

'Good faith' at issue in athlete's lawsuit

By Jennifer Pritchett, Associate Editor



An American lawsuit involving a professional baseball player and a lending firm shines a light on the importance of the good-faith principle and how unfair bargaining practices can void a contract, Toronto civil litigator [Sarah O'Connor](#) tells [AdvocateDaily.com](#).

"The good faith principle and the doctrine of unconscionability regularly come up in areas of contract law — both in Canada and the United States," she says.

O'Connor, principal of [O'Connor Richardson Professional Corporation](#), comments on a civil [matter](#) involving a 22-year-old professional baseball player from the Dominican Republic who alleges wrongful and unconscionable conduct by a lending firm, including breaches of the duty of good faith and fair dealing, as well as unjust enrichment, says the plaintiff's document (commonly called a statement of claim in Canada) filed with the Delaware court.

In 2016, the plaintiff entered into three contracts with the defendant. The player claims there was no interpreter present when he met with the firm representatives, says the court file. The plaintiff also says the lending firm hired an attorney to "represent" the player but the lawyer served as the defendant's lawyer, it says.

The firm advanced \$360,000 to the player in exchange for 10 per cent of his future earnings, the file says.

In the lending firm's [defence](#) filed with the court, it says it makes "investments in professional baseball players in return for a percentage of the player's potential future major league earnings." The firm contends the agreement with the player in this dispute is a "valid and enforceable contract," and denies the allegations made against it about breaches of duty.

In fact, the firm is asking for damages against the player because it claims he breached the contract's confidentiality arrangement.

O'Connor says the confidentiality arrangement is an unusual element of this case.

"There's no way to enforce the contract if there's a confidentiality clause," she says, adding they simply don't exist in these types of contracts.

She agrees with a description in an [MSN article](#) about the lawsuit that such a clause would be "legally dubious."

O'Connor says the case raises several legal questions, including: whether the player required an interpreter during the meetings with firm representatives to sign the agreements, if the lawyer provided to the player by the lending agency provided independent legal advice or had a conflict, and if the court would enforce this contract based on the doctrine of unconscionability.

"It's a doctrine that permits a party to avoid a contract that is manifestly unfair," she says.

"To prove that, you have to show two things: that the other party enjoyed unequal bargaining power and that a substantially unfair bargain resulted. It is generally about whether the contract was manifestly unfair at the time the contract was entered into."

O'Connor believes the player who launched the lawsuit has a strong case that the contract shouldn't be enforced because of the information about independent counsel and the lack of an interpreter.

In Canada, some of the same issues in contract law have come up in two important cases, she notes.

One was a 2014 Supreme Court of Canada landmark [decision](#) about the principle of good faith contract law. That case solidified the general organizing principle of good faith, O'Connor says.

"The court recognized a new duty of honest performance, and that requires the parties to be honest with each other in relation to the performance of their contractual obligations," she says. "This case was the first time this was recognized. Since that decision, all contracts in Canada are now subject to this duty of honest performance."

The other was a 2016 Ontario Court of Appeal [ruling](#) that showed how this new duty of honest performance is applied in contract law, O'Connor says.