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MAR 23 2000

2 AMY HARVEY, CLERK

3 By: *[Signature]*
DEPUTY

4 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
5 IN AND FOR THE COUNTY OF WASHOE

6
7 CONTINENTAL FUNDING COMPANY,
8 a Nevada corporation,

9 Plaintiff,

10 vs.

Case No. CV99-01441

11 POINT OF LIGHT, INC. d.b.a.
12 PRESERVE AMERICA, a Nevada
13 corporation, VETERANS OF
14 FOREIGN WARS OF THE UNITED
15 STATES, INC., a Nevada non-
16 profit corporation, ROBERT
17 FORMAN, CHERYL D. MEYERS,
18 BARRY L. HUDSON, JAMES L.
19 MARTIN, DOES 1 through 10,
20 and CORPORATIONS 1 through 10,

Dept. No. 6

21 Defendants.

22 AND ALL RELATED ACTIONS.

23 ORDER GRANTING SUMMARY JUDGMENT IN PART AND DENYING IN PART

24 The Court has read and considered the memoranda and
25 exhibits submitted in support of and in opposition to plaintiff's
26 motion for summary judgment filed January 31, 2000, and submitted
27 for decision on March 16, 2000.

28 The subject of this action is an agreement between
plaintiff Continental Funding Company (CFC) and defendant Point
of Light, Inc. (PLI), and the guaranty of defendants Robert
Forman, Cheryl Myers, Barry Hudson, and James Martin.

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1 On December 16, 1998, CFC entered into a Full Recourse
2 Accounts Receivable Purchase Agreement (Agreement) with PLI. See
3 Exhibit E, plaintiff's motion for summary judgment (motion). On
4 the same day, CFC and defendants Robert Forman, Cheryl Myers,
5 Barry Hudson, and James Martin executed an Unconditional and
6 Irrevocable Guaranty of Payment and Performance (Guaranty). See
7 Exhibit G, plaintiff's motion.

8 The Court finds the terms of the Agreement and Guaranty
9 are clear and unambiguous and, therefore, enforceable. The Court
10 also finds that the guarantors of the Agreement are those listed
11 individually, along with their respective residential addresses
12 and social security numbers, on the last page of the Guaranty
13 following ¶24. Parol evidence is not admissible to vary the terms
14 of the Agreement or the Guaranty.

15 In opposition to plaintiff's motion, defendants have
16 submitted affidavits of Robert Forman, Cheryl Myers, and Barry
17 Hudson. The allegations contained in Robert Forman's affidavit
18 concerning the alleged statements made by Susan Masegian (owner
19 of CFC) to Barry Hudson and Cheryl Myers are hearsay and, thus,
20 are incompetent and will be disregarded.

21 The allegations contained in the affidavits of Cheryl
22 Myers and Barry Hudson, although devoid of specific details, at
23 least generally allege that: (1) Ms. Masegian verbally agreed to
24 extend the repayment terms of the Agreement, and (2) Ms. Masegian
25 was aware of PLI's intended distribution of the proceeds
26 including the payment of the mortgage of Ms. Myers and Mr.
27 Hudson, as well as the payment of \$5,000.00 to James Martin.

28 ...

1 Any verbal modification of the payment terms would be
2 ineffective because the Agreement requires that any waiver of
3 plaintiff's rights must be in writing and signed by the
4 plaintiff. See Agreement, ¶26(a).

5 The total contract price of \$80,500.00 which plaintiff
6 paid to PLI was paid in the form of one check which was received
7 by Robert Forman, the president of PLI. See Exhibit N,
8 plaintiff's motion.

9 Any distributions of those proceeds to anyone thereafter
10 were necessarily made by PLI. There is no claim or evidence that
11 plaintiff or Ms. Masegian directed either Robert Forman or PLI to
12 pay funds to anyone. The allegations contained in the affidavits
13 of Ms. Myers and Mr. Hudson, if true, only establish that Ms.
14 Masegian was aware of such payments. These allegations may
15 demonstrate that affiants Myers and Hudson deceived Mr. Forman
16 and PLI, but not that the plaintiff or its agents made any
17 misrepresentations to the defendants or directed in any way Mr.
18 Forman's disbursement of the funds paid to him by the plaintiff.

19 Accordingly, it is hereby ordered:

20 (1) Plaintiff's motion for summary judgment regarding
21 plaintiff's claim for breach of contract against PLI, Forman and
22 Martin is granted.

23 (2) Plaintiff's motion for summary judgment regarding
24 PLI and Forman's claim for breach of contract (First Claim for
25 Relief) is granted.


26 (3) Plaintiff's motion for summary judgment regarding
27 PLI and Forman's claim for negligence (Third Claim for Relief) is
28 granted.

1 (4) Plaintiff's motion for summary judgment regarding
2 PLI and Forman's claim for conversion (Sixth Claim for Relief) is
3 granted.

4 (5) Plaintiff's motion for summary judgment regarding
5 PLI and Forman's claim for breach of fiduciary duty (Seventh
6 Claim for Relief) is granted.

7 (6) Plaintiff's motion for summary judgment regarding
8 plaintiff's claim for breach of contract against defendant
9 Veterans of Foreign Wars (VFW) is denied. The Court finds that
10 there is a genuine issue of material fact regarding whether James
11 Martin had apparent authority to bind VFW to the Full Recourse
12 Accounts Receivable Purchase Agreement.

13 DATED this 27th day of March, 2000.

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16 _____
17 District Judge
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4 CERTIFICATE OF MAILING

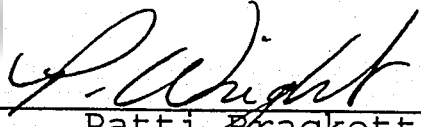
5 I hereby certify that I am an employee of the Second
6 Judicial District Court; that on the 28 day of March, 2000,
7 I deposited for mailing a copy of the foregoing Order addressed
8 to the following persons:

9 ✓ Alice S. Kung, Esq.
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Patti Brackett-Wright
Administrative Assistant

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The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: APR 17 2000

AMY HARVEY, Clerk of the Second Judicial District Court, in and for the County of Washoe, State of Nevada.

By [Signature] Deputy

REQUESTED BY
Mark H Gundersen
IN OFFICIAL RECORDS OF
DOUGLAS CO., NEVADA

2000 JUN -1 PM 3:06

LINDA SLATER
RECORDER

\$ 12.00 PAID K2 DEPUTY

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