BUSINESS SUCCESSION

BUSINESS AND INCAPACITY, DEATH AND DIVORCE

A happy and sad tale by DMH Stallard partners Philip Morton and Claire Carberry

Beware escaped lions!

As solicitors we see situations every day where people have failed to plan for the worst-case life scenarios. Incapacity. Death. Divorce. In any particular order, these are not a list of the top-three events in anyone's life. However, there are steps you can take to reduce the impact of these life events on your business. We have tried to lighten the mood of the subject through the use of bleak comedy. The characters in the following tale are a figment of the authors' imaginations, but the circumstances in which they find themselves are based on real-life events. We apologise in advance for the lack of imagination in the names, but we are no Hans, Christian or Anderson. On with the tale ...

Once upon a time, in a town not far away, there lived two successful entrepreneurs, Maggie and Mike. Maggie did not know Mike and Mike did not know Maggie.

Maggie runs Maggie Limited with her business partner Michelle. They each own 50% and they have a comprehensive shareholder's agreement. Maggie is married to Mark and entered into a pre-nuptial agreement, ring-fencing her business interests in the event that her marriage should break down. Maggie and Mark each took legal advice and signed the document well in advance of the wedding and they review it every five years or so.

Mike runs Mike Limited with his business partner Morris. They each own 50%. They trust each other and feel that that they don't need a shareholder's agreement. In any event, they're too busy running the business. Mike is married to Melinda. They felt that a pre-nuptial agreement was unromantic and, anyway, they'll be together forever (can you tell where this is going yet?).

Incapacity

Maggie and Mike continue on their separate lives, with businesses and life going well.

Unfortunately, Morris, Mike's business partner, suffers a stroke, becoming unable to deal with his affairs himself. Mike and Morris had not discussed this eventuality when setting up their business and had not entered into a shareholder's agreement. Nor had they prepared mutual Lasting Powers of Attorney, passing control of their business affairs to the other (or a trusted professional third party) in the event one should become temporarily or permanently incapacitated. Morris had, however, prepared a Lasting Power of Attorney passing control of all of his affairs (business and personal) to his wife in the event of his losing capacity. Morris' wife had never trusted Mike and refuses to accede to his request to extend the overdraft facility and purchase land the company had been trying to buy for the past five years.

Death

Meanwhile, Maggie's business partner, Michelle, has died. Michelle's family has always been an enigma to Maggie. That is why Maggie insisted that the shareholder's agreement determined what would happen in the event of either Michelle's or Maggie's death. Michelle and Maggie had a cross-option agreement with insurance in place providing a lump sum payment to Michelle's estate for for the agreed value of the shares. The shares pass to Maggie, allowing continuity of the business.

Divorce

By now, you must be hoping that Mike is in for some good news because Maggie seems extremely smug. Luckily for Mike, there is some good news, in that Morris has made a full recovery from his stroke and business is booming again. Mike and Morris take tax advice from their accountant and decide to each split their shares equally, giving their respective wives 25% of the shares in Mike Limited. Shortly after this decision, Mike's wife Melinda decides to leave him for the hunky 25-year-old gardener with the Abercrombie and Fitch body. We bet you didn't see that coming!

Mike does not have an effective pre-nuptial agreement (you see how we set up this twist in the tale?) and does not have the liquid capital to buy out Melinda from the business. 24 months and £150,000 later, the court determines that Melinda should retain a 20% share in the company, receiving dividends from Mike and Morris' hard work. Poor old Mike. Though he could count himself lucky; if we had more space, he would also have lost his directorship by Morris, his wife and Melinda getting together to vote him off the board! There was no shareholder agreement, so nothing to prevent us going down that unfortunate route.

Maggie, meanwhile, takes on a new shareholder, Matilda who has 40% of the shares in Maggie Ltd. Matilda has a daughter, Lucy, 28 and recently married. Lucy works so hard as a manager in the business that Matilda and Maggie agree that she should receive a 10% shareholding. Maggie and Matilda insist that Lucy must agree a post-nuptial agreement, protecting the business interests. Nobody wants to end up with a son-in-law they don't know as a co-shareholder. At first, Lucy's new husband is affronted that she should bring up such an unromantic topic of conversation whilst on their honeymoon in Rome. But, as Lucy explains, this is because her mother and Maggie insist and the conversation is far easier than it may otherwise have been. Lucy and her husband each take independent legal advice, learning that a post-nuptial agreement is as binding as a pre-nuptial agreement and enter into a reasonable post-nuptial agreement.

> "Think of the effects your personal lives can have on your business affairs and the effects your business life can have on your personal affairs."

Insolvency

You recall the overdraft facility that Morris' wife refused to agree to? Well, when Morris is back on his feet, Mike and Morris extend their credit lines to enter into contracts with Crooks Ltd. Crooks Ltd go into administration, leaving Mike Ltd holding the can. Unfortunately for Mike, the extra credit was backed by Personal Guarantees which he can't pay. Mike Ltd goes into liquidation and both Mike and Morris go bankrupt.

Death again...

Maggie lived a long and happy and fulfilled life and died peacefully in her 90s. She had taken advice on Estate tax planning and passed on her business and personal assets to her four children and 12 grandchildren with a minimal Inheritance Tax bill. We are not sure what happened to Mike, but the way things turned out for him in this tale, we wouldn't be surprised if he was mauled by an escaped lion from London Zoo.

Moral of the story

There are a number of morals that may be taken from this tale. Keep away from escaped lions or don't name your company after your first name, to name but two examples. What we like to think you would take away from this tale is the effects your personal lives can have on your business affairs and the effects your business life can have on your personal affairs. The busier we get, the less time we have to ensure the legal documents are in place to protect our position in the event things go wrong. The circumstances in this tale are not uncommon. We see them every day. Simple planning can save considerable future legal costs, ensure business continuity and protect your family's finances from business risk.

This autumn, DMH Stallard and Platinum Business are holding a lecture where we will present a more in-depth look at the issues discussed in this article. Following the lecture, there will be drinks and a chance to network with the presenters and other attendees. Look out for details in upcoming issues of Platinum Business Magazine.

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