

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

DESIGN BASICS, LLC,	)	
W.L. MARTIN HOME DESIGNS LLC,	)	
PLAN PROS, INC., and	)	
PRIME DESIGNS INC.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	2:16CV323-PPS
	)	
EENIGENBURG BUILDERS, INC.,	)	
	)	
Defendant.	)	

**OPINION AND ORDER**

After five protracted and difficult years of litigation, the Design Basics plaintiffs sought leave to voluntarily dismiss this case without prejudice. [DE 163.] After considering the history of the case, defendant Eenigenburg Builders' opposition, and the applicable law, I dismissed the action with prejudice. [DE 165.] The matter is now before me on Eenigenburg's motion for costs, including attorneys' fees, a step that I invited in my opinion on the dismissal. [DE 166.] Despite five extensions of time, the Design Basics plaintiffs have not filed any response to the motion. The most recent extension to September 27, 2021 was granted *sua sponte* and warned that if no response was timely filed, the motion would be taken up as unopposed. [DE 178.]

Eenigenburg's motion is well supported in law and fact, persuasively showing that it is the prevailing party for purposes of an award of costs and fees under the

Copyright Act. [DE 166 at .] Applying the *Fogerty*<sup>1</sup> factors, Eenigenburg demonstrates conclusively that attorneys' fees are appropriately awarded. [*Id.* at 3-4.] Design Basics' determination to maintain the suit after the *Lexington Homes* decision<sup>2</sup> meets the *Fogerty* factors of frivolousness and objective unreasonableness. [*Id.* at 4-5; 8-9.] Design Basics' frequently-noted "copyright troll" motive of mere profit from litigation meets the second *Fogerty* factor, improper motive. [*Id.* at 6-8.] Imposing the substantial fee award that is appropriate in this case advances "considerations of compensation and deterrence," as contemplated by the fourth *Fogerty* factor. [*Id.* at 9.]

Eenigenburg seeks a total of \$416,492.88 in fees and costs, consisting of costs of \$1,507.13, fees of \$189,778.50 for counsel and paralegals at Garan Lucow Miller, and fees of \$225,207.25 for counsel and paralegals at Overhauser Law Offices. [*Id.* at 9; DE 166-1, 166-2, 166-3.] The fees are supported by declarations of counsel, and are reasonable both in the hourly rates requested [DE 166-2 at 1-2; DE 166-3 at 1] and in the time expended over the course of five years of disputatious litigation. For all these reasons, and in view of the lack of response over more than two months' time, the unopposed motion is well-taken and will be granted in full.

**ACCORDINGLY:**

Defendant Eenigenburg Builders, Inc.'s Motion for Costs, Including Attorneys' Fees [DE 166] is GRANTED, and Eenigenburg is awarded a total of \$416,492.88 in fees

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<sup>1</sup> *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 535 (1994).

<sup>2</sup> *Design Basics, LLC v. Lexington Homes, Inc.*, 858 F.3d 1093, 1105 (7<sup>th</sup> Cir. 2017).

and costs, consisting of costs of \$1,507.13, fees of \$189,778.50 for counsel and paralegals at Garan Lucow Miller, and fees of \$225,207.25 for counsel and paralegals at Overhauser Law Offices.

The Clerk shall enter a judgment of dismissal with prejudice in which the award of fees and costs to defendant Eenigenburg Builders shall be reflected.

**SO ORDERED.**

ENTERED: September 28, 2021.

/s/ Philip P. Simon  
UNITED STATES DISTRICT JUDGE