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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION

Pension Benefit Guaranty Corporation, 1200 K Street, NW Washington, DC 20005, Plaintiff, v. Del's Flooring Contractors, Inc., 42120 State Street Palm Desert, CA 92211, Defendant.	No. CV **COMPLAINT**

PRELIMINARY STATEMENT

1. This action arises under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). 29 U.S.C. §§ 1301-1461 (2012). Plaintiff, Pension Benefit Guaranty Corporation ("PBGC") brings this action against Defendant, Del's Flooring Contractors, Inc. ("Del's Flooring") pursuant to 29 U.S.C. §§ 1303 and 1341, alleging that Del's Flooring failed to pay to a plan participant in connection with its termination of the Del's Flooring Contractors, Inc. Cash Balance Pension Plan (the "Pension Plan").

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action, without regard to the amount in controversy, under 29 U.S.C. § 1303(e)(3) and 28 U.S.C. § 1331.

3. Venue properly lies in this Court under 29 U.S.C. § 1303(e)(2). Defendant Del's Flooring conducts business at 42120 State Street, Palm Desert, California 92211.

PARTIES

4. PBGC is a wholly owned United States government corporation established under 29 U.S.C. § 1302(a) to administer and enforce the pension insurance program created under Title IV of ERISA.

5. Del's Flooring is a California corporation with its principal place of business in Palm Desert, California.

GENERAL ALLEGATIONS

6. At all times relevant to this Complaint, Del's Flooring was the sponsor and plan administrator of the Pension Plan.

7. The Pension Plan is a defined-benefit pension plan covered by Title IV of ERISA.

8. Title IV of ERISA sets forth the exclusive means for terminating a covered pension plan. 29 U.S.C. § 1341(a).

9. Under Title IV of ERISA, a pension plan may terminate in a "standard termination" if, as of the proposed plan-termination date, the plan has sufficient assets to satisfy all of its benefit liabilities. 29 U.S.C. § 1341(b)(1)(D).

10. In a standard termination, the plan administrator must distribute the plan's assets to participants and their beneficiaries by (1) purchasing "irrevocable commitments" (i.e., annuities) from a private insurer to satisfy all benefit liabilities, or (2) making an alternative form of distribution (e.g., a lump sum payment) "in accordance with the provisions of the plan and any applicable regulations." 29 U.S.C. § 1341(b)(3)(A).

11. If the plan has any "missing participants," which the plan administrator cannot locate after a diligent search, then the plan administrator must either transfer such participant's designated benefit to PBGC or purchase an irrevocable commitment for such participant, and provide PBGC with "such information and certifications with respect to such designated benefits or irrevocable commitments as [PBGC] shall specify." 29 U.S.C. § 1350(a)(1); see also 29 U.S.C. § 1341(b)(3)(A)(ii); 29 C.F.R. §§ 4041.28(c)(5), 4050.3, 4050.5, 4050.6.

12. Under the standard termination procedures of Title IV of ERISA and its implementing regulations, a plan administrator who has made distributions of plan assets to participants and beneficiaries must, within 30 days of completing such distributions, file a certification with PBGC stating that all benefits under the plan have been distributed in accordance with the plan's terms and Title IV of ERISA (a "Post-Distribution Certification"). 29 U.S.C. § 1341(b)(3)(B); 29 C.F.R. § 4041.29.

13. By the time that the Post-Distribution Certification is due, for any missing participants for which an annuity has not been purchased, the plan administrator must submit payment to PBGC of the designated benefits for those participants, along with the required missing participant certification and information. 29 U.S.C. § 1350(a)(1)(B); 29 C.F.R. § 4050.6. Interest is assessed on any late payment in accordance with 29 C.F.R. § 4050.6(b).

FIRST CLAIM FOR RELIEF

(Nonpayment of Statutory Liability)

14. PBGC incorporates paragraphs 1-13 by reference.

15. On May 31, 2006, Del's Flooring initiated a standard termination of the Pension Plan by issuing a notice of intent to terminate the Pension Plan (the "NOIT") to affected parties (within the meaning of 29 C.F.R. § 4041.23(a)). The NOIT stated that the Pension Plan would be terminated in accordance with Title IV of ERISA as of July 31, 2006, and provided certain other required information.

16. On or about September 27, 2006, Del's Flooring submitted to PBGC the required PBGC Form 500 (Standard Termination Notice), notifying PBGC of Del's Flooring's decision to terminate the Pension Plan.

17. On or about August 24, 2007, Del's Flooring submitted to PBGC the required PBGC Form 501 (Post-Distribution Certification) with respect to the Pension Plan, which certified that the distribution of all benefits under the Pension Plan was completed by August 1, 2007.

18. The Post-Distribution Certification included a Schedule MP and attachments. The Schedule MP certified, inter alia, that (i) the Pension Plan had two missing participants, (ii) irrevocable commitments were not purchased for any of the two missing participants, and (iii) the amount due PBGC under 29 U.S.C. § 1350 was $30,499.07.

19. However, Del's Flooring did not make any payment to PBGC for the two reported missing participants as required under 29 U.S.C. § 1350 and applicable regulations.

20. After receiving the Post-Distribution Certification and Schedule MP, PBGC notified Del's Flooring that PBGC had not received any payment of designated benefits for the Pension Plan's two missing participants.

21. Del's Flooring responded to PBGC that it would not pay the designated benefits for the Pension Plan's missing participants.

22. In the interim, through its own investigation, PBGC received confirmation that one of the Pension Plan's missing participants had received her plan benefit directly from the former owner of Del's Flooring.

23. To date, PBGC has not received any confirmation that the Pension Plan's remaining missing participant has received his plan benefit in the amount of $18,036.95, along with any required interest.

24. To date, PBGC has not received any payment of designated benefits for the Pension Plan's remaining missing participant in the amount of $18,036.95, along with interest, as required under 29 U.S.C. § 1350(a)(1)(B) and 29 C.F.R. § 4050.6.

PRAYER FOR RELIEF

WHEREFORE, PBGC demands judgment and prays this Court:

(i) Order that Del's Flooring pay PBGC the amount of $18,036.95 in designated benefits for the Pension Plan's remaining missing participant under 29 U.S.C. § 1350;

(ii) Order that Del's Flooring pay PBGC interest on that designated benefit amount from the Post-Distribution Certification date of August 1, 2007, at the rate prescribed by 29 C.F.R. § 4007.7(a); and

(iii) Grant such other relief as this Court may deem just and proper.

Dated: September 25, 2014

Respectfully submitted,

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/s/ Kristen Lee
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