

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MARK R. TESMER,

Plaintiff,

v.

OPINION AND
ORDER

CHARTER FILMS, INC.,

05-C-309-C

Defendant.

Defendant has filed a “motion for clarification,” which I construe as a timely motion to alter or amend the final order in this case entered on November 2, 2005, pursuant to Fed. R. Civ. P. 59(e). In its motion, defendant points to the court’s November 2, 2005 order, in which I stated:

I will grant plaintiff’s motion and order defendant to comply with the procedures set forth in section 5(b) and *only* those procedures. Under these procedures, defendant had thirty days within which to select an appraiser or consent to plaintiff’s proposed purchase price.

Defendant asserts that the court incorrectly summarized the procedures of section 5(b), which provide:

Within 30 days . . . the other party to the purchase and sale shall elect to either complete the purchase and sale using the proposed purchase price per share or require that an appraisal be conducted by an appraiser mutually

agreeable to the purchaser and seller, which appraiser shall determine the fair market value of the stock.

Defendant is correct. The court's November 2, 2005 order requires the parties to agree upon an appraiser within thirty days, but the precise terms of the contract require only that defendant decide whether to elect an appraisal within thirty days. Only after an appraisal has been elected must the parties agree to a specific appraiser. Although the contract does not create a timeline for identifying an appraiser who is acceptable to both parties, I will remind the parties that they are obliged to work together in good faith to carry out the terms of the contract.

ORDER

IT IS ORDERED that defendant's motion is GRANTED.

FURTHER, IT IS ORDERED that the opinion and order entered herein on November 2, 2005, is AMENDED as follows:

On page 16, the sentence reading, "Under these procedures, defendant has thirty days within which to select an appraiser or consent to plaintiff's proposed purchase price" shall be DELETED and REPLACED with the following sentence:

"Under these procedures, defendant has thirty days to either require that an appraisal be conducted by an appraiser mutually agreeable to the purchaser and seller or complete the

purchase and sale using plaintiff's proposed purchase price per share.”

In all other respects, the order entered on November 2, 2005, remains unchanged.

_____ Entered this 8th day of November, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge
