



Is New York Giving the Implied Covenant More Bite?

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New York law has long treated the implied covenant of good faith and fair dealing as a gap-filling doctrine, not a tool to rewrite commercial contracts. Courts routinely emphasize that the covenant cannot contradict express terms, impose obligations the parties did not bargain for, or rescue a party from a hard deal.

However, a recent decision from the New York Court of Appeals, *111 West 57th Investment LLC v. 111 W57 Mezz Investor LLC*, No. 41, 2026 N.Y. slip op. 03376, 2026 WL 1502410 (May 28, 2026), may signal a shift in long-held precedent. That is why the question posed in the Business Law Today article — whether New York is “reimagining” the implied covenant — is worth watching closely.

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For deal lawyers and litigators, the practical issue is not whether the implied covenant exists. It is how far courts will allow it to reach in sophisticated commercial settings. If courts become more receptive to implied covenant arguments, parties may face greater litigation risk even where the written agreement appears to allocate discretion, approvals, timing, termination rights, or performance standards clearly.

The key takeaway is that contractual discretion should not be treated as self-executing protection. Where a party is given discretion, the agreement should state how that discretion may be exercised, whether it is sole and absolute, whether objective or subjective standards apply, and whether any limitations or notice obligations are intended. Silence will create room for implied covenant arguments, especially where one party alleges that the other exercised a contractual right in a way that deprived it of the benefit of the bargain.

This matters particularly in private equity, joint ventures, earn-outs, financing arrangements, and other commercial agreements where parties often rely on carefully drafted discretion and control rights. The implied covenant may not override the contract, but it can become the battleground for disputes over whether contractual power was exercised consistently with the deal the parties actually made.

The drafting lesson is not to overreact. New York remains guided by the contract itself. But parties should assume that “we had the right to do it” may not always be the end of the analysis. Clearer drafting around discretion, expectations, and remedies remains the best way to reduce the risk that a court is asked to supply meaning after the relationship has broken down.

And the implied covenant cannot be the means of redressing every alleged injury arising out of a contractual relationship that is not addressed by the express terms. To allow the wrong legal theory to address a perceived harm can have “ramifying consequences, like the rippling of the waters, without end.”

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