

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEAMFITTERS LOCAL UNION : CIVIL ACTION
NO. 420 WELFARE FUND, et al. :
 :
v. :
 :
BISHOP & DRAIN MECHANICAL :
SERVICES, INC. : NO. 97-6002

M E M O R A N D U M

Padova, J.

June 8, 1998

Plaintiffs in this action comprise the Steamfitters Local Union No. 420 Welfare Fund, Pension Fund, Supplemental Retirement Fund, Vacation Fund, Apprenticeship Training Fund, and Scholarship Fund, Local Union No. 420 Piping Industry Political and Educational Fund, Mechanical Contractors Association of Eastern Pennsylvania, Inc. Industry Fund, Local Union No. 420 Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada ("Union"), Jack H. James, and Joseph Rafferty.

Plaintiffs brought this action against Defendant, Bishop & Drain Mechanical Services, Inc., who is a party to a collective bargaining agreement with the Union. The agreement provides for payment of contributions to the above-named Funds in connection with work by employees who fall under its terms.

Plaintiffs discovered that Defendant was in arrears in its contributions. They requested the delinquent payments and when they were not forthcoming, Plaintiffs initiated this action, claiming violations of the agreements and of sections 515 and

502(g) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1145, 1132(g)(2). In order to determine the exact amount that Defendant owed them, Plaintiff sought the necessary records in discovery and, when Defendant refused to produce them, the Court ordered it to do so. After completing an audit of the records, Plaintiffs have now filed this Motion for Summary Judgment. For reasons that follow, the Motion will be granted.

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). An issue is "genuine" only if the evidence is such that a reasonable jury could find for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986). Furthermore, bearing in mind that all uncertainties are to be resolved in favor of the nonmoving party, a factual dispute is only "material" if it might affect the outcome of the case. Id. A party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant's initial Celotex burden can be met simply by

"pointing out to the district court that there is an absence of evidence to support the non-moving party's case." Id. at 325, 106 S. Ct. at 2554. After the moving party has met its initial burden, summary judgment is appropriate if the non-moving party fails to rebut it by making a factual showing "sufficient to establish an element essential to that party's case, and on which that party will bear the burden of proof at trial." Id. at 322, 106 S. Ct. at 2552.

This case is complicated by the fact that Defendant has failed to comply with the Court's Order to find another counsel, after his initial counsel was compelled to withdraw because she did not have the necessary prerequisites to appear before this Court. Defendant did not respond to the Motion for Summary Judgment.

In its Answer to the Complaint, Defendant states that it "currently has no record of signing an agreement with Plaintiffs identified as Supplemental Retirement Fund nor Scholarship Fund," but it does not deny that there were such agreements. (Deft.'s Ans. to ¶¶ 4-7.) Defendant denies that the agreements provide for Plaintiffs to audit its books (Deft.'s Ans., "Wherefore" clauses) but that is not now an issue because the Court ordered Defendants to produce the books in discovery. Defendant admits that there may be contributions due for employees who have left its employ (Deft.'s Ans to ¶¶ 17, 19, 32, 35) but denies that it failed to make contributions, as Plaintiffs' allege, "in violation of 29 U.S.C. § 1145 in a period

not barred by an applicable statute of limitations." (Pl.'s Compl. at ¶ 35 and Deft.'s Ans.) However, Defendant fails to plead affirmatively a statute of limitations defense or any other defense.

Attached to their Motion for Summary Judgment, Plaintiffs present evidence, in as much detail as Defendant's records allow, as to the amount Defendant owes them. There being no contrary evidence from Defendant, the Court will grant Plaintiffs' Motion for Summary Judgment.

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O R D E R

AND NOW, this day of June, 1998, upon consideration of Plaintiffs' Motion for Summary Judgment (Doc. No. 17), Defendant's failure to respond, Plaintiffs' Complaint (Doc. No. 1), and Defendant's Answer (Doc. No. 7), **IT IS HEREBY ORDERED** that said Motion is **GRANTED**, and more specifically, that:

1. Judgment is entered against Defendant and in favor of Plaintiffs in the amount of \$91,922.80, comprising:

a. Unpaid contributions and work assessments due and owing for the period January 1995 through December 1997 in the amount of \$55,532.03;

b. Liquidated damages for January 1995 through December 1997 in the amount of \$10,702.74;

c. Interest of \$7,921.98 accrued to May 8, 1998 and calculated in accordance with 29 U.S.C. A. § 1132 and 26 U.S.C.A. § 6621 as amended. Interest shall continue to accrue in such manner until the date of payment;

d. Attorneys' fees and costs incurred by the Funds through May 8, 1998, in the amount of \$12,984.05 as provided in 29 U.S.C.A. § 1132(g)(2)(D); and

e. Audit fees incurred by Plaintiffs in the amount of \$4,728.00.

2. This Order and Judgment is enforceable, by one or more of the Plaintiff Funds or their agents, jointly and severally.

BY THE COURT:

John R. Padova, J.