

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

CHICAGO AREA JOINT WELFARE)	
COMMITTEE FOR THE POINTING,)	
CLEANING AND CAULKING)	
INDUSTRY, LOCAL 52, <i>et al.</i>)	CIVIL ACTION
)	
Plaintiffs,)	NO. 09 C 2128
)	
v.)	JUDGE JOHN W. DARRAH
)	
G. & C. CONSTRUCTION &)	
SEALANTS, INC., an Illinois corporation,)	
)	
Defendant.)	

**PLAINTIFFS' MOTION TO ENFORCE THE TERMS OF A
CONSENT DECREE AND SETTLEMENT AGREEMENT
AND ENTER JUDGMENT AGAINST DEFENDANT**

NOW COME Plaintiffs, CHICAGO AREA JOINT WELFARE COMMITTEE FOR THE POINTING, CLEANING AND CAULKING INDUSTRY, LOCAL 52, *et al.*, by their attorneys, and move the Court for the Entry of an order enforcing the terms of a Consent Decree and Settlement Agreement entered into by the Court on February 26, 2010. In support of the Motion, Plaintiffs state as follows:

1. This action was originally brought by the Plaintiffs, the Trustees of the jointly-administered, labor-management employee benefit plans collectively known as the Tuckpointers Local 52 Fringe Benefit Funds, alleging, *inter alia*, that Defendant breached its obligations under the terms of the applicable collective bargaining agreement and the Agreements and Declarations of Trust under which the Plaintiff Funds are maintained. Specifically, Plaintiffs allege that Defendant failed to remit payment of contributions for work performed on its behalf by beneficiaries

of the Plaintiff Funds. The Complaint was brought pursuant to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§1132, 1145.

2. On February 26, 2010, this Court entered the Consent Decree and Settlement Agreement incorporating the terms for settlement agreed to by the parties (copies of the Consent Decree and Settlement Agreement are attached as Exhibit A).

3. Defendant acknowledged that it owed the total amount of \$75,928.80, with interest on the declining balance at the rate of 3.25% (the current prime rate) per year, for liquidated damages and interest incurred for January 2008 through December 2009 and court costs and attorneys' fees incurred through January 31, 2010, as described in the Settlement Agreement.

4. Defendant also acknowledged that if it failed to timely make any of the payments to the Funds as set forth in the Settlement Agreement, failed to timely report and pay its regular monthly contributions to the Funds during the course of the repayment schedule, or otherwise failed to comply with the Settlement Agreement, it would be considered in breach of the Settlement Agreement. Upon breach of the Settlement Agreement, any payments remaining due pursuant to the payment schedule, and all costs and attorneys' fees incurred after January 31, 2010 to collect such amounts or enforce the Settlement Agreement, shall become immediately due and owing, and Defendant agreed to allow the Court to enter judgment against it upon a motion by the Funds to enforce the Consent Decree.

5. Defendant agreed to make payment to Plaintiffs of \$75,928.80, with interest on the declining balance at the rate of 3.25% (the current prime rate) per year, pursuant to the following schedule:

Date Due	Payment Due	Interest (3.25%)	Balance Due
03/01/10	\$6,500.00	\$205.64	\$69,634.44
04/01/10	\$6,500.00	\$188.59	\$63,323.03
05/01/10	\$6,500.00	\$171.50	\$56,994.53
06/01/10	\$6,500.00	\$154.36	\$50,648.89
07/01/10	\$6,500.00	\$137.17	\$44,286.07
08/01/10	\$6,500.00	\$119.94	\$37,906.01
09/01/10	\$6,500.00	\$102.66	\$31,508.67
10/01/10	\$6,500.00	\$85.34	\$25,094.01
11/01/10	\$6,500.00	\$67.96	\$18,661.97
12/01/10	\$6,500.00	\$50.54	\$12,212.51
01/01/11	\$6,500.00	\$33.08	\$5,745.59
02/01/11	\$5,733.26	\$15.56	\$0.00
Totals	\$77,233.26	\$1,332.35	

6. Defendant breached the Settlement Agreement and Consent Decree by making the payments due March 1, 2010 and April 1, 2010 late, and by failing to submit the payments due on May 1, 2010, June 1, 2010, July 1, 2010, August 1, 2010, September 1, 2010 and November 1, 2010.

7. In addition, Defendant breached the Settlement Agreement and Consent Decree by paying its contributions due for January through May 2010 late, and by failing to report and pay its regular contributions for June 2010 to the present.

8. Although under no obligation to do so, on October 18, 2010, Plaintiffs' counsel wrote to Defendant's counsel regarding the failure of the Defendant to abide by the terms of the Settlement Agreement, giving Defendant ten (10) days to become current in its obligations under the Settlement Agreement (a copy of the October 18, 2010 letter from Plaintiffs' counsel to Defendant's counsel

is attached hereto as Exhibit B). Notwithstanding this notice, Defendant has not cured its breach of the Settlement Agreement and Consent Decree.

9. For all the reasons stated, the Plaintiffs hereby move the Court to enforce the terms of the Consent Decree and Settlement Agreement by entering judgment against Defendant. Specifically, Plaintiffs request:

- A. That judgment be entered in favor of Plaintiffs and against Defendant to include the amount of \$64,233.26, being the total amount remaining due for liquidated damages, interest, costs and attorneys' fees for the time period January 2008 through December 2009 pursuant to the Settlement Agreement.
- B. That judgment be entered in favor of Plaintiffs and against Defendant to include the additional sum of \$2,857.50 for attorneys' fees incurred by the Plaintiffs since January 31, 2010, including the preparation of the instant motion and an estimated one (1) hour of attorneys' fees to appear for the hearing on the instant motion to enforce the Consent Decree and Settlement Agreement (see Affidavit of Catherine M. Chapman).
- C. That Plaintiffs have such other relief as may be deemed just and equitable by the Court.

/s/ Patrick N. Ryan

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CERTIFICATE OF SERVICE

The undersigned, an attorney of record, hereby certifies that on or before the hour of 5:00 p.m. this 5th day of November 2010, he electronically filed the foregoing document (Motion to Enforce) with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

Mr. Todd A. Miller
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/s/ Patrick N. Ryan

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