

Sometimes a commercial dispute is about more than just business

Information and preconceptions influence assumptions we make.



Joyce Young

photo by Dougal Bichan

By Joyce Young

A colleague of mine said that he likes mediating corporate-commercial disputes because the parties “don’t get all emotional: They know what they need and it’s a business decision.” Well, sometimes...

I recently mediated a dispute between two companies. The plaintiff alleged that the defendant had subcontracted him to service clients, and then “stole those clients back.” The plaintiff had lent the defendant \$60,000 during the tenure of their relationship. The plaintiff alleged that the defendant had declared bankruptcy and established new companies twice in the five years since this transaction went sour. For his part, the defendant said that the service provided by the plaintiff was sub-standard and he had every right to give his clients another service provider. He claimed that he had repaid \$25,000 of the loan. Both parties were very angry.

In caucus, the plaintiff said of the defendant “He’s a scumbag, a liar and a cheat and I’m going to teach him a lesson. He deliberately stole from me. Nobody treats me like this and gets away with it. I don’t care what

it costs. It’s not about the money.”

On the one hand, this case did not sound like it was ripe for settlement. On the other, the plaintiff’s damages did not justify the cost of a two-week trial, which would turn on proving fraudulent conveyance. The plaintiff was not making a rational business decision.

Whenever I hear “It’s not about the money” I think: “It’s not *only* about the money. What else is it about?” Whenever I hear “He’s a bad person and he set out to harm me,” I know that the dispute has escalated to a point of high blame and no trust. Although it was triggered by a failed business transaction, the dispute is now being fuelled by the plaintiff’s beliefs about the other party. The plaintiff has attributed hostile and intentional motives to the defendant. He states what he assumes and suspects about the other party *as if* it was a proven fact.

Attribution theory, which provides insight about the dynamics of trust and blame in relationships, provides the key to settling this

file. Mediator Gary Furlong explains it thus in his recent book, *Conflict Resolution Toolbox*. Furlong defines trust as: “Having positive expectations about another’s motives and intentions toward us where potential risk is involved.”

In business, we take the risk of trusting another because they can provide a good or service that we need. The other side trusts that we will pay the bill. We prefer to do business with people who have done a good job in the past, because that experience makes us more comfortable in trusting them.

When we attribute motives and intentions to another person, we are making an assumption about why that person behaved in a certain way. Our assumptions do not represent reality or fact. They represent the story we create to explain what happened.

If the dispute is not resolved for a long period of time, the wound festers and we embellish the story. Our assignment of motives and intentions become increasingly strident and distant from what

actually happened.

Two elements influence the assumptions we make: Information and preconceptions.

Information, misinformation or lack of data affects the assumptions that we make. Attribution theory demonstrates that in a conflict situation, we select information that supports our beliefs and assumptions while rejecting other information that may contradict our story.

Preconceptions are the belief patterns that we carry, whether we are aware of them or not. These belief patterns may be learned from our parents or formulated from our life experience. “A stitch in time saves nine” expresses the belief that if you deal with a problem in the short term, the problem will not have a chance to get bigger. This is true of many conflicts.

Finally, attributions and assumptions can be changed, or at least made manifest. In conversation with the plaintiff in caucus, I helped him to identify the assumptions he had made about the defendant. I helped him to deconstruct his story.

This method of interviewing is calm, supportive of the party’s feelings and gently teases apart the

threads of fact from the fibres of fiction. As we began to build a different picture of what happened, he became calmer and gained a more realistic view of his case. It restored an angry, hurt, vengeful plaintiff to a more rational businessperson who wanted to get on with business. We got some numbers on the table. The settlement was signed, sealed and delivered in four hours.

Counsel may find attribution theory useful when interviewing potential new clients. Understanding the very human tendency to make monsters out of those who have harmed us may go a long way toward assessing the merits of a case and the credibility of a potential client.

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