



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

ATHENIAN VENTURE PARTNERS I, L.P. *et al.*,)
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 Plaintiffs,)
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 v.)
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 GMG CAPITAL INVESTMENTS, LLC, *et al.*,)
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 Defendants.)

C.A. No. 08C-04-084 DCS

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~~PROPOSED~~ FINAL ORDER AND JUDGMENT

WHEREAS, Athenian Venture Partners I, L.P. and Athenian Venture Partners II, L.P. (collectively "Athenian") brought an action for breach of contract against GMG Capital Investments, LLC, GMG Capital Partners III, L.P., GMG Capital Partners III Companion Fund, L.P., and GMS Capital Partners II, L.P. (collectively "GMG" or "Defendants," and together with Athenian, the "Parties");

WHEREAS, the Parties stipulated in paragraph 2 of the Revised Joint Pretrial Stipulation Order that the parties submitted to this Court on March 13, 2013, which this Court granted as an Order on March 18, 2013 (the "Final Pretrial Stipulation and Order"), that they have an integrated written contract between and among them which consists of four documents: (1) a Term Sheet dated August 17, 2005 (the "Term Sheet"); (2) a Letter Agreement to Purchase Equity in Alloptic, Inc. dated August 18, 2005 (the "Letter Agreement"); (3) a Limited Recourse Promissory Note dated August 18, 2005 (the "Note"); and (4) a Pledge and Escrow Agreement dated August 28, 2005 (the "Pledge Agreement," and collectively with the Term Sheet, Letter Agreement and Note, the "Contract");

WHEREAS, the Parties stipulated in paragraphs 4, 6 and 7 of the Final Pretrial Stipulation and Order that GMG breached a provision in the Contract concerning certain

monthly payments (the “Mandatory Payments”), which first became due and payable beginning in January 2008;

WHEREAS, the Parties stipulated in paragraph 5 of the Final Pretrial Stipulation and Order that GMG’s obligation under the Mandatory Payments provision is to make monthly payments of \$15,000 until the principal amount of the Note, which is \$6,000,000, is paid in full;

WHEREAS, the Parties stipulated in paragraph 8 of the Final Pretrial Stipulation and Order that GMG’s obligation to make the Mandatory Payments does not end upon a liquidation of Alloptic, Inc.;

WHEREAS, a jury trial occurred in this action beginning on March 18, 2013;

WHEREAS, at the conclusion of trial, the jury returned a Special Verdict Form expressing its verdict (the “Special Verdict”);

WHEREAS, pursuant to the Special Verdict, the jury decided that Athenian’s remedies for GMG’s admitted breach of the Mandatory Payments provision include money damages;

WHEREAS, the Parties stipulated in paragraph 11 of the Final Pretrial Stipulation and Order that, if the jury rendered a verdict in favor of Athenian, the amount of money damages due to Athenian as of the date trial commenced totaled \$915,000;

WHEREAS, because trial started in March 2013 and this Final Order and Judgment is being granted in June 2013, it is necessary (pursuant to paragraphs 4 through 9 of the Final Pretrial Stipulation and Order) to add \$45,000 to the \$915,000 in stipulated money damages to which Athenian is presently entitled;

WHEREAS, the Parties stipulated in paragraph 10 of the Final Pretrial Stipulation and Order that if Athenian prevailed at trial, the Contract provides that Athenian is entitled to all

reasonable attorneys' fees, costs and expenses incurred in connection with enforcing its rights under the Contract;

WHEREAS, as determined by the jury through the Special Verdict, Athenian prevailed at trial;

WHEREAS, the Court previously Ordered on September 7, 2010 (the "Fee Order"), in connection with granting Athenian summary judgment, that Athenian was granted attorneys' fees, costs and expenses as of June 30, 2010 in the amount of \$470,590.04;

WHEREAS, although GMG appealed the Fee Order to the extent that GMG contended that the Court had improperly granted Athenian summary judgment, GMG expressly stated in footnote 3 of its Opening Brief of Defendants-Below, Appellants in Support of Appeal No. 614, 2010 that GMG was not appealing the reasonableness of the fees that were granted to Athenian pursuant to the Fee Order;

WHEREAS, after the Supreme Court determined that the remedies provisions in the Parties' Contract were ambiguous, Athenian remitted to GMG all attorneys' fees, costs and expenses that Athenian had received pursuant to the Fee Order; and

WHEREAS, between July 1, 2010 and May 21, 2013, Athenian incurred attorneys' fees, costs and expenses in the amount of \$730,566.99 in connection with enforcing its rights under the Contract through appeal, remand, supplemental discovery, trial and preparing for entry of judgment;

IT IS HEREBY FINALLY ADJUDICATED, ADJUDGED, DECLARED AND DECREED this 21st day of June 2013 as follows:

1. Defendants breached the Contract by refusing to pay the Mandatory Payments;

2. Defendants are required under the Note and this Final Order and Judgment to make a Mandatory Payment to Athenian in the amount of \$15,000.00 by the last day of each month until the \$6,000,000 principal amount of the Note is paid in full;
3. The obligation and liability of Defendants to make the Mandatory Payments and to pay all amounts owed to Athenian under this Final Order and Judgment is joint and several, and, for the avoidance of doubt and without limiting or expanding Athenian's rights as a judgment creditor, Athenian's remedies for payment of the Mandatory Payments and other amounts owed by Defendants under this Final Order and Judgment are not limited to proceeds arising from any securities that are or were held in escrow pursuant to the Contract;
4. Defendants are liable to Athenian for, and Final Judgment is entered in Athenian's favor against all Defendants jointly and severally in the following amounts:
 - a. the aggregate value of the unpaid, overdue Mandatory Payments for the period January 1, 2008 through June 12, 2013, in the amount of \$960,000.00;
 - b. pre-judgment simple interest at the legal rate prescribed by 6 Del. C. § 2301(a) (at 5% over the Federal Reserve discount rate in effect as of the end of the month for each unpaid, overdue Mandatory Payment) in the amount of \$157,646 as of June 12, 2013, plus appropriate amounts of interest on each unpaid, overdue

Mandatory Payment for each day thereafter until the date of the entry of this Judgment;

- c. attorneys' fees, costs and expenses in the amount of \$470,590.04, which Athenian incurred while enforcement of its rights under the Contract from the commencement of this action through June 30, 2010, because they are reasonable, GMG did not appeal this Court's previous holding that they are reasonable, and Athenian has prevailed at trial;
- d. attorneys' fees, costs and expenses in the amount of \$730,566.99, which Athenian incurred while enforcing its rights under the Contract between July 1, 2010 and May 21, 2013, because the amount is reasonable given, among other considerations, the magnitude of work performed, prevailing market rates for attorneys' fees in Delaware for this type of litigation, the skill exhibited by Athenian's counsel, and Athenian's prevailing at trial;
- e. all further reasonable attorneys' fees, costs and expenses that Athenian subsequently incurs while enforcing its rights under the Contract, including, but not limited to, execution upon this Final Order and Judgment; and
- f. post-judgment simple interest on the sum of the amounts identified in paragraph 5(a)-(e) above at the legal rate of interest prescribed by 6 *Del. C.* § 2301(a) as of the date of entry of this Judgment through the day that this Judgment is satisfied in full.

5. The Defendants that are Delaware artificial entities are obligated to comply with applicable Delaware law that governs their operations.
6. The Prothonotary is directed to enter this Final Order And Judgment as a final order.



Judge

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