

**UNITED STATES DISTRICT COURT
NORTH DISTRICT OF ILLINOIS
EASTERN DIVISION**

CENTRAL LABORERS' PENSION FUND)
BOARD OF TRUSTEES,)
CENTRAL LABORERS' WELFARE FUND)
BOARD OF TRUSTEES, and)
CENTRAL LABORERS' ANNUITY FUND)
BOARD OF TRUSTEES,)
)
Plaintiffs,)
)
v.)
)
CANTERBURY HOMES, INC.,)
an Illinois corporation, and)
JOSEPH F. HOOK, JR., individually,)
)
Defendants.)

08 C 6676

Judge Charles R. Norgle, Sr.

**PLAINTIFFS'
MOTION FOR CONFESSION OF A SPECIFIC MONEY JUDGMENT**

Plaintiffs CENTRAL LABORERS' PENSION FUND BOARD OF TRUSTEES, CENTRAL LABORERS' WELFARE FUND BOARD OF TRUSTEES, and CENTRAL LABORERS' ANNUITY FUND BOARD OF TRUSTEES, by their attorneys, move to confess a specific money judgment against CANTERBURY HOMES, INC., stating as follows:

1. The parties in this case previously reached a settlement; a copy of the *Settlement Agreement* is attached as *Exhibit A*. The *Settlement Agreement* required payment to Plaintiffs of the principal amount of \$15,123.07, plus 4% interest.
2. Pursuant to a *Stipulation of Dismissal* and the dismissal order, (Docket # 47), the Court retains jurisdiction to enforce the terms of the parties' *Settlement Agreement*.
3. Although CANTERBURY HOMES, INC. initially paid \$5,100 towards amount due under the *Settlement Agreement*, it has since defaulted in making timely payments to Plaintiffs. See Exhibit B.

4. The *Settlement Agreement* contains the following default provision:

It is hereby expressly understood and agreed that if default be made in the payment of any said payment due under this judgment note, the entire balance that may appear to be unpaid thereon together with all arrearages thereon shall, at the option of the legal holder hereof, thereupon become immediately due and payable without notice, demand or presentment and shall be collectible immediately or at any time after such default. ...

5. The *Settlement Agreement* contains the following confession of judgment provision:

As additional security, CANTERBURY HOMES, INC. hereby irrevocably authorizes any attorney of any court of record to appear for them in such court, after default in paying any of the forgoing installments due hereunder or in failure to report and pay future contributions when due, and confess a judgment without process in favor of the holder of this note for such amount as may appear to be unpaid thereon, including all future installments not yet due and payable together with costs and reasonable attorney's fees. ...

6. Based on the default in making payments, Plaintiffs have declared the entire amount due and payable under the *Settlement Agreement*. (See Docket Entry # 51.)

7. Based on the default in making payments, Plaintiffs have confessed judgment against CANTERBURY HOMES, INC. (See Docket Entry # 51.) The Court, in an order entered on January 5, 2011, granted Plaintiffs' motion to confess judgment, (Docket Entry # 53), although a specific money judgment was not entered at that time.

8. Based on the above, Plaintiffs, by this motion, request the entry of confessed, specific money judgment against CANTERBURY HOMES, INC. in favor of Plaintiffs in the amount of **\$10,833.75**. The amount of the requested judgment is broken down as follows:

(a) \$10,833.75, which is the outstanding balance pursuant to the *Settlement Agreement* (\$15,123.07 - \$5,100.00 = \$10,023.07). In support, Plaintiffs attach the Affidavit of Plaintiffs' Employer Contributions Department Director Roger Shoup as *Exhibit B*.

(b) \$176.93, which was the interest amount expressly set forth in the *Settlement Agreement* for timely payment of the amount due. See Exhibit A.

(c) \$633.75, for attorney's fees incurred in reinstating this case and in filing this motion; attorney's fees are expressly permitted pursuant to the *Settlement Agreement*. In support, Plaintiffs attach an Affidavit as *Exhibit C*.

WHEREFORE, Plaintiffs respectfully request that:

A. A judgment be confessed and entered against CANTERBURY HOMES, INC. in favor of Plaintiffs, in an amount not less than \$10,833.75.

B. Plaintiffs be granted such other and further relief as the Court may deem just.

Respectfully submitted,
CENTRAL LABORERS' PENSION FUND BOARD OF
TRUSTEES, CENTRAL LABORERS' WELFARE FUND
BOARD OF TRUSTEES, and CENTRAL LABORERS'
ANNUITY FUND BOARD OF TRUSTEES

/s/ Richard A. Toth
One of Their Attorneys

Richard A. Toth
DALEY AND GEORGE, LTD.
20 S. Clark St., Suite 400
Chicago, Illinois 60603
(312) 726-8797

SETTLEMENT AGREEMENT AND JUDGMENT NOTE

In consideration of the Central Laborers' Pension, Welfare, and Annuity Funds granting to CANTERBURY HOMES, INC. an extension of time for payment of certain amounts that are now overdue and payable, and in consideration of the withholding of collection action in regard to the same, CANTERBURY HOMES, INC. hereby promises to pay the order to Central Laborers' Pension, Welfare, and Annuity Funds the sum of \$15,123.07 plus interest at the rate of 4% per annum being payable in monthly installments (per the Payment Schedule below) of principal and interest, the first (1st) of which is due and payable on June 15, 2010.

Payment #	Date	Payment	Principal	Interest	Unpaid Balance
0					\$15,123.07
1	6/15/2010	\$2,550.00	\$2,489.59	\$50.41	\$12,623.48
2	7/15/2010	\$2,550.00	\$2,507.92	\$42.08	\$10,115.56
3	8/15/2010	\$2,550.00	\$2,516.28	\$33.72	\$7,599.28
4	9/15/2010	\$2,550.00	\$2,524.67	\$25.33	\$5,074.61
5	10/15/2010	\$2,550.00	\$2,533.08	\$16.92	\$2,541.53
6	11/15/2010	\$2,550.00	\$2,541.53	\$8.47	\$0.00
			Total:		
			Principal:	Total Interest:	
			\$15,123.07	\$176.93	

12/15 J.B.
11/15 J.A.

This Judgment Note may, at any time, be paid or prepaid in whole without premium or penalty or accrual of any subsequent interest.

In addition to the foregoing, CANTERBURY HOMES, INC. promises to promptly submit on a monthly basis reports and contributions due and owing for subsequent months. Such payments shall be submitted together with the payments provided for in the preceding paragraphs.

As additional security, CANTERBURY HOMES, INC. hereby irrevocably authorizes any attorney of any court of record to appear for the them in such court, after default in paying any of the foregoing installments due hereunder or in failure to report and pay future contributions when due, and confess a judgment without process in favor of the holder of this note for such amount as may appear to be unpaid thereon, including all future installments not yet due and payable, together with costs and reasonable attorney's fees. Without limiting the foregoing, CANTERBURY HOMES, INC. hereby consents and



**Judgment Note
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submits to the jurisdiction of any court located in Chicago, Illinois with respect to any action to confess judgment otherwise enforce this Judgment Note.

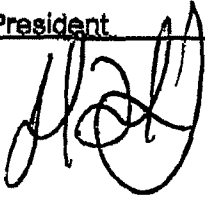
It is hereby expressly understood and agreed that if default be made in the payment of any said payment due under this judgment note, the entire balance that may appear to be unpaid thereon together with all arrearages thereon shall, at the option of the legal holder hereof, thereupon become immediately due and payable without notice, demand or presentment and shall be collectable immediately or at any time after such default. Further, the parties acknowledge and agree that this judgment note does not constitute accord and satisfaction and the Funds have the right upon default to sue for the delinquency due pursuant to ERISA along with all penalties, including but not limited to interest, liquidated damages assessments and attorneys fees and costs incurred by the Funds.

Dated this _____, 2010.

CANTERBURY HOMES, INC.

By: Joseph F. Hook, Jr.

Title: President



Subscribed and sworn to before me this _____, 2010.

Notary Public

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NORTHERN DISTRICT OF ILLINOIS
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CENTRAL LABORERS' PENSION FUND)	
BOARD OF TRUSTEES, <i>et al.</i> ,)	
Plaintiffs,)	
v.)	08 C 6676
)	
CANTERBURY HOMES, INC., <i>et al.</i>)	Judge Charles R. Norgle, Sr.
)	
Defendants.)	

AFFIDAVIT REGARDING FEES AND COSTS

I, Richard A. Toth, affiant, duly sworn on oath, depose and say as follows:

1. I am of legal age, without disability to render testimony and understand that I make this affidavit under an obligation to state truthfully the matters set forth in this affidavit.

2. I am an attorney, licensed since 1994 to practice law in the State of Illinois, U.S. District Court for the Northern District of Illinois, and U.S. District Court for the Central District of Illinois. I am Plaintiffs' attorney of record in this case.

3. I am employed as an attorney by the law firm of Daley and George, Ltd., 20 S. Clark, Chicago, Illinois. In that employment I have represented local unions and ERISA funds since 1994, including but not limited to work for a Sheet Metal Workers' International Association local union and its affiliated ERSIA funds, International Brotherhood of Electrical Workers' affiliated ERISA funds, and International Laborers' Union affiliated ERISA funds.

4. The law firm of Daley and George, Ltd. bills Plaintiffs in this case at the rate of \$195 per hour. This rate is lower than the firm's (and my own) standard hourly rate. I have been paid at the same or higher rate in other cases before U.S. District Courts. The hourly rate charged is more than fair and reasonable given my level of experience.

5. Not less than \$633.75 in attorney's fees were expended in drafting, preparing, and filing motions, exhibits, and notices required to reinstate this case and seek a confession of judgment, all of which was required as a result of Defendant's default under the parties settlement agreement. A breakdown follows:

November 9, 2010	Call to Fund Office; correspondence to and from attorney C. Riley	0.25
January 3, 2011	Receipt and review of various motions to withdraw; docket date	0.25
January 3, 2011	Communications with Fund Office; prepare and file motion	1.00
January 5, 2011	Receipt and review of court minute order; call to Fund Office	0.25
January 21, 2011	Investigation regarding amount due; prepare motion, draft affidavit	1.00
January 24, 2011	Receipt of correspondence from client; revise and file motion	0.50
Total		3.25 x \$195 = \$633.75

Subscribed and sworn to
before me this January 24, 2011.


RICHARD A. TOTH


NOTARY PUBLIC

