Title:
Bobux Marketing Ltd. v. Raynor Marketing Ltd. [2002] 1 NZLR 506 (Court of Appeal).

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[...]

[39] The notion of a general obligation to perform contractual obligations in good faith also received a boost from the fact it has been adopted in the United States and in international trade law without any evidence that commercial transactions have become unworkable or uncertain as a result. Section 1-203 of the Uniform Commercial Code in the United States provides an important milestone in the evolution of the principle. It states that "every contract or duty within this Act imposes an obligation of good faith in its performance or enforcement". Initiated by the American Law Institute in 1970 and finally promulgated in 1981, Section 205 of the Restatement of Contracts, Second, which is applicable to all contracts, reads: "Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement". Then, art 1.7 of the 1994 UNIDROIT Principles of International Commercial Contracts provides that, "each party must act in accordance with good faith and fair dealing in international trade" and further that, "the parties may not exclude or limit this duty". Similarly, art 7(1) of the 1980 United Nations Convention on Contracts for the International Sale of Goods states that in the interpretation of the Convention regard is to be had, inter alia, to the "observance of good faith in international trade".

[40] Moreover, the concept of good faith is the latent premise of much of the law of contract relating to the performance of contractual obligations. (See Livingstone v Roskilly at pp 237 - 238.) Lücke suggests that obvious examples of principles of contract law palpably designed to bring about just and fair results are the doctrine of promissory estoppel, the rule which provides relief against forfeiture, the rule which invalidates penalty clauses, and some of the established rules of construction such as the contra proferentem rule and the presumption that exemption clauses in contracts are not intended to confer immunity from the consequences of a fundamental breach. (Lücke, at p 158). Then, too, apart from fiduciary relationships, notions of good faith and fair dealing have left their imprint on English contract law in respect of contracts of insurance, suretyship, salvage and partnership, which are all characterised as contracts of the utmost good faith (Steyn, at p 136). Sir Anthony Mason lists a number of well-recognised unrelated situations in which a party is required to take account of the interests of another party, notwithstanding that the initial foundation of the relationship is that each is pursuing his or her own interests. (Mason, at pp 72 - 73). The learned jurist also canvasses the various means by which the Courts have sought to fill the void caused by the absence of a general good faith doctrine: the fiduciary principle, unconscionable bargains, estoppel and restitutionary relief (Mason at p 84).

[41] Certainly, the notion of a more explicit concept of good faith in the law of contract will continue to have its detractors. The principle is already beset by agonising inquiries into what is or can be meant by good faith. But these digressions need not detain us here. Good faith is closely associated with notions of fairness, honesty and reasonableness which are already well recognised in the law (Lücke, at p 161). Fried has correctly pointed out that good faith as honesty is quite compatible with the traditional "concept as promise" concept. (See Fried, Contract as Promise (1981) at p 85.) Underlying the concept, to my mind, is a perception of loyalty to the promise made which provides a standard, rather than a rule, and which does not require the abandonment of self-interest. The Official Comment to Section 205 of the Restatement of Contracts, Second rightly points out that the meaning will depend on its context. The basic ethic in good faith performance and enforcement of a contract is said to be "faithfulness to an agreed common purpose and consistency with the justified expectations of the other party". This ethic evinces my perception of good faith as loyalty to a promise.
Referring Principles:

I.1.1 - Good faith and fair dealing in international trade

IV.5.4 - Interpretation against the party that supplied the term