

*“Things Your Lawyer Never Told You about the Law”
A Series of Discussions*

The Hidden Pitfalls of Contracts

After we have entered into a contractual agreement, something or someone makes us dissatisfied and unhappy with the situation that we are in. There may be many reasons for our unhappiness and they often have to do with our unfilled expectations of what should have happened and didn't. When the pain of our unhappiness reaches a certain threshold, we hire an attorney to get us out of the situation.

So what happen to make us change our mind? Did we negotiate and pay for one thing, but ended up receiving something else instead? Was there a “*bait and switch*” by the other party? Did they deceive us in some way? Was there an intentional misrepresentation by the other party? Did we get what we bargained for? Was there ever a meeting of the minds?

In our written agreement, didn't we both agreed to and spelled out what each party wanted and what each party was suppose to do? If we had walked into the contract with our eyes wide open, then why are we suddenly unhappy with the situation that we helped to create in the first place?

The key to understanding what happened is to understand the intentions or motivations of the parties entering into the contractual relationship. Yes, it is true that the parties entered into the contract expecting to make money. But making money is only the *goal of the business*, it is not the *intention of the business*, nor is it the *intention of each party* entering into the contract. Did each party ever express their true intentions and motivations to the other party?

Almost all contractual disputes are the result of the failure of the parties to express their true intentions for entering the agreement. If you understand your true intentions for entering into the contract, and understand the true intentions of the other party entering into the contract, then you can see quite clearly whether your expectations can be achievable.

Examples of Hidden Pitfalls

(1) If you enter into a contract with a person who has a history of suing to enforce a contract because he wants to make sure that they follow the letter of the contract, then you might want to rethink whether you want to enter into a contractual relationship with them in the first place, because it is more likely than not that he will sue you at some point in the future. You need to know who you are dealing with and why they are there.

(2) You are a small business owner with the opportunity to land a major

contract. This will be the largest contract you have ever landed. It is to supply, install and service 10,000 personal computers to the regional offices of a national corporation that are all across the country. You have never done such a big job before. Now the buyer is unhappy with your performance because you are experiencing labor and parts shortages, and quality control issues. Your explanation is that the buyer should know that you are experience these problems that are beyond your control. Yes, the buyer knows, but that still doesn't absolve you of a breach of contract.

(3). Several years ago, I borrow \$15,000 from a friend to use as down payment on house I was buying. I decide to put his name on the title to show that I care and value his help. The housing market has gotten very hot lately and there is now a lot of equity in the property. I decide to repay his loan, but now he wants half of the equity in the house to leave.

Conclusion

If we knew yesterday before we entered into the contract what we know today about what will happen, would we still have entered into the contract? The answers are often right in front of you if you are willing to see things as they truly are. Too often we are seduced by the promises of dreams eternal and the bright lights of false hopes and fantasy.

Before entering into a contract, you should know your true intentions, the true intentions of the other party, and what is possible in the contractual relationship. Failure to do so will lead to many sleepless nights and potential lawsuits. So spend the time to understand what it is that you are getting yourself into. Then you can focus on what you do best, and that is growing your business and making money.

© 2007 Dennis Wong, Esq.
www.DennisWong.com