Using Mediation to resolve Neighbour Disputes

Every day there is news of a neighbour dispute. Often those involved have previously been on friendly terms, or even friends, until their relationship breaks down. Commonly neighbour disputes begin when an extension is built, a boundary changed, a gate on a shared driveway erected or property damaged, perhaps by ingress of water from an adjoining building. As relationships disintegrate, often things which were previously thought tolerable (such as paying to maintain a shared driveway or a barking dog) inflame the situation.

The Court of Appeal has given various warnings to neighbours who want to take their dispute to court.

First and foremost, neighbours must understand that using litigation to resolve a neighbour dispute can prove very costly. In the case of Faidi v Elliot Corporation, where neighbours fell out about timber flooring laid in one flat which was said to cause noise to be heard in a neighbouring flat that would not be heard if underlay and carpet were installed instead, the parties spent in total £140,134 on legal costs to the appeal stage. All three members of the Court of Appeal praised mediation as an alternative form of dispute resolution for neighbour disputes.

Further, Mummery LJ warned in the case of Cameron v Boggiano, a protracted neighbour dispute about the ownership of a thin strip of land, that:

*"…the only certainty in this kind of case is that the **financial outlay is almost always more than the disputed property is worth**."*

But is the potential cost of taking a neighbour dispute to court just limited to legal costs? The answer to this is likely to be no. Having a neighbour dispute may have financial and other consequences down the line, including when trying to sell each property involved. Indeed in Cameron v Boggiano Mummery LJ also said this:

*"The lawsuit could have unwanted long-term consequences that a sensible compromise might have avoided. One side 'wins' at trial, and/or on appeal, but, **in the long run, both sides lose if, for instance, litigation blight has damaged the prospects of selling up and moving elsewhere.**"*

So can mediation help avoid or reduce anything else? The answer may be yes. The potential for a neighbour dispute to affect individuals' lives is noted in the Cameron case by Mummery LJ who said this:

*"Suing and being sued by neighbours is a **stressful and unpleasant** experience."*

Also, Ward LJ said this in the case of Oliver v Symons:

*"All disputes between neighbours **arouse deep passions and entrenched positions** are taken as the parties stand upon their rights seemingly **blissfully unaware** or unconcerned that that they are committing themselves to unremitting litigation which will leave them **bruised by the experience and very much the poorer, win or lose**. It depresses me that solicitors cannot at the very first interview persuade their clients to put their faith in the hands of an experienced mediator, a dispassionate third party, to guide them to a fair and sensible compromise of an unseemly battle which will otherwise blight their lives for months and months to come."*

Other benefits of mediation include that the process of mediation may allow parties to agree solutions which are not "all or nothing". For example, in the Faidi case, Jackson LJ said that a moderate degree of carpeting might have reduced noise penetrating into the neighbouring flat, but still enabled enjoyment of the timber floor and that this was:

*"…precisely the sort of outcome which a **skilled mediator could achieve, but which the court will not impose.**"*

But how, it may be asked, could a knotty neighbour dispute ever be resolved outside a courtroom? In Faidi Ward LJ said this:

"Not all neighbours are from hell.** They may simply occupy the land of bigotry. **There may be no escape from hell but the boundaries of bigotry can with tact be changed by the cutting edge of reasonableness skilfully applied by a trained mediator. .."

So when should you mediate your neighbour dispute? The Court of Appeal has strongly encouraged using mediation – if negotiation fails – very early on in the dispute. In Bradford v James Mummery LJ said this:

*"An attempt at mediation should be made **right at the beginning of the dispute** and certainly well before things turn nasty and become expensive. By the time neighbours get to court it is often too late for court-based ADR and mediation schemes to have much impact. Litigation hardens attitudes. Costs become an additional aggravating issue."*

Finally mediation – as a process to resolve disputes – was strongly encouraged in the October 2013 judgment of PGF II SA v. OMFS Company 1 Limited. Here, the claimant had twice written to the defendant asking it to mediate. The defendant failed to respond. The Court of Appeal held that the defendant had unreasonably refused to mediate and penalised it with a large costs sanction. The Court was clear that parties should engage with each other in considering the suitability of Alternative Dispute Resolution, saying *"…the provision of state resources for the conduct of civil litigation… **call for an ever-increasing focus upon means of ensuring that court time… is proportionately directed towards those disputes which really need it, with an ever-increasing responsibility thrown upon the parties to civil litigation to engage in [Alternative Dispute Resolution]**, wherever that offers a reasonable prospect of producing a just settlement at proportionate cost."*

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