The StrongFirm® P.C. Attorneys

StrongPoints

Ethical Negotiations
Representing Your Client's Interests With Both Vigor and Class

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By: Bret Strong

Every client wants the meanest, toughest negotiator for an attorney. Having bargained for and against parties on thousands of agreements for nearly 30 years, I have learned a thing or two about what does and doesn't work when trying to make a deal. What I truly love about my job is the proactive nature of bringing parties together to strike a great deal, and one of the surprising truths I have learned is less can sometimes be more when it comes to getting the best deal for your client.

Often attorneys believe that "winning" means getting your way more often than the other side. This couldn't be further from the truth. An attorney should always be a strong and decisive advocate for their client on points that are critical to success, while being professional and forthright in all dealings. Beating the other party to death with every point may not only risk killing a deal for a client and cause unnecessary time and expense, it also may take focus away from the aspects of a deal that are the most important and valuable to a client. Furthermore, using false or misleading information to try to one-up the opposition can be straight-up unethical. Section 4.01 of the Texas Disciplinary Rules of Professional Conduct makes it clear an attorney shall never "knowingly: (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid making the lawyer a party to a criminal act or knowingly assisting a fraudulent act perpetrated by a client."

Frankly, being a manipulative jerk more often than not backfires and can land the attorney on the wrong side of the court if fraud is alleged. Some of our best referral sources and clients have been created by handling a deal well from the other side of the table. Our attorneys are taught to be a forthright and professional advocate. As a "seasoned" professional, I believe it pays more dividends in the long run.

Bret Strong

***Bret Strong** is the Founder and Managing Shareholder of The Strong Firm P.C. His areas of practice include oil, gas, and energy; commercial real estate; mergers, acquisitions, and sales; and business law and contracts. He earned a Juris Doctorate, cum laude, from South Texas College of Law, and a B.S. in Business Finance from the University of Colorado at Boulder. He is admitted to practice law in Texas, Colorado and before The United States Supreme Court. Bret has achieved the AV® Martindale-Hubbell® Peer Review Ratings™ award and has served as a founding board member of The Woodlands Bar Association.*

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Eric R. Thiergood, Sr. Promoted

Bret L. Strong, Founder and Managing Shareholder of The Strong Firm P.C., has announced the promotion of attorney Eric R. Thiergood, Sr., to Income Shareholder with the firm. Eric joined The Strong Firm in 2005 as a Law Clerk, and was promoted to Associate Attorney in 2007 and to Senior Associate Attorney in 2012.

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Small Business Association Loans:
Funding Your New Business with an SBA Loan

Eric R. Thiergood, Sr.

By: Eric R. Thiergood, Sr.

Thinking about starting a new or buying an existing business? While that decision is undoubtedly a hard one, the next decision can be equally difficult, if not more so.

How do I pay for it? How to fund the purchase of a business is a question we have helped clients through countless times at The Strong Firm P.C. Small Business Association (SBA) loans are a viable option for some new small business owners. Unlike a grant, an SBA loan does have to be repaid.

One common misconception about SBA loans is they are easily obtained since they are “guaranteed” by the federal government. While it is true that the SBA loan program may provide an opportunity for an individual or small business to obtain funding that it would not usually be able to procure through normal channels, the process is not “easy” by any means.

To secure an SBA loan the lender will review two factors: the strength of the business and, more importantly, the credit strength of the borrower/owner. To this end, borrowers will find it much easier to obtain funding for the acquisition of an existing business with a proven track record than attempting to fund an unproven startup company with no financial history.

In analyzing the strength of the business the lender will typically require 1) a formal business plan describing the nature of the business, annual sales, number of employees, length of time in business and ownership of the business, and 2) business financial statements, including complete financial statements for the past three years and current interim financial statements.

In evaluating the strength of the borrower, banks will require and examine the personal financial statements of the owners, partners, officers and stockholders who own 20 percent or more of the business.

Contrary to the beliefs of many new business owners, it is almost impossible to establish “business credit” for your new business that is not directly and heavily tied to your personal finances. A lender will also typically further require a personal guaranty from any and all owners of the company

***Eric R. Thiergood, Sr.**, Income Shareholder, joined The Strong Firm P.C. in 2005. Eric graduated from South Texas College of Law and is licensed to practice in Texas and in the United States Federal District and Bankruptcy Court for the Southern District of Texas. He lived a large portion of his life in Asturias, Oropesa Del Mar and Madrid, Spain and is fluent in Spanish.*
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Pick Your Fights (and Battlefields) Wisely:
Negotiating Forum Selection Clauses

Royce Lanning

By: Royce Lanning

A venue selection provision is a contract option that sets the geographical location where any disputes arising under the contract must be litigated. Venue selection provisions can be very helpful when the parties to the contract are located (or have locations) in more than one county or state. They can settle not only the issue of whether the controversy will be heard in California or Texas but (in some cases) which county within a given state is the proper location for litigation (i.e. Harris v. Bexar). Two common reactions to venue selection provisions are (1) to try and locate the venue in a remote area or a jurisdiction with favorable laws or (2) to “make them come to me.”

While both of these approaches have a certain logical appeal in the right circumstances, not all venue selection provisions are enforceable. For instance, Texas law will not honor a venue selection provision if neither the subject matter of the agreement nor one of the parties has some minimum connection with the venue selected. Stated another way, a Texas court will not honor an agreement between a Delaware and a Texas entity requiring litigation to be filed in Nevada unless the contract calls for performance in Nevada. Likewise, Texas courts may not honor venue selection provisions in contracts for less than $1 million in consideration. § 15.020 Texas Civil Remedies Code.

Unenforceable forum selection provisions return you to the default rules that often result in a “race to the courthouse” because the first to file may secure the location for the litigation. Therefore, you should seek the assistance of counsel to advise you on both the reasons to pick a particular forum and to ensure you are not overreaching with a forum selection clause in order to extract the maximum value from your forum selection provisions.

***Royce Lanning**, Associate Attorney, joined The Strong Firm, P.C. in 2013. He received his Juris Doctorate from the University of Hawaii, William S. Richardson School of Law and obtained immediate trial experience as a Deputy Prosecuting Attorney with the Department of the Prosecuting Attorney, Maui. He is licensed to practice law in the State of Texas, the State of Hawaii and all Federal District Courts in Texas.*
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The Truth v. the Whole Truth:
Why You Should Tell Your Lawyer Everything

Adam Looney

By: Adam Looney

There is an old saying in the legal profession: "Your client's case will never look better than the day it walks in the door." That saying has certainly proven true in my experience.

In the first client meeting, we only hear one side of the story, and most people have a tendency to exaggerate the facts that are helpful to them, and diminish those facts that are not. This tendency to exaggerate usually doesn't cause significant issues, as we are trained to disregard the fluff and focus on the truly important issues so we can provide effective legal advice and counsel.

There is one thing, however, that not even the best lawyer can prepare for: facts that clients don't tell us. More than once I have had clients relate the facts of their case to me only to find out later the client may have "forgotten" to mention one or two things. And not just little things, but important facts that turn a winning case into a losing one. Now, it's not that these clients are lying (usually). They just didn't tell the whole truth.

It has always baffled me why many people feel compelled to hide "bad" facts from their own attorney. Maybe they are afraid if they disclose these facts the lawyer won't take the case. Or maybe they are just afraid the lawyer will look down on them. But whatever the reason, the result is the same: the lawyer cannot advise a client regarding facts he doesn't know.

Therefore, there is no reason to hide facts from your attorney. Attorney-client privilege means anything you tell your lawyer will stay with your lawyer – we are ethically bound to hold that information in the strictest confidence. Furthermore, most lawyers aren't interested in passing judgment. We just want to represent our clients to the best of our abilities, and most bad facts can be dealt with as long as we know about them in advance. So the next time you are in an attorney's office discussing a potential case, don't just tell the truth, tell the whole truth.

***Adam Looney**, Associate Attorney, joined The Strong Firm P.C. as in 2012. He graduated Summa Cum Laude from Pepperdine University School of Law in 2009 and was elected into the Order of the Coif. Adam started his career as a Litigation Associate at the law firm of Baker Botts L.L.P.*
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Dying Intestate

Wendy Lambie

By: Wendy Lambie

I have heard, and even said, the following: "You have a will even if you don't know it. The State of Texas wrote it for you." Texas law provides individuals the freedom to choose how their estate is distributed at death by executing a valid Last Will and Testament. When a person dies in Texas and they do not have a will, the Texas Probate Code establishes the formula for asset distribution.

Property in Texas, which is a community property state, is classified as either real property or personal property. Thus, a decedent's estate is broken down into separate real property, separate personal property, community real property and community personal property (assuming the decedent is a married person). Without a will Texas law then determines who your heirs are for each type of property.

Not surprisingly, the Texas Probate Code does not have a favorite niece or nephew. Distribution is determined by how closely an heir was related to the decedent with no consideration for the nature or quality of the relationship between the parties. Dying without a will risks the decedent's property not passing to those people the decedent would have liked. Just a few examples are: (1) a married couple who have children from previous relationships will not inherit all the assets of their spouse at death; (2) gifts given to children during life are not considered during intestate distribution; (3) a single person whose close friends are more like family would not inherit; (4) situations surrounding adopted children; (5) an illegitimate child cannot inherit from their father unless specific criteria are met; and (6) stepchildren do not inherit from stepparents, unless adopted.

One final consideration is that even if the Texas Probate Code distribution is acceptable, dying without a will can tie up assets for long periods of time. A proceeding is frequently required to determine the deceased person's heirs, and yet another proceeding could be necessary to appoint an administrator to settle the estate and transfer title. It is possible the court could require the administrator to post bond to insure their duties are performed responsibly. In addition to time and complexity, legal fees and court costs for intestate proceedings invariably cost more than those proceedings where the decedent had a will.

Bottom line is that dying without a will in Texas can frequently be costly, time consuming and cause unnecessary frustration for the loved ones left behind. Taking the time to create a simple Last Will and Testament, if properly drafted, can be an enormous benefit to those left behind.

***Wendy Lambie**, Associate Attorney, joined The Strong Firm, P.C. in 2013. Wendy received her Juris Doctorate from South Texas College of Law and is licensed to practice law in the State of Texas and in the United States Federal District Court for the Southern District of Texas. During her career, she has gained valuable experience with Houston area firms, focusing her practice on estate planning and probate. In addition, she has in-depth experience in oil and gas matters, with special emphasis on title issues.*
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Residential Construction Defects:
What all Homeowners Should Know

Kyla Wilder

By: Kyla Wilder

We are currently experiencing a construction boom in the residential and commercial sectors. This article focuses on the influx of residential construction defect litigation in Texas and provides a brief step-by-step approach for homeowners considering going after their builder for a defectively constructed residence.

First, it is important to note that a suit against a builder by a homeowner is not limited to the original homeowner. Subsequent purchasers have the right to sue the original builder so long as it has not been more than 10 years since the substantial completion of the original construction of the property.

In order to determine whether you are within the 10-year statutory period, obtain a copy of the Certificate of Compliance filed by the builder when the property was completed. Assuming you are within the requisite 10-year period to bring suit, a homeowner must follow several crucial steps before filing suit against the builder. Failure of a homeowner to follow these steps may result in an abatement of the proceeding, or worse, the suit being dismissed by a judge in its entirety.

Before a homeowner can sue a builder over a construction defect, the homeowner must give the builder notice of the defect and a reasonable opportunity to fix the issue as set forth in the Residential Construction Liability Act (RCLA) in the Texas Property Code.

Below is a summary of the steps a homeowner is required to follow in order to comply with the RCLA:

Step 1: Send a notice letter to the builder, preferably by certified mail and regular mail;
Step 2: Allow the builder to conduct an inspection, if requested by the builder;
Step 3: Receive a written offer to repair and/or repurchase property at fair market value from builder;
Step 4: Respond to the builder's reasonable offer to repair and/or repurchase property.

In short, a homeowner must first provide the builder with notice of the alleged defect, give the builder a reasonable opportunity to fix the issue, and, if the builder fails to address the issue within the reasonable period, a homeowner may then move forward with filing a suit against the builder for residential construction defects. For a more in-depth discussion of the requirements necessary to comply with the RCLA, please contact our office and we will be happy to discuss the process with you.

***Kyla Wilder**, Associate Attorney, joined The Strong Firm in 2013. A Texas native, she spent 8 years of her childhood living in Dubai. In 1999, Kyla's family relocated back to the U.S. in The Woodlands where she attended The John Cooper School. She received her undergraduate degree from Texas A&M University and earned her law degree from South Texas College of Law. During her 2nd summer of law school, she studied abroad at Charles University School of Law in Prague, Czech Republic.*
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Corporate Name v. Trademark

Brian Albert

By: Brian Albert

There are many valuable components of a business, but one of the more overlooked assets in a company is the name. Not all forms of business names are the same, though, and it is important to understand the difference between corporate names and trademarks.

A corporate name refers to the formal name chosen to register a business under with the state of incorporation (e.g. "Apple Auto Parts, Inc."). While Texas law provides that a desired corporate name cannot be the same as or deceptively similar to the name of another business already registered with the state, this prohibition on using the same or similar name for registered entities is only meant to allow for a company to be identified by a singularly used name amongst other businesses. Because corporate names are dictated by state law, which varies from state to state, the exclusivity in Texas only applies to other registered entities in Texas and may not be applicable in other states. Furthermore, many business owners incorrectly assume their corporate name registration entitles them to unlimited rights to that name, and, even worse, some business owners may erroneously rely on a corporate name as a basis for what amounts to trademark infringement.

Unlike corporate names, trademarks provide exclusive use to a word, logo, phrase, or design that the trademark owner uses to identify its goods/services and distinguish them from competitor's goods/services. Whereas corporate names simply give you the right to use a business name as a company designator, trademarks give you the right to stop others from using the name throughout the country (depending on the circumstances). Trademarks also are assets of the company, and they can be valued, licensed, or sold just like any other corporate asset.

While corporate names do provide a limited value to the company, it is important not to confuse these two classes of names. Just because your corporate name is "Apple Auto Parts, Inc." does not mean that you may advertise and sell a product called "Apple Radio" for use in automobiles. This would likely be trademark infringement, and it could cost you and your business. If you have a name worth protecting, do not rely on your corporate name alone. The Strong Firm P.C. understands the value in a name, and we can help you understand how to value yours.

***Brian Albert**, Associate Attorney, joined The Strong Firm P.C. in 2012. His areas of practice include oil and gas, commercial real estate, business law and contracts, and trademark law. He received his Juris Doctorate from the University of Houston Law Center and a B.S. in Business Administration with a specialty in Finance from American University in Washington, D.C. He has previously worked for Baker Hughes, Inc.'s and Hewlett-Packard's in-house legal departments.*
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The Strong Attorneys in Action

January, 2015

The Strong Firm obtained attorney's fee award of over $50 thousand for successfully defending professional limited liability company against claims that it had wrongfully terminated an independent contractor agreement.

The Strong Firm negotiated purchase and sale agreement for minority owners of $26 million shopping center.

The Strong Firm negotiated commercial lease on commercial office building in construction phase.

The Strong Firm represented developer in the sale of a 43 acre tract of property in East Montgomery County.

The Strong Firm negotiated and finalized a multi-year multi-million dollar master service agreement for oil & gas service company client.

The Strong Firm represented Texas based technology company in the negotiations of a three year distribution agreement with a U.K based distributer.

December, 2014

The Strong Firm represented a local health and fitness company in the merge with a global-based triathlon training business.

The Strong Firm assisted property owner client in negotiation and execution of deed in lieu of foreclosure process.

The Strong Firm performed legal assistance for multiple clients with small businesses by forming entities specifically structured for each client's unique set of needs.

The Strong Firm represented borrower in $5.4 million commercial mortgage backed security loan.

November, 2014

The Strong Firm represented a client before the Tenth Court of Appeals obtaining a reversal of trial court's ruling requiring the sale of a portion of client's property.

We provide legal services in all of the following areas:

- Business Law and Contracts
- Financing, Trademarks, and General Corporate
- Corporations, Partnerships, and LLCs
- Real Estate
- Commercial Litigation
- Wills, Probate, Trusts, and Estates
- Mergers, Sales, and Acquisitions of Businesses
- Oil, Gas, and Energy
- International Business Investment

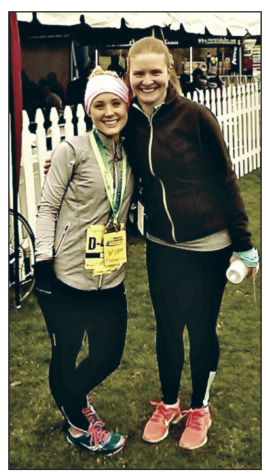
From left: **Adam Looney**, Associate Attorney; **Royce Lanning**, Associate Attorney; **Wendy Lambie**, Associate Attorney; **Bret L. Strong**, Attorney, Founder, and Managing Shareholder; **Eric R. Thiergood, Sr.**, Income Shareholder; **Kyla Wilder**, Associate Attorney; **Brian Albert**, Associate Attorney.

The Strong Attorneys in the Community

Left. The Strong Firm was a Silver sponsor of **The Woodlands Chamber's 29th Annual Economic Outlook Conference** entitled "Achieving The Vision: Our Hometown & Beyond" on Feb. 20. Pictured at the VIP event is Eric Thiergood (right) with guest Marc Berry of BOI Consulting.

Above. Junior League of the Woodlands collaborates with **Arrow Ministries** to host its 2nd **Boots n Bling Rodeo Kickoff** celebration to benefit youth victims of sex trafficking. Shown here is Kyla Wilder, member of Junior League of The Woodlands.

Right. Kyla Wilder volunteered with **Education for Tomorrow Alliance's (EfTA)** Mock Interview Day held at York Junior High School. Volunteers conducted practice interviews with middle school students and offered guidance and suggestions for future interviews.



Left. During **The Woodlands Marathon** on Feb. 28, we finished strong in the half marathon and 5K, and served as a VIP sponsor. Pictured is Legal Assistant Beth Kovacs (left) with running buddy Pamela Clift.

Below.The Strong Firm's VIP hospitality tent was prepared the night before the big race.