

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

AUTOMOBILE MECHANICS')
LOCAL NO. 701 UNION AND)
INDUSTRY PENSION FUND,)

Plaintiff,)

v.)

No. 19 C 00412

M & K EMPLOYEE SOLUTIONS,)
LLC, an Illinois Series Limited Liability)
Company; M & K EMPLOYEE)
SOLUTIONS, LLC-ALSIP, a series of)
an Illinois Series Limited Liability)
Company; M & K EMPLOYEE)
SOLUTIONS, LLC-ILLINOIS)
LEASING, a series of an Illinois Series)
Limited Liability Company; M & K)
EMPLOYEE SOLUTIONS, LLC-)
JOLIET, a series of an Illinois Series)
Limited Liability Company; M & K)
EMPLOYEE SOLUTIONS, LLC-)
NORTHERN ILLINOIS, a series of an)
Illinois Series Limited Liability)
Company; and M & K EMPLOYEE)
SOLUTIONS, LLC-SUMMIT, a series)
of an Illinois Series Limited Liability)
Company,)

Judge John J. Tharp, Jr.

Defendants.)

ORDER

For the reasons set forth in the Statement below, the plaintiff's motion for summary judgment [26] is granted. The defendants are jointly and severally liable for payment of the interim quarterly withdrawal liability assessments due to the plaintiff in connection with the termination of the collective bargaining agreement between the Automobile Mechanics' Local Union No. 701 and M&K Employee Solutions, LLC-Summit in July 2017. The parties are directed to confer and attempt to reach an agreement on the amount of the judgment to be awarded to the Pension Fund in accordance with this Order. A telephone status hearing will be held on Tuesday, September 20, 2022, at 9:00 a.m. Dial-in information for the status hearing will be provided in a separate entry.

STATEMENT

As part of its collective bargaining agreement with the Automobile Mechanics' Local Union No. 701, M & K Employee Solutions, LLC-Summit ("M&K Summit") agreed to pay contributions to the plaintiff Pension Fund on behalf of its bargaining-unit employees. Pl.'s Statement of Material Facts ¶ 1, No. 28. Effective July 31, 2017, M&K Summit's obligation to contribute to the Pension Fund ceased pursuant to a new collective bargaining agreement. *Id.* at ¶ 2. Ending its obligation to contribute to the Pension Fund resulted in a complete withdrawal under the Employment Retirement Income Security Act ("ERISA"). 29 U.S.C. § 1383. ERISA requires that "withdrawing employers . . . pay a sum that covers their liability for unfunded vested benefits attributable to their employees." *Loc. 705 Int'l Bhd. of Teamsters Pension Fund v. Pitello*, 3 F.4th 949, 950 (7th Cir. 2021); 29 U.S.C. § 1381(a).

M&K Summit is a component of a "series" LLC, a species of business organization authorized under Illinois state law. A series LLC consists of a master LLC and divisions called "series." In this case, the master LLC, M&K Master, has five series LLCs, including M&K Summit.

On October 11, 2018, the Pension Fund sent M & K Employee Solutions, LLC ("Master M&K"), M&K Summit's "master" LLC, a Notice and Demand for Payment of the Withdrawal Liability. Pl.'s Statement of Material Facts ¶ 4. The demand notified Master M&K that it could either pay the lump sum of \$6,215,168.99 or pay in quarterly installments. *Id.* at ¶¶ 4, 6. The first installment was due on November 1, 2018, but the Fund did not receive a payment. *Id.* at ¶¶ 7, 8. Pursuant to 29 U.S.C. § 1399, the Pension Fund sent a Notice to Cure Default to Master M&K. *Id.* at ¶ 8. The Pension Fund has not received any of the installment payments or the lump sum payment. It sued not only M&K Summit, but also M&K Master and all of the other M&K series LLCs, seeking to hold them liable as a single employer.

The defendants acknowledge that M&K Summit incurred withdrawal liability. Def. Resp. in Opp. 4, ECF No. 33. They do not dispute that the employer is required to pay the Fund's withdrawal assessment up front, even when challenging the merits of the assessment.¹ Thus, the only issue before the Court on the Pension's Fund's summary judgment motion is whether all of the LLCs are liable as a single employer under ERISA, 29 U.S.C. § 1301(b)(1). Resp. 4 ("The parties also agree that the dispute centers around whether any of the M&K Entities may be held liable for M&K Summit's withdrawal liability.").

ERISA treats all trades or businesses (whether or not incorporated) that are under "common control" with the withdrawing employer as a "single employer." 29 U.S.C. § 1301(b)(1).

¹ Under ERISA's "pay now, dispute later" provision, 29 U.S.C. §§ 1399(c)(2) and 1401(d), an "employer may seek review of [a plan's] calculations and then challenge the plan's determination in arbitration, but it must pay even while the review and arbitration are pending." *Cent. States Se. & Sw. Areas Pension Fund v. O'Neill Bros. Transfer & Storage Co.*, 620 F.3d 766, 768 (7th Cir. 2010). M&K Summit is contesting the Pension Fund's assessment of withdrawal liability in arbitration; this suit does not address the merits of the assessment but seeks payment of unpaid quarterly installments on that assessment pending resolution of the merits. The Pension Fund also seeks liquidated damages and attorneys' fees in connection with this lawsuit.

Withdrawal liability, therefore, does not only apply to the withdrawing employer; “trades or businesses . . . under common control” with the withdrawing employer are also on the hook for the withdrawal liability. 29 U.S.C. § 1301(b)(1); *Loc. 705*, 3 F.4th at 950. The defendants do not contest the Pension Fund’s arguments that all of the LLCs constitute trades or businesses; the LLCs admit that all of “[t]he M&K Entities were formed to provide labor to truck dealerships in the Chicagoland area.” Resp. 2 The defendants also concede common control by admitting that Chad Boucher was the sole member and owner of all of the LLCs. *Id.* at 3. The defendants, therefore, concede that all of the defendant LLCs meet the two factors necessary to hold them liable for the withdrawal liability.

The defendants contend that the withdrawal liability does not apply to them, however, because the Illinois Limited Liability Act, 805 ILCS 180/37-40(b), protects series LLCs from joint liability. Under Illinois law, the master LLC and the series LLCs are all treated as separate entities for purposes of limited liability. 805 ILCS 180/37-40(b). The defendant LLCs argue that ERISA does not preempt the Illinois Limited Liability Act, and that Illinois law prevents them from being held jointly liable. The Pension Fund contends that ERISA does preempt the Limited Liability Act, and that, moreover, the LLCs did not properly account for their assets and therefore cannot rely on the Act. Because the Court finds that the Pension Fund is entitled to judgment as a matter of law based on ERISA, the Court does not address the latter argument that the LLCs should not be given the separate liability protections for series LLCs.

The defendants frame their argument in terms of preemption, and the Pension Fund in turn makes an argument for preemption. As the defendants argue, holding separate corporate entities liable based, in part, on common control can seem like an attempt to pierce the corporate veil and discount the LLCs’ separate limited liability. Section 1301(b)(1), however, “prevent[s] businesses from shirking their ERISA obligations by fractionalizing operations into many separate entities.” *Loc. 705*, 3 F.4th at 952 (quoting *Cent. States, Se. & Sw. Areas Pension Fund v. Nagy*, 714 F.3d 545, 549 (7th Cir. 2013)). Congress is not bound by separate corporate identities when regulating commerce. *Robbins v. Pepsi-Cola Metro. Bottling Co.*, 636 F. Supp. 641, 661 (N.D. Ill. 1986) (“[The subsidiary’s] corporate veil was, in effect, pierced by Congress when it enacted the termination liability provisions of ERISA.”) (quoting *Pension Benefit Guar. Corp. v. Ouimet Corp.*, 711 F.2d 1085, 1093 (1st Cir. 1983)). The Court does not think that this provision **preempts** Illinois corporate law, but it clearly mandates that withdrawal liability extends to any trade or business under common control with the withdrawing business regardless of whether they are structured as series LLCs, separate LLCs, or corporations.

Thus, because the defendant LLCs acknowledge that they are trades or businesses under common control, they are jointly liable to the Pension Fund for the withdrawal liability incurred by M&K Summit’s complete withdrawal from the collective bargaining agreement with Local 701.



John J. Tharp, Jr.

Dated: September 1, 2022

United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

AUTOMOBILE MECHANICS' LOCAL NO. 701)	
UNION AND INDUSTRY PENSION FUND,)	NO.: 19-cv-412
)	
Plaintiff,)	
)	Judge John J. Tharp, Jr.
vs.)	
)	
M & K EMPLOYEE SOLUTIONS, LLC, an Illinois)	Magistrate Judge Sunil R. Harjani
Series Limited Liability Company; M & K)	
EMPLOYEE SOLUTIONS, LLC-ALSIP, a series of)	
an Illinois Series Limited Liability Company; M & K)	
EMPLOYEE SOLUTIONS, LLC-ILLINOIS)	
LEASING, a series of an Illinois Series Limited)	
Liability Company; M & K EMPLOYEE)	
SOLUTIONS, LLC-JOLIET, a series of an Illinois)	
Series Limited Liability Company; M & K)	
EMPLOYEE SOLUTIONS, LLC-NORTHERN)	
ILLINOIS, a series of an Illinois Series Limited)	
Liability Company; and M & K EMPLOYEE)	
SOLUTIONS, LLC-SUMMIT, a series of an Illinois)	
Series Limited Liability Company,)	
)	
Defendants.)	

FINAL JUDGMENT IN SUM CERTAIN

This matter coming before the Court on Plaintiffs' Motion for Summary Judgment, and the Court being duly advised in the premises,

WHEREAS, this Court granted Plaintiff's Motion for Summary Judgment [26] on September 1, 2022 [45];

IT IS HEREBY ORDERED:

1. Judgment is hereby entered in favor of the Plaintiff and against the Defendants, jointly and severally, in the aggregate amount of \$5,348,105.79, which is itemized as follows:
 - A. \$4,418,609.00 in past-due quarterly installment payments;

- B. \$472,665.87 in interest through September 15, 2022 on the unpaid quarterly installments at rates established by the PBGC;
- C. \$441,860.90 in liquidated damages; and
- D. \$14,970.02 in attorneys' fees and costs.

ORDERED BY:

/s/ John J. Tharp, Jr.
Judge John J. Tharp, Jr.
United States District Judge

Dated: September 27, 2022