

Case study 2: Family business dispute

This is a case study that Auckland lawyer and mediator Maria Dew gives of a mediation between elderly parents and a son over the handing on of a family business.

The conflict that engulfed them touched on matters of employment, family and civil issues. (The description of the parties and some facts have been altered to protect the identity and confidentiality of the parties.)

The plaintiff, Harold, was the elderly owner of a commercial bakery that he had established and built up successfully for more than 40 years. The business employed staff and leased its premises, a commercial building in south Auckland. The business supplied a wide range of baked goods to local supermarkets and groceries, cafes, tearooms and offices in the wider Manukau City area.

Seven years before, Harold brought his son Michael into the business as a senior manager.

Harold and his wife Nola relied on the business for income. They were semi-retired – Harold continued to work three days a week (still managing the 5am starts) and Nola continued to help with the invoicing, payroll and accounting.

Harold was justifiably proud of his success. Their son Michael approached them several times about taking over the business and even offered to purchase the business from them. However, they did not want to do so as they considered the business a valuable asset.

Michael became increasingly frustrated and angry at his parents' refusal to consider the issue of the future of the business.

Sometime later, Harold became ill and underwent surgery. In the five weeks he took to recuperate, Michael took matters into his own hands. He relocated the bakery operation to a new building two kilometers away from the old premises, and took the 15 staff with him.

Harold and Nola were shocked and deeply upset that their own son would do this to them. It caused a rift in the family.

Harold and Nola contacted their lawyer who drafted a statement of claim for filing in the High Court. However, rather than issue it, the law firm sent the statement of claim to Michael's lawyer.

The statement of claim alleged that Michael had failed in his fiduciary duty as a senior manager, de facto director, and as a trusted son. The two parties agreed to go to mediation, albeit reluctantly, to try to resolve the dispute before it escalated to the High Court.

The mediation took a full day to resolve, and things were emotional and tense between the parties.

Michael expressed to his parents how he felt he had been driven to do what he did out of sheer frustration at their refusal to engage with him. He made clear that he had worked extremely hard in the family business for many years, and that he had resented his father's ownership style.

Harold and Nola were able to express through their lawyer and through a personal statement from Nola, their profound anger, shock, disappointment and dismay at his betrayal of their trust in him.

Both parties had obtained independent valuations of the bakery business.

In the course of a day, the parties agreed a settlement. Michael would purchase the business from his parents for an agreed sum that was a compromise between the two valuations.

The settlement involved a full and final resolution of the dispute without the need for High Court proceedings. It also achieved a resolution of the matter within two months rather than at least 18 months of High Court litigation.

The legal costs for both parties were in the region of \$20,000 rather than \$70,000 to \$100,000 that might have been spent in proceeding to a High Court hearing.

For Maria Dew, this mediation provided a superior outcome for all parties.

“It’s fair to say that 10 years ago, a case of this sort would most likely have resulted in High Court proceedings being issued as a matter of course and significantly more time taken, legal costs expended, and greater anguish for the family.

“I think it’s a credit to the parties involved (and their lawyers) that they pursued mediation as a first resort.

“While not every case is capable of being mediated at such an early stage, I do see there is a place for appropriate matters to be mediated early in the life of the dispute.”