

DEERE & COMPANY,	:
	:
FINANCIAL PACIFIC LEASING, INC.,	:
	:
INTERNAL REVENUE SERVICE,	:
	:
MADISON NATIONAL BANK,	:
	:
MGI GROUP, LLC,	:
	:
NAVITAS LEASE CORP. ISAOA,	:
	:
NDH CAPITAL CORPORATION,	:
	:
PAWNEE LEASING CORPORATION,	:
	:
PHOENIX LIFE INSURANCE COMPANY,	:
	:
RBL GROUP, LLC,	:
	:
RUB BBQ FRANCHISING SYSTEMS LLC,	:
	:
SIGNATURE FINANCIAL LLC,	:
	:
SOVEREIGN BANK,	:
	:
STUDEBAKER-WORTHINGTON LEASING CORP.,	:
	:
SYSCO LONG ISLAND, LLC,	:
	:
TD BANK, NA, and	:
	:
TFG LEASING FUND I, LLC,	:
	:
Defendants.	x

1. The Pension Benefit Guaranty Corporation (“**PBGC**”) brings this action under the Employee Retirement Income Security Act of 1974, codified, *as amended*, as 29 U.S.C. §§ 1001-1461 (2012 & Supp. II 2014) (“**ERISA**”), to enforce its claims for required contributions to the

Somerstein Caterers of Lawrence, Inc. Pension Plan (the “**Plan**”) and for the unfunded benefit liabilities of the Plan, to collect pension insurance premiums and termination premiums, to collect penalties assessed under ERISA, to enforce statutory liens, and for PBGC’s costs in this action.¹

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under ERISA § 4003(e)(3), 29 U.S.C. § 1303(e)(3), and 28 U.S.C. § 1331.

3. This Court is a proper venue for this action under ERISA § 4003(e)(2), 29 U.S.C. § 1303(e)(2).

PARTIES

4. Plaintiff PBGC is a United States government corporation established under ERISA § 4002, 29 U.S.C. § 1302, to administer and enforce the pension insurance program established by Title IV of ERISA (“**Title IV**”). PBGC guarantees the payment of certain pension benefits upon the termination of a single-employer pension plan covered by Title IV. When an underfunded plan terminates, PBGC generally becomes trustee of the plan and, subject to certain statutory limitations, pays the plan’s unfunded benefits with its insurance funds.

5. Defendant QUINN RESTAURANT CORPORATION (“**Quinn**”) is a New York corporation whose principal place of business is in Long Island City, Queens County, New York.

6. Each of Defendants H&R CONVENTION & CATERING CORP. (“**H&R**”); RAJ & RAJ REALTY, LTD.; RBS RESTAURANTS, INC.; SINGH HOSPITALITY GROUP, INC.;

¹ Except as otherwise specified, all citations herein to the United States Code are to the latest edition, including supplements.

SRB CONCESSION INC.; and S.R.B. CONVENTION & CATERING CORP. (collectively, with Quinn, the “**Quinn Defendants**”) is a New York corporation whose principal executive office is in Nassau County, New York.

7. Each of the other defendants is named as a defendant in connection with PBGC’s sixth claim for relief, for enforcement of liens. Each of those defendants may claim an interest in assets of one or more Quinn Defendants that may be subject to foreclosure and related relief in this action.

FIRST CLAIM FOR RELIEF

UNFUNDED BENEFIT LIABILITIES OF THE PLAN

8. PBGC re-alleges as part of this claim the allegations in paragraphs 1 through 7.

9. The Plan was a single-employer defined-benefit pension plan covered under Title IV.

10. The Plan was terminated under ERISA § 4042, 29 U.S.C. § 1342. Specifically:

a. On February 28, 2012, PBGC determined, pursuant to ERISA § 4042(a)(1)-(2), 29 U.S.C. § 1342(a)(1)-(2), that (1) the Plan had not met the minimum funding standard under 26 U.S.C. § 412; (2) the Plan would be unable to pay benefits when due; and (3) termination of the Plan was necessary to protect the interests of Plan participants in their retirement benefits.

b. On June 8, 2012, PBGC filed an action in this Court to terminate the Plan.²

² PBGC v. Quinn Restaurant Corp., No. 12-cv-02881 (E.D.N.Y. June 8, 2012) (Vitaliano, J.).

c. On June 14, 2012, Judge Vitaliano issued an order terminating the Plan as of February 29, 2012 (the “**Date of Plan Termination**”) and appointing PBGC statutory trustee of the Plan pursuant to ERISA § 4042(c), 29 U.S.C. 1342(c).³

11. On the Date of Plan Termination, Quinn was the Plan’s contributing sponsor, and the other Quinn Defendants were members of Quinn’s controlled group.

12. As of the Date of Plan Termination, the Plan had approximately \$14,905 in assets and unfunded benefit liabilities of approximately \$2,444,629.

13. Under ERISA § 4062, 29 U.S.C. § 1362, when a single-employer pension plan covered under Title IV is terminated under ERISA § 4042, 29 U.S.C. § 1342, each person who is, on the date of plan termination, a contributing sponsor of the plan or a member of the contributing sponsor’s controlled group becomes jointly and severally liable to PBGC for the plan’s unfunded benefit liabilities—that is, the present value of the plan’s benefit liabilities, under PBGC-prescribed assumptions, minus the value of the plan’s assets⁴—and, under ERISA § 4062(b)(1), 29 U.S.C. § 1362(b)(1) and 29 C.F.R. § 4062.7, for interest thereon accruing from the date of plan termination at the annual rate prescribed under section 6601(a) of the Internal Revenue Code, compounded daily.⁵

14. The Quinn Defendants are jointly and severally liable to PBGC for the Plan’s unfunded benefit liabilities, plus interest from the Date of Plan Termination.

³ See Order & Judgment Upon Failure to Show Cause, PBGC v. Quinn Restaurant Corp., No. 12-cv-02881 (E.D.N.Y. June 14, 2012), ECF No. 10 (Vitaliano, J.).

⁴ See 29 U.S.C. § 1301(a)(18); 29 C.F.R. § 4062.3; see also 29 C.F.R. Pt. 4044 (certain PBGC-prescribed assumptions).

⁵ “Contributing sponsor” is defined by ERISA § 4001(a)(13), 29 U.S.C. § 1301(a)(13). “Controlled group” is defined by ERISA § 4001(a)(14)(A)-(B), 29 U.S.C. § 1301(a)(14)(A)-(B), and 29 C.F.R. § 4001.2, .3(b), and, by reference therein, 26 C.F.R. § 1.414(c)-2(c).

SECOND CLAIM FOR RELIEF

PENSION INSURANCE PREMIUMS

15. PBGC re-alleges as part of this claim the allegations in paragraphs 1 through 14.

16. Under ERISA §§ 4006-07, 29 U.S.C. §§ 1306-07, each person who is a contributing sponsor of a single-employer pension plan covered under Title IV or a member of the contributing sponsor's controlled group is liable to PBGC for due and unpaid pension insurance premiums and, under 29 C.F.R. § 4007.7, for interest thereon accruing from the date payment is due, at the rate prescribed under section 6601(a) of the Internal Revenue Code, compounded daily.

17. Due and unpaid pension insurance premiums respecting the Plan total \$37,548.70.

18. The Quinn Defendants are jointly and severally liable to PBGC for due and unpaid pension insurance premiums totaling \$37,548.70, plus interest from the dates payments were due.

THIRD CLAIM FOR RELIEF

TERMINATION PREMIUMS

19. PBGC re-alleges as part of this claim the allegations in paragraphs 1 through 18.

20. Under ERISA §§ 4006(a)(7), 4007, 29 U.S.C. §§ 1306(a)(7), 1307, and 29 C.F.R. §§ 4006.7, 4007, when a single-employer pension plan covered under Title IV is terminated under ERISA § 4042, 29 U.S.C. § 1342, each person who is, on the date of plan termination, a contributing sponsor of the plan or a member of the contributing sponsor's controlled group, incurs joint and several liability to PBGC for a series of three annual termination premiums, each in the amount of \$1,250 multiplied by the number of plan participants immediately before the date of plan termination.

21. There were 88 participants in the Plan immediately before the Date of Plan Termination.
22. The amount of each of the three annual termination premiums due was \$110,000.
23. Under 29 C.F.R. § 4007.13(f), payment of termination premium is due on the thirtieth day of each twelve month period beginning with the first full calendar month following the month in which the date of plan termination is established.
24. The Date of Plan Termination was established by Judge Vitaliano's order of June 14, 2012.
25. Payment of the first \$110,000 termination premium was due on July 30, 2012. Payment of the second \$110,000 termination premium was due on July 30, 2013. Payment of the third and final \$110,000 termination premium was due on July 30, 2014.
26. No termination premiums respecting the Plan have been paid.
27. Under 29 C.F.R. § 4007.7, interest on termination premiums accrues from the date payment is due, at the rate prescribed under section 6601(a) of the Internal Revenue Code, compounded daily.
28. The Quinn Defendants are jointly and severally liable to PBGC for \$330,000 in termination premiums, plus interest from the dates payments were due.

FOURTH CLAIM FOR RELIEF

UNPAID MINIMUM REQUIRED CONTRIBUTIONS

29. PBGC re-alleges as part of this claim the allegations in paragraphs 1 through 28.
30. The contributing sponsor of a single-employer defined-benefit pension plan and the members of its controlled group are jointly and severally liable for contributions to the plan

necessary to satisfy minimum funding standards under sections 412 and 430 of the Internal Revenue Code and sections 302 and 303 of ERISA.⁶

31. PBGC, as statutory trustee of the Plan, has the power to collect any amounts due the Plan, including unpaid minimum required contributions.⁷

32. The Quinn Defendants are jointly and severally liable to PBGC, as statutory trustee of the Plan, for unpaid minimum required contributions.

FIFTH CLAIM FOR RELIEF

PENALTIES ASSESSED AGAINST QUINN

33. PBGC re-alleges as part of this claim the allegations in paragraphs 1 through 32.

34. Under ERISA § 303(k), 29 U.S.C. § 1083(k), 26 U.S.C. § 430(k)(4) and 29 C.F.R. § 4043.81, a contributing sponsor and, if that contributing sponsor is a member of a parent-subsidiary controlled group, its ultimate parent, must complete and submit to PBGC a certified Form 200 when a minimum funding contribution is not made by the date due and, on that date, aggregate unpaid minimum required contributions, with interest, exceed \$1 million.

35. Aggregate unpaid minimum required contributions, with interest, exceeded \$1 million with or before the missed contribution due February 15, 2007.

36. Neither Quinn nor its ultimate parent, H&R, submitted a Form 200 to PBGC regarding that missed contribution.

37. Twenty-five subsequent minimum required contributions were missed.

⁶ 26 U.S.C. § 412(c)(11) (2006) (effective for pension plan years beginning on or before Dec. 31, 2007); 29 U.S.C. § 1082(c)(11) (2006) (same); 26 U.S.C. § 412(b)(1)-(2) (effective for pension plan years beginning after Dec. 31, 2007); 29 U.S.C. § 1082(b)(1)-(2) (same).

⁷ See ERISA § 4042(d)(1)(B)(ii), (iv), 29 U.S.C. § 1342 (d)(1)(B)(ii), (iv).

38. When each of those minimum required contributions was missed, aggregate unpaid minimum required contributions, with interest, continued to exceed \$1 million.

39. Neither Quinn nor H&R submitted a Form 200 to PBGC regarding any of those 25 missed contributions.

40. Under section 4071 of ERISA, 29 U.S.C. § 1371, and 29 C.F.R. § 4071.3, PBGC is authorized to assess a penalty of up to \$1,100 per day for each failure to timely submit a Form 200.

41. PBGC assessed penalties of \$340,200 against Quinn for its failures to timely submit Forms 200.

42. PBGC sent Quinn notice of the penalties on July 18, 2012.

43. Quinn has not paid any portion of the penalties.

44. Quinn is liable to PBGC for \$340,200 in penalties.

SIXTH CLAIM FOR RELIEF

ENFORCEMENT OF LIENS

45. PBGC re-alleges as part of this claim the allegations in paragraphs 1 through 44.

46. When aggregate unpaid minimum required contributions to a single-employer pension plan (including interest) exceed \$1,000,000, a lien in that aggregate amount arises in favor of the plan on all property and rights to property of the contributing sponsor and of each of its controlled group members.⁸ Those liens may be perfected and enforced only by or at the

⁸ ERISA § 303(k), 29 U.S.C. § 1083(k); 26 U.S.C. § 430(k).

direction of PBGC.⁹ They are treated as federal tax liens and are perfected by filing of a notice of federal lien in the appropriate jurisdiction(s).¹⁰

47. In May 2012, PBGC filed with the New York Department of State notices of federal liens in the amount of \$1,899,407 on all property and rights to property of the Quinn Defendants.

48. In July 2012, PBGC filed with the Office of the City Register of the City of New York a notice of federal lien in the amount of \$1,899,407 on all property and rights to property of Defendant Quinn.

49. In July 2013, PBGC filed with the New York Department of State notices of additional federal lien in the amount of \$440,429 on all property and rights to property of the Quinn Defendants.

50. Also in July 2013, PBGC filed with the Office of the City Register of the City of New York a notice of additional federal lien in the amount of \$440,429 on all property and rights to property of Defendant Quinn.

51. With PBGC's filing of the aforementioned notices of federal liens (collectively, the "**Recorded Liens**"), PBGC has perfected the Plan's liens on all property and rights to property of the Quinn Defendants in the total amount of \$2,339,836, plus interest accrued since recordation.

⁹ ERISA § 303(k)(5), 29 U.S.C. § 1083(k)(5); 26 U.S.C. § 430(k)(5); see also ERISA § 4003(e)(1), 29 U.S.C. § 1303(e)(1) (authorizing PBGC to bring civil action to enforce liabilities secured by lien).

¹⁰ See ERISA § 303(k)(4)(c), 29 U.S.C. § 1083(k)(4)(C); 26 U.S.C. § 430(k)(4)(C) (such liens are treated as federal tax liens, and rules similar to those under 29 U.S.C. § 1368(c)-(e) apply); ERISA § 4068(c), 29 U.S.C. § 1368(c)(4) (incorporating by reference provisions of 26 U.S.C. § 6323 *re* perfection by notice); 26 U.S.C. § 6323(a) & (f) (federal tax liens perfected by filing notice).

PRAYERS FOR RELIEF

WHEREFORE, PBGC respectfully requests that this Court grant PBGC the following relief:

FIRST, judgment against each of the Quinn Defendants, jointly and severally, on PBGC's claims for the Plan's unfunded benefit liabilities in the amount of \$2,444,629, plus interest from the Date of Plan Termination;

SECOND, judgment against each of the Quinn Defendants, jointly and severally, for unpaid pension insurance premiums in the amount of \$37,548.70, plus interest from the dates payments were due;

THIRD, judgment against each of the Quinn Defendants, jointly and severally, for unpaid termination premiums in the amount of \$330,000, plus interest from the dates payments were due;

FOURTH, judgment against Quinn for unpaid minimum required contributions in the amount determined under ERISA § 4062(c), 29 U.S.C. § 1362(c).

FIFTH, judgment against Quinn for unpaid assessed penalties of \$340,200.

SIXTH, pursuant to section 4003(e)(5) of ERISA, 29 U.S.C. § 1303(e)(5), judgment against the Quinn Defendants for PBGC's costs in this action;

SEVENTH, judgment declaring that the Recorded Liens are valid and perfected and encumber all property and rights to property of the Quinn Defendants;

EIGHTH, judgment declaring whether the Recorded Liens on the property and rights to property of Quinn and H&R (or either) encumber the barge or barges on which Quinn operates the Water's Edge Restaurant, which barge or barges are affixed to waterfront property on the East River in Queens leased from the City of New York, and which barge or barges are, on

information and belief, registered with the United States Coast Guard National Vessel Documentation Center as owned by Mr. Stuart Somerstein, a former shareholder in Quinn, from whom H&R purchased Quinn;

NINTH, judgment declaring the existence or nonexistence of any valid and perfected liens superior to any Recorded Liens;

TENTH, entry of writs of execution respecting the Court's monetary judgments in this action;

ELEVENTH, entry of a decree of foreclosure (1) requiring the Quinn Defendants, jointly and severally, to pay PBGC, within a time specified by this Court, the perfected amount of the Recorded Liens, plus interest from the dates of recordation, plus PBGC's costs of litigating its claims in this action; and (2) providing that, if such payment is not made within that time, the United States Marshal is directed to (2.a) levy on and transfer to PBGC all cash and cash equivalents encumbered by a Recorded Lien and in excess of superior liens thereon; and (2.b) sell all other property encumbered by the Recorded Liens, in bar and foreclosure of all right, title, interest, estate, claim, demand and equity of redemption of all Quinn Defendants and of all other persons claiming by, through, under or against the Quinn Defendants, and distribute the proceeds in accordance with the priority of interests in the property as declared by this Court, including in satisfaction (or partial satisfaction) of Quinn Defendants' liability to PBGC; and

TWELFTH, such further relief as is just and proper.

Respectfully submitted,

Dated: December 17, 2015

/s/ John Ginsberg

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