

Seeking Restitution Through the Courts

Restitution is a legal concept used by the courts to make the injured party whole or complete. It is the act of making good or giving equivalent for any loss, damage, or injury. In contracts, it is the restoration of the *status quo* and the amount which would put plaintiff (i.e., the party filing the lawsuit) in as good a position as s/he would have been if no contract had been made and restores to plaintiff the value of what s/he parted with in performing the contract. The person who has been unjustly enriched (i.e., received a benefit) at the expense of another is required to make restitution to the other. In plain English it means that if someone got something for nothing because he did not pay value for it, then the other party can go to court and force him to pay.

Restitution is a very important legal concept, especially during these hard economic times. When times are bad, more people and businesses look to file lawsuits to recover what they believe was *taken and owed* to them. This is unlike during good economic times when people are more willing to walk away from a bad deal because they have other opportunities. It is the fear of loss that compels people to sue in hard economic times.

When deciding whether or not to pursue a lawsuit for restitution, it is important to determine whether defendant (i.e., the party being sued) has the ability to pay and refuses to pay, or is unable to pay because of poor business judgment. Lawsuits are expensive to litigate and they take time to go through the court system. One of the first things in deciding whether or not to sue is to decide whether or not the targeted defendant has the resources to pay the judgment. If the answer is no, then the next question to ask is whether there are any business reason for filing suit. There may be many reasons to sue, but it should be a business decision on whether to sue or to settle. Will the restitution adequately compensate the plaintiff for all of its losses, including the cost to pursue the lawsuit? What about the time,

energy, allocation of resources, and loss business opportunities as a result of fight this lawsuit.

Many litigants believe that they will be able to strike it rich by filing and winning a lawsuit. They place their entire business and life on hold in an attempt to get their hands on the money. But after the dust settles, they may not be able to win a judgment for the amount they wanted to receive and then they still may not be able to collect because the defendant has spent all of his money defending the lawsuit.

Whether to sue or not to sue is a business decision for the owner or key decision-maker to make. It has nothing to do with being right or wrong. It has everything to do with putting the business first. What are the real intentions for filing the lawsuit? Are they personal or business reasons? The choices made can affect the future health and viability of the business. Being responsible for your business means that you make the decision based on the best interest of your business, and not on your personal feelings.

© 2008 Dennis Wong, Esq.
www.DennisWong.com