

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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PLUMBERS & STEAMFITTERS LOCAL NO.  
434 HEALTH & WELFARE FUND; PLUMBERS  
& STEAMFITTERS LOCAL NO. 434 UNION  
ASSESSMENT FUND; PLUMBERS &  
STEAMFITTERS LOCAL NO. 434 EDUCATION  
FUND; PLUMBERS & STEAMFITTERS LOCAL  
NO. 434 ORGANIZING FUND; PLUMBERS &  
STEAMFITTERS LOCAL NO. 434 INDUSTRY  
FUND; PLUMBERS & STEAMFITTERS LOCAL  
NO. 434 SUPPLEMENTAL PENSION FUND;  
and PLUMBERS & PIPEFITTERS NATIONAL  
PENSION FUND,

Plaintiffs,

v.

CCK, LTD. d/b/a GALESVILLE EXCAVATING,  
PLUMBING & HEATING,

Defendant.

OPINION AND ORDER

11-cv-394-wmc

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In this civil action, seven multi-employer, self-funded employee benefit funds as defined under 29 U.S.C. § 1132, seek restoration of misappropriated funds and unpaid contributions owed under collective bargaining agreements between the Mechanical Contractors Association of Northwest Wisconsin, Inc. and the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada. Plaintiffs (“Funds”) allege that defendant CCK, Ltd. d/b/a Galesville Excavating, Plumbing & Heating (“CCK”) assented to the collective bargaining agreements and violated the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1145 (“ERISA”), by failing to make continuing and prompt payments to the

Funds and failing to accurately report employee work status as required by the collective bargaining agreements.

Presently before the court is plaintiffs' motion for summary judgment seeking judgment in its favor on liability and damages.<sup>1</sup> Because defendant CCK has failed to respond to plaintiffs' motion for summary judgment, the court will treat plaintiffs' proposed statement of facts as true. Specifically, the court finds that the collective bargaining agreements required defendant to file monthly employee work status reports with the Funds and make contributions to them for each covered employee. Because the records submitted by plaintiffs demonstrate that CCK failed to fulfill these commitments, the court will grant summary judgment in favor of plaintiffs and award damages in the amount of \$39,900.35, plus reasonable attorneys' fees and costs.

## UNDISPUTED FACTS<sup>2</sup>

### A. The Collective Bargaining Agreement

A written collective bargaining agreement between the Mechanical Contractors Association of Northwest Wisconsin, Inc. and the United Association of Journeymen Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada calls for contributions to be made to the plaintiff Funds on behalf of participating

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<sup>1</sup> In its prayer for relief, plaintiffs seek judgment "against the Defendants CCK and Lauenstein, jointly and severally." (Compl. (dkt. #1) 10.) Plaintiffs fail to identify Lauenstein or his relationship to CCK, name Lauenstein as a party, or provide any supporting documentation as to why Lauenstein would be liable under ERISA. Accordingly, the court only addresses plaintiffs' claims against defendant CCK in this lawsuit.

<sup>2</sup> The court finds the following facts taken from plaintiffs' proposed findings of fact to be material and undisputed.

employers. The Funds use these contributions to provide fringe benefits to their participants and members.

Pursuant to letters of assent signed on July 13, 2009, and July 20, 2010, CCK is and has been a party to the collective bargaining agreements from June 1, 2009, until the present. (Affidavit of James F. Wilson (“Wilson Aff.”) (dkt. #10) ¶ 7; *id.*, Ex. C. (dkt. #10-3).) By adopting the collective bargaining agreements, CCK adopted and assented to the Funds’ trust agreements and any amendments to those trust agreements, which establish and govern the operation of the Funds. By adopting the collective bargaining agreements and by adopting and assenting to the Funds’ trust agreements, CCK assented to all rules and regulations adopted by the Trustees of the Funds. Moreover, CCK never provided any written notice of intent to withdraw from participation in the collective bargaining agreements.

The Funds’ Trustees adopted a Delinquency Collection Procedure, which states that in any legal action to recover delinquent contributions, the delinquent employer shall be liable for the delinquent collection amount, interest on the unpaid contribution amount at the rate of 1.5% per month and liquidated damages not to exceed 20% of the delinquent payments for the Local Funds,<sup>3</sup> plus reasonable attorneys’ fees and any other costs and expenses reasonably arising with any collection action. (*Id.* at ¶ 8; *id.*, Ex. D (dkt. #10-4); Def.’s Answ. (dkt. #5) ¶ 1.) In the case of unpaid contributions to the

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<sup>3</sup> “Local Funds” include plaintiffs Plumbers & Steamfitters Local No. 434 Health & Welfare Fund, Plumbers & Steamfitters Local No. 434 Union Assessment Fund, Plumbers & Steamfitters Local No. 434 Education Fund, Plumbers & Steamfitters Local No. 434 Industry Fund, Plumbers & Steamfitters Local No. 434 Supplemental Pension Fund.

National Pension Fund, the Funds' Trustees have determined that the delinquent employer shall be liable for the delinquent contributions, interest on the unpaid contributions of 12% per year, liquidated damages of 10% of the unpaid contributions, plus reasonable attorneys' fees and any other reasonable costs and expenses. (Wilson Aff. (dkt. #10) at ¶ 8; Def.'s Answ. (dkt. #5) ¶ 1.) As a party to the collective bargaining agreements, CCK agreed to file monthly employee work status reports with the Funds and agreed to make timely and prompt contributions to the Funds for each of CCK's employees covered by the collective bargaining agreements.

#### **B. CCK's Default**

CCK failed to make continuing and prompt payments to the Funds for all of CCK's covered employees. (Wilson Aff. (dkt. #10) ¶ 9.) A revised audit of CCK's books, records, and remittance reports filed with the Funds by CCK covering the period October 1, 2009, through July 31, 2011, reveal that as of September 9, 2011, CCK owed the Funds \$30,364.95 in delinquent contributions, as well as \$3,453.65 in assessed interest and \$6,081.75 in liquidated damages. (Wilson Aff. (dkt. #10) ¶ 10; *id.*, Ex. E (dkt. #10-5).)

#### **OPINION**

As already noted, defendant CCK has failed to respond to plaintiffs' motion for summary judgment. Accordingly, the court considers plaintiffs' proposed findings of fact as true. Federal Rule of Civil Procedure 56(e) states in relevant part:

[I]f a party fails to properly address another's party assertion of fact as required by Rule 56(c), the court may . . . grant summary judgment if the motion and supporting materials -- including the facts considered undisputed -- show that the movant is entitled to it[.]

The collective bargaining agreements required CCK to file monthly employee work status reports with the Funds and make contributions to them for all of CCK's covered employees. The records demonstrate that CCK failed to satisfy these obligations and that CCK is liable to plaintiffs in the amount they request. The court finds no genuine dispute as to any material fact on the issue of liability.

Moreover, plaintiffs' evidence of damages is well documented and consistent with the obligations under the collective bargaining agreements. Accordingly, plaintiffs are entitled to judgment in their favor as a matter of law, including an award of damages. Plaintiffs also seek reasonable attorneys' fees and costs pursuant to ERISA, 29 U.S.C. § 1132(g)(2). Plaintiffs shall file an affidavit with supporting materials seeking fees and costs as set forth in the order below.<sup>4</sup>

#### ORDER

IT IS ORDERED that:

- 1) plaintiffs' motion for summary judgment (dkt. # 8) is GRANTED;
- 2) plaintiffs are awarded damages in the total amount of \$39,900.35;

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<sup>4</sup> If plaintiffs believe they are also entitled to additional interest, they may supplement a calculation of additional interest through March 31, 2013, along with supporting materials, in the same affidavit.

3) plaintiffs may have until Monday, March 25, 2013, to submit an affidavit with supporting materials setting forth the amount of additional interest, if any, due and their reasonable attorneys' fees and costs sought; and

4) defendant may have ten days to respond.

Entered this 14th day of March, 2013.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge