

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA



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MATTHEW CUNNINGHAM

Plaintiff,

- against -

MONTGOMERY & ASSOCIATES, INC.

Defendant.

Docket No. 3:19-cv-10

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Matthew Cunningham (“Cunningham” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Montgomery & Associates, Inc. (“Montgomery” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act and for the removal and/or alteration of copyright management information under Section 1202(b) of the Digital Millennium Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of Jessica and Nick Rosier, owned and registered by Cunningham, a professional photographer. Accordingly, Cunningham seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in Indiana.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Cunningham is a professional photographer in the business of licensing his photographs to online and print media for a fee having a usual place of business at 11101 West Earl Road, Michigan City, Indiana 46360.

6. Upon information and belief, Montgomery is a domestic business corporation duly organized and existing under the laws of the State of Indiana, with a place of business at 911 Franklin Street, Michigan City, Indiana 46360.

7. At all times material hereto, Montgomery has owned and operated a magazine entitled *The Beacher* (the “Magazine”).

8. Montgomery is a for-profit entity.

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

9. Cunningham photographed Jessica and Nick Rosier (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

10. Cunningham is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

11. The Photograph was registered with the United States Copyright Office and was given registration number VA 2-126-377 (the “377 Registration”). A true and correct copy of the 377 Registration is attached hereto as Exhibit B.

B. Defendant’s Infringing Activities

12. On or about May 24, 2018, Montgomery ran an article in the Magazine entitled *A Bittersweet Farewell to a Mansion Teeming With Memorable Moments* (the “Article”). The Article prominently featured the Photograph. A screenshot of the Article is attached hereto as Exhibit C.

13. The Photograph as it appears in the Article did not contain any attribution to Plaintiff.

14. Montgomery did not license the Photograph from Plaintiff for its Article.

15. Montgomery did not have Plaintiff’s permission or consent to publish the Photograph in the Magazine.

16. Prior to publishing the Photograph, Defendant knew that Plaintiff was the author and owner of the Photograph.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

17. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-16 above.

18. Montgomery infringed Plaintiff’s copyright in the Photograph by reproducing and publicly displaying the Photograph in the Magazine.

19. Montgomery is not, and has never been, licensed or otherwise authorized to reproduce, publicly display, distribute and/or use the Photograph.

20. The acts of Defendant complained of herein constitute infringement of Plaintiff’s copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

21. Upon information and belief, the foregoing acts of infringement by Defendant have been willful or in reckless disregard of Plaintiff's rights.

22. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

SECOND CLAIM FOR RELIEF
(INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION
AGAINST DEFENDANT)
(17 U.S.C. § 1202)

23. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-22 above.

24. Upon information and belief, Defendant knowingly removed copyright management information identifying Cunningham as the author of the Photograph.

25. The conduct of Defendant violates 17 U.S.C. § 1202(b).

26. Upon information and belief, Defendant's removal and/or alteration of the aforementioned copyright management information was made without the knowledge or consent of Plaintiff.

27. Upon information and belief, the alteration and/or removal of said copyright management information was made by Defendant knowingly or, in the alternative, Defendant had reasonable grounds to know that the Photograph was displayed in the Magazine without any attribution to Cunningham.

28. Upon information and belief, the alteration and/or removal of said copyright management information was made by Defendant with the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the Photograph or, in the alternative, Defendant should have known that such alteration and/or removal of said copyright management

information would induce, enable, facilitate, or conceal its infringement of Plaintiff's copyright in the Photograph.

29. As a result of the wrongful conduct of Defendant as alleged herein, Plaintiff is entitled to recover from Defendant statutory damages pursuant to 17 U.S.C. § 1203(c)(3) in a sum of at least \$2,500 up to \$25,000 for each violation of 17 U.S.C. § 1202.

30. That Plaintiff be awarded his attorneys' fees and costs pursuant to 17 U.S.C. § 1203(b)(5).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant be adjudged to have infringed upon Plaintiff's copyright in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Defendant be adjudged to have removed and/or altered copyright management information in violation of 17 U.S.C. § 1202.
3. That, with regard to the First Claim for Relief, Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or
4. That, with regard to the Second Claim for Relief, Plaintiff be awarded statutory damages of at least \$2,500 and up to \$25,000 for each instance of false copyright management information and/or removal or alteration of copyright management information committed by Defendant pursuant to 17 U.S.C. § 1203(c);
5. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;

6. That Plaintiff be awarded his costs and attorneys' fees pursuant to 17 U.S.C. §1203(b);
7. That Plaintiff be awarded pre-judgment and post-judgment interest; and
8. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
January 7, 2019

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