IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

JOHN W. KEATING, GARY CINOTTO, HOWARD GROSSMAN and MELVIN COLACO, Individually and on Behalf of All Others Similarly Situated	)	
Plaintiffs,	)	
v.	)	No. 11 CH 28854
MOTOROLA MOBILITY HOLDINGS, INC., JOHN E. BARFIELD, WILLIAM R. HAMBRECHT, JEANNE P. JACKSON, SANJAY K. JHA, KEITH A. MEISTER, THOMAS J. MEREDITH, DANIEL A. NINIVAGGI, JAMES R. STENGEL, ANTHONY J. VINCIQUERRA, ANDREW J. VITERBI, and GOOGLE INC.	)	Calendar 16 Judge David B. Atkins
Defendants.	)	

MEMORANDUM OPINION AND ORDER

THIS CAUSE COMING ON TO BE HEARD on the individual defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint pursuant to 735 ILCS 5/2-619.1 and the corporate defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint pursuant to 735 ILCS 5/2-615, and the court having considered the briefs submitted and the arguments of counsel, and the court being fully advised in the premises,

IT IS HEREBY ORDERED that both motions are granted.

Background

This case concerns the role a corporation's board of directors must play in the event of acquisition by another company. The case at bar is a direct shareholder class action brought by plaintiffs individually and on behalf of former holders of Motorola Mobility Holdings, Inc. ("MMI") common stock. The relevant events center on Google, Inc.'s ("Google") acquisition of MMI in 2011.

In early 2011, non-party Carl Icahn, one of MMI's largest individual stockholders, began to advocate for the sale of MMI. At the time, Mr. Icahn allegedly had some control over MMI in that he was responsible for the election of one director, defendant Daniel A. Ninivaggi, and for placing defendant Sanjay Jha as CEO of the company. In mid-2011, Google executives

approached Jha, MMI's CEO, to discuss a potential acquisition. After several meetings, in late July 2011, Jha discussed the possibility of a merger with defendants John E. Barfield, William R. Hambrecht, Jeanne P. Jackson, Keith A. Meister, Thomas J. Meredith, Daniel A. Ninivaggi, James R. Stengel, Anthony J. Vinciquerra, and Andrew J. Viterbi; these individuals comprise MMI's board of directors (the "Board"). At that meeting, the Board allegedly agreed that Jha should continue discussions with Google regarding the merger. The Board also decided to retain two financial advisors to evaluate the potential transaction.

By the beginning of August 2011, Google sent a letter directly to the Board proposing a sale price of $30 per share. The Board allegedly rejected the offer and instructed one of its financial advisors to make a counter offer of more than $40 per share. Negotiations continued until four days later when Google made its final offer of $40 per share, in cash. This offer was conditioned on Google receiving a termination fee of 3% should another bidder offer more, a no-solicitation agreement precluding MMI from seeking out other bidders, and matching rights.

On August 14, 2011, the Board held a meeting where the financial advisors indicated that Google's offer was fair and the Board unanimously voted to accept Google's offer (subject to the approval of a majority of MMI's shareholders). In the three months between the announcement of the merger and the shareholder vote, MMI did not receive any competing bids.

At some point before the merger was announced, Jha allegedly received various company valuations from MMI's management, all of which were higher than the ultimate sale price. MMI also retained Global Intellectual Property Law ("Global IP") to assess MMI's patent portfolio. Global IP allegedly turned their valuation over to MMI's management, but the Board allegedly never received it. Consequently, the stockholders never received information regarding the Global IP valuation in the merger proxy statement.

Shortly after the merger was announced, on August 15, 2011, various shareholder-plaintiffs (collectively the "individual defendants") brought suit seeking to halt the merger. The parties agreed to consolidate their cases in the present suit. On September 13, 2011, Motorola filed a 150-page proxy statement setting forth information about the merger and the Board's reasoning for approving the merger.

On October 4, 2011, plaintiffs were granted leave to amend their complaint to include allegations of certain material omissions in the proxy. On November 8, 2011, the parties entered into a Memorandum of Understanding resolving the disclosure claims. As part of that agreement, MMI made additional disclosures in the proxy statement that was to go out to the shareholders. The parties also agreed to certain limited preliminary discovery, through which plaintiffs deposed the financial advisors as well as Jha and Vinciquerra, MMI's lead Director. After the additional disclosures were added to the proxy statement, the shareholders voted to approve the merger with 99% of votes cast in favor.

In June 2013, plaintiffs filed their second amended complaint alleging the Board breached its duties of loyalty, care, and good faith and that Google and MMI (together the "corporate defendants") aided and abetted the Board in doing so. Now both the Board and the corporate defendants bring motions to dismiss plaintiffs' second amended complaint.

Legal Standard

The Illinois Code of Civil Procedure ("Code") permits a litigant to combine a motion to dismiss pursuant to 735 ILCS 5/2-615 and 735 ILCS 5/2-619 in a single motion. 735 ILCS 5/2-619.1; *Jenkins v. Concorde Acceptance Corp.*, 345 Ill. App. 3d 669, 674 (1st Dist. 2003). However, a combined motion must be in parts. 735 ILCS 5/2-619.1. Each part shall be limited to either section 2-615 or section 2-619 and each part must clearly show the grounds for relief under the section upon which it is based. *Id.*; *Storm & Assocs., Ltd. v. Cuculich*, 298 Ill. App. 3d 1040, 1046 (1st Dist. 1998) ("Meticulous practice dictates that the movants clearly state the section of the Code under which a motion to dismiss is brought.").

Although defendants' motions do not meet these requirements, plaintiffs did not raise any objection in their response or at trial. Further, the court sees no reason to strike the motions because it finds that plaintiff has not experienced any prejudice. *See Anzinger v. Ill. State Med. Inter-Ins. Exch.*, 144 Ill. App. 3d 719, 725 (1st Dist. 1986) (a court may disregard a party's failure to properly identify the type of motion being brought where no prejudice to the opposing party is evident).

Illinois is a fact-pleading jurisdiction. *Weiss v. Waterhouse Sec., Inc.*, 208 Ill. 2d 439, 451 (2004). A motion to strike or dismiss pursuant to 735 ILCS 5/2-615 challenges only the legal sufficiency of a pleading. *Jarvis v. South Oak Dodge, Inc.*, 201 Ill. 2d 81, 85 (2002). The central inquiry is whether the allegations, when considered in the light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted. *Id.* at 86. In reviewing the sufficiency of a claim, a court must accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts. *Tedrick v. Cmty. Res. Ctr., Inc.*, 235 Ill. 2d 155, 161 (2009). The court may only consider the allegations of the pleading and the attached exhibits. *Haddick v. Valor Ins.*, 198 Ill. 2d 409, 413-14 (2001). A pleading should not be dismissed unless it appears there is no set of provable facts that would entitle the plaintiff to recovery. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006).

A motion to dismiss pursuant to 735 ILCS 5/2-619(a) admits the legal sufficiency of the plaintiff's claim but asserts an "affirmative matter" outside of the pleading that defeats the claim. *Czarobski v. Lata*, 227 Ill. 2d 364, 369 (2008). "Affirmative matter" is something in the nature of a defense that negates an alleged cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint. *Fancher v. Central Ill. Pub. Serv. Co.*, 279 Ill. App. 3d 530, 534 (5th Dist. 1996). 735 ILCS 5/2-619(a)(5) provides for involuntary dismissal if an action was not commenced within the time provided by law. A dismissal pursuant to section 2-619 is proper when a movant's showing of undisputed facts would entitle the movant to judgment as a matter of law. *Webb v. Damisch*, 362 Ill. App. 3d 1032, 1037 (1st Dist. 2005).

In sum, under both sections 2-615 and 2-619, all well-pleaded facts in the complaint are taken as true, and all allegations supporting documents are considered in the light most favorable to the plaintiff. *See Johannesen v. Eddins*, 2011 IL App (2d) 110108, ¶ 29; *Piser*, 405 Ill. App. 3d at 345; *Oldendorf*, 322 Ill. App. 3 at 828. The primary difference, however, is that a section 2-615 motion disputes the legal sufficiency of the complaint, while a section 2-619 motion admits that the complaint is legally sufficient and, instead, argues that the plaintiff's claim is

defeated by some other defect or defense. *See Johannesen,* 20121 IL App (2d) 110108, ¶¶ 27-29. Thus, in analyzing a section 2-619.1 motion to dismiss, the better practice is for the court to entertain the movant's section 2-615 arguments first, and then, only after a legally sufficient cause of action has been found, entertain the movant's section 2-619 arguments and supporting evidence. *Id.* ¶ 29.

Discussion

Because the claims against the corporate defendants for aiding and abetting are premised on liability by the Board, the court will first address the individual defendants' motion before moving on to the corporate defendants' motion.

The Individual Defendants' Motion to Dismiss

For their first count, plaintiffs allege that individual Board members violated their duties of loyalty, care, and good faith. In its motion to dismiss, the Board argues that plaintiffs' allegations do not satisfy the elements of their claim for breach of the duty of loyalty[1] and due care. There are two avenues by which plaintiffs may sustain a claim for breach of loyalty: the complaint may allege that a majority of the Board was not both disinterested and independent or the complaint may allege that the Board did not act in good faith. *In re BJ's*, 2013 Del. Ch. LEXIS 28 at *20.

As to the first avenue, the Board asserts that it was both disinterested and independent. Courts have stated that a director is only interested if "he or she will receive a personal financial benefit that is not equally shared by the stockholder." *In re Alloy, Inc.*, 2011 Del. Ch. LEXIS 159, at *24 (Del. Ch. 2011). A director is independent unless the pleadings show "extraneous considerations or influences" affected his or her judgment. *In re BJ's*, 2013 Del Ch. LEXIS 28 at *20. "Allegations of mere personal friendship or a mere outside business relationship, standing alone, are insufficient to raise a reasonable doubt about a director's independence." *Beam ex rel. M. Stewart Living v. Stewart*, 845 A.2d 1040, 1050 (Del. 2004).

Plaintiffs contend that the Board was self-interested and dependent, focusing in particular on the actions of Sanjay Jha. The second amended complaint alleges that Jha was self-interested and lacked independence in three ways. First, plaintiffs allege that Jha received an enormous "golden parachute" package upon the completion of the acquisition. Second, Jha was allegedly given differential treatment in that Google allowed him to rollover his MMI stock option to Google stock. Third, Jha and Ninivaggi were allegedly controlled by MMI's largest individual stockholder, Carl Icahn.

The Board responds by noting that even if plaintiffs' allegations were true, none of them would impair Jha's disinterest or independence. First, the Board argues that Jha's "golden parachute" package would not create a conflict; Jha's option would vest upon sale of the company, no matter when or for what price. The court agrees, noting that vesting stock options

[1] The duty of loyalty encompasses the duty of good faith. *See In re BJ's Wholesale Club, Inc.*, 2013 Del. Ch. LEXIS 28 at *20 (Del. Ch. 2013).

are standard practice in mergers and that it would give Jha greater incentive to seek the highest price possible. *See Globis Partners, L.P. v. Plumtree Software, Inc.*, 2007 Del. Ch. LEXIS 169, at *29 (Del. Ch. 2007) (holding that accelerated vesting options do not create a conflict because the "interests of the shareholders and directors are aligned in obtaining the highest price.") Moreover, as alleged in plaintiffs' complaint, "much of Jha's compensation for the Merger consisted of 'inducement grants in connection with his initial hiring.'" (2d Am. Compl. ¶ 97) Therefore, plaintiff's golden parachute allegations do not support their breach of duty of loyalty claim.

The Board next contends that Jha's rollover option would likewise give him reason to seek the highest price in the merger and that Google gave him no differential treatment because any stockholder could simply purchase Google stock with cash after the sale was complete. Defendants argue that this detail was not of sufficient material importance to make it improbable that Jha could perform his duties without being influenced by personal interest. *See In re Alloy*, 2011 Del. Ch. LEXIS 159, at *32. However, drawing reasonable inferences in favor of the non-moving party, the court finds that Jha arguably could have been influenced by this benefit. Presumably, there is a difference between a cash tender and a stock rollover or else Jha would not have negotiated for it. The court further notes that the time difference between when a shareholder would receive funds from the acquisition, thereby allowing him or her to buy Google stock on the open market, and Jha's instantaneous exchange of stocks could result in a favorable exchange for him, thus upsetting his ability to negotiate in the best interest of the shareholders. On the other hand, Jha already stood to make an enormous amount of money through the merger and it is unlikely that the incremental advantage a stock rollover would provide would impair his loyalty. Therefore, the court does not find that plaintiffs' rollover allegation, by itself, supports a claim for breach of Jha's duty of loyalty.

However, plaintiffs' allegations that Jha and Ninivaggi lacked independence does support their claim for breach of duty of loyalty. A director's duty of loyalty can be subverted by his or her responsibility to a third party. *In re Answers,* 2012 Del Ch. LEXIS 76, *22 (Del. Ch. 2012). In *Answers*, the court was faced with a situation in which a board's interest and dependence satisfied a duty of loyalty claim. *Id.* at *38. In *Answers*, the court recognized one board member was self-interested and two others, who were controlled by a large shareholder, were motivated by that shareholder's interest in liquidity. *Id.* at *22. The court credited assertions that the controlling shareholder's interest in cashing out was sufficient to create a conflict in the controlled directors. *Id.* Here, plaintiffs allege both that Jha and Ninivaggi were under the control of Carl Icahn and that Icahn sought to free himself from an unprofitable investment. Therefore, the court finds that plaintiffs have sustained their pleading burden in alleging Jha and Ninivaggi breached their duty of loyalty.

Even though the court finds the complaint contains sufficient allegations that Jha and Ninivaggi were dependent, a sufficiently pleaded breach of loyalty claim would require allegations indicating a *majority* of the Board was compromised. The complaint only alleges personal interest by Jha and Ninivaggi and says nothing about conflicts pertaining to the remaining directors. Plaintiffs offer nothing to contest this assertion. Therefore, the court finds that the second amended complaint does not sufficiently plead that the Board, as an entity, breached its duty of loyalty due to self-interest or lack of independence.

While plaintiffs' allegations do not state a claim via the disinterested and independent prong of the duty of loyalty test, the second amended complaint must also be evaluated to determine whether it states a claim for breach of duty of loyalty through the bad faith prong. A claim for bad faith must allege that a director "intentionally acts with a purpose other than that of advancing the best interests of the corporation, acts with the intent to violate applicable positive law, or intentionally fails to act in the face of a known duty to act, demonstrating a conscious disregard for his duties." *Sherman v. Ryan*, 392 Ill. App. 3d 712, 730 (1st Dist. 2009). A claim for bad faith must fail if there is any other plausible, legitimate explanation. *In re Alloy*, 2011 Del. Ch. LEXIS 159, at *45. Furthermore, to show bad faith, a complaint must plead facts showing that the directors "knowingly and completely failed to undertake their responsibilities." *Wayne Cnty. Emp. Ret. Sys. v. Corti*, 2009 Del. Ch. LEXIS 126, at *34 (Del. Ch. 2009).

Plaintiffs contend that the Board failed to act in good faith based on the Delaware Supreme Court's holding that a board must try to obtain the best sale price for the stockholders. *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A. 2d 173, 182 (Del. 1986). The court in *Revlon* held that a board of directors' duty changes when the sale of the corporation becomes imminent. *Id.* In *Revlon*, a board of directors first initiated measures to protect its company, issuing notes which would vest at a higher price in the event of a hostile takeover. *Id.* at 177. Upon the success of those measures, the board sold the company through a flawed auction. *Id.* at 182. The board impermissibly tipped the scales in favor of a purchaser whose offer would honor the notes issued earlier, shielding the board members from potential liability. *Id.* The court found that members of a board may not consider interests other than those of the stockholders when considering acquisition offers. *Id.* The court established that when sale of the corporation becomes imminent, it is the board's duty to act as an auctioneer charged with getting the best price for the stockholders. *Id.*

Here, plaintiffs' second amended complaint alleges that the Board completely failed to undertake its *Revlon* responsibilities. First, the Board allegedly agreed to deal protection measures including a 3% termination fee, a non-solicitation agreement and a matching rights provision. Second, plaintiffs allege that the Board did not have certain key valuations that would have allowed it to make an informed decision. Third, the second amended complaint alleges that Microsoft approached Jha regarding possible collaboration in the future, which plaintiffs conflate with a potential bid.

The Board responds by arguing that none of their alleged failings rises to the level of bad faith. First, deal protection measures such as the ones between MMI and Google are ordinary in the industry. *See McMillan v. Intercargo Corp.*, 768 A. 2d 492, 505 (Del. 2000). "Deal protection can provide a rational economic incentive for a bidder to offer 'top dollar' for a target company . . . because it can be reasonably confident that its efforts will not be thwarted by a marginally more attractive jumping bid." *Ryan v. Lyondell Chem. Co.*, 2008 Del. Ch. LEXIS 105, at *73 (Del. Ch. 2008). While Google's deal protection measures were significant, they would not preclude MMI from accepting a higher bid from a competitor, in and of themselves. Therefore, the court finds that the deal protection measures do not support plaintiffs' duty of loyalty claims.

Second, the Board maintains that the absence of the Global IP valuation or MMI management's prior valuations of the patent portfolio does not support a finding of bad faith. The Board contends these valuations are not important because of the presumption that directors are knowledgeable about the business and affairs of their company. *In re Walt Disney*, 906 A. 2d 27, 52 (Del. 2006). Moreover, "Delaware corporate fiduciary law does not require directors to value or preserve piecemeal assets in a merger setting." *Ark. Teacher Ret. Sys. v. Caiafa*, 996 A.2d 321, 322 (Del. 2010).

It is also worth noting the complaint alleges that Global IP turned over its analyses to MMI's mangers, not the Directors. (2d Am. Compl. ¶ 85) This is significant because it means there is no basis to infer the Board concealed the Global IP valuation in any way.[2] In fact, the complaint alleges that the Board never received Global IP's analyses. (*Id.* at ¶ 86) However, the complaint fails to allege that the Board knew the Global IP valuation had been conducted at all; and even if it had known, the Board's failure to obtain that report does not, on its own, constitute bad faith.

Indeed, it would appear that the Board sufficiently accomplished its *Revlon* duties by hiring outside financial analysts to value MMI. The complaint states that the Board retained two separate financial analysts to conduct a fairness analysis on the deal. Generally, the fairness opinion of financial advisors "supports a factual inference that the board acted properly when deciding to proceed with a transaction." *In re Alloy*, 2011 Del. Ch. LEXIS 159 at *36. Nowhere in the pleadings do plaintiffs allege that the financial advisors did not utilize the patent portfolio valuations in their fairness analyses. If, as plaintiffs suggest, the advisors did not see the patent portfolio valuations, they were still gathering data with the help of the management, who had access to the Global IP valuation and had performed their own patent valuations in the past. Therefore, there is no reason to think the financial advisors undervalued either the patent portfolio or the company.[3] Furthermore, the Board satisfied its duty in the first place by commissioning two financial advisors to perform a fairness analysis and giving them access to the company's financial information. Thus, the court does not find that the Board exhibited bad faith by not specifically considering certain patent portfolio valuations.

Third, the Board contends that Microsoft's offer to collaborate with MMI does not constitute an indication of Microsoft's interest in acquiring MMI. Jha was not required to inform

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[2] The complaint also alleges that Jha knew of an analysis conducted by Marc Rothman, MMI's Chief Financial Officer, and that he did not furnish this analysis to the Board of to any financial advisors. These allegations are still insufficient to support a claim for bad faith.

[3] Likewise, despite plaintiffs' allegation to the contrary, the court finds that the complaint does not contain sufficient allegations that the financial advisors were self-interested. The complaint alleges that both financial advisers stood to gain from the successful conclusion of the merger, one from a contingent fee agreement and the other from obtaining a higher advisor ranking. The court, however, recognizes that a contingent advisor fee "does not support an inference that [the advisor] intentionally undervalued [the company]." *In re Alloy*, 2011 Del. Ch. 159, at *39. Similarly, the court finds that a rankings boost would not incentivize a financial advisor to misreport a company's value. Thus, the conclusory allegation that the financial advisers were self-interested need not be taken as true for the purposes of this motion. *See Johannesen v. Eddins*, 2011 IL App (2d) 110108 (for the purposes of a motion to dismiss, only well-pleaded allegations are taken as true).

the Board that Microsoft had contacted him because the Board was now tasked with selling the corporation, not with seeking profitable relationships. *See Revlon*, 506 A. 2d at 182.

Finally, plaintiffs contend that even if none of these individual actions constitute bad faith, the sum of the Board's conduct does in fact support a claim for breach of the duty of loyalty. While the court understands that the Board may not have navigated the merger strictly by the book, it recognizes that the decision of "[w]hether it is wise for a disinterested board to take a public approach to selling a company versus a more discreet approach . . . is the sort of business strategy question [courts] ordinarily do not answer." *McMillan*, 768 A. 2d at 505. Further, the Board did not completely fail to fulfil its duties because of the actions it did take in the interest of the stockholders. For instance, plaintiffs' allegation that the Board negotiated the price of the offer from $30 to $40 per share suggests that the Board was properly focused on fulfilling its *Revlon* duties. Further, plaintiffs do not allege any other company submitted a bid for MMI. Indeed, the financial advisors indicated that Google was the company most likely to acquire MMI. Looking at the totality of the complaint, the court finds that there are no facts that plaintiffs may plead which would give rise to a claim for breach of the duty of loyalty.

The Board further argues that its decision is protected by the business judgment rule.[4] The business judgment rule precludes claims against a board of directors in an arms-length transaction when "an informed, uncoerced vote of the disinterested electorate has approved the transaction." *In re Morton's*, 2013 Del. Ch. LEXIS 188, at *17, n.34 (Del. Ch. 2013).

Here, the transaction was approved by 99% of the shareholders. Therefore, the Board argues, they could not have breached their duties to the shareholders when their decision was approved by the general electorate of shareholders. Plaintiffs respond that the business judgment rule should not apply because the shareholders were not adequately informed of the value of the corporation at the time of the merger.

The court finds that, given the extent to which the purchase price exceeded the market price of MMI's stock, the Board's failure to inform stockholders of the patent portfolio valuations did not render stockholders uninformed for the purposes of voting on the merger. Thus, the business judgment rule applies. Even if the complaint adequately stated a claim against the Board, application of the business judgment rule mandates dismissal. *See In re Lukens*, 757 A. 2d 720, 736-37 (Del. Ch. 1999). Therefore, plaintiffs' claim for breach of duty of loyalty is dismissed with prejudice.

Regarding the other corporate fiduciary duty, the Board argues that any duty of care claim set forth by the second amended complaint must fail as a matter of law because of a provision in MMI's articles of incorporation. Section 102(b)(7) of the Delaware General Corporation Law permits stockholders to adopt a provision "eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of

[4] After some confusion in the briefs, it would appear both sides are in agreement that plaintiffs are not seeking separate damages for any allegedly insufficient disclosure to shareholders. What is being argued is the extent to which the Board's potential failure to disclosure may indicate bad faith.

fiduciary duty as a director." MMI has such an exculpatory clause.[5] The court has recognized that a section 102(b)(7) clause in a company's articles of incorporation "bars a claim that is found to only state a due care violation." *Sherman*, 392 Ill. App. 3d at 730. Since the present case is for monetary damages against MMI's board of directors, the exculpatory clause bars any claims of breach of duty of care. Thus the court finds that plaintiffs are unable to plead facts which would establish a cause of action for breach of duty of due care and any such claim is dismissed with prejudice.

The Corporate Defendants' Motion to Dismiss

The claims against the corporate defendants, MMI and Google, only allege that they aided and abetted the Board in its breach of duty of loyalty. The corporate defendants move to dismiss on several bases, arguing, among other things, that they cannot aid and abet the Board if the Board never breached its duty. As the court has found that the complaint did not sufficiently allege the Board breached a fiduciary duty, the court finds there is no set of facts plaintiffs could allege that would entitle them to relief. Therefore, plaintiffs' claim against the corporate defendants is dismissed with prejudice.

WHEREFORE, both defendants Sanjay K. Jha, John E. Barfield, William R. Hambrecht, Jeanne P. Jackson, Keith A. Meister, Thomas J. Meredith, Dianie A. Ninivaggi, James R. Stengel, Anthony J. Vinciquerra, and Andrew J. Viterbi's Motion to Dismiss is granted and defendants Motorola Mobility Holdings, Inc. and Google, Inc.'s Motion to Dismiss is granted in that plaintiffs' complaint is dismissed with prejudice pursuant to 735 ILCS 5/2-615.

ENTERED
JUDGE DAVID B. ATKINS

OCT 02 2014

Circuit Court-1879
Judge David Atkins

The Court.

[5] Article 7 of MMI's Certificate of Incorporation provides:

> A director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such an exemption from liability or limitation thereof is not permitted under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended.