

Australian Dental Practice - Article – Nov/Dec 2002

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Dental Divorce Australian Style

“Pat” ran a sound practice, worked hard and employed a second dentist full time. The practice produced good but, not spectacular fees. Pat also owned the associated premises. Pat and “Rob” owned their family home, had reasonable superannuation and a few other assets. It was really no-ones fault, but their relationship had deteriorated until both realised that divorce was inevitable. Fortunately, their children were at the end of dependency and too old for custody to be an issue.

Widening the Conflict

Although they had intended to have the assets of their marriage valued and split something upset their equilibrium and one of them went to a solicitor specialising in family law. Perhaps the solicitor misunderstood his instructions, or perhaps he thought that there were a lot more issues to debate, but he immediately served a list of demands on the other marriage partner who then felt compelled to consult a solicitor also. In no time the two solicitors were exchanging voluminous correspondence and had widened the dispute beyond its intended boundaries.

The strained but still civil relationship between Pat and Rob which had survived their original separation had now broken into outright hostility.

Divorce Lawyers Come In Quads

Divorce lawyers do not come singly. Both Pat and Rob’s solicitors engaged barristers and Rob’s barrister advised the instructing solicitor to employ a “forensic” accountant. Although the dental practice accounts were quite normal, the forensic accountant who had an impressive curriculum vitae had never actually had dental clients. He started from the assumption that there was more hidden gold in the dental practice accounts than fillings in its patients teeth. He also quoted a huge fee and justified this by asking for all manner of largely irrelevant information going back for years. He then hinted to Rob’s solicitor that he was on the path of something larger.

Pat had engaged an experienced practice valuer too late and while the valuer and Pat’s accountants were able to contain the issue, and eventually the forensic accountant withdrew most of his exaggerated claims this was not before he had had charged \$18,000 to Rob. Pat’s advisers had had to spend a lot of time containing this bush fire and this added significantly to their bills. In the end, the forensic accountant found very little of substance amiss with the accounts. The report he provided to Rob’s solicitors valued the practice highly but, did not sufficiently back up its conclusions with tangible evidence of the market for dental practices.

The Bills Keep Coming

By this stage all the legal bills, plus forensic accounting, provision of extra accounting information to lawyers, and various other fees and charges were threatening to exceed \$100,000 in total. A number of legal deadlines came and went, and if there was progress, it was not obvious to either Pat or Rob.

Caught In The Legal System

Their solicitors and barristers still talked about the case and what might occur in court. Once in the clutches of the legal system, it seemed impossible to break out. The solicitors wrote to each other, conferred with the barristers then wrote to each other again. The invoices seemed to keep coming regardless. Both Pat and Rob sought explanations, but nothing seemed to transpire as it had been predicted. When one parties solicitor didn't turn up for a pre-trial conference, even though everybody had had the required notice, the opposing solicitor accepted the situation and rescheduled even though accountants had briefed barristers and a lot of time and money had been spent in preparation. It didn't seem to matter that the solicitors were generating substantial expenses, often through not behaving efficiently nor that the barristers appeared not to have analysed the expensive financial reports they themselves had asked for.

Costs Become Open-Ended

As the date of the court appearance neared, the matter got deferred and neither Pat nor Rob were sure whether it was because one of their barristers had double booked, or because the judge had more pressing matters. It seemed impossible to get adequate explanations from either of their solicitors. It slowly dawned on Pat and Rob that their lawyers did not seem as keen to get the matter into court as quickly as they had once hoped. Meanwhile the invoices kept arriving and their legal teams now wanted updated financials and revised valuations since another 30 June had passed. The combined cost of the case was now above \$150,000 and they were warned that due to its apparent complexity, the case might last several days in court. This in turn meant several days fees for two solicitors and two barristers, plus various expert witnesses. Pat and Rob each began to wonder and tremble at the ultimate cost.

Only 2 Percent Get To Court

Strangely as the new court date approached their formerly enthusiastic lawyers had now become pessimistic and were suggesting that an out of court settlement might be beneficial. Pat and Rob each separately contemplated the financial wreckage and agreed to a settlement. Both ended up worse off than they had anticipated. Needless to say their lawyers presented final accounts. Neither had realised at the outset that only about 2 percent of such cases actually get to court. Somehow, their lawyers had not passed on this vital piece of information. Nor had either contemplated the magnitude of the actual cost involved, or how inefficient the legal system was. Both found that the dispute had adversely affected their relationship with other members of their family.

OVERALL LESSONS

Short Cuts

The value of superannuation accounts and family homes are usually easily ascertained, at least within a narrow range. Sometimes the best thing to do with non strategic assets such as those Telstra shares tucked away in a drawer, or a rental property, is to sell them, reduce debt and limit the number of issues that can still be debated.

Inevitably, a divorce dispute will focus on the practice financials and the practices value. This is so because it is sufficiently intangible, particularly to a non dental partner, and to solicitors. Sometimes the non dental partner has an unrealistic idea of the worth of a dental practice. Frequently barristers and solicitors have little or no experience of dental matters and have widely differing assumptions as to likely practice value. It seems to be a widespread failing of the legal profession that many barristers and solicitors have quite inadequate financial knowledge and quickly get lost in accounting detail where a practice has operated through a company with a Service Trust and perhaps a Unit Trust owning the premises.

Sometimes a “forensic” accountant who is introduced has never looked at a set of dental financials before, nor valued a dental practice. In such cases, there is a tendency to produce long reports of irrelevant financial information but, to lack substance in respect of the actual value of the practice.

Narrowing The Dispute

There is no perfect solution, but getting an authoritative valuation done of the practice by an organisation experienced in providing accounting and valuation services to dentists is an essential early step in narrowing the focus of a dispute. Even though the valuation might be debated, it will significantly narrow the amount in dispute.

Judge Decides Between Experts

It is critical that the individual valuing the practice has wide experience in respect of dental practices and has provided evidence in legal support matters for dentists. In an actual court situation a judge has to make a decision between the evidence of two valuers and will decide which is the more expert. The judge cannot average the two values. Often a second accountant or valuer faced with a valuation by an acknowledged expert in the financials of the profession, is less likely to come up with a widely differing valuation, or alternatively is unenthusiastic about appearing as an expert witness in court. Sometimes a solicitor and barrister also have to make a decision as to which of the valuers is the more credible witness and, decide whether to press the matter into court or not. Where one side has an acknowledged expert and the other doesn't the probability of taking it into court is substantially reduced. Where the valuation is narrowed the lawyers will find it difficult to advise their clients to prolong a dispute. The Family Court Judges may be less than polite to lawyers who bring matters to court where the differences are minor. Therefore if the amount in dispute can be narrowed significantly and if the

valuation involved is authoritative, it is more likely that the matter can be settled early in proceedings. This reduces the duration of the dispute and lessens the ultimate cost to both parties.

No Winners

In financial matters it is nearly impossible for either party to be a winner in the Family Court after costs are taken out of the joint asset pool.

Solutions

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Disclaimer

Pat and Rob are fictional characters and any connection with an actual Pat or Rob is co-incidental. All of the events in the article have been taken from actual situations involving dentists or veterinarians caught in the legal mire of Family Court property dispute.

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