The Importance of Being Fair

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Many readers of our blog know that an opinion was recently issued in yet another hotel operator v. hotel owner dispute. The Sheraton v. Castillo opinion, issued on November 18, 2011, is dense, very detailed and heavily fact dependent. One element of the court’s assessment of the relationship between the parties deserves special mention and should not be overlooked in our heavily legalistic business. That is the age old notion of good faith and fair dealing. There are multiple occasions in the court’s opinion where the judge engages in a careful analysis of the facts of the case, opines that some event has or has not occurred or failed to occur, and then goes on to forgive or explain away the failure because the action that was taken by the other party was a violation of the obligation to exercise good faith and fair dealing. The obligation to act in good faith and fairly is implied throughout the law. Most states have developed their own interpretation of the concept through judicial opinions. The concept is also found in the Uniform Commercial Code and various texts as applied to torts and contracts. The point here is to remember that although the obligation to exercise good faith and fair dealing is not intended to, and should not be assumed to, alter specific provisions of a contract, such as a hotel management agreement, a party that ignores the manner in which it acts upon its contractual rights could find itself on the losing side of the argument.

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