

An Unappealing Proposal: An Obligation to Negotiate in Good Faith?

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By

Suppose for a moment that in negotiating a lease, the landlord was required to tell a prospective tenant that it had received no offers in the last six months and that the last one it did receive offered rent of \$10 per square foot while the landlord was asking \$30 per square foot. Such a proposition goes against all conceptual notions of negotiation, where hard bargaining rules and each party seeks to get the best deal for themselves. While it has long been recognized that there is an obligation to perform the obligations of a contract in good faith, absent special circumstances such as employer/employee and franchisor/franchisee relationships, no court has suggested that there is a general duty to negotiate in good faith. Courts are cautious about creating rights for which the parties have not bargained. However, recent Ontario Superior Court and Supreme Court of Canada decisions signal that change may be on the horizon.

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