

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

NELSON DESIGN GROUP, LLC

PLAINTIFF

V.

CASE NO. 3:07CV00177 BSM

RICHARD PUCKETT; BARRY PHILLIPS;
STATE DEVELOPMENT, LLC; BRENT PHILLIPS,
PHILLIPS INVESTMENTS & CONSTRUCTION, INC.;
AND CENTRAL STATES DEVELOPMENT, INC.

DEFENDANTS

ORDER

Pending before the court is the separate defendant Phillips Investments & Construction, Inc.'s (Phillips Investments) uncontested motion for summary judgment [Doc. # 39].

I. BACKGROUND

This is a copyright infringement case. Plaintiff Nelson Design Group alleges that Phillips Investments received, used, and sold designs owned and copyrighted by the plaintiff in the construction and building of homes. On October 23, 2008, Phillips Investments filed the present motion for summary judgment. Plaintiff's response was due November 6, 2008. Plaintiff has yet to file a response.

II. STANDARD

Summary judgment is appropriate when the evidence viewed in the light most favorable to the non-moving party, demonstrates there are no outstanding issues of material fact and the moving party is entitled to judgment as a matter of law. *MSK EyEs Ltd. v. Wells*

Fargo Bank, Nat. Ass'n, 546 F.3d 533, *540 (8th Cir. 2008); *Kosmicki v. Burlington Northern & Santa Fe R. Co.*, 545 F.3d 649, *650 (8th Cir. 2008). Although the burden of demonstrating the absence of any genuine issue of material fact rests on the moving party, the non-moving party may not rest upon mere denials or allegation in its own pleadings, but must instead set forth specific facts sufficient to raise a genuine issue of material fact for trial. See *Wingate v. Gage County Sch. Dist.*, No. 34, 528 F.3d 1074, *1078-79 (8th Cir. 2008). If the non-moving party fails to respond to the motion for summary judgment, summary judgment should, if appropriate, be entered against that party. Fed. R. Civ. P. 56(e)(2).

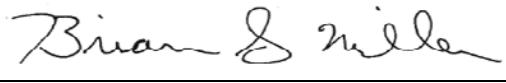
III. DISCUSSION

The uncontested facts reveal that Phillips Investments is a commercial development corporation that engages in the development of commercial properties and subdivisions. (Deposition of Barry Phillips p. 6). It does not engage in the construction of homes or the use of architectural designs of residential homes. (Affidavit of Barry Phillips ¶ 3). Based on this evidence, the court finds that there are no genuine issues of material fact and that summary judgment is appropriate.

IV. CONCLUSIONS

Phillips Investments' uncontested motion for summary judgment [Doc. # 39] is granted and the plaintiff's claims against Phillips Investments are dismissed with prejudice.

IT IS SO ORDERED this 12th day of December, 2008.



UNITED STATES DISTRICT JUDGE