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28E-FILED on 09/29/09

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re
3DFX INTERACTIVE, INC., a California
Corporation,

Debtor.

No. C-08-04634 RMW

WILLIAM A. BRANDT, JR. TRUSTEE,

Plaintiff and Appellant,

ORDER GRANTING IN PART MOTION TO
STRIKE

v.

NVIDIA CORPORATION a Delaware
Corporation, and NVIDIA US INVESTMENT
COMPANY, f/k/a TITAN ACQUISITION
CORP. NO. 2, a Delaware corporation,

Defendants and Respondents.

William A. Brandt, the Chapter 11 Trustee on behalf of creditors of 3DFX Interactive, Inc., appealed from the Bankruptcy court's grant of summary judgment in favor of defendants nVidia Corporation, et al. ("nVidia"). The parties finished briefing the appeal on April 1, 2009 and the court heard argument on Wednesday, June 10, 2009.

After the trustee filed his opening brief on appeal, nVidia moved to strike citations in the opening brief to material outside the record and to statements unsupported by citations to the record. The trustee opposed the motion to strike on the basis that the citations to material outside the record were inadvertent, and that the statements without citation were supported by the record. The trustee submitted a notice of errata with its opposition, and argued that nVidia has not been prejudiced.

ORDER GRANTING IN PART MOTION TO STRIKE—No. C-08-04634 RMW
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Because the parties agree that the trustee's brief cites material outside the record, the following citations are stricken from the trustee's opening brief:

- 5:18, citing Ex. 274(a), p. 49
- 10:1, citing Ex. 274(a), pp. 119:12-120:9
- 10:1, citing Ex. 274(a), pp. 120:19-121:22
- 27:20, citing Ex. 274(f), pp. 433:19-434:1
- 27:20, citing Ex. 274(f), p. 434:11-13
- 33:19, citing Ex. 274(a), pp. 61:24-62:7

However, the court denies nVidia's motion to strike the statements without citation (Trustee's Brief at 37:6-8 and 22:5-8). The court will consider them to the extent they are supported by the material cited in the trustee's opposition to the motion to strike.

DATED: 09/29/09


RONALD M. WHYTE
United States District Judge

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Dated: 09/29/09 _____

JAS

Chambers of Judge Whyte