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

DESIGN BASICS, LLC,

Plaintiff,

vs.

BIG C LUMBER CO INC.,

Defendant.

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Case No.: 3:16-cv-00053

**JURY DEMANDED**

**ORIGINAL COMPLAINT**

Plaintiff, Design Basics, LLC, files this Complaint against Big C Lumber Co Inc. (“Big C”), 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. Defendant Big C, is a corporation organized under the laws of the State of Indiana with its principal place of business in St. Joseph County, Indiana. Big C may be served through its registered agent, Thomas J. Hall, 212 E. LaSalle Ave., Suite 100, South Bend, Indiana 46617. Big C's principal corporate activity is the operation of a lumber yard/building center.

### **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 the 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 firms which 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 copyrights in hundreds of works which have been registered with the United States Copyright Office, including Plan No. 2927 – Morgan, and Plan No. 2235 – Albany (the "Copyrighted Works").

8. Design Basics registered its copyright in the work entitled “Morgan” with the United States Copyright Office on September 9, 1993, and was provided Registration Numbers VA 668-053 and VA 668-054 therefore.

9. Design Basics registered its copyright in the work entitled “Albany” with the United States Copyright Office on January 9, 1995, and was provided Registration Numbers VA 694-094, VA 756-041, and VA 1-929-121 therefore.

10. The Copyrighted Works have been published in various Design Basics plan books and publications. A chart that identifies some of those Design Basics plan books that published the Copyrighted Works is attached as Exhibit A. The Copyrighted Works have also been published by Design Basics on the internet at [www.designbasics.com](http://www.designbasics.com).

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

12. 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 paragraphs 7-9 above.

13. On July 16, 2013, Design Basics first became aware that Big C had violated its copyrights in one or more distinct ways, when Design Basics discovered that Big C had illegally redrawn Design Basics home plan number 2235 - Albany for a local homebuilder, Bayman and Rusk. Counsel for Big C has also informed undersigned counsel that Big C has uncovered numerous other incidents of possible infringement of other Design Basics’ plans.

14. Design Basics discovered that Big C violated Design Basics’ copyrights in Plan No. 2927 (Morgan), on or about October 8, 2014, when Big C agreed to draw a new home plan for a potential customer based on Design Basics’ Plan No. 2927 (Morgan) with minimal, if any, changes to the Design Basics’ home plan.

15. Big C has infringed the Copyrighted Works and other Design Basics' copyrighted works on one or more occasions by, *inter alia*, creating one or more derivative works from said plans for one or more of its customers.

16. The illicit acts of Big C, described in paragraphs 13-15 were done without permission or license from Design Basics, in violation of Design Basics' exclusive copyrights in said works.

17. Big C has regularly and systematically infringed Design Basics' copyrights and those of other designers and architects in original architectural works, and have induced others, including individual homeowners, contractors 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 Big C, contractors and other home builders, and to Design Basics' detriment.

18. Upon information and belief, Big C 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 discovery.

19. 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 books and other publications and also by means of the internet, including many websites.

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

21. Upon information and belief, Big C has violated and continues 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.

**Cause of Action for Non-Willful Copyright Infringement**

**Count 1**

22. Design Basics re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 21 above.

23. Big C, without knowledge or intent, infringed Design Basics' copyrights in one or more of its 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**

24. Design Basics re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 21 above.

25. Big C, without knowledge or intent, infringed Design Basics' copyrights in one or more of its works identified and described above, by publicly displaying, on its 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**

26. Design Basics re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 21 above.

27. Big C, without knowledge or intent, infringed Design Basics' copyrights in one or more of its 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**

28. Design Basics re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 21 above.

29. Big C, without knowledge or intent, infringed Design Basics' copyrights in one or more of its 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**

30. Design Basics re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 21 above.

31. Alternatively, Big C willfully infringed Design Basics' copyrights in one or more of its 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**

32. Design Basics re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 21 above.

33. Alternatively, Big C willfully infringed Design Basics' copyrights in one or more of its 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**

34. Design Basics re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 21 above.

35. Alternatively, Big C willfully infringed Design Basics' copyrights in one or more of its 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**

36. Design Basics re-alleges and incorporates, as if fully set forth herein, paragraphs 1 through 21 above.

37. Alternatively, Big C willfully infringed Design Basics' copyrights in one or more of its 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.

**Jury Demand**

38. 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 Big C Lumber Co Inc., as follows:

- a. For an accounting by Big C of its activities in connection with its infringements of Design Basics' copyrights in and to the above-described works, as well as of the gross profits and revenue attributable to its infringement(s);
- b. For Design Basics' actual damages, in an amount to be determined at trial;
- c. For Big C's direct and indirect profits attributable to its infringements, including but not limited to those direct and indirect profits derived from the construction, advertising, promotion, marketing, and sale of infringing structures, and all direct and indirect profits derived from the sale of lumber, and building materials attributable to the infringing structures, and other installed sales, in an amount to be determined at trial;
- 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 its 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 Big C, 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 Big C 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 Big C 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 Big C; and
- h. For such other relief as the Court determines to be just and equitable.

Respectfully submitted,

/s/ Sean J. Quinn

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