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Resolving a Dispute Without Involving the Courts

By Eugene Collins



Whenever someone has a dispute and decides to go and see their lawyer in an attempt to resolve it, the course they usually revert to is to sue the other party. This involves filing proceedings in either the District or High Courts, completing the discovery process (the handing over all relevant documents, electronic files and the like).

It may involve a number of applications to obtain documentation from other parties who are not part of the proceedings, or to amend pleadings or join other parties.

These processes can take anywhere between one and two years depending on the complexity of the dispute and is a very expensive process.

At the end of that process, a hearing will be conducted in which neither party has control over the outcome. Ultimately the Judge will decide and they only ever decide for one side so there is always one winner and one loser.

It is not always necessary to involve the Courts to resolve disputes. An example of an alternative dispute resolution process was illustrated in a recent case our firm dealt with.

A company entered into a

contract to purchase a business.

The parties varied the agreement on three separate occasions in relation to the assets that were being purchased as part of the business.

Settlement was deferred on a number of occasions, but when it came to the ultimate settlement date, they could not agree on what assets were being transferred to the purchaser.

The business being purchased was in a precarious position and needed to have strong management in place as soon as possible in order for it to continue to run economically.

If the parties filed proceedings in the Courts it could take up to two years before the dispute was resolved. In all likelihood the business would be gone by then and therefore both parties would end up losing in the end.

The parties agreed to go to mediation and in one day resolved the dispute. The business changed hands saving it from closure. The parties contributed equally to

the cost of the mediator and the venue and were able to walk away after signing off a settlement agreement to which they both contributed and decided they could live with. The savings made were significant.

Mediation is a commonly utilised form of alternative dispute resolution which if both parties agree, can be used to resolve the dispute where the outcome is better for both parties.

The biggest advantage of agreeing to mediation is that you become part of the resolution.

The goal of mediation is not to have a winner and a loser, but to resolve a dispute with an outcome that both parties can live with. An outcome at mediation will not make anyone feel good because it involves a dispute, however the biggest advantage is that you can control the outcome, be part of the decision-making process and the ultimate (hopefully) resolution and save money.

If you would like to discuss the possibility of using mediation, please contact Eugene Collins.

Our next newsletter by Michael Moohan covers cash-flow for small businesses—The Construction Contracts Act.