

FILED
02-01-2021
Clerk of Circuit Court
Lincoln County
2021CV000009

STATE OF WISCONSIN CIRCUIT COURT LINCOLN COUNTY

WISCONSIN DEPARTMENT OF
WORFORCE DEVELOPMENT,
Post Office Box 7857
Madison, WI 53707-7857

Plaintiff,

v.

Case No.
Money Judgments: 30301

SEMLING-MENKE COMPANY, INC.
605 North Ohio Street
Merrill, WI 54452-1778
Served at:
210 North Main Street
Oshkosh, WI 54901

DEMPSEY LAW FIRM, LLP
210 North Main Street, Suite 100
Oshkosh, WI 54901

FAYE A. SEMLING SURVIVOR TRUST
1201C Heritage Court
Merrill, WI 54452

INCREDIBLEBANK FOUNDATION, INC.
327 North 17th Avenue, Suite 200
Wausau, WI 54401

MARCH STREET MEMBERS, LLC
7800 Forsyth Boulevard, Suite 800
St. Louis, MO 63105

Defendants.

THE AMOUNT CLAIMED IS
GREATER THAN THE AMOUNT
CLAIMED UNDER WIS. STAT. §
799.01(1)(d).

SUMMONS

THE STATE OF WISCONSIN, to those named above as a defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is Clerk of Circuit Courts, 1110 East Main Street, Suite 205, Merrill, WI 54452 and to plaintiff's attorney, Assistant Attorney General S. Michael Murphy, whose address is Wisconsin Department of Justice, 17 West Main Street, Madison, Wisconsin 53703. You may have an attorney help or represent you.

If you do not provide a proper answer within twenty (20) days, the Court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any

real estate you own now or in the future and may also be enforced by garnishment or seizure of property.

Dated: February 1, 2021

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

s/S. Michael Murphy
S. MICHAEL MURPHY
Assistant Attorney General
State Bar #1078149

Attorneys for Plaintiff

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COMPLAINT

The State of Wisconsin, Department of Workforce Development, by its attorneys, Attorney General Joshua L. Kaul and Assistant Attorney General S. Michael Murphy, alleges the following for its complaint:

I. Parties.

1. Plaintiff Wisconsin Department of Workforce Development (“DWD”) is a state agency authorized to bring this action pursuant to Wis. Stat. §§ 109.07 and 109.09.

2. Defendant Semling-Menke Company, Inc. (“SEMCO”) is a domestic business with its principal place of business shown in the caption.

3. Upon information and belief, Defendant Dempsey Law Firm, LLP is a company with its principal place of business shown beneath its name in the caption and may claim an interest in property upon which Plaintiff has a priority lien.

4. Upon information and belief, Defendant Faye A. Semling Survivor Trust is a Wisconsin entity with the residence shown beneath its name in the caption and may claim an interest in property upon which Plaintiff has a priority lien.

5. Upon information and belief, Defendant Incrediblebank Foundation, Inc. is a company with its principal place of business shown beneath its name in the caption and may claim an interest in property upon which Plaintiff has a priority lien.

6. Upon information and belief, Defendant March Street Members, LLC is a company with its principal place of business shown beneath its name in the caption and may claim an interest in property upon which Plaintiff has a priority lien.

II. Background.

7. At all times relevant prior to December 31, 2019, SEMCO employed more than 50 employees in the State of Wisconsin.

8. SEMCO was financially struggling for more than a decade. It experienced sales and revenue decline starting in 2008 that caused it to begin reducing operations.

9. SEMCO experienced additional and substantial revenue decline in late 2018 and early 2019.

10. In early 2019, SEMCO advised its lender of its ongoing difficulties. Its lender informed SEMCO that it was not able to provide substantial additional funding to SEMCO.

11. In October 2019, SEMCO was in such poor financial condition that it began efforts to try to sell the company, including retaining a business broker. It had to borrow additional money to attempt to sell the business.

12. On December 30, 2019, SEMCO, for the first time, gave notice to all its employees that it was ceasing operations, and that all employees were terminated, effective as of December 31, 2019.

13. SEMCO's cessation of operations was a "business closing" as defined in Wis. Stat. § 109.07(1)(b).

14. Pursuant to Wis. Stat. § 109.07(1m), an employer must give affected employees 60 days' notice of a business closing.

15. SEMCO did not give employees 60 days' notice of its closing.

16. On February 5, 2020 and on March 2, 2020, DWD received complaints from affected employees.

17. DWD is authorized under Wis. Stat. §§ 109.07(4)(a) and 109.09(1) to investigate any wages due from an employer to any employee.

18. DWD is authorized under Wis. Stat. § 109.07(4)(a) to represent employees of Wisconsin employers to collect unpaid wages.

19. On February 12, 2020, DWD initiated an investigation into SEMCO to determine whether a violation of Wisconsin's business closing law occurred.

20. On May 1, 2020, DWD made an Initial Determination that SEMCO violated Wis. Stat. § 109.07(1m)(a) by failing to provide notice sixty (60) days in advance of business closing and owes wages and benefits to 140 employees that would have accrued during the time from when notice was required until the date of closure in the sum of \$682,864.90. DWD's Initial Determination is attached as **Plaintiff's Exhibit A**.

21. The facts underlying the DWD Initial Determination as stated on **Exhibit A** are incorporated herein.

22. On July 29, 2020, DWD affirmed the initial determination from May 1, 2020 and issued a Final Determination. DWD's Final Determination is attached as **Plaintiff's Exhibit B**.

23. The Final Determination is incorporated herein.

COUNT I: MONEY JUDGEMENT FOR UNPAID WAGES

24. Paragraphs 1 through 23 are incorporated herein.

25. Pursuant to Wis. Stat. §§ 109.01(4), 109.07(3) and 109.09(1), SEMCO is liable to affected employees for 60 days of pay at the employee's regular rate and for the value of employee benefits.

26. Pursuant to Wis. Stat. § 109.07(3), SEMCO is liable for \$682,864.90, as determined in the Initial Determination and Final Determination.

27. Pursuant to Wis. Stat. § 109.11(2)(b), SEMCO is liable for penalties in the amount of 100% of its wages and benefits liability, in the amount of \$682,864.90.

28. Plaintiff requests a money judgment against SEMCO in the total amount of \$1,257,729.80.

COUNT II: LIEN ENFORCEMENT

29. Paragraphs 1 through 23 are incorporated herein.

30. Pursuant to Wis. Stat. § 109.09(2)(a), plaintiff has a lien on all of SEMCO's real and personal property within the State of Wisconsin with priority over other security interests, perfected and unperfected, as provided in Wis. Stat. § 109.09(2)(c)1m.

31. On June 3, 2020, Plaintiff filed and perfected a wage lien against the Wisconsin personal property of SEMCO by filing with the Wisconsin Department of Financial Institutions and mailing, by certified mail, notice of the lien to SEMCO's registered agent. Plaintiff's wage lien for personal property is attached here to as **Plaintiff's Exhibit C**.

32. On August 6, 2020, plaintiff filed and perfected a lien against all real property and fixtures owned or thereafter acquired by SEMCO in the State of Wisconsin by filing and mailing, by certified mail, notice of the lien to SEMCO's registered agent. Plaintiff's wage lien for real property and fixtures is attached hereto as **Plaintiff's Exhibit D**.

33. The perfected wage liens prime existing liens and are prior perfected security interests in the assets of SEMCO.

34. The Defendants other than SEMCO may claim a security interest in the assets of SEMCO evidenced by Financing Statements filed with the Wisconsin Department of Financial Institutions.

35. Pursuant to Wis. Stat. § 109.09(2)(c)1m., plaintiff's liens are prior to the liens of any Defendant. Pursuant to Wis. Stat. § 109.09(2)(c)1m., plaintiff has elected to enforce its lien.

WHEREFORE plaintiff demands judgment:

a) against SEMCO in the sum of \$682,864.90 for wages and benefits owed plus increased wages of 100% of the original sum in civil penalties under Wis. Stat. § 109.11(2)(b) for a total money judgment of \$1,257,729.80;

b) for an order that Plaintiff has a lien on all of SEMCO's personal property and real property located in Wisconsin that is superior to the lien of any Defendant;

c) for an order that any proceeds of any of SEMCO's personal property and real property located in Wisconsin be applied to SEMCO's debt to the Plaintiff; and

d) for such other and further relief as the court deems appropriate.

Dated: February 1, 2021.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

s/S. Michael Murphy
S. MICHAEL MURPHY
Assistant Attorney General
State Bar #1078149

Attorneys for Plaintiff

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