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Dealing With an Unreasonable Contracting Party

Bad things occasionally happen to good contract parties. Let's assume you've done everything right in the negotiation process. You've been transparent about risk; honest about your capabilities; and pellucid in setting your terms. Indeed, your contract documents cause veteran lawyers to gasp at their thoroughness and shrewdness.

You have planned for every contingency except the one factor you cannot contract around: sheer unreasonableness by the other party.

There are two basic ways your reasonable expectations can be thwarted by an unreasonable counter-party (hereafter, "UCP"). First, the UCP can make extra-contractual demands. In such an instance, the UCP decides



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that he will not accept the terms he agreed to and, instead, insists on different terms. Alternatively, the UCP nominally adheres to the letter of the contract, but acts in such a way as to frustrate its purpose. Happily, the law anticipates both situations. Let's take each in turn.

Insisting on Different Terms – “Repudiation”

Let's say the contract in question clearly calls for payment on delivery of 100 standard widgets. The UCP informs you that he will now only accept and pay for customized widgets. The customization will increase your manufacturing cost. The UCP offers no premium. Worse, the UCP informs you that he has the opportunity to make a million-dollar profit on the resale of the widgets in question. He threatens to sue you for his full expectancy damages if you do not meet his new, extra-contractual expectations.

By insisting on extra-contractual performance, i.e., by insisting that you perform

more than is required of you under the contract, the UCP may have repudiated the contract as a matter of law. The law, sensibly, does not require a party threatened with breach simply to stand by and wait for it to happen. Rather, a statement of intent from the UCP that is inconsistent with an intent to honor your contract is deemed a repudiation of the contract. Under those circumstances, you can treat the contract as breached by the UCP. By accepting the repudiation as such, in writing, you may avoid being pegged with the extra-contractual burden and you may sue for any damages caused by the UCP's attempt to change the contract terms. Of course, you also have the option of accepting the new terms because it may, after all, be profitable to proceed even on the altered terms.

One note of caution: The legal doctrine of repudiation can only be triggered by a communication that represents a clear departure from the contracted terms. Mumbles, grumbles, or arguable points – even an

invitation to renegotiate – will not sustain a repudiation. In other words, anything less than a clear communication will not be construed as a breach. In that event, you may be the party charged with repudiating. It's a brave businessperson who will make such calls without the advice of counsel.

Abuse of Discretion – “Breach of Good Faith and Fair Dealing”

The second way in which an unreasonable counterparty (“UCP”) can make your business life miserable is in the exercise of contractual discretion. The law implies a covenant of good faith and fair dealing in every contract. Contractually-delegated discretion must be exercised reasonably.

A good example of this doctrine in action comes out of Hollywood. Sandra Locke was an actor and a director. She had also been romantically involved with Clint Eastwood. That relationship ended in acrimonious litigation. Locke then obtained a contract with Warner Brothers, which paid her a fixed amount for a right



of first refusal in connection with movie projects she proposed. Warner Brothers had the discretion to accept or reject each project. An acceptance would result in additional payments to Locke, as well as a boost to her career as a director. Warner Brothers turned down every project Locke pitched, though she was paid her fixed amount. Locke contended that Warner Brothers rejected her proposals, not based on the quality of her projects, but out of fear of offending Clint Eastwood.

The court looking at the case

held that Locke was entitled to Warner Brothers' honest judgment of the merits of her proposals, even though the contract never specified as much and even though she was paid the baseline amount. Even subjective dissatisfaction must be honestly held dissatisfaction. This is a condition that is implied in every contract. Hence, the fact that it was not written into the contract of the parties in this specific case had no bearing on the court's decision.

As a practical matter, contractual discretion may

involve "satisfaction," but it may also involve a range of choices relating to dates, pricing, cooperation, changing conditions, even breaches of the spirit, but not the letter, of the contract. The test used by the courts is this: Did the UPC abuse his discretion in such a manner as to deprive you of the benefit of the contract? In such a case, you may call him out, even if he can plausibly claim he is not technically in breach. 📌

Illustration by Storyset

7 Everyday Ways to Increase the Security of Your Home

1. Upgrade your front door.

Your front door is the main point of access to your home, but you may never have given it much thought other than what color to paint it. For enhanced security, your front door should have:

- A solid core of wood, metal or fiberglass. If you're not sure what you have, just knock on the door. A solid door will sound solid; a hollow door will echo.
- A deadbolt, with a solid metal strike plate (the piece that is attached to the door frame where the deadbolt fits). If you are concerned that the lock and/or the strike plate is weak, you can buy a kit to reinforce both the door and the frame, for less than \$100.
- A wide-angle peephole.

2. Lock it up.

Make it a habit to keep the



doors and windows locked when you are home; to lock them when you leave; and to check that they are locked before you go to bed. Remember to lock all the doors, including the interior door that leads from the house to the garage. Help the entire family get into this habit, so you know these things will be done, even when you're not home to do them.

To prevent entry through a sliding glass door, insert

a wooden dowel or metal rod into the track at the bottom of the door. Alternatively, for around \$20, you can purchase a "security bar" that serves the same purpose. Both methods will keep the door securely closed, even if the lock is compromised. To prevent entry through the garage, keep your garage door closed at all times when you are not in the garage or nearby. Keep any side entrances locked. If your garage

door has keycode access, change the code when you first move in to your home and periodically thereafter.

3. Light it up, inside and out.

Don't let your home go dark at night. If you are going out and you know you won't be home until after sunset, leave a light (or several lights) on in the house.

Make sure the exterior of your home is well lit at night. You know you need a porch light, but you also need lighting at the back door and around all sides of the house. Consider adding motion-sensor lights to provide extra illumination in dark corners and out-of-the-way areas that are not easily viewed from the street.

4. Be a good neighbor.

Get to know your neighbors and keep an eye out for each other. One way to do this is to form a neighborhood watch association. Ask your local police department if an officer is available to come to your home for an informal meeting. The officer can offer tips about home security, how to recognize suspicious behavior and criminal activity, and what to do in case of an emergency.

5. Bring packages in promptly.

If you are home when a package is delivered, bring it in promptly. If you are expecting a package to be delivered while you're out, ask a neighbor who is home during the day if he would mind taking the package to

his house until you return.

6. Don't hide a key.

Everyone knows there is a key hidden under the mat or the planter or that fake rock. Instead, give a spare set of keys to a couple of your neighbors and/or a family member who lives nearby. Do not put your name or house number on the key. Find another memorable way (e.g., a funky key chain) to identify the keys as yours.

7. Hang curtains.

Curtains are more than just decorative. They are a means of guarding your privacy. Keep the curtains drawn, especially at night, to prevent passerby from peering into your home like a department store window. 📌

Illustration by Designs.ia





Make Someone Happy; Send a Thank You Note

Is there a person in your life who deserves your thanks: a teacher or other mentor; a co-worker who showed you the ropes; a family member, friend, or neighbor who stood by you in hard times?

Perhaps the circumstances never gave you the opportunity to express thanks. Or maybe you feel that the person knows you are grateful and would only be embarrassed by your

note. You may also be afraid that you cannot find the right words and the other person will think your note is lame or insincere.

All of us share these fears and they may be holding us back from taking a simple step that will improve our own and others' well-being. Research shows that expressing gratitude is strongly associated with feelings of happiness,

emotional resilience, and strong relationships. Yet people hesitate to do it.

A study by two psychologists looked into this puzzle. Hundreds of study participants (the expressers) wrote brief gratitude emails to people who had a positive impact on their lives (the recipients). These were not the typical thanks for a birthday or holiday gift, but were for things like help



finding a job, or getting into college, or support during a rough patch. The expressers predicted how they thought the notes would be received and the recipients were asked how they actually felt on reading the notes.

The surprising conclusions:

The expressers significantly underestimated how surprised and pleased the recipients were to be thanked. Many of the recipients reported that they were “ecstatic” to

receive the notes, rating their happiness at 4 out of 5. The expressers overestimated how embarrassed or awkward the recipients would feel on reading the notes. The expressers significantly underestimated how competent and articulate the recipients perceived the expressers to be. In other words, the recipients of the thank you notes, by and large, were thrilled to get them; did not feel particularly embarrassed or awkward;

and thought the expressers did a good job writing them.

So get out that pen and paper or open your email program. You don’t have to be a Shakespeare or Hemingway. You don’t have to write a book. Just a couple of simple, sincere sentences will do. Many expressers spent less than 5 minutes on their notes. The recipient won’t criticize your prose. Almost certainly, he or she will be delighted to get your note and you will be glad you wrote. ▀

Illustration by Designs.ia

Making the Most of Cold Weather

As the cold season takes its turn in the cycle, you may be wondering what you can do to get outside despite the cold.

There are plenty of fun cold weather activities you can try. Here are some tips to help you make the most of winter.

1. Bundle up!

Cold weather doesn't have to be unbearable, but you do have to prepare for it. Wear layers; you can always lose some later if you get warm. And don't forget the gloves and hat - it will help keep your core temperature warmer.

2. Go sledding!

If there's snow near you, you can enjoy one of the oldest cold weather activities - sledding! Grab a sled and hit the hills. In warmer weather locations, you may be able to even find a hill with artificial snow for sledding or tubing.

3. Go skiing!

If sledding seems boring to you, plan a ski trip! Skiing and snowboarding are thrilling ways to enjoy the snow. However, if it's your first time, you may want to start with a lesson.

4. Go ice skating!

Ice skating is a family friendly activity that can be done indoors or outdoors. You'll stay active enough to keep warm while you glide across the ice.

5. Drink hot chocolate!

If it's simply too cold for you outside, stay inside and drink hot chocolate. To top off the experience, bake some cookies and start a fire, if you can. Enjoy the cold weather through a window while the hot cocoa keeps you warm inside.

Illustrations by Designs.ia

