

Summaries of some of the Mediations Carole has been involved with

Tenancy – one tenancy case involved nightclub operating tenants who spent a considerable sum of money on renovating their premises on the understanding that their lease would be renewed. Despite various applications before the Court including an interim injunction and application to strike out, the parties managed to settle and maintain their longstanding relationship of 30 years by focusing on a pragmatic solution which ultimately had little to do with the law. I was asked by the Singapore Mediation Centre to use this scenario to prepare a script as a basis for a role play in a simulated mediation. It was ultimately used in October 2015 “Unfolding Conversations – Taking Control in Uncertain Times” SMC’s signature event for senior business people.

Personal injury – The Plaintiff in this case had lost most of his hand in a workplace accident, and blamed his employer. Unfortunately, despite a high degree of friendship between the two parties before the incident, various incidents of miscommunication after the accident led to a breakdown in communication and a lack of trust which proved too difficult to overcome. However, the parties gained a clearer understanding of each other’s perspectives, increasing the prospects of settlement before trial.

Joint venture – a large joint venture dispute involving restaurant businesses across Asia settled despite a complete lack of documentation evidencing fundamental elements of the venture. Although the parties initially considered obtaining a valuation of the relevant businesses, the problems this would ultimately throw up meant the parties agreed, after lengthy discussions, to settle for a fixed sum of money for a share purchase, and managed to stay on reasonable terms in the process.

Supply of goods and services – In one case, the parties involved a diamond seller and purchaser who entered into an agreement whereby the purchaser who was purchasing on behalf of a third party, could return the diamonds less 15% of the purchase price. The issue was whether the diamonds had in fact been returned. Using the flexibility inherent in the mediation process, the parties were able to resolve this by way of a private ‘parties only’ meeting, producing a settlement. Another case going to arbitration involving a contract for services, specifically fitting and welding work, was settled by using the opportunity for the lawyers to speak directly to each other, without their clients present, which helped them to manage their client’s expectations. A relentlessly positive approach by the mediator in this case also helped it to settle.

Construction – in a construction case concerning works carried out by subcontractors which settled, the parties realised the benefit of taking a commercial approach given the relatively small quantum of the claim. The parties in this case also took advantage of the increased confidentiality afforded by the mediation process, compared to litigation. In another large construction claim concerning the tender process for car parking in Singapore which didn’t settle at mediation, the process at least provided an opportunity for the parties to gain a better understanding of each other’s perspectives.

Banking – this case involved a claim quantum of SGD \$32m and a very long standing banking relationship. A series of bad returns on derivatives trading led to the bank closing down the transactions to prevent further losses and to maintain its collateral security, and the dispute was over the bank’s timing of doing so. A simultaneous exchange of first offers by the parties led to further offers, and a narrowing of the Zone of Possible Agreement (ZOPA) and ultimately settlement.

Shipping – A deal arranged between a firm of ship brokers for the sale of a ship ran aground when the owner of the ship ultimately engaged another firm of ship brokers and then refused to pay the initial brokers. Despite one party’s lawyer leaving part way through the mediation for reasons connected to saving face, on his return the parties settled quickly for amounts quite some way apart from their initial starting points.