

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

ANN H. WOMER BENJAMIN,
Superintendent, Ohio Department
of Insurance, in her capacity as Rehabilitator
of Builders & Contractors Employee Benefit Trust,

Plaintiff,

v.

A Day in the Country, et al.,

Defendant.

Case No. 03CVH 09 10020

Judge Schneider

FILED
COMMON PLEAS COURT
FRANKLIN CO OHIO
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CLERK OF COURTS

JUDGMENT ENTRY

This matter came on for the Court's consideration regarding Plaintiff's Motion for Partial Summary Judgment, Filed August 16, 2004; Defendant R. B. Thomas Electric, Inc.'s Motion for Summary Judgment, Filed June 18, 2004; Defendant Tewel Corp.'s Motion for Summary Judgment, Filed June 18, 2004; Defendant Tewel Corp.'s Motion to Dismiss or Alternatively for Summary Judgment, Filed June 21, 2004; Defendant Orthopaedic Associates of Zanesville, Inc.'s Motion to Dismiss, Filed July 12, 2004; Defendant Blackburn's Motion for Summary Judgment, Filed June 25, 2004; Defendant Blackburn's Motion for Summary Judgment, Filed June 28, 2004; Defendant The Klingstedt Brothers Co.'s Motion for Summary Judgment, Filed August 13, 2004; Defendant SGF Management, Inc.'s Motion for Summary Judgment, Filed August 13, 2004; Defendant Bennett/Dover Home Remodelers, Inc.'s Motion for Summary Judgment, Filed August 13, 2004; Defendant Bennett/Dover Home Remodelers, Inc.'s Motion for Summary Judgment on its Counterclaim, Filed August 13, 2004; Defendant Gaymont Nursing Home's Motion for Summary Judgment, Filed August 13, 2004; Zieger Industries' Motion for Summary Judgment, Filed August 13, 2004; Defendant Treemen Industries' Motion for Summary

Judgment Filed, August 13, 2004; Defendants West Branch Nursing Home's and Pleasant View Nursing Home's Motion for Summary Judgment, Filed August 13, 2004; Defendant Rose Run Drilling, Inc.'s Motion for Summary Judgment, Filed August 16, 2004; Defendant Ziegler Tire and Supply Co.'s Motion for Summary Judgment, Filed August 16, 2004; Defendant W. T. Pettit & Sons, Co.'s Motion for Summary Judgment, Filed August 16, 2004; Defendant Columbiana Service, LLC's Motion for Summary Judgment, Filed August 16, 2004; Defendant Callos Professional Employment, LLC's Motion for Summary Judgment, Filed August 16, 2004; Defendant Western Reserve Racquet and Fitness Club's Motion for Summary Judgment, Filed August 16, 2004; Defendant Therm-O-Link's Inc.'s Motion for Summary Judgment, Filed August 16, 2004; Defendant Poland Concrete Products, Inc.'s Motion for Summary Judgment, Filed August 16, 2004; Defendant Autumn Hills Care Center, Inc.'s Motion for Summary Judgment, Filed August 16, 2004; Defendant Nescor Plastics Corp.'s Motion for Summary Judgment, Filed August 16, 2004; Defendant Michael Day Enterprise, Inc.'s Motion for Summary Judgment Filed August 16, 2004; Defendant Bollin & Sons, Inc. (dba Bollin Label Systems)'s Motion for Summary Judgment, Filed August 18, 2004; Defendant Wise Chevrolet Inc.'s Motion for Summary Judgment, Filed August 19, 2004; Defendant Universal Tire Molds, Inc.'s Motion for Summary Judgment, Filed August 19, 2004; Defendant Gauer Service & Supply Co.'s Motion for Summary Judgment, Filed August 19, 2004; Defendant Rogers Industrial Products' Motion for Summary Judgment, Filed August 19, 2004; Defendant Custom Poly Bag, Inc.'s Motion for Summary Judgment, Filed August 19, 2004; Defendant Esterle Mold & Machine Co.'s Motion for Summary Judgment, Filed August 19, 2004; Defendant Lawyers Property Development Corp.'s Motion for Partial Summary Judgment, Filed

August 19, 2004; Plaintiff's Motion to Dismiss Defendants' Counterclaims, Filed June 7, 2004; Defendant Therm-O-Link Inc.'s Motion for Default Judgment on Cross-Claim, Filed August 4, 2004; Defendant's Rose Run Drilling's Inc.'s Motion to Strike, Filed September 29, 2004; Defendant Ziegler Tire and Supply Co.'s Motion to Strike, Filed September 29, 2004; Defendant Combi Packaging Systems, LLC's Motion to Compel Discovery, Filed September 30, 2004 and Defendant R. H. Little Co.'s Motion to Extend Time, Filed October 12, 2004. The Court has rendered its decision on May 19, 2005, allowing and denying such motions as set forth below. Accordingly, IT IS HEREBY ORDERED:

1. Plaintiff's motion for partial summary judgment is GRANTED finding that Plaintiff has the statutory authority and, in cases where there are Master Agreements, contractual authority to levy assessments under O.R.C. §§ 1739.14 and 1739.15 against Defendants for BCEBAT's funding deficiencies in amounts yet to be determined by the Court; yet such motion is DENIED to the extent that Plaintiff has made claims against any Defendant for unjust-enrichment and implied-contract claims where Plaintiff also has a claim and has been granted summary judgment based upon an express contract.

In cases where there are no master agreements, Plaintiff may seek damages based on an implied contract or unjust enrichment in an amount to be proven at trial.

2. The summary judgment motions of Defendants R.B. Thomas Electric, Inc.; Tewel Corp.; The Klingstedt Brothers Co.; SGF Management, Inc.; Gaymont Nursing Home; Zeiger Industries; Treemen Industries; West Branch Nursing Home and Pleasant View Nursing Home; Rose Run Drilling, Inc.; Ziegler Tire and Supply Co.; W.T. Pettit & Sons, Co.; Columbiana Service, LLC; Therm-O-Link, Inc.; Poland Concrete Products, Inc.; Autumn Hills Care Center, Inc.; Nescor Plastics Corp.; Michael Day Enterprise, Inc.; Bollin

& Sons, Inc. (dba Bollin Label Systems); Universal Tire Molds, Inc.; Gauer Service & Supply Co.; Rogers Industrial Products; Custom Poly Bag, Inc.; Esterle Mold & Machine, Co.; and Lawyers Property Development Corp. are GRANTED in part, to the extent that the Court finds that Plaintiff has no claim for breach of implied contract and unjust enrichment where Plaintiff already has a claim to levy assessments against any such Defendants based on express contracts and such Defendants' summary judgment motions are DENIED as to the claims for breach of statutory duty and breach of express contract.

3. The summary judgment motions of defendants Lois Blackburn; Callos Professional Employment, LLC; and Western Reserve Racquet and Fitness Club are DENIED.

4. Defendant Orthopaedic Associates of Zanesville, Inc.'s motion to dismiss and Defendant Tewel Corp.'s motion to dismiss or alternatively for summary judgment are DENIED.

5. Defendant Bennett/Dover's motion for summary judgment on Plaintiff's amended complaint and motion for summary judgment on its counterclaim are DENIED.

6. Defendant Wise Chevrolet, Inc.'s motion for summary judgment is DENIED.

7. Plaintiff's motion to dismiss the counterclaim of American Tool and Mfg. Co.; Cleveland Express, Distribution Results, Inc.; E&E Nameplates, Hill-T-Farm, Inc.; Holmes Trucking; Houston Plumbing and Heating; International Equipment; KBZ Electric, Inc.; KLYN Nurseries, Lawn & Order; Michael's Mobile Meals; Pinnacle Technology; Pohl Transportation/Harold J. Pohl; Smith's Classic Machine; Superior Quality Mfg.; The Rhiel Supply Co.; Trumbull County Dry Kiln; Wells, Inc.; Osgar's Rustproofing; Glen's

Surplus, Inc.; and F.M. Machine Co. is GRANTED, and such Defendant's counterclaims are hereby dismissed, with prejudice.

8. Defendant Therm-O-Link, Inc.'s motion for default judgment on its crossclaim against Defendant Association Plan Administrators, Inc. would be GRANTED, except that the Court is advised that Defendant Associated Plan Administrators, Inc. filed a chapter 7 bankruptcy on February 14, 2003 in the United States Bankruptcy Court, Northern District of Ohio, Case No. 03-50745-S, and accordingly all actions against Defendant Associated Plan Administrators, Inc. are stayed until a party advises that the stay has been modified or lifted.

9. Defendant Rose Run Drilling, Inc.'s motion to strike is GRANTED (though summary judgment for this Defendant is still denied as set forth above), and Ziegler Tire and Supply Co.'s motion to strike is DENIED.

10. Defendant Combi Packaging Systems, LLC's motion to compel discovery is DENIED.

11. Defendant R.H. Little Co.'s Motion to Extend Time to Respond to Plaintiff's Motion for Summary Judgment [to October 8, 2004] is GRANTED.

12. The Court's granting of partial summary judgment to Plaintiff only concerns Plaintiff's authority to levy the assessments. The amounts sought in Plaintiff's notices of assessments, the time period for which a Defendant is liable and the amounts to be credited toward a Defendant's assessment liability concern factual issues as to the sums owed by the respective Defendants.

13. The amount, if any, of assessments against particular Defendants and the amount of the deficiency have not yet been determined by the Court.

IT IS SO ORDERED.

Dated: _____

Judge Schneider

APPROVED:

CARLILE PATCHEN & MURPHY LLP



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Submitted but not signed

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International Equipment, KBZ Electric, Inc., KLYN Nurseries,

Lawn & Order, Michael's Mobile Meals, Pinnacle Technology,

Pohl Transportation/Harold J. Pohl, Smith's Classic Machine,

Superior Quality Mfg., The Rheil Supply Co.

Trumbull County Dry Kiln, Wells, Inc., Osgar's Rustproofing,

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c/o William J. Stottler

Defendant

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c/o Robert J. & Loretta J. McWhorter

Defendant