
Stolen Business Deals: Actions against Corporate Officers and Directors

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Generally speaking, a corporate officer or director has a duty of loyalty to the corporation which requires him to facilitate business opportunities that are appropriate for the corporation, to the corporation. That duty is breached when an officer or director takes a business opportunity that would have otherwise gone to the corporation for himself, or for another venture of his, without disclosure to the corporation and corporate approval.

When is the Conduct Actionable?

?Usurping corporate opportunities?, as it?s called, is when an officer or director takes a business opportunity for himself that: (1) the corporation is financially able to exploit; (2) the opportunity is within the corporation?s line of business; (3) the corporation has an interest or expectancy in the opportunity; and (4) by taking the opportunity for his own, the fiduciary will thereby be placed in a position inconsistent to his duties to the corporation. Essentially, but for the interference with the opportunity by the fiduciary, the opportunity would have been exploited by the corporation. This cause of action belongs to the corporation alone.

Injunctions and Business Litigation

A civil action for breach of fiduciary duties can be filed against the officer or director involved, but an injunction can prevent the person from benefiting from their bad acts. Injunctions are generally used to restrain the defendant from bad acts, or to restore conditions that existed before the bad act was committed. In order to obtain an injunction, the plaintiff (corporation) must make a showing of irreparable harm from the defendant?s actions should an injunction be denied, and a likelihood of success on the merits in the lawsuit. The harm must be more than just money damages, and must be real and immediate. In some cases, the fact that the director/officer is currently competing with the corporation can be sufficient to warrant an injunction.

Money Damages

In most cases, where a director or officer has usurped a corporate opportunity, the most adequate remedy at law is a judgment for money damages incurred by the corporation in being deprived of the opportunity. Money damages may include the amount of profit gained by the director/officer from taking the business opportunity for himself. In some instances, the taking of such an opportunity can warrant additional and enhanced damages.

Time is crucial in these types of cases and it is important to consult with a competent business litigation attorney

as soon as possible to assess all of your legal options and prevent further injury to the corporation.