

Florid Flicks Pty Ltd Case

Executive Summary

Question # 01 – Statutory Duties

Issue

Being a private ownership firm, all business dealings and key decisions at Florid Flicks Pty Ltd seek approval of the three shareholders. According to the case, Mick, Kim and Muldoon are the three shareholders and the main parties involved; Mick and Muldoon assume the roles and responsibilities of directors while Kim acts as the Gallery Manager and a full time employee at Florida Flicks. Their relationship can be determined by the equal number of voting shares that empowers them with the equivalent right to raise voice on a particular business concern. Case assessment suggests that the key business transactions pertain to the printing of drawings and artworks; at the moment, Florida Flicks faces cash issues with a troubled record keeping system. On one hand, Mick shows high optimism that the things will eventually sort out; hence, continues to incur ongoing expenses. On the other hand, Muldoon depicts a no concern attitude by taking no necessary initiatives to improve the business situation. On a simple note, case evaluation reflects Mick as an active partner and Muldoon as a sleeping partner with little or no awareness about the company matters. In the light of given facts, issues at Florida Flicks seem to be caused by the lack of ownership and accountability among the business directors.

Rule of Law

In Australian context, statutory duties and responsibilities of directors and owners are governed under the statute law i.e. the *2001 Corporations Act (Australia)*¹ while the general law duties are administered under the constitution of a company and the common law or the law made by the judge. According to the Common Law, directors have a duty to make decisions in the best interest of the business and to restrain from impeding their discretions (See figure below)². This rule of law is relevant to facts about the responsibilities of Mick and Muldoon towards the business. Similar example can be taken from s 181 of the Corp Act (Australia) that imposes honesty as a statutory duty onto the directors³.

¹ CCA. Corporations Act 2001. 2015. Commonwealth Consolidated Acts.

² GTLaw. Corporate regulation. 2015. Gilbert Tobin Lawyers.

³ Tomasic, R., Bottomley, S. and McQueen, R. *Corporations Law in Australia*. Federation Press, 2002, p 367-375.

Source	Duty
Common law	<ul style="list-style-type: none"> to act in good faith to act in the best interests of the company to act for a proper purpose to give adequate consideration to not fetter discretions to avoid conflicts of interest
Corporations Act	<ul style="list-style-type: none"> to act with the care and diligence of a reasonable person to act in good faith and for a proper purpose to avoid conflicts of interest to avoid improper use of position to avoid improper use of information to avoid insolvent trading duties around financial reporting and disclosure
Other Statutes	Other statutes may impose personal liability on directors, notably laws governing competition, occupational health and safety and protection of the environment.

Figure 1: Directors' Duties under Australian Laws

(Source: GTLaw, 2015)

Previously known as s 232(2), s 181 of the Corp Act (Australia) creates judicial duties of directors to act honestly and responsibly in accord with s 181(1) that inflicts civil obligation on directors to act bona fides or in good faith⁴. Moreover, s 184 separates the civil and criminal aspects of the duty of bona fides; this section is relevant to the given case as it requires directors to act responsibly and avoid reckless or intentional offense⁵. In line with the figure above, Common Law imposes a duty on directors to address a particular business situation under ample consideration⁶. The law is relevant to the case of Florida Flicks as it draws a thin line of ethical and moral considerations between the right and wrong. Review of statutory duties also indicates that directors' responsibilities circle around the financial disclosure and reporting⁷. The case facts reflect poor record keeping and cash flow as the key business issues, which mean that the directors i.e. Mick and Muldoon are not fulfilling their statutory duties.

Application to the Facts

In accord with the Common Law principles, facts from the case indicate that Muldoon fails in satisfying his duties as a director because he pays no regard to the current business position; hence, it can be stated that Muldoon fails to act in good faith. Application of this legal principle to the case can be supported by the relevant case of *CAC v Papoulias [1990] 8*

⁴ Ibid 3

⁵ Ibid 3

⁶ Ibid 2

⁷ Ibid 2

*ACLIC 849*⁸; it states that a director is responsible to act honestly. Additionally, the relevant case law of *Commonwealth Bank of Australia v. Friedrich and Ors [1991]* provides a fine example of directors' duty to care⁹; in accord with ss 181 and 184, Muldoon fails to fulfil his duty to care by showing no concern to the steps taken by Mick in paying expenses. In contrast, Mick's actions as the director of Florida Flicks are found to contravene with s 184 of the Corp Act (Australia). For example, *Feil v Commissioner of Corporate Affairs [1991]* 9 *ACLIC 811* depict that a director's failure to act honestly is the breach of statutory duties¹⁰. Facts presented in the case recognize that Mick's optimism that things will turn out to be right is a mere excuse to deny his duties towards the business performance. Hence, in support of *Marchesi v Barnes [1970] VR 434*¹¹ case; Mick fails to act bona fides and honestly in the best interest of the business.

Despite knowing that the business is facing cash flow problems, Mick's actions to commission new products for sale can be recognized as a deliberate and intentional offence. Thus, Mick's actions seem to contravene with the statutory duties imposed by s 184 of the Corp Act (Australia). The relevant case of *Australian Securities and Investments Commission v Healey [2011] FCA 717*¹² provides a clear illustration of directors' duties for financial reporting and record keeping in terms of financial statements. In accord with ss 180(1), 344(1) and 601FD(3) of the Corp Act (Australia) hold directors responsible for record keeping and financial statements¹³. This means that Mick and Muldoon are legally responsible for the current cash flow problems as they act in an irresponsible manner to monitor and mitigate the current business situation.

Section 182 of the Corp Act (Australia) requires directors not to misuse their position and access to sensitive information¹⁴; this section is applicable to the position of Kim as his actions contravene his general duties towards the business. Corresponding to the case law of *Mills v Mills [1938] 60 CLR 150*¹⁵, application of statutory laws to the case indicate that Kim contravenes with his statutory duties by making improper use of sensitive information for personal gains and violating the rule of purpose.

⁸ Ibid 3

⁹ BWI. Those Inescapable Directors' Duties. 2015. Board Works International.

¹⁰ Ibid 3

¹¹ Fisse, B. Fraud and the Liability of Company Directors. *Proceedings of a Conference on Complex Commercial Fraud*, 1991, p 1-13.

¹² Jacobson, D. Centro (ASIC v Healey) case note: directors' duties for financial statements. 2015. The Bright Law.

¹³ Ibid 12

¹⁴ Ibid 1

¹⁵ Jade. [1938] HCA 4; 60 CLR 150. 2015. Bar Network.

Conclusion

In the light of above application of relevant rule of law and case laws, Mick and Muldoon contravene their statutory duties to act in good faith and in a responsible manner. They also breach their statutory duties imposed by the Corp Act (Australia) and the corresponding general laws. At the same time, Kim is observed to disobey his one the basic statutory duties i.e. to avoid misuse of information, position and power.

Question # 02 – Resolution Ratifying and General Law Duties500**Issue100**

The point in focus originates from the potential event of liquidation; in the case, Mick contemplates that Florida Flicks' inability to sustain and survive its position is likely to provoke liquidators to take Sarah's drawings into possession for the settlement of affairs. As a suggestible solution to the issue at hand, Mick and Muldoon with the directors' resolution and Kim oppose this initiative.

Rule of Law100

Application to the Facts200

Conclusion100

Question # 03 – Options under the Corporation Act1000

Issue200

Rule of Law350

Application to the Facts300

Conclusion150