

LEGAL WATCH



The advent of a New Year is a good time to return to basics. In commercial law, and in a good deal of our personal business relationships, the contract is the basic building block. The most common definition of a contract is “a promise that the law will enforce.” So, you can promise your neighbor’s kids that you’ll give them ten dollars if they promise to shovel your driveway the next time it snows. And your neighbor’s kids agree to the deal. You write those two points on the crumpled napkin in your pocket and everyone signs it. Most contracts, like that seemingly simple example, consist of mutual promises between two or more parties. But is that example so simple? What are the exact terms of the contract? Careful drafting with an eye toward legal enforcement of the contract is crucial in every transaction. This article analyzes the shoveling example and explores the express and implied terms of that contract.

Contract Terms

If a contract is “a promise the law will enforce,” what constitutes the promise in a contract such that the law, through the courts, will enforce it? Over the course of time, courts have established rules governing contract interpretation, or “construction,” giving some weight to the circumstances surrounding the contract’s execution. For example, the most basic rule in interpreting a contract is to determine and give effect to the intent of the parties at the time they entered the contract. Generally, the parties’ intent can be determined by looking at the writing itself, in the case of a written agreement. When a contract is

written, courts presume that the language means what it seems to mean, what it ordinarily means. Pennsylvania courts express this idea by saying that “[t]he intent of the parties to a written agreement is embodied in the writing itself.” Stewart v. McChesney, 498 Pa. 45, 444 A.2d 659, 661 (Pa.1982)). Therefore, where the contractual language is clear, the meaning is determined by the contract’s contents alone. Courts typically do not go beyond the plain meaning of the written words of a contract to interpret the contract’s intent.

In the snow shoveling example, the exchange of promises by you and the kids next door shows the intent on your part to

pay money to have your snow removed and the intent on the kids' part to do physical labor for pay.

Duty of Good Faith and Fair Dealing

Even though courts will not go beyond the contract's plain language to interpret terms, there is an implied term that is in every contract in Pennsylvania – it is the parties' duty of good faith and fair dealing. Every contract in Pennsylvania, regardless of the intent of the parties or the circumstances surrounding the execution of the contract, imposes the duty of good faith and fair dealing in the contracts' performance and enforcement. Kaplan v. Cablevision of Pa., 448 Pa.Super. 306, 671 A.2d 716, 722 (1996).

Good faith has been defined as “honesty in fact in the conduct or transaction concerned.” Id. That is not a very precise or practical definition and the Pennsylvania courts have not provided a better definition. We are told, however, what “bad faith” is. Examples of “bad faith” conduct include: “evasion of the spirit of the bargain, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance.” Somers v. Somers, 418 Pa. Super 131, 613 A.2d 1211, 1213 (1992).

Thus, if it were to snow two inches and your neighbor's kids divided the work into five parts and took five days to remove it, one part per day, that would breach the contract's implied term of “good faith.” Similarly, if your neighbor's kids shoveled only a 5 inch wide path down the driveway, or if they deliberately chose to shovel the snow from the driveway onto your new car, although the written contract doesn't discuss these issues, such conduct would be a

violation of the implied duty of good faith and fair dealing. You would be in violation of the duty if, after your neighbor's kids shoveled the driveway, you told them that the \$10 could be found in a treasure box in the West Indies, rather than giving them the money. Generally, then, the duty of good faith and fair dealing means the duty to try to do a good job in fulfillment of the parties' intent in making the contract.

The Doctrine of Necessary Implication

When you made the snow-shoveling deal, you wanted all, or almost all, of the snow removed so that you and others could drive and walk on the driveway. Yet, in your deal for snow-shoveling services, the amount of snow to be removed was not specified. Could your neighbor's kids shovel just a little bit of snow from the driveway, yet expect full payment?

The Doctrine of Necessary Implication allows the court to imply a term “where it is clear that an obligation is within the contemplation of the parties at the time of the contracting or is necessary to carry out their intentions[.]” Slater v. Pearle Vision Ctr., 376 Pa.Super. 580, 586, 546 A.2d 676, 679 (1988). The Pennsylvania Supreme Court has held that:

“In the absence of an express provision, the law will imply an agreement by the parties to a contract to do and perform those things that according to reason and justice they should do in order to carry out the purpose for which the contract was made and to refrain from doing anything that would destroy or injure the other party's right to receive the fruits of the contract.”

Frickert v. Deiter Brothers Fuel Co.,

464 Pa. 596, 347 A.2d 701 (1975). Keep in mind that the Doctrine of Necessary Implication only applies in limited circumstances – only when it is necessary to prevent injustice and the parties intended to be bound by such a term.

Under the Doctrine of Necessary Implication, you could show that the purpose of your snow shoveling

contract was to make the driveway passable, the implied term being that the driveway be shoveled completely or almost completely. If some shoveling occurred, but you and your family still could not get through, the whole purpose of the contract would have been frustrated. You would certainly find this an injustice requiring the Doctrine of Necessary Implication as a remedy.



While contracts are the basic building block of commercial and personal business relationships, drafting them is by no means always basic. Drafting involves not only a clear understanding of what the parties intend and what they hope to achieve, but also the parameters of the law in interpreting the contract language, and as we have seen here, the terms which may be implied into the contract. Crucial to a satisfactory contractual relationship is the agreement of all parties as to the contract's meaning. Precise language and experienced drafting, coupled with a thorough understanding of the law, will bring greatest satisfaction to the contractual relationship.

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