



AGG2020-003 training course (15 Oct 2020)

Case study

[first meeting med. decr 28, after the initial presentations]

Attended by:

- Mediator and his assistant
- Lawyer A and his client (brother of the other parties)
- Lawyer B and his clients (the three sisters of part A)

Situation: a complex and long-time story relating to the division of agricultural land between heirs. Over time, the parties have initiated various lawsuits and entered prolonged negotiations, but they have not yet reached any satisfactory solution.

MEDIATOR [to all]: [...] so basically today is the opportunity for you to decide whether or not to have this mediation held. If you decide to do so, my role will be to help you talking about the issues you might want to address [...] You have been already informed about the cost of this mediation [...] of course, today's conversation will remain confidential, in the sense that [...]] One of the possible outcomes is that you find mutually acceptable solutions, and it can be formalized in binding agreements [...]

LAWYER [to all]: Yes, thank you. My client and me, we do appreciate a lot the possibility of closing this long-standing story ... we have been involved in it for almost twenty years ... also because there are now tax advantages ... What interests us most today, is that a clear and firm proposal be finally made. This may be accepted or not. It would be unacceptable for us to negotiate for days just to be told that there is a new issue to discuss. So, we are willing to mediate, provided that these conditions are accepted; otherwise, forget it.

MEDIATOR [to lawyer A]: So, you are available to proceed with this mediation as long as there is a clear proposal, to be accepted or not, because you do not want to have to start negotiating with the risk of seeing new issues called into question.

LAWYER [to the mediator]: Exactly! We need to have a proposal: they have to make it, and it has to be final. We will consider it and then we will tell whether it is suitable or not with us.

LAWYER B [to the mediator]: Mr. mediator, we have been in litigation for a long time. We have also recently direct contacts, and we too need to arrive at a final definition. At this point, I would say that we too agree that there must be a proposal to work it on. Why [to lawyer A] don't you do it, and then we'll evaluate it?

PARTY A [to lawyer B]: 'Cmon! That's enough, counsel! It is not possible [to his lawyer A] that he takes us by the nose! What about the agreement we had found when we met last time?! A couple of hours after we departed [to his lawyer A], they sent us an email changing the cards on the table!

LAWYER A [to the mediator]: It's true. We did reach an agreement in principle, but then we they relaunched – not a minor chance... some €50,000 more, that piece of land excluded... So, it is not possible to go on that way. For this reason, I repeat, either we receive a clear proposal that we reserve the right to accept or not, or it is pointless to continue.

LAWYER B [to all]: Well, it doesn't seem to me that it went like that ... I understand that somebody is nervous ... anyway, we are here, we are available to start mediating, but if this is not possible, well, the lawsuits will stay on their track ... for we lawyers is even better ... Anyway, we are still available. Please state our proposal, in clear terms.

MEDIATOR [to all]: You both said you are willing to mediate, provided there is a clear proposal to discuss, and to be accepted or not. However, you have different visions about who has to make this proposal: each of you is of the idea that the other has to make the first step, otherwise there is no possibility to continue this conversation. Correct?

LAWYER A [to all]: Yes, indeed! We have already discussed the possible terms of a settlement, at large. Then there was a relaunch, and further discussions took place. Well, it may happen... Anyway, now we want to understand what they want. And we don't want to find ourselves arguing for hours with the risk that everything falls apart, eventually. For this reason, we need to be told what they really want. Then, we will assess their proposal. Sorry, but we think the least we can ask.

[silence]

PART A [to his lawyer]: Let's end it here! They make a fool of us!

LAWYER B [to the lawyer A and part A]: I can understand... but - net of emotions - why really don't you say what you want? So at least we can understand if you are willing to....

AVVOCATO A: No way. It is you who have to make a proposal... otherwise let's finish now.

AVVOCATO B [to all]: What if we take some 5/10 to think it over? I'd like to have some time to reflect...

AVVOCATO A: Non. You have to decide now.

MEDIATOR [to all]: So, on the issue relating to who should make a proposal, each of you remains of the idea that it is the other who should make a proposal, and that it is not acceptable for him to make it. A second point you have address is a possible adjournment; you (to lawyer B) expressed the desire to pause for, say, some 5/10 days; while you (to lawyer A) it is acceptable because you want a decision now. For my part, I have no problem being available at another date, but it is up to you to decide if and how to proceed. How do you think to proceed?

AVVOCATO A: Let's end it here please.

AVVOCATO B: Fine. Let's finish.