

A CONTRACT DISPUTE

The Plaintiff, Bert, was a professional provider of staging and platform services to conferences such as educational conferences. Intermediary Co, the Defendant, was in the business of providing a turnkey service for conferences of third parties, and this service covers lighting, staging, audio visual etc. It contracted with Bert that Bert should provide staging and platform services for a third party's conference. Intermediary Co. is a key player in the industry and if Bert fell out publicly with Intermediary Co. this might have an adverse effect on Bert's future business.

The solicitor-mediator addressed first with Bert the precise legal issues between the parties. Bert said he had contracted with Intermediary Co., as principal, but Intermediary Co. later said it regarded itself merely as agent for the third party. The contract papers were unclear. Bert submitted one quote and then after further evaluation a quote 50% higher. Bert thought the higher quote was accepted by Intermediary Co., or he would never have started the work.

Turning to Intermediary Co. on these points, Intermediary Co said it never accepted the higher quote and never had any intention of accepting it, without the prior consent of the third party which had not been given. So there were two legal problems (agent or principal? And acceptance of which quote?)

The solicitor-mediator then turned to the practical issues. Bert's team arrived at the conference venue (without a signed acceptance of the higher quote but with Intermediary Co's prior knowledge and approval) to find a number of inadequacies in the equipment provided by the venue. These were overcome after a while, but somewhat inevitably, everything turned into a "Friday job" where everything that could go wrong, did. Consequently the staging and platform services were not finished by the time the conference opened. Photographs of the platform, provided by Intermediary Co., showed a shortfall in quality. The amount of the shortfall in quality was the core dispute as to how this should be evaluated in financial terms. The third party was reported by Intermediary Co. to be seething, but Bert thought the third party was much more relaxed about it than that.

Both sides had reasonably high expectations of success. So one of them at least would have been surprised by a Court Judgement. There was reported to be deep dissatisfaction by the third party, which apparently blamed Intermediary Co. for sub-contracting to a team allegedly without the necessary skills. The third party had unilaterally deducted by way of compensation to itself a large slice of its fee for the staging, that it paid over to Intermediary Co.

Intermediary Co. in negotiations had offered a radically reduced figure to Bert. Bert had refused to accept this but had offered to reduce his total invoice by a small amount, for what he regarded as fairly notional shortfalls. Intermediary Co. stressed repeatedly that these shortfalls were not regarded by the third party or itself as notional, but deeply significant. As Plaintiff, Bert claimed his fee and Intermediary Co. defended the claim. Each side seriously considered the other unreasonable, and that its own case was good. There was no meeting of minds, or anything like it, in connection with the sum to be paid to Bert for the work. The parties moved to Mediation.

During the Mediation, Intermediary Co. allowed (under pressure from the solicitor-mediator) to be disclosed to Bert what it had been paid for the staging work by the third party. It pointed out that it was entitled to commission from the third party, based on a percentage of the sums paid by the third party. As the third party had made a substantially reduced payment, Intermediary Co. had lost a substantial amount of commission and in addition was worried about levels of future business with the third party. In the interests of a quick settlement and future cooperation, Intermediary Co. offered to write off its lost commission, and pay across to Bert exactly what it had received from the third party.

Bert considered this totally inadequate. Through the solicitor-mediator, he wanted Intermediary Co. to go back to the third party to see if it could obtain more money for Bert. Intermediary Co. refused (a) because it knew no more money would be forthcoming and (b) because it did not want to reopen old wounds and (c) because it wanted to secure further business with the third party. Each side wanted to settle, but only on the best terms possible for itself. And they were locked nearly solid.

The lawyers for the parties kept the discussions in private session as flexible as possible, probing persistently for opportunities for movement. Bert, for example, tried every possible method of solving the commercial problem in ways other than payment of money by

Intermediary Co. One example was asking Intermediary Co. to guarantee Bert future work at certain levels. Intermediary Co. replied through the solicitor-mediator that it knew that Bert's reputation on other contracts was excellent, but in view of the problems and quality on this particular job, and the fact that all Intermediary Co's tendering to third parties had to be of a very competitive nature, Intermediary Co. did not feel able to give such a guarantee of future work. It thus declined to do so. It did however agree to keep Bert on its tender lists for appropriate contracts in the future.

During the Mediation process, Bert came to recognise "reality" and the depth of feeling emanating from the "Friday job". He recognised also that what he had regarded as notional shortfalls (and not wholly his fault) were regarded by the third party as really significant. Bert was the one who "carried the can". The solicitor-mediator encouraged Bert's lawyers to tell him how long a trial would be likely to be, and estimated legal costs on a win or a lose. Bert was horrified at what he heard. He began to recognise that his future relationships elsewhere within the industry might be prejudiced if he litigated and this problem job became common knowledge.

Intermediary Co. also considered the question of litigation. It had already understood the position on legal costs, but recognised there were other issues. The publicity arising out of a litigation case of this nature would have done Intermediary Co. no good at all. It valued very much its reputation for delivering on time and delivering top quality, whether through itself or subcontractors.

Both sides reluctantly came to recognise that the deal emerging was the best available. It was not wholly satisfactory to either party, but it was the Best Alternative to litigation. So in an expression of mutual interest and hoping for a further continuing relationship, Bert settled at receiving from Intermediary Co. the sum the third party had paid to Intermediary Co., with Intermediary Co. writing off its lost commission and promising to keep Bert on its tender lists for appropriate contracts. This was higher than Intermediary Co. had wanted to pay, but much less than Bert wanted. But through the use of mediation the parties reached an agreement outside the adversarial nature of the court-room.