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

CHARLES LILLIS, GARY AMES, RICHARD POST, FRANK EICHLER, ROBERT CRANDALL, LOU SIMPSON, PIERSON GRIEVE, RICHARD MCCORMICK, JANICE PETERS, PEARRE WILLIAMS, ROGER CHRISTENSEN, DOUG HOLMES, STEVEN BOYD, PATTI KLINGE, CONNIE CAMPBELL, SHARON O'LEARY, JIM TAUCHER, BUD WONSIEWICZ and DANIEL YOHANNES,	)	
Plaintiffs,	)	
v.	)	C.A. No. 717-N
AT&T CORP. and AT&T WIRELESS SERVICES, INC.,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Submitted: November 2, 2006
Decided: December 21, 2006

Kevin G. Abrams, Esquire, ABRAMS & LASTER LLP, Wilmington, Delaware; Miranda S. Schiller, Esquire, Joshua S. Amsel, Esquire, Stephania D. Venezia, Esquire, WEIL, GOTSHAL & MANGES LLP, New York, New York, *Attorneys for the Plaintiffs.*

Todd C. Schiltz, Esquire, WOLF, BLOCK, SCHORR AND SOLIS-COHEN, LLP, Wilmington, Delaware; Michael L. Banks, Esquire, William P. Quinn, Esquire, Jeremey P. Blumenfeld, Esquire, MORGAN LEWIS & BOCKIUS LLP, Philadelphia, Pennsylvania, *Attorneys for the Defendants.*

LAMB, Vice Chancellor.

This case arises from a dispute between the former officers and directors of a telecommunications company and certain successor or related corporations and concerns the enforcement of contracts that granted stock options to those individuals. Both sides have moved for summary judgment. The court concludes that it is desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances. Therefore, the cross motions for summary judgment will be denied.

I.

The facts of this case are set forth in a previous opinion of the court in this matter.[1] The court will only briefly summarize them here.

The plaintiffs in this case are former officers and directors of MediaOne Group, Inc., a broadband telecommunications company, and former officers and directors of US West, MediaOne's former parent corporation. The plaintiffs all received stock options from MediaOne pursuant to the MediaOne 1994 Stock Plan, and also pursuant to non-qualified stock option contracts with MediaOne. The MediaOne plan included provisions protecting the economic position of the MediaOne options in the event of future changes of control.

In 2000, AT&T acquired MediaOne and issued AT&T options to the plaintiffs to replace their MediaOne options. In June 2001, AT&T spun off AT&T

[1] *Lillis v. AT&T Corp*., 896 A.2d 871 (Del. Ch. 2005).

Wireless. The plaintiffs' AT&T options were replaced with options in Wireless and newly-issued adjusted options in AT&T. Then, in 2004, Wireless merged with Cingular. This case arises as a result of the Wireless/Cingular merger and the effect it had on the plaintiffs' options.

II.

The legal standard for cross motions for summary judgment is well settled. To prevail, each moving party must show that there is "no genuine issue as to any material fact" and that each party is "entitled to judgment as a matter of law."[2] In deciding a motion for summary judgment, the court must view the facts in the light most favorable to the nonmoving party.[3] The moving party bears the burden of demonstrating that there is no material question of fact.[4] "A party opposing summary judgment, however, may not merely deny the factual allegations adduced by the movant."[5] "If the movant puts in the record facts which, if undenied, entitle him to summary judgment, the burden shifts to the defending party to dispute the facts by affidavit or proof of similar weight."[6] Summary judgment will not be granted when the record reasonably indicates that a material fact is in dispute or

---

[2] Ct. Ch. R. 56(c); *see also Acro Extrusion Corp. v. Cunningham*, 810 A.2d 345, 347 (Del. 2002); *Williams v. Geier*, 671 A.2d 1368, 1375 (Del. 1996).
[3] *Tanzer v. Int'l Gen. Indus., Inc.*, 402 A.2d 382, 385 (Del. Ch. 1979) (citing *Judah v. Delaware Trust Co.*, 378 A.2d 624, 632 (Del. 1977)).
[4] *Id.*
[5] *Tanzer*, 402 A.2d at 385.
[6] *Id.*

"if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances."[7]

III.

Under Court of Chancery Rule 56(h),[8] cross motions for summary judgment are treated as "the equivalent of a stipulation for decision on the merits based on the record," provided that the parties "have not presented argument to the Court that there is an issue of material fact." While Rule 56(h) is not discussed by the parties, it is clear from the parties' submissions that there are issues of material fact still in dispute. Moreover, the submissions simply cannot be read as the equivalent to a stipulation for decision as contemplated under Rule 56(h).

Foremost among the issues of material fact still in dispute is the meaning of "economic position" in the MediaOne plan. Specifically, the court needs a more thorough presentation of that provision's interaction with the other terms of that plan. At this stage, the court cannot conclude that the meaning of the MediaOne plan is clearly suitable for disposition on summary judgment.[9] Among the other material facts left unresolved are the basis for Wireless's potential liability and the

---

[7] *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).
[8] As added March 1, 2005.
[9] *Motorola, Inc. v. Amkor Technology, Inc.*, 849 A.2d 931, 936 (Del. 2004) ("Therefore, if reasonable people may draw different inferences from the undisputed facts, an ambiguity exists and summary judgment is inappropriate.") (discussing Illinois law); *Bae Systems North America Inc. v. Lockheed Martin Corp.*, 2004 WL 1739522, at *5 (Del. Ch. 2004) (discussing *Amkor* holding "Illinois law does not differ materially from those guiding Delaware courts.").

proper measure of damages if the court determines that the options were treated improperly in the Cingular/Wireless merger.

Given the complex legal and factual issues that remain unresolved, this case is a clear instance where the court should "inquire more thoroughly into the facts in order to clarify the application of law to the circumstances."[10] Therefore, the court will deny the cross motions for summary judgment, and the case will proceed to trial as scheduled.

IV.

For the foregoing reasons, the parties' cross motions for summary judgment are DENIED. IT IS SO ORDERED.

[10] *Williams*, 671 A.2d at 1389; *Wilson v. Triangle Oil Co.*, 566 A.2d 1016, 1018 (Del. 1989); *In re Estate of Turner*, 2004 WL 74473, at *6 (Del. Ch. Jan. 9, 2004).