

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martínez**

Civil Action No. 09-cv-01437-WJM-GJR

HOME DESIGN SERVICES, INC.,

Plaintiff,

v.

SCHROEDER CONSTRUCTION, and
JAMES E. SCHROEDER,

Defendants.

ORDER ON MOTION FOR PARTIAL SUMMARY JUDGMENT

The matter is before the Court on Defendants Schroeder Construction and James E. Schroeder's Motion for Partial Summary Judgment on Plaintiff's claims for attorney's fees and statutory damages (ECF No. 101) (the "Motion"). The Court has federal question jurisdiction over this matter pursuant to 28 U.S.C. § 1338(a).

The Court has reviewed the briefing on the Motion, and considered the arguments, authorities, and evidence presented by the parties. The issues raised by the Motion are fully briefed, obviating the necessity for an evidentiary hearing or oral argument. Thus, the Motion stands submitted on the briefs. *Cf.* Fed. R. Civ. P. 56(c) and (d); *Gear v. Boulder Community Hospital*, 844 F.2d 764, 766 (10th Cir.1988) (hearing requirement for Rule 56(a) motion satisfied by court's review of written filings and evidence of record).

Based on the Court's review of the record it is apparent that there exist genuine issues of material fact with regards to Plaintiff's claims for attorney's fees and statutory

damages. It is black-letter law that the Court must resolve any factual ambiguities against the moving party, thus favoring the right to trial. *Quaker State Mini-Lube, Inc. v. Fireman's Fund Ins. Co.*, 52 F.3d 1522, 1527 (10th Cir. 1995). Given these disputed issues of fact, summary disposition of these claims is not appropriate.

IT IS THEREFORE ORDERED that:

- 1) Defendants' Motion for Partial Summary Judgment (ECF No. 101) is hereby DENIED.

Dated this 22nd day of November, 2011.

BY THE COURT:



United States District Judge