
No. 15-11912

In the United States Court of Appeals
For The Eleventh Circuit

HOME DESIGN SERVICES, INC.
Petitioner

v.

TURNER HERITAGE HOMES, INC., et al.,
Respondents

On Appeal from the U.S. District Court
for the Northern District of Florida
No. 4:08-cv-00355-MCR-CAS

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE*,
DESIGN BASICS, LLC, IN SUPPORT OF APPELLANT'S
PETITION FOR REHEARING *EN BANC***

Louis K. Bonham
Osha Liang L.L.P.
919 Congress Avenue, Suite 919
Austin, Texas 78701
(512) 480-0667 (Tel)
(713) 228-8778 (Fax)
bonham@oshaliang.com

Attorney for *Amicus Curiae*,
Design Basics, LLC

CERTIFICATE OF INTERESTED PARTIES AND CORPORATE DISCLOSURE STATEMENT

In compliance with Federal Rule of Appellate Procedure 29(c)(5), no counsel to a party authored this brief in whole or in part, nor did any party or its counsel contribute any funds directly or indirectly for this brief's preparation, and no person other than the *amicus curiae* and its counsel contributed any funding for the preparation of this brief.

Amicus curiae Design Basics, LLC is a closely held limited liability company. It does not have a parent corporation, nor is any of its stock held by any publically held corporation.

Pursuant to Federal Rule of Appellate Procedure 26.1, 11TH CIR. R. 26.1-1, and 11TH CIR. R. 29-1, on behalf of *amicus curiae* Design Basics, LLC, the undersigned certifies that the following listed attorneys, associations of persons, firms, partnerships or corporations may have an interest in the outcome of this appeal:

1. Ashton Builders, LLC, Defendant-Appellee/Respondent
2. Bonham, Louis K., Counsel for *amicus curiae* Design Basics, LLC.
3. Boyles, Jeffrey, Counsel for Defendants-Appellees/Respondents
4. Creekside Homes, Inc., Defendant-Appellee/Respondent
5. Design Basics, LLC, *Amicus Curiae*.

6. Easton Builders, Inc., Defendant-Appellee/Respondent
7. Emerald Homes, Inc., Defendant-Appellee/Respondent
8. Frank Betz Associates, Inc., *Amicus Curiae*
9. Freeport Builders, LLC, Defendant-Appellee/Respondent
10. Gilchrist, Brian L., Counsel for Defendants-Appellees/Respondents
11. Greenfield Homes, Inc., Defendant-Appellee/Respondent
12. Home Design Services, Inc., Plaintiff-Appellant/Petitioner
13. Lightsey, Wallace K., Counsel for *amicus curiae* Frank Betz Associates, Inc.
14. Mickle, Stephan P., United States District Court Judge
15. Northside Homes, LLC, Defendant-Appellee/Respondent
16. Parrish, Jon, Counsel for Plaintiff-Appellant/Petitioner
17. Rodgers, M. Casey, United States District Court Judge
18. Santurri, Ryan T., Counsel for Defendants-Appellees/Respondents
19. South County Homes, LLC, Defendant-Appellee/Respondent
20. Summerbrook Homes, Inc., Defendant-Appellee/Respondent
21. Turner, Douglas E., Defendant-Appellee/Respondent
22. Turner, Frederick E., Defendant-Appellee/Respondent
23. Turner Heritage Homes, Inc., Defendant-Appellee/Respondent
24. Turner Heritage Homes of Destin, LLC, Defendant-Appellee/Respondent
25. Vision Coast Homes, LLC, Defendant-Appellee/Respondent

26. Wakulla Builders, Inc., Defendant-Appellee/Respondent
27. Wakulla Builders, LLC, Defendant-Appellee/Respondent
28. Yarnell, Floyd, Counsel for Plaintiff-Appellant/Petitioner
29. Zirkel, James, President of Home Design Services, Inc.

CERTIFICATE OF CONFERENCE

I certify that on July 14, 2016, I contacted counsel of record for the parties in this appeal regarding this motion.

John Parrish, counsel for Petitioner, CONSENTS to this motion.

Ryan Santurri, counsel for Respondents, OPPOSES this motion.

/s/ Louis K. Bonham
Louis K. Bonham

INTRODUCTION

Pursuant to FED. APP. R. PROC. 29(b), 11TH CIR. R. 29-1, and 11TH CIR. R. 35-6, Design Basics, LLC requests leave to file the accompanying Brief of *Amicus Curiae* in support of the Petition for Rehearing *En Banc* of Petitioner Home Design Services, Inc.

IDENTITY AND INTEREST OF *AMICUS CURIAE*

Amicus Curiae Design Basics, LLC is a building design firm. For over twenty five years, it has been one of the largest distributors of copyrighted residential building plans in the country. Its business is the development, creation, and marketing of “architectural works,” as that term is used in the Architectural Works Copyright Protection Act of 1990 (the “AWCPA”), and for many years has had to deal with the widespread piracy of its architectural works.

Amicus has a strong interest in the instant Petition for Rehearing *En Banc* because that petition seeks to have this Court revisit its decision in *Intervest Construction, Inc. v. Canterbury Estate Homes, Inc.*, 554 F.3d 914 (11th Cir. 2008) (“*Intervest*”). *Intervest* has effectively eviscerated any meaningful protection of Design Basics’ architectural works copyrights in the states of Alabama, Georgia, and Florida because, under that decision, even a willful infringer may escape liability by simply making nominal changes to its illegally-made copy. As detailed in its proposed brief, *Intervest* is contrary to settled principles of copyright law, the

legislative history of the AWCPA, and this country's obligations under international treaties, and for those reasons has been roundly criticized.

**REASONS WHY BRIEF OF AMICUS CURIAE IS DESIRABLE AND
RELEVANT TO THE DISPOSITION OF THE CASE**

While he was sitting on the U.S. Court of Appeals for the Third Circuit, Justice Samuel Alito opined that, "I think that our court would be well advised to grant motions for leave to file amicus briefs unless it is obvious that the proposed briefs do not meet Rule 29's criteria as broadly interpreted. I believe that this is consistent with the predominant practice in the courts of appeals." *Neonatology Assocs., P.A. v. Comm'r*, 293 F.3d 128, 133 (3rd Cir. 2002) (citing Michael E. Tigar and Jane B. Tigar, *Federal Appeals -- Jurisdiction and Practice* 181 (3d ed. 1999) and Robert L. Stern, *Appellate Practice in the United States* 306, 307-08 (2d ed. 1989)).

Amicus recognizes that there is no obligation for this Court to hear *amicus'* argument why rehearing should be granted and *Intervest* revisited. However, given the deleterious impact that *Intervest* has had on *amicus* and other owners of architectural works copyrights, and the severe criticism that decision has received (including by the Second Circuit and by a member of this Court), *amicus* respectfully asks to be heard.

Amicus proposed brief expounds on the following arguments:

1. The logic of *Intervest* is flawed, and is contrary to the legislative history of the AWCPA.
2. Courts across the country have rejected *Intervest*.
3. *Intervest* contravenes this country's treaty obligations under the Berne Convention and the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS"), which require the protection of copyrights in architectural works.

This motion and the proposed brief of *amicus curiae* are filed within the time period required by 11TH CIR. R. 35-6.

CONCLUSION

As detailed above, the accompanying *amicus curiae* brief will assist this Court in evaluating the important issues presented by the instant Petition for Rehearing *En Banc*. Accordingly, *amicus curiae* Design Basics, LLC respectfully requests leave to file the accompanying *amicus curiae* brief.

Respectfully submitted,

/s/ Louis K. Bonham

Louis K. Bonham

Osha Liang, L.L.P.

919 Congress Avenue

Suite 919

Austin, Texas 78701

(512) 480-0667 (tel)

(713) 228-8778 (fax)

bonham@oshaliang.com

Counsel for Amicus Curiae

July 15, 2016

CERTIFICATE OF SERVICE

This is to certify that Louis K. Bonham, counsel for Amicus Curiae, did cause copies of the Brief of Amicus Curiae to be served on counsel of record through the Court's ECF system on July 15, 2016.

/s/ Louis K. Bonham

Louis K. Bonham