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1. Agreement between Aliyah, A and Bowen, B

In a closely held corporation shareholders may combine their shares to vote accordingly. There need to be consideration for the proxy agreement to be valid.

Here, Aliyah and Bowen each owned sufficient shares to elect, through cumulative voting, one of the three directors of Corp. Since A and B entered into a signed written agreement stating that they would vote to elect themselves to the board and agree on the election of any successor board members, and if they cannot agree on a particular successor, will abstain from voting in that election, there is valid consideration. Due to the fact they each will withhold their vote if they cannot come to agreement is valid consideration. In terms of each voting for themselves instead of each other may fail consideration. However since there is consideration for withholding of votes if they disagree this is sufficient consideration.

Due to the fact that the Articles provide that for the purpose of electing directors, each shareholder shall have one vote per share that they own multiplied by the open positions, cumulative voting, each is able to cast votes because A and B each owned sufficient shares to elect through cumulative voting, one of the three directors of the Corp.

There was an agreement between A and B.

2. Is Daya bound by A and B voting agreement with respect to the election of successor directors.

Proxy Agreement

A shareholder may vote on behalf of other shareholders if there is a proxy agreement among themselves. The elected voter will vote on behalf of other shareholders.

Here there was no agreement between A and B that Daya, D will vote on their behalf. When B

discovered that Palmer, P the new President immediately instituted several costly changes intending to shift Corp solely into the manufacture of bicycles, B sold all his shares to D without agreeing with A that this step would be undertaken. B abandoned the agreement between A and B in terms of their proxy agreement and as a result this agreement was ineffective.

Had A agreed with B to allow D to vote on A's behalf, the proxy agreement would remain valid.

Furthermore D paid consideration for B's share because B sold all his shares to D. A on the other hand will argue that because the shares that D bought included the agreement that A and B made before B resigned from the board lives perpetually. However this argument will fail due to D's independent consideration. Moreover, D did not agree to vote as A and B agreed when he paid consideration for the shares from B.

D is free to elect whichever director he chooses.

As a result, D is not bound by the A-B voting agreement.

3.

Change to Articles of Incorporation-Ordinary Conduct of the business/Extraordinary business opportunity

A director who wants to change the operation of a business needs to get a unanimity in shareholders agreement and disinterested directors, or the new business is invalid.

Here, the Articles of Incorporation for Corp Inc provide that it is a closely held corporation formed for the purpose of manufacturing televisions. Because Palmer now seeks to shift Corp solely into the manufacturing of bicycles, it is acting against the Articles of Incorporation and needs a majority shareholder and unanimous director approval from directors for the Articles of Incorporation to reflect this new business.

Where there is an extraordinary conduct of business outside the line of business of the corporation and it will result in futility to the Corporation, the shareholder may bring a derivative suit against the corporation.

Since there were no votes from shareholders or directors that result in majority approval, Edgar may bring an action on behalf of Corp.

Based on the theory of extraordinary business corporation opportunity for Corp without shareholder vote, it is likely that Esger will be successful in his action.

4. Damages suit by Esger

Direct Suit

A direct suit may be brought against a corporation by a shareholder for any damages lost by him. The shareholder has to show that the board of directors have breached their fiduciary duties and the shareholder is still such at the time of the case.

Here, Edgar, E a shareholder of Corp since its inception, wishes to seek legal relief regarding P's actions. P immediate institution of several costly changes intending to shift Corp solely into the manufacturing of bicycles, ahs a case because he is about to lose money. In its inception, Corp was highly profitable in its business of manufacturing televisions for twenty years. Now because Corp is about to lose money due to the costly changes, E is entitled to damages.

E is able to show breach of fiduciary duties by A and B by voting to elect Palmer as President. Since A and B are two of the three directors, they have the majority vote and could overturn Palmer's decisions. Instead B only sold his share and resigned, breaching his duty of care (below) and duty of loyalty (below).

E may bring a direct suit for direct losses to him.

Fiduciary Duty

All directors and majority shareholders have a duty of care and loyalty to a corporation and its shareholders.

Duty of Care

A director, and majority shareholder must act to preserve a business as he would do to his own using prudent investor reasonableness.

had a duty of care as directors and majority shareholders since they had enough shares to vote for themselves to the director position through cumulative voting. They each

breached the duty of care when A and B did not object to Palmer's costly changes to Corp. Chantal another director abstained instead of voting against the extra ordinary business opportunity taken by Palmer against the prudent decisions that a reasonable president would have done for the Corp.

Palmer may argue that the opportunity is not futile because her reasoning is that Corp would be so profitable that no one would complain.

Because B only sold his shares to D and resigned when he learned of P's plan, B did not act like he would if Corp was solely his own business.

A, B and Chantal breached their duty of care to E.

Business Judgment Rule

This will cause directors to not be liable for poor judgment decisions made on behalf of Corporation.

Once the director can show that he relied on reasonable and prudent advice, he will not be held liable. here, without any research, P on her own decision decided to use costly measures to manufacture bicycles taking the Corp opportunity to continue being profitable away from its television manufacture.

There was no business judgment rule that was valid on which directors may rely to avoid liability.

Duty of Loyalty

The directors and majority shareholder must act in the best interest of the corporation and not in their own interest.

Here, when B sold her shares to D a minority shareholder, she did not have the best interest of Corp interest in mind. In addition, neither Chantal or A opposed P's action on the manufacturing of bicycles.

They have breached their duty of loyalty to Corp.

Derivative Suit

A derivative suit may be brought by a shareholder on behalf of a corporation where it would be futile to bring it to the attention of the directors and majority shareholders and he is still a shareholder at the time the suit is brought.

Here, it would be futile for Esgar to bring to the attention of the directors to stop P's actions of manufacturing bicycles. A and B were not disinterested directors because they voted to elect Palmer as President, B has sold his shares and resigned. If D was now a majority shareholder, it appears as though he is disinterested because the facts do not show that any directors opposed P's decisions.

Esgar could successfully bring a direct action and derivative suit against the directors of Corp to reinstate Corp's manufacturing of televisions and any financial loss.

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