June 18, 2003

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RE: Goal Media Group, Inc., v. Teamtalk.com Group, PLC, et al.
C.A. No. 01C-11-023 WCC

Submitted: June 6, 2003
Decided: June 18, 2003

On Defendants' Motion for Summary Judgment. Denied.

Dear Counsel:

Since the oral argument on June 6, 2003, the Court has reviewed the caselaw provided by counsel relating to the Motion for Summary Judgment having the benefit of the oral argument presentation. Unfortunately, the Court has been in trial since the time of the oral argument and time does not allow for an extensive opinion concerning the motion as this trial is set to begin next week. Therefore, the Court will issue this short letter opinion to decide the motion.

It is clear that a party to a contract may defend its alleged breach on the grounds that there exists a legal excuse for its nonperformance, even if they were ignorant of that reason at the time the contract failed. Quoting Justice Brandeis' Opinion in *College Point Boat Corporation v. United States*, 267 U.S. 12, 15 (1925), Vice Chancellor Brown stated in

Brywil, Inc., v. STP Corporation, 1980 WL 77945 at *10 (Del. Ch.):

> "A party to a contract who is sued for its breach may ordinarily defend on the ground that there existed, at the time, a legal excuse for nonperformance by him although he was then ignorant of the fact. He may, likewise, justify an asserted termination, rescission, or repudiation, of a contract by proving that there was, at the time, an adequate cause, although it did not become known to him until later."
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> To the same effect: *Pots Unlimited, Ltd. v. United States*, 600 F.2d 790 (Ct.Claims 1979); *Western Auto Supply Co. v. Sullivan*, 210 F.2d 36 (8th Cir. 1954) *Williston, Contracts* (3rd Ed.) § 839; *Restatement of Contracts* § 278.
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> Moreover, where sufficient grounds for the termination of a contract exist, it is immaterial that the alleged motivation for the termination was attributable to an unrelated reason. *Barisa v. Charitable Research Foundation, Inc.,* Del.Super., 287 A.2d 679 (1972), *affirmed*, Del.Supr. 290 A.2d 430 (1972).

There are three areas that the defendants claim fit this principal of law. They are (1) the non-disclosure of Sergio Ferraro's "new" employment contract, (2) the apportionment of expenses for August, September and October, and (3) the improper disclosure of the letter of intent.

As the Court indicated at the close of oral argument, it is satisfied that there exists reasonable factual disputes as to the accounting practices utilized by Goal Media so as to preclude summary judgment as to claim #2 above. Further, as to the disclosure issue, plaintiff asserts that any disclosure complained of by the defendant was required in order to obtain the necessary approvals for the contract or were reasonable internal notifications of its affected employees. As such, there also appears to be a factual dispute whether disclosures were appropriate under the letter of intent and thus summary judgment is not appropriate as to this area.

This leaves the final area relating to the reconfiguration of Mr. Ferraro's employment contract. Candidly, the Court is troubled by what appears to be a blatant attempt to create the illusion of a significantly different employment relationship between Goal Media and Mr. Ferraro who everyone appears to agree would be a key player in the defendant's evaluation of the viability of Goal Media's business. The e-mail cited by the defendant in its memorandum and the creation of a "new" agreement by Mr. Stoehr would give any reasonable businessperson pause as to the appropriateness of proceeding with this venture and the credibility and trustworthiness of Mr. Stoehr and Mr. Ferraro. However, the Court cannot ignore the explanation given by Mr. Stoehr when questioned as to this area. In essence, Mr. Stoehr asserts that the employment modifications were the product of

discussions occurring over a lengthy period of time prior to the letter of intent being executed and was simply his attempt to bring those discussions to a finality, recognizing that Mr. Ferraro would be included in the defendant's plans for the operation of the venture if the letter of intent lead to the purchase of the business by the defendants. Whether this explanation is a reasonable version of the events by the plaintiff or whether the actions of the plaintiff provided a justifiable cause for the defendant not to proceed with the letter of intent is a factual dispute that the Court finds appropriate for the jury to decide. This is not a clear cut fraudulent representation without any plausible explanation, and thus the Court cannot justify the extreme measure of summary judgment effectively stopping the litigation.

As a result of the above, the defendant's Motion for Summary Judgment is DENIED. The trial will proceed as scheduled on Monday, June 23, 2003. This Opinion does not preclude the defendant from again requesting a directed verdict at the conclusion of the trial based upon similar grounds or from requesting appropriate jury instructions in this area. The Court also intends to give the defendant significant latitude in fully exploring this area if Mr. Stoehr testifies.

Again, the Court apologizes for the brevity of this Opinion but hopefully this guidance will allow you to proceed forward.

Sincerely yours,

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Judge William C. Carpenter, Jr.

WCCjr:twp

cc: Prothonotary