

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF INDIANA
 NEW ALBANY DIVISION

| | | |
|----------------------------------|---|---------------------|
| ATKINSON CANDY COMPANY, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | 4:02-cv-242-WGH-SEB |
| |) | |
| KENRAY ASSOCIATES, INC., et al., |) | |
| |) | |
| Defendants. |) | |

ORDER ON PENDING MOTIONS

This matter is before the Honorable William G. Hussmann, Jr., United States Magistrate Judge, sua sponte. Based upon this court’s Order Granting Plaintiffs’ Motion to Remand Evidentiary Hearing entered on December 5, 2011 (Docket No. 189), the following motions must be addressed:

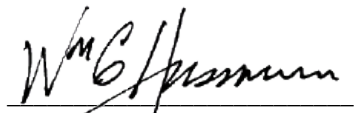
1. The Defendants’ Motion to Strike filed on April 25, 2011 (Docket No. 176) is **DENIED**, and the Plaintiffs’ Motion to Strike Affidavit of Chuck McGee filed on May 5, 2011 (Docket No. 179) is likewise **DENIED**.
2. The Plaintiffs’ Motion to Set Aside Covenant Not to Execute Based Upon Fraud in the Inducement filed on January 14, 2011 (Docket No. 162), which had previously been taken under advisement, is now **DENIED** because Plaintiff is unable to show that there was fraud in the inducement of the clause itself, nor can Plaintiff establish a breach of the Covenant aside from its claim regarding fraudulent inducement. (See Plaintiffs’ Motion to Remand Evidentiary Hearing

filed on December 2, 2011, at Docket No. 188). Therefore, the court finds that the integration clause is effective, and the Covenant must be enforced as written.

The entry of this order is intended to clarify the court's decision for purposes of any appellate review and to confirm that the court's Entry on Plaintiffs' Motion to Set Aside Covenant Not to Execute Based Upon Fraud in the Inducement entered on June 29, 2011 (Docket No. 181) is deemed to be the final order of the court with respect to the issues raised in the Plaintiffs' Motion to Set Aside Covenant Not to Execute Based Upon Fraud in the Inducement filed on January 14, 2011(Docket No. 162). Because an Agreed Judgment has already been entered in this case (Docket No. 156) and is not otherwise modified, no separate final judgment will enter.

SO ORDERED.

Dated: December 13, 2011


William G. Hussmann, Jr.
United States Magistrate Judge
Southern District of Indiana

Electronic copies to:

C. Zan Turcotte
LAW OFFICE OF PERCY L. ISGITT, PC
zturcotte@isgitt-law.com

Derrick H. Wilson
MATTOX MATTOX & WILSON
dhw@mattowwilson.com

Percy L. Isgitt
LAW OFFICES OF PERCY L.
"WAYNE" ISGITT
pisgitt@isgitt-law.com

Eric Thomas Eberwine
WATERS TYLER HOFMANN &
SCOTT LLP
eeberwine@wthslaw.com

Rodney Lee Scott
WATERS, TYLER, SCOTT, HOFMANN
& DOANE, LLC
rscott@wthslaw.com

Tricia Kirkby Hofmann
WATERS TYLER HOFMANN &
SCOTT LLC
thofmann@wthslaw.com

D. Bryan Wickens
WARD TYLER & SCOTT
bryan@wardtylerscott.com