Michigan Supreme Court Confirms: No Independent Cause of Action for Breach of Implied Covenant of Good Faith

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Sometimes an expected result is still newsworthy. On March 27, 2025, in *Kircher v Boyne USA, Inc.*, the Michigan Supreme Court held that there is no independent cause of action for breach of the implied covenant of good faith and fair dealing inherent in contracts. This is no surprise; lower state courts and federal courts interpreting Michigan law had consistently reached the same conclusion. *Kircher* represents the first such holding by the Michigan Supreme Court, however, and thus it brings certainty to this area of the law.

As *Kircher* explains, every contract contains an implied covenant of good faith and fair dealing. "Where a party to a contract makes the manner of its performance a matter of its own discretion, the law does not hesitate to imply the proviso that such discretion be exercised honestly and in good faith."[1] In other words, if a party has flexibility in how it performs a contract, it must use that flexibility in good faith. If it does not, then it could be liable for breach of the contract.

The duty of performing in good faith cannot alter a contract's terms, however. Each party to a contract is required to do only what it bargained to do, nothing more. A party to a contract that regrets the bargain it struck is not free to argue "Bad faith!" to get out of its deal.

The *Kircher* court decided that is what the plaintiff was trying to do. The plaintiff and defendants had agreed in a contract that the defendants would be required to purchase the plaintiff's shares in a certain company. They settled on a mathematical formula to calculate the price at which the defendants would purchase the shares. Neither party disputed this.

Circumstances changed, though, and the share price yielded by the formula fell below $0 per share. The contract allowed the parties to change the formula if they both wished. Plaintiff sued, claiming that the duty of good faith required defendants to agree to a different formula that would yield a result above $0 per share. The Supreme Court disagreed. The formula the parties had selected gave defendants no flexibility in how the share price was to be calculated, and thus there was no question of "good" or "bad" faith in the computation. The fact that parties *could* change the formula if they so agreed did not mean that they *must* do so because of changed circumstances. Plaintiff had to live with the bargain as originally negotiated and could not alter it with the benefit of hindsight.

Although it may not feel "fair" that the formula to which plaintiff previously agreed now yields unfavorable results, that is the agreement the parties had struck. Had the *Kircher* court ruled otherwise, it would allow the fairness of a contract to be called into question whenever a party had regrets. The decision by the *Kircher* court thus brings a welcome dose of certainty. Parties can rely on the terms of the contracts that they draft, without concern that a court might later second guess those terms at the request of a disgruntled party.

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[1] *Kircher*, quoting *Burkhardt v City Nat'l Bank of Detroit*, 57 Mich App 649, 652; 226 NW2d 678 (1975).