

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

PENSION BENEFIT GUARANTY CORPORATION,

Plaintiff,

v.

LYONS-RYAN FORD SALES, INC.,

Defendant.

Civil Action No. _____

COMPLAINT

NATURE OF THE ACTION

1. The Pension Benefit Guaranty Corporation (“**PBGC**”), a federal agency and corporation, brings this action under the Employee Retirement Income Security Act of 1974 (“**ERISA**”), *as amended*, 29 U.S.C. §§ 1001-1461 (2006 & Supp. V 2011) and, in particular, under Title IV of ERISA, 29 U.S.C. §§ 1301-1461 (“**Title IV**”). Title IV established PBGC to administer the defined benefit pension plan termination insurance program created by Title IV. When an underfunded pension plan covered under Title IV terminates, PBGC pays statutorily guaranteed pension benefits, insofar as necessary from PBGC’s insurance fund. See 29 U.S.C. §§ 1302(a)(2), 1321, 1322.

2. This action regards the Lyons-Ryan Ford Sales, Inc. Frozen Defined Benefit Pension Plan (the “**Plan**”). The Plan is a single-employer defined benefit pension plan covered by PBGC’s guaranty of benefits under Title IV. The defendant, Lyons-Ryan Ford Sales, Inc. (“**LRF**”) established the Plan to provide retirement benefits for its employees. LRF has failed to make minimum funding contributions to the Plan as required by law. Consequently, the Plan is underfunded and will be unable to pay promised retirement benefits.

3. PBGC brings this action to terminate the underfunded Plan and to become statutory trustee of the Plan, whereupon PBGC will pay Plan benefits to the extent of PBGC's statutory guaranty, drawing from PBGC's insurance fund to cover the Plan's unfunded guaranteed liabilities.

JURISDICTION AND VENUE

4. This Court has jurisdiction of this action under 29 U.S.C. § 1303(e)(3).

5. Upon the filing of this action, this Court acquired exclusive jurisdiction of the Plan and its property, wherever located. See 29 U.S.C. § 1342(e)-(f).

6. Venue properly lies in this judicial district under 29 U.S.C. §§ 1303(e)(2) and 1342(g), because defendant LRF has its principal place of business in Antioch, Illinois, which is within this judicial district, and because LRF administers the Plan in this district.

PARTIES

7. PBGC is a federal agency and corporation with its principal place of business in Washington, D.C. PBGC's statutory charter and functions are described in paragraph 1, *supra*.

8. LRF is a corporation organized under the laws of the State of Illinois. Until 2007, when LRF ceased operations, LRF operated an automobile dealership in Antioch, Illinois.

9. In or about 2010, LRF voluntarily dissolved under 805 Ill. Comp. Stat. 5/12.

10. Although LRF's voluntary dissolution terminated its corporate existence, LRF remains empowered to conduct business necessary to wind up its affairs, and LRF may still be sued in its corporate name. See 805 Ill. Comp. Stat. 5/12.30(a), (c)(4). LRF remains contributing sponsor and administrator of the Plan and has not wound up its duties in those capacities.

CAUSES OF ACTION

11. The Plan is an employee pension benefit plan within the meaning of 29 U.S.C. § 1002(2), a defined benefit pension plan within the meaning of 29 U.S.C. § 1002(35), and a single-employer plan within the meaning of 29 U.S.C. § 1002(41). The Plan is insured under Title IV. See 29 U.S.C. § 1321.

12. LRF established the Plan to provide retirement benefits for its employees. LRF is the contributing sponsor of the Plan within the meaning of 29 U.S.C. § 1301(a)(13) and the administrator of the Plan within the meaning of 29 U.S.C. §§ 1002(16)(A), 1301(a)(1).

13. LRF has failed to make contributions to the Plan as required under section 303 of ERISA, 29 U.S.C. § 1083, and sections 412 and 430 of the Internal Revenue Code, 26 U.S.C. §§ 412, 430.

14. The Plan is underfunded. PBGC estimates that, as of March 31, 2011, the Plan had \$1,556,043 in liabilities for future pension benefits, and only \$510,204 in assets from which to pay those benefits.

15. Under 29 U.S.C. § 1342(c), if PBGC has (1) determined that a plan covered under Title IV should be terminated under 29 U.S.C. § 1342 and (2) issued notice of that determination to the plan's administrator, PBGC is authorized to apply to a United States District Court for a decree that the plan must be terminated either to protect the interests of plan participants, to avoid any unreasonable deterioration of the financial condition of the plan, or to avoid any unreasonable increase in the liabilities of PBGC's insurance fund.

16. On September 26, 2013, PBGC determined:

- a. under 29 U.S.C. § 1342(a)(1) and (2), that the Plan had not met the minimum funding standard required under section 412 of the Internal Revenue Code,

that the Plan will be unable to pay benefits when due, and that the Plan should therefore be terminated;

- b. under 29 U.S.C. § 1342(c), that the Plan must be terminated to protect the interests of the Plan's participants; and
- c. under 29 U.S.C. § 1348, that the Plan's termination date should be March 31, 2011.

17. On September 26, 2013, PBGC sent notice of the foregoing determinations to LRF via (1) e-mail to Mr. Kevin Lyons, LRF's president and sole shareholder, (2) overnight delivery service to Mr. Lyons at his home address in Antioch, Illinois, and (3) e-mail and overnight delivery service to Mr. Donald S. Carnow, Esq. (the "**Notice**"). Mr. Carnow is an attorney representing LRF and Mr. Lyons in dealings with PBGC regarding the Plan. Mr. Carnow also owns Carnow & Carnow, Ltd., which has provided actuarial and administrative services to the Plan.

18. In the Notice, PBGC stated its intention to proceed under 29 U.S.C. § 1342 to have the Plan terminated and PBGC appointed statutory trustee of the Plan, and, under 29 U.S.C. § 1348, to have March 31, 2011 established as the Plan's termination date.

19. 29 U.S.C. § 1342(c) authorizes termination of a pension plan covered by Title IV without the decree of a United States District Court if PBGC and the plan's administrator agree that the plan should be terminated and to the appointment of a trustee. To facilitate such agreement with LRF, PBGC sent with the Notice (1) a cover letter asking LRF, as the Plan's administrator, to enter into an agreement to terminate the Plan and to appoint PBGC statutory trustee; and (2) a proposed form of such agreement.

20. PBGC requested that LRF sign the agreement and return it to PBGC within thirty days. LRF did not do so. Nor did LRF communicate any disagreement with any of PBGC's determinations described in the Notice.

FIRST CLAIM FOR RELIEF

21. PBGC repeats and realleges paragraphs 1 through 20.

22. After PBGC determines that a pension plan must be terminated, and upon application and notice by PBGC under 29 U.S.C. § 1342(c), a United States District Court may issue a decree adjudicating that such pension plan must be terminated, either to protect the interests of the participants, to avoid any unreasonable deterioration of the financial condition of the plan, or to avoid any unreasonable increase in the liabilities of PBGC's insurance fund. See 29 U.S.C. § 1342(c).

23. PBGC has determined that the Plan must be terminated to protect the interests of Plan participants and has provided notice to LRF, the Plan's administrator, of that determination.

SECOND CLAIM FOR RELIEF

24. PBGC repeats and realleges paragraphs 1 through 23.

25. Upon issuing a termination decree under 29 U.S.C. § 1342(c), a United States district court must appoint a statutory trustee for the pension plan—which, upon application, may be PBGC—and authorize the trustee to terminate the plan in accordance with Title IV. See 29 U.S.C. §§ 1342(c) (re required appointment of trustee), 1342(b) (re PBGC as trustee).

26. This Court should appoint PBGC as statutory trustee of the Plan. PBGC is equipped to fulfill all duties of statutory trustee and to terminate the Plan in accordance with the provisions of Title IV. PBGC administers the insurance program under Title IV and is statutory trustee of over 4,500 terminated pension plans.

THIRD CLAIM FOR RELIEF

27. PBGC repeats and realleges paragraphs 1 through 26.

28. Title 29 U.S.C. § 1348(a)(4) provides that the United States District Court presiding over a plan termination action establishes the date of plan termination if PBGC and the plan's administrator have not agreed on that date.

29. PBGC and the Plan's administrator have not agreed on a date of plan termination.

30. PBGC determined that the termination date of the Plan should be March 31, 2011. Prior to that date, LRF had ceased operations and had voluntarily dissolved under Illinois corporate law. By March 31, 2011, the Plan's participants could not have any reasonable expectation that the Plan would continue. Establishing March 31, 2011 as the termination date of the Plan is consistent with Plan participants' reasonable expectations and with PBGC's interests.

FOURTH CLAIM FOR RELIEF

31. PBGC repeats and realleges paragraphs 1 through 30.

32. Under 29 U.S.C. § 1342(d), the statutory trustee appointed under 29 U.S.C. § 1342(c) is empowered to, *inter alia*, pay benefits under the terms of the plan and manage assets of the plan. See 29 U.S.C. §§ 1342(d)(1)(B)(i), (B)(vi), (A)(iii). In furtherance of the proper exercise of these powers, the trustee is empowered to require transfer to itself of all plan assets, all plan records, and any information the trustee may reasonably need to pay plan benefits or otherwise administer the plan. See 29 U.S.C. §§ 1342(d)(1)(A)(ii), (A)(vii). (B).

33. In order to carry out its statutory duties with respect to the Plan, the trustee appointed by the Court must receive all Plan assets and all documents and records relating to the Plan or to the assets of the Plan or that are necessary for calculation and payment of Plan benefits or for the administration of the Plan.

PRAYERS FOR RELIEF

WHEREFORE, PBGC respectfully requests that this Court:

- I. decree that the Plan must be terminated;
- II. appoint PBGC as statutory trustee of the Plan;
- III. establish March 31, 2011 as the termination date of the Plan;
- IV. order LRF to transfer to PBGC all Plan assets and all documents and records relating to the Plan or to the assets of the Plan or that may be necessary for calculation and payment of Plan benefits or for the administration of the Plan;
- V. under 29 U.S.C. § 1303(e)(5), award PBGC all costs incurred in this litigation;
and
- VI. grant such other relief that this Court deems just and proper.

Respectfully submitted,

Dated: December 16, 2013
Washington, D.C.

/s/John H. Ginsberg

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