

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LOCAL 1783, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS
PENSION AND INSURANCE FUND,

Plaintiff,

Case No. 24 CV 2174

- against -

COMPLAINT

JT ROSELLE LIGHTING AND SUPPLY COMPANY, INC.,

Defendants

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Local 1783, International Brotherhood of Electrical Workers Pension and Insurance Fund (hereinafter “Fund”), by its’ attorneys, McCarthy & Preece, PLLC, alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331, §502(e)(1) of the Employee Retirement Income Security Act of 1974, as amended (hereinafter “ERISA”), 29 U.S.C. §1001, *et seq.*, and §301(a), of the Labor-Management Relations Act (hereinafter “LMRA”), 29 U.S.C. §141, *et seq.* This is an action by the Plaintiff for, *inter alia*, breach of a Collective Bargaining Agreement (hereinafter “Agreement”) between an employer and a labor organization representing employees in an industry affecting commerce, as well as to enforce ERISA §502(a)(3), 28 U.S.C. §1132(a)(3)(B)(ii), (d)(1), (e)(2) and (f) and (g), ERISA §515, 29 U.S.C. §1145 and §301 of the LMRA.

2. Venue is based on the location of the office from which the Fund is administered, which is in the Southern District of New York. As such, venue is appropriate pursuant to §502(e)(2) of ERISA, 29 U.S.C. §1132(e)(2).

PARTIES

3. Upon information and belief, the Defendant, JT Roselle Lighting and Supply Company, Inc., (hereinafter “Employer”) is a domestic corporation duly organized and existing pursuant to the laws of the State of New York with its principal office located at 84 Business Park Drive, Suite 106, Armonk, New York 10504.

4. Upon information and belief, the Employer, was and is an “employer” within the meaning of §3(5) and 515 of ERISA, 29 USC §§ 1002(5) and 1145.

5. The Fund is a “multiemployer plan” established and maintained pursuant a Trust Agreement, in accordance with 29 U.S.C. §§ 186(c)(5), (c)(6) and (c)(9). The Fund is an “employee benefit plan,” within the meaning of ERISA, 29 U.S.C. §§ 1002(1), (2), (3), and 1132(d)(1), and is a “multiemployer plan,” within the meaning of 29 U.S.C. §§ 1002(37) and 1145.

6. The Fund’s principal office is located at 84 Business Park Drive, Suite 202, Armonk, New York 10504.

7. The Fund was created pursuant to a written agreement and declaration of trust (hereinafter “Trust Agreement”). The Fund is maintained, *inter alia*, for the purpose of providing its participants and beneficiaries with a defined benefit pension plan.

PRELIMINARY STATEMENT

8. The Employer and Local 1430, International Brotherhood of Electrical Workers (hereinafter “Union”) entered into a collective bargaining agreement dated August 1, 2018 through

July 31, 2021. Article Twenty-Two of the collective bargaining agreement dated August 1, 2018 through July 31, 2021 required contributions to be made to the Fund on behalf of bargaining unit members.

9. The Employer and the Union entered into a subsequent collective bargaining agreement dated August 1, 2021 through July 31, 2023. Article Twenty-Two of the collective bargaining agreement dated August 1, 2021 through July 31, 2023 required contributions to be made to the Fund on behalf of bargaining unit members.

10. The Fund is maintained pursuant to an Agreement and Declaration of Trust (“Trust Agreement”) dated December 31, 2023.

11. Article IV, Section (4) of the Fund’s Trust Agreement provides, in pertinent part, “The Trustees may, by their respective representatives, examine and audit the pertinent employment and payroll records of each Employer at the Employer's place of business whenever such examination is deemed necessary or advisable by the Trustees in connection with the proper administration of the Fund.”

12. Article IV, Section (5) of the Fund’s Trust Agreement provides, in pertinent part, “The Trustees may require the payment by Employers of liquidated damages, in an amount equal to the greater of the interest at the rate of one and a half percent (1.5%) per month or eighteen percent (18%) per annum on delinquent contributions and/or withdrawal liability, or an amount not to exceed twenty percent (20%) of the delinquent contributions and/or withdrawal liability, and of other costs and expenses (such as, without limitation, accountant's fees, attorneys' fees, filing fees and cost of service of papers) incurred by the Trustees and arising out of the collection of such Employer's delinquent contributions and/or withdrawal liability.”

13. On July 17, 2023, Costa Rothbort, the Fund's auditor sent a demand to the Employer requesting to audit and examine W-2 Forms, 1099 Forms, quarterly and annual payroll tax returns including Forms 941 and NYS-45-ATT (all quarters); copies of contribution reports to Fund; year-end payroll journal and/or payroll register; third party sick pay/disability reports, cash disbursement journal, general ledge and copies of annual corporate/ partnership tax returns from January 1, 2019 through December 31, 2022.

14. The Employer failed to supply the requested information pursuant to the audit demand dated July 17, 2023.

15. On October 17, 2023 Fund counsel sent another demand letter requesting that the Employer comply with the audit request dated July 17, 2023.

16. On December 21, 2023 Fund counsel sent an e-mail to Employer informing the Employer that a response was never received pursuant to the demand for an audit and that if no response is receive the Fund will have no option but to commence litigation.

17. To date, the Fund has not received a response to the audit demands sent to Employer on July 17, 2023; October 17, 2023 and December 21, 2023.

18. Article IV, Section 3 of the Fund's Trust Agreement provides, in pertinent part, "an Employer who does not make the required contributions and/or withdrawal liability payment(s) promptly when due may be obligated to pay interest on the contributions due up to the maximum rate of one and half percent (1.5%) per month or eighteen percent (18%) per annum from the date when the payment was due to the date when payment is made."

19. Pursuant to the Trust Agreement, ERISA and common law, the Fund is entitled to an order requiring Employer to produce a complete set of books and records, including but not limited to, W-2 Forms, 1099 Forms, quarterly and annual payroll tax returns including Forms 941

and NYS-45-ATT (all quarters); copies of contribution reports to Fund; year-end payroll journal and/or payroll register; third party sick pay/disability reports, cash disbursement journal, general ledger and copies of annual corporate/ partnership tax returns, for review by the Fund's auditors from January 1, 2019 through December 31, 2022.

VIOLATIONS OF CBA, TRUST AGREEMENT & ERISA

20. Pursuant to the Trust Agreement, ERISA, and common law, the Fund is entitled to an Order requiring Employer to produce a complete set of books and records for review by the Fund's auditors for the period of January 1, 2019 through December 31, 2022.

21. Employer's failure to permit a complete audit has prevented the Fund from determining whether Employer has failed to remit contributions to the Fund in violation of the CBAs, Trust Agreement and ERISA.

22. Pursuant to 29 U.S.C. 1132(g)(2), the CBAs and the Trust Agreement, in the event that Employer is found delinquent in contributions, the Fund will be entitled to recover from Employer: (a) the contributions found delinquent for the period January 1, 2019 through December 31, 2022; (b) liquidated damages of twenty percent (20%) on all delinquent contributions; (c) interest at the rate of one and one-half percent (1.5%) per month or eighteen percent (18%) per annum; (d) audit costs; (e) reasonable attorney's fees, costs and expenses; (f) along with such other legal and equitable relief as the Court deems appropriate.

INJUNCTIVE RELIEF

23. ERISA, 29 U.S.C. § 1132(g)(2), authorizes this Court to award appropriate equitable relief to redress certain violations of ERISA or the terms and conditions regarding payment of contributions under the Trust Agreement.

24. Article IV, Section 4 of the Trust Agreement requires Employer to permit and cooperate in the conduct of an audit of its records.

25. Fund has repeatedly requested access to Employer's books and records necessary to conduct a complete audit examination, but Employer has refused to allow the Fund to inspect all necessary books and records as required by ERISA and Trust Agreement.

26. Employer's pattern of refusing to allow the Fund's auditors access to the necessary books and records indicates that Fund will not perform its obligations under the Trust Agreement unless Employer is ordered to perform specifically all of its obligations to the Fund under the terms of the Trust Agreement, including the production of books and records necessary for a complete audit, and is restrained from continuing its refusal to perform.

27. The Fund is without an adequate remedy at law because, without access to the necessary records to perform a complete audit examination of Employer, the Fund cannot determine if any unpaid contributions are owed to the Fund by Employer for the period of January 1, 2019 to December 31, 2022.

28. The Fund will be required to provide to employees of Employer benefits provided for under the Trust Agreement, even if Employer failed to make the required contributions, thereby reducing the corpus of such funds administered by the Fund and endangering the rights of Fund participants thereunder on whose behalf contributions are being made, all to their substantial and irreparable injury.

29. The Fund is without an adequate remedy at law and the participants of the Fund will suffer immediate, continuing, and irreparable injury, loss, and damage unless Employer is ordered to perform specifically all of its obligations to the Fund, under the terms of the Trust Agreement and is restrained from continuing its refusal to perform.

FIRST CAUSE OF ACTION

30. Plaintiff incorporates by this reference and re-allege, as though fully set forth herein, the allegations of paragraphs “1” through “29” above.

31. Employer’s failure to provide all necessary books and records to Plaintiff’s auditors for the period January 1, 2019 through December 31, 2022, constitutes a violation of the Article IV, Section 4 of the Trust Agreement and 29 U.S.C. §§ 1132 and 1145.

32. Plaintiff is entitled to an order pursuant to 29 U.S.C. § 1132(a)(3) directing Employer to provide and make available its books and records for the purpose of allowing the Fund to perform an audit to determine whether contributions are due and owing to date and continuing throughout the pendency of this action.

SECOND CAUSE OF ACTION

33. Plaintiff incorporates by this reference and re-allege, as though fully set forth herein, the allegations of paragraphs “1” through “32” above.

34. Any failure by Employer to submit contributions due and owing the Fund, the existence and amount of which is subject to determination by a complete audit would constitute a violation of 29 U.S.C. §§ 1132 and 1145.

35. Accordingly, pursuant to 29 U.S.C. § 1132(g)(2), if such a failure is determined to exist, the Fund would be entitled to recover the following: (a) all unpaid contributions found due and owing for the period January 1, 2015 through December 31, 2015; (b) liquidated damages in the amount of twenty percent (20%) on all unpaid contributions; (c) interest at one and one-half percent (1.5%) per month or eighteen percent (18%) per annum, on all unpaid contributions; (d) the costs of an audit; (e) reasonable attorneys’ fees, expenses and costs of the action; and (f) such other legal and equitable relief as the Court deems appropriate.

THIRD CAUSE OF ACTION

36. Plaintiff incorporates by this reference and re-allege, as though fully set forth herein, the allegations of paragraphs “1” through “35” above.

37. Any failure by Employer to submit contributions due and owing the Fund, the existence and amount of which is subject to determination by a complete audit would constitute a violation of the CBAs and the Trust Agreement.

38. Accordingly, if such a failure is determined to exist, the CBAs and Trust Agreement entitle the Fund to receive from Employer the following: (a) all unpaid contributions for the period January 1, 2019 through December 31, 2022, in an amount to be determined by complete audit; (b) liquidated damages in the amount of twenty percent (20%) on all unpaid contributions; and (c) interest at one and one-half percent (1.5%) per month or eighteen percent (18%) per annum on all unpaid contributions.

PRAYER

WHEREFORE, the Plaintiff hereby requests judgment against the Defendant, JT Roselle Lighting and Supply Company, Inc., as follows:

- a. against Defendant, in the form of an Order to compel the production of all books and records necessary to perform an audit examination pursuant to the Trust Agreement and ERISA;
- b. against Defendant for all outstanding past due contributions to the Plaintiff for the period January 1, 2019 to December 31, 2022 and continuing throughout the pendency of this action, in an amount to be determined by a complete audit;
- c. against Defendant for interest of one and one-half percent (1.5%) per month or eighteen percent (18%) per annum on all unpaid contributions found to be due and owing under

- the Trust Agreement, in accordance with ERISA, CBAs and the Trust Agreement;
- d. against Defendant for statutory liquidated damages of twenty percent (20%) on all unpaid contributions found due and owing under the Trust Agreement, in accordance with ERISA and the Trust Agreement;
 - e. against Defendant for all audit costs, in accordance with ERISA;
 - f. against Defendant for reasonable attorneys' fees, costs and expenses, in accordance with ERISA and the Trust Agreement; and
 - g. for such other and further relief as the Court deems just and proper.

Dated: March 22, 2024

Respectfully submitted,

McCarthy & Preece, PLLC

by: *Sheri Preece*
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