

Gordon Ramsay's family business feud: bring in the mediators

Jon Lang
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Relatives in dispute over their family firm can find innovative and workable solutions without going to court.

The feud between Gordon Ramsay and his wife's family took another unlikely twist this month when his mother-in-law, brother-in-law and nephew all announced their intention to sue him at an employment tribunal for wrongful dismissal. Strip away the celebrity varnish and Gordon Ramsay Holdings is merely going through what scores of family businesses go through each year: a collapse into a heap of mutual recriminations.

It is often said that commercial disputes are always about money, but never only about money. There is always something else going on, causing the parties to take the absolute and extreme (and inconsistent) positions they have. And this is no more so than when tensions arise in family businesses. It seems that the closer the relationship between parties, the greater the level of trust and attachment, the more extreme the behaviour when things go wrong. There is also a desire to punish, and to use the courts to do so to the exclusion of any alternative.

A recent report by Price waterhouse Coopers (PwC) based on its Family Business Survey 2010/2011 looks at how family businesses are dealing with the economic downturn and its challenges. It found that the "percentage of family firms experiencing tension has increased significantly during the past three years". Arguments within family businesses are on the increase yet, as PwC report, fewer than a third of all businesses surveyed have any procedures for dealing with disputes between family members.

Which family members are permitted to work in the business is one source of friction -there may be agreements going back generations imposing restrictions. Other triggers include performance issues, information dissemination and, importantly, division of profits between salary/bonuses for those family shareholders employed in the business on the one hand, and the payment of dividends (i.e. proprietorial reward) to all shareholders,(including those not employed in the business), on the other. If working family members pay themselves huge bonuses, there isn't going to be much left for distribution by way of dividends!

Family business disputes, if not brought under control, will often end up before the courts as minority shareholder actions. Those with a minority stake will argue that they have been treated unfairly by those controlling the company, and ultimately the court will have to decide who buys who out, and on what terms. What makes these types of disputes so damaging is that the business must continue to run while its owners are at war. Sometimes there is such bad feeling that the alleged "oppressed" minority shareholders(whose source of complaint may go back generations), decide that the only way of getting the attention of those in control of the business (and who arguably have more to lose) is to adopt something of a scorched earth strategy.

In high conflict disputes parties can have a tendency to ignore alternatives to litigation and rush straight to the courts. But these kinds of family business disputes cry out for mediation, the process through which warring parties attempt to resolve their differences outside of court, and in private. A mediator can encourage all those involved to apply their experience and imagination, for one day, to resolution.

The mediator will try to get to what is really driving the parties to take the positions they have, so often left unstated yet so frequently the key that unlocks the dispute. Parties will be encouraged to discuss their true interests, to free themselves from the constraints of strict legal rights and associated remedies, and to overcome barriers to settlement.

Mediation also gives rise to opportunities. Judges are hamstrung by a relatively limited range of remedies. In mediation the parties, in contrast, can hammer out all sorts of exotic deals and tax efficient structures to bring an end to hostilities. Mediation also represents far less of a gamble. Leaving aside risk as to liability, i.e. who might win or lose, whenever a court is asked to value an asset, there is inherent uncertainty dependent on the scope for variation of approach. And in shareholder disputes, there is no shortage of variables. The appropriate method of valuation is of course important. So, too, are any “adjustments” to historic financial information (likely to be used as a starting point for analysis), for instance, to take account of any alleged excessive remuneration of directors.

Even after a value has been arrived at, there may well be arguments as to the corresponding value of a shareholding. Courts in these kinds of cases often have to decide if the company is in the nature of a quasi-partnership, in which case the value of a minority stake is simply pro-rated, as opposed to being discounted further because of minority status. Given these variables and associated risk, most professional poker players would likely recoil in horror if asked to take a punt on this type of litigation, particularly given the huge investment required in terms of costs and time, and equally daunting spectrum of possible outcomes.

In contrast, there is little risk or downside to mediation. It is low cost, speedy and if the right deal does not emerge by the end of the day, the parties are free to roll the dice before the court. The truth of the matter is however, that once the parties engage with the mediation process, a deal is almost always reached – even with a family business as riven by dispute as Gordon Ramsay’s.

Jon Lang is a full-time independent commercial mediator and immediate past chairman of the Mediation Committee of the International Bar Association