

**Dominick Ranieri v. Adirondack Dev. Group LLC,  
No. 1:11-cv-1013-GTS-CFH (N.D.N.Y. Feb. 22, 2016)**

Year	2016
Court	United States District Court for the Northern District of New York
Key Facts	Plaintiff, Dominick Ranieri, is an architect who worked on housing design projects for Adirondack Development Group and other associated developers (collectively, “ADG”). ADG entered into three separate agreements with Ranieri to provide designs, plans, and drawings for three housing developments, Vly Point, Admiral’s Walk, and Patroon Point. ADG was not authorized to use the designs for any other developments. ADG finished construction of Patroon Point in 2002 and subsequently terminated Ranieri’s remaining contracts. Ranieri then advised ADG that they could no longer use his designs for the ongoing construction of Vly Point and Admiral’s Walk. ADG, however, used Ranieri’s Patroon Point drawings as a basis for building Jordan Point, a fourth housing development. It also provided Ranieri’s designs to defendant Coldwell Banker Prime (“C.B. Prime”), its “exclusive listing agent for the marketing and sales of the” housing developments. Without Ranieri’s authorization, C. B. Prime used simplified versions of the designs for Patroon Point “to advertise the basic floor plans for the condominium units” in Jordan Point.
Issue	Whether a real estate company’s unauthorized use of a simplified version of an architectural design in marketing materials intended to attract customers to buy property is a fair use?
Holding	The court’s summary judgment fair use analysis was limited to defendant C.B. Prime’s unauthorized use of Ranieri’s designs. Specifically, the court held that the first factor, purpose and character of the use, weighed against fair use because C.B. Prime “merely copied [p]laintiff’s drawings” and had a “primary motive” in using the drawings to “attract potential customers . . . for financial gain.” The court held that the second statutory factor, the nature of the work, also weighed against fair use because architectural works are generally considered “creative works,” and the defendant did not argue otherwise. On the other hand, the court found that the third factor, the amount of work used, weighed in favor of fair use because the defendant “used only the basic features of [p]laintiff’s designs.” And the court found that the fourth statutory factor, effect of the use on the potential market for the work, also weighed in favor of fair use because although C.B. Prime’s use “undermines” and “competes” with Ranieri’s, it did not usurp the market because Ranieri’s “designs are still viable and can be marketed for other projects.” Finding that “reasonable minds could differ as to whether fair use applies when weighing all of these factors together,” the court thus denied defendant’s motion for summary judgment because it could not conclude, as a matter of law, that C.B. Prime’s use was fair.
Tags	Second Circuit; Painting/Drawing/Graphic
Outcome	Preliminary ruling, mixed result, or remand

Source: U.S. Copyright Office Fair Use Index. For more information, see <http://copyright.gov/fair-use/index.html>.