CONSEQUENSES OF DIRECTORS' BREACH OF DUTY

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ABSTRACT
The company is a fictitious legal entity whose important organ is the Board of Directors. The Directors have a duty to uphold the company's Constitution and a legal obligation to act in its best interests by advancing the company's success for the benefit of the company and its members. Where they fail to live up to these expectations, the company may become infected with a dangerous plague, pandemic, incurable disease or organ failure, which may eventually lead to its death. The Directors, being humans are unpredictable and fallible. They are bound to inadvertently make mistakes, negligently fail in their duties or willfully act or conduct themselves in manners that may lead to the failure of the company by way of bankruptcy, insolvency, liquidation and winding up. In order to ameliorate the company from passing through the above anomalies, statutory duties are put in place, which if strictly followed, the misfortunes would not be experienced. Consequences of breach of Directors' duties are also put in place statutorily and at Common Law to enable Directors strictly observe their duties. This Article adopted the doctrinal research methodology. It examined Director's duties under the Companies and Allied Matters Act, 2020, as well as the duty of care as enshrined in section 174 of the United Kingdom's Companies Act, the factors that may lead to Directors' breach of duty, after which it proffered solutions on the way forward for the smooth running of the Company. It recommended for a continuous teachings or trainings for Directors, for them to be at par with current reality.

1. INTRODUCTION
The company is an artificial legal entity, created by law. Just like a robot may seem to have head, legs, arms and even heart, but cannot function without the assistance of a human control, using engines, batteries, remote control or electricity, so is the company, being an abstraction, cannot function or perform any duties or observe any obligations, without the assistance of human beings. No wonder it has been asserted[1] that the artificial entity created by law, evidently is a creation of imbecility. A company is devoid of body or other organs and this led to the devise of means to solve this hybrid incorporation problem. The solution was to be found in creation of the position of directors. According to Viscount Haldane in *Lennards Carrying Co. Ltd. v Asiatic Petroleum Co. Ltd*[2]and Lord Reid in *Tesco Supermarkets Ltd v Nattras*[3], "a corporation is an abstraction. It has no mind of its own more than it has a body of its own. Its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent; but who is really the directing mind and will of the corporation, the very ego and center of the personality of the corporation."

Since a company is an artificial person, its management has to be entrusted to human agents, these are the Directors. They may be described as Directors, Governors, Governing Body, Governing Committee or any other similar expression. The Companies *and Allied Matters Act* defines a Director as a person who is duly appointed by the company to direct and manage the business of the company.[4] Every company is required to have a minimum of two directors.[5]

The *CAMA* made copious provision on the appointments, removal, duties, obligations and even remuneration of Directors. It provides that every public company must now have a minimum of three Independent Directors.[6] It is an obligation on any Shareholders that has the power to nominate the majority of the members of the Board to

[1] Ogbaegbe K.. N. *Company Law in Nigeria, a Contemporary Perspective,* (Zubic Infinity Concept: 2015) 190-191.
[2](1915) AC. 705.
[3] (1972) A.C. 155.
[4]*Section 269 (1) of the Companies and Allied Matters Act 2020,* hereinafter referred to as *"CAMA"*; *Olufosoye v. Fakorede* (1993) 1 NWLR (PT. 751).
[5]As long as it is not a small company. *Section 271 CAMA 2020.*
[6] *Section 275(1).*

nominate at least three Independent Directors for the company.[7]

Directors are among the other officers of the company who are in charge of corporate governance of the company. Corporate governance refers to the processes by which corporate entities particularly limited liability companies are governed. It is the exercise of power over the enterprise direction, supervision, management and control of enterprise actions, with the concern for the effect of enterprise on other parties, particularly the stakeholders and accountability of corporate administrators.[8]

Directors are essential to a company's management team. They are viewed as both the company's agents and trustees. In addition, directors are generally responsible for managing the company and acting in good faith in compliance with the law and the company's constitution.[9]

The autonomous legal character of the company is key to the entire activity of business through organizations. Aniagolu, JSC (as he then was) has this to say in *Trenco (Nigeria) Ltd v. Graham and Sons,*[10]"…this legal concept affects its structure, its existence, capacity, power, rights and liabilities. Although a company is a legal entity and has an independent legal personality, it is, of course an artificial person or entity. Therefore, all the operations and activities of the company have to be carried on by its organs and agents."[11] The Directors are the engine room of the company, without which the company may go into peaceful slumber, becomes moribund and eventually succumbs to the cold hands of death in the form of winding up.

The role of the board is to plan and strategize goals and objectives for the short and long term good of the company and to put mechanisms in place to monitor progress against the objectives. To this regard, Board of Directors must review, understand and discuss the company's goals. In particular, the board relies on Independent Directors to challenge the board's activities.[12]

The Directors, being the engine room of the company, ought to be bold, assertive, unassuming, diplomatic, experienced, intelligent, smart and always act in the positive interest of the company. Any form of laxity or breach of duty on the part of the Directors is always felt by the company. This can be seen from the lackadaisical nature of most companies, which commenced business operations in a robust manner and were then the envy of their contemporaries. In a twinkling of an eye, just like a mirage, the companies succumbed to premature death, as a result of poor board decision-making driven by dominant directors or executives, and colleagues who remained submissive onlookers.[13]

2. DIRECTORS' DUTIES

In order to ensure orderliness and effective management of the company, the Common Law doctrine and Statutes established certain duties, which the Directors' of the company must observe. These duties are:

1. Fiduciary duties:

When using their managerial powers,[14] directors assume a fiduciary role. The following individuals are owed fiduciary obligations by directors:[15]

a. The company, with which they must always deal in good faith while doing business with it or on its behalf.[16]

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[7]*Section 275(2).*

[8]*CBN v Aribo* (2018) 1 NWLR (Pt. 1608) 130 SC.

[9]*Section 305 (1) ibid., Walleistener v.Moir (1974) 1 WLR 991.*

[10] *(1978) 1 LRN* 146, at 153.

[11]*Trenco (Nigeria) Ltd v Graham & Sons* (1978) 1 LRN 146, at 153.

[12]Prince N. J. *Corporate-Governance/The Role of the Board of Directors in Corporate Governance.* Accessed on 23rd January, 2022.

[13]Newman R. *The 3 causes of dysfunctional boards – and what we can do about them* https://aicd.companydirectors.com.au/membership/membership-update/the-3-causes-of-dysfunctional-boards-and-what-we-can-do-about-them. Accessed on 23rd January, 2022.

[14]*Section 305(1) and (2) of the CAMA 2020.*

[15]*Ofordum v. Easy GEO International Ltd* (2019) LPELR-46832.

[16]*EMCO & Partners Ltd & Ors v. Dorbeen (Nig) Ltd & Anor* (2017) LPELR-43453; *Usman &Anor v. Jubril & Ors (2019) LPELR-48792.*

See *Okeowo v. Miglore,*[17] per Eso JSC;

b. Shareholders in each transaction that impacts their interest;

c. Anyone dealing with the securities of the company.[18]

The following fiduciary duties are required of a company's directors, both individually and as a board:

(a) Duty to act bona fide for the benefit of his company;

(b) Duty to use power for lawful purposes;

(c) Not restricting the freedom to vote;

(d) Not putting duty and interest at conflicts; and

(e) Not to make secret profits by appropriating corporate assets or opportunities.

(a) Duty to Act *Bona Fide* for the Benefit of the Company

Directors must always work in the best interests of the company as a whole, protecting its assets, advancing its operations, and advancing the goals for which it was established. They must also behave faithfully, diligently, and carefully, just like any other skilled director would take given the situation.[19] The Supreme Court of Nigeria interpreted the meaning of *section 305(3) of the CAMA, 2020* in *Artra Industries Nig. Ltd. v. Nigerian Bank for Commerce and Industry*.[20] It held that the directors of a company must adhere strictly to the statutory provisions which enjoin them to consider the interest of the company as paramount in the exercise of the managerial power and duties granted upon them by *Section 87* of the *CAMA*.

Directors are also required to take broad notice of the interests of the company's members and staff while performing their duties. Regarding the employees, that is only a religious proclamation because they do not have the authority to demand that the rule be observed, under *section 305 (9) of the CAMA 2020,* in contrast to members who are able to utilize the protections granted by *CAMA 2020.*[21]

(b) Duty to use power for lawful purposes

It is required of directors to use their authority for the intended purpose alone and not for any unintended purposes.[22] But once used for the right reason, these powers remain legitimate, even if they unintentionally have a negative impact on a member. Determining the driving force behind the director's actions is hence the test. If it is genuine, it holds merit even if it has a negative effect on the members.

(c) Duty not to Restrain Voting Choice in Any Way

A director's status as a trustee of his firm means that he cannot use his discretion to vote a certain way without the company's approval, as the beneficiary. Therefore, a director cannot legitimately arrange for shareholders or other third parties to vote a certain way at board meetings on behalf of other directors. Even if formed with good intentions and in good faith, any such agreement is void. Nonetheless, in regards to a general meeting, the directors, shareholders, or a class of them, may make such an agreement.

(d) Duty not to Interfere with His Duties and Interests

A director should never allow his personal interests to interfere with his official responsibilities.[23] Therefore, it is forbidden for directors of companies to engage in any other activity with which they have a personal stake, including business. A company's incapacity or reluctance to carry out any responsibilities or obligations under its articles and memoranda will not serve as a defence against a director's violation of duty under the aforementioned Act.[24]

While the company's articles may allow a director to enter into a contract with the firm, the director must disclose the interests he has in this agreement in accordance with *section 303 of the CAMA 2020.* The section states as follows: Subject to the rules outlined in this section, any company that has a direct or indirect interest in an upcoming agreement with the company must disclose that interest to the directors of the company during a meeting.

(a) The period during which a director may disclose their interest in a contract affecting the firm to the board of directors is outlined in *Section 303(2) of the CAMA, 2020.* They are as follows:

(i) Proposed contract: The director must indicate his interest during the board meeting when the decision to sign the contract is made.

[17] (1979) 1 SC 133.

[18] *NDIC v. Rabo Farms Ltd & Anor* (2016) LPELR-42032..

[19] *Section 305 (4) of the CAMA, 2020.*

[20] (1998) 4 NWLR (Pt. 546) 375.

[21] *Sections 344, 346, and 353.*

[22] *Section 305 (5) of the CAMA, 2020.*

[23] *Section 306 (1) of the CAMA, 2020.*

[24] *Section 306 (4) of the CAMA, 2020.*

(ii) The director must declare his interest in the contract at the first board conference following his change of heart, if he was not interested in it when the contract was initially considered but before it was awarded.

(iii) If the director becomes interested in the contract after it has been awarded by the company, he must declare his interest at the first meeting of the board after he becomes interested.

Section 303's requirements will not be interpreted to impair the enforcement of any legal restriction preventing directors of a business from participating in any transactions with the company.

(b) The following additional measures were implemented to stop directors from abusing their position by putting their obligations ahead of their interests:[25]

(i) Limitation against entering into a security agreement or guarantee;[26]

(ii) Any remuneration paid to a director of a corporation for leaving their position or retiring must be revealed to and authorized by the members of the company at a general meeting.[27]

(iii) Limitations on purchasing his company's non-cash assets.[28] The company, its directors, its holding company, or any individual associated with a director is prohibited from entering into an agreement when that director or individual is to purchase non-cash assets from the company or sell them to it without the vote of the general meeting's permission. The value of this non-cash asset must be less than N2000.00 or 20% of the total assets of the business. Therefore, before the director or someone acting on his behalf may buy any non-cash item with a value greater than N2000.00, it must be presented before the general meeting.

(e) Duty not to make Secret Profits and exploit Corporate Assets, Information and Opportunities

This may be the most difficult duty a director has. The prohibition on required benefits and hidden profits is broad and addresses three areas, namely:

(i) Bribery and Corruption

(ii) Misuse of confidential information

(iii) Competition stemming from multiple directorships

(i) Bribery and corruption

Section 313 (1) of the CAMA, 2020 prohibits directors from accepting bribes, gifts, or commissions from any individual, either in cash or kind, or a portion of their profit from any transaction involving their company, with the intention of introducing their company to deal with said individual. This provision strongly discourages bribery and corruption. However, if the gift is given to the director out of gratitude after the purchase has been completed without their request, they may be allowed to keep it as long as they disclose it to the board and make sure that the board's decision to approve their retention of the gift is recorded in the directors' minute book.[29]

(ii) Abuse of confidential information

It should be highlighted that directors are prohibited from using any assets, trade secrets, or private information entrusted to them by virtue of their position for their personal gain, both during and after their employment with the firm ends. Other corporate officers that have access to private information are also impacted by this regulation, in addition to the directors. Even after resignation or appointment termination, the responsibility remains. Due to their prior positions within the corporation, the directors and these officials are still liable and may be prohibited from abusing the information they receive by an injunction.[30]

(iii) Competition stemming from multiple directorship

Directors are not supposed to take part in the unethical misuse of proprietary information belonging to one firm to the benefit of another or the improper exploitation of business opportunities belonging to one company to the benefit of another.[31] The company's refusal or inability to perform any obligation or function under its articles of association or memorandum is not a defence.[32] In *Scottish C. W. S. Ltd. v. Meyer,*[33] Lord Denning MR. examined the

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[25]*Section 303 (4) of the CAMA 2020.*

[26]*Section 296 of the CAMA 2020.*

[27]*Section 299 of the CAMA 2020.*

[28]*Section 310 of the CAMA, 2020.*

[29]*Section 313 (3), ibid.*

[30]*Section 306(5) of the CAMA 2020.*

[31]*Section 307 of the CAMA, 2020.*

[32]*Section 306 (5) of the CAMA, 2020.*

[33] (1989) AC 324.

burdensome responsibilities placed upon multiple directorships, even among rival businesses, and cautioned that "a director holding interlocking directorships is walking a tight rope." In the *Meyer case*, it was decided that the nominee members of a co-operative society had run the firm in a way that was discriminatory against the minority by operating slowly and favouring the competing society's business.

(f) Director's Duties of Skill and Care

A director of a company is required to exercise the powers and perform the duties of his office honestly, in good faith, and in the best interest of the company. S*ection 308 (1) of the CAMA 2020* introduced professionalism and an objective standard of care and skill on the part of a director of a Nigerian company. It states that a director must exercise the same level of care, diligence, and skill that a responsible, prudent director would exercise in comparable circumstances.

The level of professionalism aligns with the substantial authority granted to the board of directors of the organization under *section 87(3) of the CAMA 2020.* In *Delta Steel Nigeria Ltd. v. American Computer Tech Inc.,*[34]the court held that since directors and managers have ultimate authority over the company's actions, the thoughts and feelings of this particular class of employees reflect the firm as a whole. As a result, the company is obligated to uphold the acts of its directors and managers, shareholders and stakeholders are supposed to observe highest standards of care. The director may be held accountable for negligence and breach of duty in an action if they fail to exercise such reasonable care.[35] In actuality, the board typically appoints experts to serve as the company's executive directors in order to minimize responsibility.

The provision for Duty of Care under the *Companies Act, 2006*

The *Companies Act, 2006*[36] states unequivocally that the Duty of Care and Skill is a Common Law duty, regulated by standards regarding liability for negligence, and not a fiduciary responsibility. Millett LJ's statement in the case of *Bristol and West Building Society v. Mothew*[37] is the most often referenced source for the difference between fiduciary and other duties. He stressed that fiduciary duties are unique to fiduciaries and that breaking them has distinct legal repercussions than breaking other duties. Equitable remedies for fiduciary duty breaches are essentially restorative or restitutionary in nature, as opposed to compensatory in nature, as would be the case for duty of care breaches. His Lordship continued by emphasizing that disloyalty is at the heart of fiduciary duties and that incompetence alone is insufficient to constitute a violation of fiduciary duty. As a result, the *Companies Act's*[38] duty of care and skill is a reflection of the common law duty of care, and liability for a breach may arise from a tort or, in the case of a director with an employment contract, from the implied contractual provision that an employee will use reasonable care and skill in carrying out his duties.[39]

Individual and Collective Responsibility

The board's collective responsibility for the leadership of the company's affairs should be stated as the starting point. However, each director has 'personal and inescapable' duties[40] within the scope of this collective responsibility, and they must each exercise the appropriate level of diligence, skill, and care.

The following quote from Lord Woolf MR. in *Re Westmid Packing Services Ltd. Secretary for Trade and Industry v. Griffiths*[41] is frequently used to support this argument: "Under English company law, the collegiate or collective responsibility of a company's board of directors is of fundamental importance to corporate governance. Individual accountability must, nevertheless, serve as the foundation for that collegiate or group duty. Every director has a responsibility to the firm to keep himself informed about its operations and to work with the other directors to oversee and manage them.

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[34] (1999) 4 NWLR (Pt. 597).
[35]*Section 308 (2) of the CAMA 2020.*
[36]*Section 178(2).*
[37] (1996) 4 ALL ER 698, 711-712.
[38]*Section 174.*
[39]*Lister v. Romford Ice & Cold Storage Ltd. (*1957) 1 All ER.
[40]*Secretary of State for Trade and Industry v. Goldberg* (2004) 1 BCLC 557, 608, per Lewison J.
[41] (1998) 2 BCLC 646,653.

The Companies Act, *section 174*, clearly states the anticipated standard:

(1) A director of a company must exercise reasonable care, skill and diligence. (2) This means the care, skill and diligence that would be exercised by a reasonably diligent person with-

(a) The general knowledge, skill and experience that reasonably be expected of a person in relation to the company, and

(b) The general knowledge, skill and experience that the director has. With respect to the functions performed, the standard is an objective minimum standard that is capable of the specific qualities provided the director in question is sufficiently diligent and has assumed the office of director.[42]

Section 174(2) of the Companies Act, for instance, mandates that a director who is a professional, like a chartered accountant, meet the standard that would be expected of a reasonably diligent director performing the functions that he performs in that company and possessing that personal attribute. The standard established in *section 174 (2)* (a) cannot be lowered by the director's personal characteristics since doing so would imply that a standard that is always subjective and based on those characteristics would apply. However, the courts will not let the test to be used to impose unreasonably high levels of skill. Instead, the standard set is of the reasonably competent director in the position undertaken with those personal traits. For instance, even if they have accounting qualifications, non-executive directors of insurance companies should be able to understand the general accounting standards that apply to insurance companies; they cannot, however, be expected to be experts in complex accounting matters relating to insurance companies.[43]

3. ISSUES AND CHALLENGES THAT LEAD TO DIRECTORS' BREACH OF DUTIES

Failure in corporate governance is often attributed to board members' incompetence or lack of incentive. Another individual factor is the complexity of outside job demands: with outside responsibilities involving complex issues and situations, the board member is unable to focus on the firm's issues.

Directors have over the years abused their position and independence by pursuing interests that do no not reflect the interest of shareholders. In corporate governance, the duty of directors is to protect the interest of shareholders which can be summarized as profit maximization, but this role has been abandoned by the directors to pursue their selfish interests.[44]

Aside from generating profits, every firm has a primary goal, which is to continue operating as a going concern. Regardless of a company's size or kind of operation, illiquidity and insolvency pose one of the biggest dangers to its ability to survive. Directors' continuous abdication of his duties usually leads to the failure of the company. While there are numerous exogenous basic reasons of corporate failure, such as intense competition, the way the business community operates, shifts in public demand, casualties, excessive policy changes, socioeconomic and political unrest, the focus of this work is primarily on endogenous factors, such as poor management, excessive spending, insufficient revenue, etc.

Some of the issues and challenges that lead to directors' breach of duties include;

1. Nepotism in appointments: The directors may appoint friends, family, and acquaintances into high-paying executive roles. The majority of these individuals may lack the required skill and competence to manage such positions, making it impossible for them to justify their high wages and office amenities. They rather, function as drain pipes attached to suck away the firms' funds rather than adding any value to the company.
2. Frequent Oversea Trips: It's normal to observe people travelling outside of the nation on a regular basis. They travel in first class and stay in five-star hotels as they set off on their adventures. These ostentatious costs have a negative impact on businesses' profits.
3. Giving lucrative contracts to their businesses or businesses in which they have interests: The directors sometimes, modify the contract award to an exaggerated or outrageous sum in order to accomplish this. All of these are intended to keep a family bond intact, win over a challenging partner, or obtain a sizable portion of the contract granted to friends. If it is, however, to their private businesses, it will mean a monetary payout to the directors as well as a reduction in the profits of the company. Giving contracts to friends, family, partners,

[42] *Re Brian D Pierson (Contractors) Ltd* (2001) 1 BCLC 275, 302.

[43] *Re Continental Assurance Co. of London Plc* (2007) 2 BCLC 287, 401-402.

[44] Obasi M. N. The Abuse of Positions by Directors of Companies vis-à-vis the interest of Shareholders, *IJILJ Vol*. 4, December 2019, 185.

or relatives creates a major conflict of interest for the firm and, indirectly, the shareholders, who are inevitably impacted by the failure to declare dividends owing to a decrease in earnings.[45]

4. Non-collateralized loans: Occasionally, the directors see the clients' deposits as their own private funds, which they are free to spend anyway they like.
5. False reporting of altered accounts: Some directors may choose to produce fictitious reports that purport to indicate strong financial success and profitability while in reality there is nothing to show for it.
6. Lack of competence and skills: Incompetence and lack of the necessary skills on the effective management of the company also lead to directors' breach of duty. Where a director does not have the knowledge required in the management of the company, he tends to abandon his duty to another person who may not have the overall interest of the company at heart, thereby running down the company.
7. Lack of confidentiality or trust: Leaking or unauthorised 'sharing' of information outside of the board is unlikely to cause anything other than problems, especially in a world where reputational damage is a key risk for all organisations. Board members need to be aware of the Codes of Conduct in place and it should be made clear what information should and shouldn't be kept confidential.
8. Conflicting agendas: Boards led by individuals who do not have the best interests of the business at heart (or indeed who do not have the right skills) and are motivated by a personal or political agenda, are likely to incite conflict and ultimately impact upon the running of the business itself. It is imperative that directors are aware and reminded of their legal duty to act in a way that is most likely to promote the success of the company for the benefit of its members as a whole and not for any other reason, personal or otherwise.
9. Lack of order and respect: It's important that board members operate in respect for one another, staff and other key stakeholders; that the firm's key values are reflected both inside and outside of the firm. Ensuring order and respect helps to build a framework for the business and to hold the board itself to account.

4. CONSEQUENCES OF DIRECTORS' LAXITY

It is important to note that corporate power abuse is most noticeable when a board has too much influence and its members are either too weak to assert their rights or too naive to realize how much power they truly possess. It's interesting that the *CAMA, 2020* seeks to balance the authority of the company's many organs, but as we have seen in reality, this has mostly failed. Even in cases where shareholders are willing to assert their rights, the current institutional and legal structure is nearly invariably absent, making it impossible for complainants to achieve the remedies they would have otherwise been entitled to. The *CAMA 2020* imposes consequences on directors in an endeavour to provide shareholder protection, hence offering safeguards to shareholders.

BREACH OF DUTY NOT TO MAKE SECRET PROFIT, EXPLOIT CORPORATE ASSETS, INFORMATION AND OPPORTUNITIES

The aforementioned heading has several, strictly applicable ramifications. The fact that the donation was accepted in good faith[46] or that the company shared in the covert profit is irrelevant.[47] The firm may file a lawsuit to recover such hidden profit or benefit, and the affected director will be held liable for any undue perks and secret profit.[48]

It is irrelevant if the director acted in good faith. In *Regal (Hasting) Ltd. v. Gulliver,*[49]the court held that It doesn't matter if the directors acted in good faith because they had no other option for raising capital when they used their own funds to establish a subsidiary, strengthen it to the point of being a good going concern, and issue shares to themselves that were subsequently purchased at a profit by another business. The court additionally decided that culpability arises from breaking the prohibition against directors making undisclosed profits from assets they have obtained as a result of their affiliation with the company.

Section *306(4) of the CAMA 2020* seems to have expanded the scope of the rule, as it states that a company's incapacity or unwillingness to pursue a specific business under the memorandum of association does not absolve a director from engaging in the company's affairs or making a covert profit without using company funds. Since he would still be held accountable and may be prevented from abusing the knowledge he had from his prior

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[45]*EFCC v. Cecilia Ibru* (unreported).
[46]*Section 313 (4) of the CAMA 2020.*
[47]*Section 306 (3) ibid.*
[48]*Section 313 (2), ibid.*
[49] (1967) 2 AC 13.

employment by an injunction, resignation does not also serve as a defence for a breach of duty.[50]

A director may, however, be released from culpability if he notifies the general meeting of his interest prior to the transaction and before realizing the hidden benefit. If he does not disclose his stake after realizing a profit, he will still be held accountable and will need to provide an accounting for the earnings.[51]

(i) Injunction:

This type of remedy is generally used to stop a director from breaking the law again or in cases where the law has not yet been broken but continues to be broken.

Furthermore, for many business leaders, the possibility of being sued or having their rights suspended for noncompliance with duties severely discourages them from acting. The court may creatively employ its injunction jurisdiction to enhance a corporation's management, for example, by removal[52] of a fraudulent director or by using its inherent equitable powers. Consequently, actions taken by a director to behave sensibly and in the organization's best interests may be spurred by lawsuits for equitable relief.

If the removal of a director is approved by more than half of the shareholders, the director may be removed from office. Depending on how serious the breach is in the eyes of the shareholders, removal may be either temporary or permanent.

(ii) Damages or Compensation

Compensation is the equitable remedy for violation of fiduciary duties, whereas damages are the common law remedy for breach of duty of care. The case of *Barlett v. Barclays Bank Trust Co*[53] suggests that there is a lack of clarity on the distinction between these words. According to the court, a fiduciary may be required to pay a significant amount over what would typically be awarded as damages for loss brought on by a tort or breach of contract in order to restore the asset that he had denied the beneficiary.

A court may order a director to pay damages or compensation if the director's breach of duty caused financial loss. This implies that a director may be held personally liable for any breach of their duty, and they may also run the risk of going bankrupt and losing their residential property.

(iii) Revision of contract in which the director is interested

The company may choose to avoid any arrangements that go against the guidelines for entering into contracts in which the director is interested, provided that *restitutio integrum* is feasible and that no rights of a legitimate third party have been accrued.

(iv) Accounting for Profit

A director who makes secret profit out of the performance of his duty without the knowledge or consent of the general meeting will be held accountable for the profit made from such transaction. The company may claim an account of any profit made by director whether or not he rescinds the contract, if the profit arises out of the contract with the company. Also, if a director sells his own property to the company, the right to an account of profit will be lost if the company elects not to rescind or is too late to do so. But if profit arises out of contract between the director and a third party, there will be no question of rescinding the contract since the company cannot be said to be a party to the contract.[54]

In cases where a director's activities have caused a loss to the company, the court has the authority to order the repayment of any personal profits earned by the director in the transaction that violated his responsibility to the company.

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[50] *Section 306 (5) of the CAMA 2020.*

[51] *Section 306 (6) of the CAMA 2020.*

[52] *Section 288 of the CAMA, 2020. Oni v. Cardbury Nigeria Plc*(2016) All FWLR (Pt. 827), 605 SC; *Ighofose v. Sipol Agriculture and Fishing Industries Ltd* (2017) LPELR-46237; *U.O.O. (Nig) Ltd v Okafor & Ors* (2020) LPELR-49570.

[53] No (1 & 2)(1980)2 WLR 430.

[54] Yusuf Ali, *Update on Current Liabilities of Officers, Directors and Stakeholders of Privately and Publicly held Companies being a Paper Presented by Yusuf Ali SAN at the International Bar Association Annual Conference, Washington Dc on 20th September, 2016.*

(v) A fine in accordance with criminal law

Certain violations are deemed so grave that they have been made illegal. One illustration would be the necessity to maintain and submit the necessary company accounts and registers. The *Companies Act 2006*[55]mandates that all private firms store and preserve company records. *Section 1134* of the *CA 2006* defines company records as any register, index, accounting record, agreement, memorandum, minutes, or other document required by the *Companies Act*.

By virtue of the Act[56]; every company must cause minutes of all proceedings at meetings of its directors to be recorded. The records must be kept for at least ten years from the date of the meeting. If a company fails to comply with this section, an offence is committed by every officer of the company who is in default.

5. CONCLUSION

Directors are sometimes seen as the alpha and omega of the company, when appointed, some of them tend to abuse their offices, by turning the companies' businesses into their family businesses and wantonly disobeying the rules and regulations of the company, thereby creating room for porous immigration of ill trained individuals, managing the companies' affairs.

Where there is a hiccup in the management of companies' affairs, it sometimes, automatically results in the collapse, failure and eventual death of the company. Most company failures are attributable to laxity and failure of directors to act or perform their duties in good faith. The directors are the mind of the company, where a director is not coordinated, corrupt, greedy, loose, weak, lazy, or lacks the capacity of managing the affairs of the company; that company is definitely on its journey to the great beyond. In order to ensure the effective management of the company certain duties and consequences of the breach of duties are established. This Article discusses Directors' duties, consequences of breach of duties and made possible suggestions on the way forward.

6. RECOMMENDATIONS

The continuous efficacy of a board of directors is a critical risk that every organization must manage because of the possible problems that might arise from an ineffective board. An incompetent board of directors can result in a wide range of issues, including the company's inability to achieve its goals, inadequate management and opportunity passing up, low profitability, and regulatory failure.

The following are some of the steps the firm has to take to guarantee the effectiveness of its directors:
The company should from time to time, organise productive gatherings for its directors and members. This should be in form of trainings, seminars, conferences and workshops, where issues of company growth and development, as well as management of the company.

There shall be clearly defined goals for each board member's responsibilities.

The company should also establish committees and working groups to assist the board in its duties, for a greater impact or efficacy.

Effective board policies: It's beneficial to establish a few fundamental guidelines that specify the board's procedures.

The board should have an annual work plan so that everyone knows exactly what is expected of them.

To guarantee the execution of the plan, it is also advised that the broad objectives, responsibilities, and efficacy of the board of directors be thoroughly examined and synchronized. Such internal evaluations must occur often, yearly at the very least. In order to prevent difficulties in recovering losses and compensating creditors from the insurance policy in the event that the board of directors engages in fraud, embezzlement, or neglect of funds against the entity, its shareholders, or creditors, the company should also provide assurances to the board executives.

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[55] United Kingdom *(CA 2006).*
[56] *Section 248* of the *Companies Act 2006.*