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1. Agreement between Aliyah and Bowen (A & B)

Closely Held Corporation (CHC)

California allows formation of closely held corp when there are less than 35 shareholder (s/h), and they file Articles of Incorporation (AOI) stating that they are incorporating a closely held corp, they s/h can forgo corporate formalities by they agree to go so. Here, it is stated that the Corp is incorporated as closely held corporation, further AOI provides for rules regarding voting of directors and that it will be held by cumulative voting. Hence Corp is validly formed.

Board of Directors(BOD)

S/h have right to elect BOD, they can remove them without cause and they can themselves act as Director or Officer (D or O) of the corp.

Voting Agreement

S/h can enter into voting agreement to increase their voting power by joining together with other s/h such agreements are binding and voting is done according to the agreement. They must submit the agreement to the corporation registrar/officer for execution.

Here Aliyah and Bowen entered into a voting agreement however it is unclear if they are Controlling S/h as the facts that they owned sufficient shares to elect directors. It is probably likely that they own a controlling shares in Corp and therefore own fiduciary duty to other minority S/h, however because its a CHC, corporate formalities can be done away with and there are small group of s/h. Further here A & B entered into an written agreement laying down terms of the agreement, which shall be binding. Thus there is voting voting agreement. As they are no contrary facts, it is assumed that the voting agreement complies with all formalities

Voting Trust

Voting trust if validly executed, and trust owns the shares and the s/h are giving trust certificates. Such trust are valid for 10 years. Here, there A&B still retain their share certificates, they did not form a voting trust

2. Is Daya Bound by agreement

Here Bowen sold all of her shares to Daya and resigned from the Board. He had already entered into an voting agreement to agreed to vote according to the agreement, further the sale

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was "Subject to the Agreement"

Voting Agreement

See above

Daya may be bound by the voting agreement as they are generally binding. Although she is not a party to the voting agreement there can be novation, and she can enter into place of Bowen or she could be bound if is a bearer certificate, which gives shares to the holder. On the other hand this agreement was between Aliyah and Bowen therefore it unless Aliyah consents there can be no novation. Hence, Daya wont be bound by the S/h agreement.

3 & 4. Esgar V. Corp

A. Direct Suit

A s/h can being a direct suit for wrongs done the s/h. In order to bring the suit Esgar must be s/h at the time harm was done, he can sue.

Here, Esgar who is an existing s/h of the corp wants to bring a suit against corp. Thus, he can bring a direct suit against the Corp.

B. Derivative Suits

S/h can bring suits on behalf of corp, they must hold at least one share at the time of filing suit and till conclusion. These suits are brought to remedy the breach of fiduciary duties by the Directors & Officers (D&O) towards the corporation, the damages if any recovered are retained by the corporation. In order to have standing he must must be contemporaneous s/h which is assumed for Esgar for this analysis.

Ultra Vires Act - Both Direct and Derivative

When a corporation is formed with narrow purpose, any activities beyond that purpose care considered ultra virus and not enforceable. This is a common law rule, however modernly, such activities can be enforced if they benefit corp and allows s/h to bring suit to enjoin the proposed activity, the corporation itself can sue for damages and the state can sue for dissolution.

Here, Palmer seeks to shift the purpose of corp from manufacturing televisions to bicycles, which is beyond the scope of the AOI of Corp and therefore an Ultra-Vires Act and as such Esgar can bring an derivative suit to enjoin the proposed activities of Palmer on behalf of himself in a Direct Suit and on behalf of Corp in a Derivative Suit. Thus Esgar can properly institute Direct Suit to enjoin the proposed activities of the Corp and to seeks damages on

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behalf of the Corp.

As the AOI of the Corp are very narrow and defined the change of purpose without valid Fundamental Change action to amend the AOI is illegal and therefore Esger will prevail in his actions against D&O for taking the decision to change activities.

Election of Palmer

Here, Palmer was elected as a Corp's President. There are Three Directors of the Corp in order an effective action, there must be Quorum of Majority of the Directors which is Three. Here all three were present and majority of those present must vote. Here 2/3 voted to elect Palmer, although Chantal abstained his abstention Doesn't make voting of Palmer illegal. As it wont change majority

Duty of Care - Business Judgement Rule - Derivative Suit

A D&O owns duty to act in good faith with such care as reasonable person in like position and under similar circumstances in a manner that is the interests of the corporation. This relates to the decision making process of the D&O. A business judgement must be a informed judgement and D&O who take decision which are informed and according the Business Judgement Rule are generally protected if it adversely affects the corporation.

So, as Palmer is rightly elected as President, he is the Agent of the Corp and the Corp is bound by his actions, but he owns the fiduciary duty of good faith, trust and confidence. Thus his decision to shift Corp activities without consulting other members of board and without taking informed decision regarding if such activity will benefit the Corp is a breach of his Duty of Care owned to the Corp and hence Esger can successfully bring Derivative Suit on behalf of Corp, can enjoin the proposed action.

Duty of Loyalty-Derivative

D&O must act in the best interests of the Corp and avoid Conflicts of Interest (COI). Here Palmer could be involved in self dealing as he instituted severely costly changes without taking the BOD into confidence and therefore not acting in the best interests of the Corp. It is unclear whether he knows related parties to the transaction or has benefitted from, however, the interests of the corp were harmed and Bowen resigned following the action so Palmer as he voted to elect Palmer.

Therefore a Derivative suit can be brought by Esger on behalf of Corp to Enjoin and claim damages for the loss caused to the Corp. Palmers action could be ratified if all material information is disclosed and majority of independant directors vote to approve the transaction,

however it being a Ultra Vires Act there is very less chance that such transaction will be approved.

Piercing Corp Veil

It is generally available to Creditors and Closely Held Corp can forgo corporate formalities and hence this remedy won't be available.

Thus Esgar can bring legal claims on the above mentioned theories.

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**END OF EXAM**