

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**



Provided by:
Overhauser Law Offices LLC
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DESIGN BASICS, LLC,

Plaintiff,

vs.

MILLER BROTHERS BUILDERS INC,

Defendant.

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Case No. 3:18-cv-00063

JURY DEMANDED

Complaint

Plaintiff, Design Basics, LLC files this Complaint against Defendant, Miller Brothers Builders Inc (“Miller Brothers” or “Defendant”), and for its causes of action alleges the following:

Parties

1. Design Basics, LLC, is a Nebraska Limited Liability Company with its principal place of business in Omaha, Nebraska. Under Articles of Merger executed on July 1, 2009, Design Basics, LLC, is the successor by merger to Design Basics, Inc., and as such is the owner of all assets (including copyrights, trade and service names, trade and service marks, and all causes of action) that Design Basics, Inc., owned as of that date. Design Basics, LLC, and its predecessor (Design Basics, Inc.) will hereinafter be referred to as “Design Basics.”

2. Design Basics is engaged in the business of creating, marketing, publishing, and licensing the use of “architectural works” (as that term is defined in the Copyright Act and the Architectural Works Copyright Protection Act of 1990, both codified at 17 U.S.C. § 101 et seq.) and technical drawings depicting such architectural works.

3. Miller Brothers is a corporation organized under the laws of the State of Indiana with its principal place of business in Elkhart County, Indiana. Miller Brothers may be served through its registered agent Brad Plett, 1819 East Monroe Street, Goshen, Indiana 46528. Miller Brothers' principal corporate activity is home building.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction of this case under 28 U.S.C. §§ 1331 and 1338(a) because this action arises under federal copyright law, 17 U.S.C. § 101 *et seq.*

5. Venue is proper in this District under 28 U.S.C. § 1400(a) because Defendant may be found in this District. Furthermore, or in the alternative, venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims at issue occurred in this District; and Defendant resides and does business in this District.

Factual Background

6. Design Basics is a building design firm that creates, markets, and licenses the use of "architectural works" (as that term is defined in the Copyright Act and the Architectural Works Copyright Protection Act of 1990 (the "AWCPA")) and technical drawings depicting architectural works. Design Basics owns copyrights protecting the architectural works and technical drawings it has created.

7. Design Basics is the author and the owner of all copyrights in the following works, each of which has been registered with the United States Copyright Office:

Title	Registration Certificate No.
Plan No. 2355 – Waverly	VA 1-921-771 & 485-069

8. The foregoing works described in paragraph 7 above will be referred to as the "Copyrighted Works."

9. The Copyrighted Works have been published in various Design Basics' plan catalogs and publications. The Copyrighted Works have also been published by Design Basics on the internet at www.designbasics.com. Design Basics' home designs, including the Copyrighted Works, have been marketed for years on a nationwide basis, including in this District, by means of plan catalogs and other publications and also on the internet, including many websites.

10. The Copyrighted Works constitute original material that is copyrightable under federal law.

11. Design Basics is currently, and at all relevant times has been, the sole owner of all right, title and interest in and to the works described in paragraph 7 above.

12. Defendant has been engaged, at least in part, in the business of creating, publishing, distributing, and advertising residential home designs through traditional print media, on the internet on sites such as www.millerbrothersbuilders.com, and in marketing, advertising, constructing, and selling homes built according to such designs.

13. Defendant has regularly and systematically infringed Design Basics' copyrights and those of other designers and architects in original architectural works, and has induced others, including individual homeowners, contractors, developers, and other entities and individuals engaged in the business of home building to infringe Design Basics' copyrights in its original architectural works, to the profit of Defendant and those entities and individuals, and to Design Basics' detriment.

14. Defendant has been actually aware of Design Basics and the works that Design Basics markets. At all times material to this case, Defendant has had a reasonable opportunity to have viewed the Copyrighted Works.

15. Defendant has infringed the copyrights in other original architectural works of Design Basics, the scope and breadth of which infringing activities will be ascertained during the course of further discovery.

16. Defendant has published, distributed, marketed, and advertised certain architectural designs for single family residential homes, each consisting of a floor plan and exterior elevations, that Defendant have identified and marketed under the following model names, and others to be identified through discovery: Oakview (also known as Oakview Estate), Ridgewood Manor, Oliver, and Fieldstone.

17. Defendant has violated and continue to violate Design Basics' exclusive rights in the Copyrighted Works (including the right to reproduce, the right to prepare derivative works and the right to sell), by copying, publishing, distributing, advertising, marketing, selling, and/or constructing in the marketplace, plans, drawings, and houses which were copied or otherwise derived from the Copyrighted Works, examples of which include: Defendant's "Oakview," "Ridgewood Manor," "Oliver," and "Fieldstone" (and any predecessors, copies, or derivatives of those model under the same names or different names) infringe Design Basics' Plan No. 2355 - Waverly (and any predecessor or derivative thereof).

18. Defendant has had access to, or a reasonable opportunity to have viewed, Design Basics' home designs. Defendant were sent and received copies of Design Basics' plan catalogs and other publications, which contained the Copyrighted Works.

19. The acts of Defendant, described in paragraphs 12 through 18, were done without permission or license from Design Basics, in violation of Design Basics' exclusive copyrights in said works.

Cause of Action for Non-Willful Copyright Infringement

Count 1

20. Design Basics re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 19 above.

21. Defendant, without knowledge or intent, infringed Design Basics' copyrights in one or more of the works identified and described above, by scanning, copying, and/or reproducing unauthorized copies thereof, in violation of 17 U.S.C. §106(1), and on information and belief, has done so with others of Design Basics' works which are as yet undiscovered.

Count 2

22. Design Basics re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 19 above.

23. Defendant, without knowledge or intent, infringed Design Basics' copyrights in one or more of the works identified and described above, by publicly displaying, on web site(s) and elsewhere, for purposes of advertising and marketing, unauthorized copies and/or or derivatives thereof, in violation of 17 U.S.C. §106(5), and on information and belief, has done so with others of Design Basics' works which are as yet undiscovered.

Count 3

24. Design Basics re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 19 above.

25. Defendant, without knowledge or intent, infringed Design Basics' copyrights in one or more of the works identified and described above, by creating derivatives therefrom, in violation of 17 U.S.C. §106(2), and on information and belief, has done so with others of Design Basics' works which are as yet undiscovered.

Count 4

26. Design Basics re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 19 above.

27. Defendant, without knowledge or intent, infringed Design Basics' copyrights in one or more of the works identified and described above, by inducing others to build one or more houses based upon copies or derivatives of said works, in violation of 17 U.S.C. §106(1), and on information and belief, has done so with others of Design Basics' works which are as yet undiscovered.

Alternative Causes of Action for Willful Copyright Infringement

Count 5

28. Design Basics re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 19 above.

29. Alternatively, Defendant willfully infringed Design Basics' copyrights in one or more of the works identified and described above, by scanning, copying, and/or reproducing unauthorized copies thereof, in violation of 17 U.S.C. §106(1), and on information and belief, has done so with others of Design Basics' works which are as yet undiscovered.

Count 6

30. Design Basics re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 19 above.

31. Alternatively, Defendant willfully infringed Design Basics' copyrights in one or more of the works identified and described above, by publicly displaying, on its web site(s) and elsewhere, for purposes of advertising and marketing, unauthorized copies or derivatives thereof,

in violation of 17 U.S.C. §106(5), and on information and belief, has done so with others of Design Basics' works which are as yet undiscovered.

Count 7

32. Design Basics re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 19 above.

33. Alternatively, Defendant willfully infringed Design Basics' copyrights in one or more of the works identified and described above, by creating derivatives there from in violation of 17 U.S.C. §106(2), and on information and belief, has done so with others of Design Basics' works which are as yet undiscovered.

Count 8

34. Design Basics re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 19 above.

35. Alternatively, Defendant willfully infringed Design Basics' copyrights in one or more of the works identified and described above, by inducing others to build one or more houses based upon copies or derivatives of said works, in violation of 17 U.S.C. §106(1), and on information and belief, has done so with others of Design Basics' works which are as yet undiscovered.

Violations of DMCA § 1202

Count 9

36. Design Basics re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 19 above.

37. Additionally and alternatively, Defendant violated § 1202 *et seq.* of the Digital Millennium Copyright Act ("DMCA"), 17 U.S.C. § 1202.

38. In creating the floor plans and elevations identified above, Defendant intentionally removed and/or omitted Design Basics' copyright management information, or had them removed and/or omitted from copies of Design Basics' works.

39. Defendant thereafter distributed copies and/or derivatives of such works, knowing that such copyright management information had been removed and/or omitted without authorization.

40. At the time Defendant removed and/or omitted Design Basics' copyright management information from copies of the works, and at the time Defendant distributed copies of the works from which the copyright management information had been removed and/or omitted, Defendant knew or had reasonable grounds to know that such behavior would induce, enable, facilitate, and/or conceal the infringement of Design Basics' copyrighted works.

41. Design Basics is entitled to and seek to recover from Defendant statutory damages not exceeding \$25,000 for each act committed in violation of Design Basics' rights under 17 U.S.C. § 1202, *et seq.*

42. Pursuant to 17 U.S.C. § 1203(b)(5), Design Basics is entitled to and seek to recover Design Basics' reasonable attorneys' fees.

Jury Demand

43. Pursuant to Federal Rule of Civil Procedure 38, Design Basics respectfully demands a trial by jury of all issues so triable.

WHEREFORE, Design Basics, LLC demands that judgment be entered in its favor and against Defendant as follows:

- a. For an accounting by Defendant of their activities in connection with their infringements of Design Basics' copyrights in and to the above-described works, as well as of the gross profits and revenue attributable to their infringement(s);
- b. For Design Basics' actual damages, in an amount to be determined at trial;
- c. For Defendant's direct and indirect profits attributable to their infringements, including but not limited to those direct and indirect profits derived from the construction, advertising, promotion, marketing, and sale of infringing structures;
- d. In the alternative and at Design Basics' option, post-verdict, Design Basics seeks an award of statutory damages in lieu of actual damages for the infringement of any one or more of Design Basics' works, described above, in an amount to be determined at trial;
- e. Design Basics' actual attorney fees, court costs, taxable costs, and the cost associated with the retention, preparation and testimony of expert witnesses;
- f. For both temporary and permanent injunctions barring Defendant, its agents, employees, and/or servants, from infringing Design Basics' copyrights in any manner whatsoever, including the advertising, marketing, construction, and sale of infringing structures, and further barring Defendants from publishing through any visual media, and from selling, marketing, or otherwise distributing copies of Design Basics' plans and/or derivatives thereof;
- g. An order requiring Defendant to produce, for impounding during the pendency of this action and for destruction thereafter, all house plans and elevations which infringe Design Basics' copyrights, including all photographs, blueprints, film negatives, magnetic tapes, digitally scanned and/or stored images, and all

machines and devices by which such infringing copies may be reproduced, viewed or disseminated, which are in the possession of, or under the direct or indirect control of Defendant;

- h. An award of statutory damages for each and every violation by Defendant of the DMCA, 17 U.S.C. § 1202, *et seq.*;
- i. For such other relief as the Court determines to be just and equitable.

Respectfully submitted,

/s/ Sean J. Quinn
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