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Uniform Commercial Code

***270 THE UCC AND KEEPING THE (GOOD) FAITH**

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The Uniform Commercial Code ("UCC") imposes an obligation of good faith in the performance of all contracts and duties covered by the UCC. This good faith duty may subtly, or dramatically, affect the rights of contracting parties and other persons. Moreover, some courts have imposed the obligation of good faith in commercial contexts not falling within the scope of the UCC. Therefore, a solid understanding of the duty of good faith is vital to both counsel and client.

WHAT IS GOOD FAITH?

Non-Merchants

UCC § 1-203 provides: "Every contract or duty within this Act imposes an obligation of good faith in its performance or enforcement." There are two different standards of good faith—one for non-merchants, and one for merchants. Good faith with respect to non-merchants is set forth in UCC § 1- 201(19):

"Good Faith" means honesty in fact in the conduct or transaction concerned.

For non-merchants, then, a subjective test is used. The party does not have to be objectively reasonable, only honest. The court in *Karibian v Paletta* [FN1] explained:

This is a "subjective test of good faith, sometimes referred to as the 'white heart and empty head' test, rather than the objective or 'reasonably prudent man' test."

Accordingly, it has been held that a party can be obstreperous without violating the good faith duty:

[T]he reciprocal obligation of good faith between *Rigby* and *Boatmen's Bank and Bankshares* [is limited] to the practice of **honesty in fact, whatever the** unreasonableness of that conduct by any commercial standard. ***Rigby Corp v Boatmen's Bank and Trust Co.*** [FN2]

It has also been held that a party's violation of its own internal rules, without more, does not establish dishonesty in fact. [FN3]

Merchants

UCC § 2-103(1)(b) sets forth the definition of good faith for merchants:

"Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

Thus, merchants must not only be honest, they must be reasonable. They must observe reasonable commercial standards of fair dealing in the trade. [FN4]

The definition of merchant is set forth in UCC § 2-104(1):

"Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

Not all sophisticated entities are merchants with respect to every transaction. The definition of merchant must be carefully applied in each particular context. [FN5]

The determination of whether a party is a merchant and therefore bound by commercial reasonableness can easily determine the outcome of the entire

*272 case. For example, in one case, the court held that a bank was not a merchant with respect to the transaction at issue, and therefore its alleged negligence in not inspecting a check for forgery did not violate the good faith duty. [FN6]

It should be noted that some courts, in applying the non-merchant standard of good faith, have required more than simply refraining from dishonest behavior. For example, in *Conoco Inc. v Inman Oil Company, Inc.*, [FN7] Inman Oil, a distributor of petroleum and non-petroleum products, entered into a Jobber Franchise Agreement with Conoco Inc. Under the Agreement, Inman received the right to purchase from Conoco and to sell to customers certain products. At the time the parties entered into the agreement, Inman Oil was already supplying to several customers, including Inman's plum long-term customer, St. Joe, a lead mining company. After the parties entered into the agreement, Conoco bypassed Inman and directly solicited customers, including St. Joe. Conoco set its price at or below the base price for the same products that Conoco sold to Inman Oil, and ultimately obtained St. Joe as a customer. Although Conoco's conduct was perhaps not "dishonest," the court held that Conoco's actions in stealing a customer away from its distributor violated the duty of good faith:

This implied covenant imposes upon each party the duty to do nothing destructive of the other party's right to enjoy the fruits of the contract and to do everything that the contract presupposes they will do to accomplish its purpose **Together with the express provision, found in each of the** serial JFA's between the parties, that Conoco would promote the success of Inman Oil, the implied obligation of good faith and fair dealing represented Conoco's promise not to engage in activities hurtful to Inman Oil

. . . We therefore remand the case to the magistrate for a determination of Inman Oil's damages flowing from Conoco's 1980 and 1981 bids for the St. Joe contracts. [FN8]

Under the Conoco ruling, contracting parties--whether merchants or non-merchants--must cooperate fully in order to accomplish the purposes of the contract.

THE DUTY OF GOOD FAITH CANNOT BE BARGAINED AWAY

The duty of good faith is considered vital. Accordingly, the UCC provides that parties cannot contractually insulate themselves from this duty, although they can agree to reasonable standards for measuring compliance. UCC § 1-102(3) states:

The effect of provisions of this Act may be varied by agreement, except as otherwise provided in this Act and except that the obligations of good faith, diligence, reasonableness and care prescribed by this Act may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

MOTIVE MAY BE RELEVANT

This section discusses the relationship between the duty of good faith and the express terms of a contract.

Above all, good faith requires a party to act honestly and to avoid pretext. As proclaimed by Cyrano de Bergerac, each party is "Never to make a line I have not heard in my own heart." [FN9] Some cases have held that good faith bars a party from invoking a contractual provision for a purpose that is not within the parties' original contemplation. [FN10] Thus, in some cases motive is relevant.

In *Big Horn Coal Co. v Commonwealth Edison Co.*, [FN11] Commonwealth's agreement with its coal supplier permitted Commonwealth to reduce the quantity of coal supplied if environmental difficulties interfered with Commonwealth's operations. The court held that the district court properly allowed extrinsic evidence tending to show that Commonwealth's real motive for invoking this contract provision--its oversupply of coal--had nothing to do with environmental concerns. The court stated that "courts have examined motive evidence when deciding whether the provision was invoked within the implied good faith expectations of the parties." [FN12]

The court continued: "We are satisfied from our review of the record that the Coal Companies have a reasonable expectation that [Commonwealth] will neither deliberately cause the environmental problems so as to satisfy the condition's requirements nor cite environmental reasons for invoking Section 3.01 unless such difficulties in fact justify a reduction in the amount of coal to be supplied." [FN13]

Except in those instances where it is absolutely clear that one party was given uncontrolled discretion to exercise a power, a party granted the right to modify performance upon the occurrence of a particular event must determine in good faith that the triggering event has occurred. [FN14] As the court in *Big Horn Coal* stated:

The "mere recitation of an express power" does not in itself preclude the implication of good faith requirements. *Tymshare*, 727 F2d at 1153. "[T]o say that every expressly conferred contractual power" removes all the parties' unexpressed--but reasonable--expectations, would virtually "read the doctrine *273 of good faith (or of implied contractual obligations and limitations) out of existence." *Id.* at 1154. We are convinced that an express power will preclude the requirements of good faith if the power leaves absolute and uncontrolled discretion to exercise the power in one of the parties and if the other party can have no reasonable expectation of any implied protection from the power's exercise other than procedural notice. [FN15]

Another case that illustrates these points is *Baker v Ratzlaff* [FN16] (the Popcorn Case), which involved the sale of a popcorn crop from defendant's farm. Payment was to be made after each of the three separate deliveries. It was agreed that if plaintiff failed to pay at the time of delivery, the remaining undelivered popcorn would be released from the agreement.

Plaintiff accepted two truckloads of defendant's popcorn crop but did not make payment at the time of delivery. Plaintiff testified that he intended to send the weight tickets to his office, where the checks would be issued and mailed. Approximately one week after the first two deliveries, the defendant sent written notice of termination, claiming that plaintiff had breached.

In the days immediately preceding termination, the parties had spoken on the telephone about further deliveries, and defendant had not made any reference to the fact that payment was in default. Further, within a few days after receipt of the termination notice, plaintiff paid for both deliveries in full. However, the defendant had already agreed to sell the balance of his popcorn crop to a third party at a much higher price.

The court held that, despite the seller's specific right to cancel if he did not receive payment upon delivery, the seller breached his duty of good faith by defeating the reasonable expectations of the parties and terminating the contract upon a "technical pretense":

His failure on delivery of either load of popcorn to the Stratford plant to demand payment, his failure in the subsequent telephone conversations with plaintiff and Martin to demand payment, and his hasty resale

of the popcorn to another buyer at a price nearly double the contract price, provided the trial court with ample evidence upon which to find an absence of good faith. [\[FN17\]](#)

Yet, parties to an agreement should not be permitted to remake their bargain by using good faith principles to limit the ability of a party to take actions which the parties intended would not be subject to any scrutiny. See the termination cases cited later in this article. Such an intent can be discerned from the language of the contract and from the circumstances surrounding the making and performance of the contract.

Finally, the avoidance of pretext also dictates that even if a party acts in bad faith, the other party cannot complain if he or she did not in fact rely on the bad faith conduct, was not deceived by it, or was otherwise not harmed by it. [\[FN18\]](#) In *Price Brothers Co. v Philadelphia Gear Corp.* the court stated: [\[FN19\]](#)

The expertise of Price Brothers' representatives, and their familiarity with the requirements of Price Brothers' pipe wrapping machine enabled them to make an independent assessment of the adequacy of the proposed components for the tasks assigned to them. **The obligation of good faith imposed on the** parties by [Ohio Rev. Code Ann. § 1301.09](#) (Page) prevents Price Brothers from remaining silent in the face of known overstatements of performance by Philadelphia Gear and then asserting that those falsehoods were a basis of the bargain.

Where both parties to a contract are merchants who are on equal footing with respect to the subject matter of their transactions, and their sales agreement is reduced to a writing that specifies technical requirements for the goods sold, it would stretch reason beyond its limits to find that the buyer relied on verbal assurances by salesmen and writings intended for unspecified general audiences as a part of the basis of the bargain. Consequently, the finding that the pre-contract sales literature, journal article, and sales representatives' assurances were a basis of the Price Brothers and Philadelphia Gear agreement is clearly erroneous and the trial court's conclusion that Philadelphia Gear breached express warranties must be set aside.

As can be seen, the court also significantly held that as to merchants, specific representations of a seller which specify technical requirements for the goods displace documents, such as sales literature, "intended for unspecified general audiences," which are not a basis of the bargain.

IS THERE AN INDEPENDENT CAUSE OF ACTION FOR VIOLATING THE DUTY OF GOOD FAITH?

Many cases have held that there is no separate cause of action for violating the good faith duty; rather, a party who acts in bad faith simply may not rely on the affected contract provisions. [\[FN20\]](#) Thus, in *Super Glue Corp v Avis Rent A Car System, Inc.*, [\[FN21\]](#) the court affirmed the dismissal of claims alleging breach of the duty of good faith:

It has been stated that "[w]hen a party acts in bad faith, he will ordinarily be denied the benefit of any provision or concept that would improve his position . . . Acting in bad faith is thus a disqualifying factor as distinguished from a liability-imposing factor. In consequence, the Code does not permit recovery of money damages for not *274 acting in good faith where no other basis of recovery is present"

Many subsequent cases, however, have held that a party who violates the obligation of good faith commits an actionable breach of contract. For example, in *Best v U.S. National Bank*, the court held: [\[FN22\]](#)

Every contract contains an implied covenant of good faith and fair dealing When that covenant is breached, the non-breaching party may bring an action for breach of contract The trial court erred in ruling that plaintiffs had no basis for relief on their good faith claim.

Under this authority, a party who breaches the obligation of good faith and thereby damages the other party commits an actionable breach of contract. [\[FN23\]](#)

PLEADING AND PROOF REQUIREMENTS

Lack of good faith should be affirmatively pled. In *Bunge Corporation v Recker*, [\[FN24\]](#) the Court of Appeals reversed the finding of bad faith because bad faith had not been pled. The court stated that many

courts had held that bad faith is synonymous with "fraud," and like fraud, bad faith must be affirmatively pled:

Bad faith generally implies or involves actual or constructive fraud or a design to mislead or deceive another. It is an action not prompted by an honest mistake but rather by some interested or sinister motive. We are convinced that a lack of "good faith" as defined in the Code means some type of affirmative action consisting of at least constructive fraud or a design to mislead or to deceive another. Consequently, the "good faith" issue decided by the district judge would seem to be covered by the word "fraud" in Rule 8(c), Fed R Civ P. In any event, the lack of good faith, being closely associated with fraud or constructive fraud, would most certainly fall within the catch-all provision of the rule including ". . . any other matter constituting an avoidance or affirmative defense." [FN25]

One interesting issue regarding proof requirements should be noted. To prove the lack of observance of reasonable commercial standards of fair dealing in the trade, in those cases in which a merchant is involved, a party is not required to prove the existence of a specific commercial standard or rule on the point at issue. Rather, bad faith can be proved simply by demonstrating that the merchant's conduct is inconsistent with other related norms. [FN26] For example, in *Colorado Interstate Gas v Natural Gas Pipeline Co*, [FN27] the court held:

NGPL argues, however, that CIG failed to prove the reasonable commercial standards of fair dealing within the natural gas industry. CIG's expert, Mr. Morgan, pointed out that reasonable standards in the industry originate in the need for long-term stability due to the high cost of pipeline construction. Mr. Morgan testified that reasonable commercial standards are incapable of precise definition and instead must be determined from the facts of each case. Tr. at 2197-98. The courts support this approach Instead of providing a formula, Mr. Morgan gave specific examples of conduct which would not comport with reasonable standards within the industry. This evidence sufficiently defined industry standards of fair dealing.

OTHER ISSUES

Because of space limitations, certain issues cannot be covered here in detail. However, a sketch of some of these issues is provided below.

Termination Cases

Many cases deal with contract provisions which give one or both parties the right to terminate the contractual relationship upon specified notice. The courts have generally held that such a provision permits a party to terminate for any reason, no reason, and even a "bad faith" reason. [FN28]

Output and Requirements Contracts

Under an output contract, a party agrees to sell all or part of its production to the other party. Under a requirements contract, a party agrees to buy all or part of its requirements from the other party. UCC § 2-306(1) discusses such contracts. These agreements are subject to the good faith duty. [FN29]

Satisfaction Contracts

Under a satisfaction contract, a party agrees to perform to the satisfaction of another party. Such contracts may provide that A's performance must reasonably satisfy B. This is an objective satisfaction contract. Or, the contract may require A to actually satisfy B--irrespective of whether a "reasonable person" would be satisfied. This is a subjective satisfaction contract.

Satisfaction contracts are subject to the duty of good faith. See *Neumiller Farms, Inc. v Cornett*, [FN30] an "objective satisfaction" case. The court held that because the buyer's real reason for rejecting the potatoes was that the current market price was lower than the contract price, the buyer had not rejected in good faith. See also *Maas v Scoboda*, [FN31] where the court held that the dissatisfied party--prior to rejecting--must "make a good faith attempt to adapt [the product]" so as to render it satisfactory.

Modifications of Contracts

At common law, an agreement could not be modified without consideration. Under the Uniform Commercial Code, modifications made in good faith will be upheld even if not supported by consideration. UCC § 2.209(1). Extorted modifications will not be upheld. [FN32] Further, a party's motives and *275 means in seeking modification must be in good faith. *American Exploration Company v Columbia Gas Transmission Corp.* [FN33]

Yet, the refusal to negotiate a new contract does not constitute bad faith. [FN34] Likewise, refusing to modify a contract does not constitute bad faith. [FN35]

Summary Disposition

The issue of good faith is subject to the same summary disposition rules applicable to other issues. Because good faith often turns on subjective honesty and motive, this issue will rarely be a proper one for summary treatment. However, where no genuine issue of material fact exists, courts may decide the issue of good faith as a matter of law. [FN36]

GOOD FAITH IN NON-UCC CONTEXTS

The courts have often imposed a duty of good faith in non-UCC contexts. For example, the court in *Fountain-Lowery Enterprises, Inc. v Citicorp Acceptance Co.* [FN37] stated: "Although most distributorship agreements, like franchise agreements, are more than sales contracts, the courts have not hesitated to apply the Uniform Commercial Code to cases involving such agreements."

The court in *Division of Triple T v Mobil Oil Corp* [FN38] elaborated on why the duty of good faith should be applied to franchise and distributorship agreements:

However, the courts have not been reluctant to enlarge the type of commercial transactions clearly encompassed within the spirit and intendment of the statute Furthermore, in *Hertz Commercial Leas. Corp v Transportation Cr. Cl. H.*, 59 Misc2d 226, 298 NYS2d 392, the court held that the Uniform Commercial Code governed the rights of parties to an equipment leasing contract. The court there noted (at 229, 198 NYS2d at 395):

"In view of the great volume of commercial transactions which are entered into by the device of a lease, rather than a sale, it would be anomalous if this large body of commercial transactions were subject to different rules of law than other commercial transactions which tend to the identical economic result."

That reasoning would appear to be of persuasive force here since franchising presently accounts for at least twenty percent of all retail business equaling \$80 billion in annual sales (115 Congressional Record, April 25, 1969). That the retail dealer contract is not so alien in every day commercial transactions and therefore falls within the purview of the Uniform Commercial Code seems clear

A duty of good faith was also applied in *Wiita v Thomas M. Cooley Law School*. [FN39] There, the plaintiff student argued that the law school violated its duty of good faith when, during the final exam in property class, the proctor erroneously wrote on the chalkboard that the exam would end after 1 hour and 45 minutes, instead of the scheduled 2 hours and 45 minutes. Drawing on the Restatement (Second) Contracts, § 205.16, [FN40] the court found that the law school did owe the student a duty of good faith, but dismissed the complaint because plaintiff had not presented any evidence of lack of good faith.

On the other hand, in *Breen v Dakota Gear & Joint Co., Inc.*, [FN41] the court declined to transplant the obligation of good faith to employment relationships, quoting other authority to the effect that a good faith duty "is overly broad and should not be applicable to employment-at-will contracts."

Some courts have held that the obligation of good faith applies to all commercial transactions. In *Crooks v Chapman Company*, [FN42] the plaintiff buyer sought to recover earnest money paid under a contract for the purchase of a radio station. The court held:

The court also did not err in charging that plaintiff had to show he exercised good faith. Plaintiff contends his only contractual duty was diligence and the charge on good faith prejudicially thrust a higher

standard of conduct upon him. This is also without merit. **Good faith is, if anything**, a minimum standard of conduct in any contract. While this particular agreement does not come within the UCC, it is a commercial transaction in the broad sense and the legislature has specifically declared that good faith is a basic obligation in all such transactions. **Ga Code Ann § 109A-1-203**. See also Code § 20-1101 which calls for "substantial compliance with the spirit, and not the letter only, of the contract" in its performance. "Good faith" is merely a shorter way of saying the same thing.

CONCLUSION

The duty of good faith is pervasive and is often applied rigorously. Its most persistent application has been to penalize dishonesty and pretext and to enforce the parties' reasonable commercial expectations. Moreover, great opportunities exist to advocate extensions of good faith concepts, and to assert the applicability of the good faith duty to non-UCC contexts.

[FN1]. 122 Mich App 353, 359, 332 NW2d 484 (1983) (quoting authority).

[FN2]. 713 SW2d 517, 527 (Mo App 1986), footnote omitted, emphasis added.

[FN3]. City of Phoenix v Great Western Bank & Trust, 148 Ariz App 53, 712 P2d 966, 972-73 (1985).

[FN4]. Similarly, merchants are bound by applicable "usages of trade" in agreements between merchants, under § 1-205(2),(4), unless they are abrogated expressly by agreement. As discussed below, however, the requirement of good faith, unlike a usage of trade, cannot be bargained away. Further, a merchant's duty of good faith applies even if he is not contracting with another merchant.

[FN5]. See, e.g., Sievert v First National Bank in Lakefield, 358 NW2d 409, 414 (Minn App 1984).

[FN6]. McCarthy Kenney Reidy, PC v The First National Bank of Boston, 402 Mass 630, 524 NE2d 390, 393 (1988).

[FN7]. 774 F2d 895 (8th Cir 1985).

[FN8]. 774 F2d at 908-909, emphasis added.

[FN9]. Cyrano de Bergerac, Edmond Rostand, the Second Act.

[FN10]. See, e.g., Lane v John Deere Company, 767 SW2d 138 (Tenn 1989), condemning the creditor's invocation of an insecurity clause as "an after-the-fact justification for a wrongful declaration of default for nonpayment." Another case that touches on these issues is Balfour, Guthrie & Co. v Gourmet Farms, 108 Cal App 3d 181, 166 Cal Rptr 422 (1980). See also KLT Industries, Inc. v Eaton Corp., 505 F Supp 1072 (ED Mich 1981).

[FN11]. 852 F2d 1259 (10th Cir 1988).

[FN12]. 852 F2d at 1267.

[FN13]. 852 F2d at 1269, emphasis added.

[FN14]. The UCC obligation of good faith may be compared to Restatement (Second) Contracts § 205 (1981), which provides that "Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement." The Restatement lists "evasion of the spirit of the bargain . . . , [and] abuse of a power to specify terms" as examples of bad faith. Comment d.

[FN15]. 852 F2d at 1268.

[FN16]. 1 Kan App 2d 285, 564 P2d 153 (1977).

[FN17]. See also Colorado Interstate Gas v Natural Gas Pipeline Co., 661 F Supp 1448, 1475 (D Wyo 1987), aff'd in part, 885 F2d 683 (10th Cir 1989), where the court stated that express contract rights "had to be exercised in good faith to effectuate the parties' intent," and agreed that good faith consists of "an honest intention to abstain from taking any unconscientious advantage of another, even through the forms of technicalities of law, together with an absence of all information or belief of facts which would render the transaction unconscientious."

[FN18]. See also Crawford v Gold Kist, Inc., 614 F Supp 682, 689 (MD Fla 1985):

The plaintiff did not rely on Gold Kist's "selection" or "recommendation" of Coker 747--Gold Kist made none. The plaintiff, having the necessary information before him, decided on Coker 747 when no other seed was available. He then determined to plant late in the season knowing Coker 747 was a late maturing variety of wheat seed. The Court finds no evidence of a lack of good faith on the part of Gold Kist or of a failure to deal fairly with the plaintiff. (Emphasis added.)

[FN19]. 649 F2d 416, 422-23 (6th Cir 1981) (emphasis added).

[FN20]. See, e.g., Chandler v Hunter, 340 So2d 818, 821 (Ala App 1976). Accord, Kaushal v State Bank of India, No. 82-C-7414 (ND Ill, February 12, 1988) (dismissing count alleging damages for breach of good faith duty).

[FN21]. 517 NY Supp 2d 764, 766, 132 App Div 2d 604 (1987).

[FN22]. 714 P2d 1049, 1056 (Or App 1986).

[FN23]. See also In Re: Kham & Nate's Shoes No. 2, Inc., Debtor, Nos. 84B324, 88A970 (US B. Ct, ND Ill, March 3, 1989) ("The Bank's breach of its duty of good faith constitutes a breach of contract."); Colorado Interstate Gas v Natural Gas Pipeline Co, 661 F Supp 1448, 1474-75 (D Wyo 1987) (recognizing a separate cause of action for breach of the good faith duty); Conoco, Inc., supra (held that Conoco's breach of good faith required a conclusion that it had breached the contract); L. C. Crawford v Gold Kist, Inc., supra (accepting plaintiff's claim that a violation of the obligation of good faith stated a cause of action, but finding that there was no evidence of a lack of good faith).

[FN24]. 519 F2d 449 (8th Cir 1975).

[FN25]. 519 F2d at 452.

[FN26]. A similar analogy would be supertime rules. Suppose Billy has been warned about watching television, reading magazines and combing his hair at the dinner table. He could not successfully argue that working on crossword puzzles at the dinner table is acceptable conduct on the ground that there was no specific rule against that misconduct. Rather, proof of the other norms and rules permits one to conclude that Billy's new conduct violates the "reasonable standards of the dinner table." Of course, this analogy assumes that Billy is a merchant in this transaction and that the UCC applies to his dinnertime conduct.

[FN27]. 661 F Supp 1448, 1476 (D Wyo 1987).

[FN28]. Thus, in Grand Light & Supply Co., Inc. v Honeywell, Inc., 771 F2d 672, 679 (2nd Cir 1985), the court stated that "the parties may rely on the express terms of their contract," and that, "The UCC good faith provision may not be used to override explicit contractual terms."

The court in Zapatha v Dairy Mart, Inc., 381 Mass 284, 408 NE2d 1370 (1980) reached the same conclusion by applying the definition of good faith and holding that the termination was neither dishonest in fact nor inconsistent with reasonable commercial standards. Accord, Fountain-Lowery Enterprises, Inc. v Citicorp Acceptance Co., No. CV85-PT-1305-S (ND Ala 1987) ("When a contract contains a provision expressly sanctioning termination without cause there is no room for implying a term that bars such a termination.") (quoting authority); Cardinal Stone Co., Inc. v Rival Manufacturing Co., 669 F2d 395, 396 (6th Cir 1982); Division of Triple T Service, Inc. v Mobile Oil Corp., 304 NYS2d 191, 201, aff'd, 311 NYS

2d 961 (1970) (S Ct 1969). In the termination context, at least, the good faith duty "cannot be used by the Court as a tool for rewriting the parties' Agreement based on unspecified notions of fairness." General Aviation, Inc. v Cessna Aircraft Company, G85-890-CA5 (WD Mich December 16, 1988).

[FN29]. See Fred Feld v Henry S. Levy & Sons, Inc., 37 NY2d 466, 335 NE2d 320, 323, 373 NYS2d 102 (1975) (output contract); Weaver & Associates, Inc. v Asphalt Construction, Inc., 587 F2d 1315, 1321-22 (DC Cir 1978) (requirements contract).

[FN30]. 368 So2d 272 (Ala 1979).

[FN31]. 188 Neb 189, 195 NW2d 491, 494-95 (1972).

[FN32]. See, e.g., Erie County Water Authority v HenGar Construction Corp., 473 F Supp 1310 (WD NY 1979).

[FN33]. 779 F2d 310, 314 (6th Cir 1985).

[FN34]. Rigby Corp. v Boatmen's Bank and Trust Co., 713 SW2d 517 (Mo App 1986).

[FN35]. Missouri Public Service Co. v Peabody Coal Co., 583 SW2d 721, 725 (WD Mo 1979).

[FN36]. Finley, Inc. v Longview Bank & Trust, 705 SW2d 206, 209 (Tex App 1985); Schaller v Marine National Bank of Neenah, 131 Wis2d 389, 388 NW2d 645 (Wis App 1986) (court upheld summary judgment in the bank's favor because there were no genuine issues of material fact, and the bank's conduct did not as a matter of law constitute bad faith). Where conflicting inferences of intentions can be drawn from undisputed facts, the matter will be for the jury. Karibian v Paletta, 122 Mich App 353 (1983).

[FN37]. No. CV85-PT-1305-S (ND Ala 1987).

[FN38]. 60 Misc2d 720, 304 NYS2d 191 (1969), aff'd, 311 NYS2d 961 (1970).

[FN39]. No. L89-10001CA, WD Mich (April 5, 1989, Hon. D. Hillman).

[FN40]. See footnote 14.

[FN41]. 433 NW2d 221, 224 (SD 1988). See also Daya v Rathur, 5 Mich Law Weekly 91, Vol V, No. 4 (Ed Mich, Dec. 1990, Hon. L. Zatcoff).

[FN42]. 124 Ga App 718, 185 SE2d 787, 789 (1971) (emphasis added).

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