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## Legislative Update

BY LUKE A. BAREFOOT AND RICHARD C. MINOTT<sup>1</sup>

### The Choice-of-Law Tension Between New York's UVTA and GOL



**Coordinating Editor  
Luke A. Barefoot**  
Cleary Gottlieb Steen  
& Hamilton LLP  
New York



**Richard C. Minott**  
Cleary Gottlieb Steen  
& Hamilton LLP  
New York

Choice-of-law provisions are a standard feature of contract agreements among sophisticated parties, particularly in cross-border transactions, as they serve the purpose of reducing legal uncertainty around what laws should apply to disputes that may arise. In examining market trends, one study of Securities and Exchange Commission filings by public companies found that almost half of these contracts selected New York law as the governing law, and another study found that New York and English law were the preferred choices of law for international agreements.<sup>2</sup>

This result should come as no surprise to practitioners, given New York's longstanding commitment to preserving and giving effect to the negotiated bargain among private parties. This includes the established and predictable body of precedent the New York courts presiding over commercial disputes have established over the centuries.<sup>3</sup> It raises the question of what happens when these core tenets of promoting private agreements clashes with statutory choice-of-law changes. This tension manifests when comparing the new rigid choice-of-law dictates of the New York Uniform Voidable Transactions Act (NY-UVTA) with the more permissive choice-of-law provisions under the New York General Obligations Law (NY GOL).

#### New York Uniform Voidable Transactions Act

The NY-UVTA (which reflects the 2014 revisions to the Uniform Voidable Transactions Act) was enacted in 2020 with the overarching goal of strengthening creditor protections by providing remedies for transactions that are prejudicial to the debtor's creditors.<sup>4</sup> Section 279(b) of the NY-UVTA features a governing law provision, which states, in relevant part:

A claim for relief in the nature of a claim for relief under this article is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made, or the obligation is incurred.<sup>5</sup>

The official comments to the model Uniform Voidable Transactions Act explain that the governing-law provision is intended to provide "a simple and predictable choice-of-law rule applicable to claims for relief of the nature governed by the Act," and is based on "the priority of a security interest in an intangible property [being] generally governed by the local law of the jurisdiction in which the debtor is located."<sup>6</sup> As written, the NY-UVTA governing law provision arguably eliminates the ability of parties to agree to apply the laws of a jurisdiction other than the "local law of the jurisdiction in which the debtor is located" at the time of the alleged voidable transaction.

In addition, this language could be read to disregard any choice-of-law agreements that might have been made (or could be made) by the par-

Luke Barefoot is a partner, and Richard Minott is an associate, with Cleary Gottlieb Steen & Hamilton LLP in New York.

1 The authors thank associate Timothy Wolfe for his contributions to this article.  
2 See Theodore Eisenberg & Geoffrey P. Miller, "The Flight to New York: An Empirical Study of Choice of Law and Choice of Forum Clauses in Publicly Held Companies' Contracts," 30 *Cardozo L. Rev.* 1475 (2009), [scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1203&context=facpub](http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1203&context=facpub); see also Gilles Cuniberti, "The International Market for Contracts: The Most Attractive Contract Laws," 34 *N.J. Int'l & Bus.* 455, 516 (2014), [scholarlycommons.law.northwestern.edu/njilb/vol34/iss3](http://scholarlycommons.law.northwestern.edu/njilb/vol34/iss3) (unless otherwise specified, all links in this article were last visited on Jan. 22, 2026).  
3 See Boaz S. Morag & Katie L. Gonzalez, "New York as the Preferred Law and Forum for Commercial Disputes," Thomson Reuters Practical Law, pp. 2, 7, [uk.practicallaw.thomsonreuters.com/w-019-0417](http://uk.practicallaw.thomsonreuters.com/w-019-0417) ("New York is internationally recognized as a pre-eminent commercial and financial center with a settled body of laws and a well-respected and experienced judiciary.") (subscription required to view article).

4 See "Description, Voidable Transactions Act," Unif. Law Comm'n, [uniformlaws.org/committees/community-home?communitykey=64ee1c-cc-a3ae-4a5e-a18f-a5ba8206bf49](http://uniformlaws.org/committees/community-home?communitykey=64ee1c-cc-a3ae-4a5e-a18f-a5ba8206bf49).

5 Art. 10, Unif. Voidable Transactions Act, § 279(b) (emphasis added).

6 *Id.* at Official Comment at 1.

ties in relation to disputes that arise among them, thereby undermining the very predictability objectives that the NY-UVTA's governing law provision was intended to achieve. This being said, neither the legislature in enacting the NY-UVTA nor New York courts appear to have addressed the apparent direct conflict this creates with the longstanding NY GOL.

## New York General Obligations

Enacted in 1984, the NY GOL affords contracting parties considerable freedom to choose New York courts as their forum and New York law as their substantive and procedural governing law, regardless of the parties' affiliation with New York or the state's connection to the dispute. Section 5-1401 of the NY GOL provides, in part:

*The parties to any contract, agreement or undertaking, contingent or otherwise, in consideration of, or relating to any obligation arising out of a transaction covering in the aggregate not less than two hundred fifty thousand dollars, including a transaction otherwise covered by subsection (a) of section 1-301 of the Uniform Commercial Code, may agree that the law of this state shall govern their rights and duties in whole or in part, whether or not such contract, agreement or undertaking bears a reasonable relation to this state. This section shall not apply to any contract, agreement or undertaking (a) for labor or personal services, (b) relating to any transaction for personal, family or household services, or (c) to the extent provided to the contrary in subsection (c) of section 1-301 of the uniform commercial code.*<sup>7</sup>

As long as the conditions of § 5-1401 are met, contracting parties (irrespective of their location or ties to New York) have long had the freedom to agree to apply New York law to their disputes. This flexibility has long attracted sophisticated parties to select New York law as the governing law in their agreements. The practical effect of the NY GOL's permissive choice-of-law allowance is that it "encourage[s] companies with no other connection to New York to select that state's law to govern their agreement, without any concern that the choice-of-law clause would be invalidated for the lack of any 'substantial relationship' to New York."<sup>8</sup> Relatedly, the legislative intent behind the enactment of § 5-1401 of the NY GOL was to "divert legal business" to New York, so much so that several other states followed suit with similar statutes.<sup>9</sup>

The objectives of the NY-UVTA's stringent governing law requirements and the permissive NY GOL governing law provisions appear to be at odds as they relate to disputes arising under the NY-UVTA involving non-New York-domiciled debtors. For example, what if a Dutch debtor entered into an indenture with a New York indenture trustee, which required that New York be the forum and govern-

ing law for any disputes arising under or in connection with the indenture?

In any other context, the NY GOL should arguably dictate that the New York courts honor the parties' mutual agreement to apply New York's substantive and procedural laws in resolving the dispute at hand. However, in the context of the NY-UVTA, this freedom of contracting and New York's overarching goal of upholding private agreements seems to be effectively nullified because the NY-UVTA would dictate that Dutch law must apply — regardless of the parties' agreement. While no courts have addressed this apparent conflict, the *Frontier* case in 2023 illuminated the tension between these statutes.

## The Frontier Decision

In *Frontier Airlines Inc. v. AMCK Aviation Holdings Ireland Ltd.*,<sup>10</sup> Frontier was a party to several sale and lease-back arrangements with a foreign leasing counterparty, AMCK Aviation Holdings Ireland Ltd., and certain affiliates. Frontier filed a \$50 million lawsuit against AMCK Holdings, certain of its affiliates and other counterparties, alleging that the defendants engaged in a series of transactions to deplete the assets of AMCK Holdings so it would not be able to satisfy its obligations to Frontier.<sup>11</sup>

Specifically, the complaint alleged that AMCK Holdings entered into an agreement with Carlyle Aviation Management Ltd. to sell its aviation assets such that "it would be left with insufficient assets to satisfy AMCK Holding's liabilities to Frontier, including [the pending action]."<sup>12</sup> The Carlyle transactions involved AMCK Holdings' transfer of 98 percent of its assets to an affiliate, Manchester Aviation Finance s.a.r.l., and subsequently relinquishing its full ownership of that affiliate to another affiliate, Vermillion Holdings.

Shortly thereafter, Vermillion Holdings transferred Manchester to Carlyle, and AMCK Holdings transferred Vermillion and several other assets to Carlyle. Following the Carlyle transactions, Frontier alleged that AMCK Holdings was left with less than \$10 million in assets.<sup>13</sup> Frontier also asserted that it was entitled to advance notice of these transactions, and because it did not receive notice, AMCK Holdings breached the parties' agreements.

The complaint alleged that the Carlyle transactions constituted a fraudulent conveyance under NY-UVTA, as the defendants "raided AMCK Holdings of its assets without fair consideration and to the detriment of Frontier."<sup>14</sup> The defendants moved to dismiss the fraudulent-conveyance claims on the grounds that the complaint (1) incorrectly applied New York fraudulent-transfer law based on the choice-of-law requirements imposed by the NY-UVTA, and (2) failed to adequately plead a NY-UVTA claim under Irish law, with which the U.S. District Court for the Southern District of New York agreed, based on its assessment of the choice-of-law provisions under the statute.<sup>15</sup> In his decision, Hon. Paul

7 "General Obligations," Ch. 24-A, Art. 5, Title 14, "Enforceability of Clauses Respecting Choice of Law and Choice of Forum in Certain Transactions" (emphasis added).

8 John F. Coyle, "A Short History of the Choice-of-Law Clause," 91 *U. Col. L. Rev.* 1147, 1180 (2020).

9 *Id.* at 1179-80 (highlighting similar statutes passed by California, Delaware, Florida, Illinois, Ohio and North Carolina).

10 *Frontier Airlines Inc. v. AMCK Aviation Holdings Ir. Ltd.*, 676 F. Supp. 3d 233 (S.D.N.Y. 2023).

11 *Id.* at 238-40.

12 *Id.* at 240.

13 *Id.* at 240-41.

14 *Id.* at 241.

15 *Id.* at 255.

A. Engelmayer reasoned that the NY-UVTA prescribed that the local law of the jurisdiction in which the debtor is located when the transfer occurred must apply. Since AMCK Holdings was incorporated in Ireland and headquartered in Dublin, this meant that Irish law must apply to the fraudulent-conveyance claims.<sup>16</sup> As the complaint failed to adequately plead fraudulent conveyance under Irish law (even in the alternative), the court granted the defendants' motion to dismiss those claims. Despite *Frontier's* attempt to point the court to the numerous agreements that contemplated New York as the choice of law, the court was entirely unpersuaded that parties could contract around the dictates of NY-UVTA, stating:

[T]he UVTA's use of the debtor's location at the time of the transfer — and not inviting arguments as to the effect of contractual provisions whose application [might] be debatable — has the virtue of putting in place a “clear rule” that “eliminates the risk that the laws of multiple jurisdictions might be applicable to a single transfer involving property in multiple jurisdictions or injuring creditors in multiple jurisdictions.”<sup>17</sup>

The court's decision established a bright-line rule that any actions brought under the NY-UVTA must apply the strict governing law requirements of the NY-UVTA. However, neither the court nor the parties addressed the implications of the NY GOL on the application of the NY-UVTA. The question remains: If *Frontier* had invoked the NY GOL's permissive provisions allowing parties to agree to New York law as their choice of law, and had presented the court with the numerous agreements reflecting New York law as the parties' agreed governing law, would the court have reasoned differently? If so, how would the court have resolved the apparent conflict between the NY-UVTA and NY GOL?

## Conclusion

The tension between the NY-UVTA's rigid choice-of-law provisions and the permissive framework established by the NY GOL presents a significant unresolved issue in New York jurisprudence. The *Frontier* decision demonstrates that courts, at least in the absence of adequately briefing the NY GOL issues, are prepared to strictly enforce the NY-UVTA's requirement that the local law of the debtor's jurisdiction govern voidable transaction claims, even when sophisticated parties have expressly agreed to New York law as their governing law. While promoting predictability in the application of the NY-UVTA, this approach potentially undermines the broader policy objectives underlying the NY GOL.

Until courts or the legislature directly address this conflict, practitioners should be aware that contractual choice-of-law provisions selecting New York law might be insufficient to invoke the protections of the NY GOL when dealing with non-New York-domiciled debtors for fraudulent-conveyance claims. This conflict is of particular import with foreign debtors that often avail themselves of New York law and access to New York markets, where foreign fraudulent-conveyance

law can be significantly different and undeveloped in terms of precedents. While sophisticated parties might still be able to avail themselves of a New York forum even under the *Frontier* court's approach if they adequately plead foreign fraudulent-conveyance claims in the alternative, creditors entering into agreements with foreign debtors should carefully consider the implications of the debtor's domicile on potential fraudulent-conveyance claims, and might need to familiarize themselves with the voidable transaction laws of the debtor's home jurisdiction.

In addition, the potential conflict extends beyond New York, as states like California, with analogous provisions to the NY GOL that have enacted or could enact the Uniform Voidable Transactions Act, might need to contend with the tension between existing permissive choice-of-law statutes and the restrictive dictates of the Uniform Voidable Transaction Act. As this area of law continues to develop, further judicial or legislative guidance will be essential to reconcile these competing statutory frameworks and provide clarity to contracting parties. **abi**

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<sup>16</sup> *Id.*  
<sup>17</sup> *Id.* at 256.