BUSINESS DISPUTE

MEDIATION CASE STUDY

The Background:

The business is a boutique gift store. The business owner lives in Scotland, the managing employee runs the business in the South East. The owner takes money out of the business regularly to finance his other businesses, leaving this business short of cash flow on a regular basis. At several critical times, such as the end of year holiday season, which is peak season for gifts and so there was an acute need to purchase stock, there were no funds available in the business. The employee borrowed money from family to purchase stock on behalf of the business. The money has been paid back in time.

The Dispute

Employee wants to have his contribution to the survival of the business recognised in the form of shares in the business. He claims that effectively he kept the business afloat, and without his loans to the company, which he would like recognised as investment, the business would have collapsed.

The owner realises that he has not dealt with this business in the best interests of the business, but is in no mood to gift shares to the employee. All moneys loaned to the business have been fully repaid, and he has forbidden the employee to 'loan' any further. The difficulty arises when the employee started underperforming, and stopped communicating with the owner. The business is suffering. The owner cannot simply dismiss the employee, as they have another joint venture, and a break is not possible.

The Pre-Mediation Discussions

The owner stated emphatically that he will not consider gifting shares to the employee under any circumstances. He recognises the severity of this situation, where if things continue as they are, the business will fail within a year, and he will lose his investment, as well as a source of funds for his other enterprises.

The employee says that the owner doesn't seem to have a real understanding of this line of business, nor does he seem committed to ensuring that the business flourishes. He feels that without a real say in the running of the business as a shareholder, the owner will ignore his views, and continue to 'abuse' the business, and eventually it will fail.

The Mediation

Although I met both parties face to face, the parties preferred not to meet during the mediation, mostly for logistical reasons. The mediation took place separately; I spoke with the owner via telephone, and separately with the employee.

After the discussions, the employees concerns were articulated as follow:

He is concerned about the viability of the business in view of the manner in which the owner is treating it, and about the fact that his views are not being heard. He believes that he is the one who has the real understanding of this line of enterprise, as he has worked in the gift industry for more than a decade, whereas the current owner is relatively new to this area and to this line of business.

He wants his contribution to the business recognised. By this he meant not just his loans to the company, but also the fact that he is the real asset to the business. He is the one with the knowledge of the local market, and he is the one who builds the relationship with the clients. In fact he is the reason most of the clients come to the shop.

The owner verbally recognised the significance of the employee in the business, and agreed to a profit share scheme in exchange for a lower basic salary. He also agreed to a level of funding for the business to ensure its viability.

The employee was happy to agree to a lower basic salary in return for profit sharing, as this would incentivise him, and he felt confident that he would be financially better off with this arrangement. Initially he expressed reservation at the level of agreed funding, and he explained why he felt it was too little.

The owner agreed to ask the company accountant for an opinion as to an adequate figure for this business. The accountant came back two days later with figures that confirmed the owner's position. When this was put to the employee, he accepted the professional judgment of the accountants.

When this was all agreed, the owner and employee spoke over the phone for the first time in nine months.

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