

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

PENSION BENEFIT GUARANTY CORPORATION)
1200 K Street, NW)
Washington, DC 20005)

Plaintiff,)

v.)

FOUR STAR PIZZA, INC.)
as Plan Administrator for the)
Four Star Pizza, Inc. Pension Plan)
860 Jefferson Avenue)
Washington, Pennsylvania 15301)

Defendant.)

Civil Action No.

COMPLAINT FOR PENSION PLAN TERMINATION

This action arises under Title IV of the Employee Retirement Income Security Act of 1974, *as amended*, 29 U.S.C. §§ 1301-1461 (2012 and Supp. II 2014) (“ERISA”). Plaintiff, Pension Benefit Guaranty Corporation (“PBGC”), brings this action, pursuant to 29 U.S.C. §§ 1342 and 1348(a), seeking an order (a) terminating the Four Star Pizza, Inc. Pension Plan (the “Pension Plan”); (b) appointing PBGC as statutory trustee of the Pension Plan; (c) establishing September 30, 2014, as the termination date of the Pension Plan; and (d) directing the defendant and any other person or entity having possession, custody or control of any of the records, assets, or other property of the Pension Plans, to transfer, convey and deliver all such records, assets, and property to PBGC, as the statutory trustee upon request under 29 U.S.C. § 1342(d)(1).

JURISDICTION AND VENUE

1. This Court has exclusive jurisdiction of this action pursuant to 29 U.S.C. §§ 1303(e)(3) and 1342(e) and (f).

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

PARTIES

3. Plaintiff is a wholly owned United States government corporation established under 29 U.S.C. §1302(a) to administer the pension plan termination insurance program created under Title IV of ERISA. When an underfunded pension plan terminates, PBGC ensures the timely and uninterrupted payment of statutorily guaranteed pension benefits to plan participants and their beneficiaries. 29 U.S.C. §§ 1302(a)(2), 1321, 1322.

4. Defendant, Four Star Pizza, Inc. (“Four Star”), is the administrator of the Pension Plan within the meaning of 29 U.S.C. §§ 1002(16)(A) and 1301(a)(1).

THE PENSION PLAN

5. The Pension Plan is a single-employer defined benefit pension plan and is covered under Title IV of ERISA. 29 U.S.C. §§ 1002(35), 1301(a)(15), 1321(a).

6. Four Star is the contributing sponsor of the Pension Plan within the meaning of 29 U.S.C. § 1301(a)(13).

7. The Pension Plan provides pension benefits to certain present and former employees of Four Star and to their beneficiaries. On information and belief, the Pension Plan has two participants. PBGC estimates the Pension Plan is underfunded by approximately \$393,086 on a termination basis as of September 30, 2014.

8. Upon information and belief, Four Star sold all of its assets on or about July 1, 2007.

9. On information and belief, Four Star administered the Pension Plan at its offices in Washington, Pennsylvania.

CAUSE OF ACTION

10. Under 29 U.S.C. § 1342(a), PBGC must commence proceedings to terminate a

plan whenever PBGC determines that a covered pension plan does not have assets available to pay benefits which are currently due under the terms of the plan.

11. PBGC has determined, pursuant to 29 U.S.C. §§ 1342(a), that the Pension Plan does not have assets available to pay benefits which are currently due under the terms of the Plan.

12. PBGC has determined that termination of the Pension Plan is necessary to protect the interests of participants and to avoid any unreasonable increase in liability to the PBGC insurance fund.

13. On September 30, 2015, in accordance with 29 U.S.C. § 1342(c), PBGC issued a Notice of Determination (the “Notice”) to Susan Cottrill, president of Four Star (“Cottrill”), notifying Cottrill that PBGC had determined that the Pension Plan does not have assets available to pay benefits which are currently due under the terms of the Pension Plan. The Notice stated that the Pension Plan’s termination date is September 30, 2014. A copy of the Notice is attached hereto as Exhibit 1.

14. Pursuant to 29 U.S.C. § 1348(a)(4), a district court establishes the date of termination of a pension plan covered by Title IV when PBGC and the plan administrator have not agreed on a date of termination.

15. As of the filing of this Complaint, PBGC and the Pension Plan administrator have not agreed on a date of plan termination.

16. September 30, 2014, should be established as the date of plan termination of the Pension Plan pursuant to 29 U.S.C. § 1348(a)(4), because as of that date, the Pension Plan’s participants were no longer employed by the Pension Plan, and they no longer had any justifiable expectations of the Pension Plan’s continuation.

17. Pursuant to 29 U.S.C. § 1342(c), a trustee for a pension plan shall be appointed by the court upon granting a decree of plan termination. Further, 29 U.S.C. § 1342(c) provides that PBGC may request that it be appointed as trustee of a pension plan in any case.

18. The PBGC is ready, willing, and able to serve as statutory trustee of the Pension Plan.

RELIEF REQUESTED

WHEREFORE, PBGC respectfully requests that this Court grant judgment for PBGC and issue an order granting the following relief:

1. Adjudicating the Pension Plan terminated pursuant to 29 U.S.C. § 1342(c);
2. Appointing PBGC statutory trustee of the Pension Plan pursuant to 29 U.S.C. § 1342(c);
3. Establishing September 30, 2014, as the termination date of the Pension Plan pursuant to 29 U.S.C. § 1348(a)(4);
4. Directing Four Star, Cottrill and any other person or entity having possession, custody or control of any records, assets or other property of the Pension Plan, to transfer, convey and deliver all such records, assets, and property to PBGC as statutory trustee upon request under 29 U.S.C. § 1342(d)(1); and

5. Granting such other relief as this Court deems just and proper.

Dated: Washington, D.C.

Respectfully submitted,

July 15, 2016

s/ Rhonda Baird
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