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## **Sieger Suarez Architectural Partnership, Inc. v. Arquitectonica International Corp.**

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*New York Law School, 2016*

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ELIZABETH STEVENS

*Sieger Suarez Architectural Partnership, Inc.  
v. Architectonica International Corp.*

60 N.Y.L. SCH. L. REV. 553 (2015–2016)

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*[A]rchitecture is art and science. . . . The end product contains both the rational and romantic . . . .*<sup>1</sup>

The issue of architectural plagiarism involves competing interests: promoting innovative progress in architectural design on the one hand, while protecting an architect’s unique creative work on the other.<sup>2</sup> These competing interests are not mutually exclusive, despite the position taken by the U.S. District Court for the Southern District of Florida in *Sieger Suarez Architectural Partnership, Inc. v. Arquitectonica International Corp.*<sup>3</sup> The *Sieger Suarez* case demonstrates the challenges in defining what type of architecture is protected under the Copyright Act as well as creating a working standard to evaluate copyright infringement claims.

When Congress amended the Copyright Act in 1990 to include architectural works, its intention was to remedy this confusion and extend copyright protections to architectural structures.<sup>4</sup> Prior to 1990, the Copyright Act explicitly included “diagrams, models, and technical drawings, including architectural plans” but did not include “works of architecture.”<sup>5</sup> In the legislative materials to the amendment, Congress recognized architecture as “a form of artistic expression that performs a significant societal purpose, domestically and internationally.”<sup>6</sup> Architecture has traditionally been considered a high art in league with painting and sculpture; categorizing architecture for copyright protection purposes, however, is difficult because of the utilitarian function, or the useful everyday nature of buildings.<sup>7</sup>

The critical issue in *Sieger Suarez* was the substantial similarity test for copyright infringement. To establish a claim for copyright infringement, a plaintiff is required to show that she owns a valid copyright<sup>8</sup> and that the architectural works in question are substantially similar.<sup>9</sup> Substantial similarity is an ambiguous term that the Eleventh Circuit has defined as being present “where an average lay observer would

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1. Raleigh W. Newsam, II, *Architecture and Copyright—Separating the Poetic from the Prosaic*, 71 TUL. L. REV. 1073, 1076 (1997).
  2. *See id.* at 1079–80.
  3. 998 F. Supp. 2d 1340 (S.D. Fla. 2014).
  4. *See Newsam, supra* note 1, at 1076–82.
  5. H.R. REP. NO. 101-735 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6935, 6942.
  6. *Id.*, *reprinted in* 1990 U.S.C.C.A.N. at 6936. The Architectural Works Copyright Protection Act of 1990 recognized architecture as a new category of copyright subject matter in the United States. 17 U.S.C. § 102(a)(8) (2012); *see also Newsam, supra* note 1, at 1076.
  7. *See Newsam, supra* note 1, at 1077; *see also* David E. Shipley, *The Architectural Works Copyright Protection Act at Twenty: Has Full Protection Made a Difference?*, 18 J. INTEL. PROP. L. 1, 3 (2010) (describing architect’s artistry as flourishing “even though their works received only second-class protection under United States copyright law until 1990”).
  8. The plaintiff is also required to show that the defendant had access to the architectural plans protected by a copyright, which is not disputed in this case. *Sieger Suarez*, 998 F. Supp. 2d at 1351.
  9. *Oravec v. Sunny Isles Luxury Ventures, L.C.*, 527 F.3d 1218, 1223 (11th Cir. 2008).

recognize the alleged copy as having been appropriated from the copyrighted work.”<sup>10</sup> Additionally, the court has described substantial similarity as a question of “whether a reasonable jury could find the competing designs substantially similar at the level of protected expression.”<sup>11</sup>

The Copyright Act defines protectable “architectural work” as “the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings.”<sup>12</sup> An architectural work “includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features.”<sup>13</sup> The overall compilation or arrangement consists of the individual design elements and standard features that are not protected—such as a window unit, the dimensions of a room, or the use of a balcony.<sup>14</sup> Under the substantial similarity analysis, only the architectural work’s arrangement as a whole, called an “expression,” is protected, whereas the individual design elements, called “ideas,” are not protected.<sup>15</sup> Thus, the important focus in a substantial similarity analysis is on the architectural design’s overall compilation or arrangement.<sup>16</sup>

The inclusion of architectural structures under the Copyright Act was a step forward. However, critics have identified a problem with the distinction between expressions and ideas, claiming courts apply too thin a layer of protection to “architectural work” despite the Copyright Act’s expansive definition of the term.<sup>17</sup> Courts have established that only “expressions” in architectural works are protectable, not “ideas.”<sup>18</sup> However, the distinction between an expression and an idea is unclear and has been determined on a case-by-case basis.<sup>19</sup>

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10. *Id.* at 1224 (quoting *Original Appalachian Artworks, Inc. v. Toy Loft, Inc.*, 684 F.2d 821, 829 (11th Cir. 1982)).
  11. *Miller’s Ale House, Inc. v. Boynton Carolina Ale House, LLC*, 702 F.3d 1312, 1325 (11th Cir. 2012) (quoting *Oravec*, 527 F.3d at 1224 n.5); *see also* *Intervest Constr., Inc. v. Canterbury Estate Homes, Inc.*, 554 F.3d 914, 921 (11th Cir. 2008) (holding that no substantial similarity existed because no reasonable, properly instructed jury could find that the protectable expressions of the two house floor-plans were substantially similar).
  12. 17 U.S.C. § 101 (2012).
  13. *Id.*
  14. *See* Shipley, *supra* note 7, at 3–7 (explaining the unique feature of architectural design in creating not only an artistic work, but also a functional building, and noting that society’s need for useful buildings cannot be impeded by trying to protect individual elements like doorways).
  15. *See* Newsam, *supra* note 1, at 1101–04; *see also* H.R. REP. NO. 101-735 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6935, 6949.
  16. *Intervest*, 554 F.3d at 919 (“Accordingly, any similarity comparison of the works at issue . . . must be accomplished at the level of protected expression—that is, the *arrangement and coordination* of those common elements.”).
  17. *See* Shipley, *supra* note 7, at 7.
  18. *See id.*
  19. *See, e.g., Intervest*, 554 F.3d at 921; *Oravec v. Sunny Isles Luxury Ventures, L.C.*, 527 F.3d 1218, 1224 (11th Cir. 2008); *Bldg. Graphics, Inc. v. Lennar Corp.*, 866 F. Supp. 2d 530, 543–45 (W.D.N.C. 2011) (utilizing the typical ad hoc basis to distinguish an expression from an idea).

The issue in *Sieger Suarez* was whether a constructed condominium building was similar enough to the design in an architectural blueprint to constitute copyright infringement.<sup>20</sup> The dispute involved a prominent South Florida architecture firm, the Sieger Suarez Architectural Partnership (“plaintiff”), against another prominent architecture firm and two real estate developers, Arquitectonica International, Regalia Beach Developers, and Golden Beach Developers (collectively, the “defendants”).<sup>21</sup> The plaintiff filed suit in the Southern District of Florida, alleging copyright infringement of its architectural design plans for a condominium building.<sup>22</sup> The court held that despite the comparable exterior shapes and conceptual similarities, the plaintiff’s designs and the defendants’ condominium building were not substantially similar as a matter of law because the individual design elements of each expressed the buildings’ shapes in different ways.<sup>23</sup>

This case comment contends, first, that the court erred in creating a new, stricter four-factor interpretation of the substantial similarity test instead of following the “average lay observer” interpretation articulated by the Eleventh Circuit in *Oravec v. Sunny Isles Luxury Ventures, L.C.*<sup>24</sup> Second, in applying its new four-factor test, the court erred by categorizing the design plan arrangements as unprotected “ideas” instead of protected “expressions.”<sup>25</sup> Third, the practical reality of a higher standard of scrutiny with four specific factors forces judges to bear the burden of conducting detailed design analysis that is far removed from their typical realm of legal expertise. It would be preferable for a jury of laypeople, who view these architectural designs in everyday life, to determine substantial similarity by applying the Eleventh Circuit’s “average lay observer” test.<sup>26</sup>

In August 2000, the plaintiff was hired by Mori Classics to design a building plan for a project eventually known as Regalia.<sup>27</sup> By May 2006, defendant Arquitectonica had replaced the plaintiff as the architect, and the plaintiff had no further involvement in the project.<sup>28</sup> In March 2011, defendants Regalia Beach Developers and Golden Beach Developers took over the project from Mori Classics.<sup>29</sup> The plaintiff later learned that construction had begun, allegedly using the plaintiff’s

20. *Sieger Suarez Architectural P’ship, Inc. v. Arquitectonica Int’l Corp.*, 998 F. Supp. 2d 1340, 1343–45 (S.D. Fla. 2014).

21. *Id.* at 1343–44.

22. *Id.* at 1343.

23. *Id.* at 1353–54.

24. *Oravec*, 527 F.3d at 1224.

25. *See, e.g.*, *Interwest Constr., Inc. v. Canterbury Estate Homes, Inc.*, 554 F.3d 914, 919–21 (11th Cir. 2008) (explaining that the arrangement and coordination of common elements reaches the level of protected expression).

26. *See, e.g., id.* at 920; *Oravec*, 527 F.3d at 1224; *Corwin v. Walt Disney Co.*, 475 F.3d 1239, 1250–51 (11th Cir. 2007).

27. *Sieger Suarez*, 998 F. Supp. 2d at 1344.

28. *Id.*

29. *Id.*

copyrighted architectural design plans.<sup>30</sup> Thus, the plaintiff filed a complaint against the defendants on May 31, 2013 in the Southern District of Florida, Miami Division, and the defendants filed a motion to dismiss for failure to state a viable cause of action, which the court granted.<sup>31</sup>

The specific architectural elements in dispute were the exterior façade elements, or the “exterior face”<sup>32</sup> of the buildings.<sup>33</sup> The exterior façade of each building included an overall flower shape and rounded curve designs that gave the building exterior an impression of movement or fluidity.<sup>34</sup> The plaintiff argued that its building’s flower shape and the rounded curve design of its exterior façade were protected under the copyright because they were “arrangements and combinations” that are recognized as protected expressions of architectural design.<sup>35</sup> The plaintiff argued that the correct test for substantial similarity was whether “an average lay observer would recognize the alleged copy as having been appropriated from the copyrighted work.”<sup>36</sup> The defendants asserted that the building shape and exterior façade were merely architectural “ideas”—standard design features that are not protected by a copyright, regardless of any substantial similarity.<sup>37</sup>

The court held that although the buildings’ outward appearances were comparable and inspired by the same flower shape and rounded façade, each expressed its architectural “ideas” differently in achieving its end results.<sup>38</sup> The court declared a new, four-factor test for finding substantial similarity which relies on expression found in: (1) the manner by which a design is achieved; (2) the use of structures and details; (3) the manner in which an individual interacts with the space; and (4) the location.<sup>39</sup>

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30. *Id.* at 1345. The court held that the plaintiff owned a valid copyright for the Regalia Project based on Certificates of Registration issued by the U.S. Copyright Office. *Id.* at 1351.

31. *Id.* at 1343–45.

32. An exterior façade is a common architectural term used to refer to the outside features of a building. A façade is defined as “[a]n exterior face or elevation of a building.” CITY OF PHX., PLANNING & DEV. DEP’T, GENERAL DESIGN GUIDELINES FOR HISTORIC PROPERTIES 3 (1996), [https://www.phoenix.gov/pddsite/Documents/pdd\\_hp\\_pdf\\_00035.pdf](https://www.phoenix.gov/pddsite/Documents/pdd_hp_pdf_00035.pdf).

33. *Sieger Suarez*, 998 F. Supp. 2d at 1351–54.

34. *Id.* at 1352–53. The court also analyzed the interior floor plans and the use of structure and detail, but it was not the main area of concern for protected expressions under the substantial similarity analysis. *Id.* at 1353–54.

35. Plaintiff, the Sieger Suarez Architectural P’ship, Inc.’s, Response to Defendant, Arquitectonica Int’l Corp.’s Motion to Dismiss Counts the Complaint at 12, *Sieger Suarez Architectural P’ship, Inc. v. Arquitectonica Int’l Corp.*, 998 F. Supp. 2d 1340, No. 13-cv-21928-JLK, 2013 WL 6498635 (S.D. Fla. Aug. 2, 2013).

36. *Id.* at 14.

37. Defendant Arquitectonica International Corp.’s Reply Memorandum in Further Support of its Motion to Dismiss the Amended Complaint at 6, *Sieger Suarez Architectural P’ship, Inc. v. Arquitectonica Int’l Corp.*, 998 F. Supp. 2d 1340, No. 13-cv-21928-King/McAliley, 2013 WL 9662081 (S.D. Fla. Dec. 9, 2013).

38. *Sieger Suarez*, 998 F. Supp. 2d at 1352–54.

39. *Id.* at 1348–49.

The court reasoned that the buildings' exterior façade elements achieved their designs in different manners and characterized the façades as "strikingly different" in outward appearance.<sup>40</sup> One distinction the court noted was between the defendants' wrap-around, irregularly shaped balconies and the plaintiff's rounded corner balconies.<sup>41</sup> The court also reasoned that a clear difference existed in the outward appearances and visual impressions of the buildings because the defendants' "oscillating wave" effect was different from the plaintiff's "smooth, static wave" design.<sup>42</sup> Similarly, the court called the expression of the flower shape "vastly different" in each building.<sup>43</sup>

However, the court noted in its analysis that the two designs were similar in the "striking aspect" of each work's flower shape and the distinctive visual impression of a horizontally rippling wave created by each building's exterior.<sup>44</sup> Although the court determined that the number of condominium units per floor, the height of the building, and the height of the ceilings were not protectable evidence of copyright infringement, it also acknowledged that the defendants may have used the plaintiff's work to bypass the need to create their own independent work.<sup>45</sup> Regardless, in evaluating the relevant design aspects under the new four-factor test for substantial similarity, the court found an intellectual relationship between the concepts and ideas of the plaintiff's work and those of the defendants' work, but not between the expression and overall execution of the two works.<sup>46</sup> Interestingly, the court only analyzed two of its newly articulated four factors in finding that no substantial similarity existed: (1) the manner by which a design is achieved and (2) the use of structures and details.<sup>47</sup>

This case comment contends that the *Sieger Suarez* court erred in applying a new, four-factor approach that creates a higher standard for interpreting the substantial similarity test instead of the "average lay observer" interpretation articulated by the Eleventh Circuit in *Oravec*.<sup>48</sup> Furthermore, the court failed to identify the Sieger Suarez building's shape and exterior façade design as protected expressions under the "compilation" or "arrangement" standard set by the Eleventh Circuit in *Interwest Construction, Inc. v. Canterbury Estate Homes, Inc.*<sup>49</sup> Moreover, the practical impact of the *Sieger Suarez* court's higher standard of scrutiny, with specific factors, results in judges bearing the burden of conducting detailed design analysis in place of a jury—

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40. *Id.* at 1352.

41. *Id.* at 1352–54.

42. *Id.* at 1352–53.

43. *Id.*

44. *Id.* at 1352.

45. *Id.* at 1351.

46. *Id.* (describing the similarities as "intellectual" and identifying the similar elements as unprotected standard features and not expressions or compilations deserving copyright protection).

47. *Id.* at 1351–54.

48. 527 F.3d 1218, 1224 (11th Cir. 2008).

49. 554 F.3d 914, 919 (11th Cir. 2008).

comprised of the actual viewing audience—determining substantial similarity under the more appropriate “average lay observer” test.

First, the *Sieger Suarez* court failed to apply the *Oravec* “average lay observer” test for substantial similarity.<sup>50</sup> In *Oravec*, the Eleventh Circuit held that a substantial similarity exists “where an average lay observer would recognize the alleged copy as having been appropriated from the copyrighted work.”<sup>51</sup> Architect Paul Oravec filed copyright infringement claims against numerous individuals and entities associated with the Trump Palace Buildings in Sunny Isles Beach, Florida, after seeing pictures of two Trump condominium buildings that he believed to be nearly identical to his copyrighted architectural designs.<sup>52</sup> The *Oravec* court focused its substantial similarity analysis on whether a reasonable person would view the buildings and plans as similar.<sup>53</sup> The court held that there was not a substantial similarity because the building in Oravec’s plans had five alternating concave segments running the entire length of its exterior on both sides, whereas each Trump building had only three segments appearing at the top half of its exterior on one side.<sup>54</sup> Additionally, the *Oravec* court noted that Oravec’s plans contained exposed elevator shafts which were obstructed on alternating floors by the alternating concave segments, whereas a viewer could clearly see exposed elevator shafts for the entire length of each Trump building.<sup>55</sup> Accordingly, the *Oravec* court found that “no reasonable jury, properly instructed, could find the competing works substantially similar . . . .”<sup>56</sup>

The average lay observer test for substantial similarity in *Oravec* takes a more general, “viewer focused” approach than the technical, four-factor test in *Sieger Suarez*.<sup>57</sup> Similarly, the Eleventh Circuit in *Original Appalachian Artworks, Inc. v. Toy Loft, Inc.* also applied the average lay observer test to a copyright infringement claim.<sup>58</sup> The *Original Appalachian* court held that two toy doll designs were substantially similar because an ordinary observer would be inclined to overlook any

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50. *Oravec*, 527 F.3d at 1224.

51. *Id.* (quoting *Original Appalachian Artworks, Inc., v. Toy Loft, Inc.*, 684 F.2d 821, 829 (11th Cir. 1982)); *see also* *Leigh v. Warner Bros., Inc.*, 212 F.3d 1210, 1215–16 (11th Cir. 2000) (holding that a motion for summary judgment was inappropriate for a copyright infringement claim involving two photographs because a jury could reasonably find substantial similarity under the “average lay observer test” in expressive elements such as the photographic angle, hanging Spanish moss in the background, and location and lighting that draws the viewers’ attention to a girl).

52. *Oravec*, 527 F.3d at 1221–22.

53. *Id.* at 1226.

54. *Id.*

55. *Id.*

56. *Id.*

57. *Compare id.* at 1224, *with* *Sieger Suarez Architectural P’ship, Inc. v. Arquitectonica Int’l Corp.*, 998 F. Supp. 2d 1340, 1348 (S.D. Fla. 2014) (“Rather than simply continue down the oft-misleading road of ad hoc analysis, the Court will consider certain telling factors of substantial similarity . . . for determining the level of similarity between architectural works.”).

58. 684 F.2d 821, 829 (11th Cir. 1982).



minor differences, such as the dolls' facial expressions and nose and finger shapes, and find that the dolls had the same "aesthetic appeal," or general feeling and overall impression.<sup>59</sup> Thus, the court upheld a valid copyright infringement claim.<sup>60</sup>

In *Oravec*, the exterior segments and exposed elevator shafts with different numbers and segment lengths were clear and obvious differences. An average lay observer, however, would not be able to differentiate between the two buildings in *Sieger Suarez*.<sup>61</sup> The *Sieger Suarez* court's reasoning that the exterior façade of the defendants' building achieved its design in a different manner goes to great lengths of artistic analysis beyond those of an average lay observer.<sup>62</sup> The court even characterized the outward appearances of the buildings as "strikingly different" because the defendants' building had wrap-around, irregularly shaped balconies while the plaintiff's design had rounded corner balconies.<sup>63</sup> Under the *Original Appalachian* court's reasoning, an ordinary observer would have the impression that both buildings were substantially similar because both façades created the same horizontally rippling wave effect.<sup>64</sup> The minor differences in details are less significant, and an average lay observer would likely be inclined to overlook such minute differences as balcony shapes and find that the overall works have the same "aesthetic appeal," much like the dolls in *Original Appalachian*.<sup>65</sup>

In addition, the *Sieger Suarez* court contradicted its own point that a "striking" difference existed by admitting that the building designs are similar in the "striking aspect" of each work's flower shape exterior design and the same distinctive wave impression created by each exterior façade.<sup>66</sup> The *Sieger Suarez* court erred in calling the design methods "vastly different" under its new test and distinguishing between works that the court even admitted had the same flower shape impression upon a viewer.<sup>67</sup>

The very nature of experiencing an artistic work is subjective and varies by the individual; thus, a comparative analysis for artistic works fits more appropriately within the looser ad hoc standard of how the average observer views a structure and not within specific factors.<sup>68</sup> Therefore, unlike the buildings in *Oravec*, the buildings

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59. *Id.*

60. *Id.* at 830.

61. *See Sieger Suarez*, 998 F. Supp. 2d at 1347 (describing the usual analysis for substantial similarity as too vague and misleading under the "average observer" test found in Eleventh Circuit precedent).

62. *See id.* at 1347, 1352.

63. *Id.* at 1352.

64. *Id.*

65. *See Original Appalachian*, 684 F.2d at 829 ("[T]he copier . . . will not avoid liability for infringement if 'the ordinary observer, unless he set out to detect the disparities, would be disposed to overlook them, and regard their aesthetic appeal as the same.'" (quoting *Puudu v. Buonamici Statuary, Inc.*, 450 F.2d 401, 402 (2d Cir. 1971))).

66. *Sieger Suarez*, 998 F. Supp. 2d at 1352.

67. *Id.*

68. *See Leigh v. Warner Bros., Inc.*, 212 F.3d 1210, 1215 (11th Cir. 2000) (describing the difficulty in evaluating qualities such as mood).

in *Sieger Suarez* would likely pass the average lay observer test considering the similarities the *Sieger Suarez* court noted.

Instead of following the *Oravec* average lay observer test, the *Sieger Suarez* court created a new four-factor test for substantial similarity that raises the standard of scrutiny.<sup>69</sup> In applying this test, the *Sieger Suarez* court did not even address the third and fourth factors that it created to determine substantial similarity—the manner in which an individual relates to a space and the location of the structure.<sup>70</sup> Therefore, in enacting its own test, the *Sieger Suarez* court established an extremely high standard of evaluation under which dissimilarity between only two of the four factors can be dispositive, thus preventing copyright protection except in limited circumstances.

Second, the *Sieger Suarez* court failed to identify the building shapes and exterior façade designs as protected expressions in analyzing substantial similarity, contrary to the Eleventh Circuit’s interpretation of protected expressions in *Intervest*.<sup>71</sup> In *Intervest*, the Eleventh Circuit applied the substantial similarity test to a limited category of protectable design elements.<sup>72</sup> As the *Intervest* court noted, the legislative history of the Copyright Act illustrates that “individual standard features” such as “common windows, doors, and other staple building components,” were not intended as protectable design elements.<sup>73</sup>

However, the phrase “the arrangement and composition of spaces and elements in the design” indicates that Congress viewed architectural creativity as frequently taking “the form of a selection, coordination, or arrangement of unprotectable elements into an original, protectable whole.”<sup>74</sup> The individual features alone may not be subject to protection as mere ideas, but together the individual features create a combination or compilation arrangement of expression that meets the level protected by a copyright.<sup>75</sup> Thus, the distinction is not easily defined and creates difficulty in distinguishing between what is protected at an expression level and what is not protected at an individual standard feature level.<sup>76</sup>

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69. *Sieger Suarez*, 998 F. Supp. 2d at 1347–49.

70. *Id.* at 1351–54 (omitting any reference whatsoever to the third and fourth factors in reaching a holding of no substantial similarity).

71. *See Intervest Constr., Inc. v. Canterbury Estate Homes, Inc.*, 554 F.3d 914 (11th Cir. 2008).

72. *Id.* at 919, 921.

73. *Id.* at 919 (citing H.R. REP. NO. 101-735 (1990), reprinted in 1990 U.S.C.C.A.N. 6935, 6949).

74. *Id.*

75. *Id.* at 919–21; *see also Corwin v. Walt Disney Co.*, 475 F.3d 1239, 1251 (11th Cir. 2007) (holding that no substantial similarity existed between a painting and an actual theme park development because only similar individual standard features were present and such design elements are mere ideas that are not protected by copyright, although the arrangement of such ideas to create a unique combination may be protectable).

76. *Intervest*, 554 F.3d at 920; *see also Oravec v. Sunny Isles Luxury Ventures, L.C.*, 527 F.3d 1218, 1224 (11th Cir. 2008) (“This distinction—known as the idea/expression dichotomy—can be difficult to apply, as there is no bright line separating the ideas conveyed by a work from the specific expression of those ideas.”).

In *Intervest*, the Eleventh Circuit held that no copyright infringement occurred because the only similar elements between two floor plans for personal family homes were standard individual features, not protectable architectural design aspects.<sup>77</sup> In particular, the *Intervest* court focused on the nature of the buildings as single-family homes and standard individual design features such as common kitchen fixtures, a two-car garage, and typical living room and dining room units.<sup>78</sup>

In contrast, the *Sieger Suarez* court erred in conducting a more in-depth analysis of the compilation expressions created by the wave effect and the overall flower shape of the buildings' structural designs.<sup>79</sup> The court went especially far in trying to establish a clear difference in the outward appearance and visual impression of the buildings by contrasting the defendants' "oscillating wave" effect with the plaintiff's "smooth, static wave."<sup>80</sup> Unlike the unprotected individual elements, such as kitchen fixtures, discussed in *Intervest*, the elements in question in *Sieger Suarez* were the overall flower shape and rounded curve design of the entire building exterior, which more closely fit the compilation or arrangement definition of a protectable expression.

The *Sieger Suarez* court found that design details such as the number of condominium units per floor, the height of the building, and the height of the ceilings were not protectable expressions.<sup>81</sup> While these elements are likely individual standard features, the arrangement of the exterior façade design and overall building shape should have been considered protectable expressions because they are unique compilations of individual design features—such as balcony units and windows—that together create the wave and flower impression for a viewer.<sup>82</sup> Thus, the façade and building shape are at a higher level of compilation expression and are not mere individual standard features like the dimensions of a two-car garage or dining room in *Intervest*.<sup>83</sup> The *Sieger Suarez* court even acknowledged that the defendants may have used the plaintiff's work to bypass the need to create their own totally independent work.<sup>84</sup> Therefore, the *Sieger Suarez* court erred in finding no substantial similarity between designs that actually shared protected expressions of overall design compilation rather than unprotected common idea elements unrecognized by copyright law.

The decision in *Sieger Suarez* raises an already high standard of review by introducing a four-factor test. The Eleventh Circuit, in *Oravec* and *Intervest*, had already raised the standard of scrutiny for architectural copyright protection by

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77. *Intervest*, 554 F.3d at 921.

78. *Id.* at 916–21.

79. *Sieger Suarez Architectural P'ship, Inc. v. Arquitectonica Int'l Corp.*, 998 F. Supp. 2d 1340, 1351–54 (S.D. Fla. 2014).

80. *See id.* at 1352–53.

81. *Id.* at 1351.

82. *See id.* at 1352.

83. *See Intervest*, 554 F.3d at 918–21.

84. *Sieger Suarez*, 998 F. Supp. 2d at 1351–52.

emphasizing that such cases are appropriate for a judge to decide on a motion for summary judgment rather than allowing a jury to evaluate substantial similarity at trial.<sup>85</sup> The *Sieger Suarez* court's four-factor test and its high standard for determining what constitutes a protected expression goes too far and may act as a disincentive for architects to create original designs.<sup>86</sup>

The *Sieger Suarez* court's technical analysis for substantial similarity, articulated for the first time in the newly created four-factor test, creates an unfairly high standard for finding copyright infringement that is inconsistent with Eleventh Circuit precedent.<sup>87</sup> In *Oravec*, the court emphasized that the substantial similarity test is applied at the level of an average lay observer.<sup>88</sup> The *Sieger Suarez* court's specific factors require a more nuanced level of analysis and create additional work for trial judges who are already overburdened with increasingly high caseloads.<sup>89</sup> Judges are legal professionals and are not trained to perform this level of detailed design analysis. The decision in *Sieger Suarez* will lead to arbitrary decisionmaking and potential error, as well as the further clogging of already overburdened judicial dockets.

Moreover, a continued theme throughout Eleventh Circuit precedent is that the distinction between an idea and an expression is extremely difficult to identify and quantify. There is no clear, bright line separating the ideas that compose a work from the overall expression that is conveyed by those ideas.<sup>90</sup> A higher standard for substantial similarity, with specific factors, will result in judges conducting in-depth design analysis like that in *Sieger Suarez*.<sup>91</sup> The judiciary should uphold valid copyrights and protect unique expressions of architectural design when the average layperson, who is the actual audience viewing and judging such a design in the real world, can articulate a substantial similarity between two architectural works.<sup>92</sup> Therefore, in addition to its legal errors, the holding in *Sieger Suarez* places an inappropriate burden on the judiciary to conduct an in-depth design analysis when determining copyright infringement of an architectural work.

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85. See Stephen Milbrath, *The 11th Circuit's New Copyright Standard for Architectural Works*, FLA. B.J., Nov. 2009, at 49, 50–51.

86. See generally Shipley, *supra* note 7, at 7 (describing the effect of the 1990 Copyright Act's inclusion of architectural works as unclear).

87. See *Miller's Ale House, Inc. v. Boynton Carolina Ale House, LLC*, 702 F.3d 1312 (11th Cir. 2012) (applying the average lay observer test for substantial similarity to restaurant floor plans); *Intervest Constr., Inc. v. Canterbury Estate Homes, Inc.*, 554 F.3d 914 (11th Cir. 2008); *Oravec v. Sunny Isles Luxury Ventures, L.C.*, 527 F.3d 1218 (11th Cir. 2008).

88. *Oravec*, 527 F.3d at 1224.

89. See Keith Matheny, *Court, Jail Overload is Putting True Justice in Doubt*, USA TODAY (Dec. 3, 2010), [http://usatoday30.usatoday.com/news/nation/2010-12-03-courtcuts03\\_ST\\_N.htm](http://usatoday30.usatoday.com/news/nation/2010-12-03-courtcuts03_ST_N.htm).

90. See *Oravec*, 527 F.3d at 1224; *Intervest*, 554 F.3d at 920; *Corwin v. Walt Disney Co.*, 475 F.3d 1239, 1251 (11th Cir. 2007).

91. See *Sieger Suarez Architectural P'ship, Inc. v. Arquitectonica Int'l Corp.*, 998 F. Supp. 2d 1340, 1351–54 (S.D. Fla. 2014).

92. See *Oravec*, 527 F.3d at 1224.

The *Sieger Suarez* court erred by applying a stricter, four-factor test to determine that substantial similarity did not exist between the plaintiff's designs and the defendants' condominium building. The two buildings meet the *Oravec* "average lay observer" substantial similarity test, and the unique flower shape of the structures and the rippling wave exterior façades constitute protectable compilation expressions under *Intervest*. The result of *Sieger Suarez*'s new test and its narrow interpretation of expression is an impossibly high burden for sustaining a valid copyright infringement claim that fails to uphold the Copyright Act's expansive definition of architectural works intended to receive protection.<sup>93</sup>

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93. See Shipley, *supra* note 7, at 7.