

Three friends legal question



According to Jason (2011), the person who is involved in incorporating with either active role or inactive role can be defined as a promoter. The case *Tracy v Mandalay Pity Ltd* illustrates that a person who agrees to share profit while forming a company is the promoter, in spite of his passive role. In this case, though Alicia played no active role in forming the company, as a shrewd business man, she agreed to share the profits generating from this new organization obviously. Thus, Alicia is a promoter. 2. Does Alicia breach the fiduciary duties?

According to *Gloucester v Barnes*, a promoter should be honest and disclose all the information to the independent board of directors to meet his fiduciary duty rather than personal interest. In this case, Alicia hid the fact of converting Pit Street into a pedestrian mall. In other words, she did not fully disclose the information, which would lead to the loss of the Batch Ltd because of the useless of the petrol station on a no motor vehicle traffic area. Alicia kept the secret to ensure Batch Ltd would purchase this development site. In this way, Alicia herself can make personal profits from the transaction.

To some extent, Alicia showed individual interest on this contract other than the company. So, Alicia breached the fiduciary duties. In this situation, Batch Ltd can sue Alicia and rescind the contract. 3. Is Alicia entitled to retain her profit? According to *Releaser v New Sombrero Phosphate*, a promoter should focus on the benefit of the new company other than it of himself. In this case, though Alicia had made disclose of \$220,000 profit to the directors, she got it from the new company. As a promoter and director of Batch Ltd, Alicia should minimize the cost of purchasing his site.

By contrast, she maximized her own personal gain by consuming the property of the new company. To some extent, Alicia can be regarded as a trustee and Boat Ltd can be thought of the beneficiary. Thus, constructive trust order can be required by Boat Ltd in terms of claiming Alicia to hand back the additional \$220,000 personal gain. In this way, the profit is not retained to her. 4. Lifting the corporate veil? According to *Guilford Motor Company Ltd v Horns*, as a separated legal entity, the corporate veil should be lifted if the motivating factor is to fraud. In this case, Boat

Ltd is incorporated by Alicia, which certainly shows the company is a separated legal entity. Immediately after the formation, Boat Ltd bought the site from Alicia, who had already known this site could not be petrol station one month ago. But, she did not disclose this information to Boat Ltd and sell it. Obviously, fraud existed.