A Multi-disciplinary approach to Family Mediation

-Working together-

Case Study – Pete and Carol

Introduction

The following scenario presents a range of potential substance, emotional and process challenges and is exactly the kind of scenario that our problem solving mediation model is designed and created for.

The purpose of this presentation is not for our professionals to present their solutions to the financial and emotional challenges facing the family in this case study but to demonstrate how they might work together within this specific mediation model process to address these challenges with the clients in an inclusive and collective way so as to enable the clients to arrive at their own solutions and outcomes with the appropriate level of emotional, financial and facilitative support within a specific mediation model and process.

The Professionals Integrated Mediation Model(‘PIMM’) team will demonstrate, through presentation, questions and answers how this model draws on the strengths, skills and experience of the professionals working both independently with the clients in parallel processes and as an interdependent, co-operative and integrated problem solving team.

By reference to the case study below we will seek to explore and demonstrate some of the important features of our mediation model and main benefits for the clients and all those involved in this process.

We would like you, the audience to challenge the process with questions which we will do our best to answer but this is an evolving and adapting process and dispute resolution model which relies on continued feedback and constructive comment to become even more effective and efficient as time goes on.

Background

Pete and Carol; an accountant and cattery manager, both in their late 30’s, have been married for 18 years.

For the past three to five years their relationship/marriage has been breaking down. They have been spending very little time together and when they have they simply avoided arguments by sitting in silence. They disagreed on matters relating to the children, and argued about their finances.

Pete moved about 4 months ago on the 1st June and they have now decided to divorce.

The separation was triggered by Carol finding emails from one of Pete’s female colleagues which she found inappropriate and believes he has been having an affair. Pete denies that there was anything inappropriate, but recognises that he has looked for support from others due to the lack of support he felt he received from his wife.

They have two businesses, a family home, three children 5, 9 and 13 and Carol’s mother lives in the annexe attached to the family home having gifted Carol and Pete £200,000 which

Peter subsequently injected into his business. Carol’s mother’s understanding is that she will have a home for life here. The cattery business is also located within the grounds of the family property.

Whilst they say they want to resolve matters as amicably as possible, communication has broken down between them to a point that they both agree that “every discussion ends in an argument”.

They agree that their marriage is over and want to divorce as amicably as possible. They have friends who have gone to mediation and told them about mediation but Carol and Pete want to find out more about this option themselves because they believe that their circumstances might be too complicated for the mediator and mediation process to help them with. Their friends only had one house, no children and a couple of pensions.

Profiles

Husband – Pete

Pete, age 39 has been married since he was 21. He owns and runs a Stationary business that has grown over the last 15 years to become a national enterprise with 5 warehouses strategically situated around the country and has been the main financial provider throughout the marriage. He works hard and goes to the gym three evenings a week to relieve the pressures that build up during the week and, if truth be told, it makes him feel and look younger.

He moved out six months ago because he had started to form a relationship with a close female friend. He admits confidentially that he was engaging in an ‘emotional affair’ until Carol found the emails, which triggered him moving out.

He has never been unfaithful before and whilst he recognises this is a symptom of his marriage difficulties he is experiencing mixed feelings of guilt and loss alongside anger and resentment towards his wife.

His female friend has decided to cease contact with him since Carol spoke to her.

Pete is a quiet person, a reflector and strategic thinker. Since he moved out he has felt generally happier in himself, he is enjoying a more ‘peaceful lifestyle’ but misses his children, who he has intermittent contact with, despite agreeing with Carol that they would see him every weekend. She tells him that they do not want to see him too much at the moment.

He has become increasingly resentful over the past few months towards Carol and considers her to have lost very little from the break-up, whilst he feels that his life has been pulled apart. He resents the increased level of freedom Carol provides to their children/teenagers since he left; their recent lack of availability/motivation to see him, Carol’s (excessive) spending from the joint account and her newly formed social life.

The top it all, Carol’s mother, who Pete has always got on well with, has fallen out with Pete.

He is feeling cautious and suspicious about his wife’s intentions in negotiations and is focusing on ‘not being screwed over’.

Wife – Carol

Carol, aged 37, was a full time mother and home-maker for the first thirteen years of her marriage. She owns and runs a cattery which she set up five years ago when their youngest child was born.

Strong, independent and ambitious, Carol has high expectations of herself, her children and her husband. She is a very conscientious mother, runs a small business, cares for her mother, keeps the ‘kitchen garden’/ veg patch, pigs and chickens well maintained and strives for a healthy lifestyle.

She feels that the decline of their marriage coincided with her starting her own business, regaining her independence and the demands of family life (three children and an able but elderly mother).

Since Pete moved out she has joined the local running club with other parents she knows well and has tried to restore some balance to her.

She feels that life is easier without Pete, and wants as little contact as possible with him at the moment because she feels betrayed and bitter that she is likely to have to sell the family home and her business premises.

She is extremely concerned about her financial future, particularly as Pete dealt with all of the financial management for her cattery. She lacks in confidence when trying to negotiate with Pete. She feels he twists her words, puts her down and fears that she will agree to things that she doesn’t fully understand. She is also anxious that he has always dealt with the finances and feels at a distinct disadvantage in her understanding of the business accounts.

The children

Billy- 5, Jane -9 and Frank- 13

Billy- Started bed wetting and has also become quiet. He has fantasy friend he talks to constantly.

Jane- She has become rebellious and constantly challenges his mother.

Frank- He has become very quiet and withdrawn and has started bullying other pupils at school. He will not talk to his parents

The Financial outline

The Family Home – Rosebud Farm has been in Pete’s family for 3 generations and is worth about £1.3 million but the value has not been agreed. No mortgage

The businesses-

1. Stationery business- 5 Warehouses owned by the Company, 4 Directors (2 family and 2 non-family), shareholding; 40% Peter/40%Carol/10% by each of the other two non family Directors

Pete takes a small salary and tops up his income with dividends. Carol is not employed but gets the same level of dividend income as Pete.
Pete and Carol have built up credit balances in the company by loaning back part of their dividends each year for use as working capital. There are significant retained profits in the business. Accounting year is to 31 March

2. Cattery - attached to house and carried on as a sole trade in Carol's name. She works full time in the business, which makes approximately £25,000 p.a.

Bank accounts- a range of current and savings accounts but no personal debts. The only debts are business debts

Investments –An endowment policy and a number of single premium investment bonds are held in Pete's name**.**

Pensions – SSAS with a range of investments including warehouses, two small final salary schemes relating to past employment, an entitlement to second state pension

Trusts –Carol's mother has taken legal advice and believes that a constructive trust exists in respect of her interest in the Farm House but to avoid the tax problems with the constructive trust Carol's mother has agreed that if a suitable property is provided for Carol with an annexe she is willing to move out of the annexe at Rosebud Farm to the annexe at the new property

Accountancy matters to consider and potential solutions

1. If Pete wishes to retain Rosebud Farm as it has been in his family for three generations and Carol, the children and her mother want a suitable house with annexe for themselves and from which the cattery business can be run there will need to be a release of sufficient capital out of the business for the purchase of the new property.

2. Possibility of mortgaging Rosebud Farm – mortgage to be repaid from taxed income, so Peter's income will need to be increased – possibly taking him into 50% tax rate.

3. Valuation of shares in the stationery business – PE ratio; dividend yield; net asset value; discounted cash flow; is minority discount appropriate? (G v G) – legal advice needed?

4. Release of cash from the company – sale of warehouse(s) to SSAS to provide liquid cash. Routes out of company to consider – dividend payments taxed as income and potentially available to all shareholders; company buy back of own shares (CGT if approved by HMRC); repayment of DCA's with no tax implications; consider position and attitude of minority shareholders to the arrangements. From the company's tax point of view consider capital gains and SDLT and consider the impact on profitability.

5. Possible alternate mortgage on purchase of new property, reducing initial capital requirement. Sale back of shares to the company in small tranches (will be treated as quasi dividends) or share for share exchange and Carol taking (redeemable?) preference shares. Or Pete to purchase Carol's shares (n.b. CGT implications dependent upon date of separation).

6. Cattery business being retained by Carol – valuation principles; notional salary; return on capital employed; super profits for goodwill; goodwill attached to the property?

7. Realise cash by surrender or sale of Pete's investments. Impact of taper calculations on SPIB's – possibility of remaining in basic rate band by income restriction through DCA drawings for the year of surrender.

8. Tax implications of the constructive trust for mother (in law). By implication it is a life interest settlement with the annexe as the asset. When commenced? If post 2006 relevant settled property with IHT charges on commencement, 10 year anniversary charges and charges on exit from settlement.

FSA matters to consider and potential solutions

1. Pension sharing/allocation – does Carol want this if the main assets of the SSAS become the warehouses used by the limited company?

2. Liquidation of present investments of SSAS and tax implications. Borrowing of funds by SSAS trustees if there is insufficient liquid funds to buy warehouse(s)

3. Likelihood of contracting out of SERPS, self employed for a number of years and capital value of SERPS likely to be small

4. Disposal of investments via surrender or via sale to third party? Differing tax status of the investments.

5. Requirement for commercial rent to be charged by SSAS to the limited company if the warehouses purchased.

Chartered Surveyor matters to consider and potential solutions

1. Problems with mother in law continuing to live in annexe – within curtilage of farmhouse; separate access and rights; utilities; council tax; occupational rights.

2. Potential breach of trust if mother in law is removed from the annexe against her wishes and how is this achieved?

3. Valuation of the annexe/mother in law's life interest

4. Valuation of the warehouse(s) for sale to the SSAS and for the company's tax computation.

5. Commercial rent for the letting of the warehouse by SSAS to the limited company and terms of tenancy.

Family Consultants matters to consider and challenges

Prepare Carol and Peter for the mediation process

Help them to work on a parenting plan

Help them with strategies for their children such as how and when to discuss matters with the children in appropriate terms.

Mediator

As well as the usual role of facilitating there are the added challenges of co-ordinating the selection of appropriate professionals for the problem and the subsequent parallel process going on with the information gathering etc. So there is an element of managing, chairing and facilitating the various meeting within the overall process.

The mediator is also a valuable source of legal information and sign poster of information.

Family solicitor

The main role of the family solicitor is to assist and advise their client in a way that informs and empowers them to negotiate for themselves in mediation and reach outcomes that meets the needs of the children and as many needs and interests common to their client <u>and</u> their partner/spouse as possible