Trueblood v Culp
2019 NY Slip Op 32091(U)
June 29, 2019
Supreme Court, New York County
Docket Number: 655552/2018
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREA MASLEY, *Justice* — PART IAS MOTION 48EFM

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MICHAEL TRUEBLOOD, GRANT SEABROOKE,

Plaintiff,

- v -

H. CULP, SEBASTIEN BAZIN, W. BEATTIE, JOHN BRENNAN, FRANCISCO D'SOUZA, EDWARD GARDEN, THOMAS HORTON, RISA LAVIZZO-MOUREY, JAMES MULVA, LESLIE SEIDMAN, JAMES TISCH, MARIJN DEKKERS, JOHN FLANNERY, PETER HENRY, SUSAN HOCKFIELD, JEFFERY IMMELT, ANDREA JUNG, ROBERT LANE, ROCHELLE LAZARUS, LOWELL MCADAM, STEVEN MOLLENKOPF, JAMES ROHR, MARY SCHAPIRO, JAMIE MILLER, JEFFREY BORNSTEIN, JAN HAUSER, GENERAL ELECTRIC COMPANY

Defendant.

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INDEX NO. 655552/2018

MOTION DATE

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 26

were read on this motion to/for DISMISS.

In this shareholder derivative action, defendants move, pursuant to CPLR 3211 (a) (3) and (a) (7) and Business Corporation Law § 626 (c), for an order dismissing the complaint. For the reasons set forth below, the motion is granted.

Background

The following facts are alleged in the complaint, unless otherwise noted, and for the purposes of this motion to dismiss are accepted as true.

Plaintiffs Michael Trueblood and Grant Seabrooke are shareholders in nominal defendant General Electric Company (GE) (NYSCEF Doc. No. (NYSCEF) 12, affirmation of defendants' counsel, exhibit A [complaint], ¶¶ 14-15).

GE is a New York corporation with its principal office in Boston, Massachusetts (*id.*, ¶ 16). Defendants H. Lawrence Culp, Jr., Sébastien N. Bazin, W. Geoffrey Beattie, John J. Brennan, Francisco D'Souza, Edward P. Garden, Thomas W. Horton, Risa Lavizza-Mourey, James J. Mulva, Leslie F. Seidman, James S. Tisch, Marijn E. Dekkers, John L. Flannery, Peter B. Henry, Susan Hockfield, Jeffrey R. Immelt, Andrea Jung, Robert W. Lane, Rochelle B. Lazarus, Lowell C. McAdam, Steven M. Mollenkopf, James E. Rohr, and Mary L. Schapiro (collectively, the Director Defendants) are either current or former members of GE's board of directors (the Board) and the committees, including the Audit Committee, the Finance & Capital Allocation Committee, the Governance & Public Affairs Committee, the Management Development & Public Affairs Committee, and the Risk Committee, charged with overseeing GE's business operations (*id.*, ¶¶ 17-39). Culp presently serves as GE's chief executive officer and chair of GE's Board (*id.*, 17), and Immelt and Flannery had previously served in those same capacities (*id.*, ¶¶ 29 and 32).

Defendant Jamie S. Miller has been GE's chief financial officer since November 1, 2017, and defendant Jeffrey Bornstein served in that same capacity from July 2013 until November 1, 2017 (*id.*, ¶¶ 40-41). Defendant Jan Hauser was GE's chief accounting officer from April 2013 until September 10, 2018 (*id.*, ¶ 42). Apart from Culp, Immelt, Flannery, Miller, Bornstein and Hauser, none of the other named defendants have been GE employees.

GE is a global diversified technology and financial services company (*id.*, ¶ 45). GE Power is a wholly-owned subsidiary of GE that builds and operates power plants, turbines and generators (*id.*). GE Power is responsible for approximately 30% of GE's

total revenues (*id.*, ¶ 46). As part of an ongoing effort to refocus its business, GE acquired Alstom Power (Alstom), a French power conglomerate, for $13.7 billion in November 2015 (*id.*, ¶¶ 3-4). It is alleged that GE anticipated the "synergies" from the Alstom acquisition would generate revenues, profits and cash flow (*id.*, ¶ 5), including an increase in earnings per share between $0.05 to $0.08 in 2016, and $0.15 to $0.20 by 2018 (*id.*, ¶ 49).

Plaintiffs claim, however, that the benefits expected from the Alstom acquisition never materialized (*id.*, ¶ 51), and that as of September 30, 2017, the Director Defendants and Miller, Bornstein and Hauser (collectively, defendants) knew that GE Power's goodwill, then valued at $25 billion, had been impaired but refused to correct GE's balance sheet (*id.*, ¶ 56). It is alleged that defendants ignored numerous warnings that GE Power faced declines in cash flow and worsening downward trends in the energy industry, as evidenced by GE Power's adoption of cost-cutting measures in early 2017 because of increased pressures in the energy industry (*id.*, ¶¶ 8 and 56).

According to a 2017 Form 10-K filed with the Securities and Exchange Commission (SEC) on December 31, 2017, GE reported performing an annual impairment test for goodwill, and found that the fair values for all reporting units, save its "Power Conversion" reporting unit within GE Power, exceeded their carrying values (*id.*, ¶ 62). GE attributed this result to a decrease in core profits "extended downturns in certain of its customer service segments . . . increased pricing and cross pressures in low margin renewable markets, and the delayed introduction of new technologies and products" (*id.*). GE reported that it also performed a two-step analysis of the Power Conversion reporting unit, which resulted in a non-cash, third quarter loss of $947

million in goodwill to its implied fair value (*id.*). Because of the results from the third-quarter test, GE completed an interim impairment test on the Power Conversion unit the next quarter and determined that there was an additional impairment loss of $217 million in goodwill (*id.*). An interim fourth quarter impairment test of the "Grid Solutions" reporting unit, which was formed within GE Power after the Alstom transaction, found no impairment of goodwill to that unit, but GE warned that "there could be an impairment in the future as a result in changes of certain assumptions . . . [if the] expected synergies of the acquisition with Alstom are not realized" (*id.*). The Grid Solutions reporting unit represented 5% of GE's total goodwill as of December 31, 2017 (*id.*). GE also reported that a decline in the power market led it to perform an interim step-one analysis of the "Power Generation" reporting unit of GE Power (*id.*). Although the test revealed a decline in fair value, the fair value remained in excess of its carrying value (*id.*).

Plaintiffs allege that despite these clear warnings, defendants either failed or refused to write down GE Power's goodwill (*id.*, ¶¶ 51 and 63). Generally Accepted Accounting Principles (GAAP) call for annual testing of goodwill, but upon the happening of a triggering event, goodwill must be tested more frequently so that corrective action may be taken (*id.*, ¶¶ 57 and 64). In this instance, plaintiffs claim that these warnings should have prompted GE to perform interim goodwill impairment testing. Plaintiffs allege that defendants elected to maintain inflated values for GE Power's goodwill at $23.16 billion and $25.886 billion through the first two quarters of 2018 until October 28, 2018, when GE announced a goodwill impairment charge of $23 billion to GE Power (*id.*, ¶¶ 51 and 63-65). This announcement caused the value of GE's stock to fall, Moody's to downgrade GE's credit rating, and the SEC and the

Department of Justice to expand their investigations into GE's accounting practices (*id.*, ¶ 65). GE is presently the subject of numerous civil lawsuits (*id.*, ¶ 77).

Plaintiffs maintain that defendants breached their fiduciary obligations of loyalty and good faith by failing to prudently oversee GE's operations and improperly inflating GE Power's goodwill. Notably, the Audit Committee was charged with reviewing the corporation's financial statements and activities, including the Alstom purchase accounting practices (*id.*, ¶¶ 72-73), yet that committee's members failed to address the fair value of GE Power in view of GE Power's financial difficulties (*id.*, ¶ 71). Instead, defendants purportedly enabled GE to misrepresent GE Power's fair value, goodwill and lack of impairments (*id.*, ¶ 76).

Plaintiffs commenced this action seeking damages for breach of fiduciary duty and waste of corporate assets. Plaintiffs admit that they have not served a demand upon the Board to investigate the allegations concerning GE Power because such a demand would have been futile (*id.*, ¶ 84). Defendants move pre-answer for dismissal of the complaint.

The Parties' Contentions

On this motion, defendants argue that the complaint should be dismissed for plaintiffs' failure to plead demand futility with particularity. Defendants contend that 10 of the 11 Director Defendants are outside, disinterested, non-management directors, and it was unreasonable for plaintiffs to conclude that the Board would not have been responsive to a demand. They submit that the complaint contains only conclusory allegations that defendants failed to reasonably inform themselves about GE Power's

operations when, plaintiffs actually allege that defendants were "heavily involved' and "spent a significant amount of time" on the Alstom transaction.

Defendants assert that he "red flags" or "warnings" plaintiffs allege -- GE Power's cost-cutting measures, unspecified reports of pressure within the energy sector and a July 2017 report from "J.P. Morgan" discussing the "deteriorating state of this business" -- were not red flags at all because those concerns were acted upon, as described in the 2017 Form 10-K. Next, defendants refute the allegation that they failed to properly oversee GE's financial activities and statements, arguing that the Board was entitled to rely upon the audits of GE's financial statements performed by KPMG LLP (KPMG), an independent accounting firm, under Business Corporation Law § 717. Finally, defendants argue that the complaint fails to particularize the egregiousness of their actions so as to bar the invocation of the business judgment rule; as for the Director Defendants, Business Corporation Law § 402 (b) precludes the assertion of any claim against them; and, in addition, the allegations were not pleaded with adequate particularity pursuant to CPLR 3016 (b).

Plaintiffs maintain that they have adequately pleaded demand futility. They argue that defendants ignored the decline in GE Power for one and one-half years before the sudden $23 billion write down of goodwill in October 2018 because defendants "either passively rubber-stamped management decisions or joined in decisions so egregious on their face that they cannot have been the product of sound business judgment" (NYSCEF 21, plaintiffs' memorandum of law at 9). Plaintiffs further argue that defendants cannot invoke the business judgment rule as a defense as their actions, or passivity, constitute bad faith in light of their significant involvement in the

Alstom transaction and integration. As for the language in GE's certificate of incorporation, plaintiffs submit that defendants acted in bad faith and intentionally breached their fiduciary duties by repeatedly ignoring the red flags concerning the true state of GE's business.

Discussion

On a motion to dismiss brought under CPLR 3211 (a) (7), the court must "accept the facts as alleged in the complaint as true, accord [the plaintiff] the benefit of every possible favorable inference and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994] [citations omitted]). Allegations that are ambiguous must be resolved in plaintiff's favor (*see JF Capital Advisors, LLC v Lightstone Group, LLC*, 25 NY3d 759, 764 [2015]). A motion to dismiss the complaint will be denied "if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law" (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977] [citations omitted]). However, "the court is not required to accept factual allegations that are plainly contradicted by the documentary evidence or legal conclusions that are unsupportable based upon the undisputed facts" (*Robinson v Robinson*, 303 AD2d 234, 235 [1st Dept 2003]).

A. Demand Futility under Business Corporation Law § 626 (c)

Business Corporation Law § 626 sets forth specific procedures that must be followed in shareholder derivative actions. Importantly, Business Corporation Law § 626 (c) provides that the complaint in any shareholder derivative action "shall set forth with particularity the efforts of the plaintiff to secure the initiation of such action by the board or the reasons for not making such effort." The requirement of a pre-litigation

demand "relieves courts of unduly intruding into matters of corporate governance by first allowing the directors themselves to address the alleged abuses" (*Bansbach v Zinn*, 1 NY3d 1, 9 [2003], *rearg denied* 1 NY3d 593 [2004]).

However, a plaintiff's failure to serve a pre-litigation demand upon the corporation may be excused if making such a demand would be futile (*see Culligan Soft Water Co. v Clayton Dubilier & Rice LLC*, 139 AD3d 621, 621-622 [1st Dept 2016]). The demand requirement is excused where a plaintiff pleads "with particularity that (1) a majority of the directors are interested in the transaction, or (2) the directors failed to inform themselves to a degree reasonably necessary about the transaction, or (3) the directors failed to exercise their business judgment in approving the transaction" (*Marx v Akers*, 88 NY2d 189, 198 [1996]). If any one of these tests is met, the failure to file a pre-litigation demand is excused (*id.* at 200-201). Excusing a pre-litigation demand is an exception, and the Court of Appeals has indicated that "the exception should not be permitted to swallow the rule" that a pre-litigation demand is required (*Matter of Omnicom Group Inc. Shareholder Derivative Litig.*, 43 AD3d 766, 768 [1st Dept 2007], citing *Marx*, 88 NY2d at 200). Therefore, conclusory allegations of wrongdoing are insufficient (*see Glatzer v Grossman*, 47 AD3d 676, 677 [2d Dept 2008] [stating that "it is not sufficient to name a majority of the directors as defendants with conclusory allegations of wrongdoing or control by wrongdoers"]). If a plaintiff fails to plead with particularity that service of a pre-litigation demand should be excused, the complaint must be dismissed (*see Retirement Plan for Gen. Empls. of the City of N. Miami Beach v McGraw*, 158 AD3d 494, 495 [1st Dept 2018]).

Plaintiffs admit that they do not allege demand, but insist that this failure should be excused because the Board was "interested" or that the Board failed to self-inform. Thus, the first and second tests enunciated in *Marx* are inapplicable.

The third *Marx* test requires a plaintiff to plead particularized facts showing that "the challenged transaction was so egregious on its face that it could not have been the product of sound business judgment of the directors" (*Matter of Omnicom Group Inc. Shareholder Derivative Litig.*, 43 AD3d 766, 768 [1st Dept 2007], quoting *Marx*, 88 NY2d at 200-201). "The business judgment rule is a common-law doctrine by which courts exercise restraint and defer to good faith decisions made by boards of directors in business settings" (*40 W. 67th St. Corp. v Pullman*, 100 NY2d 147, 153 [2003] [citation omitted]), but the rule will not protect directors who "passively rubber-stamp[ ] the acts of active corporate managers" (*Matter of Comverse Tech, Inc.*, 56 AD3d at 56, citing *Barr v Wackman*, 36 NY2d 371, 381 [1975]). The complaint must "allege facts, such as self-dealing, fraud or bad faith" to show that the subject transaction "could not have been the product of sound business judgment" (*see Goldstein v Bass*, 138 AD3d 556, 557 [1st Dept 2016]; *Lewis*, 227 AD2d at 596]; *see generally Auerbach v Bennett*, 47 NY2d 619, 631 [1979]). Nonconclusory allegations of bad faith or self-dealing are insufficient (*see Kassover v PCP-GCC Holdingco II LLC*, 73 AD3d 626, 629 [1st Dept 2010]), *lv dismissed*, 15 NY3d 820 [2010], *lv dismissed* 15 NY3d 821 [2010]). Thus, "[s]o long as the corporation's directors have not breached their fiduciary obligation to the corporation, 'the exercise of [their powers] for the common and general interests of the corporation may not be questioned, although the results show that what they did was unwise or inexpedient'" (*Matter of Levandusky v One Fifth Ave. Apt. Corp.*, 75

NY2d 530, 538 [1990] [internal quotation marks and citation omitted]). Nevertheless, "it is the 'rare case[ ] [in which] a transaction may be so egregious on its face that board approval cannot meet the test of business judgment'" (*Stein v Immelt*, 472 Fed Appx 64, 66 [2d Cir 2012], quoting *Wandel v Eisenberg*, 60 AD3d 77, 82 [1st Dept 2009]).

A close reading of the complaint reveals that plaintiffs did not plead any specific, particularized factual allegations of self-dealing, fraud or bad faith on the part of defendants (*see Goldstein*, 138 AD3d at 557), or that defendants' delay in performing timely goodwill impairment tests, or in announcing a goodwill impairment charge related to GE Power was "so egregious on its face that it could not have been the product of sound business judgment of the directors" (*Marx*, 88 NY2d at 200-201).

First, plaintiffs have not claimed that defendants personally benefited from the transaction or that their decisions were affected by "a conflict of interest or the self-dealing necessary to overcome the business judgment rule" (*Kassover v Prism Venture Partners, LLC*, 53 AD3d 444, 450 [1st Dept 2008], citing *Auerbach*, 47 NY2d at 629).

Likewise, plaintiffs have not articulated a claim that the goodwill impairment charge was tainted by fraud related to GE's accounting practices. Under Business Corporation Law § 717 (a) (2), a director may "rely on information, opinions, reports or statements including financial statements and other financial data, in each case prepared or presented by . . . public accountants or other persons as to matters which the director believes to be within such person's professional or expert competence." In this instance, GE retained KPMG to audit GE's financial statements, and KPMG issued audit opinions on February 24, 2017 and February 23, 2018 and (NYSCEF 13, affirmation of defendants' counsel, exhibit B at 2; NYSCEF 14, affirmation of

defendants' counsel, exhibit C at 2). Plaintiffs appear to concede that defendants' reliance on the KPMG audit opinions was reasonable (NYSCEF 21, plaintiffs' memorandum of law at 15). The complaint also referred to a previous charge of accounting fraud by the SEC related to GE's financial statements (complaint, ¶ 79), but the press release furnished by defendants shows that the charge was unrelated to GE Power (NYSCEF 18, affirmation of defendants' counsel, exhibit G at 1). Plaintiffs' have not supplemented their conclusory allegations about accounting fraud with any specific facts.

Additionally, "[e]stimates of goodwill depend on management's determination of the 'fair value' of the assets acquired and liabilities assumed, which are not matters of objective fact" (*Fait v Regions Fin. Corp.*, 655 F3d 105, 110 [2d Cir 2011] [citations omitted]). While plaintiffs argue that defendants overinflated the value of GE Power's goodwill, the complaint did not "plausibly allege that defendants did not believe the statements regarding goodwill at the time they made them" (*id.* at 112 [concluding that misstatements of goodwill reflected the defendant's opinion and therefore were not actionable under sections 11 and 12 of the Securities Act of 1933 (15 USC §§ 77k and 77l)]; *see also City of Omaha v CBS Corp.*, 679 F3d 64, 68 [2d Cir 2012] [stating that the corporation's "overly optimistic views regarding its overall business outlook . . . do not plausibly demonstrate that defendants knew, nor even had reason to know . . . that interim impairment testing would reveal that the goodwill . . . was overvalued"]).

Further, plaintiffs have failed to allege any specific instances where the Director Defendants acted in bad faith or include an allegation that could plausibly be read to infer bad faith. There are no allegations of conduct by the Director Defendants that they

were acting for a purpose unaligned with the best interest of the corporation (*see Foley v D'Agostino*, 21 AD2d 60, 66 [1st Dept 1964] [holding that, to act in good faith, directors "may not assume and engage in the promotion of personal interests which are incompatible with the superior interests of their corporation"]). The complaint does not contain any particularized statements that defendants served interests other than GE's interests.

Similarly, the allegations are inadequate to plausibly infer that defendants' actions, or passivity, in refusing to perform a timely interim goodwill impairment test and reporting a false value of goodwill, were the product of "'knowing' misconduct" (*Levy v Huszagh*, 2012 WL 4512038, *4, 2012 US Dist LEXIS 144831, *11 [SD NY, Sept. 28, 2012, No. 11-CV-3321 (JS) (GRB)]). Rather, plaintiffs' own allegations belie their claims of passivity or inaction regarding the warnings or red flags about GE Power (*see Matter of Falconstor Software Inc.*, 39 Misc 3d 916, 934 [Sup Ct, Suffolk County 2013], *appeal dismissed Walter v FalconStor Software, Inc.*, 126 AD3d 885 [2d Dept 2015] [stating that the complaint lacked "particularized facts that the FalconStor directors knew of the violations, or that they were provided with any red flags to support an assertion that they consistently refused to exercise proper oversight"]; *Brewster v Lacy*, 2004 WL 5487868 [Sup Ct, NY County, June 21, 2014, Moskowitz, J., Index No. 603873/2002], *affd* 24 AD3d 136 [1st Dept 2005] [finding that the plaintiff failed to plead specific facts that the director defendants acted wrongfully or recklessly or willfully ignored red flag warnings]; *cf. Matter of Bank of New York Derivative Litig.*, 2000 WL 1708173, *2, 2000 US Dist LEXIS 16502, *5 [SD NY, Nov. 14, 2000, No. 99-CV-9977 (DC)] [finding that the complaint included "numerous specific examples of publicly available and other

information that plaintiffs contend should have put the individual defendants on notice . . . that the Bank was being exposed to unacceptable risks"]).

Here, plaintiffs allege that the Board's lead director, Brennan, had stated publicly that the Board had spent significant time on the Alstom acquisition, including monitoring the integration and transition of Alstom's assets into GE (complaint, ¶¶ 50 and 55). Despite the Board's involvement, it is alleged that defendants either failed or refused to correct GE's balance sheet when the expected synergies from the Alstom acquisition did not occur (*id.*, ¶ 51). The complaint identifies GE Power's decline in cash flow beginning in early 2017 as the "trigger event" that should have led GE to conduct more frequent goodwill impairment tests as opposed to an annual test during the third quarter (*id.*, ¶¶ 56-58).

However, plaintiffs also allege that defendants took remedial action once they learned of GE Power's difficulties, as evidenced in the 2017 Form 10-K. In addition to the annual testing recommended under GAAP, GE performed interim testing for goodwill impairment on several reporting units within GE Power (*id.*, ¶ 62). GE took these actions after J.P. Morgan had issued a July 24, 2017 report criticizing GE Power and after the securities fraud lawsuit was filed in November 2017 (*id.*, ¶¶ 60, 77). Therefore, although plaintiffs assert that defendants' neglect of their oversight duties constitutes bad faith, the excerpts from the Form 10-K quoted in the complaint indicate that GE took prompt remedial action. Moreover, GE actually reported a decrease in goodwill between the first and second quarters of 2018 (*id.*, ¶ 52), which suggests that this write down, prior to the later October write down of $23 billion, was a prudent exercise of defendants' oversight responsibilities.

Thus, absent a factual basis suggesting fraud, bad faith or self-dealing, "judicial inquiry into the actions of corporate directors is prohibited, even though 'the results show that what [the directors] did was unwise or inexpedient'" (*Jones v Surrey Coop. Apts., Inc.*, 263 AD2d 33, 36 [1st Dept 1999] [internal quotation marks and citation omitted]). Lastly, the 2017 Form 10-K warned of future impairments in the event the synergies from the Alstom acquisition were not realized (complaint, ¶ 62). Hence, plaintiffs cannot claim surprise at the October 2018 announcement.

Accordingly, defendants' motion seeking dismissal of the complaint based on demand futility is granted.

B. Business Corporation Law § 402 (b)

Business Corporation Law § 402 (b) provides:

> "(b) The certificate of incorporation may set forth a provision eliminating or limiting the personal liability of directors to the corporation or its shareholders for damages for any breach of duty in such capacity, provided that no such provision shall eliminate or limit:
> (1) the liability of any director if a judgment or other final adjudication adverse to him establishes that his acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled or that his acts violated section 719, or
> (2) the liability of any director for any act or omission prior to the adoption of a provision authorized by this paragraph."

The statute plainly allows a corporation to shield a director from liability provided that the director was not engaged in intentional misconduct, bad faith, or a knowing violation of the law (*see Teachers' Retirement Sys. of La. v Welch*, 244 AD2d 231, 231 [1st Dept 1997]).

As is relevant here, section 6 of GE's certificate of incorporation reads, in part:

> "A person who is or was a director of the corporation shall have no personal liability to the corporation or its shareholders for damages for any breach of duty in such capacity except that the foregoing shall not eliminate or limit liability where such liability is imposed under the Business Corporation law of the State of New York"

(NYSCEF 29 at 2). The exculpatory language in GE's certificate of incorporation above has been found to insulate its directors from liability (*see Teachers' Retirement Sys.*, 244 AD2d at 231-232; *accord Bildstein*, 222 AD2d at 546).

Even after affording plaintiffs every favorable inference, as this court must, the complaint does not plead specific, particularized facts sufficient to infer that defendants acted in bad faith, as discussed *supra*, or that they engaged in intentional misconduct or a knowing violation of the law (*see Teachers' Retirement Sys.*, 244 AD2d at 231-232).

In view of the foregoing, the court need not assess whether the complaint should be dismissed for plaintiffs' failure to plead a breach of fiduciary duty cause of action with particularity as required under CPLR 3016 (b).

C. Leave to Replead

Plaintiffs' request for leave to replead is denied as procedurally improper. (See *Bd. of Mgrs. of the Vetro Condominium v 107/31 Dev. Corp.*, 2014 NY Slip Op 32748[U] [Sup Ct, NY County 2014]).

Accordingly, it is

ORDERED, that the motion of nominal defendant General Electric Company and defendants H. Lawrence Culp, Jr., Sébastien N. Bazin, W. Geoffrey Beattie, John J. Brennan, Francisco D'Souza, Edward P. Garden, Thomas W. Horton, Risa Lavizza-Mourey, James J. Mulva, Leslie F. Seidman, James S. Tisch, Marijn E. Dekkers, John L. Flannery, Peter B. Henry, Susan Hockfield, Jeffrey R. Immelt, Andrea Jung, Robert

W. Lane, Rochelle B. Lazarus, Lowell C. McAdam, Steven M. Mollenkopf, James E. Rohr, Mary L. Schapiro, Jamie S. Miller, Jeffrey Bornstein, and Jan Hauser for dismissal of the complaint is granted, and the complaint is dismissed with costs and disbursements as taxed by the Clerk of the Court.

ORDERED that the Clerk is respectfully directed to enter judgment of dismissal accordingly.

This memorandum opinion constitutes the decision and order of the Court.

6/29/19
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION	
	X	GRANTED	DENIED		GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT	REFERENCE