

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

PAINTERS DISTRICT COUNCIL NO. 58,)
et al.,)
)
Plaintiffs,)
)
vs.)
)
E.K.M. CONTRACTING LLC, et al.,)
)
Defendants.)

Case No. 4:16-CV-00846 JAR

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiffs’ Motion to Compel. (Doc. No. 33). Plaintiffs seek to compel Defendants E.K.M. Contracting LLC and Makal Ali to appear for a post-judgment deposition and produce the records requested in Plaintiffs’ October 12, 2017 notice of deposition (Doc. No. 33-2). For the following reasons, the motion will be granted.

Background

Plaintiffs filed this action on June 14, 2016 to recover from Defendants delinquent fringe benefit contributions pursuant to Section 502 of the Employee Retirement Income Security Act, 29 U.S.C. § 1132 (“ERISA”). On August 21, 2017, default judgment was granted for Plaintiffs in the amount of \$10,453.10 in unpaid fringe benefit contributions and union dues, \$2,094.81 in liquidated damages and \$687.00 in payroll examination costs, for a total of \$13,234.91. (Doc. No. 24).

Motion to Compel

Plaintiffs’ motion to compel and the affidavit of attorney James P. Faul assert that on October 12, 2017, Plaintiffs sent a notice of post-judgment deposition and request for production

of documents to Defendants. The notice called for a deposition at the offices of Plaintiffs' counsel on October 25, 2017 at 10:00 a.m., and the simultaneous production of requested documents relevant to Plaintiffs' efforts to collect the judgment in this case. Defendants did not appear at the deposition or produce any of the requested documents.

Rule 69(a) of the Federal Rules of Civil Procedure provides that the “process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise.” Rule 69(a), Fed. R. Civ. P. Rule 69 further provides that the procedure on execution, and in proceedings in aid of execution, “shall be in accordance with the practice and procedure of the state in which the district court is held ... except that any statute of the United States governs to the extent that it is applicable.” *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, in the manner provided in [the Federal Rules of Civil Procedure] or in the manner provided by the practice of the state in which the district court is held.” *Id.* 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.” Carpenters’ District Council of Greater St. Louis and Vicinity v. Vehlewald Const. Co., 2008 WL 544977, at * 1-2 (E.D. Mo. Feb. 25, 2008) (quoting H.H. Robertson Co. v. V.S. DiCarlo Gen. Contractors, Inc., 994 F.2d 476, 477 (8th Cir. 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 Defendants were properly noticed for deposition but failed to appear. Plaintiffs' motion to compel should therefore

be granted, and Defendants will be ordered to appear for deposition at the offices of Plaintiffs' counsel, and produce the requested documents at the same time.


Accordingly,

IT IS HEREBY ORDERED that Plaintiffs' Motion to Compel [33] is **GRANTED**.

IT IS FURTHER ORDERED that Defendants E.K.M. Contracting LLC and Makal Ali shall appear for a post-judgment deposition and produce the records requested in the notice of deposition dated October 12, 2017, at the offices of Plaintiffs' counsel on **December 10, 2017 at 10:00 a.m.**

IT IS FURTHER ORDERED that the Clerk of the Court shall mail a copy of this order to Defendants at 4319 August Manor Court, Florissant, Missouri 63034.

Dated this 9th day of November, 2017.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE