

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

PENSION BENEFIT GUARANTY)
CORPORATION,)
1200 K Street, N.W.)
Washington, D.C. 20005-4026,)
)
Plaintiff,)
)
v.)
)
W. PROPERTY RESOURCES,)
as Plan Administrator for the W. Property)
Resources, Inc. Employees Pension Plan & Trust)
123 West 126th Street)
New York, NY 10027,)
)
Defendant.)

COMPLAINT

Civil Action No. 14-cv-4981 (PAE)
Judge Paul A. Engelmayer

1. This action arises under Title IV of the Employee Retirement Income Security Act of 1974, *as amended* (“ERISA”), 29 U.S.C. §§ 1301 to 1461 (2012). Plaintiff, the Pension Benefit Guaranty Corporation (“PBGC”), brings this proceeding under 29 U.S.C. §§ 1342 and 1348(a), for an order (a) terminating the W. Property Resources, Inc. Employees Pension Plan & Trust (the “Plan”), (b) appointing PBGC as statutory trustee of the Plan, and (c) establishing September 30, 2012, as the termination date of the Plan.

Jurisdiction and Venue

2. This Court has exclusive jurisdiction over this proceeding, without regard to the amount in controversy, under 29 U.S.C. §§ 1303(e)(3), 1342(c) and 1342(f).

3. Venue lies in this Court under 29 U.S.C. §§ 1303(3)(2) and 1342(g).

Parties

4. Plaintiff PBGC is a wholly-owned United States government corporation established under 29 U.S.C. § 1302(a) to administer and enforce the defined benefit pension plan termination insurance program created under Title IV of ERISA. When an underfunded pension plan terminates, PBGC pays statutorily guaranteed pension benefits to plan participants. 29 U.S.C. §§ 1302(a)(2), 1321, 1322.

5. Defendant W. Property Resources, Inc. (“W. Property”) was incorporated on August 20, 1986, in the state of New York, and its principal place of business was located at 123 West 126th Street, New York, New York, 10027.

6. W. Property was a general construction contractor of commercial and non-commercial buildings. In June of 2012, PBGC learned that W. Property had not responded to inquiries by its third-party administrator, Pension Review Services, since November 2009. PBGC learned that the Plan was abandoned.

7. PBGC has been unable to locate the President and owner of W. Property, Mr. Milton E. Wilson. Further investigation revealed that the New York Secretary of State administratively dissolved W. Property’s corporate charter on January 25, 2012. PBGC is not aware of any evidence to suggest that W. Property continued operations after January 25, 2012 and not aware of any evidence to suggest that any employees continued to work for W. Property after January 25, 2012.

Background

8. ERISA § 4042(c) authorizes PBGC, after determining that a pension plan covered by Title IV of ERISA should be terminated and after providing notice to the plan administrator, “[to] apply to the appropriate United States district court for a decree adjudicating that the plan

must be terminated in order to protect the interests of the participants or to avoid any unreasonable deterioration of the financial condition of the plan or any unreasonable increase in the liability of the [PBGC's insurance] fund.” 29 U.S.C. § 1342(c).

9. Upon issuing a decree of termination under 29 U.S.C. § 1342(c), the district court must appoint a trustee and authorize such trustee to terminate the pension plan in accordance with Title IV of ERISA. PBGC may request that it be appointed as trustee in any case. 29 U.S.C. § 1342(b)(1).

10. The termination date of a pension plan is the date agreed to by PBGC and the plan administrator, or, in the absence of an agreement, the date established by the district court. 29 U.S.C. § 1348(a)(4).

11. W. Property is the plan administrator and contributing sponsor of the Plan within the meaning of 29 U.S.C. § 1301(a)(1), (13). The Plan provides benefits to certain employees of W. Property.

12. The Plan is an employee pension benefit plan, within the meaning of 29 U.S.C. § 1002(2), and defined benefit pension plan, within the meaning of 29 U.S.C. § 1002(35). The Plan is insured under Title IV of ERISA. *See* 29 U.S.C. § 1321(a).

13. Upon information and belief, the Plan has 6 participants.

14. The Plan was established and became effective on January 1, 1999. The Plan was amended and restated effective January 1, 2001. According to section 1.3 of the Plan document, the plan administrator means the plan sponsor unless another administrator is appointed by the sponsor. PBGC has no documentation which indicates that such a designation was made, therefore, W. Property is assumed to be the plan administrator.

15. Benefit accruals for the Plan were frozen as of December 31, 2005. The last known contribution to the Plan occurred on September 15, 2005 for the 2004 plan year. No premiums have been paid to PBGC since 2008. No Internal Revenue Code Form 5500s have been filed for the 2009 plan year or any later plan years. Additionally, PBGC has no knowledge of any actuarial reports prepared after 2008.

16. On September 30, 2014, in accordance with 29 U.S.C. § 1342(c), PBGC issued a Notice of Determination to W. Property as plan administrator of the Plan that PBGC determined that the Plan has not met the minimum funding standard required under section 412 of the Internal Revenue Code and will be unable to pay benefits when due. 29 U.S.C. § 1342(a)(2). PBGC further determined that the Plan must be terminated in order to protect the interests of the Plan's participants. 29 U.S.C. § 1342(c).

Count I

17. PBGC repeats and re-alleges paragraphs 1 through 16.

18. PBGC has determined that the Plan will be unable to pay benefits when due. 29 U.S.C. § 1342(a)(2).

19. After PBGC determines that a pension plan must be terminated, and upon application and notice by PBGC under 29 U.S.C. § 1342(c), a United States district court may issue a decree adjudicating that such pension plan must be terminated to protect the interests of the Plan's participants, to avoid any unreasonable deterioration of the financial condition of the plan, and to avoid any unreasonable increase in PBGC's liability.

Count II

20. PBGC repeats and re-alleges paragraphs 1 through 19.

21. Upon issuing a termination decree under 29 U.S.C. § 1342(c), a United States district court must appoint a trustee, which upon application may be PBGC. 29 U.S.C. § 1342(b).

22. PBGC is ready, willing, and able to serve as trustee of the Plan.

23. If appointed as trustee of the terminated Plan, PBGC will terminate the Plan in accordance with the provisions of Title IV of ERISA, pay benefits under the Plan in accordance with the provisions of Title IV of ERISA, and will fulfill all obligations of a trustee under 29 U.S.C. § 1342(c).

Count III

24. PBGC repeats and re-alleges paragraphs 1 through 23.

25. PBGC believes January 25, 2012 should be the termination date of the Plan. Should the plan administrator disagree with this determination, the termination date under 29 U.S.C. § 1348(a)(4) will be the date established by this Court.

26. A termination date of January 25, 2012 is appropriate because as of that date Plan participants no longer had any reasonable expectations of the Plan continuing.

27. PBGC has determined that a termination date of January 25, 2012 best serves the interests of PBGC.

Count IV

28. PBGC repeats and re-alleges paragraphs 1 through 27.

29. Under 29 U.S.C. § 1342(d), the trustee appointed by the Court is authorized, among other things, to pay benefits under the terms of the Plan and to manage the assets of the Plan.

30. In order to carry out its statutory duties with respect to the Plan, the trustee appointed by the Court must receive all documents relating to the Plan, the participants in the Plan, and the assets of the Plan.

WHEREFORE, PBGC respectfully prays that the Court grant judgment on all four counts:

1. Issuing a decree adjudicating that the Plan must be terminated pursuant to 29 U.S.C. § 1342(c);
2. Appointing PBGC as trustee of the Plan pursuant to 29 U.S.C. § 1342(c);
3. Establishing January 25, 2012 as the termination date of the Plan pursuant to 29 U.S.C. § 1348(a);
4. Ordering W. Property, its agents, and any other person or entity having possession, custody, or control of any records, assets, or other property of the Plan, and any documents required to determine the benefits payable to participants of the Plan, to transfer, convey and deliver all such records, assets, property, and documents to PBGC; and
5. Granting any and all other relief that this Court deems just and proper.

Dated: November 24, 2014

Respectfully submitted,



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