

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

IN RE SILICONIX INCORPORATED ) CONSOLIDATED  
SHAREHOLDERS LITIGATION ) C. A. No. 18700

SILICONIX INCORPORATED'S ANSWERING BRIEF  
IN OPPOSITION TO PLAINTIFFS' OPENING BRIEF IN SUPPORT OF THE  
MOTION FOR PRELIMINARY INJUNCTION

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Dated: June 13, 2001

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## NATURE AND STAGE OF THE PROCEEDINGS

In this preliminary injunction proceeding, the plaintiffs bear the burden to demonstrate their likelihood of prevailing on the merits, that they will actually suffer irreparable harm in the absence of injunctive relief, and that the balance of hardships tips in their favor. A hearing on their application is scheduled for June 15, 2001 at 10:00 a.m.

On February 23, 2001, the first of ten actions was filed in the Delaware Court of Chancery challenging a tender offer ("Tender Offer") made by Vishay TEMIC Semiconductor ("Vishay") for the outstanding shares of common stock of Siliconix incorporated ("Siliconix"). Vishay is Siliconix's majority stockholder.

On May 22, 2001, the Court of Chancery consolidated all the Delaware actions challenging the Tender Offer. The parties then undertook discovery pursuant to an agreed-upon scheduling order. Plaintiffs filed their opening brief in support of their application for a preliminary injunction on June 11, 2001. This is Siliconix's answering brief in opposition to plaintiffs' request for injunctive relief.

## STATEMENT OF FACTS

For the convenience of the Court, Siliconix summarizes the causes of action set forth in the verified amended complaint (“Complaint”) and respectfully refers the Court to the statement of facts contained in the answering briefs of co-defendants for a comprehensive statement of the facts developed incident to the June 15 hearing.

The Complaint has six counts. None of them state a claim under Delaware law against Siliconix:

- Count I alleges that “Vishay owes the minority stockholders of Siliconix a fiduciary duty to pay a fair price” in connection with the Tender Offer. (Compl. ¶ 79.) This Count attacks the offeror’s actions and does not allege wrongdoing on the part of Siliconix.

- Count II alleges that “defendants have engaged in unfair dealing”. (Compl. ¶ 86.) The acts alleged to constitute unfair dealing are not alleged to have been taken by Siliconix. (Id.)

- Count III alleges that “defendants breached their duty of disclosure.” (Id. ¶ 92.) As more fully set forth below, Siliconix, owes no such duty to plaintiffs.

- Count IV alleges that Vishay “aided and abetted” a breach of fiduciary duties by the Individual Defendants. (Id. ¶¶ 97-99.) This count alleges no wrongdoing on the part of Siliconix.

- Count V alleges breaches of fiduciary duties by the Individual Defendants. This count alleges no wrongdoing on the part of Siliconix.

- Count VI purports to assert a claim for waste derivatively on behalf of Siliconix against Vishay and the Individual Defendants. This count alleges no wrongdoing on the part of Siliconix.

**QUESTION PRESENTED**

- I. CAN PLAINTIFFS SHOW LIKELIHOOD OF SUCCESS ON THE MERITS OF ANY STATE LAW CLAIM AGAINST A CORPORATION THAT OWES PLAINTIFFS NO FIDUCIARY DUTY?

## ARGUMENT

### **I. PLAINTIFFS CANNOT SHOW THE LIKELIHOOD OF SUCCESS ON THE MERITS OF ANY CLAIM AGAINST SILICONIX BECAUSE A CORPORATION OWES ITS SHAREHOLDERS NO FIDUCIARY DUTY**

#### **A. Applicable Standard**

It is well-established that a preliminary injunction only may be granted where Plaintiffs satisfy their heavy burden to (i) demonstrate a reasonable probability of success on the merits at trial, (ii) prove a reasonable probability of irreparable harm in the absence of such relief, and (iii) convince this Court that, after balancing the relative hardships to the parties involved, the harm to Plaintiffs if preliminary injunctive relief is denied outweighs the harm to defendants if such relief is granted. See, e.g., Mills Acquisition Co. v. Macmillan, Inc., Del. Supr., 559 A.2d 1261, 1278-79 (1989); Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., Del. Supr., 506 A.2d 173, 179 (1986).

This brief addresses only item (i) above and demonstrates that plaintiffs cannot prevail on the merits of any claim against Siliconix because Siliconix owes plaintiffs no fiduciary duties. As to items (ii) and (iii) and additional reasons that plaintiff cannot demonstrate a probability of success on the merits, Siliconix respectfully refers the Court to the answering briefs of the other defendants.

#### **B. Siliconix Owes No Duty to Plaintiffs**

As summarized in the fact section above, the Complaint alleges only one claim that could even arguably be read as a claim against Siliconix – a breach of the duty to disclose.



It is settled Delaware law, however, that the corporation, in this case Siliconix, owes no fiduciary duty to its stockholders, including any duty to disclose. Arnold v. Society for Savings Bancorp, Inc., Del. Supr., 678 A.2d 533, 539 (1996); Turner v. Bernstein, Del. Ch., C.A. No. 16190, 1999 WL 66532, Jacobs, V.C., slip op., at 14-20 (Feb. 9, 1999)<sup>1</sup>; Emerald Partners v. Berlin, Del. Ch., C.A. No. 9700, 1995 WL 600881, Steele, V.C., mem. op. at 20 (Sept. 22, 1995), aff'd in part rev'd in part on other grounds, Del. Supr., 726 A.2d 1215 (1999) (“corporation itself is not liable for a breach of fiduciary duties by its directors”); Gaffin v. Teledyne, Del. Ch., C.A. No. 5786, 1987 WL 18430, slip op. at 6-7, Harnett, V.C. (Oct. 9, 1987), rev'd on other grounds, Del. Supr., 611 A.2d 467 (1992) (“liability for breach of a director’s fiduciary obligation cannot run against the corporation itself”). Indeed, as plaintiffs recognize, the duty of disclosure “obligates directors” to provide material information. (Open. Br. at 20.) Plaintiffs’ opening brief does not, in fact, argue that Siliconix owed any fiduciary duty to the plaintiffs for any of the counts despite their having named Siliconix as a defendant in the Complaint. (Compl. ¶ 6.) Plaintiff therefore cannot demonstrate a likelihood of success on the merits for any claim against Siliconix, and their request for injunctive relief against Siliconix should be denied.<sup>2</sup>

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<sup>1</sup>Unreported decisions are attached hereto in alphabetical order starting at Exhibit A.

<sup>2</sup>If the case proceeds at all beyond the preliminary injunction phase, Siliconix should be dismissed from the action, apart from its limited role as a nominal party under Count VI of the Complaint.

CONCLUSION

For the foregoing reasons and those contained in the briefs of its co-defendants, Siliconix respectfully requests that this Court deny Plaintiffs' motion for a preliminary injunction.

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