Copyright in Architectural Works: Plagiarism Investigation

13.12.2022 4 min read

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The Copyright Law (Law No. 9.610/1998) protects, as intellectual works, "creations of the spirit, expressed by any means or fixed on any support, tangible or intangible, known or to be invented in the future", specifically dedicating item X of article 7 to projects, sketches and plastic works concerning architecture. Thus, and as also enshrined in the jurisprudence of the Superior Court of Justice, not only the project and the sketches have copyright protection, but also the "work itself, materialized in the built construction" .

The predictability of protection for architectural projects, from the perspective of copyright, is verified both in the legislation and in the application of the law by the higher courts, which have already endorsed the need for custom-made architectural works to have the assignment of their patrimonial rights agreed between the contracting parties, in order to determine the limits of the rights of the creators of the work and those who will use it , avoiding problems of dispute of ownership of the works in the future.

The legal framework foresees that the author of an architectural project is entitled to act against a new plagiarized project or building. It should be noted however that it is not any architectural work or aspect of it that deserves copyright protection. Any work including architectural projects to be subject to copyright protection, must be considered unpublished and original. The work must result from the original creation of the author who can rise to the condition of intellectual creation and, finally, be protected.

In this sense, before conducting an analysis of a potential architectural plagiarism it is necessary to investigate the originality of the architectural project and/or the built construction. The originality of a work is an essential requirement for any analysis of possible plagiarism and it is not different in the field of architecture, in which many projects and constructions are inspired by architectural patterns or styles with common references and which naturally do not have originality. The legislator himself was concerned with indicating, in the Copyright Law, which pattern or style should not be subject to copyright protection.

Once the investigation of the originality of the work has been concluded, it is prudent to consider the technical aspect in the analysis of potential architectural plagiarism. Given that, the Council of Architecture and Urbanism of Brazil (CAU) issued specific regulations regarding copyright in architecture and urbanism (Resolution No. 67/2013). Although the resolution is not considered a law and, therefore, mandatory, there are relevant guidelines for the technical expert examination, specifically in its article 21, which lists three criteria for the characterization of plagiarism, namely: topological and structural part, functional distribution and volumetric and spatial form.

Topological and structural party refers to the structures that involve the project, including the geometric aspect, the proportions and areas of the analyzed projects/residences. The second, functional distribution, will analyze the sectorization of the works, including the arrangement of its blocks, such as service and leisure. Finally, the third criterion, the volumetric and spatial form, comprises the dimensions of the works, heights and volumetry.

As can be seen, architectural solutions that end up only reproducing patterns once applied are not uncommon, and it is naturally impossible for any project or construction to be inspired by ideas already applied in architectural projects on throughout history. Thus, any analysis of architectural plagiarism should carefully consider the verification of the originality of the work allegedly plagiarized and then, after overcoming this aspect, must focus on the technical analysis, specifically the analysis of the criteria that give rise to plagiarism.

In a recent judgment, the 4th Chamber of Private Law of São Paulo Appellate Court confirmed a final ruling issued by the trial court because, among other arguments, the expert evidence ruled out the requirement of the originality of the allegedly plagiarized work. According to the vote of the reporting judge, Ênio Santarelli Zuliani, "in the hypothesis of the case the expert evidence removes the qualified "novelty" and this gains a relevance that excludes protection by copyright law, because before the required other architects used the same techniques used in the author's house project".

Thus, the Court shows that in addition to the requirements that give rise to plagiarism, it is necessary to previous analyze the originality of the allegedly plagiarized project in order to proceed with the architectural plagiarism investigation.

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NOTES:

[1] STJ; REsp 1.562.617/SP, Third Panel, DJe 11/30/2016.

[2] STJ - REsp: 1290112 PR, DJ of 6-9-2016, Minister Luis Felipe Salomão.

[3] Law No. 9.610/1998, article 8, I.

[4] TJSP; Civil Appeal 1082978-13.2020.8.26.0100; Rapporteur: Enio Zuliani; Judging Body: 4th Chamber of Private Law; Central Civil Forum - 42nd Civil Court; Judgment Date: 08/18/2022; Registration Date: 08/22/2022.