

Serle Court International Trusts and Commercial Litigation Conference 2023

No surrender – Does Bruce Springsteen have the right idea when it comes to blessing applications?

The E Street Trust is a discretionary trust settled by Chuck for the benefit of his four sons, John, Paul, George and Ringo, and their families.

The present trustees of the E Street Trust are Bruce, Eric, Tom and Chrissie.

The Trust holds two main assets:

- *Rock Island* in the Caribbean, worth c. £60m.
- The shares and other interests in a global sportswear manufacturing and distribution business, known as *Born to Run*, worth somewhere in the region of £10m to £30m.

When Chuck settled the Trust he signed a letter of wishes in which he indicated that his top priority was the continuation of his sportswear legacy in the form of Born to Run, and that subject to that he wished for his sons to be treated broadly equally.

Chuck died five years ago, and shortly after his death the sons fell out. Born to Run is now run by John and Paul, with the assistance of two of the trustees, Tom and Chrissie, who occupy senior management positions.

The sons are constantly complaining to the trustees about the level of the trustees' fees and asking for further distributions from the Trust. As a result of loans taken out during the pandemic and other exigencies of business, there is very little cash in the Trust at present. This has resulted in the trustees being out of pocket in respect of remuneration and having little available cash with which to pay for advice.

The trustees have decided that they would like to wind up the Trust and distribute the assets amongst Chuck's sons. In the course of their deliberations the trustees consider the following points:

- The trustees consider that the Trust's shares and interests in Born to Run should be distributed to John and Paul. They have recently received two valuations of the business, at £16m and £28m. They consider that £20m is about the right value.
- The trustees consider that Rock Island should be sold in order to provide liquidity to the Trust and because the proceeds will be readily divisible. They have undertaken some discreet marketing and have received an offer at £60m. After providing for a retention of £10m, this would leave £50m immediately available for distribution.
- The trustees consider that if they distribute Born to Run to John and Paul in equal shares they could then distribute the £50m cash as to £7.5m to each of John and Paul and £17.5m to each of George and Ringo.

The trustees informally sound out Chuck's sons as to their views on the above. John and Paul support the trustees' thinking. George and Ringo vehemently oppose it because their father would never have wanted to see Rock Island sold (and certainly not for a price as low as £60m) and Born to Run should be valued at £30m, not £20m.

Tom and Chrissie are nervous about the decision and suggest to their co-trustees that they should make an application surrendering their discretion to the court. Bruce tells them that there is no need to apply to court at all as the Trust deed contains a wide 'no contest' clause, which provides that any beneficiary who challenges an exercise of the trustees' discretion shall forfeit their interest under the Trust.

You are asked to advise the trustees, with particular regard to the following:

- How the trustees should proceed in light of the 'no contest' clause.
- If the trustees decide to apply to court, whether they should seek a blessing or instead surrender their discretion to the court.
- Whether the trustees can approach the court for informal guidance as to what they should do.
- What protection the trustees will obtain if the court blesses the decision or accepts the surrender.