

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

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CAROL CHESEMORE, DANIEL  
DONKEL, THOMAS GIECK, MARTIN  
ROBBINS, and NANETTE STOFLET, on  
behalf of themselves, individually, and on  
behalf of all others similarly situated,

Plaintiffs,

v.

ORDER

09-cv-413-wmc

ALLIANCE HOLDINGS, INC., DAVID B.  
FENKELL, PAMELA KLUTE, JAMES  
MASTRANGELO, STEPHEN W. PAGELOW,  
JEFFREY A. SEEFELDT, TRACHTE  
BUILDING SYSTEMS, INC. EMPLOYEE  
STOCK OPTION PLAN, ALLIANCE HOLDINGS,  
INC. EMPLOYEE STOCK OPTION PLAN,  
A.H.I., INC., ALPHA INVESTMENT  
CONSULTING GROUP, LLC, JOHN MICHAEL  
MAIER, AH TRANSITION CORPORATION, and  
KAREN FENKELL,

Defendants;

PAMELA KLUTE, JAMES MASTRANGELO,  
and JEFFREY A. SEEFELDT,

Cross Claimants,

v.

ALLIANCE HOLDINGS, INC., and STEPHEN W.  
PAGELOW,

Cross Defendants.

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On July 21, 2016, the Seventh Circuit affirmed various orders of this court, including orders involving enforcement of judgment. *Chesemore v. Fenkell*, Nos. 14-3181, 14-3215 & 15-3740 (7th Cir. July 21, 2016). This court previously entered a consent order, incorporating the terms of a collateral pledge of assets, which established the

events that would occur if the Seventh Circuit affirmed this court's judgment. (12/9/15 Order (dkt. #1132).) With the mandate having been returned to this court, that order will now be enforced.

Instead of complying with the consent order and the express terms of the collateral pledge of assets, Fenkell seeks to reopen an essentially negotiated order that arose out of the court's finding Fenkell in civil contempt of this court's earlier order. (11/18/15 Op. & Order (dkt. #1121).) In contrast, the Alliance defendants simply seek to enforce the order. The court can conceive of no basis for doing otherwise. In any event, Fenkell's notion that the court should do so based on changed circumstances is almost laughable since Fenkell would unquestionably be arguing just the opposite had the shoe been on the other foot. Both sides ran the risk of shifting values over time, as does any party to a contract with a fixed form. Moreover, all of the equities are completely against Fenkell at this point as well, as does the need for finality.

For these reasons, as well as additional reasons set forth in the Alliance defendants' motion, IT IS ORDERED that:

- 1) Defendant David B. Fenkell's motion for updated valuation and related relief (dkt. #1200) is DENIED.
- 2) The Alliance Parties' motion for immediate enforcement of agreed consent order and an order again holding Fenkell in contempt of court (dkt. #1202) is GRANTED IN PART AND DENIED IN PART as follows:
  - a) North American Specialty Insurance Company as the surety of the \$995,345.78 *supersedeas* bond (dkt. #1135-1), shall pay the bond proceeds to the Alliance defendants within seven business days; and
  - b) David Fenkell's ESOP and Spence Turbine Accounts are forfeited to the Alliance ESOP consistent with the terms of the consent order (dkt. #1132).

- 3) By September 1, 2016, the Alliance defendants shall file a brief and supporting materials in support of their request for reimbursement of attorneys' fees and costs in bringing this motion and related activities; Fenkell may have 10 days to respond; and no further briefing will be allowed absent invitation by the court or an advanced demonstration of good cause.

Entered this 18th day of August, 2016.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge