

3. The Steuber & Morris Joiners, LLC SIMPLE IRA Plan, a/k/a the Replica Windows SIMPLE IRA Plan (“Retirement Plan”), is an employee benefit plan within the meaning of ERISA § 3(3), 29 U.S.C. § 1002(3), that is subject to the provisions of Title I of ERISA pursuant to ERISA § 4(a), 29 U.S.C. § 1003(a). The Retirement Plan is named as a defendant herein pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.

4. The Steuber & Morris Joiners, LLC Group Health Plan, a/k/a the Replica Windows Group Health Plan (“Health Plan”), is an employee benefit plan within the meaning of ERISA § 3(3), 29 U.S.C. § 1002(3), that is subject to the provisions of Title I of ERISA pursuant to ERISA § 4(a), 29 U.S.C. § 1003(a). The Health Plan is named as a defendant herein pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.

5. Venue of this action lies in the Northern District of Illinois pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Retirement Plan and the Health Plan are or were administered in Oglesby, LaSalle County, Illinois, within this district.

DEFENDANTS AND PARTIES IN INTEREST UNDER ERISA

6. Steuber & Morris Joiners, LLC (“SMJ”) was a Delaware limited liability company engaged in the business of providing custom doors and windows in Oglesby, Illinois, from at least February 2008 to December 3, 2009.

7. The Delaware Secretary of State cancelled SMJ’s articles of organization on June 1, 2012.

8. Replica, LLC (“Replica”) was an Illinois limited liability company engaged in the business of providing custom doors and windows in Oglesby, Illinois, from December 3, 2009, through June 8, 2012.

9. Replica assumed SMJ’s business operations on December 3, 2009.

10. From February 2008 through December 2, 2009, SMJ was the sponsor of the Health Plan; the administrator of the Health Plan pursuant to ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A); a fiduciary of the Health Plan within the meaning of ERISA §§ 3(21)(A)(i) and (iii), 29 U.S.C. §§ 1002(21)(A)(i) and (iii); and a party in interest to the Health Plan within the meaning of ERISA §§ 3(14)(A) and (C), 29 U.S.C. §§ 1002(14)(A) and (C).

11. From December 3, 2009, through June 8, 2012, Replica was the sponsor of the Health Plan; the administrator of the Health Plan pursuant to ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A); a fiduciary of the Health Plan within the meaning of ERISA §§ 3(21)(A)(i) and (iii), 29 U.S.C. §§ 1002(21)(A)(i) and (iii); and a party in interest to the Health Plan within the meaning of ERISA §§ 3(14)(A) and (C), 29 U.S.C. §§ 1002(14)(A) and (C).

12. From December 3, 2009, through June 8, 2012, Replica was the sponsor of the Retirement Plan; the administrator of the Retirement Plan pursuant to ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A); a fiduciary of the Retirement Plan within the meaning of ERISA §§ 3(21)(A)(i) and (iii), 29 U.S.C. §§ 1002(21)(A)(i) and (iii); and a party in interest to the Retirement Plan within the meaning of ERISA §§ 3(14)(A) and (C), 29 U.S.C. §§ 1002(14)(A) and (C).

13. From February 2008 through December 2, 2009, William Morris (“Morris”) was a principal member of SMJ who exercised authority and control over SMJ, including its assets.

14. From December 3, 2009, through June 8, 2012, Morris was a principal member of Replica who exercised authority and control over Replica, including its assets.

15. From February 2008 through June 8, 2012, Morris exercised authority and control over the assets of the Health Plan; was a fiduciary of the Health Plan within the meaning of ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i); and was a party in interest to the Health Plan within the meaning of ERISA § 3(14)(A), 29 U.S.C. § 1002(14)(A).

16. From December 3, 2009, through June 8, 2012, Morris exercised authority and control over the assets of the Retirement Plan; was a fiduciary of the Retirement Plan within the meaning of ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i); and was a party in interest to the Retirement Plan within the meaning of ERISA § 3(14)(A), 29 U.S.C. § 1002(14)(A).

17. The Illinois Secretary of State involuntarily dissolved Replica's articles of organization on June 8, 2012.

18. When Replica assumed SMJ's business operations on December 3, 2009, it took over administration of the Retirement Plan and the Health Plan.

19. Sean Steuber ("Steuber") was a principal member and president of SMJ and Replica.

20. Replica, through Morris and Steuber, had notice of SMJ's withholding of \$1,496.30 from participating employees' pay in participants' contributions from June 5, 2009, through August 28, 2009, and failing to remit the amounts withheld to either the Health Plan or its insurance carrier for the payment of premiums.

21. Replica continued operations of SMJ, as demonstrated by retaining some of the same employees; working from the same location; producing and selling the same products; and completing work started by SMJ.

22. Based on paragraphs 13 through 14, and 18 through 21 above, Replica is a successor in liability to SMJ and properly named as a defendant in this action.

COUNT ONE

Failure to Remit Participant Contributions to the Retirement Plan

23. Paragraphs 1 through 3, 5 through 9, 12, 14, 16 through 19, and 21 through 22 above are realleged and incorporated in these allegations.

24. In December 2008 SMJ established the Retirement Plan to provide retirement benefits to its employees.

25. At all relevant times, the Retirement Plan's governing documents, which were adopted by SMJ, provided in pertinent part that the Retirement Plan would be funded through participants' pre-tax contributions from their compensation to the Retirement Plan.

26. During periods from September 24, 2010, through May 27, 2011, Replica withheld from employees' pay \$2,640.83 in employee contributions to the Retirement Plan.

27. The participant contributions withheld by Replica from employees' wages between September 24, 2010, and May 27, 2011, were retained in Replica's own general operating account and used to pay corporate expenses.

28. During periods from September 24, 2010, through May 27, 2011, Morris and Replica caused Replica to retain the employee contributions to the Retirement Plan that had been withheld from their pay and failed to ensure that the amounts withheld from participating employees' pay were deposited in the employees' Retirement Plan accounts.

29. By the allegations described in paragraphs 24 through 28 above, Replica and Morris:

a. failed to ensure that all assets of the Retirement Plan did not inure to the benefit of Replica, in violation of ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1);

b. failed to act solely in the interest of the participants and beneficiaries of the Retirement Plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of Retirement Plan administration, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);

c. failed to discharge their duties with respect to the Retirement Plan in accordance with the documents and instruments governing the Retirement Plan insofar as such documents and instruments are consistent with ERISA, in violation of ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D);

d. caused the Retirement Plan to engage in transactions which they knew or should have known constituted a direct or indirect transfer to, or use by or for the benefit of, a party in interest, of assets of the Retirement Plan, in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D);

e. dealt with assets of the Retirement Plan in their own interests in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1); and

f. acted on behalf of a party whose interests are adverse to the interests of the Retirement Plan or the interests of its participants and beneficiaries, in violation of ERISA § 406(b)(2), 29 U.S.C. § 1106(b)(2).

30. As a direct and proximate result of Replica and Morris' breaches, the Retirement Plan suffered injury and losses for which it is entitled to equitable relief, pursuant to ERISA § 409, 29 U.S.C. § 1109.

COUNT TWO
SMJ's Failure to Remit Participant Contributions to the Health Plan

31. Paragraphs 1 through 2, 4 through 10, 13, and 15 above are realleged and incorporated in these allegations.

32. In February 2008 SMJ took over sponsorship and administration of the Health Plan from Dahlgrens, Inc., which SMJ bought, to provide health and dental benefits to its employees.

33. The Health Plan's benefits were provided by the Heartland Healthcare Fund, a self-insured health fund that provides welfare benefits to participants of approximately three hundred contributing employers.

34. The Health Plan's governing documents provide in pertinent part that the employer is responsible for making premium contributions to the Heartland Healthcare Fund on behalf of its participating employees.

35. From February 2008 to December 2, 2009, premiums for the Health Plan were partially funded through weekly payroll deductions from SMJ's employees.

36. The Heartland Healthcare Fund cancelled the Health Plan's insurance policy on May 31, 2009, for failure to pay premiums.

37. The Heartland Healthcare Fund reinstated coverage of the Health Plan on September 1, 2009.

38. Upon information and belief, the Health Plan had no insurance coverage during the period from June 5, 2009, through August 28, 2009.

39. As the Health Plan sponsor during the period from June 5, 2009, through August 28, 2009, SMJ had a duty to collect the participant premium contributions and remit the Health Plan assets to the Heartland Healthcare Fund for the payment of premiums.

40. During the period from June 5, 2009, through August 28, 2009, when the Health Plan did not have coverage with the Heartland Healthcare Fund, SMJ withheld \$1,496.30 from participating employees' pay in participants' contributions to the Health Plan.

41. During the period from June 5, 2009, through August 28, 2009, Morris and SMJ caused SMJ to retain the withheld participant contributions to the Health Plan that had been withheld from their pay and failed to ensure that the amounts withheld from the employees' pay were remitted to the Health Plan for payment of premiums to the Heartland Healthcare Fund.

42. By the allegations described in paragraphs 32 through 41 above, SMJ, and Morris:

- a. failed to ensure that all assets of the Health Plan did not inure to the benefit of SMJ in violation of ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1);
- b. failed to act solely in the interest of the participants and beneficiaries of the Health Plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of Health Plan administration, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);
- c. failed to discharge their duties with respect to the Health Plan in accordance with the documents and instruments governing the Health Plan insofar as such documents and instruments are consistent with ERISA, in violation of ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D);
- d. dealt with assets of the Health Plan in their own interests in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1); and
- e. acted on behalf of a party whose interests are adverse to the interests of the Retirement Plan or the interests of its participants and beneficiaries, in violation of ERISA § 406(b)(2), 29 U.S.C. § 1106(b)(2).

43. As a direct and proximate result of SMJ and Morris' breaches, the Health Plan suffered injury and losses for which it is entitled to equitable relief, pursuant to ERISA § 409, 29 U.S.C. § 1109.

44. Replica is liable for the violations committed by SMJ in paragraphs 40 through 41 above as the successor to SMJ.

COUNT THREE

Replica's Failure to Remit Participant Contributions to the Health Plan

45. Paragraphs 1 through 2, 4 through 9, 11, 14 through 15, and 17 through 18 above are realleged and incorporated in these allegations.

46. From December 3, 2009, through at least June 24, 2011, premiums for the Health Plan were partially funded through weekly payroll deductions from Replica's employees.

47. The Heartland Healthcare Fund cancelled the Health Plan's health insurance policy a second time on January 31, 2010, for failure to pay premiums.

48. Upon information and belief, the Health Plan had no insurance coverage after January 31, 2010.

49. As the Health Plan sponsor during the period from February 5, 2010, through June 24, 2011, Replica had a duty to collect the participant premium contributions and remit the Health Plan assets to the Heartland Healthcare Fund for the payment of premiums.

50. During the period from February 5, 2010, through June 24, 2011, when the Health Plan did not have coverage with the Heartland Healthcare Fund, Replica withheld \$6,064.32 from participating employees' pay in participants' contributions to the Health Plan.

51. During the period from February 5, 2010, through June 24, 2011, Morris and Replica caused Replica to retain the withheld participant contributions to the Health Plan that had been withheld from their pay and failed to ensure that the amounts withheld from the

employees' pay were remitted to the Health Plan for payment of premiums to the Heartland Healthcare Fund.

52. By the allegations in paragraphs 46 through 51 above, Replica and Morris:

a. failed to ensure that all assets of the Health Plan did not inure to the benefit of Replica in violation of ERISA § 403(c)(1), 29 U.S.C. § 1103(c)(1);

b. failed to act solely in the interest of the participants and beneficiaries of the Health Plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of Health Plan administration, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A);

c. failed to discharge their duties with respect to the Health Plan in accordance with the documents and instruments governing the Health Plan insofar as such documents and instruments are consistent with ERISA, in violation of ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D);

d. dealt with assets of the Health Plan in their own interests in violation of ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1); and

e. acted on behalf of a party whose interests are adverse to the interests of the Retirement Plan or the interests of its participants and beneficiaries, in violation of ERISA § 406(b)(2), 29 U.S.C. § 1106(b)(2).

53. As a direct and proximate result of Replica and Morris' breaches, the Health Plan suffered injury and losses for which it is entitled to equitable relief, pursuant to ERISA § 409, 29 U.S.C. § 1109.

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays for a judgment:

A. Permanently enjoining Defendants Morris, Replica, and SMJ from violating the provisions of Title I of ERISA;

B. Permanently enjoining Defendants Morris, Replica, and SMJ from acting as fiduciaries or service providers to any ERISA-covered employee benefit plan;

C. Ordering Defendants Morris, Replica, and SMJ to make good to the Retirement Plan and the Health Plan any losses, including lost opportunity costs, resulting from fiduciary breaches committed by them or for which they are liable;

D. Requiring Defendants Morris, Replica, and SMJ to disgorge any profits received as a result of fiduciary breaches committed by them or for which they are liable;

E. Ordering Defendants Morris, Replica, and SMJ to correct the prohibited transactions in which they engaged, plus appropriate lost opportunity costs;

F. Removing Defendants Morris, Replica, and SMJ from their positions as fiduciaries with respect to the Retirement Plan and the Health Plan;

G. Awarding the Secretary the costs of this action; and

H. Ordering such further relief as is appropriate and just.

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