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**Law's related to corporations, the notion duty of good faith, with references to the Re-Walt Disney case; A critical analysis**

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**Abstract:**

*Based on the set of renowned Delaware cases, the good trust duties in the company have always been a guide to jurisprudence and common law jurisprudence has specifically recognized good faith as the special fiduciary responsibility only around 2006, which has contributed to the need to form this requirement from a corporate law point of view. In addition, jurisdiction has proven that, in certain situations, a director's liabilities may be exhaustively restricted by some rules of statute or convention but in instances that come under fiduciary duties of good faith, those laws will not be applicable. In the end it allows court to articulate specific trust duties that meet social change and transformations of corporate law due to the scale and generosity of the concept of good faith. These secondary duties cannot be used as subsidiary components of the defined trust duties because of their existence, substance and consequence.*

**Keywords: Corporate law, duty of good faith, Re-Walt Disney**

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**Introduction:**

Once Ponta has suggested that the adoption of the duty of good faith of corporate law is in the last 25 years a reaction to the case law of common law. <sup>1</sup>In addition to the traditional fiduciary obligations, including the responsibility of "due care" and "loyalty commitment," the administrators and managers indirectly owe the business a good faith. However, that obligation was not in itself established by common law jurisprudence but has instead been between corporate governance laws and incorporation papers.

It seeks to recognize and explain, in view of Delaware cases, the duty of good faith in corporate law. From the beginning of "doctrinal controversy," the relation between the issues has been identified since the legal status of good faith is based on the justification of such laws, and the codification has been a direct consequence of defining the boundaries of this requirement.<sup>2</sup> "Delaware" rules offer fundamental forms of corporate decision-making mechanisms that enables businesses to adopt their own practices and procedures.<sup>3</sup> The reason for this scheme is that it is better to allow businesses to be handled rather than by judges and legislators by those responsible for it.<sup>4</sup> I believe that in civil law jurisdictions, the same concept would be very desirable.

**Definition of Good faith:**

The obligation of good faith in corporate law means that corporate directors and officers have to act with due attention to their responsibilities as trustees in taking all sorts of decisions in their capacity of corporate trustees.<sup>5</sup> An intentional departure from the duties of a director or officer, acting intentionally for purposes not to benefit a company, or deliberately violating or disregarding the law or acting without due care and diligence, may include a violation of the obligation of good faith. Although no private shareholder's right to take action is granted for a breach of the good faith duty, its breach can also raise a loyalty claim.

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### **According to Black's Law Dictionary**

Sale quoted a definition of good faith in the Black's law Dictionary which states that the holder must be questioned with honesty of intention and free from the knowledge of circumstances. An honest intention to abstain from taking any unconscientious advantage of another, even though technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious.<sup>6</sup> This term is normally used in common use to describe a state of mind that denotes honesty of purpose, freedom from intention to defraud and in general means that it remains true to its duty or obligation.

### **Case law title “in re walt disney co. Vs derivative litigation”**

The Delaware Court of Chancery decided the titled case in the year. This Court is the sole authority of equity and, together with the Supreme Court and the Supreme Court, is one of the three constitutional courts of Delaware.<sup>7</sup>

### **Facts of The Case**

The compensation committee of board of directors nurtured a contract with Michael Ovitz –when his services were hired as a president by of Disney Company -containing no fault termination provision. This entailed a severance package-the committee was acquiesced of it-In case of his no-fault termination, he would get salary of \$ million per year, \$7.5 million for remaining contract duration as annual bonus payment, \$10 million as termination fee; and, exercisable acceleration of his options for three million shares. The committee also knew all along that it had to bear the burden of additional \$92 million (Option portion of his severance package) in case he was terminated without due cause after one year of employment as he had sacrificed almost \$150 to \$ 200 million for rendering hi service of the company. Subsequently after hiring, fourteen months down the line he was fired from the said post on non-fault basis and obtained, by virtue of aforementioned contract, about \$130 million. Consequently, claiming breach of fiduciary duty by the directors while

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approving unnecessary and unfavorable contract with Michael Ovitz without adequately apprising itself of cost of the non-fault termination provision, shareholders(plaintiff) filed second complaint after dismissal of first one against Disney directors (defendants).<sup>8</sup>

**Issue:** Did the directors comply with their fiduciary duties in connection with the president's hiring and termination?

**Holdings:** The Supreme Court, Jacobs, J. , held that:

- 1- No infringement of any fiduciary duty committed by the president while pursuing the contract with the company.
- 2- President did not flout any fiduciary duties when he accepted \$130 million severance payout in accordance to his employment agreement after he was terminated.
- 3- Company's compensation Committee did not transgress its fiduciary duties by approving president's employment contract and sufficient evidence was there to substantiate this.
- 4- After chief executive officer (CEO) and Company general counsel decided to terminate president, Board of directors wasn't obliged to give vote on termination.
- 5- CEO and corporate general counsel did not act in disregard of their fiduciary duties while they decided that president could not be terminated for cause, and thence, that president was awarded severance package and sufficient evidence is there to substantiate this,

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- 6- Payment of severance package to Michael Ovitz by no means come is ambit or definition of waste.

### **Analysis of The Term Duty of Good Faith in Corporate Law in The Light of Disney Case**

Dr. Adina Ponta a Ph.d holder in law have beautifully analyzed the Disney case. The court delineated comprehensively the significance and connotation of good faith, even in a scenario where there are company is tied to apron strings of shareholders or an imperial director who is member of pathetic board. Justice Chancellor Chandler considers that, if properly informed, the Management Board or controlled shareholders and the Board does not suffer from other disabling interest conflicts, such patently independent, as traditionally described, fiduciary duties of care and loyalty might not be aggressive as to protect shareholder's interest. Good faith may serve to bridge this gap and ensure, with honesty of purpose and an understanding of the interests which are to be protected by the shareholders entrusted to govern Delaware companies.<sup>9</sup>

Therefore, the initial argument arising from the doctrine of good faith and case law is distinctive fiduciary duty or obligation, and involves a large number of situations in which the undertaking or exercise of the directors or actions is even inadequate and the duty of care and loyalty is not infringed. Secondly, in good faith situations, a number of rules restricting the duty of care and loyalty do not apply. A large number of rules limit the responsibility of the director in implementing traditional trust duties.

Even if he is negligent, if his conduct is protected by the rule of the business judgement or by the norm of gross negligence, the director is not liable for violation of his duty of care. A director selling a property, owned by a building, to a company at a higher market price level shall not be held liable for violation of the loyalty duty. The damages to the company and the profit of

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the directors, for example, should not be a violation of the fiduciary duty of good faith, even if the violation of the law maximizes company profits. the directors who deliberately causes the company to break the law breach the fiduciary duty of good faith. Even when the director acts on illegal grounds, no financial implication or harm for the company will be seen. Thirdly, the instrument of good faith works to delineate specific trustee duties.<sup>10</sup> Based on and in line with social changes, Business Law remains one of the law branches. Situation, business practices and efficiency goals are a paradigm shift and rules for business conduct also evolve. The aim of the institution is to achieve the fundamental goals of the policies of any system of rules by analyzing the characteristics of good faith, found in both business law and contract law. By invoking good faith without the general legal means, a judge has the opportunity to resolve the matter either lawfully or equitably.

**In the light of the case of Walt Disney, specific obligations in the area of good faith**

**1. The duty of the Director/Officer “not to consciously put the company in the position to violate the law”**

A fundamental principle enunciated under the aegis of the fiduciary duty in good faith is that director is outright forbidden from rendering advertently company in a condition (slippery slope) tends to breaking of law, even if, such act expectedly results in maximization of shareholders. It does not matter If the rational of the decision finds its footing on the fact that the penalties and reputational harm to the company are -per se- not in commensurate to the likelihood of detection and if the penalties are slightly less than the foreseeable advantages resulting from the breach of duty. In fact, it is the complex fibers of society set forth the reason for orchestrating this obligation because they fear legal sanctions cannot survive. To earn the dividends in a complicated society, the majority of its members must internalize the obligation (though, moral one) to obey the law. We have a strong social interest in prohibiting directors from consciously determining the company to break

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the law in search of profit growth.<sup>11</sup> Compliance with this obligation focuses on directors, who are responsible for guiding the conduct and conduct of the company's transactions. The compatibility of the principle of legal conduct with the principle of maximizing the profits and wealth of shareholders is not in dispute, the latter being the main objective of the establishment and existence of a company. The principle of legal conduct does not prevent this objective, but only charts the paths for the proper achievement of objectives. In *Roth s. Robertson*, the CEO of an amusement park consciously placed the company in a position to offer money to people who lived near the park and threatened to be referred to the authorities because the park was operated on Sundays, contrary to legal standards for rest hours. Undoubtedly, the director made the decision to maximize the company's profits and because he had rationally foreseen that the expected profits of the company as a result of the opening of the park on Sunday would exceed the cost of possible economic sanctions, taking into account the chances of discovery and the effective sanction. The court noted that the administrator was responsible for the granting of these illegal payments and ordered the repayment of these funds which were wasted at the expense of shareholders.

## 2. Duty of Candor

The duty of candor- being second set of duties and having its basis in good faith- is the one that can be found and bifurcated in two ways. First, as manager, it is duty of director not to take a position by his act or conducts or make misleading assertions (including ambivalent statements). Secondly, directors also obliged to apprise the board as well shareholders concerned of useful information sine quo non for decision making process or the delegation of tasks, i.e. the duty to properly inform, and director must not intentionally or grossly negligently violate their obligation. Though, both, the duty not to mislead and the obligation to properly inform, are inextricable; the differences is present between them and it cannot be overlooked. The former one duty is connotative to a manager's intended conduct when making a statement and is negative duty. Whereas, the

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imperative compulsion to effectively inform, the latter one, directors impose a positive obligation on directors to make certain statements.

The duty of candor is not circumscribed to the certainty that all statements or assertion of director are true or correct all the time. Conversely, this duty imposes an obligation to enshrine only what is imperative in "certain situations". The obligation of frankness will be seen from three perspectives: communication between the board of directors and shareholders, between board members and finally, between executives and the board of directors. One must not blur the duty to properly inform with the duty of directors to properly inform themselves before making a decision of the company.<sup>12</sup> The obligation that calls directors to properly inform themselves before making a business decision is part of obligation of care and due diligence. This element of the franchise obligation primarily concerns shareholder's information when they choose the corporation's arrangement, it mirrors the demeanor of the directors, their data activity and the substance of the data gave.<sup>13</sup> Directors are bound to reveal the data they have sensibly, however in a far reaching and exact way, without discarding, under any circumstances, the revelation of issues that could impact investor dynamic according to any perspective. The worth telling example is *Malone v. Brincat*, in which the court characterized the obligation not to misdirect as the board's commitment to reveal significant data when it requires shareholder's shareholder input or decision. The Delaware Supreme Court has decided that directors must to communicate honestly with shareholders, even in setting where they do not request their involvement. (Eisenberg, 2006)

The question, in these conditions, is whether the directors have not complied with their duty to inform or whether they have additionally penetrated a lot more extensive and general obligation of dedication and great confidence by purposely dispersing bogus data about the organization's budgetary

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circumstance. Although in *Malone v. Brincat* the court alluded to both the obligation of steadfastness and great confidence, and the principal court even alluded to the obligation of care, we declare that the board's obligation not to delude shareholders is better clarified by good faith, the obligation of loyalty is not a satisfactory basis for this requirement, as the board of directors may abuse the obligation not to mislead shareholders, even in circumstances where it does not act in the personal interests of directors.<sup>14</sup> Neither, “duty of care”, “perseverance” and “prudence” is an adequate basis because, in the present circumstances, board can settle on a discerning choice, which needs genuineness (innocence), yet augments the company's benefits and ensures the current abundance of shareholder at an extremely sublime level. Good faith can legitimize this commitment in a few regards. First, a board of directors that intentionally offers false expressions acts untrustworthily to investors. Second, by giving incorrect data to shareholders, directors exhibit an absence of devotion to their workplaces since shareholders sensibly hope to impart to trustworthy, decently and straightforwardly with the directors they endorse. Good faith may explain the board's obligation to inform shareholders accordingly, without omitting information that might be considered useful, because loyalty to the function requires directors to meet the reasonable expectations of shareholders, namely to provide information known to them as the basis of a decision to be made by shareholders. (Fallon Jr, 2017) It is clear that these factors will be assessed in practice in each case, because not all breaches of information are a violation of good faith, just as not all violations of the law automatically exclude good faith. Another context where the obligation of honesty is normal is in the correspondence between the director and the whole board.

It is accepted that in this relationship, directors are again required to satisfactorily educate other people on exceptionally significant issues they know about that might be pertinent to the board's dynamic and administrative duties, regardless of whether it pertains to issue in which director has no ax to grind. One horizon that can't be ignored is the interchanges given by

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the agents, i.e., the organization's officials to the individuals who runs the affairs of company. Obviously, some information critical to the corporation's subjective dynamic isn't accessible to the individuals who are answerable for deciding the issue; however, this information is given or created by individuals who don't have the same mandate yet may have a vested interest in decision. The vulnerability of the asymmetry of data by government servants to thrive their own interest's overlaps with the risk that these directors will try to lead the board to actions or decisions that they consider to be in the best interests of the company. For instance, board of directors is confronted with the choice to decide on the opening of another plant; however, just the division whose items will be made in the new plant can create a great part of the significant data in regards to the probability of an arrival on interest in the new production facility.<sup>15</sup>

**3. company Earning by using deceptive means that break widely agreed company rules**

In general, this concept acts more as a prerequisite than as a law of obligation, because, if so, the main purpose is to conduct or contribute to the operations of the companies' organizations. If the action is unsuccessful, the management would not damage the company if the principle is broken and the executive director is not responsible. VGS, Inc. v. Castiel (VGS), (Mehra v. Teller, 2019) had financial problems, and after some managers' intrigue, the decision-making process on the subject of recognizing the corporation's other best interests eliminated one of them who did not embrace the mainstream trend. The perpetrators are linked with acts of manipulation and the Board's violation of the requirement to conduct its business in a minimum level of fairness and fairness, given that there is clearly a lack of good faith in the attitude of the directors concerned. It is an essential part of good trust and not a duty of loyalty that the company must achieve its aims without relying on manipulation processes. Except if a conflict of interest does not mean the desired outcome, this condition is applicable and the conduct which gives the business a profit does not

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inherently breach the obligation of equal loyalty, for that reason. Rather, even though the outcome has a good impact for the organization, corporate organizations' commitment not to behave in a coercive way in violation of the fundamental principles of corporate governance.

#### **4. Gratifying disallowed financial interests**

A director may often show behavior which conflicts with his skill as a manager, while not in his own financial interest. This structure is labelled "intolerable encouragement" by the doctrine. This definition is strongly suggestive, as stated in *Re RJR Nabisco, Inc. Lawsuit Shareholders*, where it has been found by the courts that a director is not behaving in good faith on "hash, dislike, jealousy, vengeance, embarrassment or pride." Their approach on these grounds does not correlate with good faith. The prohibition of this sort of action in good faith is a legitimate explanation. While such action is mainly a duty of allegiance on the basis of the directors' personal interest, this inclusion cannot explicitly be defined in compliance with the regulations or with constructive jurisprudence, since in the situations where the conduct of directors is directly or indirectly focused on advancing their own financial interests, conventional loyalty is necessary.<sup>16</sup>

In comparison the ban on good faith actions based on unauthorized motives, but not tied to financial rewards, explicitly indicates that it is unacceptable even though the historically assumed obligation of allegiance is not broken. This ban is an inappropriate behavior. The condition that arises is very normal where improper or unauthorized purposes apply to the actions of directors to exclude responsibility of a co-worker.

The effectiveness in these choices is the impartial reasoning of members of the board who are encouraged to take action against one of their colleagues. This is another situation in which the "interest agon" is established loosely and only involves financial interests. The justice test was extended by the

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Delaware courts after 2000, the freedom analysis was applied and, aside from financial grounds, the absence of any financial interest decided. In our opinion, when evaluating the impartiality of directors, the courts should not exaggerate.

### **5. Substantial disregard of responsibilities**

The inability of the directors to take account of their duties is almost invariably a breach of the obligation, even though the Corporate Decision Regulation, a regulatory standard or a statutory assessment standard of conduct dependent on extreme negligence will preclude liability itself. In some cases, however, Lack of consideration is such that the violation also violates the duty of good faith, because the neglect of duties constitutes an absence of office fidelity, violates basic generally accepted standards of corporate management, and sometimes the absence of honesty is so marked that the director does not convince himself that he is acting in a correct manner. The claimants argued that the board of directors of a drug-processing company has overlooked the admonitions of a government institution controlling feed and medicines content, along with a range of media articles, over seven years. in the Abbott Laboratories Derivative Shareholders Litigation. These warnings stated that due facilities in Abbott Laboratories would not conform to legal requirements set by Abbott Laboratories (Food and Drug Administration - FDA). The production facility was closed and the company sustained significant losses as the result of those shortcomings and the Board's failure to take any steps. The Court concluded that in the present case the directors were not mainly aware of their good faith obligations, because the Board's continued and systematic failure to exert oversight was inadvertent in that the directors had not taken any action to prevent or remedy the situation. Six years of non-compliance, inspections, warning letters and notice in the press have been reported, all of which led to the FDA's greatest civic fine including the destruction and suspension of goods to suggest that the decision of the director not to act was not made in good faith and was contrary to the company's best interests. The Court notes that the liability of directors in cases in which they

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have infringed on good faith, when they have knowingly and deliberately discovered their responsibilities, can be very high, if they adopt an attitude of disregard for the risks posed by a business decision.<sup>17</sup> While this is not the case law of Delaware Supreme Court.

As in the aforementioned cases, jurisprudence shows several tests to determine the extent that a director is not only infringing on care but also in good faith. The tests include a continuous or systematic failure of the board to exercise oversight or “careless” or “intentional misconduct” or “conscious and deliberate disregard of known risks,” or the adoption of an attitude of indifference towards risks involved in the decision of a company, that is, the willful dismissal of duties. Furthermore, the judge's assessment may take a conscientious disregard of duties or manifested and deliberate indifference to the exercise of the duty of fair and due diligence into account. Such tests are not mutually exclusive but instead are ways to show the magnitude of disregard and negligence to be established in order that the duty of good faith is violated based on the violation of liabilities.<sup>18</sup>

Smith v. Van Gorkom was the last point of departure in order to reveal the essence of good confidence in corporate law when a collective action was decided by the court and the directors failed to consider the combination the CEO had presented to them. The care duty is an important point of departure since it is closely linked to responsibility. Managers and executives who constantly perform their duties are much less likely to violate other trust duties. Such directors are more likely to weight their own decisions, consult with appropriate advisors and disclose conflict of interests in accordance with the diligent and prudent behavior.

**Conclusion:**

The sum and substance of discussion is good faith is lynch-pin where fiduciary duty comes. Its role is underscored by

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noteworthy progression in business law over the earlier decade is the unequivocal affirmation of good faith as a separate fiduciary commitment of corporate official. It should be noted, in any case, that this fiduciary commitment was not made by law, yet it has for a long while been explicitly or unquestionably referenced in various genuine courses of action relevant in corporate law that required directors to manage business in good faith. Additionally, good faith has reliably existed in the wording of the corporate judgment rule and in the meaning of various responsibilities that must be explained by that dedication. In any case, the express affirmation of good faith as an alternate fiduciary commitment in jurisprudence underscores its centrality and the need to consider this responsibility in its individuality; it underscores the improvement of its contours and the noteworthiness of contemplating this dedication from a regulatory perspective. Good faith can be seen from various focuses. From one perspective, it legitimizes and explains a grouping of unequivocal duties, which can't be set inside the degree of unfaltering quality, sensibility and unwaveringness, for instance, the dedication not to have the law broken or as a commitment of candor. This discussion in like manner shows cases of good faith, yet this doesn't generally recommend the duty of care or the duty of prudence. Though good faith must exist as a component of loyalty, determination and reason capacity, its control to these conditions would decrease its ability as an as a prophylactic device or as an incentive to help good faith conduct. Diligence and consistency or duty of care is procedural, not substantive.

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