Belated Bag Beef Preempted

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Illinois law generally recognizes an "implied covenant of good faith and fair dealing" in contracts. In other words, parties to a contract are assumed to have agreed to deal with each other fairly and in good faith, even if they do not spell it out. The implied covenant arises most frequently when one party to a contract accuses the other party not of a breach, but of acting unfairly in some other respect. A common example is when the purchaser in a real estate contract suffers a bout of buyer's remorse and intentionally fails to obtain a mortgage. Illinois courts are willing to hold such a buyer liable for breach of contract, despite not technically breaching the contract, because the buyer did not fulfill his obligations in good faith.

The Illinois Appellate Court visited this issue recently in the context of an air carrier's contract of carriage in ***Spadoni v. United Airlines, Inc.*** The plaintiff, a passenger who paid a checked baggage fee, discovered on arrival at her destination that the airline shipped her bag on a later flight. The airline's contract of carriage permitted this, stating: "checked baggage will generally be carried on the same aircraft as the Passenger unless such carriage is deemed impractical by carrier, in which event the carrier will make arrangements to transport the baggage on the next flight on which space is available." Nevertheless, the plaintiff claimed that the airline acted in bad faith by delaying her bag in favor of more lucrative cargo, and attempted to bring a class action lawsuit. The carrier argued that the plaintiff's suit was preempted by the Airline Deregulation Act, which prohibits states from creating their own laws related to an air carrier's price, route, or service. Essentially, according to the airline, a state court has no authority to inject implied covenants into a contract of carriage.

The court sided with the airline and noted that, at first blush, the plaintiff's claim could survive; the ADA does not generally preempt breach of contract actions because compelling a carrier to comply with duties it voluntarily undertook is not the same as a state imposing its own substantive standards on a carrier. However, to read a "good faith and fair dealing" covenant into every contract, regardless of whether such a covenant is expressed in the contract, would be tantamount to the state imposing its own law on a carrier. The appellate court also rejected the plaintiff's argument that the "good faith and fair dealing" covenant is enforceable because parties can disavow it in an agreement. Since no court had ever permitted a contracting party to disavow the implied covenant, the ability to do so was "wholly theoretical." Since the plaintiff's lawsuit relied on a theory that is preempted by federal law, it was dismissed.

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The intent behind the ADA's preemptive effect was to permit airlines, with oversight from the federal government, to select and design their own methods of operation without interference from the states. While preemption has helped to protect airlines from an impossibly complex patchwork of state laws, the doctrine of preemption itself has grown complex, with different courts taking differing views of the scope of preemption. Nevertheless, airlines are sure to welcome the Illinois Appellate Court's decision here, especially since a holding in favor of the passenger could have opened the proverbial class action floodgates.