2)

Corporation Formation

A corporation is formed with articles of formation, filed with the state. Wherein the name, address, and articles of purpose for the corporation are included. Here, the facts provide that Acme is a corporation that holds $20 million in cash, it is presumed Acme is a functioning corporation.

1. Acme's Outside Directors' Vote

In addressing whether Acme's outside directors possess the authority to reject Brown's and Chase's recommendation, the court will look to the procedures utilized in the decision making process.

Voting

The board of directors in a corporation are instilled with the authority to make important decisions for the corporation, the directors are elected by the shareholders. Corporations hold meetings wherein their board of directors make decisions with regards to the corporations business endeavors.

Quorum

In order for the board of directors to make decisions relating to the corporation, a quorum is required. A quorum is a majority vote. In the present case the Board of Directors held a meeting and the majority of the shareholders (non-employee) directors chose to vote in favor of the business proposition.

Board of Directors

Duty of Care

A duty of care is owed to the shareholders of a corporation by the board of directors (herein referred to as "BOD"). The directors must act in a 1) reasonable prudent manner in handling the investments of the corporation, and 2) in such a manner that an individual would act in investing their own capital.

Here, during their meeting the BOD discussed the potential business opportunity available to the corporation and simultaneously heard a report prepared by a outside consulting firm. It is not impermissible for a BOD to hear outside reports, if anything it is often encouraged, because if the board needs further information to make a decThis goes to show that the board took measures to ensure that the investment they sought to make was for the benefit of the corporation, rather than a frivolous/negligent misuse of the company's assets. The board is attempting to acquire a greater income, thereby justifying not paying a dividend.

Duty of Loyalty

A director further acquires a fiduciary duty of loyalty to the corporation and its shareholders. When a director is fiscally benefitted by the contribution of the corporation, the court will look to certain factors to ensure that the director was not in any way self dealing or exerting his interests against that of the corporation's. The court will look to whether the corporation was acting for a directors' individual pecuniary interest.

Brown's Fiduciary Duty

Here, the issue remains whether Brown violated any of his fiduciary duties to the corporation. Although, Brown was a graduate and member of the board of trustees for the university that will receive a gift of 100k there is no showing that he pushed for this decision or that he would reap any pecuniary benefits from the decision. Further, there has been no demonstration that he acted fraudulently as a director.

Conclusion: The Court will most likely find in favor of Acme because there has been no showing that the directors did not possess the authority to make a decision in their capacity as directors, in a meeting, with quorum.

2. Davis's Inspection

SH - Inspection of Documents

A shareholder generally does not have a right to inspect records relating to the board. However, if the shareholder 1) makes a request to the board providing them with notice, and 2) a reasonable explanation for his desire to inspect then often times this request is granted to the shareholder. Adversely, If Davis was a director, he would be afforded the right to inspect the documents without question.

Here, the facts provide that Davis has sent a letter demanding that Acme allow him an opportunity to review the records relating to this decision. Given Davis's status as a shareholder, he may be permitted to view this documents but it would depend on the board's granting of his timely request.

3. it Against Acme?

Dividends

Contrary to popular belief, a corporation is not required to pay dividends to its shareholders. In fact, the decision to pay a dividend is in the discretion of the board of directors. Here, as demonstrated above the board of directors made a reasonable inference about Acme's expansion into a new line of business; there was no fraudulent activity, they made the decision based on reliable facts. Given that the board unanimously chose not to pay a dividend, Evan has no viable claim against the corporation.

Piercing Corporate Veil

Shareholders might attempt to hold directors personally liable when there is a showing that the directors have acted with 1) scienter (extreme negligence), and 2) did not carry out their duties to the corporation with the utmost care and diligence.

Business Judgment Rule

The business judgment rule ("BJR) will protect directors of a corporation, and will not prevent any piercing of the corporate viel when the directors did not breach their duties to the corporation or the shareholders. The BJR is a shield for directors as it ensures that when the board has enlisted the help of an outside entity to consider options for the corporation, they will be protected so long as they exercise due care, and take diligent efforts to

4. Injunctive Relief

The issue presented is whether Evan can adequately make a claim that the court should prevent Acme from fulfilling its gift to a third party?

If Evan attempts to bring a suit against Acme for injunction relief, wherein he requests the court prevent Acme from making a $100,000 cash gift to Acme he will probably not succeed, because on these facts there has been no showing that Acme acted fraudulently, or that any of its directors breached a duty to the corporation.

Derivative Suit

Evan can attempt to bring a suit on behalf of the corporation, 1) if he provides notice to the corporation, 2) if he remains a shareholder at the time of suit, 3) he believes a duty has been breached, and 4) he will be a shareholder when the suit is to come to an end.

Question #2 Final Word Count = 1016

END OF EXAM