

ADR Insights on Business Divorces: I Heard It Through the Grapevine
(Part 4 of 9)

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*Ooo I heard it through the grapevine
Not much longer would you be mine
Ooo I heard it through the grapevine
And I'm just about to lose my mind.*

(Marvin Gaye's I Heard It Through the Grapevine)
(Written by Norman Whitfield and Barrett Strong)

This is the fourth in the “*Breaking Up is Hard to Do*” nine-part series on exploring dispute resolution for business divorces.

Self-dealing. Inequitable compensation. Exclusion from decision-making. Usurpation of business opportunities. Denial of access to books and records. Disagreements over future direction. Business failure. Fraud and mismanagement.

These are some of the common accusations in business divorces, but each of these allegations boils down to one common catalyst for the dispute: betrayal.

Whether real or perceived betrayal, these disputes are often emotionally charged and suffer from a cavernous trust deficit. So, how do we diffuse emotions, bridge the trust divide, and move toward resolution?

In the context of arbitration, arbitrators use structure to mitigate these challenges. There is a formal construct setting guidelines, parameters, and hearing dates. The process culminates in a forum (final hearing) for each of the parties to be heard.

In the context of mediation, the trust deficit looms large as the goal is for the parties to reach an agreement. Mediators have lots of tools in their toolbox to address this, including:

- Time: Allowing parties time to safely share their experience and process their emotions is critical to these mediations. Parties often need to be heard, validated, and supported before they can move beyond their pain to explore options for resolution.
- Common Ground: Parties locked in a dispute tend to focus only on their differences. As a result, they miss the common ground. Taking time to seek out, identify, and highlight areas of agreement may help rebuild some of the lost connection and trust.
- Connection: At the start of their venture, the co-owners shared some connection – a family connection, a friendship, a shared vision, something. In some business divorce mediations, once they have had a chance to process their negative emotions, parties become nostalgic about the connection they once had. Once remembered, this shared connection may help parties shift toward finding a path to resolution.
- Reciprocity: Deeply engrained in nearly every culture is the rule of reciprocity: those who give a benefit are entitled to get a benefit in return. Time and reciprocity need to be sequenced. The rule of reciprocity is most effective once each party has begun to process their emotions. The back and forth, and back and forth, and back and forth of mediation is reciprocity at work.
- Receptivity: To pivot from entrenched positions to exploring interests and options for resolution, parties need to become receptive. Receptivity is being open to hearing and considering different views, opinions, and options. Receptivity takes time - time to share, time to be validated, time for empathy, time to process, time to find common ground, and time to engage in reciprocity. Once all parties are receptive, meaningful progress can be made in finding a path to resolution.

Disclaimer: “You’re So Vain, You Probably Think This Song is About You” (written and sung by Clary Simon). Please note that this series is drawn from over 30 years of experience as counsel or neutral in business separations, reconciliations, and divorces. Nothing in this series is based on any specific dispute in which I have been involved. In addition, nothing contained herein constitutes legal advice nor does it create a professional relationship.