

ADR Insights on Business Divorces: Reunited and It Feels So Good
(Part 8 of 9)

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*Reunited, and it feels so good
Reunited 'cause we understood
There's one perfect fit
And, sugar, this one is it
We both are so excited 'cause we're reunited.*
(Peaches and Herb's Reunited)
(Written by Dino Fekaris and Freddie Perren)

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

In the world of family law, not all divorce proceedings end in divorce. Sometimes, couples reconcile. The same is true in business divorces. Sometimes business owners reconcile too.

Whatever the dispute resolution forum (mediation, arbitration, or litigation), the ingredients for reconciliation are similar: reconnection, listening, and realignment. In this context, the only difference between mediation v. arbitration or litigation is that, in mediation, a neutral third party (the mediator) facilitates the reconciliation, whereas, in arbitration or litigation, the parties engage directly.

Reconnection:

At inception, business partners have a shared dream. They have a sense of unity and connection. However, over time, as their shared dream is reality-tested, tensions may arise. Some owners can constructively work through any friction and maintain their connection, but that is not always the case. It is those situations that end up in a business divorce.



To reconcile, business partners may need to take a step back and remember what brought them together originally. A shared vision? A desire to effect change? Specific goals for the return on their investment? Friendship or family ties? Something else? Or they may need to take a step back to focus on the basic building blocks of their business and partnership. Looking back to look ahead may help them reconnect and shift the focus from past disagreements or hurts to future potential and opportunities.

Listening:

Listening is a crucial element for reconciliation for two reasons.

First, while a specific event or series of events may trigger a business divorce, the actual catalyst for the schism between business partners is typically bound up in a knot of disagreements and emotions. Co-owners may need a safe space to share and be heard in order to untangle that knot and move from conflict to reconciliation. Active and nonjudgmental listening is critical at this stage.

Second, once some of the emotional baggage has been untangled, the owners may become more receptive to competing views. As they listen and learn, they transition from focusing solely on their wants to exploring ways to balance each other's needs.

Realignment:

There is typically no way to return to the status quo in a business divorce situation. Instead, to reconcile, owners must adapt and realign their priorities to address the current circumstances and the challenges they face. This is an opportunity for them to roll up their sleeves and work cooperatively to find a mutually beneficial solution.

Being reunited does indeed feel good when business partners can work through their problems and find a shared path to reconciliation and 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.