BOXALL BATTLES
PHASE 4- SECOND LAWYER-CLIENT MEETING

Information for Dianne Nelson

You now know that your brother has both retained an attorney to represent him against you and your mother. That could be good: maybe his lawyer will talk sense into him.

Despite your explaining how you and your mother are aligned – you would never do anything against her interest – your lawyer said that your mother must have independent counsel. He suggested that she retain someone he knows and trusts. They could work in alliance as long as it served both of your interests. You agreed and you accompanied your mother to the first meeting at that lawyer's office. You don't know if she has also met with him separately. He did assure you that, while obligated to protect your mother's legal interests, he will not get in the way of any resolution that is favorable to you and your mother.

In the meanwhile, you learned from your lawyer that Keith's lawyer provided them with all the BoxAll financial statements from the last ten years. The financial statements purportedly showed BoxAll revenues and expenses, including executive salaries and any loans extended to BoxAll, as well as interest paid on loans. He reviewed them with an accountant.

A short while ago, your lawyer sent you a short email, reporting that the review of the documents revealed that Keith had made a $3 million loan to BoxAll 5 years ago, from his own funds, with interest at 8%. Since then, as reflected in the financials, BoxAll has paid Keith interest and principal of approximately $300,000 per year ($240,000 of this was all interest the first year, and then the company started paying down the principal also.)

The lawyer's email also reported that he had communicated with Keith's lawyer about this loan and the BoxAll % allocation. According to his lawyer, Keith believes he explained the circumstances at the annual dinner meeting and is willing to provide more complete information about the reasons for his loan. With regard to his request that your mother allocate 3% of BoxAll to him and 1% to you, Keith insists that he just wanted to avoid future conflict and not to cheat you financially. He claims he explained that to your mother and wanted her to offset that 1% by giving you extra real estate or cash from the Trust of equal value.

Your lawyer's email asked: "Did you know anything about this loan, or do you remember discussing or approving it?" "Did you ever hear anything from your mother about Keith wanting to even up the financial impact?" He suggested that you meet again to discuss the information he learned in more detail and to consider next steps.

Regarding the Loan

You were not surprised but you were outraged to learn that Keith had made a $3 million loan to BoxAll 5 years ago, with interest at 8%. The quickest internet search confirms your memory that commercially available interest rates at that time were in the 4-5% range.

You vaguely remember Keith saying at one of the annual dinner meetings that BoxAll's regular banker was being difficult, quoting high interest rate and asking for personal guarantees and mortgages on shareholders' homes. You all agreed that was ridiculous. BoxAll had been doing business with that bank for as long as anyone could remember. Did it really want to lose BoxAll's business? You assumed your brother would go back and negotiate or shop around and get a competitive rate and better terms. After all, it was and is his job to act in BoxAll's and the shareholders' best interest. Now you know why you never heard about this problem again: Keith decided to take the interest profit for himself instead. So, for quite a while now, instead of just drawing a salary, bonuses, and a distribution check, Keith has taken another $240,000 off the top of BoxAll's revenues. Outrageous! No individual could get that much interest on his money when savings accounts or CDs were at 1% or less.

Regarding the BoxAll % Allocation

You don't buy Keith's excuse for trying to manipulate your mother into leaving you ¾ of her 4% of BoxAll – 3% - instead of splitting it between you two upon her death. Shameful! How low can a person go? His excuse about avoiding conflict and not tearing the family apart: baloney! There are no positive relationships left. Keith wants complete control over BoxAll and the Nelson Family Trust, just like your father. He knows your mother is eighty-eight and not entirely lucid. While she hasn't been formally diagnosed with Alzheimer's, anyone who spends time with her can tell that she's not completely with it. She's pretty good with stories about "the olden days, with your father" but can't remember what happened a few hours ago, let alone yesterday. Maybe to cover her own cognitive decline, she's completely suggestible – happy to agree with whatever people tell her.

Thank goodness you happened to visit your mother just a few hours after Keith had been there, and she remembered what he had asked her to do. That's when you stepped in, and emailed Keith that he had better "lawyer up."

You hope your lawyer will agree to sue Keith for his financial self-dealing and attempt to influence your mother. You suspect this is the tip of the iceberg. You want him removed as CEO and President of BoxAll, as Executor of your father's will, and as Successor Trustee of the Nelson Family Trust.

You aren't necessarily concerned about BoxAll's business being affected. The VP, Sales and Marketing group, and the rest of the executive team seem capable and honest. As far as you can tell, Keith spends an awful lot of time taking people to lunch and basking in accolades from charitable board activities. Let him do that instead of cheating you and your mother.

Surely, you should be able to force Keith to pay back the excess interest he owes BoxAll and drop any effort to change the terms of the Nelson Family Trust or your mother's will. Now that she has a lawyer, that's less of a concern. Really, Keith owes you both an apology for trying to manipulate her.

You plan to ask your lawyer how much it would cost to sue Keith and take the litigation all the way. You can afford whatever it is. But you also want some sense of how much you would have to be involved, how public it would be, and how long it would take. You have a life, and you wouldn't want this to take it over. On the other hand, litigation would be a useful thorn in Keith's side that could knock him off the BoxAll throne.

Dealing with the Property

As you explained to your lawyer at the beginning of all this, your father's commercial real estate property is held by the Nelson Family Trust, for which Keith is the Successor (after your father) and Managing Trustee. Each Trust property is professionally managed, with annual income going back into the Trust.

The Trust provides that your mother is its primary beneficiary as long as she lives. Upon her death, the properties are to be divided equally between you two (as contingent beneficiaries). At that point, you and Keith are free to agree on allocation of properties and transfer titles accordingly. The Trust provides that if you and Keith cannot agree within a year after your mother's passing, then unallocated properties will be sold, and proceeds divided equally.

In the meantime, Keith oversees the management contracts for each property and authorizes significant maintenance expenditures, etc. While it's theoretically possible that Keith has pulled some shenanigans on these properties too, you doubt it. The management companies are highly professional. Ever since your father's death, they've copied you on emails attaching financial statements. While you haven't necessarily read every one, you do look them over. From time to time, you visit the properties to check for any management issues. All has seemed to be fine.

Given that your mother is physically healthy, resolving the property allocation isn't urgent. On the other hand, the current conflict with Keith suggests it would be wise to settle any future property questions now. You are ready and willing to deal, and to have the properties appraised. The cost of appraisals should be paid out of the Trust (which has plenty of cash in reserve).

If, in the end, all the properties were sold and proceeds divided, that would be okay. However, if possible, you would like to end up with certain properties, for sentimental and business reasons.

You will provide some or all the following information to your lawyer, if and only if Keith is agreeable to negotiating the eventual property allocation now.

Shortly after your father's death, Keith had a real estate agency do quick appraisals of the properties' values for tax and estate purposes. He gave you the valuation schedule for the properties at that time. You still have that document and can give a copy to your attorney. Fresh appraisals would be appropriate. The properties' current dollar values are higher than five years ago, as commercial property values have increased since then. Still, if their relative values are about the same, the earlier appraisals can serve as the basis for negotiation about allocation.

Estimated appraisal values aside, you do have preferences among the various properties. In other words, you would "pay" more or less than the stated value – or at least count them as more or less valuable in negotiating about allocation between you and Keith. The appraiser's valuations of each property are set forth below, with your added comments about your intuitions and preferences – the way *you* subjectively value each property.

1) Compass Road Nelson Car Wash - $3 million (land & equipment with profit multiplier)

   This car wash has high customer volume. It benefits from a location close to a gas station, local playing fields, a nature center, church, and ice rink. When your kids played in tennis tournaments near there, parents would sneak over to get their cars washed. Still, most people wash their cars after filling up with gas. You wonder if, when electric vehicles take over, fewer people will go to gas stations, and customer volume at the Compass Road Nelson Car Wash will decrease.

   <u>For that reason, you ascribe less value to this property – only $2 to $2.5 million</u>.

2) Dexter Road Nelson Car Wash - $2 million (land & equipment with profit multiplier)

   The Dexter Road car wash is not highly profitable. The $2 million dollar valuation is likely due to its location on a large lot, but it's oddly shaped with noise from the highway and airport runways nearby. At best, a fast-food restaurant might be built there. Though fairly close to BoxAll, you don't see why that matters.

   <u>You would value it at the appraised price of $2 million, not more,</u> on the assumption it could always be sold for about that much.

3) Exeter Street Strip Mall - $3 million (land and buildings with profit multiplier)

   While you don't think the earlier appraisal was wrong then, the Exeter Street Strip Mall is in an area close to the city center that has changed in recent years. There's now a business incubator in a former factory, upscale condominiums and mixed income housing, and a weekly farmer's market – all generating foot traffic. The new development hasn't quite reached the Exeter Street block but it's getting close. Sometimes, people find parking spaces on or near Exeter Street and walk into the newer areas from there. You are optimistic about this strip mall and its diverse set of small business tenants, mostly on long term leases.

Eventually, you could imagine putting a highly profitable upscale condominium building there, with retail on the ground floor.

<u>In your mind, the Exeter Street Strip Mall is worth at least $4 million, maybe as much as $5 million.</u>

4) Fairview Street Strip Mall - $5 million (land and buildings with profit multiplier)

   What was the appraiser was thinking when he put a $5 million dollar price tag on this strip mall? It's not worth nearly that much. Perhaps the high valuation was prompted by its location across the road from a large regional mall/shopping center, and the numerous eateries by the property. Unfortunately, since your father's passing, the larger regional mall has gone into receivership. It is all but shuttered; the anchor stores have closed. On this property's side of the road, the eateries have either closed or converted to drive-throughs. You don't know if the tenants are current on their rent, but you bet they are struggling.

   No doubt, an updated appraisal (or a conversation with the property management company) would confirm <u>it's not worth more than $2 million.</u> To reap real profits, someone would have to formulate a new business plan and make a substantial investment. You have absolutely no interest in doing that.

5) Garnet Apartment Building - $6 million (land and buildings with profit multiplier)

   You have always liked this apartment building. It has a stunning art deco lobby. The units are generously sized with high ceilings. They have been renovated and upgraded over time to keep up with modern finishing styles and standards and command the area's top dollar rents. Tenants are mostly affluent empty nesters so there's little turnover.

   You also have a sentimental eye on this building; you'd like nothing better than to take over the two top-floor units and create a large single apartment with room for all of your grandchildren to sleep over. Even better would be if your son, his wife, and their kids could end up in one of the other units. It's located in their community, close to the kids' school.

   Even if this plan doesn't work out, the building would be a solid investment, with strong income and high future sale price.

You would value it (internally) at $8 – $9 million.

6) Hoover Apartment Building - $5 million (land and buildings with profit multiplier)

   You think this building is overvalued in its current condition. The per-unit rentals are low because the finishings and appliances are cheap and outdated. Some of the layouts are awkward. You are only interested in owning an apartment building that makes you proud when you walk in the front entrance.

   You don't really want to own or operate this one, and you don't think it's worth more than $4 million, at most. If you ended up with it, you would want to sell it immediately and you'd rather not go to the trouble.

7) Ibid Apartment Building- $8 million (land and buildings with profit multiplier)

   If possible, you would like this building to stay on your side of the dividing line, especially if you don't get the Garnet Apartments. You don't think you could get your son and his family to move into a unit at Ibid. But you could imagine creating a large apartment for yourself – with room for grandchildren sleepovers. It's not quite as elegant as the Garnet building, but it would be an option. You appreciate that it's easily walkable restaurants and coffee shops.

   Based on standard property valuation methods, the $8 million appraised value seems about right. It's a prominent building in the area. The tenants are a mix of empty nesters, young professionals, and a good many medical students, residents, or researchers. While turnover is somewhat higher than optimal, at least the medical folks stay for several years. (And there's always a doctor in the house.)

   You see only an upside for this property because of its phenomenal location. It could also be attractive as a senior assisted living facility because of its proximity to area hospitals. At some point, the university or one of the hospitals might seek to buy it (at top dollar) for use as medical offices or expanded research or treatment facilities. You want to hold this one, and you would count it (internally) at significantly more than $8 million.

In addition to the real estate, the Nelson Family Trust now has about $4 million in cash reserves. That is likely to increase between now and when your mother passes away. There should be no dispute about dividing it in half or using it to offset imbalance in the value of the properties as agreed upon between you and your brother. (Note that, for each property, the management companies maintain modest cash reserves to cover normal operational expenses, repair, and maintenance. However, the Trust would have to fund any sizeable investments for significant repurposing or construction. Now, these would be subject to Keith's approval as Trustee, but you want to negotiate for equal authority.)

As you will explain to your lawyer, you are open to negotiating with Keith (through his lawyer) about the future allocation of these properties. You both know that, upon your mother's death, the Trust gives you both equal rights to the properties. Absent agreement on how to divide them, they are to be sold and the proceeds split evenly.

You don't have to do this now. You can wait. But given that you and your brother are entangled in the conflict over BoxAll, you would like to suggest getting it over and done with. Then you'd never have to fight again. What a relief!

Nelson Family Trust Holdings
Summary Schedule of Appraised Value Estimates, as of 5 years ago.

1) Compass Road Nelson Car Wash - $3 million (land & equipment with profit multiplier)
2) Dexter Road Nelson Car Wash - $2 million (land & equipment with profit multiplier)
3) Exeter Street Strip Mall - $3 million (land and buildings with profit multiplier)
4) Fairview Street Strip Mall - $5 million (land and buildings with profit multiplier)
5) Garnet Apartment Building - $6 million (land and buildings with profit multiplier)
6) Hoover Apartment Building - $5 million (land and buildings with profit
7) Ibid Apartment Building- $8 million (land and buildings with profit multiplier)

Plus

$4 million in cash reserves at present, likely to increase.