

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

TERRENCE J. HANCOCK, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	CIVIL ACTION
vs.)	
)	NO. 13 C 4045
RITeway-HUGGINS CONSTRUCTION)	
SERVICES, INC., an Illinois corporation,)	JUDGE JOAN B. GOTTSCHALL
)	
Defendant.)	

**PLAINTIFFS' MOTION TO REOPEN CASE FOR
THE LIMITED PURPOSE OF ENFORCING THE
TERMS OF THE CONSENT DECREE
AND ENTERING JUDGMENT AGAINST DEFENDANT**

Plaintiffs, TERRENCE J. HANCOCK, *et al.*, by their attorneys, request the entry of an order reopening this action for the limited purpose of enforcing the terms of the Consent Decree entered by this Court on May 23, 2015. In support of this Motion, Plaintiffs state as follows:

1. This action was originally brought by the Plaintiffs alleging 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 May 22, 2015, this Court dismissed this cause of action pursuant to the parties' settlement. The following day, on May 23, 2015, a Consent Decree incorporating the terms for settlement agreed to by the parties was entered by this Court (a copy of the Consent Decree is attached as Exhibit 1). Defendant agreed that it owed the total amount of \$112,776.36 for contributions, liquidated damages, interest and attorneys' fees for the time periods January 1, 2012

through June 30, 2014 (audited period) and July 1, 2014 through November 30, 2014 (unaudited period) as described in Paragraph 3 of the Consent Decree. Defendant agreed to make payment to Plaintiffs of the amount specified in Paragraph 3, being \$112,776.36, by way of equal monthly payments over 24 months or a monthly payment of \$4,699.02. Defendant also agreed that it was obligated to submit its monthly contribution reports and fringe benefit contributions due during the term of the payment plan.

3. The Consent Decree provides that in the event Defendant fails to make any payments described in the Consent Decree, including the obligation to remain current in its reporting obligations during the duration of the Consent Decree, the Defendant will be considered in violation of the Consent Decree.

4. Defendant did not comply with the terms of settlement. The Plaintiffs have brought two motions to reopen and for judgment since the Consent Decree was entered. After the first motion to reopen, on November 17, 2016, an Order was entered requiring the Defendant to submit two (2) monthly payments of \$4,699.02 each for the time period November 15, 2016 through June 15, 2017. On July 15, 2017, the Defendant would resume submitting one (1) installment payment of \$4,699.02 per month pursuant to the terms of the Consent Decree (a copy of the Order entered on November 17, 2016 is attached as Exhibit 2). The July 15, 2017 Order amended the original Consent Decree.

5. Unfortunately, Defendant continues to be unable to comply. On April 24, 2017, Defendant submitted only one (1) payment of \$4,699.02, which was due on April 15, 2017. Defendant did not submit the two (2) payments of \$4,699.02, which were due on May 15, 2017. The

two (2) payments of \$4,699.02 due on June 15, 2017 will become due prior to the hearing on the instant motion.

6. As of the date of filing the instant motion, Defendant has not cured its breach as it has not submitted the second installment payment due on April 15, 2017 pursuant to the terms of the Consent Decree and the Court's Order entered on November 17, 2016. In addition, Defendant has not submitted the two (2) installment payments of \$4,699.02 each due on May 15, 2017.

7. For all the reasons stated, the Plaintiffs hereby move the Court for the entry of an Order reopening this action for the limited purpose of enforcing the terms of the Consent Decree and entering judgment against the Defendant. Specifically, Plaintiffs request:

- A. That judgment be entered in favor of Plaintiffs and against Defendant to include the amount of \$18,795.96, being the total amount remaining due for contributions, liquidated damages, interest and attorneys' fees for the time periods January 1, 2012 through June 30, 2014 and July 1, 2014 through November 30, 2014.
- B. That judgment be entered in favor of Plaintiffs and against Defendant to include the amount of \$6,215.21, being the additional 10% liquidated damages there were previously waived.
- C. That judgment be entered in favor of Plaintiffs and against Defendant to include the amount of \$6,513.50 in attorneys' fees incurred by the Plaintiffs in all efforts to enforce the Consent Decree, including the preparation and presentment of the instant Motion to Reopen.
- D. That Plaintiffs have such further relief as may be deemed just and equitable by the Court.

/s/ Laura M. Finnegan

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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 9th day of June 2017, she electronically filed the foregoing document (Plaintiffs' Motion to Reopen Case) with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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