

IN RE:

IN BANKRUPTCY NO.:

TAK COMMUNICATIONS, INC.,

MM11-91-00031

Debtor.

IN ADVERSARY PROCEEDING NO.:

FREEDOM COMMUNICATIONS, INC.,

95-3027-11

Plaintiff,

FILED

AUG 14 1995

v.

CLERK, U.S.
BANKRUPTCY COURT
CASE NO. _____

TAK COMMUNICATIONS, INC.,

Defendant.

ORDER FOR SUMMARY JUDGMENT

This matter came before the Court on the motion of Tak Communications, Inc. (Tak) for summary judgment on each of the claims in the Complaint of Freedom Communications, Inc. (Freedom). Tak also moved for a protective order or a stay with respect to discovery, and objected to the Court's declaration that this was a core bankruptcy proceeding.

Having considered the submissions and arguments of the parties, and having concluded that there is no genuine issue as to any material fact, the Court decides:

1. This is a proceeding to determine an unliquidated claim against the estate and therefore a core bankruptcy proceeding pursuant to 28 USC § 157(b)(2)(B).

2. The Tak/Freedom Agreement created no claim against Tak as a matter of law.

a. The Tak/Freedom Agreement was an unambiguous, integrated document that explicitly required the fulfillment of a condition precedent before Tak was to be bound by any of its provisions. As this condition, Bankruptcy Court approval, was never met, none of the terms of the agreement ever came into force.

b. Furthermore, and regardless of the terms of the Tak/Freedom Agreement, as a matter of federal bankruptcy law the document was not binding on Tak prior to Bankruptcy Court approval. The agreement was an integrated contract for the sale of estate property and was outside of the ordinary course of business. Pursuant to 11 USC § 363(b)(1), the agreement was subject to a hearing after the Creditors Committee objected to it. No approval having been obtained at the hearing, the agreement was void and unenforceable in its entirety.

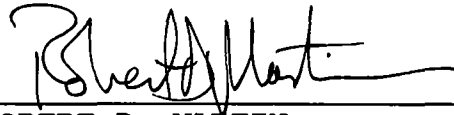
c. Since, as a matter of law, Tak was never bound by the agreement, Tak is entitled to summary judgment with respect to counts I and III of Freedom's complaint.

3. Under Wisconsin law, any benefit conferred by Freedom upon Tak in the form of a higher bid from a third party was incidental, and therefore does not give rise to an unjust enrichment claim. Freedom can prove no set of facts that would change the nature of this benefit. For this reason, Tak is entitled to summary judgment on count II of Freedom's complaint as well.

For the foregoing reasons, it is ordered that the motion of Tak for summary judgment be granted in all respects and judgment may be so entered by the Clerk.

The motion of Tak for a protective order or stay is rendered moot by this decision.

Dated August 14, 1995.



ROBERT D. MARTIN
UNITED STATES BANKRUPTCY JUDGE

United States Bankruptcy Court

For the Western District of Wisconsin

In re: TAK COMMUNICATIONS, INC.
Bankruptcy No. MM11-91-00031

FILED

AUG 14 1995

No. 95-3027-11

CLERK, U.S.
BANKRUPTCY COURT
CASE NO. _____

FREEDOM COMMUNICATIONS, INC. v. TAK COMMUNICATIONS, INC.

Plaintiff,

Defendant

**JUDGMENT
ON DECISION
BY THE COURT**

This proceeding having come on for trial or hearing before the court, Honorable Robert D. Martin, United States Bankruptcy Judge, presiding, and the issues having been duly tried or heard and a decision having been rendered, It is Ordered and Adjudged that the complaint of the plaintiff is dismissed.



Clerk of Bankruptcy Court

[Seal of the U.S. Bankruptcy Court]
Date of issuance: August 14, 1995

By: _____
Deputy Clerk