

A Deal's a Deal

By Reg P. Wydeven
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After I graduated from college, my dad told me a lot of stories about his experiences in law school at UW, where he graduated in 1965. He told me about some of his favorite professors, especially Stewart Macaulay, who taught Contracts.

When I registered for classes my first semester at UW in 1995, I got Stewart Macaulay for Contracts. Ten years later, my friend, Mike, also had Stewart Macaulay for Contracts. Last week I wrote about our summer clerk, Jon, who is finishing up at UW this fall. Sure enough, he had Stewart Macaulay for Contracts.

Professor McCauly has been a great teacher of Contracts for so long because as he explains, the elements of a contract are some of the oldest tenets in legal history and haven't changed since the beginning. A contract is an agreement entered into voluntarily by two or more competent parties. For a valid contract, one party must make an "offer" that is "accepted" by the other party in exchange for "consideration."

A party is considered to have "breached" the contract if it doesn't fulfill its obligations under the contract. When this happens, the other party may pursue various remedies under the contract, pursuant to law, or both. A very common remedy is to sue the breaching party for monetary damages.

Take, for example, FC Online Marketing, Inc. The fitness firm recently filed a lawsuit in U.S. District Court in Florida against Tara Costa for breach of contract.

FC Online Marketing hired Costa in 2011 to be a spokesperson for the company. FC offered to pay \$45,000 to Costa's foundation in exchange for the use of her image and likeness and to make public appearances, including visiting their franchises. Costa accepted FC's offer and the parties signed a contract documenting their agreement.

FC was hoping to capitalize on the notoriety Costa garnered by losing 155 pounds as a contestant on NBC's "The Biggest Loser." However, FC filed their suit after Costa purportedly gained 45 pounds, which FC claims is "far too much weight" and violates the conditions of their contract.

The clause in question reads that Costa "agrees to maintain her current level of fitness and conditioning" during the term of the contract. FC claims that because Costa regained some of the weight, she could no longer appear in photo shoots or make public appearances.

Costa's Miami-based attorney, Darren Heitner, insists his client has remained physically fit since appearing on "The Biggest Loser" and has even participated in an Ironman triathlon competition. As a result, Heitner indicated that Costa plans to file a countersuit against FC Online Marketing for royalty and exemplary damages.

Costa is hoping she won't be the biggest loser in court.