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Keeping the White Space Promises: When Breaching Good Faith Crosses the Legal Line

In every contract, there is more than just the words on the page. There is the white space, the open space between the lines of text. The law also expects the parties to act in good faith and deal fairly with each other. This is known as the **implied covenant of good faith and fair dealing**, and it is built into every contract. It lives within the white space.

When one party violates this covenant, it can lead to a legal claim—even if they have not technically broken the express terms of the contract. This article explores what this covenant means, how breaches are treated in California, Texas, Florida, and New York, and how businesses can avoid these pitfalls.

WHAT IS THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING?

The implied covenant of good faith and fair dealing means that parties to a contract must not do anything to unfairly interfere with the other party's right to receive the benefits of the agreement. This does not mean everyone has to act generously—it means they cannot act in bad faith or undermine the agreement.

Examples of bad faith include:

- Using loopholes in the contract to deny someone benefits they bargained for.
- Deliberately failing to cooperate with the other party's performance.
- Acting dishonestly to gain an unfair advantage.

A breach of this covenant does not require breaking the express terms of the contract. Instead, it is about violating the spirit or purpose of the agreement.

A RELATABLE EXAMPLE

Janice owns a bakery company and signs a lease with the landlord, Mark, to open her shop in a busy strip mall. The lease says Mark must maintain the property, including keeping the parking lot clean and well-lit. However, Mark decides to cut costs and fails to do a good job. As a result, the parking lot becomes unsafe, and Janice loses customers.

Mark's actions might not violate the express terms of the agreement if the lease lacks specific language detailing **what constitutes adequate maintenance** or **how often Mark must perform those duties.** For example:

1. **General Maintenance Obligation:**
   If the lease states only that Mark "must maintain the property, including keeping the parking lot clean and well-lit," it does not provide specific performance standards, such as:

   - How frequently Mark must clean the parking lot.
   - The brightness level or repair schedule for the lighting.

   Without these specifics, Mark could argue that his minimal efforts (*e.g.*, occasional cleaning or temporary fixes) technically meet the broad language of the lease.

2. **No Express Penalty for Neglect:**
   The lease may lack express remedies or enforcement mechanisms for Janice to compel Mark to maintain the property at a certain standard. This makes it harder to prove a clear-cut breach of the written terms.

3. **Subjective Intent Not Explicitly Addressed:**
   Mark's underlying intent to harm Janice's business may not be explicitly prohibited by the lease terms. Even if his neglect is intentional, as long as he provides some baseline maintenance, he might claim compliance with the lease.

However, Mark's conduct undermines the **purpose and spirit of the lease**, which is where the implied covenant of good faith and fair dealing comes into play. This implied obligation exists to prevent one party from taking opportunistic or dishonest actions that deprive the other party of the contract's benefits- filling gaps in express terms when those gaps are exploited in bad faith.

Janice can sue Mark for breaching the implied covenant of good faith and fair dealing.

HOW THE LAW VARIES BY STATE

California:
California courts take breaches of good faith and fair dealing seriously, especially in cases involving insurance, employment, and real estate. In Janice's case, California law would likely recognize Mark's failure as a breach of the covenant because it unfairly interferes with Janice's use of the property. Remedies could include monetary damages or an order requiring Mark to maintain the parking lot properly.

Texas:
Texas applies the implied covenant more narrowly. It typically arises in situations involving "special relationships," like partnerships or insurance contracts. In Janice's case, Texas courts would focus on whether Mark's actions were intentionally dishonest or completely undermined the lease. If Mark simply failed to perform without bad intent, Janice might need to rely on other claims, like breach of contract.

Florida:
Florida law acknowledges the implied covenant but often limits its application. Courts in Florida focus on whether the covenant can be reconciled with the express terms of the contract. In Janice's case, if the lease explicitly required Mark to maintain the property, Florida courts would likely find a breach of the covenant for his neglect.

New York:
New York courts strongly enforce the implied covenant, especially when one party deliberately acts to deprive the other of the contract's benefits. In Janice's case, New York courts would likely find Mark liable because his actions directly harmed Janice's business. New York also allows for damages, including lost profits, if the breach caused significant financial harm.

WHAT BUSINESS OWNERS SHOULD KNOW

A breach of the implied covenant of good faith and fair dealing is not always obvious. Here is how to protect yourself:

1. **Understand Your Obligations:** Go beyond the words in the contract—ask yourself if your actions align with its purpose.

2. **Document Issues:** If you believe the other party is acting in bad faith, keep detailed records of their behavior and how it impacts you.

3. **Act Fairly:** Avoid decisions that might be seen as intentionally undermining the other party's rights.

Whether you are drafting, negotiating, or enforcing a contract, understanding this covenant is critical to avoiding disputes.

FINAL THOUGHTS

The implied covenant of good faith and fair dealing serves as a reminder that contracts are not just about legal language- they are about fairness and mutual respect. If you believe someone has breached this covenant, consulting an attorney can help you evaluate your options and protect your rights.

For more information or assistance, please contact Mark S. Adams, or another member of Blank Rome's Business Litigation group.

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