

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

KENNETH L. BONNER, SR.,)	CIVIL ACTION NO. 5:02CV00065
)	
)	
Plaintiff,)	
)	<u>MEMORANDUM OPINION</u>
v.)	
)	
BRUCE DAWSON et al.,)	
)	
Defendant.)	JUDGE JAMES H. MICHAEL, JR.

This matter comes before the court on the plaintiff's June 20, 2003 Motion for Summary Judgment. The above-captioned civil action was referred to the presiding United States Magistrate Judge for proposed findings of fact, conclusions of law, and a recommended disposition. *See* 28 U.S.C. § 636(b)(1)(B) (West 2000). On August 21, 2003, Magistrate Judge B. Waugh Crigler rendered to this court his Report and Recommendation setting forth findings and recommendations for the disposition of outstanding issues. On August 28, 2003, the plaintiff filed timely objections to portions of the Magistrate's Report and Recommendation. The defendant filed its objections and responses to the aforementioned objections on September 2, 2003, which he supplemented with amended objections on September 4, 2003.

The court has performed a *de novo* review of those portions of the Report and Recommendation to which objections were made. *See* § 636(b)(1)(C); FED. R. CIV. P. 72(b). The court dispenses with oral argument because the facts and legal contentions are adequately

presented in the materials before the court, and argument would not aid in the decisional process.¹ Having thoroughly considered the entire case and all relevant law, and for the reasons stated herein, the court will accept the Report and Recommendation of the magistrate judge and will grant the plaintiff's Motion for Summary Judgment as to the issue of liability only.

I.

The plaintiff in this action, Kenneth L. Bonner, Sr. ("Bonner"), is a self-employed architect and the owner of the Bonner Metropolitan Architectural Group in Reston, Virginia. Bonner was hired in 1998 by the American Woodmark Corporation ("Woodmark") to select a location and design for a new customer service center. During the process of site selection, Woodmark examined various locations on property owned by the defendant, Bruce Dawson ("Dawson"), part owner of Dawson Investments. Following consultation with Bonner, Woodmark found a suitable site on one of Dawson's parcels of land. Dawson entered a lease agreement with Woodmark, then hired defendant Terry Bishop ("Bishop"), part owner of Valley Building Systems, to perform the construction work for the proposed customer service center.

After assessing Woodmark's particularized needs for its customer service center, including size, cost, design, and materials, Bonner drafted a design proposal for the company.

¹ A district court is not required to rehear testimony on which the magistrate judge based his findings and recommendations in order to make an independent evaluation of credibility. Specifically, the Supreme Court found that "[w]e find nothing in the legislative history of the statute to support the contention that the judge is required to rehear the [arguments] in order to carry out the statutory command to make the required 'determination.'" *U.S. v. Raddatz*, 447 U.S. 667, 674 (1980).

He then signed a contract with Woodmark in which both parties agreed that Bonner would work at an hourly rate of seventy dollars per hour in exchange for his architectural services. The agreement does not address ownership rights for any plans or designs submitted by Bonner; however, each page of all design proposals and blueprints he submitted to Woodmark bore the imprint “© Kenneth L. Bonner, 1998.” Relying on the design blueprints submitted by Bonner, Bishop contracted with several subcontractors to develop the necessary structural and engineering plans for construction. All told, Bonner received \$35,690 for his input concerning site selection and for building design development.

Pleased with the first building constructed by Bishop, American Woodmark contacted Dawson to request the construction of an additional building, very similar in color and style to the first, for use as a computer center. Woodmark indicated that this second building should be larger than the first and provided a proposed interior floor plan quite distinct from that of the original building. Dawson agreed to the construction of a second building and again hired Bishop for the job. The plans for the second building were developed by a team of engineers, with Valley Building Systems providing the plan elevations on a Computer Aided Design (“CAD”) program, and with various other subcontracted firms providing the footage and foundation drawings, the site plan drawings, and the steel structural drawings. The specifications detailed in several of these plans refer expressly to the design of the first building.² Indeed, both defendants Dawson and Bishop indicated their awareness that Bonner’s

² The building proposal for the computer center includes ten such references, with the columns, roof pitch, vertical facade, windows, and interior reception area all to be “similar to

design was relied on to develop the CAD drawings for the second building. No architect was engaged for this second building project, nor was there ever any discussion of contacting Bonner concerning the design plans he provided for the first building.

The second American Woodmark building was completed in December of 2001. Sometime thereafter, Bonner noticed the second building while driving past the site. Suspecting a possible copyright violation, Bonner promptly registered his drawings for the first building with the copyright office. His copyright submission was approved for registration, effective April 10, 2002. On July 22, 2002, Bonner filed a complaint in this court, alleging copyright infringement in violation of the Architectural Works Protection Act of 1990 (“AWCPA”), 17 U.S.C. § 102(a) (West 2000).

II.

On June 20, 2003, the plaintiff filed a motion for summary judgment. Pursuant to the pretrial order entered by the magistrate judge, the defendants were given until July 3, 2003 to respond. The defendants did not respond to the plaintiff’s summary judgment motion until their appearance on July 18, 2003 for argument, at which time they sought leave to file a written response with the court. The defendants did not attempt to present new evidence in support of their response, but rather requested only that the court hear argument concerning the propriety of summary judgment. With the indulgence of the magistrate judge, the

the Customer Service Building.”

defendant proceeded to argue that summary judgement should be denied as there are genuine issues of material fact concerning both liability and damages.

In this case, both parties have entered objections. The defendants assert a number of factual objections, most of which go directly to the issue of the propriety of summary judgment.³ The court will address these objections generally in its de novo review of the magistrate judge's Report and Recommendation. The remainder of the defendants' objections concern the applicability of an award of attorney's fees and damages. The plaintiff's objections also concern the matter of damages. Each of these contested determinations shall be fully discussed in turn.

III.

A party is entitled to summary judgment when the pleadings and discovery show that there are no genuine issues as to any material fact, and that the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “[S]ummary judgment . . . is mandated where the facts and the law will reasonably support only one conclusion.” *Hawkins v. PepsiCo, Inc.*, 203 F.3d 274, 279 (4th Cir. 2000) (quoting *McDermott Int’l, Inc. v. Wilander*, 498 U.S. 337, 356 (1991)). If the evidence is such that a reasonable jury could return a verdict in favor of the nonmoving party,

³ In the September 2 and September 4 filings, the defendant objects to, among other things: the plaintiff's failure to provide copies of the drawings/designs that are protected by the April 10, 2002 copyright; the magistrate judge's characterization of the nature of the contractual relationship between the plaintiff and the defendants; the conclusion that the defendants copied any part of the plaintiff's work; the legal standard applied; and the fact of substantial similarity between the two buildings.

then there are genuine issues of material fact. *See Anderson*, 477 U.S. at 248. All facts and inferences shall be drawn in the light most favorable to the nonmoving party. *See Food Lion, Inc. v. S.L. Nusbaum Ins. Agency, Inc.*, 202 F.3d 223, 227 (4th Cir. 2000). The nonmoving party may not, however, rest on its pleadings, but rather must present probative and material evidence which would permit a trier of fact to find in its favor. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). The nonmoving party need not present its own affidavits, but may rely on the “depositions, answers to interrogatories, and admissions on file” to designate specific facts showing there is a genuine issue for trial. *Id.* Absent sufficient evidence to show an essential element as to which the nonmoving party has the burden of proof, that party risks the entry of judgment as a matter of law. *Cray Communications v. Novatel Computer Sys., Inc.*, 33 F.3d 390, 393 (4th Cir. 1994).

In the present matter, the plaintiff complains only that the defendants have violated his copyrighted architectural design in violation of the Architectural Works Copyright Protection Act. In assessing whether summary judgment is proper in a copyright infringement action, it is necessary first to determine whether plaintiff has demonstrated the validity of his claimed copyright, and next to evaluate whether the plaintiff’s evidence is sufficient to demonstrate that the copyright has been infringed as a matter of law. *See Keeler Brass Co. v. Continental Brass Co.*, 862 F.2d 1063, 1065 (4th Cir. 1988); *Richmond Homes Mgmt., Inc. v. Raintree, Inc.*, 862 F. Supp. 1517, 1523 (W.D. Va. 1994).

A.

A plaintiff claiming copyright infringement must first establish the validity of his copyright. *Keeler Brass Co.*, 862 F.2d at 1065. This threshold requirement must be reviewed “in light of the fact that although the plaintiff’s valid copyright registrations create the presumption of copyright validity, . . . the plaintiff bears the ultimate burden of proving the validity of the copyright.” *Richmond Homes, Inc.*, 862 F. Supp. at 1523 (internal citations omitted).

Copyright protection extends to “original works of authorship fixed in any tangible medium of expression,” including architectural works. § 102(a)(8). An “architectural work” is defined as “the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings” taking into consideration “the overall form as well as the arrangement and composition of spaces and elements in the design.” § 101. While there can be instances in which architectural plans, drawings, or designs do not meet the legal definition of protected architectural work, such plans are subject to copyright protection when the author has independently created the works and the works reflect creativity, regardless of how simple the design. *Richmond Homes, Inc.*, 862 F. Supp. at 1523.

In this instance, the plaintiff may take advantage of a statutory safe harbor which recognizes, as prima facie evidence, the validity of any copyright registered “before or within five years after first publication of the work.” 17 U.S.C. § 410(c). As the magistrate judge noted in his report and recommendation, it is undisputed that Bonner marked his drawings with a copyright notice upon initial preparation of those materials in 1998. It is also certain from

the evidence before the court that the drawings in question were registered with the United States Copyright Office on April 10, 2002, well within the five-year period specified by section 410(c). Consequently, there can be no doubt that the plaintiff has demonstrated, by prima facie evidence, the validity of his copyright.

The defendants nonetheless attempt to rebut the validity of the plaintiff's copyright by arguing that one of the statutory exceptions to copyright protection apply. They argue that Bonner's drawings are a "work made for hire" within the meaning of 17 U.S.C. § 101 and that Bonner therefore does not hold a valid copyright. Although as a general rule, copyright ownership vests in the author of a copyrighted work, the Copyright Act of 1976 carves out specified exceptions to this rule, including an exception for "works made for hire." § 201(b); *Cmt. for Creative Non-Violence ("CCNV") v. Reid*, 490 U.S. 738 (1988). "In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author" and owns the copyright unless there is an agreement to the contrary. § 201(b). A work made for hire is defined as either: (1) "a work prepared by an employee within the scope of his or her employment"; or (2) "a work specifically ordered or commissioned for use as a contribution to a collective work . . . if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire." § 101. In this case, the first of these definitions certainly does not apply as Bonner's work as an architect was clearly in the capacity of independent contractor rather than employee.⁴ With

⁴ The use of the term "employee" in the work made for hire exception to copyright ownership has been interpreted to parallel the conventional master-servant relationship as

regard to the second definition of the work for hire exception, the defendants fare no better. An independent contractor retains ownership of a copyright in the absence of express agreement to the contrary; here there was no such mention of copyright ownership in the agreement between Bonner and Dawson. *See CCNV*, 490 U.S. at 738. As Bonner was neither an employee nor was he working pursuant to an express agreement providing for transfer of copyright ownership, the court concludes that the work made for hire exception does not apply and that Bonner, as the author of his designs, holds the rights to his copyrighted work.

B.

Having established the validity of Bonner's copyright, the court now turns to the question of infringement. To prove copyright infringement, the plaintiff must establish that the defendant copied the protected work. *Keeler Brass Co.*, 862 F.2d at 1065 (4th Cir. 1988). Since direct evidence of copying rarely exists, the plaintiff may prove copying by showing that the defendant had access to the copyrighted material and that the defendant's work is substantially similar to the protected work. *Id.*; *Robert R. Jones Assocs., Inc. v. Nino Homes*, 858 F.2d 274, 277 (6th Cir. 1988). As discussed more fully below, the court concludes that the plaintiff has met this burden and is therefore entitled to summary judgement on his claim of copyright infringement.

1.

understood by common law agency principles. *Creative Cmty. for Non-Violence v. Reid*, 490 U.S. 730, 739-40 (1989). There can be no doubt that the agreement between Bonner and Dawson did not create such a relationship.

The defendants in this case indisputably had access to Bonner's copyrighted architectural design. To prove access, the copyright holder need not show that the allegedly infringed work was actually accessed. *Nino Homes*, 858 F.2d at 277. Rather, the owner of the copyright may prove access by demonstrating that the person who composed the allegedly infringing work had the opportunity to view or copy the copyrighted material. *Ale House Mgmt., Inc. v. Raleigh Ale House, Inc.*, 205 F.3d 137, 143 (4th Cir. 2000); *Nino Homes*, 858 F.2d at 277. Here, the record shows that both Dawson and Bishop had access to the design drawings during the planning and construction phases for the first Woodmark building. In addition, both certainly had access to the copyrighted design in its fully realized form: Dawson as owner of the completed customer service building, and Bishop as general contractor. The evidence before the court leads inexorably to the conclusion that the defendants had access to the copyrighted work.

2.

The court now turns to the second element of a copyright infringement claim: substantial similarity between the allegedly infringing work and the copyrighted work. Substantial similarity is measured by reference to the eye of the ordinary observer; the legal test asks whether an ordinary observer comparing two works, "unless he set out to detect the disparities, would be disposed to overlook them, and regard their aesthetic appeal as the same." *Richmond Homes*, 862 F.Supp. at 1527 (quoting *Peter Pan Fabrics v. Martin Weiner Corp.*, 274 F.2d 487, 489 (2d Cir. 1960)). A court's evaluation of substantial similarity "should be

based on the ordinary and reasonable layperson's overall impression of the two works, not on a detailed comparison of the two works, focusing on the individual differences." *Id.* (quoting *Ganz Bros. Toys v. Midwest Importers*, 834 F.Supp. 896, 901 (E.D. Va. 1993)). In the context of architectural design, substantial similarity has been understood to require the plaintiff to show only that a substantial part of the allegedly infringed design was copied, not that every element of the plaintiff's design was copied. *Id.* While dissimilarities are relevant to a court's evaluation of substantial similarity, no plagiarist can excuse the wrong by showing how much of the work in question was not copied. *Ronald Mayotte & Assocs. v. MGC Bldg. Co.*, 36 U.S.P.Q.2d (BNA) 1793 (E.D. Mich. Sept. 6, 1995). For example, a claim for copyright infringement of architectural design may lie on the basis of infringing interior floor plans, exterior structure, or both. *Richmond Homes*, 862 F. Supp. at 1527.

While the general rule is that the question of substantial similarity is one for the jury, a court may nonetheless be justified in ruling for a plaintiff on a summary judgment motion when the similarities between plaintiff's and defendant's works are so "overwhelming" as to preclude the possibility of independent creation. 3 NIMMER ON COPYRIGHT § 12.10 [B][3] (2003). The evidence before the court in this dispute presents such a case. As the magistrate judge observed in his Report and Recommendation, this case is indeed one in which a picture is worth a thousand words. Following a careful examination of the photographs of the two buildings, no reasonable trier of fact could conclude that the two Woodmark buildings are not virtually identical. Although there are certain differences between the two buildings such as the building's size, interior layout, exterior stripe color, and some window variation, the

overall architectural concept and designs of each the two buildings is overwhelmingly similar. Minor variations cannot save defendants from the obvious likeness shared by the Woodmark buildings. Of further relevance in this case is the ample evidence, provided in deposition testimony of the defendants themselves, that they undertook construction of the second building with the goal of copying the design and “feel” of the first building. The two buildings look the same because they were intended to look the same. The court therefore cannot escape the conclusion that these two buildings are more than substantially similar.

In short, the court concludes that because the defendants had access to the plaintiff’s copyrighted work and because the second building constructed for Woodmark is overwhelmingly similar to the first building, the plaintiff is entitled to judgment as a matter of law for infringement of his copyrighted architectural design.

IV.

The court turns now to the question of damages. In his Report and Recommendation, the magistrate judge recommended that this court deny the plaintiff’s motion for summary judgment. The plaintiff objects, arguing first that the Report and Recommendation misconstrues the basis upon which the plaintiff seeks attorney’s fees. The plaintiff also objects more generally to the characterization of his claim for damages arising due to lost profits. For their part, the defendants object to the magistrate judge’s failure to recommend immediate dismissal of the plaintiff’s claims for punitive damages and attorney’s fees. Each of these objections will be addressed in detail.

A.

The plaintiff's first objection to the Report and Recommendation need be addressed only briefly. In his Report and Recommendation, the magistrate judge assumed that the plaintiff sought an award of attorney's fees under both the Copyright Act and Rule 11 of the Federal Rules of Civil Procedure. In fact, the plaintiff recognizes that he is not entitled to attorney's fees under the Copyright Act,⁵ and therefore limits his request for fees to those available under Rule 11. Without now reaching the question of the propriety of an award of attorney's fees under Rule 11, the court will sustain the plaintiff's objection to the aforementioned misconstruction of his claim for attorney's fees.

B.

The plaintiff's second objection, along with the defendants' remaining objections, concern the proper measure of damages. Specifically, the plaintiff objects to the magistrate judge's recommendation that the plaintiff's claim for recovery of damages in the amount of lost profits be dismissed. The defendants object to the report's failure to dismiss the plaintiff's claims for any attorney's fees or for damages other than actual damages. The court will therefore evaluate the propriety of judgement as a matter of law concerning the recovery sought by the plaintiff.

⁵ The Copyright Act precludes an award of attorney's fees in "(1) any infringement of copyright in an unpublished work commenced before the effective date of its registration; or (2) any infringement of copyright commenced after first publication of the work and before the effective date of its registration, unless such registration is made within three months after the first publication of the work." 17 U.S.C. § 412.

Upon a finding of copyright infringement, a “copyright owner is entitled to recover the actual damages suffered by him or her as a result of the infringement, and any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages.” § 504(b). Because this statutory provision is premised on a theory of restitution and unjust enrichment rather than punishment, the plaintiff must prove direct damages arising from its loss and any unjust profits of the infringer. *Richmond Homes*, 862 F. Supp. at 1528. Where the plaintiff seeks to recover damages arising from the profits of the infringer, he must establish the infringer’s gross revenue. *Konor Enters., Inc. v. Eagle Publ’ns, Inc.*, 878 F.2d 138, 140 (4th Cir. 1989). The defendant then has the opportunity to rebut this evidence by establishing costs and profits not attributable to the infringement. *Id.*

Here, the plaintiff claims actual loss in the amount of \$35,690; a figure which represents the amount he was paid for his services for designing the first building. He also seeks damages for the unjust enrichment of the defendants, both for the profits received by Bishop for constructing the second building in the amount of \$587,625, and for the rents received by Dawson for the second building in the amount of \$352,800. It is this court’s view that neither of these claims for recovery can be resolved at this stage of the litigation.

First, although it is clear that the plaintiff is entitled to an award for his actual damages, it is not so clear that the measure offered by the plaintiff is the right amount. There is some evidence from the record that the fees paid to architects for reuse of their designs varies dramatically. Consequently, while this court is of the view that the plaintiff is entitled to an

award for his actual damages, additional evidence is required before an appropriate amount of recovery for actual damages can be determined.

Second, it is not entirely evident from the existing record that the lost profits asserted by the plaintiff are entirely, if at all, attributable to the infringement. Although the plaintiff's notion of lost profits may indeed be somewhat tenuous, there nonetheless are many circumstances in which the profits accrued by an infringer are recoverable. Recovery of such profits has been made available as a means to ensure that infringers are not permitted to retain the benefits of their wrongful conduct that are not fully taken into account in the calculation of actual damages. *U.S. Payphone, Inc. v. Executives Unlimited of Durham, Inc.*, 781 F. Supp. 412, 413 (M.D. N.C. 1991). To calculate the profits of the infringer that are attributable to the infringement, and therefore a proper element of damages, the law specifies a burden shifting approach. A copyright owner must first present proof of the infringer's gross revenue from the line of business or project related to the infringement. *Nelson-Salabes, Inc. v. Morningside Development*, 284 F.3d 505, 511 n.9 (4th Cir. 2002). Once a copyright owner has submitted evidence of the infringer's gross revenue, the infringer bears the burden of proving his deductible expenses and the elements of profit attributable to factors other than those arising from the infringement itself. *Id.* Here, while the plaintiff has offered evidence of both the defendants' gross and net profits, there has been no development of the facts necessary to determine whether the defendants could show that all or a portion of these profits are not properly attributable to the copyright infringement.

This conclusion applies equally to the matter of punitive damages. While punitive damages may be awarded upon a showing of reckless or conscious disregard for the rights of others, *Vincente v. Obenauer*, 736 F. Supp. 679, 695 (E.D.Va. 1990), here there is insufficient evidence before the court to make an informed decision concerning the propriety of such damages. The court is therefore of the view that until the plaintiff presents to the court additional evidence to support his claim for punitive damages, a ruling on this claim shall be withheld.

C.

The plaintiff also requests injunctive relief pursuant to 17 U.S.C. §503(b) which provides that a court may order, as part of a final judgment or decree, “the destruction or other reasonable disposition of all copies . . . found to have been made or used in violation of the copyright owner’s exclusive rights.” Specifically, the plaintiff requests either destruction or modification of the second, infringing building. The statute vests courts with broad discretion to fashion equitable relief, and is a discretionary provision of the Copyright Act. *Rogers v. Koons*, 960 F.2d 301, 313 (2nd Cir. 1992). Courts are expected to weigh the equities of each case to determine the propriety and desirability of destruction of infringing copies of a copyright owner’s work. *TVT Records, Inc. v. The Island Def Jam Music Group*, 02 Civ.6644, 2003 U.S. Dist. Lexis 15270, at *109 (S.D.N.Y. Sept. 2, 2003). In this case, balancing of the equities counsels against awarding the plaintiff injunctive relief in the form of demolition or substantial modification of the infringing building. The court is of the view that the plaintiff’s injury can be adequately remedied by monetary compensation, and that there is no danger that

additional infringements will occur. Accordingly, the court will deny the plaintiff's request for destruction or modification of the second Woodmark building.

D.

Finally, in addition to recovery of damages, the plaintiff seeks an award of attorney's fees to sanction the defendants' counsel for conduct which the plaintiff contends rises to a level of bad faith. In support of this request, the plaintiff cites several instances of the defendants' conduct: failure to identify which defendants were being represented by counsel, improper filing of an answer in conjunction with a Rule 11 motion and a motion to strike, continued pursuit of a motion to strike that was ill-conceived, failure to appear in a timely manner at a scheduled deposition, failure to file a timely response to a set of interrogatories and request for production of documents, and improper identification of a witness in the case as an expert. While the plaintiff has properly followed the rule's directive that a "party seeking sanctions should give notice to the court and the offending party promptly upon discovering a basis for doing so," the rule also contemplates that "the sanctions issue . . . normally will be determined at the end of the litigation." FED. R. CIV. P. 11 advisory comm. notes (1983). Without passing on the propriety of imposing Rule 11 sanctions for the offered conduct, the court therefore finds it proper to defer a ruling until final resolution of the remaining issues in this case.

In short, the court agrees with the magistrate judge's recommendation to require greater evidence be presented for consideration of the proper amount of damages, but disagrees with his recommendation to dismiss the plaintiff's claim for lost profits at this time. The court

accordingly concludes that there is presently insufficient evidence concerning the extent of plaintiff's damages to warrant a denial of summary judgment as to damages. The court further concludes that the injunctive relief requested by the plaintiff would be unduly burdensome and it is therefore denied. Finally, the court elects to defer a ruling on the plaintiff's request for an award of attorney's fees under Rule 11 until the resolution of all remaining issues.

V.

For the reasons articulated herein, the court shall grant the plaintiff's motion for summary judgment as to the issue of liability. The court shall overrule in part both the plaintiff's and the defendants' objections to the magistrate judge's Report and Recommendation. Additionally, the court shall adopt in part the magistrate judge's Report and Recommendation, and shall decline to adopt his recommendation that the plaintiff's claim for lost profits be dismissed as a matter of law. Accordingly, the court defers judgment concerning the proper amount of actual damages, and the availability and amount of recovery for lost profits, punitive damages, and attorney's fees. An appropriate Order shall this day enter.

The Clerk of the Court hereby is directed to send a certified copy of this Memorandum Opinion and the accompanying Order to Magistrate Judge Crigler and to all counsel of record.

ENTERED:

Senior United States District Judge

Date

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

KENNETH L. BONNER, SR.,)	CIVIL ACTION NO. 5:02CV00065
)	
)	
Plaintiff,)	
)	<u>ORDER</u>
v.)	
)	
BRUCE DAWSON et al.,)	
)	
Defendant.)	JUDGE JAMES H. MICHAEL, JR.

For the reasons stated in the accompanying Memorandum Opinion, it is this day

ADJUDGED, ORDERED and DECREED

as follows:

1. The Plaintiff's first objection to the Report and Recommendation, filed August 28, 2003, shall be, and hereby is SUSTAINED;
2. The Plaintiff's second objection to the Report and Recommendation, filed August 28, 2003, shall be, and hereby is SUSTAINED in part, and OVERRULED in part;
3. The Defendant's objections numbered 1 through 4, and 5 through 8 to the Report and Recommendation as detailed in the "Notice of Objection" filed September 2, 2003, shall be, and hereby are, OVERRULED;

4. The Defendant's fifth objection to the Report and Recommendation as detailed in the "Notice of Objection" filed September 2, 2003, shall be, and hereby is, SUSTAINED;

5. The Defendant's objections to the Report and Recommendation as detailed in the "Supplemental Notice of Objections" filed September 4, 2003, shall be, and hereby are, OVERRULED;

6. The Magistrate Judge's Report and Recommendation, filed August 21, 2003, shall be, and hereby is, ACCEPTED and ADOPTED in part as detailed in the accompanying memorandum opinion;

7. The plaintiff's Motion for Summary Judgment, filed June 20, 2003, shall be, and hereby is, GRANTED in part with regard to the issue of liability, and DENIED in part with regard to the issue of damages; and

8. The plaintiff's request for injunctive relief, as incorporated in its Motion for Summary Judgment, filed June 20, 2003, shall be, and hereby is DENIED.

The Clerk of the Court hereby is directed to send a certified copy of this Order and the accompanying Memorandum Opinion to Magistrate Judge Crigler and to all counsel of record.

ENTERED:

Senior United States District Judge

Date