2015 IL App (1st) 140073-U

FOURTH DIVISION
December 24, 2015

No. 1-14-0073

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

STEPHEN D. RUBIN, ELLIS ROSENZWEIG, MICHAEL RUBIN, WENDY RUBIN, MICHELLE SOBEL o/b/o WILLA SOBEL, MICHELLE SOBEL o/b/o LUCY SOBEL, MICHELLE SOBEL, PAUL BRENNER, JASON GORCHOW, GERALD LEVY, THE EDWIN C. GLICKMAN TRUST, RICHARD KONST, JAMES COHN, IRVIN CAPLAN, JAMES RUBIN, JOYCE RUBIN, RONALD L. BOORSTEIN, MARGARET DESHON, RONALD NORINSKY, DAVID GORENSTEIN TRUSTEE OF THE DAVID GORENSTEIN TRUST, ADELE J. GORENSTEIN, TRUSTEE OF THE ADELE J. GORENSTEIN TRUST, JBF ENTERPRISES, HAN SARAH GLICKMAN, MICHAEL KEER, AND NADINE KEER,	)	Appeal from the Circuit Court of Cook County
Plaintiffs-Appellants, Cross-Appellees,	)	Nos. 09 L 15723 10 L 9835
v.	)	
HOWARD E. BEDFORD, CLIFFORD K. BOLEN, DAVID S. LIPSON, EDWARD P. DOLANSKI, ROBERT C. DOUGLAS II, and DAVID T. ALLEN,	)	Honorable Thomas L. Hogan and Sanjay T. Tailor, Judges Presiding
Defendants-Appellees Cross-Appellants.	)	

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Ellis and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Judgment affirmed over plaintiffs' claims that the trial court erred in striking their jury demand and in granting judgment for defendants on claims of negligence and breach of fiduciary duty. Defendants' cross-appeal, alleging error in the trial court's finding that plaintiffs had not breached their fiduciary duties, is also rejected.

¶ 2 Plaintiffs, Stephen D. Rubin *et al.*, (the Rubin parties), are former shareholders in Vita Foods, a company which processes and distributes food products in the United States. The Rubin parties filed claims for breach of fiduciary duty and negligence against the defendant directors (the Vita parties), claiming that they violated their fiduciary duties in connection with the acquisition of Vita Foods' outstanding stock for $1.05 per share in April 2009, by Howard Bedford, the majority shareholder and director. These claims were consolidated with a pending action filed by the Vita parties against Mr. Rubin and John Seramur, claiming that Messrs. Rubin and Seramur had breached their fiduciary duties by not disclosing to the other board members that another company had been interested in acquiring Vita Foods for as much as $3.50 per share in 2007.

¶ 3 Prior to trial in this matter, the Vita parties filed a motion to strike the Rubin parties' jury demand. In that motion, they maintained that a party is not entitled to a jury trial on claims alleging a breach of fiduciary duty. Although the Rubin party had "styled" their complaint to allege claims of both "Breach of Fiduciary Duty" and "Negligence," the Vita parties asserted that a review of the negligence count revealed that it was actually based on a "purported breach of fiduciary duty." Because the negligence count "alleges no duty owed by [the Vita parties] to [the Rubin parties] other than a fiduciary one," the Vita parties maintained that the Rubin parties had "no right to a jury trial," and asked the court to strike their jury demand.

¶ 4 At the subsequent hearing, the parties agreed that a party is entitled to a jury trial for claims based on negligence, but for not claims of breaches of fiduciary duty. The Rubin parties clarified that their two counts were different, in that the breach of fiduciary duty claim was based on "intentional conduct" while the negligence claim was based on "negligent conduct." They maintained that because they had included a claim "based on negligent conduct," their jury demand must be allowed. The Vita parties conceded that the claims were not "duplicative," but contended that both counts "arise[] out of the same duty, meaning a duty of care which is a fiduciary duty." The court agreed, finding that the "duty that is an element of both the breach of fiduciary duty claim and the negligence claim arise from the same source." The court struck the jury demand, and the parties proceeded to a bench trial.

¶ 5 At that trial, the evidence established that prior to 2006, Mr. Rubin was the CEO and largest shareholder of Vita Foods, which was comprised of two divisions: seafood, and "specialty foods" or sauces. The company was struggling financially, and in February 2006, the company required a $3 million cash infusion, which it obtained from a combination of inside and outside investors. One of those investors was Mr. Bedford, a longtime friend of Mr. Rubin, who contributed $1 million in exchange for stock in the company. Mr. Bedford became a member of Vita Food's board of directors, and, in 2007, Vita Foods required another cash infusion to sustain its business. At that time, Mr. Bedford contributed $3 million to the company, again receiving stock in exchange. Also in return for Mr. Bedford's 2007 contribution, Mr. Rubin and Mr. Bedford executed a voting proxy which enabled Mr. Bedford to vote Mr. Rubin's stock in all circumstances, except to remove Mr. Rubin as a director of the company. This proxy agreement gave Mr. Bedford a controlling vote, allowing him to vote the majority of the shares in the company.

¶ 6 In November 2007, the board voted to delist Vita Foods from the American Stock Exchange and trade on the "pink sheets," or the over the counter market. The decision was made based on the significant regulatory expenses associated with being a public company. Robert Douglas, one of the board members, testified the company "wasn't doing very well," and "no one really wanted to do it [delist], but it was costing about $600,000 per year, and given the circumstances of the company at the time, it just didn't seem like money well spent."

¶ 7 In November and December 2008, shares of Vita Foods traded between $0.23 to $0.30 on the pink sheets. Around that time, in late November 2008, Mr. Bedford sent the board of directors an offer to purchase the minority shareholders' outstanding shares for $0.30 per share.

¶ 8 When the board initially got notification that Mr. Bedford was going to make an offer, they created a special committee, comprised of independent board members, to evaluate the offer. The special committee was initially comprised of Mr. Douglas, David Lipson, David Allen and Edward Dolanski, however Mr. Dolanski resigned from the special committee after two meetings due to other work obligations.

¶ 9 Mr. Douglas testified that the special committee "hired Sutter Securities in anticipation of possibly rendering a fairness opinion." However, "[w]hen the bid came in at 30 cents a share, we told them to stop because we were going to reject that 30-cent offer." The special committee then went back to Mr. Bedford and told him that the offer was inadequate, but that they would consider an improved offer.

¶ 10 Thereafter, on December 15, 2008, Mr. Bedford submitted a new proposal of $1 per share. At that point, the special committee had Mr. Matthews of Sutter Securities evaluate the $1 per share offer, and learned that Mr. Matthews thought that price was "more than fair." The special committee then tasked Mr. Lipson with going back to Mr. Bedford to seek a deal at $1.20 per share. Mr. Bedford and the special committee subsequently settled on a price of $1.05 per share. The special committee recommended, and the board approved, acceptance at that price.

The record shows that on the last full trading day prior to the public announcement of the proposed merger, Vita Foods stock closed at a price of $0.30 per share.

¶ 11 Mr. Douglas testified that, as part of the negotiations, the special committee asked for a number of nonmonetary deal requirements, including the approval by a "majority of the minority," meaning that "people other than Mr. Bedford, we wanted to make sure a majority of those people who were disinterested people would also be in favor of the transaction." Initially, Mr. Bedford did not agree to that requirement, but the special committee held firm, and Mr. Bedford eventually acquiesced.

¶ 12 Another requirement which was negotiated by the special committee as part of the transaction was a "go-shop" period. Mr. Douglas explained that a "go-shop period is a period typically allowed after the announcement of a deal for other interested parties to express an interest in the same transaction *** on better terms." There was a 30-day go-shop period for this transaction, which based on Mr. Douglas's experience, was "pretty much the norm."After settling on the terms of the agreement, the merger was announced to the public on February 27, 2009.

¶ 13 In eliciting interest for Vita Foods, Mr. Douglas testified that the special committee "made a conscious decision not to contact direct competitors because Vita *** was an old, extremely well-known company, small. It had what we considered proprietary customer lists, supplier lists, operating information and whatnot. *** [I]f an inquiry would come in, I'm sure we would have followed up on it, but we had to be very careful that the information being disseminated in effect didn't let the toothpaste out of the tube because it would be impossible to put back in." Mr. Douglas explained that this meant that, even if a competitor "signed a nondisclosure agreement, what they did with that information in the conduct of their business possibly to the detriment of Vita was a real risk." He stated, however, that the special committee "made very, very clear that the company was contemplating a transaction, and we would respond and, in fact, did respond to incoming inquiries."

¶ 14 Mr. Douglas testified that the special committee disseminated information to solicit potential interest in Vita using a "three-pronged" approach. First, they issued a press release announcing the pending transaction to attract potential purchasers. The press release was aimed at their direct competitors, and was picked up by Seafax, which was "the trade publication for the fish industry." Second, they came up with "a list of, I believe, six companies that were to be contacted to actively buy the company," and third, they hired an investment banker from Key Bank to solicit offers from a list of ten companies, three of which were Vita Foods' competitors.

¶ 15 Despite these efforts, the potential acquirers contacted showed very little interest in Vita Foods. Mr. Douglas testified that this was in part due to Vita Foods' "two-business nature." He explained that "it would be possible that there would be somebody that would have an interest in the fish business, for example, but knew nothing whatsoever about—about sauce and therefore would eliminate themselves from having any interest." Because of "the legal structure, the financial structure of the company," the special committee did not think it was possible to consummate a transaction involving only one side of the business.

¶ 16 Vita Foods ultimately received two offers during the go-shop period. Terry Hess, the prior owner of the specialty foods division of Vita was contacted, and made an offer for Vita at $1.25 per share, contingent on financing. Mr. Hess, however, later withdrew that offer. Mr. Douglas understood that it had "something to do with the financing" as "[i]t was a very difficult environment" for obtaining financing at that time. There was also an offer of $1.16 per share made by a man by the name of Marvin Sussman. Mr. Douglas testified that the committee asked its legal counsel to "find out what they could about Mr. Sussman because no one had really heard of him, and counsel advised us that they really couldn't find anything about him as well. So we took this to be really sort of an illusory indication. *** We had no reason to believe there was substance to [the offer.]" Mr. Sussman's offer was later withdrawn as well.

¶ 17 Mr. Douglas also testified that one competitor, Trident, asked for more information during the go-shop period. They were given a package of information, and a three-day extension of the go-shop period to determine whether they would make an offer, but "ultimately, nothing materialized."

¶ 18 The record shows that in April 2009, Vita issued a proxy statement to the shareholders, informing them of a meeting set for April 23, 2009, to vote on the proposed merger. In that proxy statement, the shareholders were informed that, pursuant to their "dissenter's rights" under Nevada law, they could choose not to accept the proposed price, and instead seek payment for the "fair value of their shares." At the subsequent meeting, a majority of the minority shareholders voted in favor of the merger.

¶ 19 Mr. Douglas testified that he believed Mr. Bedford's offer was fair at the time he voted to recommend the offer to the board, and "looking back at it," he continued to believe that it was fair. Mr. Douglas testified that "when [Mr. Bedford's] offer came in, we all knew that this had the potential to look like an insider transaction, and I think the board and I certainly know that the special committee was absolutely committed to see that it was going to be an arm's length transaction." Mr. Douglas had no doubt that the special committee had "d[one] it right," "maintained its independence," and "exercised its best judgment." He further testified that Mr. Bedford did not, in any way, "impact[] what the special committee did" and that no interested party "interfered with the work of the special committee, or otherwise influenced the special committee."

¶ 20 Mr. Douglas testified that Mr. Rubin did not bring any offer or interest to his attention from the time the special committee was originated until the deal with Mr. Bedford was completed. Had he been made aware of any other offer or interest, the committee would have investigated it. Mr. Douglas testified that if anyone had been "interested in purchasing the company *** [for] somewhere between 20 and $30 million," the special committee would have entertained and been interested in that kind of offer.

¶ 21 The court then viewed a video deposition of David Lipson, who had passed away during the course of litigation. Mr. Lipson testified that he was retired, but was formerly chairman of the board of directors at Vita Foods. He was a long time friend of Mr. Bedford, who had invited him to join the Vita Board. Mr. Lipson was also the chairman of the special committee, and testified that his relationship with Mr. Bedford had "absolutely" no impact on the work he did in that role.

¶ 22 Mr. Lipson similarly outlined the efforts of the special committee, including that they had hired special counsel and someone to contact prospective purchasers, and had put out an announcement through the PR wire. Mr. Lipson also testified consistently with Mr. Douglas as to the offers received from Mr. Hess and Mr. Sussman, and the extension of the go-shop period for Trident.

¶ 23 Mr. Lipson acknowledged a number of other emails in which he used harsh and foul language either to or about Mr. Rubin. He explained that Mr. Rubin "was a member of the board of directors who, in my opinion and others' opinion, had violated his fiduciary responsibility." When questioned about whether he was upset with Mr. Rubin for contacting competitors to determine if he could get a better offer, Mr. Lipson explained that "the special committee *** voted unanimously not to supply any direct competitors with information about Vita Foods, which included client lists and prices. *** I tried to make it clear that independent activity concerning the sale of the company is effectively prohibited." "[H]is attempts to go out and shop the company himself without notifying the special committee, *** [were] against the rule that we had initially put into place which [was] we would not shop the company to direct competitors." Had "Mr. Rubin ** come to [Mr. Lipson] directly with any sort of legitimate process and offer, [Mr. Lipson] would have *** gone out *** to see if they were actually just trying to obtain information about Vita *** through the due diligence process versus having an actual real offer." Mr. Lipson also explained that he was previously in the Marine Corps, and that sometimes he uses "salty language" when he is frustrated.

¶ 24 Mr. Rubin testified that in November 2008, he had a conversation with Mr. Bedford about taking Vita Foods from a publicly held to a private company. Mr. Bedford "advised [him] that he was taking the company private, and he was willing to take [Mr. Rubin] along with him at the time as his shareholder." Mr. Rubin testified that he had some conversations with Marine Harvest, a Vita Foods competitor, and "then I went to tell [Mr. Bedford] what was going on because I thought he—he had given me permission to do this *** [a]nd then he said no. He said he wasn't interested in talking to anybody, and, you know, said stop."

¶ 25 Mr. Rubin continued to attempt to determine if any other companies were interested in the purchase of Vita, because he "saw what they were doing, *** and I didn't feel that they were going in the right direction to get the best value for the shareholders." He testified that he and Mr. Lipson were not "getting along very well" because "I was—I was interfering with his special committee, I think. *** I was interfering with—in his mind—what they were doing." Mr. Rubin stated that he did not go to Mr. Lipson, as chairman of the special committee with the information about Marine Harvest's interest in purchasing Vita, because "[Mr.] Bedford, as far as

I was concerned, controlled the company, controlled the board of directors, controlled the special committee, and if I told him *** [Mr.] Lipson could not have done anything without talking to [Mr. Bedford] one way or the other."

¶ 26 In February 2009, Mr. Rubin decided that he no longer wished to retain his shares in Vita Foods. Mr. Rubin testified that he "made a voluntary decision *** to sell [his] stock to Mr. Bedford at a dollar-five."

¶ 27 Mr. Rubin acknowledged that he did not tell anyone on the board that Trident was coming in to look at Vita in 2007. Mr. Rubin discussed with Trident the possibility of Trident making an offer for Vita between December 2008 and February 2009. Mr. Rubin initially testified that he discussed this with Mr. Bedford, but after being confronted with his deposition testimony in which he stated that he had not, Mr. Rubin stated, "Then that's correct."

¶ 28 Mr. Bedford testified that prior to his November 2008 offer, he met with Mr. Rubin to tell him that he would be submitting an offer. At that point, Mr. Rubin was going to keep his shares. After submitting the offer, they met again, and Mr. Rubin told Mr. Bedford that that "he had a friend in Florida that may be interested" but Mr. Rubin never identified the friend, or indicated at what price the friend would be interested. Mr. Bedford testified that Raphael Puga of Marine Harvest emailed him after the deal was completed, but testified that he had never spoken to Mr. Puga before the deal was completed. Mr. Bedford denied knowing that anyone was interested in purchasing the company for $34 million, and stated that had he known that such an interest existed, he would have "jumped at it" because he "would have stood to make a lot of money in a short period of time."

¶ 29 Mr. Bedford identified an email he sent to Mr. Rubin on December 11, 2008, which stated that he was "not shopping Vita Foods to the public." Mr. Bedford explained that he was "basically telling [Mr. Rubin] that whatever he has to do, he has to go through the process and use the special committee."

¶ 30 Raphael Puga testified as an expert witness for the Rubin parties. He testified regarding his years of experience in the seafood industry, leading up to his most recent tenure at Marine Harvest, which he described as "the largest salmon farmer in the world."

¶ 31 Mr. Puga testified that he began doing business with Vita Foods "originally selling them raw material, basically selling them raw salmon for them to smoke." Eventually, he started "manufacturing products for them and what's in the industry called private label, where you make a product for somebody with their name." Mr. Puga testified that "that was, like, our first realization of how successful Vita was because our biggest challenge was *** it was such a successful brand that we were getting more orders than we could [fulfill]."

¶ 32 Mr. Puga stated that, based on his experience, Marine Harvest would have paid "[a]nywhere between 20 and $30 million" for Vita Foods in 2006 through the end of 2008, including the assumption of any debts Vita Foods had at the time. That valuation would not include the sauce division because Marine Harvest would not have been interested in that part of the business. Mr. Puga explained that Vita Foods was worth that much because of its sales volume, well-known brand, and shelf space in supermarkets. He testified that "if you look at all these transactions done in the last 20 years, *** most seafood companies that have a brand usually, they are paid *** in the neighborhood of $1 or plus, depending on the brand, per sales revenue."

¶ 33 Mr. Puga testified that Vita Foods' sales were "approximately 25 to $30 million in seafood and something similar in other products, sauces and something else." His valuation of the company's worth was based on a calculation of "one time [Vita's sales], plus assumption of debt." Mr. Puga testified that he was aware that Vita was "not that profitable" in 2007 and 2008, but it did not make a difference to him in terms of what he would have been willing to pay for the company because he believed Marine Harvest would be able to make it profitable, in part by closing a Chicago plant and using their own "smoking operation." He explained that "especially in our industry where we are producers and we owned also [*sic*] smoked salmon operation, *** we do know what our costs would be to produce. So basically, once you know the sales numbers, you can extrapolate those numbers and say, 'Okay. This is the value for us.' "

¶ 34 Mr. Puga testified that in December of 2008, he had conversations with Mr. Rubin about the possibility of selling Vita Foods. He also sent two emails to Mr. Bedford to inquire about purchasing Vita Foods at some point between 2007 and 2010, to which Mr. Bedford responded that he was not interested in selling the company. Mr. Puga could not remember when he sent those emails, and agreed that it could have been in August and September of 2009, after the deal with Mr. Bedford was completed.

¶ 35 Mr. Puga testified that "the idea" for Marine Harvest's possible acquisition of Vita Foods, would have been that "Marine Harvest could have come in and purchased simply the seafood part of the business" because they were not interested in the sauce business. He testified, however, that he was not aware that "if the seafood division was sold off, Vita had a massive unfunded pension liability in the millions of dollars that would have prevented any sale." Mr. Puga was likewise unaware that "Vita's bank debt *** in the tens of millions of dollars, secured both business lines, and they couldn't be separated out." Mr. Puga also acknowledged that he had "no information about Vita's shelf space" after 2006, and that his opinion of it was based on "what [he] saw walking through [his] local supermarket." Mr. Puga also did not know that Vita lost shelf space at a number of major retailers from 2003 to 2007.

¶ 36 Mr. Puga testified that he did not know the fair market value of Vita as of April 2009, and that he had no formal training in accounting, economics, or how to value a company. He acknowledged that he was aware that Vita was "going private" in 2009, that Marine Harvest never made an offer to purchase Vita at any time between 2004 and 2009, and that nothing prevented them from making an offer.

¶ 37 The deposition testimony of Joseph Bundrant, the Executive Vice-President of Trident Seafoods, was read into the record. Mr. Bundrant testified that at some point in time, Trident had an interest in purchasing the Vita seafood business, and Mr. Rubin had "interest in potentially exploring the opportunity for Trident to acquire Vita Foods" as well. In 2007, after signing a confidentiality agreement, Mr. Bundrant and his father, the Trident CEO, visited the Chicago facility of Vita Foods. He did not recall ever actually making an offer, nor did he recall anyone else from Trident making an offer to Mr. Rubin. Mr. Bundrant testified that Vita did not "put up any roadblocks to prevent Trident from making an offer at any time," and, if Trident had wanted to make an offer, they could have done so.

¶ 38 Ronald Boorstein[1] testified that he is a lawyer and friends with Mr. Rubin, who he had represented in a several acquisitions. Around Thanksgiving of 2008, Mr. Rubin consulted with him because he was concerned about "some things that were occurring at Vita." Mr. Boorstein testified that there "were a number of things that he really wasn't free to give me because that *** belonged to the company. *** And I thought the best way to get information regarding the company was to *** become a stockholder. So I purchased a thousand shares for about $600 so that I could get all the information that the company disseminated."

[1] Mr. Boorstein is the attorney representing the Rubin parties in this appeal.

¶ 39 Mr. Boorstein reviewed public information that was available about the company, and learned that Mr. Lipson was the chairman of the committee that was evaluating the sale process. He testified that "it appeared to me **** that they were attempting to justify a sale of stock at a price that I considered considerably less than the value of the company to Mr. Bedford." Mr. Boorstein wrote a letter to Mr. Lipson on March 4, 2009, "to urge him to solicit bids from competitors."

¶ 40 At the end of the Rubin parties' case in chief, the Vita parties made an oral motion for a directed finding in favor of Messrs. Bolen, Allen, Dolanski and Douglas. The court stated that it had "listened to the evidence" and that it did "not think that the Rubin parties have met their burden with respect to Mr. Bolen, Mr. Dolanski, Mr. Douglas and Mr. Allen. Therefore, those four are dismissed from the lawsuit which the Rubin parties have filed against them." The case then continued as to defendants Mssrs. Bedford and Lipson.

¶ 41 The Vita parties called Clifford Bolen, the President and CEO of Vita Foods, who testified that he was formerly on the board of directors. He explained that the seafood division and sauce division could not easily be sold separately from the other, because the bank loans were "cross-collateralized" and "if you went to pull any of the assets out of the company or sell any asset, it would have the entire loan come due." He also testified that it would be impractical to sell just the seafood division because "[i]f the plant in Chicago were shut down, that would trigger an unfunded pension liability *** [of] approximate[ly] $2 million."

¶ 42 Mr. Bolen testified that there were some concerns in connection with the go-shop period, that they would be "handing out confidential financial data. And from my perspective, the concern is that competitors could potentially get information to be used against the company, and that was something that I wanted to protect against and to at least express my concern about."

Nevertheless, the special committee did contact some competitors, including four herring and salmon companies which Mr. Bolen identified. Mr. Bolen also testified that he furnished information to Trident Seafoods at the request of Mr. Lipson.

¶ 43 Mr. Bolen described Seafax as the industry publication that he looks at everyday, and that his peers "[a]bsolutely [look at, too,] first thing in the morning." Mr. Bolen identified the press release announcing the approval of the merger agreement, and testified that it was picked up by Seafax, as well as Yahoo Finance.

¶ 44 Mr. Bolen testified that he did not know that Trident visited Vita Foods' facility, and that the first time he became aware that they had done so was after Mr. Rubin's deposition.

¶ 45 Edward Dolanski testified that he is the president and CEO of a Boeing subsidiary, and was previously a member of the board of directors at Vita Foods. He was a member of the special committee for two meetings until he realized that the time commitment would conflict with his duties at Boeing. He testified that no one influenced the board members at Vita Foods. Mr. Rubin never came to him with information about a competitor being interested in "doing something with Vita," and if he had, he would have referred him to the special committee.

¶ 46 Gilbert Matthews testified as an expert witness that he is an investment banker for Sutter Securities, and is in charge of the "valuation opinions and testimony practice which is responsible for, among other things, fairness opinions." Mr. Matthews provided fairness opinions for Vita Foods in 2006, 2007 and 2009. He described a fairness opinion as "an opinion given to a fiduciary as to the fairness of a particular transaction to a specific group of investors. As in this case, it was given to the shareholders of the company other than the insiders."

¶ 47 Mr. Matthews testified that he first provided a fairness opinion to Vita Foods in 2006 in connection with its raising of $3 million in equity. The reason the company was raising money at that point was that "the company was at risk of becoming insolvent, [and] needed additional money in order to keep its operations operating." Mr. Matthews identified a memorandum he submitted in the course of providing that opinion, which stated that Vita was "highly leveraged," had "negative tangible net worth," and had "operated at a loss in the past two years."

¶ 48 Mr. Matthews next provided a fairness opinion in 2007 when Vita Foods was again looking to raise $3 million in equity to "keep its operations going." Mr. Matthews testified that Vita Foods was again at risk of becoming insolvent if they did not receive the capital it was seeking.

¶ 49 In December 2008, Mr. Matthews was hired by the special committee to provide a fairness opinion in connection with Mr. Bedford's offer to purchase the shares of the company for $1 per share. Mr. Matthews acknowledged that at that point in time, Vita's profitability had improved, having "gone from losses to a *** small profit." He noted, however, that "the debt maturity was now a bigger sort of Damocles that [*sic*] had been before. The company was looking for a potential debt maturity in April of 2010 that it had no ability to meet, and *** its inability to reach that would have caused the company to become bankrupt."

¶ 50 Mr. Matthews described Vita as a "troubled company," and explained that the general economic conditions of 2008 "would have meant that there were no other sources *** of financing available. *** [T]here were no investors that were going to be putting new money into companies. Good companies couldn't raise money in their pockets. Troubled companies certainly couldn't."

¶ 51 Mr. Matthews explained that he looked at comparable companies to determine whether the price was fair. In evaluating the proposed transaction, Mr. Matthews identified eight comparable companies which were "in the food products industry,*** smaller companies engaged in selling products through the same distribution channels that Vita was using." He considered that Vita had "very little cash flow, that the company was not generating enough cash to come close to meeting its debt maturities and that it had very low profit margins.

¶ 52 Mr. Matthews testified that "frankly, [this] was one of the easiest fairness opinions I ever worked on. I would say it was a very generous price. *** [M]y opinion at the time was that *** a price in the area [of] 60- to 70-cent-per-share *** would have been fair, a price for a dollar per share was a very generous price, in my opinion."

¶ 53 When questioned about whether one could determine the value a company through a calculation using only revenue, Mr. Matthews explained that "Revenues are not very relevant at all because the important thing is how much profit you're able to get from those revenues." Mr. Matthews also noted that Vita's earnings before interest, taxes, depreciation, and amortization (EBITDA) margins were less than five percent, which was below the median of all of the comparable companies. He testified that this "clearly shows that value in the company based on sales is not meaningful because those sales were not profitable."

¶ 54 Dr. Elizabeth Eccher, a principal with Analysis Group, an economic, financial and strategy consulting firm, also testified as an expert witness for the Vita parties. Dr. Eccher was retained by the Vita parties to assess the fair market value of shares of Vita Food's common stock in April 2009, and that her opinion was that those shares had a value of "between 66 and 69 cents." Dr. Eccher reviewed the fairness opinion performed by Mr. Matthews and believed that "the methodologies followed were industry standard and appropriate valuation practices."

¶ 55 Dr. Eccher testified that it would not be appropriate to value Vita by "taking its revenues, adding the debt, and using that to compute a total value." She explained that revenues are only "one input to what we're really interested in when we're looking at the value of a company, which is its ability to generate cash flow or profits as a proxy for cash flow." Instead, Dr. Eccher focused on "EBIT or EBITDA" which she testified was "more of a lower-down-the-line number on the income statement that should be capturing all of the value generating benefits of all of the company's assets, including brand and shelf space, as well as its manufacturing and other things."

¶ 56 Expert witness Jeffrey Golman testified that he is the head of the investment banking group at Mesirow Financial. In his career, Mr. Golman had "represented special committees as an investment banker," and "been involved in situations where an insider at a company was either purchasing some or all of the company." In his opinion, the process undertaken by the special committee in this case, "appeared to be a full *** process, reasonably consistent with industry practices for a special committee in the context of this kind of transaction." He explained that the special committee, among other things, only allowed independent and disinterested directors on the special committee, retained its own legal and financial advisors, obtained a fairness opinion in connection with the transaction, and "negotiated rather vigorously *** in terms of price and other critical transaction terms." Mr. Golman noted that the special committee made sure that there was a "go-shop" provision, which allowed them to discuss alternative transactions with other interested parties, and that they "did, in fact, do that with some parties." He testified that the 30-day go-shop period used in this case was "very consistent" with industry practice. Finally, Mr. Golman noted that they caused a press release to be disseminated, which announced the merger agreement, and invited other parties to "register interest."

¶ 57 Mr. Golman testified that it would not be uncommon for "competitors *** [to] not be contacted in connection with a transaction *** [because] [o]ftentimes in these situations, buyers have no genuine interest in buying the company, but just want to get the inside confidential financial information to maybe gain a competitive edge." He also explained that the relative lack of interest in acquiring Vita Foods may have been because "a typical premium [over the price at which a stock is trading] in connection with an acquisition transaction is 30 percent [and the offer from Mr. Bedford] was significantly more than that. And when you see instances like that, it would not be unusual for such a premium to have a chilling effect on third-party interlopers who may have otherwise had an interest."

¶ 58 Mr. Rubin was recalled, and acknowledged that in a federal court filing, he had pleaded that "in 2007, at the National Seafood Show, [he] discussed with two seafood competitors of Vita, the possibility of having one or the other acquire Vita." He testified that one of those competitors was Trident Seafood Corporation, and that Trident indicated in a telephone call to him that it was "prepared to acquire Vita for as much as $25 million, plus the assumption of Vita's outstanding debt." Mr. Rubin testified that he advised Mr. Bedford about Trident's interest, but that there was never an actual offer.

¶ 59 Mr. Bedford was also recalled, and testified that Mr. Rubin did not tell him anything about Trident in 2007 or 2008. No one ever told him that someone would consider acquiring Vita for a figure in excess of $20 million, plus assumption of debt.

¶ 60 After the close of evidence and argument, the trial court issued a written order. In it, the court noted that in order to comply with their fiduciary duty, the directors "must undertake reasonable efforts to secure the highest price reasonably available given the market for the company. [citation omitted] This does not require directors to canvass all possible acquirers before agreeing to the sale of the company; all that is required is that they undertake a logically sound process to get the best deal that is realistically attainable." The court concluded that the record showed that the remaining Vita parties, Mssrs. Bedford and Lipson, had done so, thus complying with their fiduciary duties. Additionally, the court concluded that the Rubin parties had failed to prove that they were damaged, because there was no evidence to "establish that there were any offers that were made which were not considered by the special committee."

¶ 61 Finally, the court also rejected the defendants' counterclaim against Rubin, stating that it "believes this claim fails for the same reason that the Rubin parties' claim fails—there was no evidence adduced by either side as to other, more lucrative offers for this stock." The court then dismissed both cases with prejudice.

¶ 62 In this court, the Rubin parties raise three issues: 1) whether the trial court erred in striking their jury demand; 2) whether the court erred in finding that Mssrs. Bedford and Lipson did not breach their fiduciary duties; and 3) whether the trial court erred when it entered directed judgments for Mssrs. Allen, Bolen, Dolanski and Douglas. Defendants' cross-appeal, claiming that the court erred in finding that Mssrs. Rubin and Seramur did not breach their fiduciary duties.

¶ 63 The Rubin parties first claim that because they included a negligence claim against the Vita parties, the trial court erred in striking their jury demand. The Illinois Constitution provides a right to a jury trial only in those cases where such right existed at common law at the time the constitution was originally adopted. *Bank One, N.A. v. Borse*, 351 Ill. App. 3d 482, 487 (2004). Specifically, as relevant to this case, a party claiming damages based on negligence is generally allowed the right to a jury trial (*Interstate Bankers Cas. Co. v. Hernandez*, 2013 IL App (1st) 123035, ¶ 26), whereas equitable claims, including claims based on the alleged breach of a fiduciary duty, are tried without the right to a jury (*Prodromos v. Everen Securities, Inc.*, 389 Ill. App. 3d 157, 174 (2009)). Whether an individual has a right to a trial by jury is a legal question, which we review *de novo*. *Prodromos v. Everen Securities, Inc.*, 389 Ill. App. 3d 157, 174

(2009). We may affirm on any basis supported by the record, regardless of the trial court's reasoning. *Alpha School Bus Co. v. Wagner*, 391 Ill. App. 3d 722, 734 (2009).

¶ 64 In the Rubin parties' complaint, they alleged counts of breach of fiduciary duty and negligence. For both claims, they incorporated by reference the same factual background, specifically paragraphs 1-131 of the complaint. The Rubin parties negligence claim continued, in its entirety, as follows:

> "143. Directors of a corporation have a *fiduciary duty* to the shareholders of a corporation to conduct the affairs of the corporation with the utmost care and diligence.
>
> 144. In regard to the possible sale of a corporation or its shares the *fiduciary duties* of the Directors of a corporation to its shareholders includes [*sic*] the obligation and duty to obtain for the shareholders the highest possible price.
>
> 145. As described above, the Defendant Directors of Vita with willful negligence and reckless disregarded [*sic*] failed to observe and carry out *those duties* and obligations to the Plaintiff shareholders of Vita.
>
> 146. As a direct and proximate cause of the willful negligence and reckless disregarded [*sic*] by the Defendants of their *fiduciary duties* and obligations to the shareholders of Vita the Plaintiffs received substantially less for their shares of Vita stock than the fair market value of those shares.
>
> 147. The amount of the damages suffered by each of the Plaintiffs will be determined at the trial of the cause." (emphasis added)

¶ 65 As can be seen by the above language, the allegations of the Rubin parties "negligence" claim are actually based on the fiduciary duties owed by directors to shareholders. The Rubin parties cited no other relationship, other than a fiduciary one, from which a duty to the shareholders would arise. In essence, their claim is one of negligent breach of fiduciary duty. See *In re Haley D.*, 2011 IL 110886, ¶ 67 ("the character of the pleading should be determined from its content, not its label."). However, as this court has previously noted, there is no cause of action in Illinois for negligent or grossly negligent breach of fiduciary duty.[2] *Palm v. 2800 Lake Shore Drive Condominium Association*, 2014 IL App (1st) 111290, ¶ 95 (2014). Because the trial court would have been entitled to strike the Rubin's negligence count entirely for failure to state a valid cause of action, we find no error in the trial court's decision to strike their jury demand. See *Harrel v. Dillards Department Stores, Inc.*, 268 Ill. App. 3d 537, 547 (1994) (where compelled self-defamation is not a valid cause of action in Illinois, the trial court erred in allowing such a claim to go forward.); *Rosenberg v. Packerland Packing Co.*, 55 Ill. App. 3d 959, 963 (1977) (affirming the dismissal of a "negligent assault" count, where there was "no such thing as a negligent assault.").

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[2] We recognize that in matters related to corporate governance, Illinois courts generally apply the substantive law of the state of incorporation (see *Libco Corp. v. Roland*, 99 Ill. App. 3d 1140, 1144 (1981)), which in this case would be Nevada. Although neither party has argued that Nevada law applies to this issue, to the extent that it does apply, Nevada law also does not impose liability on a director for negligently breaching a fiduciary duty. See Nev. Rev. Stat. Ann. § 78.138 ("a director or officer is not individually liable to the corporation or its stockholders *** for any damages *** unless it is proven that *** the breach of [fiduciary] duties *involved intentional misconduct, fraud or a knowing violation of law*." (emphasis added))

¶ 66 The Rubin parties next contend that the court erred in entering judgment for Mssrs. Bedford and Lipson on their breach of fiduciary duty and negligence claims. They allege that the record shows that Mr. Bedford, "in attempting to acquire all of the other issued and outstanding shares engineered a scheme whereby the majority of directors were appointed to a puppet Special Committee *** and the directors on the Committee deliberately avoided efforts to garner the highest and best price from prospective purchasers." The Vita parties respond that the trial court correctly held that they engaged in "a logically sound process to get the best deal that was realistically attainable *** for the shareholders" and that there was no evidence showing that other higher offers would have been actually available.

¶ 67 We will reverse a judgment following a bench trial only if the judgment is against the manifest weight of the evidence. *Chicago's Pizza, Inc. v. Chicago's Pizza Franchise Ltd. USA,* 384 Ill. App. 3d 849, 859 (2008). " 'A judgment is against the manifest weight of the evidence only when the opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence.' " *Chicago's Pizza, Inc.*, 384 Ill. App. 3d at 859 (quoting *Judgment Services Corp. v. Sullivan,* 321 Ill. App. 3d 151, 154 (2001)). Ultimately, it is for the trial judge to determine the credibility of the witnesses, to weigh the evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidentiary record (*Williams v. Cahill*, 258 Ill. App. 3d 822, 825 (1994)), and this court will not reverse the trial court's decision unless the appealing party presents evidence that is strong and convincing enough to overcome, completely, the evidence and presumptions existing in the opposing party's favor (*Wildman, Harrold, Allen & Dixon v. Gaylord,* 317 Ill. App. 3d 590, 599 (2000)).

¶ 68 The parties initially disagree on whether the actions of the Vita parties should be analyzed using the business judgment rule, or under the more exacting standards articulated in

Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173, 182 (Del. Supr. 1986). Although the Rubin parties rely extensively on *Revlon, Inc.*, a Delaware case, this court is not bound by the decisions of other state's courts. *Dunlap v. Illinois Founders Ins. Co.*, 250 Ill. App. 3d 563, 568 (1993). Neither Illinois, nor Nevada—where Vita Foods is incorporated—has adopted the *Revlon* holding, and we thus conclude that it is not precedential authority on this court. Nevertheless, even if we were to accept the Rubin parties' reliance on the stricter *Revlon* standards, and find it persuasive, we would conclude that the trial court's judgment was not against the manifest weight of the evidence.

¶ 69 To establish a claim of breach of a fiduciary duty, a plaintiff must prove that a fiduciary duty exists, that the fiduciary duty was breached, and that damages were proximately caused therefrom. *Neade v. Portes*, 193 Ill. 2d 433, 444 (2000); *Chicago City Bank & Trust Co. v. Lesman*, 186 Ill. App. 3d 697, 701 (1989). In a corporate setting, a fiduciary has the duty to act with utmost loyalty and good faith in managing the business and affairs of a corporation. *Maercker Point Villas Condominium Ass'n*, 275 Ill. App. 3d at 484. Specifically, in the context of a corporate sale, the Delaware Supreme Court has held that these fiduciary duties require the directors to undertake reasonable efforts to secure the highest and best price reasonably available given the market for the company. *Revlon, Inc.*, 506 A.2d at 182 ("The duty of the board ... [is] the maximization of the company's value at a sale for the stockholders' benefit."). There are "no legally prescribed steps that directors must follow to satisfy their *Revlon* duties," and the directors' decisions must be "reasonable, not perfect." *Lyondell Chem. Co. v. Ryan*, 970 A.2d 235, 243 (Del. 2009). Directors need not "canvass all possible acquirers before agreeing to the sale of the company; all that is required is that they undertake a logically sound process to get the best deal that is realistically attainable." *In re Netsmart Tech. Inco. Shareholders Litigation*, 924 A. 2d 171, 192 (Del. Ch. 2007).

¶ 70 In this case, the record shows that once Mr. Bedford expressed interest in making an offer for the remaining shares of the company, the board of directors created a special committee, comprised of independent directors to evaluate the offer. They hired legal and financial advisors, and procured a fairness opinion in connection with the transaction. The special committee negotiated back and forth, increasing Mr. Bedford's initial offer of $0.30 up to $1.05, and including "critical transaction terms" like the 30-day "go-shop" period and a requirement for approval by a majority of the minority. The special committee contacted certain potential purchasers, hired an investment banker to contact others, and caused a press release to be disseminated announcing the merger agreement and inviting other offers. After a company expressed some interest, the special committee extended that go-shop period beyond the initial 30 days to allow them to consider whether it would make an offer. Mr. Golman testified as an expert that this process used by the special committee was "a full process, reasonably consistent with industry practices," and two other expert witnesses testified that the price paid by Mr. Bedford was well in excess of the actual value of Vita Foods.

¶ 71 Based on the foregoing facts, the trial court determined that the board of directors had "undertake[n] a sound process to get the best deal that [was] reasonably attainable." *Netsmart*, 924 A. 2d at 192. In our view, it cannot be said that the trial court's judgment was against the manifest weight of the evidence.

¶ 72 The Rubin parties disagree, and contend that, "Stepping back and taking a global view of the facts, *a reasonable construction demonstrates* that Bedford saw blood in the water[,] *** seeded the Board of Directors with his cronies, *** [and] [o]nce Vita's leadership was securely in the hands of Bedford and his men, he took advantage of the 2008 economic downturn and company difficulties." (emphasis added). Assuming but not deciding that such a view could be a "reasonable construction" of the evidence presented below, the mere fact that an alternative interpretation exists does not mean that a trial court's judgment is against the manifest weight of the evidence. As a reviewing court, we may not overturn a judgment merely because we disagree with it, or as the trier of fact, we might have come to a different conclusion. *People v. A Parcel of Property Commonly Known as 1945 North 31st Street, Decatur, Macon County, Illinois*, 217 Ill. 2d 481, 510 (2005).

¶ 73 The Rubin parties make a number of strongly-worded contentions, including that Mssrs. Bedford and Lipson were "steering the ship" with their "dutiful minions, Allen, Bolen, Dolanski and Douglas," and that the Special Committee was a mere "puppet committee ruled by the iron hand of [the] bombastic [Mr.] Lipson." The Rubin parties characterize the negotiation up from Mr. Bedford's initial offer as "a sham," the go-shop period as "a joke," and the special committee's actions as mere "lip service" to their fiduciary duties. Despite their flowery language, the Rubin parties' contentions go to matters of credibility and the weighing of the evidence, and it is not our prerogative to substitute our judgment for that of the trial court on such issues. In these circumstances, we find no basis for reversing the determination made by the trial court.

¶ 74 In arguing that the Vita parties breached their fiduciary duties, the Rubin parties primarily rely on *In re Netsmart Technology, Inc. Shareholders Litigation*, 924 A.2d 171, 192 (Del. Ch. 2007). In *Netsmart*, shareholders of the company moved for a preliminary injunction in early 2007 against the consummation of a merger between the company and two private equity firms, arguing in part that the board of directors had inadequately explored the option of a strategic buyer in favor of dealing with private equity firms.

¶ 75 In considering whether to grant the preliminary injunction, the court was required to determine whether the plaintiff shareholders had a reasonable likelihood of success on their claim that the board members had breached their fiduciary duties. The court noted that despite being advised by their financial advisor about a "litany of potential strategic buyers" it could pursue, "no effort was taken from that point forward to explore whether any of these buyers were interested in Netsmart. None." *Id*. at 186. Instead, the board steered the sale of the company towards a private equity buyer, which held substantial personal benefits to the company management because a private equity buyer was more likely to retain them after the deal and provide stock option incentives. *Id*. at 194. Significantly, the court also noted that the proposed merger implied a value of $115 million, which fell below "even the lower range" of the company's financial advisor's valuation of $142 million to $202 million. *Id*. at 196.

¶ 76 Although the board of directors contended that they had chosen not to pursue strategic acquirers because prior attempts to secure such acquirers had been unsuccessful, and because the risks of "confidentiality leaks" outweighed the potential benefits, the court found "no credible evidence in the record" to support the board's assertions. *Id*. at 183. It found that the prior attempts had occurred long before, "when Netsmart was a very different (smaller and less consistently profitable) entity" than at the time of the proposed acquisition. *Id*. at 184.

¶ 77 We are unpersuaded by the Rubin parties' reliance on *Netsmart*. Unlike the deal in *Netsmart*, which was at a value significantly lower than the company's valuation range as determined by the company's financial advisers, the Vita parties presented testimony from two experts who evaluated the Vita deal and determined that Mr. Bedford's offer was actually significantly higher than the true value of Vita Foods. Additionally, the special committee in this case negotiated several significant nonmonetary terms including a go-shop period and a majority of the minority requirement, whereas the court in *Netsmart* specifically noted that the acquiring private equity firms had refused to allow a go-shop period. *Id*. at 190.

¶ 78 Moreover, unlike in *Netsmart* where the evidence showed that management's focus on private equity firms may have held specific personal benefits, the Rubin parties provided no compelling evidence as to why the special committee members would have been incentivized to do a deal with Mr. Bedford, other than their general and speculative allegations of them wanting to "benefit[] their buddy." In fact, a deal with Mr. Bedford that undervalued Vita Foods' would have been to the personal detriment of the special committee members, most of whom sold at least some of their stock holdings as part of the transaction. In these circumstances, we find *Netsmart* to be distinguishable from the case at bar, and find no error in the court's finding that the Vita parties had complied with their fiduciary duties.

¶ 79 The Rubin parties also challenge the trial court's determination that they had failed to establish damages, claiming that Mr. Puga's testimony that Marine Harvest "would have paid $30,000,000 plus the assumption of debt to purchase Vita *** [provided] a reasonable basis for ascertaining *** damages."

¶ 80 Although Mr. Puga did testify that his company would have offered between $20 and 30 million for Vita in 2006 through the end of 2008, notably, this range does not include the times when the Vita Food's special committee was soliciting competing bids, or when the deal closed in 2009. Moreover, his testimony was not particularly convincing for a number of reasons. Mr. Puga acknowledged that he had no expertise in valuing companies, and the two Vita parties' expert witnesses, who did have such expertise, testified as to the flaws in Mr. Puga's proposed value calculation of one times revenues plus debt. Additionally, Mr. Puga testified that his perception of Vita Foods' shelf space—one of the factors he specifically cited as supporting his proposed value—was based on walking through his local grocery store. Mr. Puga also appeared to be either unaware or mistaken as to several other significant issues affecting the company's value. Most importantly, however, his company never actually made an offer to purchase Vita before the deal with Mr. Bedford was completed, and he acknowledged that nothing prevented them from doing so. Because there was no evidence in the record to suggest that there were any better offers that were realistically available to the company, we find no error by the trial court in determining that the Rubin parties had not established damages.

¶ 81 We next turn to the Rubin parties' final claim: that the trial court erred when it entered judgments for Mssrs. Allen, Bolen, Dolanski and Douglas at the close of its case-in-chief.

¶ 82 When the trial court terminates a bench trial by granting the defendant's motion for judgment at the close of the plaintiff's evidence, the standard of review will depend on the reason why the court granted the motion; if the court found a total lack of evidence on one or more of the elements of the prima facie case, the standard of review is *de novo*, but if the court granted the motion by weighing the evidence and assessing the credibility of witnesses, the appellate court asks whether the ruling is against the manifest weight of the evidence. *Barnes v. Michalski*, 399 Ill. App. 3d 254, 264 (2010). The Rubin parties contend that we should review this issue under a *de novo* standard of review, while the Bedford parties claim that we should use a manifest weight of the evidence standard. Because our result would be the same under either standard, we need not determine which standard is applicable.

¶ 83 The Rubin parties claim that the evidence was "clear that all members of the Special Committee were party to this scheme engineered by Bedford and Lipson." They devote approximately one-page to this issue, in which they provide no authority, other than for the standard of review and the general proposition that the board members "had a duty to undertake reasonable efforts to secure the highest and best price reasonably available given the market of the company." They also cite no specific evidence as to any of the particular defendants that were the subject of the directed judgment which could establish any breach of their fiduciary duties. See Ill. S. Ct. R. 341(h) (eff. Feb. 6, 2013) ("The appellant's brief shall contain *** the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on.") Further, as we found above, the Rubin parties failed to establish any evidence to show that they were damaged by the purported breach. Under these circumstances, we conclude that the trial court properly directed judgment in favor of Mssrs. Allen, Bolen, Dolanski and Douglas.

¶ 84 Finally, we turn to the Vita parties' cross-appeal against Mssrs. Rubin and Seramur. They contend that the trial court erred in entering judgment for Mr. Rubin, and summary judgment for Mr. Seramur, on their claim that they had breached their fiduciary duties by not informing the other board members of Trident's interest in purchasing Vita Foods in 2007. Specifically, they argue that the trial court's ruling was "based on a clear mistake," pointing to the court's observations about the absence of another offer from which damages could be ascertained. They maintain that this analysis "relies on what occurred in 2009," which "has no bearing on the potential losses from Rubin's actions in 2007."

¶ 85 We first analyze the Vita parties' claim of error as to the judgment granted for Mr. Rubin at the conclusion of the trial. Initially, we point out that the Vita parties' argument on this point is scant. The only support cited for their claim is two Delaware cases, one of which is an unpublished memorandum opinion from chancery court. As previously discussed, this court is not bound by courts of other jurisdictions (*Dunlap*, 250 Ill. App. 3d at 568), and this holds particularly true for unpublished opinions by courts of other jurisdictions (see *Ballard RN Center, Inc. v. Kohll's Pharmacy & Homecare, Inc.*, 2015 IL 118644, ¶ 48 (declining to consider an issue where defendant significantly relied on nonprecedential unpublished decisions from the federal courts and the Illinois circuit court). The failure to properly develop an argument and support it with citation to relevant authority results in forfeiture of that argument. *Compass Group v. Illinois Workers' Compensation Commission*, 2014 IL App (2d) 121283WC, ¶ 33 *as modified on denial of reh'g* (May 13, 2014). Because the Vita parties have cited no relevant authority for their argument, we would find it forfeited on appeal.

¶ 86 Nevertheless, we disagree with the Vita parties' claim of error. As previously stated, to establish a claim of breach of a fiduciary duty, a plaintiff must prove that a fiduciary duty exists, that the fiduciary duty was breached, and that damages were proximately caused therefrom. *Neade,* 193 Ill. 2d at 444; *Chicago City Bank & Trust Co.*, 186 Ill. App. 3d at 701. Although the Vita parties maintain that the court was "conflating evidence from the two time periods," our review of the record shows that the court was merely pointing out that, like the Rubin parties had failed to provide evidence of damages arising from the Vita parties' alleged breach of fiduciary duty, so too did the Vita parties fail to offer such evidence on their claim. Even assuming that Mr. Rubin had breached his fiduciary duty by not informing the rest of the board of Trident's interest, there was no evidence to show that there was ever an offer realistically available in 2007, or that there was any other way to ascertain damages arising from his alleged breach. Specifically, Mr. Bundrant testified that Trident chose not to make an offer for Vita Foods, at that or any other time. In fact, the Vita parties appear to concede that they had not established damages, when they request that this court remand the matter to the trial court to determine "whether (and in what way) Vita was damaged as a result [of Rubin's failure to notify the board of Trident's interest]." A party's failure to establish an essential element of their cause of action defeats their claim. See *Thacker v. UNR Industries, Inc.*, 151 Ill. 2d 343, 354 (1992) ("the plaintiff has the burden of producing evidence sufficient to establish each element of his or her claim"); *Palmolive Tower Condominiums, LLC v. Simon*, 409 Ill. App. 3d 539, 547 (2011) (because damages are an essential element of a breach of contract claim, the defendants counterclaims should have been dismissed where they failed to allege damages). We thus find no error in the court's determination that the Vita parties had not established their counterclaim against Mr. Rubin.

¶ 87 For the reasons we found that the court did not err in finding in favor of Mr. Rubin, we also conclude that summary judgment was properly entered in favor of Mr. Seramur, and against the Vita parties. Without any evidence to show that the Vita parties were damaged from an alleged breach of fiduciary duty by Mr. Seramur, summary judgment was properly granted. *Willett v. Cessna Aircraft Co.*, 366 Ill. App. 3d 360 (2006) ("summary judgment is appropriate if a plaintiff cannot establish an element of his claim"); *Thacker*, 151 Ill. 2d at 354.

¶ 88 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 89 Affirmed.