

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Christine M. Arguello**

Civil Action No. 12-cv-01907-CMA-BNB

XEDAR CORPORATION,

Plaintiff,

v.

DON RAKESTRAW,

Defendant.

ORDER DENYING THE PARTIES' CROSS-MOTIONS FOR SUMMARY JUDGMENT

This matter is before the Court on the Motion for Summary Judgment filed by Defendant Rakestraw (Doc. # 38) and the Motion for Summary Judgment filed by Plaintiff XeDAR Corporation ("XeDAR") (Doc. # 39.) XeDAR filed a complaint seeking declaratory and injunctive relief. (Doc. ## 1-3.) Rakestraw asserted five counterclaims: (1) common law fraud, (2) common law negligent misrepresentation, (3) violations of section 10(b) and Rule 10b-5 of the Securities Exchange Act, (4) violations of the Colorado Securities Act, and (5) breach of fiduciary duty.

Rakestraw seeks summary judgment granting his five counterclaims and denying XeDAR's breach of contract claim. Rakestraw filed this motion on April 15, 2013 (Doc. # 38), XeDAR responded on May 9, 2013 (Doc. # 42), and Rakestraw replied on May 28, 2013 (Doc. # 45). XeDAR likewise filed a motion for summary judgment on Rakestraw's claims on April 15, 2013 (Doc. # 39), to which Rakestraw responded on May 6, 2013 (Doc. # 41), and XeDAR replied on May 23, 2013 (Doc. # 44). Jurisdiction

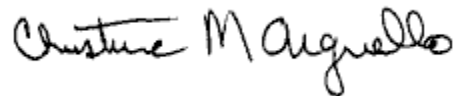
is proper under 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1367(a) (supplemental jurisdiction over state-law claims).

Upon review of the parties' briefing and the more than 1,000 pages of evidence referenced therein, the Court determines that genuine issues of material fact preclude the Court from granting either summary judgment motion.

Accordingly the Court ORDERS that Defendant Rakestraw's Motion for Summary Judgment (Doc. # 38) and Plaintiff XeDAR's Motion for Summary Judgment (Doc. # 39) are DENIED.

DATED: August 16, 2013

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge