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1. Pick Inc. shareholder claims against Alex (A) and Baker (B) (**Fiduciary Duty Towards Shareholders)**

As mentioned by the facts we assume that Pick Inc. is a properly formed corporation.

Liabilities for Corporations - Limited Liability

A corporation is a business entity whose board of directors enter into business deals on behalf of the company's interests. Corporations are generally limited liability companies. Limited liability companies means that a a companies high level officials such as a board of directors are generally not personally liable for any torts or contract claims brought against the company. However, such directors may be personally liable for any personal torts or contracts that can be imputed to them individually. If a corporation has shareholders, these individuals or entities only have a financial interest in the company and they do not run the day to day business of the corporation.

General Duties of Directors

A board of directors is a group of individuals who have been elected by shareholders of voting power (usually persons who have a large stock amount or stake in a company) The Board of directors of a corporation have a general fiduciary duty of care and loyalty towards their shareholders and other directors and to use their best judgement (using their skills, knowledge, and advice where appropriate) when dealing on behalf of the corporation. They also gave agency power which means that they have the power to enter into contracts and business deals on behalf of the corporation. However when doing so they must use their the business judgement rule (more on this below).

Here, A, B, and C are sole directors of Pick Inc. that markets to wealthy investors who want to trade stocks online. A,B, and C have been elected by Pick shareholders. It is important to note that they are sole directors which means they have the ability to enter into business dealings on behalf of Pick - the corporation. Their shareholders only have a financial stake in the company and do not dictate how the day to day of the company is run--this as mentioned above is up to the Board of directors.

Duty of Loyalty

As mentioned above, directors have a fiduciary duty of loyalty towards the other directors as well their shareholders. A director cannot (1) use their position of power in the company for their own personal or financial benefit or for the benefit of their family. (2) A director must not usurp any business from the company. 3) A director must not compete with the corporation.

Here, there is no indication that A and B breached this duty in their dealings regarding pick. There is no personal financial decision that benefitted either in the facts mentioned.

Therefore, it is likely that A and B did not breach their duty of loyalty towards C or the shareholders.

Duty of Care

As mentioned above, directors have an absolute duty of care towards their shareholders as well as towards the other directors. A duty of care means that a director will use their best judgement, skill, and knowledge of like business persons required to handle the business duties endowed to them

Here, Cate believed that Alex and Baker's business decision of solely focusing on wealthy investors (which is what Pick mainly markets towards) instead of average consumers hence losing their low-priced end of the trading market. It sounds like C is insinuating that A and B have breached their duty of care towards her (the other director) and the shareholders by not using their best judgement, skill, and knowledge to handle Pick. However, A and B to the best of their knowledge assert that the decline in Pick stocks has to do with a general recent decline in the stock market and not what C claims. Additionally (as elaborated below), A and B did base their knowledge on a hired analyst (assuming this is a business analyst who has skills and knowledge of the stock market.) Furthermore, Pick specifically markets towards "wealthy investors" to trade stocks online so, it can be argued that tapping into an average market was not the purpose of the corporation in the first place and would entail a total shift in business model of the company.

Therefore, if this claim of breach of duty of care is brought by the shareholders alike is likely to fail since there is no showing that they breached their duty of care when deciding not to avail of the average consumer market.

Business Judgement Rule:

A director must use their best business judgement, skill, and knowledge while dealing with the corporation. They may also use the advise of outside counsel, analysts, accounts etc, when doing so.

Here, A and B focused solely on the wealthy investors because this was the business model of Pick. They however did not expand their knowledge and skill towards researching the trading market space of low-priced stocks. However, it can be argued that since they hired an analyst two months ago to look at the low-end market on their behalf they have successfully fulfilled the business judgement rule.

Therefore, it is likely that A and B did not breach their business judgement duty towards the shareholders.

2. Pick shareholder claims against Cate (C)

Duty of Loyalty

Please see rule above.

<u>Using Position of Power for Personal Interests</u>

Here, by starting her own company (E-Save) C breached her duty of loyalty for her own personal interests. Furthermore, she used her position of power as a director to try to intimidate A and B into agreeing to have Pick form a subsidiary. Even though ultimately in the best interests of the corporation she nonetheless breached her duty of loyalty.

<u>A director must not usurp any business from the company.</u>

Here, it is unclear from the facts whether C usurped any business from Pick, since her new company is a completely different business model than Pick since it targets low-end stocks over wealthy clients.

Therefore, it is unlikely that she usurped any business from Pick.

<u>A director must not compete with the corporation</u>

A director has the responsibility of bringing to the notice of the directors any new business ventures with the ability to bring additional revenues to the corporation.

Here, it can be argued C breached her duty by going over A and B's disagreement to form E-Save. Eitherway, she did inform A and B of her interest in starting a new company and A and B did not stop her from doing so.

So she likely did not breach her duty of loyalty towards the shareholders here.

Overall, it is likely that C breached her duty of loyalty toward the shareholders by using her position of power as a director by intimidating A and B to start E-Save/

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END OF EXAM