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## COPYING HOUSE PLANS

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In a recent decision, the *Cour du Québec* rendered a decision on the copying of house plans. The Court determined that the plans involved in this case lacked originality and, for this reason, could not benefit from copyright protection. The defendants thus avoided any liability.

In this case, the Defendants, Yves Jeanson and Brigitte Brunet, had visited in 1998 a model-home built by the Plaintiff, Construction Denis Desjardins Inc. After their visit, in spring 2002, the couple decided to approach Construction Denis Desjardins Inc. for the construction of a house similar to the one visited in 1998 on a lot that they had recently purchased. After having seen the proposed plans and architectural specifications prepared by the Plaintiff, the couple decided to contract out the preparation work to another architect and gave him the Plaintiff's plans and pictures of the original house. For technical reasons, the new house plan shared several similarities with the original model, but was inversed. In 2003, the Plaintiff realized that the new house being built corresponded to his initial model-home but was inversed, and thus decided to bring the couple to court for loss of profits on construction of the new house and for exemplary damages.

However, the Court determined that the arrangement of the rooms, their location and size did not confer an original character to the Plaintiff's house plans. Instead, they represented a compromise between different factors including budgetary constraints, fashionable tendencies, different tastes, physical constraints, etc. Consequently, the Court concluded that there was an absence of copyright in the plans for the initial model-home developed by the Plaintiff. Construction Denis Desjardins Inc. thus lost their case.

Although additional analysis was not necessary in order to settle the case, the Court also determined that the couple had clearly copied the plaintiff's plans. Indeed, there was clear proof that the couple had obviously imitated the Plaintiff's plans. Among other elements of proof, the architect for the inversed house plan recognized having received copies of the original plans from the couple. These copies included a cover-

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up on a bottom corner of one plan which clearly hid the name and coordinates of the Plaintiff on the original copy. Consequently, if the Plaintiff's plan had been determined to be original, the Court may have found that the couple was infringing the Plaintiff's copyright. Unfortunately for the Plaintiff in this case, the principle that "copying, does not necessarily mean stealing" applies...

For more details on this decision see *Construction Denis Desjardins inc. v. Jeanson*, 2008 QCCQ 4326.

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