UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

JUDGE PETER J. WALSH

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November 19, 2003

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Re: Covad Communications Group, Inc. v. Holder/Royal 400 II, LLC
Adv. Proc. No. 02-03527

Dear Counsel:

This is with respect to Defendant's summary judgment motion (Doc. # 26) and Plaintiff's summary judgment motion (Doc. # 29)in the above referenced adversary proceeding. After a limited review of the motion papers and the extensive exhibits appended thereto, I conclude that the issues are not ripe for summary judgment.

In support of their respective positions, the parties

cite to e-mails, correspondence and deposition transcripts, but to a significant degree Plaintiff and Defendant offer different interpretations as to the effect of those communications. Given the multiple theories for recovery asserted by Plaintiff in its complaint, I cannot at this time conclude that there are no material issues of fact. Possibly, with a substantial undertaking, I could rule at this time on one or two of these theories but that would still leave others to be resolved by a trial.

I understand that pretrial discovery is complete or nearly so. Consequently, this case should be scheduled for trial. Counsel should contact my courtroom deputy to schedule a pretrial conference.

Although a disposition on the merits is not appropriate at this time, I make the following observations:

(1) To suggest, as Defendant does, that it assumed a tenant improvement allowance obligation of $1,565,076.50 only if it contracted to have the work done pursuant to § 6.01 and exhibit B of the lease, and had no obligation whatsoever for tenant improvements if Plaintiff contracted to have the work done, makes no sense and is fundamentally inconsistent with numerous post-April 28, 2000 communications between the parties. Indeed, Defendant's version of the essential facts as set forth on pages

2-4 of its reply brief (Doc. # 43), clearly suggests that Defendant recognized a tenant allowance obligation where Plaintiff hired the contractor, albeit with details to be worked out.

(2) As reflected in exhibits 2, 4, 5 and 6 to the Clark Gore declaration, Defendant effectively agreed to pay for the allowed tenant improvements, albeit subject to Plaintiff's completion conditions. We need to address the question of whether those conditions are properly a part of the commitments between the parties, and, if so, whether they have been effectively satisfied.

(3) While I have not examined the case law in any detail on the issue, Defendant's argument that Plaintiff's § 365(g) breach excuses Defendant's breach seems to me to be a stretch. The tenant improvement work was performed many months prior to the August 15, 2001 bankruptcy petition. If Defendant's completion conditions effectively occurred prior to the petition date, I do not believe Defendant's position has any merit. Even if the completion conditions are deemed to have occurred after the petition date, the merits of Defendant's position seems doubtful to me.

Very truly yours,

Peter J. Walsh

PJW:ipm

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:	) Chapter 11
COVAD COMMUNICATIONS GROUP, INC.,	) Case No. 01-10167(PJW)
Reorganized Debtor.	)
COVAD COMMUNICATIONS GROUP, INC.,	)
Reorganized Debtor and Counter-Claimant,	)
v.	) Adv. Proc. No. 02-03527(PJW)
HOLDER/ROYAL 400 II, LLC,	)
Counter-Defendant	)

ORDER

For the reasons stated in the Court's letter ruling of this date, Defendant's motion for summary judgment (Doc. #26) and Plaintiff's motion for summary judgment (Doc. # 29) are **DENIED**.

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Peter J. Walsh
United States Bankruptcy Judge

Dated: November 19, 2003