Doron F. Eghbali Business Law

What Are Implied In Fact and Implied In Law Contracts?

Monday, August 1, 2011 by Doron F. Eghbali

Contracts can be even found to be formed based on the conduct or intent of the parties and not their mere express words evidenced in an agreement. In addition, the law might find there is an agreement solely because Justice demands it. Let us further explore and delineate the concepts of Implied-In-Fact and Implied-In-Law contracts in some detail.

1. SOME BACKGROUND ON EXPRESS CONTRACTS

Express Contracts encompass most forms of agreements we often encounter in our daily encounters or business dealings. Express contract terms are expressed either orally or in writing. In express contracts, parties to the contract express their assent to some terms and conditions verbally or in writing.

2. SOME BACKGROUND ON IMPLIED-IN-FACT CONTRACTS

Implied-In-Fact contracts form, in whole or in part, through conduct of the parties and not their mere exchange of promises through words. Such contracts form merely because parties intend and mutually agree to an agreement. To ascertain the parties' mutual agreement to intend into a contract NOT evidenced in writing, we could look at parties' course of dealing, usage of trade, or course of performance. For instance, based on case law, implied-in-fact contract might be found because parties for years have been dealing with each other despite having a written agreement evidencing such dealings and the terms governing it. In addition, contract might be found by courts even after expiration of the original contract, since parties continued to perform under the terms of the expired contract.

It is noteworthy, generally, the terms of Implied-In-Fact contracts have similar legal effect as Express Contracts.

A. USE OF IMPLIED-IN-FACT CONTRACTS IN INFRINGEMENT CASES

Implied-In-Fact Contracts might be used in infringement of literary works, screenplays or ideas. For the plaintiff to prevail, it must be shown, among other things, the following ELEMENTS:

1. Plaintiffs provided the defendants the works or idea for SALE;
2. Plaintiffs conditioned the use of the works or idea on PAYMENT;
3. Defendants knew or should have known of the PAYMENT condition;
4. Defendants VOLUNTARILY accepted the works or idea;
5. Defendants actually USED the works or idea;
6. Plaintiff's works or idea actually had some VALUE; AND
7. Defendants impliedly promised to PAY for the USE of the works or idea. This element is especially essential in implied-in-fact contracts.

3. SOME BACKGROUND ON IMPLIED-IN-LAW CONTRACTS

Implied-In-Law contracts are rather different from Express or Implied-In-Fact contracts. Implied-In-Law contracts are formed not through written or oral promises or conduct of the parties, Implied-In-Law contracts are formed because law demands it without regard to parties' intentions mainly to uphold justice.

In fact, Implied-In-Law principle is inextricably intertwined with principles of unjust enrichment and restitution. For instance, if defendant benefits from something the defendant is not legally entitled to retain, then law imposes upon the defendant to return such unjust enrichment. In the latter instance, there is no oral or verbal contract or the parties' might not have intended it through their conduct, yet law demand justice.

SALIENT CAVEAT

This article neither supplants nor encompasses the complexities and nuances involved in articulation or delineation of such complicated sophisticated legal concepts and principles.

DORON EGHBALI is a Partner at the Beverly Hills Offices of Law Advocate Group, LLP. Doron Primarily Practices Business, Real Estate and Entertainment Law. Doron Can Be Reached at: 310-651-3065. For More information, Please, Visit: HERE.