UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

Jaspan v. Certified Industries, Inc., IIJ Enterprises, Inc., IIJ Associates, and Split Rock Realty, Inc.

Jaspan v. Certified Industries, Inc., IIJ Enterprises, Inc., IIJ Associates, and Split Rock Realty, Inc., 645 F. Supp. 998 (E.D.N.Y. 1985) · No. CV 84-2561 · Decided October 23, 1985

SUMMARY

The United States District Court for the Eastern District of New York addressed withdrawal liability under the Multiemployer Pension Plan Amendments Act after Certified Industries, Inc. transferred its assets and ceased covered operations. The court denied the defendants' motion to stay pending arbitration, held that the employer waived arbitration by failing to timely seek review, and granted summary judgment against Certified for the assessed withdrawal liability with interest. The court also dismissed the employer's fiduciary-duty counterclaim for lack of standing and deferred claims against related defendants for further discovery.

CASE DETAILS

COURT	United States District Court for the Eastern District of New York
WRITING FOR THE COURT	Mishler, District Judge
JURISDICTION	New York
DECIDED	October 23, 1985
DOCKET	CV 84-2561
DISPOSITION	other
PROCEDURAL POSTURE	The trustees sued to collect multiemployer pension-plan withdrawal liability. Defendants moved to stay the action pending arbitration, and the trustees cross-moved for summary judgment. The court denied the stay, granted summary judgment against Certified Industries, Inc., and left the claims against the remaining defendants for trial after discovery.
STANDARD OF REVIEW	Summary judgment is appropriate where the movant establishes that there is no genuine issue of material fact and the opposing party provides an affirmative indication supporting a genuine factual dispute rather than conclusory allegations.

PRECEDENTIAL VALUE	Published federal district court opinion; persuasive authority within the Second Circuit and elsewhere.
PARTIES	Joseph Jaspan, Michael Carbone, Jack Dee, Robert Sasso, Alfred Finkel, Theodore King, Chester Broman, and John Quadrozzi, as Trustees of the Local 282 Pension Trust Fund v. Certified Industries, Inc., IIJ Enterprises, Inc., IIJ Associates, Split Rock Realty, Inc.

TOPICS

erisa · employee benefits · summary judgment · arbitration · employment law

PRACTICE AREAS

ERISA · employee benefits · civil procedure · commercial litigation · arbitration

QUESTIONS PRESENTED

1. Whether the defendants were entitled to stay the action pending arbitration of Certified's challenge to the withdrawal-liability assessment.
2. Whether the trustees were entitled to summary judgment against Certified for the assessed withdrawal liability.
3. Whether Certified could cure after the asset sale the failure to satisfy the statutory conditions for avoiding withdrawal liability under 29 U.S.C. § 1384(a).
4. Whether the possibility of double payment or overpayment constituted a defense to the withdrawal-liability assessment.
5. Whether Certified, as an employer, had standing to assert an ERISA fiduciary-duty counterclaim against the trustees.

HOLDINGS

1. Certified waived its right to demand arbitration by failing to request review of the withdrawal-liability assessment within the 90-day period required by 29 U.S.C. § 1399(b)(2)(A); the motion to stay pending arbitration was therefore denied.
2. The assessed withdrawal-liability amounts were due and owing, and the trustees were entitled to summary judgment against Certified in the amount of $1,166,865, with interest at 11 percent from May 4, 1983.
3. Certified could not avoid withdrawal liability by belatedly posting the required bond and amending the sale agreement to impose secondary liability, because the statutory conditions had to be satisfied when the assets were sold and Certified had also waived arbitration of the § 1384 dispute.
4. The possibility, probability, or actuality of overpayment or double payment was not a defense to the withdrawal-liability assessment.

5. Certified lacked standing to sue under ERISA's fiduciary-duty enforcement provisions because it was an employer rather than a participant, beneficiary, or the Secretary of Labor.

KEY QUOTATIONS

> *“The nature of the statutory liability of a withdrawing employer from a multiemployer pension plan is to "pay a fixed and certain debt to the pension plan."”* (645 F. Supp. at 1003)

> *“Since no timely request for review was made, Certified has waived its right to demand arbitration.”* (645 F. Supp. at 1004)

> *“We find that the possibility, probability or even the actuality of overpayment or double payment is not a defense to the demand for withdrawal liability assessment.”* (645 F. Supp. at 1007)

FACTUAL BACKGROUND

Certified Industries was an employer obligated under a collective bargaining agreement to contribute to the Local 282 Pension Trust Fund, a multiemployer ERISA pension plan. Certified sold all of its assets to Marine Pollution Service, Inc. on June 30, 1981, and Marine thereafter made contributions to the Fund for substantially the same contribution base units. The Fund assessed Certified approximately $1.17 million in withdrawal liability and gave notice of review and arbitration rights, but Certified did not challenge the assessment within 90 days and failed to make the required installment payments. The asset sale did not satisfy all statutory conditions for avoiding withdrawal liability because no bond was posted and Certified did not agree in the sale contract to remain secondarily liable.

PROCEDURAL HISTORY

The action was filed in federal district court to collect $1,166,865 in withdrawal liability, interest, attorney's fees, and costs. Certified did not request review of the withdrawal-liability assessment within the statutory 90-day period and later sought to challenge the assessment and obtain arbitration. The court held that the arbitration right had been waived, entered summary judgment against Certified, and determined that the claims against IIJ Enterprises, IIJ Associates, and Split Rock Realty remained unresolved.

DISPOSITION

other

CASES CITED

- Pension Benefit Guaranty Corp. v. R.A. Gray & Co., 467 U.S. 717, 720, 725 (1984)
- T.I.M.E.-DC, Inc. v. Management-Labor Welfare & Pension Funds, 756 F.2d 939, 941, 943-947 (2d Cir. 1985)
- Trustees of Retirement Fund v. Lazar-Wisotzky, Inc., 550 F. Supp. 35 (S.D.N.Y. 1982), aff'd by summary order, 738 F.2d 419 (2d Cir. 1984)
- Republic Industries v. Central Pa. Teamsters, 693 F.2d 290, 292 (3d Cir. 1982)

- Washington Star Co. v. International Typographical Union Negotiated Pension Plan, 729 F.2d 1502, 1510-1511 (D.C. Cir. 1984)
- Textile Workers Pension Fund v. Standard Dye and Finishing Co., 725 F.2d 843, 854-855 (2d Cir. 1984)
- Republic Industries, Inc. v. Teamsters Joint Council No. 83 of Virginia Pension Fund, 718 F.2d 628, 640-641 (4th Cir. 1983)
- Keith Fulton & Sons, Inc. v. New England Teamsters and Trucking Industry Pension Fund, Inc., 762 F.2d 1124, 1135, 1137 (1st Cir. 1984)
- Board of Trustees of the Western Conference of Teamsters v. Ceazan, 559 F. Supp. 1210, 1218 (N.D. Cal. 1983)
- Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970)
- Heyman v. Commerce & Industry Insurance Co., 524 F.2d 1317, 1319 (2d Cir. 1975)
- S.E.C. v. Research Automation Corp., 585 F.2d 31, 33 (2d Cir. 1978)
- Quinn v. Syracuse Model Neighborhood Corp., 613 F.2d 438, 445 (2d Cir. 1980)
- Sova Outerwear Corp. v. Trustees of the Amalgamated Cotton Garment and Allied Industries Fund, 578 F. Supp. 1126, 1127 (S.D.N.Y. 1984)
- New York State Teamsters Conference Pension & Retirement Fund v. St. Lawrence Transit Mix Corp., 612 F. Supp. 1003, 1009 (N.D.N.Y. 1985)
- Long Island Oil Products Co. v. Local 553 Pension Fund, 775 F.2d 24, 27, 30 (2d Cir. 1985)
- Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 44 (1976)
- Operating Engineers Pension Trust v. Beck Engineering & Surveying, 746 F.2d 557, 568-569 (9th Cir. 1984)
- Tuvia Convalescent Center, Inc. v. National Union of Hospital & Health Care Employees, 717 F.2d 726, 730 (2d Cir. 1983)

CITED IN

- Jaspan v. Certified Industries, Inc., IIJ Enterprises, Inc., IIJ Associates, and Split Rock Realty, Inc., Jaspan v. Certified Indus., Inc., 645 F.Supp. 998 (E.D.N.Y. 1985)