



Case study

A three party dispute involving a Cricket Club, Contractor and an Architectural Practice

The problem

The Cricket Club had developed a Cricket Pitch. The firm of Architects had been contracted to create designs for the building and the layout of the grounds. The Architects, in addition to providing designs were required to prepare drawings to instruct Building Contractors working for the Property Developer. The Architects had specified that nets be erected to prevent stray balls from being hit over the boundary of the Cricket Pitch and into neighbouring property. Next door to the Cricket Pitch was a prestigious office development. The car park that serviced these offices was directly adjacent to the Cricket Pitch nets. Once the Club was in use, it became apparent that Cricket balls were being hit over nets and were landing on and damaging cars parked in the office car park. On occasion expensive cars such as Porsches and Range Rovers had been severely marked. The owners claimed damages from the Cricket Club, who in turn made a claim against their insurance policy. The Cricket Club considered issuing proceedings against (1) the Architect, for damages caused by breach of contract and professional negligence, and (2) the Contractor for breach of contract.

Peter McHugh was asked to mediate to find a resolution that would prevent a situation where excessive court and legal fees would be incurred. The Architects claimed that the Contractor had installed the netting in the incorrect place and not as instructed by their drawings. The Contractor had claimed that they had put up the netting exactly as instructed. Although the drawings and photographs were brought to the mediation session by both Architects and Contractors to support their claims, inspection of the drawings did not facilitate the apportionment of blame.

It became apparent that should the Property Developer try to claim against the Contractor, a successful outcome would be unlikely because the Contractor did not have the funds to pay, even if a court found that they were at fault. The Architects had the benefit of professional indemnity insurance but they did not want to claim against it as future premiums would be increased and a black mark would be made upon their professional record.

The solution

The dispute settled on the basis that the Architects carried out work on a free of charge basis for the Property Developer on another project, thus indirectly reimbursing the Property Developer for the cost of moving the netting – albeit, that repayment was paid in terms of labour and deferred until the Property Developer called on that work.

The benefit

The Architects did not suffer a black mark on their professional record or suffer increased insurance costs and the Property Developer, through the waiving of professional fees, were reimbursed for insurance excesses (from damaged cars) and the moving of the netting system. This is an example of how matters can be resolved by a Mediator in a commercial and flexible manner, which could not have been achieved at court due to the limited remedies available for a Judge to award.