

## **MEDIATION BETWEEN DIFFICULT PERSONALITIES**

When you act as a small claims court judge, sometimes you get to meet some interesting personalities. I recently presided over a settlement conference that began in vocal overdrive as though someone had fired a gun at the starting line and escalated from there. When the special police constable on duty entered the settlement conference room, it was obvious that the parties voices had begun to sound threatening which is always a concern for police.

In any event, a claim had been issued by a home renovator who had completed a bathroom renovation for the Defendant for roughly \$2,700.00. Because one of the promised components was not available, the Plaintiff credited \$900.00 to the defendant and claimed the difference of \$1,800.00. The defendant did not deny that the work had been done, did not allege any defects, but did complain about the time it took to be completed.

The Plaintiff who attended the conference was quiet and well behaved. His representative, a licensed para-legal was competent but presented his case as though he were a one man symphony. The Defendant, who represented herself, responded in kind and insisted on raising her voice and in interrupting the Plaintiff's presentation sentence by sentence, talking at the same time. These performances continued for about five minutes despite my warnings at which point the police officer walked in. It's amazing what a calming effect a police uniform and bullet proof vest have on bad behaviour.

However, as the effect of the officer's brief entrance into the settlement conference room was short lived, I decided that the usual rules [ie give everyone an opportunity to present] would have to yield to a little direction. So I instructed the Plaintiff's representative and the Defendant not to address each other and instead asked each of them several relevant factual questions. It became abundantly clear that the Defendant's real beef with the Plaintiff was not about price or quality, about which she never complained. Her complaint was solely that the parties had never signed a

formal renovation contract. She admitted that she very much enjoyed the bathroom renovation using the Plaintiff's materials and labour.

I then decided to use an old class room teacher's technique. And that was to speak so softly to the point where she had to cup her ear in order to hear me. And she was seated next to me. After warning her that a trial judge would have no difficulty finding in favour of the Plaintiff, she began to negotiate. She settled ten minutes later for \$1,250.00.

The take away, I suppose, is this. Since we never know what kinds of personalities we are going to deal with, sometimes the best response is to apply some good, old fashioned common sense.

Jack Zwicker

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