

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

|  |   |                              |
|--|---|------------------------------|
| <b>LABORERS’ PENSION FUND and</b>                | ) |                              |
| <b>LABORERS’ WELFARE FUND OF THE</b>             | ) |                              |
| <b>HEALTH AND WELFARE DEPARTMENT</b>             | ) |                              |
| <b>OF THE CONSTRUCTION AND GENERAL</b>           | ) |                              |
| <b>LABORERS’ DISTRICT COUNCIL OF</b>             | ) |                              |
| <b>CHICAGO AND VICINITY, JAMES S.</b>            | ) |                              |
| <b>JORGENSEN,</b>                                | ) |                              |
|  | ) |                              |
| <b>Plaintiffs,</b>                               | ) | <b>No. 15 C 9013</b>         |
|  | ) |                              |
| <b>v.</b>  | ) | <b>Judge Edmond E. Chang</b> |
|  | ) |                              |
| <b>J &amp; T SERVICES, INC., and TOM ALBERTO</b> | ) |                              |
| <b>and MARIA A. BANUELOS,</b>                    | ) |                              |
|  | ) |                              |
| <b>Defendants.</b>                               | ) |                              |

**PLAINTIFFS’ MOTION TO REINSTATE AND FOR JUDGMENT  
CONSISTENT WITH THE SETTLEMENT AGREEMENT**

Plaintiffs, the Laborers’ Pension Fund and the Laborers’ Welfare Fund of the Health and Welfare Department of the Construction and General Laborers’ District Council of Chicago and Vicinity, by their attorneys, respectfully request this court to reinstate the above captioned matter and enter judgment for the balance owed and for additional attorneys’ fees and costs expended. In support of this motion Plaintiffs state as follows:

1. This Court has jurisdiction of this cause as this matter was resolved by a Voluntary Dismissal Notice filed on February 23, 2016, Dk No. 82, which provides for jurisdiction to be retained until May 1, 2018 to permit either party to enforce the terms of the Settlement Agreement and Release. A copy of the Voluntary Dismissal Notice is attached hereto as Exhibit 1.

2. On August 15, 2017, Plaintiffs counsel left a voice mail for Defendant Tom Alberto to contact Karen I. Engelhardt, immediately, to discuss the delinquencies. This phone message followed a message left approximately a week earlier. To date, no contact has been made with Mr.

Alberto. Neither Mr. Alberto nor Defendant J & T Services, Inc., are represented by counsel.

3. On February 22, 2016, Defendants J & T Services, Inc. (“J & T”), and Tom Alberto together with the Plaintiffs entered into a Settlement Agreement and Release which provided for payment to the Funds of contributions owed. J & T signed an Installment Note, and Defendant Alberto, personally guaranteed the debt as shown by the personal guaranty. A copy of the Settlement Agreement and Release is attached hereto as Exhibit 2 and copies of the Installment Note and personal guaranty are attached as Exhibit 3. In paragraph 9 of the Settlement Agreement, Defendants J & T and Tom Alberto have agreed to permit leave to reinstate this matter against Defendants in the event that J & T failed to make settlement payments pursuant to the Settlement Agreement or Installment Note or otherwise breaching this Settlement Agreement.

4. According to the Funds’ Field Representative James Fosco, J & T failed to pay installment note payments for May, June, July and now August 2017. An affidavit of James Fosco, attached hereto as Exhibit 4, documents amounts currently owed. The Installment Note provided for twenty-four monthly payments to the Funds. (Exhibit 3). The balance owed on the note is \$27,039.00. (Exhibit 4 ¶ 4).

5. According to the Settlement Agreement, upon default the Funds are entitled to declare the total amount due under the Installment Note and the Funds are entitled to judgment against both J & T and Alberto, personally. See Exhibit 2, ¶¶ 4,5. The Funds are entitled, following their default declaration to move for judgment within five days of a material breach of the Agreement and also are entitled to accelerate the balance owed. The Funds will forward this motion and a Notice of Motion to Tom Alberto at the address provided by the Agreement.

6. According to the Settlement Agreement ¶ 6, Exhibit 2, judgment will be entered for all

unpaid amounts due plus reasonable attorneys' fees. Attorneys' fees in this matter are the amount of \$675.00. (See affidavit of Karen I. Engelhardt, attached, Exhibit 3).

Wherefore, Plaintiffs request this Court to enter judgment against Defendants Tom Alberto and J & T Services, Inc., consistent with the Settlement Agreement, which in this matter is the amount of \$27,714.00.

Respectfully submitted,

/s/ Karen I. Engelhardt  
One of plaintiffs' attorneys

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August 16, 2017