



TO GET PAID, GET TOUGH

HOPE IS NOT A STRATEGY

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Watch out folks. Business has rediscovered cheating.

I call it “stiffing people.” Some call it “not paying your bills.” The culprits call it “improving the bottom line.” But, whatever you do, don’t call it somebody else’s problem. The deadbeats are rampant.

Look at the cases piled high on my desk. It’s the new ABCs of business:

Architects are not getting paid. Brokers are not getting paid. Contractors are not getting paid. Dentists are not getting paid. Engineers are not getting paid.

I could do the whole alphabet— except my zoologist client is doing just fine.

Consider an electrical contractor I know. He works on a big project— correctly and on time—and should have gotten a fat check and a “thank you.” But, the general contractor screwed up the project and got fired. The GC was looking at millions of dollars in losses. Instead, the GC decides to stiff all the contractors: “Let’s offer them: (a) 50 cents on the dollar, or (b) nothing, plus a lawsuit.” My guy gets real. He can take that small check and move on with life or he can sign on for a two-year battle in court, tons of legal fees and no vacations or family time. He takes the check. Now, he spits whenever he hears that GC’s name.

Folks, this is business today. You still have some fair, reasonable businesspeople. Then, you have everybody else. They don’t pay their bills and give it a fancy name, like “alternative compliance.” Getting stiffed is making a lot of people want to “pay it forward”—which means they ain’t paying. Yeah, I know. It’s dark.

But, you can make it a lot brighter. First, know thy customer.

DUE DILIGENCE

There’s no magic here.

Due diligence means you check out your customer before you do business with him, her or it. Sometimes it is as simple as asking around. In other cases, you need that prospective customer’s

financial statements or a personal guarantee or a security deposit or some other protection.

Other times, you just use good judgment. For example, I was working on a mega-contract for a general contractor. Our opponent, the Owner, had a construction contract that was as tough as they come. Plus the Owner's attorney would not budge on a single provision. No changes. Take it or leave it. So, we asked around. It turns out that this Owner insisted that contractors comply with every letter of that crazy contract and then sued if they didn't. Did we sign contract-zilla? To quote the wisdom of Amy Winehouse: "No, no, no."

Sometimes your due diligence is just a Google search away. If you see that someone has been sued dozens of times and owes money to everybody in town, call me cautious, but I'd stay away.

Due diligence won't guarantee success. It just improves your odds.

KEY CONTRACT PROVISIONS

I represent a lot of brokers—of all types. They lease real estate, sell businesses and negotiate for blocks of hotel rooms. Often, they work on deals that die. But, sometimes when a deal goes through, the commissions are big. That's when greedy people try to cheat them. You would be surprised how often that happens. That's why the stacks of cases on my desk are so tall. And the difference between getting paid or not can often turn on a few magic clauses in their contracts.

These brokers - and anybody looking to get paid—improve their odds with the following:

Attorneys' fees

- You need a provision that says if the other side breaches, they have to pay your attorneys' fees. It is okay to make it mutual. That is, you breach, you pay. This prevents a few problems. First, it reduces the other side's temptation to outspend you and force you to settle cheap. Second, you don't have to walk away from a dispute just because the attorneys' fees will be more than the amount you are due.
- Don't be shy about including an attorneys' fees provision. Some feel it's too aggressive or litigious. They're wrong. You're simply protecting yourself. Why should you go in the hole paying legal fees to get what you've already earned? If you're still not comfortable, I hear they're hiring at the petting zoo.
- The cheaters aren't shy at all. Trust me. If they think a contract provision will protect them, they'll tattoo it on your forehead.

Arbitration vs. Litigation

- Even if you are bound to win, you don't want it to take forever or cost a fortune. Going to court has gotten insanely expensive and complicated. In many cases, you may want to arbitrate

instead. Ask your attorney for guidance. Arbitration can often slice the time, cost and hassle in half.

Mandatory Venue

- Venue is a 25-cent word for location—and home field advantage can make a difference. In fact, savvy lawyers joke about out-of-towners who get burned by a local judge. It even has a name—the “home-town roast.” Turn the tables. Write your contracts so that disputes are decided in your city. Often, the other side won’t even notice the venue provision buried in the fine print.

The bottom line is that contracts matter. They level the playing field. They can even tip it in your favor.

STRATEGY

Still, due diligence and a good contract aren’t enough. You also need the right strategy.

Sometimes, you take your losses and walk away. Despite all the precautions, there are times you’re not going to win. It’s best to realize that early and call it a life lesson (*see electrical contractor fiasco above*).

Sometimes, you fight.

- For example, if you are in a business where you will be regularly challenged by cutthroat cheaters, consider this. Pick a battle you know you will win. Then fight all the way to victory. No settlement. Even if the other side begs for it. Push on till you get the win.
- In the future, that victory is proof: (1) you will fight, and (2) if you fight, you will win.
- Victory pays. Give one guy a bloody nose and you may not have to throw another punch for years.

Sometimes you fight, then settle when the settling is good.

- People on a winning streak get overconfident and often overplay their hand. Know when to settle. Streaks don’t go on forever.
- A good settlement can maximize your results and minimize your costs.
- The key is to fight long and hard enough to extract a good deal from your opponent. When you don’t need to set a precedent, a good settlement can net you a far better result than a great court victory.

There’s no set formula. Apply the strategy that fits the situation.

I have been doing battle for clients over thirty years now. When I was sworn in as an attorney, a

handshake meant something and it was scandalous not to pay someone. You hid the misdeed. Now, it's like Night of the Living Deadbeats.

So, be realistic. If you're in business, it's just a matter of time before someone tries to cheat you. You can't just hope it won't happen to you.

Prepare for it. Protect against it. Fight when you must.

Hope is not a strategy.

Best,
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