BOXALL BATTLES
7 – For Later Meeting & Possible Settlement Process

Information for Dianne Nelson

Despite your and your lawyer's efforts, you were unable to work out a resolution of the many conflicts between you and your mother and Keith.

Since then, you've learned of more financial shenanigans by Keith. Your lawyer's and the accountant's initial review of the BoxAll financials turned up that loan and excessive interest paid to Keith. That was a key claim against Keith and has already been the subject of much discussion and argument (call it negotiation).

Knowing Keith, you were hardly surprised when your lawyer notified you of additional grounds for a claim against Keith. The accountant decided to dig behind the "executive compensation" line in the financials and found that Keith had been awarding himself outlandish bonuses over the five years since your father's death. His regular salary was $500,000 per year. That had long been true. And you knew that, even when your father was alive, when BoxAll had a very good year, he and Keith took personal bonuses as high as their salaries. But never in a bad year, and never more than their base salaries. Even after he retired as BoxAll's owner, your father reviewed and approved all executive compensation, including bonuses. Sure enough, as soon as your father passed away, when BoxAll shares went into the Trust, Keith started taking annual bonuses much larger than $500,000 – on top of that salary. Of course, that's because Keith had become the Successor Trustee and approved them for himself.

Even that first year, when he claims BoxAll was in a tough financial situation, he took a $600,000 bonus. (If he hadn't taken the bonus, the company wouldn't have needed to borrow so much.) During the next four years, he took bonuses of $600,000, $650,000, $700,000, and $750,000. That is a total of $800,000 ($100,000 + $100,000 + $150,000 + $200,000 + $250,000) more than your father ever permitted. Especially in the first year or so, it's arguable that $0 bonuses were financially prudent, as the company's hadn't yet reaped profits from its new patents and large contracts. That $800,000 would have come off the top of the profits that were shared by you and your mother. So, you are entitled to 48% of that $800,000 – at minimum. An accountant or business expert could say you are owed much more. Moreover, while Keith was awarding himself high-six-figure bonuses, he gave only token bonuses to the rest of the executive team – never more than $50,000. He can't credibly argue that his own outsized bonuses acted as incentives for the team and thus benefitted BoxAll.

You are disgusted and frankly, you are done. You hate that Keith has been laughing all the way to the bank while getting away with stealing more than his share of BoxAll for a long time. You hate that he and his lackeys embarrassed you at BoxAll when you just wanted to see documents from the company you own as much as he does. While glad the accountant finally found the excessive bonuses, you don't even want to know if Keith has been cheating you and your mother in other ways.

What you really want to do is wrap all of this up, make Keith pay for what he's done, and part ways. You absolutely do not want to co-own any property with him after your mother passes. Having said that, you don't want to cede your BoxAll shareholder's rights and equal control. If and when it sells, they will need your approval. And Keith can't be allowed to milk the company dry before that.

Your lawyer has recommended negotiation to resolve current disputes and agree on a path forward to you and Keith. After discussing this with you and with opposing counsel, he will advise as to whether to go directly to mediation or to attempt to negotiate directly. The direct negotiations could be just lawyer-to-lawyer, with client authority, or you and Keith could participate. He explained that in mediation, a neutral seeks to facilitate agreement. The mediator would likely insist on you and Keith being there, though you could be in separate caucus rooms all or most of the time.

Your response to your lawyer was: "Whatever works." When asked what you would absolutely need to see in a final, settle-everything agreement, you asked for some time to think about it. And you did just that. You finally decided that you would want a settlement that takes into account:

1) Keith's overcharging for interest on the $3 million dollar loan.
2) Keith's excessive bonuses for the past five years.
   (Any settlement should reflect some compensation to you for these claims, even if not the full amounts.)
3) The extreme humiliation you suffered while trying to review documents at BoxAll.
4) Your half interest in BoxAll (after your mother's passing).
5) Your obligation to make sure your mother is treated fairly, in accordance with your father's wishes.
6) Your shareholder's rights to monitor BoxAll's business until it is sold. Someone needs to monitor whether Keith is finding new ways to skim profits.
7) Your unwillingness to have less control over BoxAll's fate than Keith does.
8) Your desire to end up with no less than half the value of the real estate properties. If they are to be divided between you and Keith, you want the division to reflect your own preferences and valuations.
9) Your desire to be DONE with Keith and this whole mess.

You don't care whether settlement is reached in negotiation or mediation, as long as it gets done.

Regarding the Property

You know both sides have the document listing the appraisals of the Nelson Family Trust's various real estate holdings just after your father's death (attached). The properties could all do with a fresh appraisal. Their 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.

For negotiation purposes, and estimated appraisal values aside, you have interests, intuitions and preferences relating to each of 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. Underneath each property's appraised value, you have added comments the way *you* subjectively value each property.

Even if you already informed your lawyer about these, they bear repeating here.

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. 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 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 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.

<u>You would value it (internally) at $8 – $9 million.</u>

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.

   <u>You don't really want to own or operate this one, and you don't think it's worth more than $4 million</u>, 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.

   <u>Based on standard property valuation methods, the $8 million appraised value seems about right.</u> 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. <u>You want to hold this one, and you would count it (internally) at significantly more than $8 million.</u>

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.)

You want no more conflict with Keith, but you refuse to tolerate his deceit and will not accept an agreement that is unfair to you.

Now you have to meet with your lawyer to convey this information and discuss next steps.