United Rentals v. RAM Holdings as Transplant Failure: Strategic Ambiguity, Good Faith and the Forthright Negotiator Principle in US Contract Law

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Abstract

In United Rentals Inc. v. RAM Holdings and RAM Acquisition Corp, the Chancery Court of Delaware interpreted an “ambiguous” clause in a merger agreement by reference to the defendant’s subjective interpretation of it, which interpretation had been communicated to, and not disavowed by, the plaintiff in the pre-contract negotiations. The Court grounded its decision in the “forthright negotiator principle”, an offspring of the Continental good faith doctrine, crystallized at Section 201 (2) of the Restatement (Second) of Contracts. I criticize the Court’s ruling on the basis that it proceeded from the conflation two unconflatable contractual paradigms—the English (“internal”) and the French (“external”)—thus yielding an incoherent, and altogether unfair, conclusion. The two paradigms are developed in Parts I and II, which briefly survey and contrast various counterpart doctrines of English and French contract law (contractual interpretation, judicial/scholarly justifications for the authority of contracts, consideration/ causa, offer and acceptance, remedies/sanctions de l’inexécution, unilateral mistake, and Equity/ équité). Part III then describes the court’s failed attempt at conflating these paradigms in United Rentals and the misfit, in particular, of the “forthright negotiator principle” in situations of strategic ambiguity. It is argued that, in contrast, consistent adherence to the English paradigm alone would have been more fair and would have, in fact, better aligned with the letter and spirit of the Restatement (Second) properly construed. At a more general level, the paper also aims to contribute to the Anglo-American debate on the objective/subjective theory of contract.