

The Fight Over the Un-dead Parent

By James F. McDonough, Jr. on February 21st, 2012 Posted in Business, Family Business, Power of Attorney, Revocable Living Trusts, Uncategorized

Frank Brunetti and I were discussing business succession plans for a client the other day, and he uttered the phrase that is the title of this blog post. It will stay with me forever, because every business attorney has seen family disputes involving business succession. In a nutshell, they often become the *Fight Over the Un-dead Parent*.

The battle starts with a family business and aging parents. The children – rightly or wrongly – begin to angle to protect their own interests. Children threaten to withhold the grandchildren to gain leverage. Children feed the fears and insecurities of an aging parent that the child in charge of the business will bankrupt it, or that this child is taking too much money out of the business.

Who is capable of running the business? I have seen two very intelligent children, successful in endeavors outside of a family business, step into the family operation and cause the business to close in eight months. In this particular instance, the child who had spent all of his adult life in the business was forced out, and the other two children assumed control of the business. The employees that remained after his departure warned the two children against taking certain actions that affected the quality of the product. Their advice was not taken, and the finished goods were rejected by the customer and returned. The next act of hubris by the two children was to demand payment in advance or cash on delivery. The industry did not operate that way, and the business closed.

Another common pattern is that of a business run by a strong parent who does not install his or her successor before the parent's death or illness. The result is a void where the children fight for power. For example, a tenant in a commercial shopping center did not pay rent, and the self-proclaimed family successor met with the owner of the tenant. The owner of the tenant claimed the landlord had concealed the fact that construction would block access to the center and that, had the owner known, he would not have signed the lease. What the successor did not know was the owner lived ten minutes from the shopping center and, like everyone in town, was advised of the schedule for replacing water and sewer pipes. The successor did not check with the town's construction official and failed to learn that the tenant's own electrical work failed to meet code. The self-appointed successor gave a rent credit of approximately fifty thousand dollars.

Powers of attorney ("POA"), revocable living trusts ("RLT") and voting stock can upset the delicate balance of informal succession plans. It is interesting that there are certain offshore trust regimes that attempt to address this issue by absolving the trustees of oversight for the business and leaving that responsibility for the board of directors. In a closely-held business, this may only serve to move the battle to the boardroom.

When I advise such families, I ask the parent if all of the children, including those that do not participate in the business, are to benefit from the value of the business at the parent's death. Sometimes, the non-participating children can be given other assets in lieu of interests in the business or they may be made beneficiaries of life insurance policies.

In the next blog, I will discuss identifying unresolved issues between and among siblings, what Frank Brunetti refers to as "Sandbox Issues" and I will offer additional planning suggestions to address the potential conflict.