IN THE HIGH COURT OF JUSTICE CH 1996 G NO 3761

CHANCERY DIVISION

B E T W E E N :-

GAMETEK (UK) LIMITED

Plaintiff

SUPREME COURT
OF JUDICATURE
11 JUN 1996
CHANCERY
CHAMBERS
REGISTRY

- and -

DAVID BRABEN

Defendant

TO THE DEFENDANT David Braben of Saxon Farm, Long Meadow, Lode, Cambridge CB5 8HA

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out overleaf.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office mentioned below the accompanying ACKNOWLEDGMENT OF SERVICE stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued from the Chancery Chambers of the High Court this 11 day of June 1996.

Note: This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of jurisdiction, 6 months) beginning with that date unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

OFFICE COPY

SUPREME COURT OF JUDICATURE

CHANCERY CHAMBERS

STATEMENT OF CLAIM

1. The Plaintiff is and was at all material times in the business of publishing and marketing computer games software.

2. The Defendant is and was at all material times in the business of creating and developing computer games software.

3. By an Agreement in writing dated 18 March 1994 ("the Agreement") the Defendant agreed, inter alia, to develop on behalf of the Plaintiff a sequel PC Version and PC CD Version of a computer game known as "Frontier/First Encounters" ("the Program").

4. The Agreement, to which the Plaintiff will refer as may be necessary for its full terms, true meaning and effect, provided, inter alia, as follows:-

(1) By Clause 3(a), the Defendant agreed to deliver to the

Plaintiff finished machine code master disks of the Program, free of Bugs and other deficiencies (as determined by the Plaintiff in its absolute discretion) as follows:-

(A) Sequel PC version - 31 October 1994

(B) CD PC version - 31 October 1994.

(2) By Clause 3(b), if the master tape or disk of the Program shall not have been delivered to the Plaintiff in a form acceptable to the Plaintiff in its absolute discretion by the dates specified above, then the Plaintiff may at its option, and notwithstanding any grace periods otherwise provided by the Agreement, either extend the time for delivery or terminate the Agreement.

(3) By Clause 3(c), in the event that delivery [as defined by Clause 1(c) as delivery to the Plaintiff of each of the items specified in Clause 4(a)] of a master disk of the Program by the Defendant has not taken place within 6 months of the dates set out under Clause 3(a), then the royalty rate payable under the Agreement after such 6 month period shall have elapsed will be reduced by 0.5% of the Plaintiff's Net Receipts for every additional month or part thereof that Delivery is delayed beyond the extended 6 months grace period, subject to a maximum decrease of 2.5%.

(4) By Clause 4, the Defendant agreed to supply to the Plaintiff in connection with each Program, inter alia, a technically satisfactory (to the Plaintiff) master of the Program free of "Bugs" [as defined by Clause 1(e) as "A repeatable phenomenon in the Program or Program Copy [as defined in 1(b)] of unintended events or actions during the running of the Program or Program Copy that results in the Program or Program Copy being unplayable or otherwise not acting properly under normal conditions"] and other deficiencies in the form of a diskette and compact disk or in such other form as may be acceptable to the Plaintiff, such master to be adequate for the creation and reproductions of copies of the Program.

(5) By Clause 5, the Defendant agreed at his own cost and expense to correct any "Bug" which appeared in the Program within 3 months from first publication of the Program.

(6) By Clause 14(a), the Plaintiff agreed to pay to the Defendant a non-returnable but fully recoupable advance against royalties of £250,000, payable as to:

(I) £75,000 on signature of the Agreement;

(II) £25,000 on Acceptance of each of the 6 specified milestones, as set out in Schedule B to the Agreement;

(III) £25,000 on Acceptance of the Sequel PC and PC CD versions of the Program

5. In breach of Clauses 3(a) and 4 of the Agreement, the Defendant did not deliver to the Plaintiff finished machine code master disks of the Program, free of Bugs and other deficiencies by 31 October 1994, or at all. On or about 6 April 1995 the Defendant delivered to the Plaintiff a version of the Program which was not free of Bugs and other deficiencies. Full particulars of the Bugs and other deficiencies have been supplied to the Defendant.

6. Further or in the alternative, in breach of Clause 5 of the Agreement, the Defendant failed at his own cost and expense to correct any Bug which appeared in the Program within 3 months from first publication of the Program. Full particulars of the said bugs have been supplied to the Defendant.

7. As a result of the Defendant's breach of contract as aforesaid, the Plaintiff received seriously adverse publicity in relation to the Program and considerable consumer

resistance, as a result of which on or before 9 August 1995 the Plaintiff was forced to withdraw the Program.

8. By reason of the matters aforesaid, the Plaintiff has suffered loss and damage.

PARTICULARS OF LOSS

(1) Loss of Profit (Calculated on the bases of lost sales of 140,000 units, at a gross profit of £4.70 per unit)	£658,000.00
(2) Costs of "patch disks" and remedial works £ 27,189.25	
(3) Costs of advertising	£ 12,705.00
(4) Lost management time	£ 15,421.15
(5) "Support line" costs	£ 9,519.23
Total	£722,834.63

9. Further or in the alternative, on or about 6 September 1995 the Plaintiff and the Defendant agreed that an additional advance of £25,000 paid by the Plaintiff to the Defendant for an "Amiga" version of the Program ("the Amiga Advance") would be recouped by the Plaintiff by way of set off against royalties earned by the Dependant on existing versions of the Program, such recoupment to be completed by 1 January 1996.

10. By exchange of correspondence dated 12 February 1996 from Jacqui Lyons of Marjacq Micro Ltd ("Marjacq"), acting on behalf of the Defendant, to the Plaintiff's solicitors, and their reply dated 26 February 1996, the Defendant agreed to make immediate repayment to the Plaintiff of £14,709.03 plus VAT, being the outstanding balance of the Amiga advance.

11. In breach of the said agreement, the Defendant has failed and refused to pay the said sum or any part of it to the Plaintiff. By letter dated 23 May 1996 from Guy Herbert at Marjacq, acting on behalf of the Defendant, to the Plaintiff's solicitors, the Defendant purported to withdraw the offer set out in Marjacq's letter of 12 February 1996. Having been accepted as aforesaid, the said offer was not capable of withdrawal.

12. In the premises, the sum of £14,709.03 plus VAT remains due and payable to the Plaintiff.

13. Further the Plaintiff claims interest pursuant to Section 35A of the Supreme Court Act 1981 on the sums found to be due to it at such rate and for such period as may be appropriate.

AND the Plaintiff claims:-

(1) Damages for breach of contract;

(2) The sum of £14,709.03 plus VAT at 17.5%;

(3) Interest pursuant to Section 35A of the Supreme Court Act 1981 as aforesaid.

(4) Further or other relief;

(5) Costs.

ANDREW DAVIES

Harbottle & Lewis _____

THIS WRIT was issued by Harbottle & Lewis of Hanover House, 14 Hanover Square, London W1R 0BE, Solicitors for the Plaintiff

whose registered office is situate at 258 Bath Road, Slough, Berkshire, SL1 4DX.