

Director's duties in company law



**ASSIGN
BUSTER**

Solution:

Facts and Issues:

In this case Mario is the Director of FWPL Company. Mario decides to contact Simon with the intention to acquire his shares in FWPL. As a Managing Director, Mario knows that there is a good chance that Company will in near future enter into a distribution agreement with a leading retailer in the United States that will enhance the value of the business. The issues in this case are as hereunder:-

- Duty of care or (director's duty of care to the company and to the members).
- Duty of good faith.
- What duties director owes to the company? (Bostock, 2012)

Rules:

Section 180 (1) of the Corporations Act 2001 incorporates the Duty of diligence and care. This provision states that an officer or Director of a corporation shall exercise the powers vested in him and discharge their duties with a degree of care and diligence which is exercised by a reasonable person if they:

1. Were an officer or director of a corporation in the circumstance of corporation; and
2. held or occupied the office by, and bear the same responsibilities within the corporation as the Director or the officer.

The reference to a reasonable person indicates an objective level of care which is consistent with the development of a duty based on trust. The balance

<https://assignbuster.com/directors-duties-in-company-law/>

should be between the foreseeable risks of harm against the potential benefits that can reasonably affect the corporation from the questioned conduct(Lowry, 2012).

Section 181- Duty of good faith. An officer or Director of a corporation shall exercise their powers and discharge their duties:

1. In the best interests of the corporation and in good faith
2. For a proper purpose

This provision embodies fiduciary duty on directors of the corporation to act Bonafide and in good faith for the advantage of the corporation, and provides with an obligation to act honestly(Barasnevicius Quagliato, 2008).

Section 182- Duty of Director not using his position improperly. A director of a corporation shall not use their position improperly to gain an advantage either for themselves or for some other person. The director shall not make improper use of their position in such a way that it causes detriment to the corporation. This section is determined to be violated when a director is engaged in a conduct with the intention and objective of obtaining an advantage regardless of the fact whether that advantage occurred or not (Ho & Lee, 2007).

Section 183- Duty not to use information obtained as a director improperly. When a person obtains some information because he has been or is a director of the corporation, then he must not use that information in improper way to have an advantage for himself or any other person (Kottow, 2010).

Application:

Section 180 of the corporations Act 2001 attracts a civil obligation that a officer of the corporation or director of the corporation must at all reasonable times show a proper degree of care and diligence in the execution of their duties and powers. Section 180 (2) provides a rule of business judgment whereby a director is required to:

1. Make their judgment for a proper purpose in good faith
2. The director should not invest his personal interest of material nature in the matter of the concerned judgment.
3. Should inform themselves regarding the matter of the judgment to the extent they believe to be appropriate.
4. The directors believe that the judgment is made with the advantage of the corporation.

In this case the decision of Mario to acquire Simon's shares is based on his personal interest and violates the duty of care and diligence (Bainbridge, n. d.).

The duty of good faith as per section 181 of the corporations Act 2001 is violated. Section 181 requires that the director must entertain his duties in good faith in the best interests of the corporation and. In this case Mario is not discharging his duties for a proper purpose for the advantage of the corporation rather he has been intended to have a personal advantage which shall not be in the advantage or interest of the corporation. On the other hand, this is also not for the proper purpose. Proper purpose under this act refers a purpose which is in the interest of the corporation.

A civil obligation is imposed on the directors and other officers under section 181 to exercise their duties and powers in good faith and in the interests of the corporation. It has been provided that if the directors use their powers of their personal interest, the advantage of any other party, then it shall be considered to have breached this duty under section 181. It is important to note that under section 184 (1) breach of this duty shall be considered as a criminal offense if the director was intentionally dishonest (Lim, 2013).

The duty provided under section 182 not to make improper use of position and under section 183 not to make improper use of information has been violated in this case. Here Mario has used his position in an improper way for his personal interest and benefit rather than for the benefit of the corporation or the members of the corporation. Mario has also used the information which he obtained because he was a managing director has violated and breached the duty under section 183 of the act.

Conclusion:

It can be concluded from the above analysis that in this case Mario being the Managing Director has breached the duties under section 182 and 183 of the Corporations act 2001. Mario has used his position and information he obtained being in the position of Director of the corporation for his personal interest and benefit. Mario has failed to perform his duties in good faith against the corporation as well as against Simon. In this case Mario has breached the duties to act in good faith in the interest of the corporation for a proper purpose. Mario has breached his duties against the corporation and the members of the corporation both.

Question 2:

Facts and Issues:

In this case JV Mine Pty Ltd is jointly held fifty percent by GML and the other fifty percent by QMNE. In 2009, QMNE approached GML, the shareholder in JV Mine, to make another big investment in JV Mine, to offer it to develop a copper mine. The directors of GML delegated to others, which included a geologist, the work of collecting the technical information relating to the quantum of copper that the company might be able to be mined. The report, which was prepared for the directors showed that the investment offered in the mine shall be very fruitful. Queried by other directors regarding the optimistic results, Mr. Chester (who has a geology qualification) assured them that all reports seem to be in order. But it was discovered that some of the facts had been negligently included in the report. This means that, if the directors believe the report and invest funds of GML's in the mine, the investment will not be as successful as the report has declared. The issues in this case are as given hereunder:

- What should be standard of care for the directors?
- Duty of care is same for all or less for others or special for one?
- Is it special for directors who have geological qualification?
- Mention responsibilities of decisions, all decisions can't be positive

(Bruner, n. d.)

Rules:

Section 180 (1) of the Corporations Act 2001 provides the duty of care and diligence for the directors of the corporation. It states that an officer or director of a corporation shall exercise the powers vested in him and

<https://assignbuster.com/directors-duties-in-company-law/>

discharge their duties with a degree of care and diligence which a person of reasonable prudence would exercise if he:

1. Held the position a director or officer of a corporation in the circumstance of the corporation; and
2. Occupied the office or position held by, and hold the same powers in the corporation as the Director or the officer (Lipson, n. d.).

The standard of care which is to be observed by the directors of the corporation should be as expected from a person of reasonable prudence would have shown if he was a director or held the same office with the same responsibilities. In other words the standard of care which is required from the directors is that same for a person of ordinary and reasonable prudence. The directors have a duty to act in the advantage and interests of the corporation. Directors have a duty to directly avoid conflict of interests ('DIRECTORS' PERSONAL LIABILITY FOR CORPORATE FAULT', 2007).

An objective standard of care was developed by Australian courts in the case of Daniels V Anderson (1995) 13 ACLC 614 (Cassidy, J. 1997).

Duty of care is same for all the directors of the corporation. The law does not provide for difference in liability of directors. All the directors are expected to act with their diligence and care and perform their duties with such care that no loss is caused to the corporation (Art, R. C. 2003).

Special standard of care is expected from the directors who are skilled or have special knowledge of a technical question involved. Where the question is related to a technical point and any of the directors have special

knowledge or skill related to that question then the standard of care expected becomes as that from an expert (Gordon, R. 2003).

Application:

In this case it is the duty under section 180 (1) of corporation act 2001 of the directors to act with care and diligence. The standard of care expected was as that of a person of ordinary prudence. The directors of GML fulfilled their duty of care by delegating it to others, including a geologist to obtain technical information on the amount of copper that could be mined. It was the duty of the directors to take the decision that whether the investment will be successful or not. In this case the duty of care is same for all the directors and a duty of care was special for the director who had a special knowledge of geology. It comes within the scope of duty of care that the directors make sure that the report submitted before directors should be verified. In this case Mr. Chester, who has a geology qualification, had a special standard of care in this case because he had the special knowledge of the subject.

So in this case the duty of care has been breached by the directors of GML as the report showed the amount of profits was not accurate or reasonable. As it was discovered later that some information in the report was negligently prepared. So it comes within the breach of duty of care when the directors fail to obtain a reasonable report and the facts in the report are based on negligence that means the duty of care has not been fulfilled as of the expected standard (Harding, D. 2001)

Conclusion:

In this case the duty of care was vested in the directors of the GML as to the question of the amount of copper which could be obtained from the mine. The directors had a special standard of care expected from them. The directors delegated to others to obtain the information on technical points about the quantum of copper which could be achieved from the site. It was discovered later that the report, though in order, but it has included the facts of profit which are negligent and not reasonable. So it can be concluded that the directors of GML breached their duty of care in this case (Premiers. qld. gov. au, 2015).

References:

- Bostock, T. (2012). The Corporations Act 2001. *Ac* , 2002 (39).
- Lowry, J. (2012). The Irreducible Core of the Duty of Care, Diligence and skill of Company Directors: Australian Securities and Investments Commission v Healey. *The Modern Law Review* , 75 (2), 249-260.
- Barasnevicius Quagliato, P. (2008). The duty to negotiate in good faith. *Int Jnl Law Management* , 50 (5), 213-225.
- Ho, L., & Lee, P. (2007). A DIRECTOR'S DUTY TO CONFESS: A MATTER OF GOOD FAITH? *The Cambridge Law Journal* , 66 (02), 348.
- Kottow, M. (2010). The improper use of research placebos. *Journal Of Evaluation In Clinical Practice* , 16 (6), 1041-1044.
- Bainbridge, S. The Business Judgment Rule as Abstention Doctrine. *SSRN Journal* .
- Lim, E. (2013). Directors' duties: improper purposes or implied terms? *Legal Studies* , 34 (3), 395-418.

- Bruner, C. Is the Corporate Director's Duty of Care a 'Fiduciary' Duty? Does it Matter? *SSRN Journal* .
- Lipson, J. Directors' Duties to Creditors: Volition, Cognition, Exit and the Financially Distressed Corporation. *SSRN Journal* .
- DIRECTORS' PERSONAL LIABILITY FOR CORPORATE FAULT. (2007). *Tilburg Law Review* , 14 (4), 481-482.
- Has the "sleeping" director finally been laid to rest? *Australian Business Law Review*, 25 (2), 102-117.
- Shareholder rights and remedies in close corporations: Oppression, fiduciary duties, and reasonable expectations. *Journal of Corporation Law*, 28 (3), 371
- Do publicly traded corporations act in the public interest? *Advances in Economic Analysis & Policy*, 3 (1), 1013
- Referral of powers paves way for Australia's corporations act. *International Financial Law Review*, 20 (4), 57-58.
- Premiers. qld. gov. au,. (2015). 7. 3 *Corporations Act 2001 (Cth) (the Corporations Act) - Welcome Aboard - Department of the Premier and Cabinet* .