

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CARPENTERS PENSION TRUST FUND FOR)	Case No. 10-0812 SC
NORTHERN CALIFORNIA, et al.)	
)	ORDER GRANTING MOTION FOR
Plaintiffs,)	<u>SUMMARY JUDGMENT</u>
)	
v.)	
)	
M.A. LINDQUIST CO., INC., a)	
California Corporation,)	
)	
Defendant.)	
)	
)	

I. INTRODUCTION

Before the Court is a Motion for Summary Judgment or in the Alternative for Default Judgment, brought by Plaintiffs Board of Trustees of the Carpenters Pension Trust Fund for Northern California, et al. ("Pension Fund" or "Plaintiffs"), against Defendant M.A. Lindquist Co., Inc. ("M.A. Lindquist Co." or "Defendant"). ECF No. 29 ("Mot."). Defendant did not file an Opposition to the Motion. Having considered the papers submitted, the Court concludes that entry of Summary Judgment against Defendant is appropriate, and GRANTS Summary Judgment in favor of Plaintiffs.

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1 **II. BACKGROUND**

2 **A. Factual Background**

3 Defendant admits that it was a participating employer in the
 4 Pension Fund. McDonough Decl., Ex. A ("Def.'s Admis.").¹ As such,
 5 Defendant was obligated to make contributions to fund benefits for
 6 employees under the Pension Fund pursuant to a collective
 7 bargaining agreement with the Carpenters 46 Northern California
 8 Counties Conference Board of the United Brotherhood of Carpenters
 9 and Joiners of America, the Agreement and Declaration of Trust of
 10 the Pension Fund, and Section 515 of the Employee Retirement Income
 11 Security Act ("ERISA"), 29 U.S.C. § 1145. Price Decl. ¶ 5.²

12 On or about April 1, 2006, Defendant withdrew from the Pension
 13 Fund. Price Decl. ¶ 6. Upon Defendant's withdrawal, the Board of
 14 Trustees of the Pension Fund calculated Defendant's withdrawal
 15 liability to be \$954,508. Id. ¶ 7. The Pension Fund's
 16 administrator, Gene Price, has provided sworn testimony that
 17 \$954,508 is the correct amount of Defendant's withdrawal liability.
 18 Id. ¶¶ 7, 17. On or about August 1, 2006, the Pension Fund sent
 19 Defendant a Notice of Withdrawal Liability informing Defendant it
 20 owed the Pension Fund \$954,508. Price Decl., Ex. A ("Aug. 1, 2006
 21 Notice"). Plaintiffs received no payment and sent Defendant a
 22 follow-up letter on August 10, 2006. Id., Ex. B ("Aug. 10, 2006
 23 Letter"). On October 5, Plaintiffs sent Defendant a letter
 24 informing it that if an installment payment of \$11,816 was not

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 26 ¹ Katherine McDonough ("McDonough"), attorney for Plaintiffs, filed
 a declaration in support of the Motion. ECF No. 29-3.

27 ² Gene Price ("Price"), Administrator of the Carpenters Pension
 28 Trust Fund, filed a declaration in support of the Motion. ECF No.
 29-1.

1 received within sixty days the Pension Fund would require immediate
2 payment of the entire withdrawal liability amount. Id., Ex. C
3 ("Oct. 5, 2006 Letter"). The letter was returned as undeliverable.
4 Id. On November 13, 2006, Plaintiffs' agent hand delivered the
5 August 1, 2006 Notice and the October 5, 2006 Letter to Defendant.
6 Id. ¶ 12. Defendant admits that it received the withdrawal
7 liability demand. Def.'s Admis. ¶ 2. To date, Plaintiffs have not
8 received a withdrawal liability payment from Defendant. Price
9 Decl. ¶ 13.

10 Defendant did not submit a request for review of its
11 withdrawal liability to the Pension Fund or initiate arbitration
12 proceedings regarding the assessment of its withdrawal liability.
13 Price Decl. ¶¶ 14-15; Def.'s Admis. ¶¶ 3-4.

14 **B. Procedural Background**

15 Plaintiffs filed this action February 26, 2010 under ERISA
16 sections 502(g)(2) and 4301. ECF No. 1 ("Compl."). Defendant
17 answered on April 21, 2010. ECF No. 4 ("Answer").

18 On May 21, 2010, Defendant's counsel Roland G. Simpson
19 ("Simpson") filed a Motion to Withdraw as Attorney. ECF No. 7
20 ("Mot. to Withdraw"). On June 16, 2010, this Court granted
21 Simpson's Motion to Withdraw on the condition that Simpson continue
22 to accept service of papers for forwarding purposes until Defendant
23 obtained new counsel. ECF No. 15. On September 30, 2010, Simpson
24 filed a motion to discontinue acceptance of papers for Defendant.
25 ECF No. 21. This Court granted that motion on November 3, 2010.
26 ECF No. 24. To date, Defendant has not retained new counsel
27 despite the fact that Civil Local Rule 3-9 provides that

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1 corporations "may only appear through a member of the bar of this
2 Court."

3 **III. LEGAL STANDARD**

4 **A. Summary Judgment**

5 Entry of summary judgment is proper "if the pleadings, the
6 discovery and disclosure materials on file, and any affidavits show
7 that there is no genuine issue as to any material fact and that the
8 movant is entitled to judgment as a matter of law." Fed. R. Civ.
9 P. 56(c). Summary judgment should be granted if the evidence would
10 require a directed verdict for the moving party. Anderson v.
11 Liberty Lobby, Inc., 477 U.S. 242, 251 (1986). Thus, "Rule 56(c)
12 mandates the entry of summary judgment . . . against a party who
13 fails to make a showing sufficient to establish the existence of an
14 element essential to that party's case, and on which that party
15 will bear the burden of proof at trial." Celotex Corp. v. Catrett,
16 477 U.S. 317, 322 (1986). "The evidence of the non-movant is to be
17 believed, and all justifiable inferences are to be drawn in his
18 favor." Anderson, 477 U.S. at 255.

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20 **IV. Discussion**

21 **A. Statutory Framework**

22 Pension plans are federally regulated pursuant to ERISA, 29
23 U.S.C. § 1001 et seq. The Multiemployer Pension Plan Amendments
24 Act of 1980 ("MPPAA"), 29 U.S.C. §§ 1381-1453, amended ERISA to
25 allow plans to impose proportional liability on withdrawing
26 employers for the unfunded vested benefit obligations of
27 multiemployer plans. Carpenters Pension Trust Fund v. Underground
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1 Constr. Co., Inc., 31 F.3d 776, 778 (9th Cir. 1994). The MPPAA
2 sought to ensure that if a withdrawing employer's past
3 contributions did not fully fund the obligations that had vested at
4 the time of its withdrawal, then the withdrawing employer would
5 have to pay its proportionate share of the deficit. Id.

6 This system is designed to make employers pay their share of
7 the real cost of pensions by paying a share of the difference
8 between the assets already contributed and the vested benefit
9 liability. Woodward Sand Co., Inc. v. W. Conf. Teamsters Pension
10 Trust Fund, 789 F.2d 691, 694 (9th Cir. 1986). When an employer
11 withdraws from a multiemployer pension plan, ERISA requires the
12 withdrawing employer to compensate the pension plan for benefits
13 that have already vested with the employees at the time of the
14 employer's withdrawal. Id. This "withdrawal liability" is
15 assessed against the employer to ensure that employees and their
16 beneficiaries are not deprived of anticipated retirement benefits
17 by the termination of pension plans before sufficient funds have
18 been accumulated in the plans. Id.

19 Withdrawal occurs when an employer permanently ceases to have
20 an obligation to contribute under the plan. 29 U.S.C. § 1383(a).
21 Congress has established the procedure and methods for computing
22 and assessing the amount of liability of a withdrawing employer.
23 Under 29 U.S.C. § 1399, the amount of withdrawal liability is first
24 computed by the pension plan's sponsor and the employer is then
25 notified of the amount and the schedule of payments to be made. The
26 employer is then entitled, within 90 days of such notice, to ask
27 the sponsor to review any specific matter relating to the

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1 determination of the employer's withdrawal liability. 29 U.S.C. §
2 1399(c). "Any dispute" between an employer and the plan sponsor
3 relating to the employer's withdrawal liability "shall be resolved
4 through arbitration." 29 U.S.C. § 1401(a)(1). Arbitration may be
5 initiated "within a 60-day period" after the employer is notified
6 of the sponsor's final determination concerning withdrawal
7 liability (or 120 days after the employer requested the sponsor to
8 review the matter, whichever date is earlier). 29 U.S.C. §
9 1401(a)(1). If arbitration proceedings are not initiated within
10 the time periods prescribed by the statute, "the amounts demanded
11 by the plan sponsor . . . shall be due and owing on the schedule
12 set forth by the plan sponsor." 29 U.S.C. § 1401(b)(1). If the
13 employer fails to make payment when due, and fails to cure the
14 delinquency within 60 days of notice of the delinquency, the plan
15 sponsor is entitled to obtain immediate payment of the entire
16 amount of the employer's outstanding withdrawal liability. 29
17 U.S.C. § 1399(c)(5).

18 Under the above statutory framework, a pension fund need only
19 establish three elements to be entitled to judgment on a collection
20 claim for withdrawal liability: (1) that the defendant is an
21 "employer" under the MPPAA; (2) that the pension fund notified the
22 defendant of its withdrawal liability as required by the MPPAA; and
23 (3) that the defendant failed to timely initiate arbitration. See
24 Bd. Of Trs. Of Trucking Employees of N. Jersey Welfare Fund v.
25 Canny, 900 F. Supp. 583, 592 (N.D.N.Y. 1995).

26 **B. Undisputed Facts**

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1 Here, there is no disputed issue of fact with regard to any of
2 the three elements Plaintiffs must prove to prevail in this action
3 for delinquent withdrawal liability. First, Defendant admits that
4 it was an employer under the MPPAA. Def.'s Admis. ¶ 1. Second,
5 Defendant admits that it received the withdrawal liability notice
6 and demand for payment from Plaintiff. Id. ¶ 2. And third,
7 Defendant admits that it did not initiate arbitration. Id. ¶ 3.
8 Accordingly, there is no disputed issue of material fact as to
9 Defendant's liability, and Plaintiffs are entitled to summary
10 judgment.

11 **C. Remedy**

12 ERISA provides that "[i]n any action under this section to
13 compel an employer to pay withdrawal liability, any failure of the
14 employer to make any withdrawal liability payment within the time
15 prescribed shall be treated in the same manner as a delinquent
16 contribution" 29 U.S.C. § 1451(b). In an action to
17 enforce payment of delinquent contributions, a plaintiff is
18 entitled to recover the unpaid contributions, interest, liquidated
19 damages, and reasonable attorneys' fees and costs. 29 U.S.C. §
20 1132(g)(2). See also Operating Eng'rs Pension Trust Fund v.
21 Clarke's Welding, Inc., 688 F. Supp. 2d 902, 914 (N.D. Cal. 2010).

22 1. Interest

23 ERISA Section 502(g)(2)(B) provides that interest on unpaid
24 contributions shall be determined based on the rate provided under
25 the plan, or, if none, the rate prescribed under section 6621 of
26 the Internal Revenue Code. 29 U.S.C. § 1132(g)(2)(B). Here, the
27 statutory interest rate is 10 percent per year. Price Decl. ¶ 17.

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1 Plaintiff has calculated the total interest owed from August 1,
2 2006, the date Defendant was first notified of its withdrawal
3 liability, through November 30, 2010 to be \$397,755.25 and has
4 explained the basis for this calculation to the Court's
5 satisfaction. Price Decl. ¶ 17.

6 2. Liquidated Damages

7 ERISA section 502(g)(2)(C) authorizes a liquidated damages
8 award pursuant to the terms of the pension plan in an amount not in
9 excess of 20 percent of the total withdrawal liability. 29 U.S.C.
10 § 1132(g)(2)(C)(ii). Here, the pension plan provided that "the
11 amount of damage to the Fund and the Pension Plan resulting from
12 any failure to promptly pay shall be presumed to be the sum of
13 \$20.00 per delinquency or 10% of the amount of the Contribution or
14 Contributions due, whichever is greater." Price Decl. ¶ 16.
15 Accordingly, Plaintiffs seek a liquidated damages amount equal to
16 10 percent of the total withdrawal liability amount of \$954,508.
17 Plaintiffs therefore request \$95,450.80 in liquidated damages.

18 3. Attorneys' Fees and Costs

19 ERISA section 502(g)(2)(D) entitles Plaintiffs to an award of
20 reasonable attorneys' fees and costs. 29 U.S.C. § 1132(g)(2)(D).
21 Plaintiffs have not provided a statement of attorneys' fees and
22 costs but assert that they will move for fees and costs if judgment
23 is awarded in their favor. Mot. at 11.

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7 **V. CONCLUSION**

8 The Court GRANTS the Motion for Summary Judgment filed by
9 Plaintiffs Board of Trustees of the Carpenters Pension Trust Fund
10 for Northern California and against Defendant M.A. Lindquist, Co.,
11 Inc., in the amount of \$954,508.00 in unpaid principal withdrawal
12 liability, \$397,755.25 in interest, and \$95,450.80 in liquidated
13 damages. Plaintiffs' total recovery will be \$1,447,714.05. Within
14 thirty (30) days of this Order, Plaintiffs shall file a motion for
15 attorneys' fees and costs.

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17 IT IS SO ORDERED.

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19 Dated: February 8, 2011

UNITED STATES DISTRICT JUDGE

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