

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

LABORERS' PENSION FUND et al.,)	
)	
Plaintiffs,)	
)	Case No. 15 C 5331
v.)	
)	Judge Harry D. Leinenweber
WINDY CITY MAINTENANCE)	
CONTRACTORS, INC.)	
)	
Defendant.)	

AFFIDAVIT OF JAMES FOSCO

STATE OF ILLINOIS }
COUNTY OF COOK }

James Fosco being first duly sworn on oath, deposes and states as follows:

1. I am a Representative of the Field Department, employed by the Laborers' Pension Fund and Laborers' Welfare Fund of the Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity (the "Funds"), Plaintiffs in the above referenced action. My responsibilities include oversight of the collection of amounts owed by Windy City Maintenance Contractors, Inc. (the "Company") to the Funds, and the Funds are authorized to act in the collection of unpaid Union work dues on behalf of the Construction & General Laborers' District Council of Chicago and Vicinity (the "Union"). This affidavit is submitted in support of the Funds' Motion To Reinstate This Cause And To Enter Judgment Consistent With The Terms Of The Parties' Settlement Agreement.

2. The Company has been a signatory employer at least since March 27, 2014 as reflected by the Funds' records and as shown by the collective bargaining agreement that was

attached to the Complaint, and is a true and correct copy of the agreement between the Company and the Union that is on file with the Funds.

3. On or about March 29, 2016, the Funds and the Company (collectively hereinafter the "Parties") signed a Settlement Agreement and Release (the "Agreement") and an Installment Note (the "Note") to resolve the above captioned case, covering an audited period of October 1, 2014 through June 30, 2015.

4. On or about May 17, 2016, the Parties also signed a stipulated dismissal, consenting to this Court retaining jurisdiction until September 30, 2016, for the purpose of enforcing the Agreement and Note, covering the duration of the Note's payment schedule.

5. However, as of June 11, 2016, the Company defaulted on its Note, when it failed to timely submit its first note payment, which was due on June 1, 2016. Furthermore, the Company failed to cure within the twenty day cure period. To date there is a remaining balance on the Note in the amount of \$39,204.60 due to the Funds.

6. The Installment Note Agreement that is explicitly incorporated into the Company's Settlement Agreement, assesses untimely paid note payments with liquidated damages at the same rates as untimely made monthly payments, pursuant to the governing collective bargaining agreement, Master Agreement and Declarations of Trust of the respective Funds, to which the Company is bound. The agreements require payment of liquidated damages in the amount of twenty percent of any delinquent principal contributions to the Welfare, Pension, and Training funds. The same agreements establish that liquidated damages are due in the amount of ten percent of the principal amount for delinquent contributions to the LDCLMCC, CAICA and LECET funds, and for Union dues. As the amount remaining on the Note consist entirely of amounts due to the Pension

and Welfare Funds, the amount of \$7,840.92 is due for liquidated damages, and I prepared and attached the Company's Payment Plan Worksheet to this affidavit to show the amounts owed on the Note and the liquidated damages assessed at this time (See Exhibit 4A, Reports).

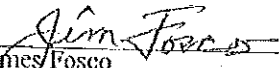
7. Additionally, the Company also breached the Agreement and was in default on the Note when it failed to submit timely its monthly Work Hour report of July 2016 and its Union dues report and payment of May 2016. While a portion of the May report was eventually paid and credited, it was untimely received and was short \$201.60. As such, the Company's dues fund Contribution Exception History Report from the Union, and the \$59.48 unpaid late fee associated with the Company's delinquency to the dues fund is also included as an attachment to this affidavit, along with the summary sheet for the Company's unpaid July 2016 report, reflecting that \$7,035.26 in principal contributions are owed, plus \$1,407.06 for liquidated damages and \$131.89 in accumulated interest for the added amounts owed by the Company at this time (See Exhibit 4A, Reports attached to my affidavit that is Exhibit 4 attached to the Funds' motion).

8. To establish the amounts that the Company owes to the Funds for its unreported principal contributions, Union dues, liquidated damages and accumulated interest, the Funds may require the Company to submit to a compliance audit, covering the unaudited period from July 1, 2015 to the present, pursuant to the Company's obligations under its collective bargaining agreement with the Union, the Master Agreement and the Declarations of Trust of the respective Funds.

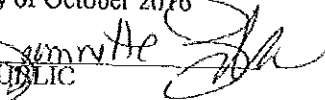
9. The Company is further obligated to pay the Funds for the costs associated with the compliance audit, as well as all reasonable attorneys' fees and court costs incurred by the Funds to enforce the Agreement and the Note.

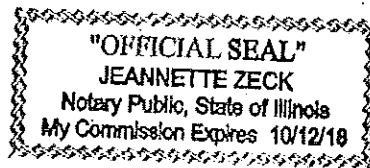
10. As required by Article IX, paragraph 1 of the collective bargaining agreement, all

employers are required to procure, carry and maintain a surety bond in an amount that is satisfactory to the Union. This surety bond must be in excess of \$5,000.00 to guarantee the payment of wages, Pension and Welfare Trust Contributions during the term of the Agreement. The Company must show proof of maintaining a surety bond as required by the contract.


James Fosco
Field Department Representative

Subscribed and sworn to before me
this 13 day of October 2016


NOTARY PUBLIC



Contribution Exception History

WINDY CITY MAINTENANCE CONTRACTORS INC.
 2548 W. DIVISION ST.
 CHICAGO IL 60622

August 26, 2016
 Contractor # 035427

Dues

Report Month	Receipt Date	Total Gross Wages	Total Hours	Expected Amount	Remitted Amount	Applied Amount	Balance
05/2016	07/05/2016	\$13,015.40	296.50	\$365.70	\$270.84	0.00	-94.86
Subtotal							-94.86

IECA

Report Month	Receipt Date	Total Gross Wages	Total Hours	Expected Amount	Remitted Amount	Applied Amount	Balance
05/2016	07/05/2016	\$13,015.40	296.50	\$35.58	\$0.00	0.00	-35.58
Subtotal							-35.58

LECET

Report Month	Receipt Date	Total Gross Wages	Total Hours	Expected Amount	Remitted Amount	Applied Amount	Balance
05/2016	07/05/2016	\$13,015.40	296.50	\$20.76	\$0.00	0.00	-20.76
Subtotal							-20.76

LMCC

Report Month	Receipt Date	Total Gross Wages	Total Hours	Expected Amount	Remitted Amount	Applied Amount	Balance
05/2016	07/05/2016	\$13,015.40	296.50	\$50.40	\$0.00	0.00	-50.40
Subtotal							-50.40

Total Shortage \$201.60

WINDY CITY MAINTENANCE CONTRACTORS INC.
2548 W. DIVISION ST.
CHICAGO IL 60622

August 26, 2016
Contractor # 035427

Dear Contractor:

According to our records, your following report(s) were submitted late. As a result, you owe the Work Dues and Ancillary Funds an amount of \$59.48 late fee.

Report Month	Receipt Date	Total Gross Wages	Total Hours	Expected Amount	Remitted Amount	Expected Shortage Penalty	Expected Late Fee	Applied Penalty	Unpaid Penalty
05/2016	07/05/2016	\$13,015.40	296.50	\$ 594.82	\$ 393.22	\$0.00	\$59.48	\$0.00	\$59.48
Total Unpaid Penalties									\$59.48

* Under Article VI, Paragraph 2, the Working Dues Report is due no later than the 10th of the month following the month for which such deductions were made.

If you fail to remit the amount due, legal action may be initiated to collect this amount, and you will be liable for all attorney fees and court costs incurred to enforce your obligations.

Please send all your remittances to this address:

ATTN: Work Dues Department
LABORERS' DISTRICT COUNCIL
999 McClintock Drive, Suite 300
Burr Ridge, IL 60527

If you have any questions, please contact us at (630) 855-8765 (phone), (630) 655-8864 (fax) or by e-mail at workdues@cvlcdc.org.

Sincerely,

Work Dues Department
Chicago Laborers' District Council

