

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**HUMPHREYS & PARTNERS
ARCHITECTS, L.P.,
Plaintiff,**

vs.

**BUCKHEAD INVESTMENT
PARTNERS, INC.,
EDI ARCHITECTURE, INC.,
EDI INTERNATIONAL, INC.,
Defendants.**

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Civil Action No. _____

JURY DEMANDED

**ORIGINAL COMPLAINT AND
APPLICATION FOR PRELIMINARY AND PERMANENT INJUNCTIONS**

Humphreys & Partners Architects, L.P., plaintiff, files this Complaint and Application for Preliminary and Permanent Injunctions against Buckhead Investment Partners, Inc., EDI Architecture, Inc. and EDI International, Inc. and for its cause of action would respectfully show the Court and Jury the following:

Parties

1. Plaintiff Humphreys & Partners Architects, L.P. ("Humphreys") is a Texas limited liability company with its principal place of business in Dallas, Texas.
2. Defendant Buckhead Investment Partners, Inc. ("Buckhead") is a corporation organized under the laws of Texas with its principal place of business in Houston, Texas. Buckhead may be served through its registered agent, Matthew J. Morgan, 2536-F Amherst St., Houston, Texas 77005.

3. Defendant EDI Architecture, Inc. is a corporation organized under the laws of Texas with its principal place of business in Houston, Texas. EDI Architecture, Inc. may be served through its registered agent, Britten L. Perkins, 10550 Richmond Ave., Suite 160, Houston, Texas 77042.

4. Defendant EDI International, Inc. is a corporation organized under the laws of Texas with its principal place of business in Houston, Texas. EDI International, Inc. may be served through its registered agent, Britten L. Perkins, 10550 Richmond Ave., Suite 160, Houston, Texas 77042.

5. EDI Architecture and EDI International, Inc. will be referred to collectively as the "EDI defendants."

Jurisdiction and Venue

6. This Court has subject matter jurisdiction of this case under 28 U.S.C. § 1338 because this action arises under federal copyright law, 17 U.S.C. § 101 *et seq.*

7. Venue is proper in this district under 28 U.S.C. § 1400(a) because all defendants reside and may be found in this district. Furthermore, or in the alternative, venue is proper in this district under 28 U.S.C. § 1391(b) because all defendants reside in this district and in the State of Texas, and a substantial part of the events giving rise to the claims at issue occurred in this district.

Factual Background

8. Humphreys is an architecture firm which creates and markets architectural designs. Humphreys owns copyrights protecting the architectural works and architectural drawings it has created.

9. Humphreys is the author and the sole owner of all copyrights in the following technical drawings and architectural works:

Grant Park Condominiums

Grant Park City Homes
HPA Job No. 05377

(Hereinafter, the foregoing works will be referred to collectively as the "Copyrighted Works.")

10. Each of the Copyrighted Works constitutes original material that is copyrightable under federal law.

11. The following Copyrighted Works have been registered as architectural works with the United States Copyright Office :

<u>Work</u>	<u>Registration Number</u>	<u>Date</u>
Grant Park Condominiums	VAu 579-608	February 19, 2003
Grant Park City Homes	VAu 594-663	February 19, 2003

12. As to the remaining Copyrighted Work, Humphreys has applied for registration of copyrights in HPA Plan No. 05377 with the United States Copyright Office. The dates Humphreys applied for registration, and the Copyright Office Case Numbers, are set out below:

<u>Plan</u>	<u>Case Number</u>	<u>Date of Application</u>
HPA Plan No. 05377 Architectural Work	1-684751301	November 14, 2011
HPA Plan No. 05377 Technical Drawings	1-684751340	November 14, 2011

For each copyright in HPA Plan No. 05377, Humphreys (1) has paid the requisite fees to the Copyright Office; (2) has deposited copies of the work with the Copyright Office, and (3) has sent the registration application to the Copyright Office, and the Copyright Office has received it.

13. Defendant Buckhead has obtained access to Humphreys' Copyrighted Works. Buckhead has infringed Humphreys' copyrights in the Copyrighted Works. Buckhead has committed numerous acts of infringement, including the following:

- a. Buckhead has made copies of Humphreys' Copyrighted Works.
- b. Buckhead has made derivatives of Humphreys' Copyrighted Works.
- c. Buckhead has published copies and derivatives of Humphreys' Copyrighted Works on its website, <http://buckfund.com/>.
- d. Buckhead has published copies and derivatives of Humphreys' Copyrighted Works by submitting them to the City of Houston for the purpose of obtaining permits that would allow construction of a building based on Humphreys' Copyrighted Works at 1717 Bissonnet, Houston, Texas.
- e. Buckhead has published and distributed copies and derivatives of Humphreys' Copyrighted Works in printed form.
- f. Buckhead has materially aided, induced, and/or contributed to the publication and distribution by others of copies and derivatives of Humphreys' Copyrighted Works.

In addition, Buckhead has proposed future acts in violation of HPA's exclusive rights. These include, but are not limited to, the following:

- g. Buckhead has expressed its intention of constructing a building based on copies or derivatives of Humphreys' Copyrighted Works at 1717 Bissonnet, Houston, Texas.
- h. In connection with this intended construction, Buckhead will necessarily create additional copies and derivatives, or authorize or induce others to create additional copies and derivatives, of Humphreys' Copyrighted Works.

14. Defendants EDI Architecture and/or EDI International obtained access to Humphreys' Copyrighted Works. On information and belief, the EDI defendants, either individually or in combination, have infringed Humphreys' Copyrighted Works. The EDI defendants have committed numerous acts of infringement, including the following:

- a. The EDI defendants have made copies of Humphreys' Copyrighted Works.
- b. The EDI defendants have prepared derivatives of Humphreys' Copyrighted Works.
- c. The EDI defendants have provided copies and derivatives of Humphreys' Copyrighted Works that Buckhead has published on its website, <http://buckfund.com/>.
- d. The EDI defendants have published copies and derivatives of Humphreys' Copyrighted Works by submitting them, or allowing Buckhead to submit them, to the City of Houston for the purpose of obtaining permits that would allow construction of a building based on Humphreys' Copyrighted Works at 1717 Bissonnet, Houston, Texas.
- e. The EDI defendants have published and distributed copies and derivatives of Humphreys' Copyrighted Works in printed form.
- f. The EDI defendants have materially aided, induced, and/or contributed to the publication and distribution by others, including Buckhead, of copies and derivatives of Humphreys' Copyrighted Works.

In addition, Buckhead's proposed building at 1717 Bissonnet will require future acts by EDI Architecture and/or EDI International in violation of Humphreys' exclusive rights. These include, but are not limited to, the following:

- g. In connection with this intended construction at 1717 Bissonnet, the EDI defendants will necessarily create

additional copies and derivatives, or authorize or induce others to create additional copies and derivatives of Humphreys' Copyrighted Works.

- h. In connection with this intended construction, any inspection or contract administration services that the EDI defendants provide will necessarily constitute contributory copyright infringement by materially assisting in the construction of an infringing building.

15. All copies of Humphreys' Copyrighted Works obtained by defendants contained copyright management information, in the form of notices identifying the works, identifying Humphreys as the author of the works, identifying Humphreys as the owner of copyrights in the works, and specifying terms and conditions for use of the works.

16. In the course of their creation of infringing copies and/or derivatives of Humphreys' copyrighted works, defendants removed and/or altered Humphreys's copyright management information without authority of Humphreys.

17. Buckhead has created, published and used depictions of a building and various floor plans of the building based on Humphreys' Copyrighted Works in promotional and advertising materials. Buckhead has published and used these infringing materials in the course of advertising.

18. In November 2011, Humphreys demanded that defendants cease and desist from further acts of copyright infringement. Defendants have refused, and continue to violate Humphreys' copyrights by continuing their infringing activities. Humphreys therefore brings this action to protect its rights under federal law.

Cause of Action

Copyright Infringement

19. Humphreys complains of defendants for copyright infringement, and incorporates paragraphs 1-18 above by reference.

20. The creation and publication of the drawings based on Humphreys' Copyrighted Works by defendants has infringed and continues to infringe Humphreys' copyrights in the Copyrighted Works.

21. The acts of defendants in the creation and publication of drawings based on Humphreys' Copyrighted Works have infringed and are infringing Humphreys' copyrights in the Copyrighted Works.

22. Defendants are each jointly and severally liable for Humphreys' actual damages, including all of Humphreys' lost profits.

23. Defendants are each jointly and severally liable to Humphreys for all of their profits attributable to the infringements.

24. In the alternative to the actual damages and profits sought above, Humphreys is entitled to an award of statutory damages for all infringements of Humphreys' Copyrighted Works, as permitted by 17 U.S.C. § 504(c).

25. Defendants are each jointly and severally liable for Humphreys' costs and reasonable attorneys fees incurred in this action.

Request for Injunctive Relief

26. Pursuant to Fed. R. Civ. P. 65, Humphreys seeks preliminary and permanent injunctions enjoining defendants from their continuous and ongoing infringement of Humphreys' copyrights, and incorporates paragraphs 1-25 above by reference.

27. Unless defendants are enjoined from their continuous and ongoing infringement of Humphreys' copyrights, including injunction against the construction of the building at 1717 Bissonnet, Humphreys will suffer immediate and irreparable harm, which cannot be compensated by an award of money damages and for which Humphreys has no adequate remedy at law. There is a likelihood that Humphreys will succeed on the merits of its copyright infringement claim against defendants. The injury from defendants' continuous and ongoing infringement of Humphreys' copyrights outweighs the injury that defendants may sustain as a result of the requested injunctive relief. Granting of preliminary and permanent injunctions enjoining defendants from their continuous and ongoing infringement of Humphreys' copyrights will not adversely affect public policy or the public's interest.

28. In addition to actual and statutory damages as permitted by law, Humphreys is entitled to preliminary and permanent injunctions pursuant to 17 U.S.C. § 502 prohibiting defendants from further infringement of Humphreys' copyrights, including but not limited to the further use of infringing plans, creation or use of derivative plans, and construction, sale or rental of infringing structures, including injunction against the construction of the building at 1717 Bissonnet.

29. Furthermore, pursuant to Fed. R. Civ. P. 65(f), this Court should issue an order pursuant to 17. U.S.C. § 503 directing the United States Marshal's Service to (a) impound all copies of the Copyrighted Works, in possession of defendants or their agents or contractors that infringe

Humphreys' copyrights during the pendency of this lawsuit; and (b) upon final hearing of this case, to destroy or otherwise dispose of those copies.

30. Humphreys requests that, pursuant to Fed. R. Civ. P. 65(c), it be allowed to provide a nominal amount of security, if any, for any payment of such costs and damages, if any, as may be incurred or suffered by defendants if found to have been wrongfully enjoined or restrained.

Conditions Precedent

31. With respect to all counts, Humphreys generally avers that all conditions precedent to its rights of recovery have occurred or been performed, or have been waived or excused by defendants.

Jury Demand

32. Pursuant to Federal Rule of Civil Procedure 38, Humphreys respectfully demands trial by jury of all issues so triable.

WHEREFORE, PREMISES CONSIDERED, Humphreys & Partners Architects, L.P., prays that defendants be cited to appear and answer; and that upon final trial it have and recover from defendants as set forth above, that it have preliminary and permanent injunctive relief against defendants as requested herein, and that it have such and other relief as it may show itself to be entitled.

Respectfully submitted,

/s/ Patrick Zummo

Patrick Zummo

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ATTORNEY FOR PLAINTIFF

HUMPHREYS & PARTNERS ARCHITECTS, L.P.

VERIFICATION

I verify under penalty of perjury that the factual allegations of the foregoing Original Complaint and Application for Preliminary and Permanent Injunctions is true and correct.

Executed on November 14, 2011.

A handwritten signature in black ink, appearing to read 'Mark Humphreys', written over a horizontal line.

Mark Humphreys
on behalf of Humphreys & Partners Architects, L.P.