

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

ALEXANDER STROSS	:	
Plaintiff,	:	CIVIL ACTION # 1-16-CV-55
vs.	:	
	:	
NBCUNIVERSAL MEDIA, LLC,	:	
Defendant/Counterclaimant	:	JURY DEMANDED
<hr/>	:	

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff Alexander Stross respectfully alleges as follows for his complaint against Defendant NBCUniversal Media, LLC.

PARTIES

1. Plaintiff Alexander Stross (“Plaintiff” or “Stross”) is a resident of Austin, Texas.
2. Defendant NBCUniversal Media, LLC, (“Defendant”) is a Delaware limited liability company with its principal place of business at 30 Rockefeller Plaza, New York, New York. According to records filed with the Delaware Secretary of State, Defendant may be served with process through its registered agent, Enterprise Corporate Services, LLC at 1201 North Market Street, Suite 1000, Wilmington, Delaware 19801.

NATURE OF THE CLAIMS

3. This is an action for copyright infringement under 17 U.S.C. § 101 *et seq.* and violations of the Digital Millennium Copyright Act (“DMCA”), arising in connection with the unauthorized commercial exploitation of nine (9) of Plaintiff’s federally registered architectural photographs.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action under 17 U.S.C. §§ 101 *et seq.* (the U.S. Copyright Act); and 28 U.S.C §§ 1331 (federal question) and 1338(a) (copyrights).

5. The Court has personal jurisdiction over the Defendant because they conduct business in Texas and because, among other things, Defendant has availed itself of the forum, this claim arose out of Defendant's continuous and systematic acts in Texas through its regular broadcasting and other business in Texas, and because Defendant has committed infringing and other illegal acts inside and outside the State of Texas which have had, and are having, an effect within the State of Texas.

6. Venue is proper under 28 U.S.C. §§ 1391(b), (c), and (d), and 28 U.S.C. § 1400(a).

CONDITIONS PRECEDENT

7. All conditions precedent have been performed or have occurred.

BACKGROUND FACTS

8. Plaintiff Alexander Stross is a highly regarded architectural photographer who has worked with some of the most respected names in Central Texas real estate, including Dick Clark Architecture, Wilson Goldrick Realtors, Gottesman Residential, John Luce Builder, and Fleetwood USA. Licensed uses of his works have appeared in publications such as *Luxury Home Magazine*, *Luxe*, *Refine* and *New Home Guide*; as well as appearing on billboards, online advertising, television broadcast and the like.

9. Defendant NBCUniversal Media, LLC is a worldwide media and entertainment company in the business of the “development, production, and marketing of entertainment, news

and information to a global audience.”¹ Defendant owns and operates a colossal portfolio of “news and entertainment television networks, a premier motion picture company, significant television production operations, a leading television stations group, world-renowned theme parks, and a suite of leading Internet-based businesses.”²

10. Defendant’s portfolio includes The Today Show - a daily live broadcast American morning news and talk television show that features several well-known television personalities, including Al Roker, Kathie Lee Gifford, Matt Lauer, and Carson Daly. The Today Show also maintains a website – Today.com - where it publishes news stories and information.

11. On or about November 11, 2011, Stross photographed a group of micro houses outside of Llano, Texas – built by lifelong girlfriends seeking a country retreat. The micro-houses were designed by Austin-based architect Matt Garcia, to whom Stross granted a limited, non-assignable right to use the photographs for promotional purposes on his website. Stross timely registered each of the Photographs with the U.S. Copyright Office. *See Exhibit A*, hereto.

12. On or about May 8, 2015, Stross was contacted by online pop-culture media blog “Pop Sugar” – requesting permission to reprint the Photographs in a story about the project. Over the next few days – the story went viral, and Stross received dozens of additional requests, from media outlets across the country - including People Magazine, Country Living and ABC News. Photographs provided to each authorized outlet included an embedded copyright notice identifying Stross as the owner of the Photographs, as reflected below.

¹ *See* <http://www.nbcuniversal.com/who-we-are>.

² *Id.*



13. On May 11, 2015, The Today Show aired a segment on the micro-house project entitled “Bestie Row,” prominently featuring eight (8) of the Photographs (the “On-Air Segment”). Upon information and belief, The Today Show “scraped” the Photographs from another online source (i.e., it stole them). The Photographs also appear to have been stripped of Stross’ copyright notices; however, the words “Alexander Stross” were displayed near the Photographs – presumably intended to falsely suggest that The Today Show had Stross’ authority to use them.

14. The same day as the On-Air Segment (May 11, 2015), The Today Show “Tweeted” about the story – reproducing one (1) of the Photographs, with no attribution at all (the “Tweet”).³

15. On May 12, 2015, at 1:59 p.m. (according to Defendant’s website), Defendant published an on-line article entitled “The Story Behind ‘Bestie Row’: Why Friends Built Tiny Homes Next To Each Other” (the “Web Article”). The Web Article featured the On-Air Segment, and included five (5) static images of the Photographs used in the On-Air Segment, plus one (1) additional photograph that was not used in the On-Air Segment. This time,

³ <https://twitter.com/todayshow/status/597736910170116096>.

Defendant ascribed a false and misleading credit to each Photograph stating “*Courtesy of Matt Garcia Design,*” as reflected below.

The screenshot shows a web browser window displaying a news article on the TODAY.com website. The article title is "The story behind 'Bestie Row': Why friends built tiny homes next to each other" by Julie Pennell, dated May 12, 2015. The article text describes how Jodi Zipp and her friends built tiny homes on a 10-acre property near Austin, Texas. A video player is embedded in the article, showing a news anchor and guests on the TODAY show set. Below the video is a "MORE VIDEO" section with four thumbnails and captions: "Up close and personal with Pluto", "Caught on camera: Baby born in the front seat of a car!", "NYC's Waldorf Hotel is home to thousands of bees - on purpose!", and "Whopper of a wedding when Mr. Burger and Mrs. King tie the knot". At the bottom of the article, there is a photograph of a modern, illuminated building at night, with the caption "Courtesy of Matt Garcia Design".

www.today.com/home/story-behind-bestie-row-lifelong-friends-build-tiny-homes-live-t20766

TODAY Home

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The story behind 'Bestie Row': Why friends built tiny homes next to each other

Julie Pennell
TODAY

May 12, 2015 at 1:59 PM

Jodi Zipp and her group of friends always dreamed of building a vacation house together, so when they discovered available land on the Llano River in 2010, they decided it was time to make it happen.

A 90-minute drive from the group's home base of Austin, Texas, the 10-acre property was the perfect weekend getaway spot for the four couples, according to Zipp.

share link

WHAT'S TRENDING TODAY

GREAT WHITE SHARK TRACKER
"MARY LEE" SURFACES NEAR EAST COAST

MORE VIDEO

- Up close and personal with Pluto
- Caught on camera: Baby born in the front seat of a car!
- NYC's Waldorf Hotel is home to thousands of bees - on purpose!
- Whopper of a wedding when Mr. Burger and Mrs. King tie the knot

"When we all used to fantasize about this, we had some criteria," she told TODAY.com. "It needed to be within two hours of Austin, we wanted it to have views, we wanted it to be on the water and it needed to be affordable."

The friends, who have known each other for many years, bought the property in 2011 and hired architect Matt Garcia to help them create their vision. Zipp says the idea of having one big house evolved into individual 350 square-foot cabins due to a slight fear they'd get sick of each other and need time to themselves.

Courtesy of Matt Garcia Design

16. Stross emailed Defendant on June 21, 2015 – notifying it that the photo credits on the Web Article were incorrect, and that Stross was the photographer/owner. Defendant ignored the notice, prompting Stross to send a second notice on July 19, 2015 – again requesting that the credit be corrected, and further notifying Defendant that Mr. Garcia had no right to license the Photographs. The second notice was also ignored, prompting Stross to retain counsel.

17. When contacted by counsel, Defendant claimed to have obtained the Photographs - and advance permission to use them - from architect Matt Garcia. Upon information and belief, neither is true. Rather, correspondence provided to Plaintiff by Defendant, reflects the following:

- On May 8, 2012, Amy Eley – a producer working for Defendant - requested press materials and photographs from Mr. Garcia, who replied that he had a photo shoot coming up, and asked her to wait until they were finished. There appears to have been no further correspondence between Ms. Eley and Mr. Garcia.
- At 2:17 p.m. on May 12, 2015 – *after* Defendant ran the On-Air Segment; *after* it posted the Tweet; and *after* it published the Web Article - a freelance writer named Julie Pennell contacted Garcia and informed him that she was writing a piece on the houses for Today.com. She asked if new photographs had been taken, and whether she could use them (failing to advise Garcia that Defendant had already used the Photographs). Garcia informed Pennell that the scheduled photo shoot had been cancelled, and asked if she would like copies of other photographs that he had – which happened to be Stross' Photographs.
- On the evening of May 12, 2015, Garcia forwarded the Photographs to Pennell, who re-forwarded them with a revised version of her written piece to Amy Eley (apparently intended to correct an error in the square footage of the micro-houses).

18. As a result of the foregoing, several facts appear to be abundantly clear: (a) At the times Defendant ran the On-Air Segment, posted the Tweet, and published the Web Article, it had permission from *no one* to use the Photographs, (b) Defendant was well aware that Stross owned the Photographs, since it credited them to Stross in the On-Air Segment (not to mention the fact that every authorized media outlet was correctly crediting him), (c) even though Defendant knew that Stross owned the Photographs, it never once approached him for permission to use them, (d) Defendant knowingly published the Photographs in the Web Article with a false and misleading credit to Garcia – *before* it ever received anything from Garcia, (e) Defendant thereafter ignored two notices from Stross, and (f) when contacted by counsel, Defendant lied about the source of the Photographs, and its alleged belief that it had advance authorization to use them.

19. Stross now brings this suit for copyright infringement and violation of the DMCA.

COUNT I
COPYRIGHT INFRINGEMENT

20. Plaintiff realleges and incorporates herein the foregoing paragraphs.

21. By its actions alleged above, Defendant has infringed Plaintiff's copyrights in the Photographs (a total of nine copyright protected photographs). Specifically, by aggregating, copying, displaying, distributing and otherwise exploiting Plaintiff's Photographs in the On-Air Segment and Web Article, Defendant's actions constitute willful infringement of Plaintiff's exclusive copyrights inasmuch as it knew, or had reason to know, that its use of Plaintiff's Photographs was unauthorized; and/or because it acted with reckless disregard of Plaintiff's copyrights.

22. As a result of the foregoing, Plaintiff is entitled to actual damages, plus Defendant's profits, and/or statutory damages of up to \$150,000 per work infringed, plus attorney's fees and costs of court.

COUNT II
TAMPERING WITH AND FALSE COPYRIGHT MANAGEMENT INFORMATION

23. Plaintiff realleges and incorporates herein the foregoing paragraphs.

24. Through its actions alleged above, Defendant has violated Section 1202 of the Digital Millennium Copyright Act by removing, altering and/or providing false copyright management information ("CMI") related to Plaintiff's Photographs. Upon information and belief, Defendant (a) removed the copyright notice appended to published copies of the Photographs, and (b) attributed false "courtesy credits" to the Photographs - suggesting that it had permission to use Plaintiff's photographs when it did not. Upon further information and belief, Defendant committed these actions knowingly, and with the intent to induce, enable, facilitate and/or conceal infringement.

25. As a consequence of the foregoing, Plaintiff is entitled to actual damages plus Defendant's profits; or in the alternative, statutory damages for each violation⁴ in an amount no less than \$2,500 and no more than \$25,000, plus costs and attorney's fees. 17 U.S.C. §1203(b)(4), (5), and (c).

JURY DEMAND

26. Plaintiff asserts his rights under the Seventh Amendment to the U.S. Constitution and demands, in accordance with Federal Rule of Civil Procedure 38, a trial by jury on all issues.

⁴ See *Interplan Architects, Inc. v. C.L. Thomas, Inc.*, 4:08-CV-03181, 2010 WL 4366990 (S.D. Tex. Oct. 27, 2010) citing *Goldman v. Healthcare Management Sys., Inc.*, 559 F. Supp. 2d 853, 868 (W.D.Mich. 2008) (each "distribution" of an infringed work constitutes a distinct "violation").

PRAYER

Plaintiff prays for:

- A. An order that Defendant and all persons under its direction, control, permission or authority be enjoined and permanently restrained from exploiting the Photographs;
- B. For each Work infringed, an award of actual damages and/or statutory damages under 17 U.S.C. § 504(c);
- C. For each violation of the Digital Millennium Copyright Act, an award of actual and/or statutory damages under 17 U.S.C. § 1203(c);
- D. An award to Plaintiff of his reasonable costs and attorney's fees under 17 U.S.C. §§ 505 and 1203(b)(4) & (5);
- E. Prejudgment and post-judgment interest on any damage award as permitted by law; and
- F. Such other and further relief as the Court may deem just, proper and/or necessary under the circumstances.

Dated this 26th Day of January, 2016

LAW OFFICE OF BUCK MCKINNEY, PC

/s/ R. Buck McKinney
R. Buck McKinney
State Bar No. 00784572
2203 E. 5th St.
Austin, Texas 78702
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Email: mckinney@buckmckinney.com
ATTORNEY FOR PLAINTIFF ALEXANDER STROSS

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ALEXANDER STROSS

(b) County of Residence of First Listed Plaintiff Travis (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) R. Buck McKinney, LAW OFFICE OF BUCK MCKINNEY, PC, PO Box 6231, Austin, Texas 78762

DEFENDANTS

NBCUNIVERSAL MEDIA, LLC

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Motor Vehicle, Personal Injury, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 17 USC 101, et. seq. Brief description of cause: Action for copyright infringement and false copyright management information relating to photographs.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 01/26/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ R. Buck McKinney

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

Exhibit

A

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
V Au 1-089-810

Effective date of registration:

February 20, 2012

Title _____

Title of Work: Alexander Stross 65,323 Photographs 9/18/2011 - 1/24/2012

Completion/Publication _____

Year of Completion: 2011

Author _____

▪ **Author:** Alexander Bayonne Stross

Author Created: photograph(s)

Citizen of: United States

Domiciled in: United States

Copyright claimant _____

Copyright Claimant: Alexander Bayonne Stross

616 Oakland Ave, Austin, TX, 78703

Rights and Permissions _____

Organization Name: Stross Arts

Name: Alexander Bayonne Stross

Email: abstross@gmail.com

Telephone: 512-586-1648

Address: PO Box 300459

Austin, TX 78703 United States

Certification _____

Name: Alexander Bayonne Stross

Date: January 25, 2012

Registration #: VAU001089810

Service Request #: 1-715599274



0000VAU0010898100101

Alexander Bayonne Stross
616 Oakland Ave
Austin, TX 78703