
Kluwer Mediation Blog

Reasons to mediate

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This post should be about trust and credibility, moreover when it comes for reasons to choose mediation.

We recently received a request for mediation from a family that encountered difficulties in engaging with their new neighbours that bought the house next door. That city centre area is packed with houses close together that are left with little land around them. The back of each house is located on the property boundary and this context requires good relations between neighbours. The requesting party is claiming a totally different situation with their “new neighbours”.

The new owners initiated a renovation process that required agreements from their neighbours for access in their property and other things. In their turn, “the old owners”, the party requesting mediation, have their concerns and requests. Without going in detail, among the topics for conversation with shared interest for both neighbours are usual neighbourhood issues regarding boundary, noise, trees and gardens.

It seems that after some failed communication attempts between the two neighbours that concluded with “disrespectful attitudes and behaviors” with each other, the new owners decided to take “the next logic step”, as we were told later, and initiated litigation.

The case was submitted to mediation at the suggestion of requesting party’s lawyer, a mediation advocate, experienced with counselling clients in a range of dispute resolution processes, including litigation and mediation. It was clear for him that mediation was worth trying, as their previous attempts to discuss were unsuccessful and the litigation prospect didn’t seem encouraging in the long run as well.

We scheduled a preparatory meeting with the requesting party and discussed about their concerns and possible ways that would help them address those concerns effectively. They attended the meeting with their lawyer, which was helpful because he was a reality agent, particularly when we discussed the litigation alternative. Also, he was very instrumental in echoing mediation related information. So far, the perfect case for mediation.

Following the invitation letter sent to the responding party, we had a meeting with them to discuss about their views on the situation and the possibility of using mediation. Well, the whole discussion stimulated this post because it showed, again, the difficulty of having an effective meeting with unassisted users that are not familiar with the added value of using a third party to support a dialogue process.

We were surprised, again, to see that his decision not to use mediation was based on the same reasons that the requesting party was looking at, when considering mediation. Specifically, the distrust that was already established among parties, the fact that they failed to achieve progress when communicating directly, the importance of good ongoing relations between neighbours and the need for the third party to manage and facilitate the process are just some examples of reasons to mediate ... or not.

The decision to pursue litigation is fine in certain cases, moreover when competent advice is considered. But what about when the user is not informed and competent advice is not there? Is the mediator in the best position to provide credible and objective information about the use of mediation? It may be. Or it may be to self-serving. In our case, it was just too difficult to be credible, considering the responding party's perceptions about the use of mediation.

Nevertheless, some questions remain. What would be needed to ensure an informed decision of the responding party? Also, if the requesting party's lawyer was not a mediation advocate, would they consider mediation in the first place?

Finally, who are the most credible sources of "reasons to mediate"?


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