UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
PROFESSIONAL VIDEO ASSOCIATION, INC.,	)	Case No. 95-016 (PJW)
	)	
Debtor.	)	
	)	
MICHAEL J. HORAN,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Adv. Proc. No. A98-00247
	)	
WILLIAM DANTON, PROFESSIONAL VIDEO ASSOCIATION, INC., and VIDEO LOTTERY CONSULTANTS, INC.	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

Louis M. Tarasi, Jr.
C. William Kenny
THE TARASI LAW FIRM, P.C.
510 Third Avenue
Pittsburgh, PA 15219-7135

Jane W. Evans
JANE W. EVANS ATTORNEY AT LAW
1210 N. King Street
Wilmington, DE 19801

Attorneys for Michael J. Horan

Stephen W. Spence
Kathleen P. Makowski
PHILLIPS, GOLDMAN & SPENCE, P.A.
1200 North Broom Street
Wilmington, DE 19806

Steven E. Angstreich
LEVY, ANGSTREICH, FINNEY, BALDANTE, RUBENSTIEN & COREN, P.C.
1616 Walnut Street, 18th Floor
Philadelphia, PA 19106

Attorneys for Defendants William Danton, Professional Video Association, Inc. and Video Lottery Consultants, Inc.

Pace Reich
PACE REICH, P.C.
726 Meetinghouse Road
Elkins Park, PA 19027

Michael B. Joseph
FERRY & JOSEPH, P.A.
824 Market Street, Suite 904
P.O. Box 1351
Wilmington, DE 19899

Co-Counsel for Professional Video
Association, Inc.

Date: August 8, 2000

WALSH, J.

Before the Court in this adversary proceeding is plaintiff Michael J. Horan's ("Horan") motion for partial summary judgment (Doc. # 112) pursuant to Rule 7056 of the Federal Rules of Bankruptcy Procedure. Horan asserts that there are no genuine issues of material fact as to the nature and effect of a software release agreement (the "Software Release Agreement") between William Danton ("Danton") and Stephen D. Holniker ("Holniker") such that, pursuant to a settlement agreement (the "Settlement Agreement") between Horan, Danton, and Danton's business entity Professional Video Association, Inc. ("PVA" and, together with Danton, the "Defendants"), Horan is entitled to certain rights in the software (the "Holniker Program") putatively conveyed by the Software Release Agreement. For the reasons set forth herein, I find that genuine material factual disputes exist as to the nature and effect of the Software Release Agreement and Horan's motion will therefore be denied.[1]

FACTS

[1] Because Horan's motion is denied based on a finding of material factual disputes surrounding the nature and effect of the Software Release Agreement, I need not reach the other issues raised by Horan's motion concerning whether Horan has any legally cognizable rights in the particular software program that may or may not have been conveyed by Holniker to Danton pursuant to the Software Release Agreement and whether Defendants breached a warranty of ownership.

At the core of the present, protracted dispute are the contested ownership rights in certain software used to operate video poker terminals. Horan initiated this adversary proceeding by alleging that Defendants (i) failed to turn over all of certain software assets pursuant to the parties Settlement Agreement, (ii) breached a warranty of ownership provision in the Settlement Agreement by fraudulently asserting exclusive ownership of software sufficient to operate PVA's video poker game (the "PVA Video Poker Game"); and (iii) misrepresented their ownership of the Holniker Program, apparently the only software sufficient to presently operate the PVA Video Poker Game.

PVA filed for bankruptcy relief under Chapter 11 on January 6, 1995. In an attempt to reconcile a dispute over ownership of and interests in PVA, Danton and Horan entered into the Settlement Agreement on February 27, 1997. The Settlement Agreement was approved by this Court on March 4, 1997. The Settlement Agreement, in its background section, recites that:

> Horan invented a certain computer software program commercially known as "Elimination Draw Poker." "Elimination Draw Poker" was patented at Patent No. 4,648,604 (the Patent). "Elimination Draw Poker" together with the Patent, related copyrights, rules, design, format, system and related hardware (the Software Assets) were assigned to PVA . . .

(Doc. #114 at A-002). By the Settlement Agreement, Defendants granted to Horan:

> "all exclusive distribution and all other related rights in and to the Software Assets, including any upgrades, updates, modifications, the name and/or new versions . . . , which rights include the exclusive right to sell, advertise, distribute, demonstrate, manufacture, and duplicate the Software Assets in [certain] exclusive locations. . ."

(Doc. # 114 at A-003).

Defendants warranted that they had exclusive ownership of the Software Assets as defined in and conveyed by the Settlement Agreement. (Doc. # 114 at A-010). Thus, by the Settlement Agreement, Horan was granted exclusive distribution and all other related rights in specified geographic locations in and to the Software Assets, including any upgrades, updates, modifications, the name and/or new versions. The software developed by Horan is admittedly rudimentary and cannot, by itself, operate the PVA Video Poker Game. At least up to the time of the Settlement Agreement, the PVA Video Poker Game was manufactured and assembled for PVA by Amusement World, Inc., a corporation owned by Holniker.

The essence of the dispute between the parties is the scope of these Software Assets and what constitutes upgrades, updates, and modifications of same. Additionally, Horan, based on alleged admissions by Defendants, believes himself entitled to any software acquired by Defendants subsequent to the Settlement Agreement even if it is determined that such software is not an upgrade, update, or modification of the defined Software Assets.

Horan contends that Defendants have admitted that if they ever acquired software to operate the PVA Video Poker Game independent of Holniker, they would give that software to Horan. The admission apparently derives, largely, from the deposition testimony of Stephen Angstreich ("Angstreich"), attorney for Defendants. Angstreich offered in his deposition that:

> [Defendants] agree that in the event that Mr. Danton or his entity came up with a software program so that we didn't need Holniker, we'd give [Horan] use of that, to the extent we changed the game, we would give him that.

(Doc. # 102 at 19:11-16)(Emphasis added).

Horan contends that on March 26, 1997, one month after the parties entered into the Settlement Agreement, Defendants acquired the rights to the Holniker Program pursuant to the Software Release Agreement. The Software Release Agreement provides that:

> Holniker . . . hereby release[s], quitclaim[s], and otherwise transfer[s] to Danton, all . . . rights, title, and interest in and to the certain computer software program . . . that is part of the package commercially known as "Professional Video Association, Inc. Games, Rules, Designs, Formats, and Systems" together with all enhancements, improvements, and upgrades thereto as existed on April 1, 1994 . . . including, but not limited to, the object code and source code . . . .

(Doc. # 114 at A-027). The Software Release Agreement specifically provides that "Danton may assign this Agreement without the

consent of Holniker or [Amusement World, Inc.]" (Doc. #114 at A-028).

Horan has persistently maintained that Defendants, by their admissions, acknowledge that Defendants must turn over to Horan any software that Defendants develop or acquire that is capable of running the video poker terminals. Horan further asserts that, because, pursuant to the Software Release Agreement, Defendants acquired the Holniker Program, that software became a program that Defendants "came up with" so that they no longer "[needed] Holniker." According to Horan, the software acquired pursuant to the Software Release Agreement, the Holniker Program, comports with Angstreich's admission and Defendants should be bound, by their own admission, to turn this software over to Horan.

Defendants assert that the computer program used to run the PVA Video Poker Game belongs to Holniker, not Defendants and that the Software Release Agreement, by which they are alleged by Horan to have acquired the Holniker Program, was never "completed." An April 25, 1997 letter from Holniker to Danton suggests that the execution and delivery of the Software Release Agreement was conditioned on (i) the completion of negotiations between Defendants and certain third parties and (ii) payment of $100,000 by Danton to Holniker. (Doc. #109 at Ex. C-27). Defendants assert that because of a failure of those conditions, the Software Release Agreement was never completed. By a November 5, 1997 letter, Holniker informed Danton that, given Danton's failure of payment,

the Software Release Agreement was deemed in default and rendered null and void. (Doc. # 109 at Ex. C-28). Thus, according to Defendants, by reason of the combined effect of the April 25, 1997 letter and Software Release Agreement, there was no consummated assignment of rights in the Holniker Program to Defendants. Defendants contend that because they never came to own the Holniker Program, Horan is not entitled to the Holniker Program regardless of the interpretation given to the scope of the Settlement Agreement and Defendants' alleged post-agreement admissions.

Moreover, according to Defendants, because of the nullification of the Software Release Agreement resulting from Holniker's November 5, 1997 letter, an attempted assignment of the Software Release Agreement by Defendants to Fortune Entertainment Corp. ("FEC"), as part of a purchase and sale agreement (the "Purchase and Sale Agreement") between Danton and FEC whereby FEC purchased PVA from Danton, was rendered a nullity. (Doc. # 114 at A-057). Defendants subsequently sought to assign their rights in the Holniker Program to FEC. Holniker, by a July 12, 1998 letter, agreed to reinstate the voided Software Release Agreement "under the same terms and conditions as the April 25, 1997 agreement . . . ." (Doc. # 109 at Ex. C-29). Apparently the conditions set forth in the April 25, 1997 letter were again not satisfied by Danton and by a November 24, 1998 letter, Holniker advised Danton that the Software Release Agreement, again, was deemed null and void. (Doc. # 109 at Ex. C-30). Thus, Defendants argue, there was never any

transfer of ownership of the Holniker Program to which Horan could lay claim even if the Court were to accept his reading of the Settlement Agreement or take Defendants' comments as an admission requiring that Defendants turn over to Horan any game related software that came into their possession by subsequent acquisition.

DISCUSSION

Horan seeks partial summary judgment pursuant to Federal Rules of Civil Procedure 56(c) as incorporated in Rule 7056 of the Federal Rules of Bankruptcy Procedure. Rule 56(c) provides that:

> summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Fed. Rules Civ. Proc. 56(c).

In ruling on a motion for summary judgment the evidence must be viewed in a light most favorable to the nonmoving party. See, e.g., Cheilitis Corp. v. Citrate, 477 U.S. 317, 322 (1986); Anderson v. Liberty Lobby, Inc., 447 U.S. 242, 255 (1986); Matsushita EEC. Incus. Co. v. Zenith Radio Co., 475 U.S. 574, 587 (1986). Parties opposing a motion for summary judgment must do more than advance mere conclusory statements and allegations; they must set forth specific facts showing a genuine issue for trial, although they "'need not match, item for item, each piece of evidence proffered by the movant,' but must simply exceed the 'mere

scintilla of evidence' standard." Liberty Lobby, 447 U.S. at 256. A genuine issue of material fact exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." See id.

As an initial matter, both parties agree, pursuant to a choice-of-law clause in the Software Release Agreement, that Maryland law governs the interpretation of that agreement. (Doc. # 114 at A-028). Such choice of law clauses are routinely enforced by Delaware courts. See, e.g., Flavors of Greater Del. Valley, Inc. v. Bressler's 33 Flavors, Inc., 475 F.Supp. 217, 226-27 (D. Del. 1979).

Horan argues that Defendants acquired an upgrade, modification, name and/or new version of the Software Assets under the clear and unambiguous terms of the Software Release Agreement between Holniker and Danton. According to Horan, in exchange for granting Holniker fully paid, worldwide distribution licenses and an exclusive manufacturing agreement, by the clear language of the Software Release Agreement that contains no conditions precedent to its effectiveness Defendants acquired the Holniker Program. Moreover, Horan argues that evidence supporting his position that Defendants obtained such rights in the Holniker Program is found in Defendants' subsequent attempts to transfer those rights to FEC first as part of the Purchase and Sale Agreement and then by assignment to FEC. (Doc. # 114 at A-057 and A-083). Because the Software Release Agreement dated March 26, 1997 predates Holniker's

April 25, 1997 letter, Horan argues that Defendants cannot maintain that that letter acted to impose conditions on the effectiveness of the Software Release Agreement such that failure of the conditions rendered the Software Release Agreement voidable. Therefore, Horan maintains that Defendants obtained rights in the Holniker Program and were bound to convey that program to Horan for his use pursuant to the terms of the Settlement Agreement.

Horan argues that, regardless of the intended legal intent of Holniker's April 25, 1997 letter as it might pertain to altering the terms of the Software Release Agreement, the parol evidence rule under Maryland law prohibits the admission of any evidence that contradicts the clear and unambiguous intent of the parties' manifested on the face of the existing agreement. See, e.g., Truck Insur. Exchange v. Marks Rentals, Inc., 418 A.2d 1187, 1190 (Md. 1980); Equitable Trust Co. V. Imbesi, 412 A.2d 96, 107 (Md. 1980); Board of Trustees v. Sherman, 373 A.2d 626, 629 (Md. 1997); Glass v. Doctors Hospital, Inc., 131 A.2d 254, 261 (Md. 1957); Markoff v. Kreiner, 23 A.2d 19, 23 (Md. 1941). Horan contends that the Court is bound by the clear and unambiguous language of the Software Release Agreement, an agreement that contains within its four corners no conditions upon the bargain between the parties. Thus, according to Horan, Holniker transferred title and ownership of the Holniker Program to Danton and Danton is bound to convey those rights to Horan to the extent provided for in the Settlement Agreement.

I find that Horan's suggested application of the parol evidence rule is misplaced under the present facts. None of the Maryland cases cited by Horan address the impact of a consensual modification to a contract by the parties to that contract. See id. The cases cited merely advance the general legal principle that the parol evidence rule prohibits the admission into evidence of prior or contemporaneous agreements between contracting parties that work to contradict or alter the express and unambiguous written terms of an integrated agreement between those parties. See id. Adhering to well established tenets of contract construction, Maryland courts consistently hold that a court is bound by the four corners of an unambiguous contract when the court is asked to interpret the meaning of that agreement. See id.

However, neither the cases cited by Horan nor established legal principles in Maryland suggest that parties are prohibited from entering a separate agreement, contemporaneously or subsequently, that consensually modifies another agreement. See id.; see also, Geramifar v. Geramifar, 688 A.2d 475, 478 (Md. Ct. Spec. App. 1996); Dixon v. Haft, 253 A.2d 715, 718 (Md. 1969); Thomas v. Hudson Motor Car Co., 174 A.2d 181, 183 (Md. 1961); Gallagher v. Battle, 122 A.2d 93, 99 (Md. 1956). And judicial consideration of such modifications is not barred by the parol evidence rule. See, e.g., Truck Insur. Exchange, 418 A.2d at 1190; Equitable Trust Co., 412 A.2d at 107; Board of Trustees v. Sherman, 373 A.2d at 629; Glass v. Doctors Hospital, 131 A.2d at 261;

Markoff, 23 A.2d at 23. Under Horan's interpretation of the parol evidence rule, contract modifications and side agreements on related matters would be rendered meaningless. Such a result clearly controverts existing doctrines of contract law and the rights of parties to consensually modify agreements or enter side agreements touching upon related subject matters.[2] Horan does not dispute Defendants' contention that the conditions articulated in Holniker's April 25, 1997 letter were not satisfied.

Moreover, Horan's argument ignores a plausible alternative reading of the combined effect of the Software Release Agreement and Holniker's April 25, 1997 letter as they relate to any rights Danton may have been granted in the Holniker Program. Holniker's letter of April 25, 1997 may not, in fact, be an attempted modification of the Software Release Agreement. The April 25 Letter states:

> Enclosed is a signed copy of the Manufacturing Agreement and Software Release Agreement.
>
> * * *
>
> I have agreed to the Software Release Agreement on the condition that it be used solely for negotiations . . . with respect to your potential obligation . . . in reference to representations of ownership interest in the [Holniker] software made by PVA to PVA Software Partnership I and PVA Partnership II.

---

[2] I also note that Horan cites no case law in which an unintended third-party beneficiary to a contract has been found to possesses the requisite standing to challenge a subsequent, consensual modification to a contract.

> Commitment to both of these agreements are contingent upon the execution of a Letter of Credit from Saco & Biddeford Savings Institution . . . and that AMUSEMENT WORLD, INC. be paid within six months of this date $100,000 in settlement of the open PVA account balance.
>
> * * *
>
> If you are in agreement with this letter, please sign below where indicated.

(Doc. # 109 at C-27)(Emphasis added.) Thus, the April 25, 1997 letter may not be viewed as a modification of a previously executed and delivered Software Release Agreement at all, but rather as an expression of a condition precedent to Holniker's obligation to perform incorporated by the parties and included as a component of Holniker's delivery of the Software Release Agreement to Danton. The letter bears Danton's signature as "Agreed and Acknowledged." Although not dispositive of this issue, I note that the Software Release Agreement document contains no integration clause. Arguments about modification or side agreements might have no bearing on the present matter if one reads the April 25, 1997 letter, with its reference to the Software Release Agreement, the delivery language, and request for Danton's signature, to embody the parties' entire understanding of their agreement. When viewed in a light most favorable to Defendants, the interpretation of the April 25, 1997 letter in the overall context of the parties' dealings raises material factual issues bearing upon Horan's view of the effect of the Software Release Agreement.

Horan also argues that the Software Release Agreement between Holniker and Defendants could not be revoked as a matter of law because the agreement provides that "Holniker and [Amusement World, Inc.] waive any claim or challenge to the validity of Danton or his assigns' rights in the [Holniker Program] . . . ." (Doc. # 114 at A-028). Thus, Horan contends that Danton obtained the Holniker Program as a matter of law despite the attempts by Holniker in his letters of November 5, 1997 and July 12, 1998 to deem the Software Release Agreement null and void.

I do not agree that the contract language quoted by Horan compels enforcement of the Software Release Agreement despite the subsequent voiding action taken by Holniker in his letters of November 5, 1997 and November 24, 1998. That clause, together with the April 25, 1997 Holniker letter, may be read as a waiver of any claim or challenge to the validity of Danton's rights <u>after</u> those rights vested, the vesting of course being contingent upon the satisfaction of the conditions. Thus, the presence of a material factual dispute as to the parties intended effect of the Software Release Agreement and April 25, 1997 letter agreement prohibits the granting of summary judgment.

Alternatively, Horan argues that, regardless of whether Danton presently possesses any rights or title in the Holniker Program, there was, in essence, a window of opportunity, between July 12, 1998 when the Software Release Agreement was reinstated by Holniker and November 24, 1998 when Holniker once again deemed the

Software Release Agreement null and void, in which Danton had rights in the Holniker Program such that Danton became obligated to convey the Holniker Program to Horan. Horan contends that, if the November 24, 1998 letter acted as a "revocation" of the Software Release Agreement, then between the reinstatement date of the Software Release Agreement, July 12, 1998, and the revocation by letter on November 24, 1998, Danton acquired rights to the Holniker Program and was obligated under the Settlement Agreement to convey those rights to Horan.

Based on the facts before me, I find Horan's interpretation of the parties' intent questionable. First, I question whether Holniker's November 24, 1998 null and void letter can fairly be characterized as a "revocation" of a previously granted right. I believe it may fairly be viewed as a statement of the failure of Danton to satisfy conditions precedent to the vesting of that right. Second, it is hard to imagine that Holniker understood the arrangement between he and Danton to allow Danton to assign or otherwise transfer nascent or inchoate rights in the Holniker Program to a third party before Danton had performed his end of the agreement. Nor does it seem likely that Danton believed that he possessed rights in the Holniker Program in this interim, pre-performance period during which Holniker awaited Danton's satisfaction of the various financing and payment obligations imposed by the April 25, 1997 letter agreement and reinstated by the July 12, 1998 letter.

There are facts supporting the view that this may well be the understanding of Holniker and Danton. By the Purchase and Sale Agreement, the Software Release Agreement was putatively assigned to FEC. This supposed transfer was followed by Holniker's first null and void letter of November 5, 1997. This voiding was followed by Holniker's reinstatement letter of July 12, 1998 which itself was followed by a July 14, 1998 assignment of the Software Release Agreement from Danton to FEC. The latter assignment makes no sense if FEC acquired the Software Release Agreement from Danton pursuant to the September 5, 1997 Purchase and Sale Agreement, which preceded Holniker's first null and void letter of November 5, 1997. It seems entirely possible, if not likely, that neither Holniker nor Danton believed that Danton acquired any rights in the Holniker Program in the period between April 25, 1997 and November 5, 1997, nor similarly between July 12, 1998 and November 24, 1998. To reason otherwise would render the second assignment to FEC and the second letter voiding the Software Release Agreement irrelevant. In any event, I cannot reconcile these conflicting interpretations of the parties contractual intent in a summary judgment context.

Although Holniker's letters of November 5, 1997 and November 24, 1998, declared the Software Release Agreement "null and void <u>as of this date</u>," it seems questionable that in some interim period between the granting or reinstatement of rights to the Holniker Program and the subsequent voiding of those rights,

Holniker and Danton understood that Danton had obtained sufficient rights such that he might alienate those rights to FEC, Horan, or any third party. (Doc. # 109 at C-28 and C-30)(Emphasis added.) Perhaps Holniker's letters were inartfully drafted in that they claim to have rendered the Software Release Agreement null and void "as of this date" rather than the more appropriate voiding of the agreement ab initio. In any event, the intent of the parties will have to be aired on the record in order to assess Horan's contention that a window of opportunity existed in which Danton possessed sufficient rights in the Holniker Program such that Danton was obligated to convey the Holniker Program to Horan. As such, a material factual dispute exists that makes summary judgment inappropriate.

Horan also challenges Danton's denial of any ownership rights sufficient to affect transfer to FEC based upon FEC's assertions in its Form 10 KSB filing with the Securities and Exchange Commission, a filing signed by Danton as an officer of FEC. Horan quotes from FEC's April 17, 2000 Form 10 KSB filing for the fiscal year ending December 31, 1999 in which FEC asserts that:

> as part of the agreement relating to the acquisition of PVA the Danton Group assigned to [FEC] all of the Danton Group's rights and obligations pursuant to a Manufacturing Agreement and a related Software Release Agreement.
>
> * * *
>
> In consideration of the transfer of the stock in PVA and the assignment of the Manufacturing

> Agreement and the Software Release Agreement, [FEC] issued 1, 647,500 shares of common stock to the Danton Group and paid the Danton Group $1,006,986 in cash. [FEC] also issued 200,000 shares of common stock to an unrelated third party as a finder's fee in connection with the transaction.

(Doc. # 119 at C-07-08)(Emphasis added.) Horan argues that FEC's Form 10 KSB shows that the Software Release Agreement was not voided on November 24, 1998 and is extant.

However, the quoted language from FEC's Form 10 KSB does not state that the Software Release Agreement is extant or what rights FEC acquired by the Software Release Agreement. It merely recites that Danton assigned whatever rights he may have had in the Software Release Agreement to FEC. The quoted language may be inadequate, it may be misleading, or it may suggest an understanding by FEC which is different from that reflected in the Holniker letters. Regardless, significant assertions to the contrary in Danton's affidavit that the Software Release Agreement was rendered null and void, the parties conditions letter of April 25, 1997, and Holniker's voiding letters of November 5, 1997 and November 24, 1998, would require me to conclude in Horan's favor on disputed facts were I to grant his motion for summary judgment. (Doc. # 109 at C-31).

Finally, although neither party addressed this point in their briefs, I note paragraph 4 of the Software Release Agreement which provides:

> Danton hereby understands and agrees that no copies of the [the Holniker Program], including but not limited to underlying code or compilations in any form or media, may be removed from [Amusement World, Inc.'s]premises.

(Doc. # 114 at A-028). I have no clear understanding of the nature and effect of this limitation on Danton's rights and Horan's asserted rights arising therefrom. Until the nature and effect of this limitation is clarified, I cannot know the extent of Horan's rights pursuant to paragraph 1(a) of the Settlement Agreement by reason of the grant made by Holniker to Danton by the Software Release Agreement, assuming the Software Release Agreement is extant and granted Danton the rights asserted by Horan. Thus, an additional material factual issue relevant to rights in the Holniker Program remains unresolved.

CONCLUSION

For the reason stated above, I find that numerous material factual disputes exist as to what rights, if any, Horan has arising out of the Software Release Agreement between Holniker and Danton. Horan's motion for partial summary judgment will therefore be DENIED.

This opinion, of course, does not deny Horan the opportunity to establish a factual record at trial that might support his view of the nature and effect of the Software Release Agreement. That being the case, it seems clear that Defendants' motion of summary judgment, to the extent it rests on Defendants' view that the

Software Release Agreement was never “completed,” implicates factual conflicts and I see no useful purpose being served by addressing that motion in detail at this time. Indeed, it seems to me that the parties have pretty much exhausted, if not abused, the summary judgment process with a plethora of motion papers and briefs with both parties citing the same documents and deposition testimonies for conflicting conclusions and without advancing the focusing of issues. I believe that further proceedings short of a trial will only continue to serve to polarize the parties’ positions and produce more “briefs” that provide no basis for a court resolution of this matter. I suggest we convene a brief meeting to (a) establish trial dates and (b) in light of the observations I have made in court and in this memorandum opinion, schedule the filing of a new pretrial order.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
PROFESSIONAL VIDEO ASSOCIATION, INC.,	)	Case No. 95-016 (PJW)
	)	
Debtor.	)	
	)	
MICHAEL J. HORAN,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Adv. Proc. No. A98-00247
	)	
WILLIAM DANTON, PROFESSIONAL VIDEO ASSOCIATION, INC., and VIDEO LOTTERY CONSULTANTS, INC.	)	
	)	
Defendants.	)	

ORDER

For the reasons set forth in the Court's Memorandum Opinion of this date, Plaintiff's Motion for Partial Summary Judgement (Doc. # 112) is DENIED.

_____
Peter J. Walsh
United States Bankruptcy Judge

Date: August 8, 2000