

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TRUSTEES OF EMPIRE STATE CARPENTERS
ANNUITY, APPRENTICESHIP,
LABOR-MANAGEMENT COOPERATION,
PENSION and WELFARE FUNDS,

Plaintiffs,

-against-

MEMORANDUM & ORDER
13-CV-1508 (JS) (ARL)

DYKEMAN CARPENTRY, INC.; RM CONTRACTING
SERVICES, INC.; SISCA NORTHEAST, INC.;
and J.J. SISCA & ASSOCIATES BUILDING
CORPORATION,

Defendants.

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APPEARANCES

For Plaintiffs:

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For Defendants

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RM Contracting:

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Sisca Northeast, Inc.
& J.J. Sisca:

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SEYBERT, District Judge:

Plaintiffs, the trustees of a group of employee benefit plans ("Plaintiffs"), commenced this action against defendants Dykeman Carpentry, Inc. ("Dykeman"), RM Contracting Services, Inc.

("RM Contracting"), Sisca Northeast, Inc. ("Sisca Northeast"), and J.J. Sisca & Associates Building Corporation ("J.J. Sisca," and together with Sisca Northeast, the "Sisca Companies") (collectively, "Defendants"), alleging violations of the Employee Retirement Income Security Act of 1974 ("ERISA") and the Labor Management Relations Act of 1947 ("LMRA"). The Complaint alleges that Defendants are alter egos of one another or constitute a single employer, such that RM Contracting and the Sisca Companies are bound by a collective bargaining agreement to which Dykeman is a signatory and that Defendants are therefore jointly and severally liable for alleged delinquent employer contributions. (Compl. ¶¶ 24-32.) Currently pending before the Court is the Sisca Companies' motion to dismiss the Complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) or, in the alternative, for summary judgment pursuant to Federal Rule of Civil Procedure 56.¹ For the following reasons, the Sisca Companies' motion is DENIED.

¹ Counsel for the Sisca Companies filed separate, but substantively identical, motions and supporting documents for Sisca Northeast and J.J. Sisca. (See Docket Entries 14-15.) As the motions and supporting documents are identical, the Court will cite only to the filings at Docket Entry 14.

BACKGROUND²

Plaintiffs are the trustees of the Empire State Carpenters Annuity, Apprenticeship, Pension and Welfare Funds (the "ERISA Funds") and the Empire State Carpenters Labor Management Cooperation Fund (the "Labor Management Fund," and together with the ERISA Funds, the "Funds"). (Compl. ¶¶ 4-5.)

Dykeman is a party to collective bargaining agreements (the "CBAs") with the Northeast Regional Council of Carpenters f/k/a the Empire State Regional Council of Carpenters (the "Union"). (Compl. ¶ 10.) Pursuant to the CBAs, Dykeman is obligated "to make specified hourly contributions to the Funds in connection with all work performed in the trade and geographical jurisdiction of the Union ('Covered Work')." (Compl. ¶ 11.) The CBAs provide that "all employers bound thereto are obligated to abide by the trust agreements (the 'Trust Agreements') by which the Funds are operated, including any modifications or amendments thereto, and by the rules and regulations adopted by Plaintiffs." (Compl. ¶ 17.) The CBAs and the Trust Agreements authorize and "require employers bound thereto to submit to an audit of their books and records by Plaintiffs to verify that the employers have made all required contributions to the Funds." (Compl. ¶ 18.)

² The following facts are taken from the Complaint and are presumed to be true for the purposes of this Memorandum and Order.

Plaintiffs allege that "an audit of Dykeman's books and records covering the period February 26, 2007 through May 10, 2011 found that Dykeman failed to pay contributions to the Funds in the amount of \$1,933,559.10" (Compl. ¶ 19.) The Funds had not previously discovered Dykeman's delinquency "because Dykeman failed to comply with its obligation to report these hours to the Funds." (Compl. ¶ 19.)

RM Contracting and the Sisca Companies are not signatories to the CBAs. However, Plaintiffs allege that RM Contracting and the Sisca Companies are bound by the CBAs (and consequently, are jointly and severally liable for the delinquent employer contributions) either because they are alter egos of Dykeman or because Dykeman, RM Contracting, and the Sisca Companies constitute a single employer. (Compl. ¶ 31.) Plaintiffs allege that Defendants "had substantially identical management, business purpose, operations, office staff, equipment, customers, supervision, and/or ownership," (Compl. ¶ 25), and that Defendants "acted as a single enterprise," (Compl. ¶ 30.). In addition, Plaintiffs allege that Defendants "operated at the same location in Brewster, New York" during all relevant times, (Compl. ¶ 26); that Defendants "shared common employees who performed work covered by the CBAs," (Compl. ¶ 27); and that employees of Defendants "interchanged between and among the companies," (Compl. ¶ 29.). Finally, Plaintiffs allege that RM Contracting and the

Sisca Companies "paid employees for work covered by the CBAs that the employees performed for Dykeman, and thereby aided Dykeman in evading its contractual obligations to the Funds." (Compl. ¶ 28.)

Plaintiffs commenced this action on March 21, 2013. The Complaint seeks (1) a money judgment holding Defendants jointly and severally liable for delinquent contributions to the Funds in the amount of \$1,933,559.10 and interest and (2) an order directing Defendants to submit to an audit. (Compl. at 10-11.) On July 1, 2013, the Sisca Companies moved to dismiss the Complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) or, in the alternative, for summary judgment pursuant to Federal Rule of Civil Procedure 56. That motion is currently pending before the Court.

DISCUSSION

I. Legal Standard

In deciding a Rule 12(b)(6) motion to dismiss, the Court applies a "plausibility standard," which is guided by "[t]wo working principles." Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009); accord Harris v. Mills, 572 F.3d 66, 71-72 (2d Cir. 2009). First, although the Court must accept all allegations as true, this "tenet" is "inapplicable to legal conclusions;" thus, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 678; accord Harris, 572 F.3d at

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