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<u>1) Pick Shareholders v. Alex and Baker</u>

Corporation

A corporation is formed when the appropriate Articles of Incorporation are filed with the Secretary of State certifying that there is a valid business purpose, the presence of shareholders, an elected board of directors and an designated person to receive service of process.

Here, a PickWiners Inc. (Pick) is a valid corporation because the use of the word "Inc." in their name holds the business out as a corporation. Additionally, Pick has shareholders and a board of directors (BOD) consisting of Alex, Baker, and Cate as sole members.

Therefore, Pick is a valid corporation.

Shareholders May Request to See Accounting Books and Data

Shareholders may request access to relevant accounting logs when 1) there is a reasonable belief that a corporations assets or stocks were sold or distributed for less than par and fair market value, 2) the BOD are provided with notice of this request within 5 days, 3) the data review must take place during regular business hours.

Here, Pick shareholders may seek inspection of any accounting documents, revenue sheets, and expenses upon learning of the board's action and Cate's subsequent creation of E-Save Inc. In order to do so, Pick shareholders must provide a written request and inspect the documents during regular business hours. Pick may insect Pick's information only because they are shareholders of this company and thus do not have access to any other non-public information outside of Pick. During a board meeting with all three directors present; Cate Alex and Baker discussed the current value of Pick, Cate's desires to start a new company, and the overall market. Pick shareholders may request to see any documentation presented at the meeting upon having a reasonable doubt of any negative harm the corporation may be facing. Here, Pick shareholders learned of Cate's new company and saw the decrease in Pick's market share and stock price.

Therefore, Pick shareholders may request to see this information because there is a reasonable doubt that the actions were taken in good faith, and there is a clear loss of the corporation's value.

Direct Suit

The shareholders of a corporation may assert a cause of action against the BOD through a direct suit when the shareholders have been directly wronged as result of the BOD' actions. In order to do so, the shareholders must 1) be shareholders at the time of the allegation, 2) must be shareholders during the litigation, and 3) must provide notice to the BOD of their intent to file suit unless notice would be futile.

Here, Pick shareholders may file a cause of action against Alex and Baker through a direct suit because Alex and Baker are directors. The direct suit will allow Pick shareholders to be the plaintiffs in a cause of action against the board of directors; Alex and Baker. Here, Pick shareholders served the board with a written demand to take remedial action. Upon which, the Board denied the action. Thus, Pick shareholders provided Alex and Baker with adequate notice regarding their intent to sue on behalf of the corporation. Additionally, Pick shareholders were shareholders at the time this action occurred and they will continue to have standing provided they remain shareholders throughout litigation.

Therefore, Pick shareholders may recover against Alex and Baker through a direct action brought forward by the shareholders.

Duty of Care

The directors owe a duty of care to the corporation by performing their duties in good faith, in a manner that the reasonable director in a similar position would also provide, and they must take actions within the reasonable scope of their role as a director.

Here, Alex and Baker owe Pick a duty of care and thus they must act in good faith. Thus, Baker and Alex must act with the best interest of the corporation in mind. Here, the third BOD, Cate provided both Alex and Baker with concerns regarding the status of Pick. Cate provided adequate notice of a reasonable doubt regarding Pick's success during a regular scheduled board meeting (a board meeting may take place when there is quorum present through a majority of present BOD) where the entire board was present. Thus, Alex and Baker had reasonable notice of these concerns in an appropriate setting. Alex and Baker failed to investigate Cate's concerns regarding Pick's focus on wealthy investors only because a large part of the market in the lower-priced sector has been ignored. A reasonable director in Alex and Baker's position would have investigated these claims and provided information. Thus, Alex and Baker breached multiple portion of the duty of care during this meeting when they failed to act un the corporation's best interest, did not provide good faith, and failed to take appropriate action.

Therefore, Alex and Baker breached the duty of care.

Business Judgement Rule (BJR)

The BJR provides shareholders and individuals a way to hold one or more BOD of a corporation personally liable for their actions when a director violates the duty of care owed to the corporation. The BJR overcomes the presumption that a director acted with care and provides a cause of action.

Here, Alex and Baker breached their duties of acre to the corporation. In doing so, Alex and Baker availed themselves to personal liability under the BJR. As discussed above, Alex and Baker failed to provide sufficient care to Pick. Thus, they may be personally liable for the harm done to Pick because they did not act in good faith as a reasonable directors. Pick shareholders may be able to recover from Alex and Baker personally under the BJR.

Therefore, the BJR may apply and Pick shareholders may be able to recover from Alex and Baker directly.

Overall, Alex and Baker will be personally liable for their failure to act with care. Pick shareholder will likely be able to recover from Alex and Baker under the BJR rule and through a derivative suit on behalf of Pick.

<u>2) Pick Shareholders v. Cate</u>

Failure to Provide Notice of Substantial Change

The BOD must provide the shareholders with notice of any substantial changes including the sale of assets and distribution of shares.

Here, all three directors failed to provide shareholders with adequate notice of the changes discussed in the board meeting. However, Cate's failure to dissolute from the corporation (a dissolution occurs when a director leaves a corporation as director and provides notice of this change to provide shareholders with the time and ability to elect a new director to assume the role), was a breach of the duty to provide sufficient notice of the change.Cate's departure and subsequent creation of a competing interest are substantial changes the shareholders were entitled to know about.

Therefore, Cate failed to provide adequate notice.

Duty of Loyalty

A director owes a duty of loyalty to the corporation and must refrain from actions that are likely to substantially harm the corporation in any negative way such as the possibility of creating situations where revenue may be lost, fraudulent investments, insider trading, and any action that may be adverse to the corporation in which the director sits on board.

Here, Cate left Pick and immediately started E-Save which would likely constitute as a violation of loyalty. A director must act with the corporation's best interest in mind without putting their needs above. Cate failed to provide the duty of loyalty when she created the competing company and failed to properly resign from the board at Pick.

Thus, Cate likely breached the duty of loyalty.

Business Judgement Rule

See rule above.

Here, Pick shareholders may recover from Cate personally on behalf of Pick through the BJR because Cate breached the duty of care and loyalty when she left as a director and created E-Save. Pick shareholder would be able to directly recover for her neglect to Pick.

Therefore, Pick shareholder may be able to recover from Cate through damages suffered directly to Pick.

Sole Proprietorship Business

A sole proprietorship is formed when an individual has the intent to create a business as the sole owner and operator. Unlike a validly formed corporation, a sole proprietorship does not enjoy a liability shield nor have double or pass through taxation, as a result, a sole proprietorship owner will be joint and severally liable from any causes of actions against the business including breach of contract claims and tort claims. Under the sole proprietorship business arrangement, an owner and the business are seen as the same entity.

Here, Cate intended to create a corporation and stating her intend during the board meeting with Alex and Baker. However, Cate subsequently went on to create "E-Save" as opposed to "E-Save Inc." Thus, Cate formed a sole prop as opposed to a corporation because there are no shareholder nor other directors. While an individuals can create a C-corporation alone thought the valid articles of incorporation; there are no facts to indicate Cate had the intent to create one. Thus, E-Save will likely be deemed a sole prop and Pick Shareholder's may recover against Cate and her new company for any damages that were caused as result of her actions. Pick shareholder's may thus sue Cate directly.

Therefore, Pick Shareholders may be able to recover against Cate and E-Save directly. She will likely be held liable for her actions a director of Pick.

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END OF EXAM