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Corp is a closely held corporation and has been for 20 years, thus it is a valid corporation, and formation does not need to be discussed. A corporation requires articles of incorporation to be filed with the secretary of state, it requires, and a board of directors who appoints officers. This particular corporation has cumulative voting where shareholders have a vote the shareholders vote to appoint the board of directors. It also states the purpose of the corporation is to manufacture televisions. Modification of the articles of incorporation would require a majority vote of the board members to change the articles of incorporation

board members duties

board members have a duty to the corp and its shareholders to act in the best interest of the corporation by taking efforts to maximize the goals of the corporation, usually its bottom line of share prices, and a fiduciary duty to take reasonable actions to keep the corporation profitable. As well as uphold the stated purpose of the corporation

here, the corporation is to make tvs's and the board members must uphold this, and make reasonable efforts to keep the company profitable.

1. Is the agreement between A and B valid?

Voting Agreement between A and B

A and B have a majority of the shares and thus can vote themselves into the board. There is nothing wrong with them agreeing to appoint themselves on the board. A and B also agree to abstain from voting if they cannot agree on their vote. this part is fine as it as the shareholders have a right to cast their vote as they choose. Forming an alliance between boardmembers is not inherently illegal, so long as they uphold the the duties mentioned above.

on the other hand it could be interpreted that A and B's actions would go against the articles of incorporation as well. the AOI state that each shareholder shall have one vote per share they own multiplied by the number of open director positions. The AOI do not state that their voting rights can be volunteered or delegated to another.

2. is D bound by A and B's voting agreement regarding successors directors.

Voting agreement on subsequent owners - changing the articles of incorporation

A and B cannot limit the rights of subsequent owners. Their agreement would take away the rights of D and for future owners to have a vote. Effectively undermining the nature of the cumulative voting system in the articles of incorporation. This would effectively force D to consult A for all vote, or abstain during disagreements.

In order to change the articles of incorporation the board members would have to have a meeting to change the articles of incorporation, have a majority vote, and then change the the articles of incorporation and refile them with the secretary of state. That said, it is likely they could change the articles of incorporation if they following the proper procedure since they have a majority vote between the two of them. It is immaterial that the back of the shares are stamped subject to agreement, as the agreement is between a and B, not between a, b and a third party that does not exist yet. Thus, the agreement that to restrict subsequent owners votes would be unenforceable.

on the other hand, D could be bound by the voting agreement if the AOI are revised according to the change.

is this anticompetitive behavior?

3. on what theory can E bring an action to stop Corp from moving to manufacture bicycles

E can bring suit against corp for acting contrary to its created purpose and for financial waste

Corp has been a profitable company manufacturing tv's for 20 years. Corps stated purposed is to manufacture tvs. E is a shareholder has an interest in the corporations success he can sue the corporation for failing to adhere to its articles. Such a change would change the entire corporation drastically, even if it did make more money. The corp has a history of making tvs and making bicycles is seemingly not related at all. It is unclear that orientign the company so drastically will be successful and would be contrary to the stated purpose of the corporation to manufacture televisions. The corp cannot change what it is makes without changign the articles of incorporation with a majority board vote as previously stated. Such actions are likely to lead to a waste of shares held by E, thus as a shareholder he can sue the company for the imminent loss, and going contrary to the articles of incorporation. E will likely win and hopefully stop the company from doing more

damage to itself as several costly changes had already been implemented.

If E is successful, and the company is insolvent he could attempt to pierce the corporate veil and go after maybe and B for appointing him. This is likely irrelevant, and beyond the scope of the question.

E could also file for an injunction to stop P because of the potential irreparable injury to the company.

4. on what theory can E bring an action for damages against Corp for manufacturing bicycles

Duties of Officers

Duty of Loyalty

Officers owe a duty of loyalty to their corporation, to not enter into deals that would be against the best interest of the corporation and its stated goals.

Here, P directly and willfully rejected the stated purpose of the corporation to manufacture TVs and instead manufacture bicycles. P also did not advise the shareholder of this big change, instead he willfully withheld that information, by not telling them, and his reasoning to not share anything about the changes because he thought it would be so profitable. Thus P could be liable for damages, but as only one person he is unlikely to have sufficient funds to make up for the destruction of a profitable company.

Fiduciary Duties

Officers owe a duty to ensure a corporation remains productive and financially viable, and not enter agreements directly in conflict with its financial goals.

Here, P immediately instituted several costly changes to abandon the manufacture of TVs and only bicycles on. These costly changes go against the stated goal of the corporation and cost the company significant amounts of money. In addition, even if the company suddenly was even more profitable with the sale of bicycles it would still constitute a breach of the fiduciary duty, because all of a sudden the company would not be receiving revenue from its stated purpose as stated above in the duty of loyalty section.

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END OF EXAM