

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

WISCONSIN CARPENTERS PENSION FUND,
WISCONSIN CARPENTERS HEALTH FUND,
GREATER WISCONSIN CARPENTERS
VACATION FUND, NORTHERN WISCONSIN
CARPENTERS APPRENTICESHIP &
JOURNEYMAN TRAINING FUND, LABOR
MANAGEMENT COOPERATION TRUST FUND,
CONTRACT ADMINISTRATION FUND,
NORTHERN WISCONSIN REGIONAL COUNCIL
OF CARPENTERS DUES FUND and
BRIAN GENTRY,

Plaintiffs,

v.

ROTH'S FLOR-MART, INC.,

Defendant.

ORDER

06-C-75-C

This is a civil action for monetary relief under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001-1461. Plaintiffs Wisconsin Carpenters Fund, Wisconsin Carpenters Health Fund, Greater Wisconsin Carpenters Vacation Fund, Northern Wisconsin Carpenters Apprenticeship & Journeyman Training Fund and Labor Management Cooperation Trust Fund are employee benefit plans under ERISA. Plaintiff

Contract Administration Fund is an association of construction contractors. Plaintiff Northern Wisconsin Regional Council of Carpenters Dues Fund is a labor organization within the meaning of the National Labor Relations Act, 29 U.S.C. § 158. Plaintiff Brian Gentry is a trustee and fiduciary of plaintiff Wisconsin Carpenters Pension Fund. Defendant Roth's Flor-Mart, Inc. is a Wisconsin corporation and a party to a collective bargaining agreement with the Greater Fox River Valley District Council of Carpenters. Plaintiffs allege that defendant has failed to live up to its obligations under the collective bargaining agreement, including not making contributions to the various funds named as plaintiffs. Jurisdiction is present. 28 U.S.C. § 1331.

Plaintiffs filed their complaint on February 7, 2006. Defendant electronically filed its answer on March 6, 2006. The answer was signed by James Viner, who was listed as defendant's secretary. (Viner also signed defendant's corporate disclosure statement, dkt. #5). There is no indication that Viner is an licensed attorney. Plaintiffs have filed a motion to strike defendant's answer on the ground that it does not meet the requirements of Fed. R. Civ. P. 11(a). Rule 11(a) states that every "pleading, written motion, and other paper shall be signed by at least one attorney of record in the individual's name, or, if the party is not represented by an attorney, shall be signed by the party." Plaintiff notes correctly that a corporation may appear in federal court only by an attorney and argues that defendant's answer should be stricken because Viner is not an attorney. Mendenhall v. Goldsmith, 59

F.3d 685, 687 n.1 (7th Cir. 1995); United States v. Tri-No Enterprises, Inc., 819 F.2d 154, 159 (7th Cir. 1987).

Operating Engineers Local 139 Health Benefit Fund v. Rawson Plumbing, Inc., 130 F. Supp. 2d 1022 (E.D. Wis. 2001), involved a situation similar to this one. After the defendant corporation filed an answer that was signed by an individual who was not an attorney, the court decided to treat the answer as unsigned, give the defendant a chance to file another answer signed by counsel and warn the defendant that failure to comply with its order would result in entry of default judgment. Id. at 1024-25. I agree that this is the appropriate course of action. Therefore, I will grant defendant's motion and give plaintiff a short extension of time to retain counsel and file a new answer.

ORDER

IT IS ORDERED that

1. Plaintiffs' motion to strike is GRANTED and defendant's answer, dkt. #4, and its corporate disclosure statement, dkt. #5, are STRICKEN;

2. Defendant may have until May 21, 2006, in which to file an answer and corporate disclosure statement that comply with Fed. R. Civ. P. 11(a). If defendant fails to file its answer and disclosure statement by May 21, 2006, the court may, on its own motion or a

motion from plaintiffs, order the clerk of court to enter default judgment.

Entered this 1st day of May, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge