

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

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|---------------------------------------|---|-----------------------|
| THOMAS E. PEREZ, Secretary of Labor, | : | |
| United States Department of Labor, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| | : | |
| v. | : | |
| | : | Case No. 1:14-cv-1092 |
| SPARTAN ROOFING COMPANY, INC. | : | |
| and the SPARTAN ROOFING COMPANY, INC. | : | |
| PROFIT SHARING PLAN, | : | |
| | : | |
| Defendants. | : | |

COMPLAINT

Plaintiff Thomas E. Perez, Secretary, United States Department of Labor (the "Secretary"), alleges:

JURISDICTION AND VENUE

1. This action arises under Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. Secs. 1001, et seq., and is brought by the Secretary under ERISA Secs. 502(a)(2) and (5), 29 U.S.C. Secs.1132(a)(2) and (5), to enjoin acts and practices which violate the provisions of

Title I of ERISA, to obtain appropriate equitable relief for breaches of fiduciary duty under ERISA Sec. 409, 29 U.S.C. Sec. 1109, and to obtain such further equitable relief as may be appropriate to redress violations and to enforce the provisions of Title I of ERISA.

2. This court has jurisdiction over this action pursuant to ERISA Sec. 502(e)(1), 29 U.S.C. Sec. 1132(e)(1).

3. The Spartan Roofing Company, Inc. Profit Sharing Plan (the "Plan") is an employee benefit plan within the meaning of ERISA Sec. 3(3), 29 U.S.C. Sec. 1002(3), which is subject to the provisions of Title I of ERISA pursuant to ERISA Sec. 4(a), 29 U.S.C. Sec. 1003(a). The Plan is named as a defendant in this action pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.

4. Venue of this action lies in the Western District of Michigan, pursuant to ERISA Sec. 502(e)(2), 29 U.S.C. Sec. 1132(e)(2), because the Plan was administered in Lansing, Michigan, within this district.

5. Defendant Spartan Roofing Company, Inc. ("Spartan"), the sponsor of the Plan, is the plan administrator of the Plan and a fiduciary of the Plan within the meaning of ERISA Sec. 3(21)(A), 29 U.S.C. Sec. 1002(21)(A).

ALLEGATIONS

6. Spartan Roofing Company, Inc. was incorporated in 1977 and its office was located at 6850 Aurelius Road, Lansing, Michigan. Carey Scott Miller was the Company president and resident agent. Mr. Miller died on April 7, 2012 and Spartan ceased doing business shortly after his death.

7. The Plan was established by Spartan on April 1, 1984 and was a profit sharing plan funded through employee rollover contributions and employer profit sharing contributions. As of March 31, 2011, there were 13 participants in the Plan. As of April 30, 2014, \$54,911.80 of the Plan's assets was held in a PNC Bank account. As of June 27, 2014, \$342,457.43 of the Plan's assets were held in two separate policies with Jackson National Life Insurance Company

8. Spartan is the Plan's Administrator.

9. Miller is the Plan's trustee. Miller was the only person with authority to administer the Plan's annuity contracts with Jackson or authorize distributions from the Plan's annuity contracts. Further, Miller was the only person with signature authority for the Plan's PNC Bank account. Before his death, Miller did not appoint a successor trustee.

10. To the best of Plaintiff's information and belief, Spartan has not taken any fiduciary responsibility for the operation and administration of the Plan and its assets since Spartan went out of business in 2012.

11. The last Form 5500 Report of Employee Benefit Plan filed with the Department of Labor was for the Plan year ending March 31, 2011.

12. The Plan has not been formally terminated and participants are unable to secure distributions from the Plan.

13. By the conduct described in paragraphs 6 through 12 above, Defendant Spartan:

a. failed to discharge its duties with respect to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and its beneficiaries and defraying reasonable expenses of administering the Plan, in violation of ERISA Sec. 404(a)(1)(A), 29 U.S.C. Sec. 1104(a)(1)(A);

b. failed to discharge its duties with respect to the Plan solely in the interest of the participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct

of an enterprise of a like character and with like aims, in violation of ERISA Sec. 404(a)(1)(B), 29 U.S.C. Sec. 1104(a)(1)(B); and

c. failed to discharge its duties with respect to the Plan solely in the interests of the participants and beneficiaries and in accordance with the documents and instruments governing the Plan insofar as such documents and instruments are consistent with ERISA, in violation of ERISA Sec. 404(a)(1)(D), 29 U.S.C. Sec. 1104(a)(1)(D).

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays for judgment:

A. Removing Defendant Spartan from its position as fiduciary with respect to the Plan and appointing an independent fiduciary to administer the Plan in order to effectuate its termination, and the distribution of Plan assets to the participants and beneficiaries;

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

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

M. PATRICIA SMITH
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

BENJAMIN T. CHINNI
Associate Regional Solicitor

s/Maureen M. Cafferkey
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