 1991 Termination Agreement, and the 1991 Consulting Agreement for any breaches that occurred prior to the effective date of the 1991 Purchase Agreement.

An integrated agreement discharges prior agreements within its scope. RESTATEMENT (SECOND) OF CONTRACTS § 213. We have already determined that with respect to the restrictive covenants, the 1991 Purchase Agreement supersedes, and therefore discharges, the 1989 Employment Agreement, the 1991 Termination Agreement, and the 1991 Consulting Agreement. Therefore, any

rights and obligations set forth under the superseded agreements concerning the restrictive covenants no longer exist. If Graham desired to bring a claim for breach of the restrictive covenants based upon the 1989 Employment Agreement, the 1991 Termination Agreement, or the 1991 Consulting Agreement, it had to do so prior to entering into the superseding 1991 Purchase Agreement. Afterwards, all rights and obligations concerning the restrictive covenants were to be found only in the 1991 Purchase Agreement. See Bardwell v. Willis Co., 100 A.2d 102, 104 (Pa. 1953). In sum, Graham may not pursue any claim against Haughey based upon the 1989 Employment Agreement, the 1991 Termination Agreement, or the 1991 Consulting Agreement for breach of the restrictive covenants.

Graham maintains that we committed error when we held that the 1991 Purchase Agreement was an integrated agreement that superseded the 1989 Employment Agreement, the 1991 Termination Agreement, and the 1991 Consulting Agreement. Graham contends that we did not consider the terms of the 1991 Consulting Agreement and it reiterates that the 1991 Purchase Agreement concerned matters additional to those covered by the 1991 Consulting Agreement. Moreover, Graham maintains we erroneously refused to consider extrinsic evidence of whether the parties intended the 1991 Purchase Agreement to be integrated.

Graham is incorrect that we ignored the terms of the 1991 Consulting Agreement. Despite the assertions in its brief, we did not give any of the agreements a mere cursory glance, but

instead carefully considered the specific language of each one to determine that the restrictive covenants covered the same subject matter. Further, Graham inappropriately attempts to receive a second bite at the apple by rehashing arguments we have previously considered. We have already explained in our Memorandum that the 1991 Purchase Agreement is an integrated agreement with respect to the restrictive covenants despite its inclusion of matters additional to those found in the other agreements. Graham, 2006 WL 1214784, at *16.

We also had available the evidence presented by Graham on the issue of integration and are knowledgeable that "the parol evidence rule does not preclude the admission of evidence to establish whether the parties intended the writing to be a complete embodiment of their agreement." Lenzi v. Hahnemann Univ., 664 A.2d 1375, 1379 (Pa. Super. Ct. 1995). However, after considering all relevant evidence, we determined that each of the agreements was unambiguous and the 1991 Purchase Agreement constituted the final and complete expression of the parties' agreement with respect to the restrictive covenants. Thus, the motion of Graham for reconsideration of whether the 1991 Purchase Agreement is an integrated agreement will be denied.

Finally, Graham asserts that we mistakenly read the 1991 Purchase Agreement as excepting Haughey from liability for any breach of its confidentiality provisions with respect to materials provided to him as part of the sale of accounts under

that agreement. Our decision was based upon the clear language of the contract.

Accordingly, the motion of Graham for reconsideration of its contract claim will be denied.

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ORDER

AND NOW, this 14th day of June, 2006, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that the motion of plaintiff William A. Graham Company for reconsideration is DENIED.

BY THE COURT:

/s/ Harvey Bartle III

C.J.