UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TRUSTEES OF THE UNITED TEAMSTER FUND and TRUSTEES OF THE LOCAL 111 PENSION FUND,

Plaintiffs,

V.

MALLORY KOTZEN TIRE CO., INC.,

Defendant.

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CV 10- 5595
Case No.

KORMAN, J.
MANN, M.J.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
DEC 03 2010 ★
BROOKLYN OFFICE

COMPLAINT

Plaintiffs, the Trustees of the United Teamster Fund and Trustees of the Local 111 Pension Fund (collectively, the "Funds"), by their attorneys, Cary Kane LLP, respectfully allege as follows:

Nature of the Action

1. This action is brought under Sections 502 and 515 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §§ 1132 and 1145, by fiduciaries of and on behalf of the employee benefit plans maintained by the Funds in order to enforce the provisions of a collective bargaining agreement, Trust Agreements, and the statutory obligations imposed on Mallory Kotzen Tire Co., Inc. ("Mallory Kotzen").

Jurisdiction and Venue

2. This Court has jurisdiction pursuant to Sections 502 and 515 of ERISA, 29 U.S.C. §§ 1132, 1145, and Section 301 of the Labor-Management Relations Act of 1947 ("LMRA"), 29 U.S.C. § 185.

3. Venue properly lies in this judicial district pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2), and Section 301(a) of the LMRA, 29 U.S.C. § 185(a), in that the employee benefit plans are administered in this district.

The Parties

4. Plaintiffs have been, at all times material hereto, "fiduciaries," as defined by Section 3(21) of ERISA, 29 U.S.C. § 1002(21), of "employee benefit plans" and "multi-employer plans," as defined by Sections 3(3) and 3(37) of ERISA, 29 U.S.C. §§ 1002(3), 1002(37). The Funds are administered in Brooklyn, New York at 2137-2147 Utica Avenue, 11234. The Funds are collectively-bargained, jointly-trusteed funds organized and operating pursuant to the provisions of Section 302(c) of the LMRA, 29 U.S.C. § 186(c).

5. Upon information and belief, defendant Mallory Kotzen has been, at all times material hereto, an "employer" "affecting commerce" as defined by Sections 2(2), (6), and (7) of the LMRA, 29 U.S.C. §§ 152(2), (6), and (7). Mallory Kotzen is and has been, at all times material hereto, a New York corporation with its principal place of business at 2120 Boston Post Road, Route 1, Larchmont, New York 10538.

Collective Bargaining Agreement

6. Mallory Kotzen is party to a collective bargaining agreement (the "Agreement") with Local 111, International Brotherhood of Teamsters (the "Union").

7. The Agreement covers the terms and conditions of employment of employees represented by the Union and employed by Mallory Kotzen for all periods relevant hereto.

8. The Agreement requires Mallory Kotzen to remit monthly contributions to the Funds, so that the Funds can provide certain benefits to defendant's employees covered by the Agreement.

9. The Funds are third-party beneficiaries of the Agreement.

10. The Funds are operated pursuant to their respective Trust Agreements (the "Trusts"). The Trusts provide that the Funds' Trustees, the plaintiffs, may bring any action to enforce the agreements and to recoup unpaid contributions due the Funds, plus interest, costs, damages, and attorneys' fees.

CLAIM FOR RELIEF

Delinquent Contributions under ERISA

11. Defendant is obligated, pursuant to the Agreement, to remit benefit contributions to the Funds, within the meaning of Section 515 of ERISA, 29 U.S.C. § 1145, and, with such contributions, to provide the Funds with remittance reports setting forth the hours worked each month by employees covered by the Agreement.

12. Notwithstanding the foregoing, defendant has failed and refused to remit contributions to the Funds for the period May 2010 through November 2010, and is currently delinquent in the estimated amount of $34,720 to the United Teamster Fund, and $1,400 to the

Local 111 Pension Fund. Defendant also failed to provide the above-described remittance reports for the months of May 2010 through November 2010.

13. Accordingly, plaintiffs bring a claim under Sections 502 and 515 of ERISA, 29 U.S.C. §§ 1132 and 1145, to enforce the terms of the Agreement and the Trusts, and to collect any and all contributions owed pursuant to their terms.

14. Pursuant to Section 502(g)(2) of ERISA, 29 U.S.C. §1132(g)(2), and the Trusts, plaintiffs are also entitled to interest on the unpaid contributions and liquidated damages, as well as costs and attorneys' fees incurred in collecting any amounts due.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that the Court enter judgment in their favor and against defendant and more particularly that the Court grant the plaintiffs the following relief, as required by Section 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2), and by the terms of the Agreement and the Funds Trusts:

(a) Order defendant to pay contributions owed to the United Teamster Fund for the months May 2010 through November 2010 in an estimated amount of $34,720, along with any contributions that may come due subsequent to November 2010;

(b) Order defendant to pay contributions owed to the Local 111 Pension Fund for the months May 2010 through November 2010 in an estimated amount of $1,400, along with any contributions that may come due subsequent to November 2010;

(c) Order defendant to submit remittance reports setting forth the hours worked by employees in covered employment for the months May 2010 through November 2010, along with any remittance reports that may come due subsequent to November 2010;

(d) Order defendant to remain current in its obligations to the Funds;

(e) Order defendant to pay interest of ten percent (10%) on the delinquent contributions;

(f) Order defendant to pay liquidated damages equal to the greater of the interest on the unpaid contributions or twenty percent (20%) of the unpaid contributions;

(g) Order defendant to pay the plaintiffs' costs and attorneys' fees incurred in this action; and

(h) Grant plaintiffs such other and further relief as the Court may deem just and proper.

DATED: December 2, 2010
New York, New York

CARY KANE LLP
Attorneys for Plaintiffs

By: _____
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