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COSTS ALTERNATIVE DISPUTE RESOLUTION

CADR Case Study

Solicitors Act

The claimant had instructed her solicitors to act for her in hard fought matrimonial proceedings which had included a complicated application for ancillary relief. During the case, the solicitors sent her several invoices within total exceeded £100,000 including VAT and counsel's fees of about £20,000. Whilst the claimant had little complaint about the quality of the work save in respect of completing a Form E, she was unhappy about the level of charges because they had exceeded an estimate she had been given at the initial meeting with the solicitors, that the case would cost between £40,000 and £50,000. Relying on that estimate, she had borrowed money from her sons to pay the invoices as the matter proceeded, since if she had not paid them as the case went along, the solicitors would have stopped acting for her. The last invoice had come as a terrible shock, in addition to which she had been told by the solicitors that more money was required before they could complete the case.

The solicitors maintained that the fees had been hard earned on their part. The former husband had proved to be difficult and hostile and the claimant had known that the costs were running up because she had been copied-in on much of the correspondence. In addition, she had been sent interim invoices so she had known what the matter was costing but had not complained or otherwise engaged in any correspondence with the solicitors about the fees. With their last bill having been unpaid, the solicitors had had no choice but to end their retainer and although they had great sympathy for the claimant, they could not write off their fees and had agreed that those which were not disputed should be assessed by the court under s.70 Solicitors Act 1974.

Faced with the prospect of another set of proceedings which would cost both sides time and money, the claimant and the solicitors decided to see if their differences could be resolved by mediation rather than by the court. If the case proceeded at the latter, there would be a fully contested hearing which would include the parties having to give evidence (and face cross-examination) about what had been agreed about costs at the initial meeting. Neither side wished that to happen if it could possibly be avoided as the outcome could not be predicted, and each side might find themselves out of pocket : the solicitors if the bills were reduced, the client would benefit from the reductions but if the claimant she failed to achieve a 20% reduction under the "one-fifth" rule, she would have to pay the costs of the s.70 assessment, which would exceed the sums disallowed.

With the assistance of the mediator, the parties were able to have a reasoned discussion and exchange of views across the table. Each side recognised the concerns and views held by the other. The claimant agreed that the solicitors had gone the extra mile for her, but if she had been told what it had been costing, she would have had an opportunity to arrange her affairs differently. The solicitors accepted that their estimates should have been updated and that the costs information the claimant had been given, could have been more accurate, but the case had proceeded at a relentless pace and the claimant must have known that it was all costing more than had been envisaged at the outset. And, of course, she had received the interim invoices, so she had known how the costs were mounting up. Whilst the solicitors were willing to reduce their charges to reflect that, they could not afford to write off £50,000.

At the facilitative stage of the mediation, the parties were able to agree a figure for counsel's fees. However, the gap could not be bridged so far as the solicitor's profit costs were concerned, although progress was made drawing on the mediator's expertise in private session. In the end, however, the difference still remained too large, but both sides were still anxious for there

to be a resolution and invited the mediator to provide an evaluation, in order to

indicate how he thought the case would unfold at a detailed assessment before a judge.

It was agreed with the mediator that this evaluation should be given in writing and that the outcome should be binding, the mediator having explained that he could not direct the parties that that should be the case. That was something that they must decide and agree for themselves.

The written evaluation was delivered within one week of the mediation. The mediator's view (having regard to the relevant law) was that the original estimate had been too low, that the claimant had relied on that estimate, that the solicitors would not receive all their charges for work on the Form E and that as counsel's fees had now been agreed and would be excluded from the s.70 assessment, the claimant's task would be much easier in beating the one-fifth rule. There were, accordingly, risks for both sides going forward. For these reasons, he advanced a figure on evaluation that was one which he considered was a reasonable amount for the claimant to pay, recognising that the estimate had not been updated, but giving the solicitors credit for some, but by no means all, of the additional charges they had made for their work . Both sides recognised that the evaluation had not given them everything that they wanted, but it was a resolution both could live with and they were glad that the mediation had ended their dispute without anyone having to go to court.

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