



Mediation Case Study

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General Instructions

Dominic Longshanks (53) worked long, hard and successfully at a city job in Edinburgh. He gathered together enough capital to be able to contemplate building his dream country house. He identified a site in Perthshire with a marvellous view, which had the rare commodity of the foundations of an old dwelling with the benefit of outline planning permission. He and his wife, Jasmine, both fell in love with it. The owners were Stone Dwellings Ltd, local builders, whose proprietor, Mr Sandy Mason (57), was well aware of what he had and was determined to maximise his investment. Mr Mason lives only a short distance from the site.

Dominic negotiated with Mr Mason that his company would sell him the ground and construct a 4 bedroom stone clad “cottage” on the site. There was much discussion about the design of the house, which had to be traditional externally but modern internally. Mr Mason said that his architect had to be used. The Longshanks were quite fussy and the architect was very slow and old fashioned in his approach. After a while Mr Mason said, in exasperation, that the Longshanks had to settle on the plans as they were or he would sell to another party who had appeared on the scene.

Mr Longshanks instructed his lawyer to make the contract simple – a turnkey arrangement whereby the builder should build the agreed house in accordance with the plans and provide a local buildings authority completion certificate. The deal should be done in name of his wife. The price was £256,500 to be paid in 3 equal instalments of £85,500. Title would pass to Mrs Longshanks on payment of the first instalment.

The building work started. Within a fortnight, Stone Dwellings Ltd encountered bedrock near the surface which made it impossible to proceed without substantial work with a large pecker and digger. Mr Mason told Mr Longshanks that he would have to pay £4,500 extra because of the problem. This caused a lot of heartache because Mr Longshanks was sure the contract did not require him to pay this. Nonetheless, Mr Mason was adamant and said that he would have to call his men off the job if the additional payment was not made. Mr Longshanks did not want long delays nor to fall out with Mr Mason and very reluctantly agreed (with some anxiety about the prospects for the future of the contract).

The first two instalments of the price were paid as requested (the first with the addition for the foundation work). Towards the end of the contract, endless difficulties were encountered, with the Longshanks complaining about details, slow completion and, finally, a problem which arose over the water supply. The rules (stemming from a recent EU Directive) regarding the supply had been changed between the date of the contract and the date on which the supply was due to be installed. This meant that the hill supply, which had been scheduled, was no longer acceptable and a bore hole would have to be sunk which, with the required pump and filter equipment, would add £12,500 to the price.

Mr Longshanks' patience had been exhausted and he refused to agree to pay the extra, claiming that a compliant water supply was necessary to enable Mason to fulfil his obligations. Mason said that such a supply was not in the contract, as the regulation came in after the contract was concluded. Furthermore he told Longshanks that he was not moving a muscle to complete the house, was fed up to the back teeth with the hassle he had had from the Longshanks and would sue them forthwith for the balance – plus some extras which the Longshanks had agreed verbally but had not paid for.

Mason has raised an action for £102,500 (the third instalment of £85,500, the price of the water supply of £12,500 and the extras of £3,500) has been raised in the Edinburgh Sheriff Court. The lawyers have agreed that mediation might be worthwhile.

Dominic Longshanks and his solicitor Victor(ia) Toughnut and Sandy Mason will be present. Sandy Mason's solicitor - Cameron Shy – may also attend.