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Interplay of Good Faith and Fair Dealing and Breach of Contract Claims



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In New York, the implied covenant of good faith and fair dealing can provide litigants a cause of action when a party has violated the mutual expectations of a contractual agreement. However, “tension” exists between a “good faith limitation on the exercise of a contract right” and “using the implied covenant of good faith to create new duties that negate explicit rights under a contract.” *Richbell Info. Servs. v. Jupiter Partners, L.P.*, 309 A.D.2d 288, 302 (1st Dep’t 2003). In this article, we explore New York courts’ treatment of this tension and the degree to which courts have permitted good faith and fair dealing claims independent of breach of contract claims.

To begin, under New York law, “all contracts imply a covenant of good faith and fair dealing in the course of performance.” *511 W. 232nd Owners*

v. Jennifer Realty Co., 98 N.Y.2d 144, 153 (2002). The implied covenant “embraces a pledge that ‘neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.’” *Id.* (citation omitted). Further, when a “contract contemplates the exercise of discretion,” the party with discretion is bound by the implied covenant of good faith and fair dealing “not to act arbitrarily or irrationally

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in exercising that discretion.” *Dalton v. Educ. Testing Serv.*, 87 N.Y.2d 384, 389 (1995). When one party to a contract deceives the other party and delays or prevents the exercise of that party’s contractual rights, that

party breaches the implied covenant of good faith and fair dealing. See *Richbell Info. Servs.*, 309 A.D.2d at 302 (“[O]ne has an apparently unlimited right under a contract, that right may not be exercised solely for personal gain in such a way as to deprive the other party of the fruits of the contract”); *25 Bay Terrace Assocs., L.P. v. Pub. Serv. Mut. Ins. Co.*, 144 A.D.3d 665, 667 (2d Dep’t 2016) (upholding an implied covenant of good faith and fair dealing claim alleging that defendant had prepared a “factually inaccurate” report).

New York courts have held, however, that the implied covenant of good faith and fair dealing cannot negate express provisions or rights in a contract. See *Transit Funding Assocs. v. Cap. One Equip. Fin.*, 149 A.D.3d 23, 30 (1st Dep’t 2017) (finding no breach of implied covenant where “complained-of conduct consists entirely of acts it was authorized to do by the contract”); *Nat’l Union Fire Ins. Co. of Pittsburgh, Pa. v. Xerox*, 25 A.D.3d 309, 310 (1st Dep’t 2006) (“The covenant of good faith and fair dealing cannot be construed so broadly as to effectively nullify

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other express terms of the contract, or to create independent contractual rights.”). Moreover, a good faith and fair dealing claim is “redundant if it merely pleads that defendant did not act in good faith in performing its contractual obligations.” *Danusiar v. Auditchain USA*, No. 20-CV-1477 (KNF), 2020 WL 6126378, at *9 (S.D.N.Y. Oct. 8, 2020).

Thus, courts must determine whether a breach of contract and a breach of the implied covenant are based on the same facts and whether the damages are identical. See *MBIA Ins. v. Countrywide Home Loans*, 87 A.D.3d 287, 297 (1st Dep’t 2011). Further, some good faith and fair dealing claims are brought without a breach of contract claim to ensure even an “unfettered contract right” is not exercised in “bad faith.” *Richbell Info. Servs.*, 309 A.D.2d at 302; compare *Chase Manhattan Bank, N.A. v. Keystone Distribs.*, 873 F. Supp. 808, 815 (S.D.N.Y. 1994) (in New York “[a] party may be in breach of its implied duty of good faith and fair dealing even if it is not in breach of its express contractual obligations”) with *Netologic v. Goldman Sachs Grp.*, 110 A.D.3d 433, 433-34 (1st Dep’t 2013) (“Plaintiff’s claim for breach of the implied covenant of good faith and fair dealing ... should be dismissed as duplicative of its contract claims.”).

In April 2022, Justice Reed of the New York Supreme Court, Commercial Division, reiterated that, under certain circumstances New York recognizes the implied duty of good faith and fair dealing as an independent cause of action separate from a

breach of contract claim. In *Anexia v. Horizon Data Solutions Center*, 74 Misc.3d 1233(A), 2022 N.Y. Slip Op. 50320(U) (Sup. Ct. N.Y. Cnty. 2022), the court denied dismissal of defendant’s counterclaim for breach of the implied duty of good faith and fair dealing because it had alleged a “scheme to deprive it of the benefit of its bargain” separate and apart from its breach of contract claim. *Id.* at *3. In that case, the defendant alleged that the plaintiff negotiated directly with a third party to cut out the defendant—preventing the defendant from reselling to the third party as contemplated in the contract—and thereby depriving the defendant of the benefit of its bargain. *Id.* In denying the dismissal of defendant’s counterclaim, the court rejected plaintiff’s argument that the counterclaim was simply duplicative of the breach of contract claim involving the same set of facts, injury and request for damages. *Id.* at *3-4. Since the good faith claim was premised on specific, bad faith conduct distinct from express obligations and “does not depend on a breach of the contract” the defendant’s claim was not duplicative. *Id.* at *3; see also *Rebecca Broadway Ltd. P’ship v. Hotton*, 143 A.D.3d 71, 78 (1st Dep’t 2016) (“Even assuming that his conduct did not violate the express terms of his agreement to act as the play’s press representative, Thibodeau breached the implied duty of good faith and fair dealing by essentially defeating the purpose of the agreement by his actions.”).

The Second Department came to the same conclusion in *Elmhurst*

Dairy v. Bartlett Dairy, 97 A.D.3d 781 (2d Dep’t 2012). In this case, the plaintiff brought a cause of action for breach of the covenant of good faith and fair dealing, alleging that business was “diverted ... away from the plaintiff ... even though the plaintiff [was] entitled to that business under the [contract].” *Id.* at 784. Because of this, plaintiff argued it was “deprive[d] ... of the fruit, or benefit, of the exclusivity provision of the [contract],” and that “Bartlett may have acted in bad faith to circumvent its exclusivity obligations under the [contract].” *Id.* While the trial court dismissed the implied covenant claim, the Second Department reversed this dismissal, finding that the cause of action was “not duplicative” of the breach of contract claim. *Id.* at 785.

New York courts have reaffirmed the availability of a standalone good faith and fair dealing claim as long as it is distinct from any breach of contract claim, and will often find such a standalone claim exists where the party alleges some bad faith conduct that was not encompassed by express obligations. Complainants should thus be aware of this extra-contractual cause of action, but wary that they are not simply repleading a breach of contract claim.