

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

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 CHICAGO)
LABORERS' DISTRICT COUNCIL RETIREE)
HEALTH AND WELFARE FUND and JAMES)
S. JORGENSEN, Administrator of the Funds,)
CONSTRUCTION & GENERAL LABORERS')
DISTRICT COUNCIL OF CHICAGO &)
VICINITY)

Case No. 17 C 5758

Judge SCHENKIER

Plaintiffs,)

v.)

ABN BUILDING MAINTENANCE INC., an)
Illinois corporation,)

Defendant.)

MOTION FOR ENTRY OF FINAL JUDGMENT

NOW COME Plaintiffs, Laborers' Pension Fund, Laborers' Welfare Fund of the Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity, the Chicago Laborers' District Council Retiree Health and Welfare Fund, and James Jorgenson, not individually, but as Administrator of the Funds, (collectively "Funds") by and through their attorney G. Ryan Liska, and the Construction & General Laborers' District Council of Chicago & Vicinity ("Union") by and through its attorney Christina Wernick and hereby file this Motion for Final Judgment pursuant to Fed. R. Civ. P. 54(b) and state as follows.

1. On August 7, 2019, this Court granted the Union's motion for summary judgment on Count III and entered judgment in favor of the Union and against ABN in the amount of \$717,040.51. (Docket No. 56).

2. The Union did not request a Fed. R. Civ. P. 54(b) finding in conjunction with its motion for summary judgment. As a result, the judgment entered by the Court on August 7, 2019 was not a final judgment due to the pending Counts I and II.

3. The periods of fringe benefit liability and damages requested by the Funds in Counts I and II involved the identical periods of liability and damages awarded by the Court in its Count III judgment order entered on August 7, 2019. As a result, the Funds filed a Motion to Voluntarily Dismiss Counts I and II of the Amended Complaint pursuant to Fed. R. Civ. P. 41(a)(2). That motion was filed simultaneously with this motion.

6. The anticipated dismissal of Count I and II pursuant to Fed. R. Civ. P. 41(a)(2) and the granting of the Motion for Summary Judgment on Count III disposes all claims against all parties; however, the Seventh Circuit has stated that summary judgment on one claim, followed by dismissal without prejudice of the remaining claims, "does not terminate the litigation in the district court in any realistic sense and so is not a final decision within the meaning of 28 U.S.C. § 1291, which authorizes the appeal of such decisions." *ITOFCA, Inc. v. MegaTrans Logistics, Inc.*, 235 F.3d 360, 363 (7th Cir. 2000). In order to make the order for summary judgment a final order sufficient for appellate jurisdictional issues under § 1291 (and to allow the Funds to conduct collection proceedings), entry of judgment under Fed. R. Civ. P. 54(b) is required.

7. All claims in the lawsuit have been disposed of -either via motion for summary judgment or voluntary dismissal order- and there is no just reason to delay the appeal process or collection of the judgment.

WHEREFORE, Plaintiffs, Laborers' Pension Fund et al. and the Construction & General

Laborers' District Council of Chicago & Vicinity ("Union") requests this Court grant its Motion for Final Judgment pursuant to Fed. R. Civ. P. 54(b) and enter a finding that its August 7, 2019 Order granting motion for summary judgment in favor of Union and against Defendant ABN Building Maintenance, Inc. is a final order and the for any other relief deemed just and equitable.

Dated: September 23, 2019

Respectfully submitted,

The Construction and General Laborers'
District Council of Chicago and Vicinity

By: /s/ Christina Krivanek Wernick

Laborers' District Council
999 McClintock, Suite 300
Burr Ridge, IL 60527

Respectfully submitted,

By: /s/ G. Ryan Liska

G. Ryan Liska
Office of Fund Counsel
Laborers' Pension and Welfare Funds
111 West Jackson, Suite 1415
Chicago, IL 60604
(312) 692-1540

CERTIFICATE OF SERVICE

The undersigned certifies that she caused a copy of the foregoing Motion for Entry of Final Judgment to be served upon the following persons via the Court's electronic notification system this 23rd day of September, 2019.

Megan M. Moore
Allocco, Miller & Cahill, P.C.
20 N. Wacker Drive, Suite 3517
Chicago, IL 60606

By: /s/ G. Ryan Liska