1)

1. Upon what theory or theories may the Pick shareholders bring claim against Alex and Baker and result**corporation:**A corporation can be formed by registering article of incorporation with the secretory of state. It should contain name of the corporation, name of the incorporators,stated purpose of the corporation registered office and shares to be issued. Here, the facts suggests that PickWinners Inc. (Pink) is a corporation so it can be assumed that it is a duly registered corporation. It can be called de jure corporation if all the formalities of corporation is complied with.

If all the formalities are not complied with however there is a colorful good faith belief, then corporation can be de facto corporation.

Pink is a corporation because the facts says it is a corporation and the purpose of the corporation is to markets to wealthy investors who wants to trader stocks online.

Shareholders:

Shareholders are owners of the corporation, however they do not control day to day activities of the corporation. Shareholders usually elect the directors by voting at the annual general meeting. Shareholders are not fiduciaries.

Board of Directors:

Board of director has to manage the corporation day to day.

Here, shareholders have elected Alex, Baker and Cate as the sole directors of the Pick so they are the board of directors and they have fiduciary duties like duty of loyalty, duty of care etc. If they breach these duties , the shareholder can bring direct or derivative action as discussed below.

Duty to care:

Directors have duty to manage the corporation in a prudent manner and used the ordinary prudent person's skill in the management and running of the corporation.

They have to used business judgement to take decisons that are in the best interest of the corporation.

Here, Alex and Baker only focusing on the wealthy investor and ignored the average consumers and thereby caused low price end of the trading. They are not acting in the best interest of the corporation and therefore breached the duty of care. Both Alex and Baker did not agree with Cate to focus on the low- end price and ignore to post the advertisement and caused loss to the corporation. On the other hand, Cate used this business skill and started her own company which began generating large profits.

By not using the best judgement in the interest of the corporation, Alex and Baker as, fiduciaries, breached the duty of care.

Shareholders claim against Alex and Baker:

Shareholder can have two types of claim. Direction action if the damages are caused to the shareholders. If the damages is to the corporation, they can bring derivative action. Before filing the action, they have to demand the board of directors to take action and wait for 90 days unless waiting for 90 days is going to cause irreparable harm to the corporation.

Here, Shareholders made the written demand to the Board to take action, however, it is denied so they can bring the derivative action against Alex and Baler.

Shareholder can claim, Alex and Baker should have focused on the wealthy investors to market and could have made profit to the corporation. Baker and Alex would argue that they have hired the analyst two months ago who conducted the study of low priced end of the market and concluded that there was no money in it and there was a overall market decline of the stock market and that is why Pick is in loss. Shareholder might argue that Cate started it and generating profit out of it.

As long as, Alex and Baker have used business judgment skill, they have valid defense to the claim of shareholders.

2. Upon what theory or theories may Pick shareholders bring claim against Cate and result

Duty of loyalty:

Cate as a director has a fiduciary duty of care to the shareholder of the corporation as well as the corporation.

Usurping corporate Opprotunity:

A director cannot avail any opportunities without first bringing to the corporation. If the director does that she is in a breach of duty of loyalty. Also director cannot compete with the corporation.

Here, Cate had belief that Alex and Baker caused a decline in Pick's market share and stock pricing by focusing only on wealthy investors and she proposed Alex and Baker to focus on low- end priced end average consumers. When Alex and Baker did not agree with her, she threatened both that if they do not agree, she will start her own business.

Alex and Baker did not agree because of the study of analyst as discussed above and advised her that because of the oevrall market decline, Pick is in loss. Cate subsequently formed E- Save on her own and made large profits.

Shareholder can bring derivative suit against Cate alleging that she usurped the corporate opportunity and therefore breached duty of loyalty and duty of care. Cate will argue that she discussed and proposed the opportunity to the board of directors, however they did not accept her proposal. Cate might argue that Pick might have not sufficient funds to avail the opportunity, however corporation has no financial means is not a valid defense.

It is really close call whether shareholders will be successful in the claim as Cate first brought the opportunity to the corporation and when the board did not accept her proposal, she started her own company E- Save.

Duty not to engage in self dealing:

Directors can not engage in self dealing by commingling the corporate funds or use any funds for own benefit.

The facts does not suggest that Cate has used any funds from the corporation to start her business , therefore she is not engaged in a self dealing.

Question #1 Final Word Count = 952

END OF EXAM