Sovereign debt and holdout disruption

A good faith and relational contract approach

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Conclusion

Sovereign debt contracts are relational contracts. The central question of this thesis was answered in the affirmative at Chapter 4 of this thesis. The duty of good faith is: implied by law in relational contracts under English law; implied by law in all contracts, including relational contracts, under the common law applicable in New York; and implied by law in all contracts to which the Uniform Commercial Code (UCC) of New York applies. This question of the application of the duty of good faith both generally and in the context of relational contracts under English and New York laws was thus affirmatively answered in Chapter 5 of this thesis. These affirmative answers laid the foundation for the completion of the enterprise of this thesis, to wit, explore how the duty of good faith, implied in relational contracts, may help combat the problem of holdout disruption of sovereign debt restructuring which was discussed in sub-Chapters 1.4 and 1.5, and Chapter 2 of this thesis.

In the sovereign debt and holdout disruption context, the contents of the duty of good faith as applied in English and New York law jurisprudence, show that holdout disruption violates the duty of good faith because it: is an objectively unreasonable action which undermines the contractual bargain thus depriving the sovereign debtor of the benefits of the contract; violates the objectively determined purpose of the sovereign debt contract to which purpose the duty of good faith requires parties fidelity; is manifestly against the course of reasonable commercial standards in the course of trade of sovereign debt which unequivocally affirms cooperative restructuring of sovereign debt as fundamental trade custom; and violates the obligation to negotiate in good faith which is required by the duty of good faith. Chapter 6 of this thesis discussed these contents of the duty of good faith showcasing, in each case how holdout disruption violates all of these contents of the duty of good faith as recognized and enforced in English law and New York law jurisprudence.

The potential usefulness of the duty of good faith in the context of sovereign debt and holdout disruption in practice was explored in Chapter 7 of this thesis. In three major practical contexts: good faith between the sovereign debtor and creditor as contract counterparties; good faith among sovereign creditors themselves; and good faith in the transfer/assignment of sovereign debts, this thesis demonstrate that the duty of good faith could be a very effective tool in helping combat holdout disruption in these variegated scenarios. Practically every case of holdout disruption is arguably liable to be caught as a violation of the duty of good faith in at least one of these three contexts. The discussion on the potential usefulness of the duty of good faith in Chapter 7 of this thesis was enhanced by analysis of select case law precedents which demonstrated that it is plausible to combat holdout disruption by invoking the duty of good faith and showcasing how holdout disruption violate that duty of good faith particularly by demonstrating how the contents of the duty of good faith as discussed in Chapter 6 of this thesis are violated in each such illustrative case. Although the duty of good faith has never been invoked against a holdout under English and New York law (and in fact the only time it was invoked was by a holdout against another creditor), the demonstration of the contents of the duty of good faith in Chapter 6 and the various contexts of their application as well as case law discussions in

in Chapter 7 of this thesis all showcase that the duty of good faith could be a viable answer to holdout disruption under both English and New York law courts.

As this thesis adumbrated at sub-Chapter 5.3, although the duty of good faith discussed in this thesis is focused on English and New York laws, the doctrine of the duty of good faith could also be a helpful doctrine in combating holdout disruption in Continental European jurisdictions, since the duty of good faith in these jurisdictions is even more developed with a much broader scope than obtains under English and New York laws. The duty of good faith and the relational contract approach are therefore arguably viable tools in combating holdout disruption, not only under English and New York law, but also under the civil law jurisdictions of Continental Europe.

What then is the role of the relational contract approach in the enterprise of this thesis? First, under English law, the duty of good faith applies only to certain categories of contracts, one of which is relational contracts. Hence, under English law the relational contract approach becomes of critical importance in the sense that, unless sovereign debts are relational contracts, the duty of good faith may not apply and whatever help the duty of good faith may render in combating holdout disruption would not be available against holdouts under English law. With sovereign debt as relational contracts, on the other hand, English law's application of the duty of good faith comes in as a potentially very effective tool against holdout disruption as English courts interpreting the obligation imposed on contract parties by the duty of good faith have established significant case law precedents that decidedly disapprove of the species of conduct typical of holdout disruption amongst contract parties bound by the duty of good faith. Further, even as English law implies the duty of good faith in relational contracts, what the law requires of the parties pursuant to the implied duty of good faith is still sensitive to context. The relational contract approach also makes an important contribution to English law in the context of sovereign debt and holdout disruption, because (as discussed in Chapter 4 of this thesis), it showcases the characters of sovereign debt as a relational contract and the nature of good faith conduct objectively expected of the parties in the context of the relationship-based nature of the sovereign debt contract.

Secondly, under New York law, while the duty of good faith is implied by the UCC, the statute does not say what are the objectively determinate contractual intentions and reasonable expectations of the parties, from which the nature of good faith conduct may be deciphered and applied. This, as discussed in sub-Chapter 6.6, has led academic writers and judges alike to describe the duty of good faith under New York law as not amendable to a precise definition or otherwise easy to understand. But as sub-Chapter 3.3 of this thesis demonstrated, New York law recognizes and enforces relational contracts, including with its fundamental attribute of relationship-based cooperation in performance and enforcement. Thus, the relational contract approach serves as a good complement to both the common law and the statutory application of the duty of good faith under New York law, in the sense that the nature of the good faith conduct required of the parties under New York law, which is not supplied by either the common law or statutory application of the duty of good faith would be supplied by the relational contract approach. In the sovereign debt context, the cooperative negotiation in good faith required of the parties in sovereign debt restructuring and the underlying relationship-based nature of

sovereign debt as a relational contract would provide important inputs in the analysis of the nature of the good faith conduct required of parties to sovereign debt contracts and whether such duty is violated under New York law.

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Summary

Sovereign debt, which, as used in this thesis, refers to private commercial debt, as opposed to official bilateral or multilateral debt, continues to be a critical source of infrastructure, social, and other forms of development as well as budget financing for most countries. As developing countries across the world strain under increasingly unsustainable debt and seek multilateral rescue programs, including, for some, a restructuring of their sovereign debt, the problem of disruption of sovereign debt restructuring by holdout creditors who refuse to submit their debt stock to a common restructuring arrangement (simply, holdout disruption) begs solutions. Successful restructuring of sovereign debt to bring the sovereign debtor back to debt sustainability is imperative to ensure that debtor countries return to debt sustainability without severe impact on lives, livelihoods, and socio-economic cohesion in the debtor country, while allowing for creditors to salvage as much value as is possible in the circumstances their imperiled credit.

Creditor coordination is key to successful sovereign debt restructuring; and a refusal of one or more of the creditors to participate in the process poses potential dangers to the restructuring exercise, especially if such creditors decide to take judicial actions in domestic courts to obtain full payment of their debt outside of the restructuring framework or outrightly upend the restructuring exercise. If holdout disruption is not adequately tackled, the result could range from disorderly debt defaults with a myriad of negative consequences for the political economy of the sovereign debtor to regional and global economic contagion and market dysfunction. Most stakeholders (including creditors) in international finance agree that holdout disruption has a deleterious effect on international capital market and financial systems, and thus needs a viable panacea.

How best to ensure creditor coordination, combat holdout disruption, and avoid a demonstrably value-diminishing race to the bottom among creditors has occupied academic, juridical, and policy discourse in international finance for a long time. Several proposals that called for a variety of public international law-based mechanisms (the so-called “statutory approach”) stipulating and enforcing modalities for creditor coordination have been made, but none has so far been adopted, mainly, it would seem, because of strong opposition from the capital market which views these proposals as limiting free market function and potential infractions on contractual rights. Contractual clauses have rather been developed by a coordinated effort of both market and policy makers to help engender greater creditor coordination and limit the potential for holdout disruption. These contractual clauses have received the backing of practically all stakeholders in international finance, as preferred tool of choice in combating holdout disruption. The statutory approach having fallen into apparent disfavor, contractual clauses are seen as the only viable solution to holdout disruption, because as typically argued, the rights of the holdouts flow from the sovereign debt contracts, and one must find the remedy to holdout disruption within (not external from) the sovereign debt contract itself. In fact, even when the concern is expressed that the use of contractual clauses alone could prove ineffective in the battle against holdout disruption, there seem to be little more (besides occasional muted

resuscitation of the debate on a statutory approach) than hand wringing offered across the broad spectrum of international finance.

Contractual clauses, while demonstrably useful in engendering creditor coordination, still fall short of needed viability in combating holdout disruption. Recent renewed attempts at using domestic legislations in the United Kingdom and the State of New York to combat holdout disruption point to continued worry about the shortcomings of contractual clauses as tools of combat against holdout disruption, which concern have also been variously raised in both academic and policy discussions on sovereign debt restructuring. But the fallibility of contractual clauses ought not present a no-hope situation, because recourse may be had to domestic legal systems where solutions distilled from applicable law, particularly contract law, could be possible.

The option to rely on local courts may seem rather forlorn, given that judicial precedents from New York courts (the dominant seat of adjudication on sovereign debt) point to strict enforcement of contractual rights of holdouts and rejection of several defenses that have been proffered against the holdouts. The thesis, therefore, charts a hitherto unexplored approach to understanding sovereign debt contracts, which could provide a legal basis for combating holdout disruption through local courts: i.e., sovereign debt contracts as relational contracts. The approach to combating holdout disruption as presented in the thesis involves neither a statutory intervention (which is unlikely to happen at the international level, given the apparent disfavor met by the statutory approach) nor a retooling of contractual clauses themselves, but rather seeks answers to the problem of holdout disruption by exploring a contract law theory of sovereign debt, i.e., whether sovereign debts are relational contracts, and the legal implications of such a relational character. This enquiry is based on English and New York laws – a necessary choice because first, most sovereign debt contracts are contracted under either English or New York law, and secondly, most holdout disruption litigation is undertaken in the courts of New York, with enforcement typically sought in New York or other United States courts, English courts, and sometimes in the courts of Continental Europe.

Relational contracts are, the thesis shows, a recognized category of contract under both English and New York laws. And relational contracts, case law demonstrates, carry with them incidental duties of good faith under English law (which does not yet recognize a general duty of good faith). Under New York law, the duty of good faith is already implied in all contracts. If sovereign debts are relational contracts under English law, they would then carry with them incidental duties of good faith. And if sovereign debts are relational contracts under New York law, they would continue to benefit not only from the duty of good faith which is already implied in all contracts under New York law, but also from an enhanced understanding of the nature of good faith conduct required of parties to a sovereign debt contract as a relational contract, given the particularly context and circumstances-dependent nature of good faith duties under New York law. The concept of a relational contract and how relational contracts are recognized and enforced under English and New York laws, as well as the question whether sovereign debts are relational contracts, are tackled in the thesis from both English and New York law perspectives as well as from both academic and practical perspectives, identifying and discussing the

characters of sovereign debt contracts against the backdrop of relational contracts as recognized and enforced in these jurisdictions.

The enquiry whether sovereign debts are relational contracts probes the characters of sovereign debt in its most typical forms (i.e., bank loans and bonds), examining its characters against the judicially recognized tests for relational contracts under English and New York laws (summarized in the thesis as relationship-based and relationship-driven), including the so-called *Alan Bates* test for English law purposes. Once concluded that sovereign debt contracts are relational contracts, the thesis examines holdout disruption in the light of the law in these jurisdictions by taking into account the several elements and requirements of the duty of good faith under both English and New York laws, drawing from applicable statutory and case laws and the most authoritative academic treatises. The thesis considers the duty of good faith in respect of three relational scenarios - counterparty, intercreditor, and assignment of sovereign debt obligations. For each, it explores where these duties exist, what they require of parties to sovereign debt contracts, and how holdout disruption may be violative of the good faith conduct required in each case.

Relational contract theory is relatively young in both academic and judicial usage, but it has recently been elevated particularly in judicial pronouncements under both English and New York laws but more under English law. The thesis further elevates and sharpens the discussion, particularly in the context of New York law where its impact in contract law jurisprudence is not yet commonly acknowledged or possibly even properly understood. While the duty of good faith is already implied in all contracts under New York law, a relational contract approach brings important implications to light in the interpretation and enforcement of sovereign debts as relational contracts.

What emerges from the enquiry is that the relational contract approach with its incidental or inherent duty of good faith as implied by law in certain categories of contracts, including relational contracts, under English law, and as implied in all contracts under New York law, can be viable tools in combating holdout disruption.

The analysis in chapter 7 of the thesis strongly suggests that the relational contract and good faith approach could have been successfully invoked against holdouts in precedent cases where holdouts upended attempts at sovereign debt restructuring; and the case is even stronger that it could fare better as a viable tool against holdout disruption in the future, given the increasing recognition of the attributes and incidents of relational contracts under both English and New York laws. Importantly also, I suggest that sovereign debtors would be able to enforce against holdouts not only counterparty but also intercreditor duties of good faith pursuant to the third party beneficiary doctrine under New York law and as an intended beneficiary pursuant to the Contracts (Rights of Third Parties) Act of 1999 under English law.

Although the main enterprise of the thesis is based on English and New York laws, brief comments are also made on a potential application of the duty of good faith in Continental European jurisdictions as a plausibly even more potent doctrine in combating holdout disruption,

based on how the duty is interpreted and applied in these jurisdictions. Therefore, solutions to holdout disruption distilled from the relational contract and good faith approach in the thesis are even more potentially viable instruments in the civil law jurisdictions of Continental Europe.

Samenvatting

Staatsschuld, waarmee in dit proefschrift particuliere commerciële schuld wordt bedoeld in tegenstelling tot officiële bilaterale of multilaterale schuld, blijft voor de meeste landen een kritieke bron van infrastructuur, sociale en andere vormen van ontwikkeling en begrotingsfinanciering. Terwijl ontwikkelingslanden over de hele wereld gebukt gaan onder een schuld die steeds onhoudbaarder wordt en multilaterale reddingsprogramma's aanvragen, waaronder voor sommige landen een herstructurering van hun staatsschuld, vraagt het probleem van de verstoring van de herstructurering van staatsschulden door schuldeisers die weigeren hun schuldvoorraad te onderwerpen aan een gemeenschappelijke herstructureringsregeling (eenvoudigweg "verstoring door hold-outs" genoemd) om oplossingen. Een succesvolle herstructurering van staatsschulden om de houdbaarheid van de schuldenlast te herstellen is noodzakelijk om ervoor te zorgen dat schuldenlanden terugkeren naar een houdbare schuldenlast zonder ernstige gevolgen voor levens, bestaansmiddelen en sociaaleconomische cohesie in het schuldenland, terwijl schuldeisers zoveel mogelijk waarde kunnen redden in de omstandigheden van hun bedreigde krediet.

Coördinatie van schuldeisers is de sleutel tot een succesvolle herstructurering van staatsschulden; en een weigering van een of meer schuldeisers om deel te nemen aan het proces vormt een potentieel gevaar voor de herstructurering, vooral als deze schuldeisers besluiten om gerechtelijke stappen te ondernemen bij binnenlandse rechtbanken om volledige betaling van hun schuld te verkrijgen buiten het herstructureringskader om of de herstructurering volledig in de war sturen. Als de verstoring door hold-outs niet adequaat wordt aangepakt, kan het resultaat variëren van wanordelijke wanbetalingen met een groot aantal negatieve gevolgen voor de politieke economie van de soevereine debiteur tot regionale en wereldwijde economische besmetting en marktdisfunctie. De meeste belanghebbenden (inclusief schuldeisers) in de internationale financiële wereld zijn het erover eens dat de verstoring van hold-outs een schadelijk effect heeft op de internationale kapitaalmarkt en financiële systemen, en dat er dus een haalbaar panacee nodig is.

Hoe schuldeisers het best kunnen worden gecoördineerd, hoe de verstoring van hold-outs kan worden bestreden en hoe een aantoonbaar waardeverminderende race naar de bodem onder schuldeisers kan worden vermeden, houdt het academische, juridische en beleidsdiscours in de internationale financiële wereld al lange tijd bezig. Er zijn verschillende voorstellen gedaan die opriepen tot een verscheidenheid aan op het internationaal publiekrecht gebaseerde mechanismen (de zogenaamde "wettelijke aanpak") die de modaliteiten voor de coördinatie van schuldeisers vastleggen en afdwingen, maar tot nu toe is er nog geen enkele aangenomen, voornamelijk, zo lijkt het, vanwege de sterke weerstand van de kapitaalmarkt die deze voorstellen ziet als een beperking van de vrije marktwerking en een mogelijke schending van contractuele rechten. In plaats daarvan zijn er contractuele clausules ontwikkeld door een gecoördineerde inspanning van zowel markt- als beleidsmakers om een betere coördinatie tussen crediteuren te bewerkstelligen en de kans op verstoring door hold-outs te beperken. Deze contractuele clausules hebben de steun gekregen van vrijwel alle belanghebbenden in de internationale financiële wereld, als het instrument bij uitstek om verstoring door hold-outs

tegen te gaan. Nu de wettelijke aanpak duidelijk in ongenade is gevallen, worden contractuele clausules gezien als de enige haalbare oplossing voor verstoring door hold-outs, omdat, zoals typisch wordt aangevoerd, de rechten van de hold-outs voortvloeien uit de contracten voor staatsschuld en men de remedie voor verstoring door hold-outs moet zoeken binnen (en niet buiten) het contract voor staatsschuld zelf. Zelfs wanneer de bezorgdheid wordt geuit dat het gebruik van contractuele clausules alleen ineffectief zou kunnen blijken in de strijd tegen verstoring door hold-outs, lijkt er in feite weinig meer te gebeuren (behalve af en toe een gedempte reanimatie van het debat over een wettelijke aanpak) dan handenwringen in het brede spectrum van de internationale financiële wereld.

Contractuele clausules zijn weliswaar aantoonbaar nuttig om de coördinatie tussen schuldeisers te bevorderen, maar zijn nog steeds niet levensvatbaar genoeg om de verstoring van hold-outs tegen te gaan. Recente hernieuwde pogingen om binnenlandse wetgeving in het Verenigd Koninkrijk en de staat New York te gebruiken om ontwrichting van hold-outs tegen te gaan, wijzen op aanhoudende bezorgdheid over de tekortkomingen van contractuele clausules als instrumenten om ontwrichting van hold-outs tegen te gaan. Maar de feilbaarheid van contractuele clausules hoeft geen uitzichtloze situatie te zijn, omdat er een beroep kan worden gedaan op nationale rechtssystemen waar oplossingen kunnen worden gedistilleerd uit het toepasselijke recht, met name het verbintenissenrecht.

De optie om te vertrouwen op lokale rechtbanken kan nogal hopeloos lijken, gezien het feit dat gerechtelijke precedenten van rechtbanken in New York (de dominante plaats van rechtspraak over staatsschulden) wijzen op strikte handhaving van contractuele rechten van holdouts en verwerping van verschillende verdedigingen die tegen de holdouts zijn ingebracht. Deze dissertatie schetst daarom een tot nu toe onontdekte benadering om overheidsschuldcontracten te begrijpen, die een rechtsgrondslag zou kunnen bieden om de verstoring van holdouts door lokale rechtbanken te bestrijden: d.w.z. overheidsschuldcontracten als relationele contracten. De in dit proefschrift gepresenteerde benadering van het tegengaan van "holdout" verstoring impliceert noch een wettelijke interventie (die op internationaal niveau waarschijnlijk niet zal plaatsvinden, gezien de kennelijke afkeer van de wettelijke benadering), noch een aanpassing van de contractuele bepalingen zelf, maar zoekt eerder naar antwoorden op het probleem van "holdout" verstoring door het onderzoeken van een verbintenisrechtelijke theorie van staatsschulden, d.w.z. of staatsschulden relationele contracten zijn, en de juridische implicaties van een dergelijk relationeel karakter. Dit onderzoek is gebaseerd op Engels en New Yorks recht - een noodzakelijke keuze omdat ten eerste de meeste contracten voor staatsschulden worden afgesloten onder Engels of New Yorks recht, en ten tweede de meeste rechtszaken over verstoring van de greep van staatsschulden worden gevoerd in de rechtbanken van New York, waarbij de tenuitvoerlegging meestal wordt gezocht in de rechtbanken van New York of andere Amerikaanse rechtbanken, Engelse rechtbanken, en soms in de rechtbanken van continentaal Europa.

Relationele contracten zijn, zo toont het proefschrift aan, een erkende contractcategorie onder zowel het Engelse als het New Yorkse recht. En relationele contracten, zo blijkt uit de jurisprudentie, brengen onder Engels recht (dat nog geen algemene plicht tot goede trouw

erkent) incidentele plichten tot goede trouw met zich mee. Naar New Yorks recht is de plicht van goede trouw al impliciet aanwezig in alle contracten. Als soevereine schulden relationele contracten zijn naar Engels recht, dan zouden ze incidentele plichten van goede trouw met zich meebrengen. En als soevereine schulden relationele contracten zijn naar New Yorks recht, dan zouden ze niet alleen blijven profiteren van de plicht van goede trouw die naar New Yorks recht al in alle contracten besloten ligt, maar ook van een beter begrip van de aard van het gedrag te goeder trouw dat van partijen bij een soeverein schuldcontract als een relationeel contract vereist is, gezien de bijzonder context- en omstandighedenafhankelijke aard van de plichten van goede trouw naar New Yorks recht. Het concept van een relationeel contract en hoe relationele contracten worden erkend en gehandhaafd onder Engels en New Yorks recht, evenals de vraag of overheidsschulden relationele contracten zijn, worden in deze dissertatie behandeld vanuit zowel Engels als New Yorks recht en vanuit zowel academisch als praktisch perspectief, waarbij de kenmerken van overheidsschuldcontracten worden geïdentificeerd en besproken tegen de achtergrond van relationele contracten zoals erkend en gehandhaafd in deze rechtsgebieden.

Het onderzoek naar de vraag of staatsschulden relationele contracten zijn, onderzoekt de kenmerken van staatsschulden in hun meest typische vormen (d.w.z. bankleningen en obligaties), waarbij de kenmerken worden getoetst aan de door de rechter erkende toetsen voor relationele contracten onder Engels en New Yorks recht (in het proefschrift samengevat als 'relationship-based' en 'relationship-driven'), inclusief de zogenaamde Alan Bates-toets voor Engels recht. Eenmaal geconcludeerd dat overheidsschuldcontracten relationele contracten zijn, onderzoekt de scriptie de verstoring door hold-out in het licht van het recht in deze rechtsgebieden door rekening te houden met de verschillende elementen en vereisten van de plicht tot goede trouw onder zowel Engels als New Yorks recht, waarbij gebruik wordt gemaakt van toepasselijke wettelijke bepalingen en jurisprudentie en de meest gezaghebbende academische verhandelingen. Het proefschrift beschouwt de plicht tot goede trouw met betrekking tot drie relationele scenario's - tegenpartij, intercrediteur en cessie van overheidsschuldverplichtingen. Voor elk van deze scenario's wordt onderzocht waar deze plichten bestaan, wat ze vereisen van partijen bij soevereine schuldcontracten en hoe een verstoring van de "holdout" in strijd kan zijn met het in elk van deze gevallen vereiste gedrag te goeder trouw.

De relationele contracttheorie is relatief jong in zowel academisch als gerechtelijk gebruik, maar heeft recentelijk een hoge vlucht genomen in gerechtelijke uitspraken onder zowel Engels als New Yorks recht, maar meer onder Engels recht. Het proefschrift verheft en verscherpt de discussie verder, met name in de context van het recht van New York, waar de invloed ervan in de jurisprudentie over contractenrecht nog niet algemeen wordt erkend of mogelijk zelfs niet goed wordt begrepen. Hoewel de plicht tot goede trouw al impliciet aanwezig is in alle contracten naar New Yorks recht, brengt een relationele contractbenadering belangrijke implicaties aan het licht voor de interpretatie en handhaving van overheidsschulden als relationele contracten.

Wat uit het onderzoek naar voren komt, is dat de benadering van het relationele contract met zijn incidentele of inherente plicht tot goede trouw, zoals wettelijk geïmpliceerd in bepaalde categorieën contracten, waaronder relationele contracten, naar Engels recht, en zoals

geïmpliceerd in alle contracten naar New Yorks recht, uitvoerbare instrumenten kunnen zijn in de strijd tegen verstoring door hold-outs.

De analyse in hoofdstuk 7 van dit proefschrift suggereert sterk dat de benadering van relationele contracten en goede trouw met succes kon worden ingeroepen tegen hold-outs in eerdere zaken waarin hold-outs pogingen tot herstructurering van staatsschulden in de war stuurden; en de argumenten zijn nog sterker dat het in de toekomst beter zou kunnen gaan als een levensvatbaar instrument tegen verstoring door hold-outs, gezien de toenemende erkenning van de kenmerken en incidenten van relationele contracten onder zowel Engels recht als het recht van New York. Belangrijk is ook dat ik suggereer dat soevereine debiteuren tegen holdouts niet alleen de plicht van tegenpartij maar ook de plicht van intercrediteur tot goede trouw zouden kunnen afdwingen krachtens de doctrine van derdebegunstigde krachtens het New Yorkse recht en als beoogde begunstigde krachtens de Contracts (Rights of Third Parties) Act van 1999 krachtens het Engelse recht.

Hoewel het grootste deel van het proefschrift gebaseerd is op het Engelse en New Yorkse recht, worden er ook korte opmerkingen gemaakt over een mogelijke toepassing van de plicht tot goede trouw in continentale Europese jurisdicties als een aannemelijk nog krachtiger doctrine in het bestrijden van verstoring door hold-out, op basis van hoe de plicht in deze jurisdicties wordt geïnterpreteerd en toegepast. Daarom zijn oplossingen voor onderbreking van een holdout die gedistilleerd worden uit de relationele contract- en te goeder trouwbenadering in dit proefschrift, potentieel zelfs meer bruikbare instrumenten in de civielrechtelijke jurisdicties van continentaal Europa.

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