

Mediation Agreements – Haste brings Absurdity
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If you could pick one thing that is most important in a Mediation settlement, what would it be: the sense of accomplishment, praise from your client, a warm handshake with opposing counsel, getting everything you demanded, or an enforceable, accurate settlement agreement?

In two of my prior articles, I have stressed the importance of finishing the task at Mediation. While the parties usually spend brief moments on it, the final document is the most important. A meeting of the minds is laudable, but unenforceable without an accurate settlement agreement. The latter, I propose, is the most important task in any Mediation conference.

Yet another case highlights this fact. In Developers of Northlake, Inc., et.al. v. Northlake Equities, Inc., 30 Fla. L. Weekly D 2127 (Fla. 4th DCA 9/7/05), a dispute arose as to what fee was due to the developer of phase I, and the parties submitted to arbitration. The arbitrator's Order declared the fee amount that the developer was entitled to as of the completion of phase I. Subsequently, the parties went to Mediation and adopted the arbitrator's Order as the Mediation Settlement Agreement. The developer finished phase I, but the landowner refused to make any payment until the entire project was developed and sold, citing a provision in the arbitrator's Order declaring such. The developer sued, seeking to obtain partial payments as individual parcels of the project sold. It claimed that any other interpretation of the arbitrator's Order (adopted by the parties as the Mediation agreement) would lead to an unreasonable and absurd result. The trial court agreed, and ordered partial payment. In reversing, the district court of appeals stated, "While it may make little sense to require Equities to await the sale of the entire project before it is compensated when it is overseeing only the development of phase I, that is precisely what the arbitrator's words say. The inequity of the outcome does not change the meaning of the words."

It would appear that the developer overlooked the "payment due" language in the Order, and further that it squandered the opportunity to revisit or correct this during the subsequent Mediation and in the Mediation Settlement Agreement. One can only speculate as to whether the landowner intended this result all along or merely used this "absurd" verbiage to its benefit later.

Typically a dispute is ended by a release document. Too often, Mediation participants feel comfortable with a brief, skeletal Mediation Settlement Agreement, trusting that the full details will be mutually agreed when the release is subsequently drafted and reviewed. Many published opinions, such as the one above, highlight the peril of this short sightedness.

Remember that the ultimate outcome of a Mediation settlement is that the settlement will proceed as contemplated. This is best accomplished by creating a sufficiently thorough and accurate Mediation Settlement Agreement. It is a document worthy of more time than is usually devoted to it. Even though the Mediator's invoice will increase by the extra time spent memorializing the details, consider that money well saved. The cost is far less than would flow from the absurd results that haste may bring.

This article is one in a series of periodic articles concerning mediation topics such as use, legal developments, and negotiation tactics. Blane G. McCarthy is a Jacksonville civil trial lawyer and certified circuit civil mediator. For questions, comments, or suggestions on future articles, please call (904) 391-0091 or email at bgmccarthy@sprintmail.com.