

11-06-09JWL144297-4

65100-1208LIT4868

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

JAMES T. SULLIVAN, not individually but as Trustee of )  
PLUMBERS' PENSION FUND, LOCAL 130, U.A., etc., )  
et al., )

Plaintiffs, )

v. )

EMERALD SEWER AND PLUMBING, INC.; and )  
MB2 GROUP INC., )

Defendants. )

No. 09 C 377

Judge Robert M. Dow, Jr.

Magistrate Judge Morton Denlow

PLAINTIFFS' MOTION FOR JUDGMENT

Plaintiffs, James T. Sullivan, not individually, but as Trustee of Plumbers' Pension Fund, Local 130, U.A., etc., et al. ("Funds"), by their attorneys, John W. Loseman, Douglas A. Lindsay, and Brian T. Bedinghaus, with LEWIS, OVERBECK & FURMAN, LLP of counsel, move the Court to enter Judgment in favor of Funds and against Defendants, Emerald Sewer and Plumbing, Inc. ("Emerald"), and MB2 Group Inc. ("MB2"). In support hereof, Funds state:

1. Funds filed this action on January 21, 2009, seeking, *inter alia*, an accounting, monthly reporting, and payment of unpaid contributions and other damages under a collective bargaining agreement, ERISA, 29 U.S.C. §§1132 and 1145, and LMRA, 29 U.S.C. §185.
2. Emerald appeared through counsel on February 16, 2009.
3. Subsequently, a compliance audit covering the period from April 1, 2008, through December 31, 2008, was completed.
4. Pursuant to leave of Court, on October 9, 2009, Funds filed their First Amended Complaint against Emerald and MB2 seeking judgment against Defendants based on an Audit Report dated May 28, 2009, as well as certain injunctive relief. *First Amended Complaint*,

*Docket No. 25.* For the Court's convenience, a true and correct copy of the Audit Report is attached as Exhibit A.

5. Funds' First Amended Complaint was served on Emerald via District Court electronic notification on April 9, 2009. *First Amended Complaint, Docket No. 25.*

6. Funds' First Amended Complaint was served on MB2 via personal service on October 16, 2009. *Return of Service, Docket No. 28.* For the Court's convenience, a true and correct copy of the Return of Service on MB2 is attached as Exhibit B.

7. Pursuant to F.R.Civ.P. 15(a)(3), Emerald was required to answer First Amended Complaint by October 23, 2009.

8. Pursuant to F.R.Civ.P. 12(a)(i), MB2 was required to appear and to answer First Amended Complaint by November 5, 2009.

9. As of the date of filing of this Motion, Emerald has not answered or otherwise responded to the First Amended Complaint.

10. As of the date of filing of this Motion, MB2 has not appeared in this case or answered the First Amended Complaint.

11. Emerald and MB2 are in default.

12. Defendants owe the following:

Audit delinquency and interest per CBA and ERISA, 29 U.S.C. §1132(g)(2)(A) and (B) as set forth in Audit Report attached as Exhibit A	\$105,714.47
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Additional interest for period 6/01/09 through 11/13/09 at \$1,292.59/mo. per CBA and 29 U.S.C. §1132(g)(2)(B)	7,755.54
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ERISA double interest through 11/13/09 including audit and additional interest per 29 U.S.C. §1132(g)(2)(C)	20,404.08
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Attorneys' fees and costs through 10/31/09 as set forth in Loseman Affidavit attached as Exhibit C per CBA and 29 U.S.C. §1132(g)(2)(D)	12,345.92
Audit costs as set forth in auditor's statement attached as Exhibit D per CBA and 29 U.S.C. §1132(g)(2)(E)	<u>2,029.50</u>
Total:	\$148,249.51

WHEREFORE, Plaintiffs, James T. Sullivan, not individually but as a Trustee of Plumbers' Pension Fund, Local 130, U.A., etc., et al., request that the Court enter judgment in favor of Plaintiffs and against Defendants, Emerald Sewer and Plumbing, Inc., and MB2 Group Inc, jointly and severally, providing the following:

- a. Awarding damages in the amount of \$148,249.51;
- b. Enjoining and ordering Defendants to complete and submit to Funds and/or Union monthly contribution reports for the period from January 1, 2009, to the present, accurately reflecting all hours worked by all persons employed by Emerald and/or MB2 who performed any work described in Appendix A of the Collective Bargaining Agreement attached to the Amended Complaint as well as contributions and payments due thereon, and to immediately pay to Funds, Council, and/or Union all contributions and payments due;
- c. Enjoining and ordering Defendants to timely complete and submit to Funds and/or Union monthly contributions reports on an ongoing and future basis accurately reflecting all hours worked by all persons employed by Emerald and/or MB2 who perform any work of the type described in Appendix A of the Collective Bargaining Agreement attached to the Amended Complaint as well as all contributions and payments due thereon, and to timely pay to Funds, Council, and/or Union all such contributions and payments shown due; and

- d. Awarding such other and further relief as the Court deems just and equitable.

James T. Sullivan, not individually but as a Trustee of Plumbers' Pension Fund, Local 130, U.A., etc., et al., by their attorneys, John W. Loseman, Douglas A. Lindsay, and Brian T. Bedinghaus

By: /s/ John W. Loseman  
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Of Counsel:  
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CERTIFICATE OF SERVICE

John W. Loseman, an attorney, certifies that service of the foregoing Plaintiffs' Motion for Judgment was effected on the following person(s):

Todd A. Miller, Esq.  
Kathleen M. Cahill, Esq.  
Allocco, Miller, & Cahill, P.C.  
3409 N. Paulina Street  
Chicago, IL 60657  
(tam@alloccomiller.com)  
(kmc@alloccomiller.com)

via the electronic filing (ECF) system of the United States District Court for the Northern District of Illinois as a result of electronic filing made this 13<sup>th</sup> day of November, 2009.

John W. Loseman, an attorney, certifies that he caused a copy of the foregoing Plaintiffs' Motion for Judgment to be served on the following person(s):

MB2 Group, Inc.  
c/o Edward H. Lowery, Registered Agent  
10450 S. Western Avenue  
Chicago, IL 60643

by causing a true and correct copy thereof to be sealed in an envelope addressed as aforesaid, with proper first class postage affixed, and deposited with the U.S. Postal Service at 20 N. Clark Street, Chicago, IL this 13<sup>th</sup> day of November, 2009.

/s/ John W. Loseman\_\_\_\_\_