

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

CARPENTERS’ DISTRICT COUNCIL OF)
ST. LOUIS AND VICINITY, et al.,)
)
Plaintiffs,)
)
v.)
)
F.G. LANCIA CUSTOM WOODWORKING,)
LLC, et al.,)
)
Defendants.)

No. 4:06-CV-1673 CAS

MEMORANDUM AND ORDER

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

Background

Plaintiffs Carpenters District Council of Greater St. Louis and Vicinity and the Trustees of its various Trust and Training Funds filed this action under the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1132 (“ERISA”), to collect delinquent fringe benefit contributions. On June 5, 2007, the Court entered a default judgment against defendant F.G. Lancia Custom Woodworking, LLC in the amount of \$46,842.17 for delinquent fringe benefit contributions, liquidated damages, and interest owed to plaintiffs under collective bargaining agreements and under the terms of ERISA, 29 U.S.C. § 1132. On the same day, the Court also entered a judgment against defendants F.G. Lancia Custom Woodworking, LLC and Frank Lancia, an individual, in the amount of \$88,156.69, jointly and severally, for delinquent contributions, liquidated damages, interest, attorneys’ fees, and costs, and amounts owed pursuant to a promissory note. On September 29,

2009, the Court granted plaintiffs' Motion for a Creditor's Bill in Equity and to Pierce the Corporate veil, which assessed the June 5, 2007 judgment against a related entity, F.G.L. Woodworking and Audio-Video, Inc.

Motion to Compel

Plaintiffs state in their motion to compel that they have not been able to collect all of the judgment balance. In an attempt to further collection efforts, plaintiffs noticed the deposition of defendant Frank Lancia pursuant to Rule 69 of the Federal Rules of Civil Procedure for August 14, 2013 at 10:00 a.m. That Notice also required Mr. Lancia to produce certain documents specified in nine numbered paragraphs. See Affidavit of Greg A. Campbell at ¶ 3, and Ex. 1 thereto at ¶¶ 1-9. Plaintiffs state that Mr. Lancia failed to appear at the deposition on August 14, 2013, failed to produce any documents responsive to the above-mentioned document request, and did not communicate with plaintiffs' counsel concerning his attendance at the deposition. See Campbell Aff. at ¶ 4. Plaintiffs move the Court for an order compelling Mr. Lancia to appear for a deposition on September 24, 2013, and to produce all records listed in the Notice of Deposition.

Rule 69(a)(1) of the Federal Rules of Civil Procedure provides, “[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. Rule 69(a)(2) 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.

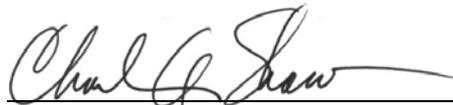
Plaintiffs seek to take a post-judgment deposition in aid of execution of their judgment. This procedure is appropriate pursuant to Rules 69(a) and 30 of the Federal Rules of Civil Procedure. It appears to the Court from the affidavit of plaintiffs' counsel that defendant Frank Lancia was properly noticed for deposition but failed to appear. Plaintiffs' motion to compel should therefore be granted, and Mr. Lancia 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 is **GRANTED**. [Doc. 106]

IT IS FURTHER ORDERED that defendant Frank Lancia shall appear for a post-judgment deposition and produce the records requested in the Notice of Rule 69 Deposition and Request for Production of Documents, at the offices of plaintiffs' counsel on Tuesday, **September 24, 2013**, at **10:00 a.m.**

IT IS FURTHER ORDERED that the Clerk of the Court shall mail a copy of this order to defendant Frank Lancia at F.G. Lancia Custom Woodworking, LLC, 813 N. Skinker, St. Louis, Missouri 63130, by first-class and certified mail.



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 5th day of September, 2013.