

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

GREATER ST. LOUIS CONSTRUCTION)
LABORERS WELFARE FUND, et al.,)
)
Plaintiffs,)
)
v.)
)
EMPIRE GENERAL CONTRACTING,)
INC., et al.,)
)
Defendants.)

No. 4:02-CV-1105 CAS

MEMORANDUM AND ORDER

This matter is before the Court on plaintiffs’ motion to compel post-judgment discovery. Plaintiffs’ motion is accompanied by an affidavit of counsel and an exhibit. For the following reasons, the Court will grant the motion.

Background

Plaintiffs Greater St. Louis Construction Laborers Welfare Fund, related funds, and the Trustees of the funds filed this action on July 19, 2002 under Sections 502 and 515 of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1132(a)(3)(ii) and 1145. A Consent Judgment was issued on December 11, 2003, in favor of plaintiffs and against defendant Empire General Contracting, Inc. in the total amount of Ninety-Five Thousand One Hundred Fourteen Dollars and Eleven Cents (\$95,114.11). The Consent Judgment was signed on behalf of defendant by its president, Mr. Keith Hanford.

Motion to Compel

Plaintiffs' motion to compel and the affidavit of attorney Michael A. Evans assert that plaintiffs sent a notice of post-judgment deposition to defendant's officer, Mr. Keith Hanford, by mail on June 25, 2009, pursuant to Federal Rules of Civil Procedure 69 and 37. The notice required the attendance of Mr. Hanford at the office of plaintiffs' counsel on July 14, 2009 at 11:00 a.m., and the simultaneous production of certain documents relevant to plaintiffs' efforts to collect the judgment in this case. The affidavit of counsel states that Mr. Hanford did not appear at the deposition or produce any documents, nor did any representative of the defendant contact plaintiffs' counsel with respect to the deposition notice.

Rule 69(a) of the Federal Rules of Civil Procedure provides that a "money judgment is enforced by a writ of execution, unless the court directs otherwise." Rule 69(a)(1), Fed. R. Civ. P. Rule 69 further provides that the procedure on execution, and in proceedings in aid of execution, "must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies." *Id.* Finally, Rule 69 provides that in aid of a judgment or execution, a judgment creditor "may obtain discovery from any person--including the judgment debtor--as provided in [the Federal Rules of Civil Procedure] or by the procedure of the state where the court is located." Rule 69(a)(2), Fed. R. Civ. P.

In the absence of a controlling federal statute, a district court "has the same authority to aid judgment creditors in supplementary proceedings as that which is provided to state courts under local law." H.H. Robertson Co. v. V.S. DiCarlo Gen. Contractors, Inc., 994 F.2d 476, 477 (8th Cir.) (citation omitted), cert. denied, 510 U.S. 1019 (1993).

Plaintiffs seek to take a post-judgment deposition in aid of execution of their judgment. This procedure is appropriate pursuant to Rules 69(a) and 30 of the Federal Rules of Civil Procedure. It appears to the Court from the affidavit of plaintiffs' counsel that defendant's officer was properly noticed for deposition but failed to appear. Plaintiffs' motion to compel discovery should therefore be granted, and Mr. Hanford will be ordered to appear for deposition at the offices of plaintiffs' counsel, and to produce the requested documents at the same time.

Accordingly,

IT IS HEREBY ORDERED that plaintiffs' motion to compel discovery is **GRANTED**.

[Doc. 30]

IT IS FURTHER ORDERED that Mr. Keith Hanford, an officer of defendant Empire General Contracting, Inc., shall appear for a post-judgment deposition and produce the records requested in the notice of deposition dated June 25, 2009, at the offices of plaintiffs' counsel on **Tuesday, August 25, 2009, at 10:00 a.m.**

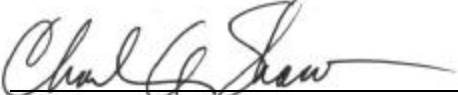
IT IS FURTHER ORDERED that the Clerk of the Court shall mail a copy of this order to defendant Empire General Contracting, Inc.'s officer, Mr. Keith Hanford, at the following addresses:

Mr. Keith Hanford
2376 Cassens Dr.
Fenton, MO 63026

Mr. Keith Hanford
3811 Midview Ave.
Bridgeton, MO 63044-2920

Mr. Keith Hanford
11035 Warwickhall Dr.
Bridgeton, MO 63044

SO ORDERED.



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 21st day of July, 2009.