

Q-1

Issue;

The issue is what common law duty and statutory duty had Julian breached. The actions of Julian is related to conflict of interest for the company as he has suggested the proposal to acquire the land from his uncle Gerald without disclosing the relationship he has with Gerald to the other directors of the company, as well as he had passed on information regarding architectural tenders to his brother Raphael

Rule;

The general law of conflict of interest rule mentions that as per “Corporations Act 2001”, Section 191 (Corporations Act, 2001),

The duty of the Director's is to inform other directors of material personal interest while disagreement emerges; when (1) A director of a corporation who has a material personal interest for a subject that identifies with the dealings of the corporation should make available to the rest of the directors with notice of the interest.

As per Section 195,

1. A director of a public listed corporation who has a material personal interest for a subject that was considered at meetings of the directors' should not:

- (a) be available whilst the subject were discussed during the meeting; or
- (b) take part in the vote on the subject (Corporations Act, 2001)

As per section 183 of the Act, Improper use of information; is about not to inappropriately make use of the information they pick during their director responsibilities to raise up favorable position for themselves or some other person or to the loss towards the corporation (Corporations Act, 2001).

Application;

A director should not put themselves in a place where there is a definite or considerable probability of a disagreement among personal interest as well as their responsibility to act in light of the interests of the corporation, except the consent of the corporation is acquired. Therefore, Julian is guilty of a conflict of interest because he did not reveal his interest in the transaction for the acquirement of the land from his uncle Gerald, to the other directors of the company. Under section 191 he is required to disclose a material personal interest and therefore, he is liable for the conflict of interest in the transactions. As per section 195 in case of public limited company, Julian is not supposed to be there at the meeting or to vote on the subject

except the rest of the directors be in agreement that he could do so. Case; “*Grand Enterprises Pty Ltd v Aurium Resources Ltd [2009] FCA 513*” (BSG Legal, 2009)

Conclusion;

Therefore, in this matter the other directors did not know that Julian is related to Gerald and thus they did not consent that Julian should not be present in the voting and should not vote regarding purchasing the land.

Q- 2

Issue;

What common law or statutory duty has Sol and Daniel breached?

Rule;

Section 180 of the “Corporations Act, 2001”, states Care and diligence for directors and additional officers

(1) A director or additional official of a company should practice their authorities and release their responsibilities with level of care and diligence that a sensible individual will practice if they:

- (a) were an executive or official of a corporation in the firm’s setting; and
- (b) possessed the workplace held by, and had an similar responsibilities in the corporation as, the director or official (Corporations Act, 2001).

Application;

At the board meeting the other two directors, Sol and Daniel didn’t try to request for an independent valuation of the property and also they did not worry regarding how the corporation would finance the land purchase. They have a fundamental understanding of finance, however can't comprehend financial statements and gave the responsibility to the accountant of the corporation to deal with it. As per law, it is necessary for every directors, whether official or non-official, to take action in a minimal standard of care and diligence. Therefore, Sol and Daniel neglected their duty to take action with appropriate care and diligence. Case; “*ASIC v Adler (2002)*” (premiers.qld.gov.au, 2010)

Conclusion;

Thus, Sol and Daniel under this section might have breached of performing their job with proper care and diligence.

Q-3

Issue;

If the directors, Julian, Sol and Daniel have breached their responsibilities, and do any of them have a defense and if not what are the consequences for them?

Rule;

As per Section 184 also enforces criminal legal responsibilities on directors (Corporations Act, 2001),

- a) are irresponsible or deliberately dishonest and neglect to take action in good faith to the greatest interests of the company or neglect to take action an appropriate reason;
- (b) make use of their place dishonestly with the intent of gaining a benefit for themselves or some other person or with the intent of generating loss towards the corporation;
- c) make use of their place irresponsibly so that the use might cause themselves or else some other individual gaining positive place or might cause in generating loss towards the corporation;
- (d) utilize information they have acquired in the course of their place deceitfully with the plan of picking up benefit for themselves or some other person or with the intent of generating loss towards the corporation; or

Any director legally responsible of a wrongdoing in section 184 would face a most severe sentence of 2,000 punishment units (at present \$220,000), 5 years of detention or may be both.

In case of the business judgment rule, it secures against both the general law and the statutory duty of care. It is given in section 180 (2) of the “Corporations Act 2001”, that (Corporations Act, 2001);

A director or any other official of a company who builds a (positive) business judgment would not be in contradiction of the duty of care (both general law and statutory) if the director has settled on the decisions, in good faith and for a proper purpose; and with no individual interest for the matter of the business judgment; and has well-versed themselves concerning the matter of judgment to a degree that they sensibly accept towards being suitable; and with the sensible belief that they are acting to the best interests of the company.

Application;

As per the section 180(2) business judgment' rule does not provide directors the authorization to perform in a way, to be exact specifically opposing towards their place, not prepared in good faith or for a proper purpose, every which are obligations that directors are obligated towards following. In this case the Sol and Daniel were ignorant about the full information of the land purchase, and thus they not liable to be secured under business judgment rule. Therefore the directors had breached their duties under section 180 and could draw in fines of up to \$200, 000 and could face dissimilar penalties, like, paying compensation towards any affected persons substances. Case; "*Australian Securities and Investments Commission v Mariner Corporation Limited [2015] FCA 589*" (Findlaw.com.au, 2017)

Conclusion;

Thus, the directors have breached the duties and they are liable for penalties.



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References

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