

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

FOX VALLEY LABORERS' HEALTH AND WELFARE FUND, THE FOX VALLEY LABORERS' PENSION FUND, and PAT SHALES, Administrator of the Funds, Judgment Creditors, v. SUBSURFACE UNDERGROUND CONSTRUCTION INC., an Illinois corporation, ROBERT NICKOLSON, individually, Judgment Debtors, KB UTILITY SERVICES CORP., Third-Party Citation Respondent. Case No.: 15 cv 9461 Judge: Finnegan

JUDGMENT CREDITORS' MOTION FOR ENTRY OF CONDITIONAL JUDGMENT

Judgement Creditors FOX VALLEY LABORERS' HEALTH AND WELFARE FUND ("Welfare Fund"), THE FOX VALLEY LABORERS' PENSION FUND ("Pension Fund") and PAT SHALES, administrator of the Funds, (collectively, "the Funds" or "Judgment Creditors"), through their attorneys, Dowd, Bloch, Bennett, Cervone, Auerbach & Yokich, respectfully move this Court for entry of a conditional judgment against KB Utility Services Corp. ("KB Utility"), pursuant to 735 ILCS 5/12-807 and Rule 69(a) of the Federal Rules of Civil Procedure. In support of this motion, the Funds state as follows:

- 1. The Funds brought this suit against Subsurface Underground Construction, Inc. ("Subsurface Underground") and Nickolson seeking relief for delinquent contributions under the

Employee Retirement Income Security Act of 1974, Section 515, 29 U.S.C. § 1145 and Section 502(g)(2), 29 U.S.C. ¶ 1132(g)(2), and the Labor Management Relations Act, Section 301, 29 U.S.C. § 185.

2. On August 9, 2016, Subsurface Underground and Nickolson agreed to a judgment against Subsurface Underground in the amount of \$254,672.98. (Agreed Judgment [Doc. No. 52]).

3. To date, Judgment Creditors have collected only \$14,000.00 towards the judgment, leaving a balance of \$240,672.98.

4. On October 28, 2016, the Funds obtained a judgment against Nickolson in the amount of \$36,899.99, jointly and severally, with up to \$36,899.99 of the judgment entered against Subsurface Underground, based on assets fraudulently transferred from Subsurface Underground to Nickolson.

5. To date, Nickolson has not paid any amount towards the judgment entered against him.

6. On October 13, 2016, the Funds deposed KB Utility pursuant to a Third-Party Citation to Discover Assets. During the deposition, KB Utility testified that Nickolson is an employee of KB Utility (excerpts of the deposition transcript are attached as Exhibit A). Ex. A at 11.

7. Based on KB Utility's testimony, the Funds obtained a wage deductions summons and notice issued to KB Utility (a copy of the wage deduction summons and notice to KB Utility is attached as Exhibit B). The summons was served on November 25, 2016 (a copy of the certified return receipts are attached as Exhibit C). Based on the timing of service, KB Utility was required to respond by December 20, 2016.

8. As of the filing of this motion, KB Utility has not answered the wage deductions summons. Pursuant to Illinois law, which applies in post-judgment collections in this case under Fed. R. Civ. P. 69(a):

If an employer fails to appear and answer as required . . . , the court may enter a conditional judgment against the employer for the amount due upon the judgment against the judgment debtor. A summons to confirm the conditional judgment may issue against the employer returnable not less than 21 nor more than 30 days after the date of issuance, commanding the employer to show cause why the judgment should not be made final.

735 ILCS 5/12-807(a).

9. Because KB Utility has failed to answer the wage deduction summons, the Funds request entry of a conditional judgment against KB Utility. The Funds will then obtain from the Clerk of the Court a Summons to Confirm Conditional Judgment, serve that Summons on KB Utility, and seek confirmation of the conditional judgment if KB Utility does not appear.

WHEREFORE, the Funds move the Court to issue a conditional judgment against KB Utility Services Corp., in the form of the attached proposed conditional judgment or otherwise, and a Summons to Confirm Conditional Judgment.

Respectfully submitted,
/s/ Elizabeth L. Rowe
Elizabeth L. Rowe
One of the Judgment Creditors' Attorneys

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