LAW MADE SIMPLE

Jonathan Ross, Head of Property Litigation at Forsters writes on the particular advantages of mediation in neighbour disputes.

The Message: Neighbours should mediate and not litigate.

The Cases: In two recent decisions, the Court of Appeal expressed despair at the inability of neighbours to reach sensible compromises rather than help fund the legal profession (Oliver-v-Symons and Faidi-v-Elliot Corporation (15/16 March 2012)).

In Colin and John Oliver-v- Symons, the parties disputed the width of a right of way along a track across farmland. The right of way allowed the use of agricultural machinery to pass along the track but the track itself was not wide enough for the large agricultural vehicles currently used by the Olivers to pass along without use of the verges either side.

The Olivers argued that the extent of the right of way should not be limited to the track itself but should include the verges as well as "swing space" to allow tractors and trailers to swing over this adjoining land when going around corners. They demonstrated that many of their vehicles could not pass through gates erected by Ms Symons which only allowed use of the width of the track.

The Court of Appeal however agreed with the Judge that land adjoining rights of way should not be sterilised to facilitate greater use of the right and that, generally, an owner of land should be entitled to build right up to the boundary with a right of way. In the absence of any evidence that the use of large agricultural vehicles preceded the grant or was contemplated, the right of way did not include the verges or swing space.

The Court said this was a case crying out for mediation. The Olivers had spent over £150,000 and, with a modicum of good will on both sides, the Court considered the matter could have been readily settled. In particular, the Court emphasised that solicitors should push the parties to mediate to avoid costly litigation that would blight their lives and leave them bruised by the experience.

In Faidi-v-Elliot Corporation, the parties were at loggerheads over noise from the Defendant's flooring which could be heard in the Claimants' flat below. The Claimants argued that works undertaken by the Defendant to install timber flooring breached terms of their Lease requiring carpeting even though the landlord had authorised the works. The Defendants had spent £100,000 installing the flooring with heating below it and the laying of carpeting above it would completely defeat the purpose of the works.

The Court of Appeal held that the landlord must have intended to waive the requirement for carpeting even though the Licence for Alterations referred to all the provisions of the Lease remaining effective. Accordingly, the works were lawful.

The Court highlighted that this was exactly the sort of case where, with the assistance of a mediator, the parties could have agreed a sensible resolution involving the laying of a moderate amount of carpeting. There was simply no need for either party to have their day in Court to determine the exact extent of their rights. Instead, the parties had incurred costs of £140,000 between them which, as the Court made clear, only benefitted their lawyers.

In words which every solicitor acting in neighbour disputes will now be well advised to convey to their clients, Lord Justice Ward said "Not all neighbours are from hell. They may simply occupy the land of bigotry. There may be no escape from hell but the boundaries of bigotry can with tact be changed by the cutting edge of reasonableness skilfully applied by a trained mediator. Give and take is often better than all or nothing".

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