

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

FAR NO. 17039

YONG LI  
Plaintiff – Appellant

v.

**RAYTHEON COMPNAY, IAN C. MITCHELL, ARTHUR BULIUNG, AND  
JOHN DIDIO**  
Defendants – Appellees

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OPPOSITION TO PLAINTIFF-APPELLATE’S  
APPLICATION FOR FURTHER APPELLATE REVIEW

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BRIEF OF DEFENDANTS-APPELLEES  
RAYTHEON COMPANY, IAN C. MITCHELL, AND ARTHUR BULIUNG

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Arthur Buliung

Date: June 23, 2008

## CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 1:21 of the Supreme Judicial Court Rules, defendant – appellee Raytheon Company (“Raytheon”) hereby discloses that it is a publicly held corporation organized under the laws of the State of Delaware with its principal palce of business in Waltham, Massachusetts. Raytheon has no parent companies and no publicly held corporation owns ten percent or more of its stock.

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## STATEMENT OF PRIOR PROCEEDING

Defendants-Appellees Raytheon Company, Ian C. Mitchell, and Arthur Buliung (“Raytheon Defendants”) agree with the major points set forth in the Statement of Prior Proceedings of Plaintiff-Appellant Yong Li (“Li”). The Raytheon Defendants, however, disagree with several minor points in Li’s Statement of Prior Proceedings and object to certain argumentative statements made therein. Therefore, for clarity of the record and convenience of the Court, the Raytheon Defendants provide their own Statement of Prior Proceedings.

On May 11, 2006, Li filed an eight-count complaint in the Middlesex Superior Court. In the complaint, Li asserted, among other claims, a race discrimination claim against Raytheon (Count I); a retaliation claim against the Raytheon Defendants (Count II); a claim for violation of the Massachusetts Civil Rights Act (violation of First Amendment rights) against Raytheon (Count III); a claim for violation of the Massachusetts Civil Rights Act (violation of Fifth Amendment rights) against Raytheon (Count IV); a negligent/reckless/intentional infliction of emotional distress claim against Raytheon and Mr. Buliung (Count V); a misrepresentation claim against Mr. Buliung (Count VI); and a claim for tortious interference with advantageous [business] relations against the Raytheon Defendants (Count VII).

On June 23, 2006, the Raytheon Defendants filed a Motion to Dismiss all claims against them. On October 10, 2006, Li filed a Motion for Leave to Amend Complaint, in which she proposed to add Scott Oglesby, Stephanie Kolenski, and

Irving Kooris as defendants, and proposed new claims, including violation of “right of privacy” against Raytheon (Count IX), violation of “right of consent” against Raytheon and Mr. Buliung (Count X), violation of the Massachusetts Civil Rights Act against Raytheon and Mr. Buliung (Count XI), and a negligence claim against Raytheon (Count XIII). Li also sought to add Ms. Kolenski to her misrepresentation count (Count VI), and to add Mr. Oglesby to her tortious interference count (Count VII).

On October 11, 2006, the Superior Court granted the Raytheon Defendants’ Motion to Dismiss in its entirety but agreed to consider Li’s Motion for Leave to Amend Complaint. Upon review of Li’s Motion for Leave to Amend Complaint and the defendants’ Opposition, the Court denied Li’s Motion on November 6, 2006, and entered Final Judgment in favor of all defendants on all claims in this case on November 7, 2006.

Li filed a Notice of Appeal from the Final Judgment, as well as from the Superior Court’s denial of her Motion to Amend Complaint, on November 21, 2006.

On March 25, 2008, the Massachusetts Appeals Court issued its decisions, affirming the Superior Court’s orders to dismiss the case against all defendants and to deny Li’s Motion to Amend Complaint. In its Rule 1:28 Decision, the Appeals Court affirmed the Superior Court’s decision with respect to Counts II, IV, VI, and VIII of the complaint because Li failed to challenge the dismissal of these counts and thereby, waived the claims. The Appeals Court affirmed the Superior

Court's dismissal of the remaining claims (Counts I, II, V, and VII) pursuant to Mass.R.Civ.P. 12(b)(6) for failure to state a claim upon which relief can be granted. Finally, as to Li's appeal of the Superior Court's denial of her Motion to Amend Complaint, the Appeal Court found that Li "failed to meet her burden of demonstrating error in [the Superior] Court's ruling."

#### STATEMENT OF RELEVANT FACTS

The statement of facts in the decision of the Appeals Court issued on issued on March 25, 2008 (Appeal Court No. 2007-P-0156), 71 Mass. App. Ct. 1115 (Table, Text in Westlaw), Unpublished Rule 1:28 Disposition, 2008 WL 783404, is correct and satisfactory to the Raytheon Defendants. Accordingly, pursuant to Mass.R.App.P. 27.1©, the Raytheon Defendants do not restate any of the relevant facts.

#### REASONS WHY FURTHER APPELLATE REVIEW IS NOT APPROPRIATE

Rule 27.1 of the Massachusetts Rules of Appellate Procedure mandates that an applicaitojn for leave to obtain further appellate review by the full Supreme Judicial Court must be "founded upon substantial reasons affecting the public interest or the interests of justice." Mass. R. App. P. 27.1(a). Li fails to articulate any substantive or substantial arguments as to how the public interest or the interests of justice are affected by the Appeals Court's decision.

Rather, the "focus" of Li's Application for Further Appellate Review is the Appeals Court's alleged "sua sponte" decision to affirm the Superior Court's

ruling under Rule 12(b)(6) (as opposed to affirming on the grounds relied on by the Superior Court), which, Li argues, “probably never occurred in US history.” (Li Application, p. 3). Contrary to Li’s argument, this Court has stated that the granting of a dispositive motion should be upheld “if there is any valid ground on which the motion should have been granted,” whether or not the valid ground was relied on by the trial court. Alhom v. Town Wareham, 371 Mass. 621-26 (1976).

In this case, the Superior Court relied on Rule 12(b)(9) to dismiss Li’s claims against the Raytheon Defendants. Although the Appeals Court found that the Superior Court erred in relying on Rule 12(b)(9) to dismiss Li’s claims against the Raytheon Defendants, the Appeals Court was permitted to rely on Rule 12(b)(6) to affirm the dismissal because Li’s claims against the Raytheon Defendants failed to state a claim upon which relief can be granted. Because Rule 12(b)(6) constituted a valid ground upon which the Raytheon Defendants’ dispositive motion should have been granted, the Appeals Court did not err in affirming the dismissal of Li’s claims against Raytheon Defendants on that basis. See Alholm, 371 Mass. at 625-26.

Li also asserts that the Appeals Court erred by affirming the Superior Court’s denial of her Motion to Amend Complaint. (Li Application, pp. 5, 12-13). The Appeals Court correctly concluded that Li failed to meet her burden of demonstrating error in the Superior Court’s ruling because she did not provide any basis to conclude that the Superior Court abused its discretion in denying her amendment motion. See Breman v. Linnane, 434 Mass. 301, 305 (2001). Indeed,

Li's Appeals Court brief is devoid of any argument or analysis of the abuse of discretion standard.

The Appeals Court also noted that Li failed to meet her obligation to provide the Court with copies of the Motion to Amend Complaint or any opposition memoranda, and that therefore it was not necessary to review the propriety of the denial of her Motion to Amend Complaint. See Chokel v. Genzyme, 449 Mass. 272, 279-280 (2007). Based on the foregoing, there is no basis under Mass. R. A.P. 27.1 to disturb the decision and order of the Appeals Court.

Moreover, the structure of the Massachusetts appellate court system is such that successive review by the Appeals Court and the Supreme Judicial Court is disfavored. See 1 Hon. Cynthia J. Cohen, Analyzing the Decision to Appeal, in Appellate Practice in Massachusetts § 8.8 (Massachusetts Continuing Legal Education, Inc. 2004). Li has failed to articulate any arguments to overcome this basic presumption against granting leave to obtain further appellate review.

The Massachusetts appellate court system is not structured to give a litigant a second chance to have its case heard by another appellate court merely because it is dissatisfied with the outcome of the first appellate opportunity. Li's appeal was fully considered and ruled upon by the Appeals Court. Li has not met the extraordinary threshold of showing that there are substantial reasons affecting the public interest or the interests of justice to warrant the Supreme Judicial Court's exercise of its authority to grant leave to obtain further appellate review.

## CONCLUSION

For the foregoing reasons, Plaintiff-Appellate Yong Li's Application for Further Appellate Review should be denied.

Respectfully submitted

Defendants-Appellees,  
RAYTHEON COMPANY, IAN C.  
MITCHELL,  
and ARTHUR BULIUNG

by their attorneys

/s/ \_\_\_\_\_  
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Date: June 23, 2008

CERTIFICATE SERVICE

I, Michael R. Bernardo, hereby certify that on June 23, 2008, I caused to be served by hand delivery two copies of this Brief on the Plaintiff-Appellant Yong Li and counsel for John Didio:

Yong Li

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