Players, Owners, and Contracts in the NFL: Why the Self-Help Specific Performance Remedy Cannot Escape the Clean Hands Doctrine

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INTRODUCTION

Jim Blutarski was an All-American defensive end for three years at Faber College.[1] After his third year in college, Jim decided to forego his senior season and make himself eligible for the National Football League's college draft. Jim was chosen as the tenth pick in the first round of the draft by the New Orleans Saints and eventually signed a four year contract worth a total of $5.5 million.

After three successful years starting at defensive end for the Saints, including two invitations to the Pro Bowl,[2] Blutarski notified the Saints that unless they agreed to renegotiate his contract, he planned to hold out from playing in the upcoming football season. The Saints at this point had several options. If the Saints liked Blutarski's performance, they could negotiate with him and provide Blutarski with a raise, since the risk of losing his unique services for the year greatly outweighed the raise he was demanding. The Saints could also trade Blutarski to another team willing to deal with him for adequate compensation. If worse came to worst and the club found that it could not agree on new terms with Blutarski, and that it was no longer feasible to keep his services, the club would have to release Blutarski from his contract.

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1. This hypothetical is fictional and not meant to represent or resemble any person living or dead. Any similarities are unintentional.

2. The Pro Bowl is a professional football player's reward for excellence on the field and the National Football League's All-Star Game. Players are elected to the game by their peers and the game is played in Hawaii one week after the Superbowl.

Is it fair that professional football players possess so much control in renegotiating contracts? Do the players in fact possess the control that we perceive them to have? Often, players do have most of the bargaining power, as in the case of college players being chosen in the draft. Once a team has chosen to pursue a draftee out of college, no other team has the right to interfere with that process.[3] If that club fails to sign the player, the club wastes a valuable pick, and there is no remedy for such a failure.[4] But after that introduction into the league, who retains control? It appears that the player still retains control because, although the player is under contract, he can withhold playing for the club until it accedes to his new demands.[5]

There is, however, a theoretical method by which the club can even the playing field—self-help specific performance.[6] The self-help specific performance remedy was originally created by Professor Subha Narasimhan in response to her belief that there are certain situations in contract law where the damage remedy is inadequate and traditional specific performance is denied by the courts for reasons of inadequacies in judicial administration.[7] Professor Alex Johnson, Jr. later adapted the self-help specific performance remedy to the world of professional sports contracts because he believed the National Football League was an ideal arena for the remedy, satisfying all prerequisites enumerated by Professor Narasimhan.[8] According to Professor Johnson, this remedy calls for the club initially to accept a "superstar" player's demands for more money and a contract extension so that the club obtains actual performance on the contract that the player threatened to breach.[9] Then, after the player has performed fully under the new

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3. A club that drafts a player is, from the date of the initial draft to the date of the following draft, the only National Football League (NFL) club that may negotiate for or sign a contract with that player. If, during that period, the player does not sign a contract with the club that drafted him in the initial draft, the club loses the exclusive right to negotiate for a contract with him, and the player is then eligible to be drafted by another NFL club in the next draft. Alex M. Johnson, Jr., *The Argument for Self-Help Specific Performance: Opportunistic Renegotiation of Player Contracts*, 22 CONN. L. REV. 61, 67 n.19 (1989) (citing 1 R. BERRY & G. WONG, THE LAW AND BUSINESS OF THE SPORTS INDUSTRIES, § 3.41, at 178 (1986)).

4. *See id.* at 67.

5. This type of act is the focus of this Comment. The issue is not whether players *should* hold the power in renegotiations. The issue is whether, if a player takes advantage of his position and asks the club for more money, the club should be able to take advantage of its position and trick the player into signing a contract that the club never intends to honor.

6. *See generally* Johnson, *supra* note 3.

7. Subha Narasimhan, *Modification: The Self-Help Specific Performance Remedy*, 97 YALE L.J. 61, 86-89 (1987).

8. *See* Johnson, *supra* note 3, at 93-94.

9. The contract is breached when the player repudiates his duties under the existing contract, first by giving the club notice of potential breach, then by not playing when the season

contract, the club sues the player for any money the player received in excess of the sum agreed on in the original contract, for the time period covered by the original contract.[10] Such a suit would be based on a theory such as economic duress or the preexisting duty rule.

Although those with promanagement sentiment might agree that this option should be available to the club,[11] the remedy will not be accepted by the courts[12] because the clean hands doctrine poses a major roadblock to the legal implementation of the self-help specific performance remedy.[13] Since the club acted inequitably towards the player in signing a contract it had no intention of performing, the player can invoke the clean hands doctrine as a defense, and the club will be disqualified from taking advantage of the judicial system to recover the difference between the contracts' terms.[14]

Before analyzing the problems that the self-help specific performance remedy faces, this Comment begins in Section I by describing the self-help specific performance remedy as applied to professional athletes. Section II then explains the clean hands doctrine and the rationales behind it. Section III continues by explaining why the self-help specific performance remedy should not be exempt from the defense of the clean hands doctrine. Section IV then concludes that the clean hands doctrine is a proper defense and will defeat any attempt to implement the self-help specific performance remedy.

I. THE SELF-HELP SPECIFIC PERFORMANCE REMEDY

The self-help specific performance remedy proposes that if an NFL player holds out, demanding renegotiation of his contract, the

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begins, creating an actual breach. *See* RESTATEMENT (SECOND) OF CONTRACTS § 250(a) (1979). *See also* McCloskey & Co. v. Minweld Steel Co., 220 F.2d 101, 104 (3d Cir. 1955) (quoting McClelland v. New Amsterdam Cas. Co., 185 A. 198, 200 (Pa. 1936)). "In order to give rise to a renunciation amounting to a breach of contract, there must be an absolute and unequivocal refusal to perform. . . ." *Id.*

10. Johnson, *supra* note 3, at 64. This proposal was developed in light of the lack of adequate remedies available to the club under current contract law. "A promise to render personal service . . . will not be specifically enforced by an affirmative decree." RESTATEMENT (FIRST) OF CONTRACTS § 379 (1932). Even if the court could award the club specific performance, there would be no effective means to monitor the player's performance to insure he was playing to the best of his ability.

11. This Comment in no way seeks to support players who employ dishonorable means to force the renegotiation of their contracts. Instead of being overjoyed to play, players who hold out for more money show that they have forgotten the joy of the game and merely wish to be the highest paid player either at their position or in the NFL.

12. *See infra* Part I.

13. *Id.*

14. *See infra* Part III.A.

club should agree to the player's new demands and then contest the modification on the grounds of economic duress or the preexisting duty rule after the player has performed his duties fully under the new contract. The club is thus seeking recovery for any salary it paid in excess of what the player was entitled to under the original contract.[15] This remedy requires that the club's suit for rescission of the renegotiated contract not begin until after the player has already delivered full performance under that contract.[16] To do otherwise would eliminate the possibility of the club benefiting from the player's ability during the remainder of the contract.

However, before employing the self-help specific performance remedy, the club must first address its theory of recovery in court.

A. Theories of Recovery

The preexisting duty rule, under the law of contract modification, offers one theory of recovery for the club.[17] Specifically, the club would claim that it received no new consideration from the player for the contract modification because the player merely agreed to provide a service already called for under the original contract. The rule states that the performance of a preexisting duty does not constitute sufficient consideration to support a contract modification.[18]

Although the Restatement (Second) of Contracts adopts such a rule, later sections of the treatise dilute much of its impact. If the modification is fair and equitable in view of circumstances not anticipated by the parties when the contract was made, then the modification will be enforceable.[19] However, a professional football player can hardly claim that his level of performance under the original contract increased by such a degree that it constituted an unanticipated circumstance, not foreseen at the time of creation of the original contract. In most football contracts, the player agrees to perform to the best of his ability. Therefore, any increased ability by the player

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15. *See* Johnson, *supra* note 3, at 92.

16. *See id.* at 98.

17. "Under [the preexisting duty] rule an agreement modifying a contract is not supported by consideration if one of the parties to the agreement does or promises to do something that he is [already] legally obligated to do. . . ." Angel v. Murray, 322 A.2d 630, 634 (R.I. 1974).

18. *See generally* E.A. FARNSWORTH, CONTRACTS § 4.21 (1982).

19. RESTATEMENT (SECOND) OF CONTRACTS § 89(a) (1981). *See also Angel*, 322 A.2d at 636. "The modern trend appears to recognize the necessity that courts should enforce agreements modifying contracts when unexpected or unanticipated difficulties arise during the course of the performance of a contract, even though there is no consideration for the modification, as long as the parties both agree voluntarily." *Id.*

was expected by the club and cannot constitute an unanticipated change.[20]

In deciding whether to introduce the "unanticipated circumstances" exception, a player should think hard before opening Pandora's box. By claiming unanticipated circumstances, the player opens the door for owners to invoke the same concept. For example, in a situation in which player salaries experience a downward trend, or a competing league folds (thereby reducing the competition for obtaining good players), club owners could claim unanticipated circumstances that may justify modifying player contracts and reducing salaries.[21]

This Comment assumes that both Blutarski and the club knew of Blutarski's full potential and ability to perform, such that any increase in Blutarski's on-field performance would not surprise the club and require greater consideration than that originally bargained for in the original contract. The club anticipated Blutarski would develop into a great football player. Given the fact that the club selected Blutarski early in the draft and provided him with a lucrative contract, there is no reason to believe the club was surprised by an improvement in Blutarski's skills. Therefore, the club has not received any valuable consideration or services from Blutarski not already considered during the creation of the original contract. Barring the application of equitable doctrines,[22] most contract modifications not supported by new consideration, and modified contract terms exceeding the time period covered in the original contract,[23] will probably be found void—as should Blutarski's modified contract.

The second theory of recovery a club may claim in attempting self-help specific performance is "economic duress."[24] Under this

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20. *See* Johnson, *supra* note 3, at 94.

21. *See* Johnson, *supra* note 3, at 98. This example seems a little absurd, but many other aspects of the sports and entertainment industry are equally so.

22. See *infra* Section I.B.

23. Most renegotiated contracts also call for a contract extension beyond the time frame of the original contract just to protect against the threat of the preexisting duty rule and to insure that the player will be covered in the future by the newly formed contract. *See* RESTATEMENT (SECOND) OF CONTRACTS § 73 (1981). "Performance of a legal duty owed to a promisor which is neither doubtful nor the subject of honest dispute is not consideration; but a similar performance is consideration if it differs from what was required by the duty in a way which reflects more than a pretense of bargain." *Id.* *See also* Air Prod. and Chem., Inc. v. Louisiana Land and Exploration Co., 806 F.2d 1524, 1529 (11th Cir. 1986). "The payment of a preexisting debt does not constitute consideration." *Id.* This would constitute adequate consideration for the time period not covered by the original contract. However, if the new contract calls for increased pay for the player during the period covered by the original contract, the player had a preexisting duty.

24. *See* Johnson, *supra* note 3, at 99-102.

theory, the club sues the player for damages because his new contract was signed by the club under economic duress. In order to succeed, the club needs to show an improper threat, a lack of a reasonable alternative, and the inadequacy of ordinary remedies for breach.[25]

A player who threatens not to perform a duty that he already promised to perform, unless paid more money, seems to have made an improper threat. The only potential problem is that a player probably would not threaten not to perform, but rather threaten to play below the skill level the club expects from him.[26] This, however, does not create a problem because a threat need not be express, but "may be inferred from words or other conduct."[27]

The last two elements of economic duress—a lack of a reasonable alternative for the victim to secure replacement performance and the inadequacy of ordinary remedies—are related. Whether a lack of a reasonable alternative exists brings our discussion to whether the performance of a "superstar" athlete is unique, and therefore impossible to replace.[28] When it comes to dealing with unique abilities in personal services, especially athletic services, no one player performs like any other. Every player has different strengths and weaknesses, and therefore, no player can be substituted for another and be considered an equal. As for the availability of an adequate remedy, the

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25. Henry Mather, *Contract Modification Under Duress*, 33 S.C. L. REV. 615, 621 n.20 (1982). See, for example, *Austin Instrument, Inc. v. Loral Co.*, where the court was faced with a plaintiff who filed suit to recover payments made under a contract with the defendant, claiming the plaintiff was forced to agree to an increased price:

> A contract is voidable on the ground of duress when it is established that the party making the claim was forced to agree to it by means of a wrongful threat precluding the exercise of his free will . . . [h]owever, a mere threat . . . to breach . . . does not in itself constitute economic duress. It must also appear that the threatened party could not obtain the goods from another source of supply and that the ordinary remedy of an action for breach of contract would not be adequate.

272 N.E.2d 533, 535 (N.Y. 1971).

26. Although this may seem to hurt a player's market value, clubs generally know what a player's ability level is, and, more importantly, when a player's contract is coming to a close.

27. RESTATEMENT (SECOND) OF CONTRACTS § 175 cmt. a (1981). *Cf.* Gerber v. First Nat'l Bank of Lincolnwood, 332 N.E.2d 615, 618 (Ill. App. Ct. 1975) (holding that "[t]he act or threat upon which a claim of coercion is predicated must only be wrongful in a moral sense, not necessarily a legal one").

28. It is important to note that we must be dealing with unique services for which there is no equivalent substitute, or available means to evaluate the loss of such services. The best method to demonstrate such a situation in the NFL is to use a superstar player whose performance can be equaled by no one else in the league. Although defining a "superstar" is difficult, it is best defined using Justice Stewart's opinion on how to identify obscenity—"I know it when I see it. . . ." Jacobellis v. Ohio, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

only possible remedy would be a negative injunction.[29] However, this would only provide effective relief if another party is competing for the playing rights of the player in question.[30] Normally, there is no competing entity, and therefore this remedy is inappropriate. Despite the availability of a negative injunction, the Restatement specifically states that, although possible remedies exist for the club besides specific performance, the mere availability of some legal remedy will not be considered to fulfill the requirement of an appropriate and adequate legal remedy if it does not afford the club effective relief.[31]

Provided that it appears that a prima facie case for economic duress exists, several other factors must be considered before a court will allow the theory to succeed. The first obstacle is that the club must convince the court that an individual player victimized a wealthy, corporate entity.[32] In order to persuade the court, the club would have to stress the intense pressure fans place on the club to produce consistently successful seasons and highlight the bargaining power that a "superstar" possesses because of this pressure from fans.[33]

The second obstacle the club has to overcome is that it must disaffirm the modification to the original contract within a reasonable time after the threat has ceased.[34] Given that the club faces the loss of the player's performance if it disaffirms the modified contract at any time before the expiration of the contract, it should not be difficult for the club to prove that it disaffirmed the modified contract within a reasonable time period.[35]

Because economic duress is available to a club to fight an opportunistic player,[36] and because "the principal economic function of duress has been to redress unjust enrichment,"[37] it follows that economic duress is a viable legal theory to implement the club's claim

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29. A negative injunction is a court-ordered injunction restricting a party from performing services for competing entities. *See, e.g.*, Lumley v. Wagner, 42 Eng. Rep. 687 (Ch. 1852).

30. RESTATEMENT (SECOND) OF CONTRACTS § 175 cmt. b (1981). For an explanation on what determines the adequacy of a remedy, see *Ross Systems v. Linden Dari-Delite, Inc.*, 173 A.2d 258, 262 (N.J. 1961), where the court held "[t]he adequacy of the remedy is to be tested by a practical standard which takes into consideration the exigencies of the situation in which the alleged victim finds himself."

31. RESTATEMENT (SECOND) OF CONTRACTS § 175, cmt. b (1981).

32. *See* E.A. FARNSWORTH, CONTRACTS, § 4.28, at 314 (stating that courts are apprehensive about allowing a claim of unconscionability by a sophisticated corporation).

33. *See* Johnson, *supra* note 3, at 101.

34. *See id.*; E.A. FARNSWORTH, CONTRACTS, § 4.19, at 267.

35. *See* Johnson, *supra* note 3, at 101.

36. This assumes that the corporation is able to convince the court that a player was able to control the club's actions with respect to his new contract.

37. J. CALAMARI & J. PERILLO, CONTRACTS, § 9.8, at 349 (3d ed. 1987).

for self-help specific performance.[38] Provided that the club now has an avenue for seeking *self-help* specific performance in court, should it be allowed by the courts if the remedy of *traditional* specific performance will generally not be allowed as a club's remedy to holdout players?

B. Other Possible Remedies Besides Self-Help Specific Performance

Professor Johnson argues self-help specific performance should be available to a club where the club is justifiably entitled to specific performance and judicial limitations prevent the enforcement of traditional specific performance.[39] A possible alternative remedy for the club is the enforcement of liquidated damages. However, no club has sought this remedy to date. The most significant reason why a club would not wish to enforce a liquidated damages clause is the fear that it would establish that a team can be monetarily compensated for an athlete's breach, thereby negating the player's status as "unique," and in turn eliminating any possibility for specific performance.[40] Another possible alternative is a negative injunction. However, as discussed above, this remedy is not applicable in the context of this hypothetical.[41]

A last possible alternative remedy is *traditional* specific performance. Courts generally do not utilize this remedy unless it appears that awarding damages will not make the plaintiff whole.[42] Damages are generally impossible for an NFL club to prove when faced with a single player holding out, because revenues are generally shared throughout the league.[43] Despite extensive profit sharing, however,

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38. *See* Johnson, *supra* note 3, at 102.

39. *Id.* at 92-93. *See also* Narasimhan, *supra* note 7, at 87.

40. *See* Edward L. Rubin, *The Enforcement of Personal Service Contracts*, 3 ENT. & SPORTS LAW 3, 6 (No. 1, 1984).

41. *See supra* notes 29-30 and accompanying text.

42. RESTATEMENT (SECOND) OF CONTRACTS § 359(1) (1979). *See, e.g.*, Nemer Jeep-Eagle, Inc. v. Jeep-Eagle Sales Co., 992 F.2d 430, 436 (2d Cir. 1993) (finding plaintiff entitled to specific performance of contractual provision calling for maintenance of the status quo pending arbitration arising under the contract). The court further noted that the evidence established at least a doubt concerning the adequacy of money damages to the dealer. *Id. See also* Guinness-Harp Corp. v. Jos. Schlitz Brewing Co., 613 F.2d 468, 473 (2d Cir. 1980) (finding that Guinness had no adequate remedy at law and had sufficiently demonstrated entitlement to an injunction when it lost the use of a distributorship that would likely cause loss of business and injure Guinness' reputation—consequences for which compensation is difficult, if not impossible, to determine).

43. *See* BERRY & WONG, *supra* note 3, § 2.10, at 68. NFL clubs evenly share approximately ninety percent of the revenues generated from football, thus the club's financial success is based in large part on the league's overall performance and profitability. John C. Weistart, *League Control of Market Opportunities: A Perspective on Competition and Cooperation*

some revenue, such as that from ticket sales, is not shared.[44] Therefore, the club's actual loss stems from lost revenue at the ticket gate. But if the club does experience a downward trend in this revenue, how much of the responsibility can be placed upon the player?

The ultimate factor in determining whether a club loses money is the team's popularity. However, it is nearly impossible to figure out whether the lost popularity is due to the holdout player, management, or any of the other players on the team.[45] Given the numerous variables facing the court that must decide the exact amount of lost revenue due to the club from a single holdout player, it is impossible for a team to recover monetary damages on such a claim.

Even if traditional specific performance seems to be the appropriate remedy, several factors appear to negate its application. First, it will not be awarded unless the contract's terms are sufficiently definite to provide an appropriate basis for a judge's ruling.[46] A player's contract usually calls for little more than a player's "best efforts," and therefore it can hardly be considered to be definite.[47] There are so many elements that affect a player's performance (such as weather, a good defensive team, or trouble at home), that it is impossible for a judge to order a player to perform better. A player's level of performance is not entirely within his control.[48]

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in the Sports Industry, 1984 DUKE L.J. 1013, 1018 (citing Los Angeles Memorial Coliseum Comm'n v. Nat'l Football League, 726 F.2d 1381, 1390 (9th Cir. 1984), *cert. denied*, 469 U.S. 990 (1984)).

44. Gate receipts are split 65-35 between the home and visiting team, respectively. BERRY & WONG, *supra* note 3, § 1.32, at 59-60.

45. This problem is made more difficult when the club faces a player who threatens to perform at less than his best. The player is active for the team and able to play, but will not play up to his full potential.

46. RESTATEMENT (SECOND) OF CONTRACTS § 362 (1981). Comment (a) requires the contract to be certain enough in its framework to provide a basis on which a judge can order specific performance, and the judge must be able to determine whether the performance is in accord with his or her order. *Id.* at cmt. a. *See, e.g.*, Oglebay Norton Co. v. Armco, Inc., 556 N.E.2d 515, 521 (Ohio 1990) (finding specific performance necessary when the length of the contract and the dramatic changes in market prices between the time of the signing of the contract and the time for performance made an award of money damages impossible); Mr. Mark Corp. v. Rush Inc., 464 N.E.2d 586, 592 (Ohio Ct. App. 1983) (ruling that defendant must perform its part of the contract to sell its interest in a restaurant business, despite its insistence that the contract terms relating to financing were not sufficiently worked out to constitute an enforceable contract). *But see* Genest v. John Glenn Corp., 696 P.2d 1058, 1064 (Or. 1985) (ruling that the contract for sale contained too many indefinite terms, such as payment schedule, to entitle purchaser to specific performance).

47. *See* Johnson, *supra* note 3, at 103.

48. *See id.*

A second factor that will probably make specific performance unavailable to the club is the difficulty of administering the remedy.[49] A court cannot effectively evaluate a player's performance on a continuous basis or supervise him over an extended period of time.[50] These concerns weigh too heavily on the court to allow a club this remedy.

The last factor that may preclude specific performance is that courts do not like to enforce service contracts[51] because they worry about involuntary servitude.[52] Furthermore, it seems absurd for the court to force parties to interact with each other, especially after tensions between parties have already mounted.[53] When all of these factors are taken into consideration, courts will likely never instruct a player to specifically perform his part of a sports service contract.

While traditional specific performance looks bleak as a remedy, Professor Johnson argues that self-help specific performance is an ideal remedy for a club (the performance occurs before a player knows he is

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49. RESTATEMENT (SECOND) OF CONTRACTS § 366 cmt. a (1979). *See also* Storch v. Erol's, 620 A.2d 408, 413-14 (Md. Ct. Spec. App. 1993) (denying plaintiff's request for injunctive relief that would force defendant's business to remain open, because it necessarily required continuous employee supervision over an extended period of time, making effective enforcement unreasonably difficult).

50. *See* Johnson, *supra* note 3, at 103.

51. RESTATEMENT (SECOND) OF CONTRACTS § 367(1) (1979). *See also In re* Noonan, 17 B.R. 793, 796 (Bankr. S.D.N.Y. 1982) (ruling that defendant would not be forced to change his Chapter 7 bankruptcy to a Chapter 11 bankruptcy because doing so would provide plaintiff with opportunity to force defendant to render services under an existing contract; the court likened the practical effect of its ruling to preventing the debtor from entering into involuntary servitude to the recording company).

52. *See* American Broad. Companies, Inc. v. Wolf, 420 N.E.2d 363, 366 (N.Y. 1981). "[T]here [has] emerged a more compelling reason for not directing the performance of personal service contracts: the Thirteenth Amendment's prohibition of involuntary servitude." *Id.* See also Judge Harlan's opinion in *Arthur v. Oakes*:

> But the vital question remains whether a court of equity will, under any circumstances . . . prevent one individual from quitting his personal service of another . . . [a]n affirmative answer is not . . . justified by any authority to which our attention has been called or of which we are aware. It would be an invasion of one's natural liberty to compel him to work for or to remain in the personal service of another.

63 F. 310, 317-18 (7th Cir. 1894).

53. *See* RESTATEMENT (SECOND) OF CONTRACTS § 367(1) cmt. a (1979). *See also American Broad. Companies*, 430 N.Y.S.2d at 283.

> It has long been a principle of equity that the performance of contracts for personal services depends upon the skill, volition and fidelity of the person who has engaged to perform such services and that it is impracticable, if not impossible, for a court to supervise or secure the proper and faithful performance of such contracts.

Id.

going to be brought into court) and for the courts (who do not have to wonder about how they are going to administer the remedy).[54]

Not only does self-help specific performance ease the courts' worries about administrative problems, it eliminates their concern about allowing involuntary servitude, since the courts' decisions will come after the remedy has been performed; the courts will not force the player to do anything.[55] It could be said that what the player doesn't know won't hurt him. This type of underhanded activity by the club could, however, lead to strained relations between clubs and players; nevertheless, the same argument applies to players who continually threaten to hold out unless their contracts are renegotiated.

Professor Johnson argues that the self-help specific performance remedy "promotes the public interest in the sanctity of contracts and allows for the efficient utilization of judicial resources."[56] Judicial resources may be utilized more efficiently in self-help specific performance because a step has been eliminated in the judicial process: the court's duty of enforcing the remedy. However, there appears to be a problem with the claim that entering into fraudulent contracts "promotes the public's interest in the sanctity of contracts."[57] It is difficult to imagine how, when one intentionally enters into a contract without the intention to perform, the sanctity of contracts is promoted. If anything, this conduct encourages the public to enter into fraudulent contracts because they believe the courts are not going to provide them with the traditional remedy they believe they deserve. It encourages citizens to take justice into their own hands and away from the courts. Contracts are not treated as sacred under the self-help specific performance remedy.

II. THE CLEAN HANDS DOCTRINE

Despite the alleged benefits of the self-help specific performance remedy, there is one major impediment to its effective utilization,[58] and that is the "clean hands" doctrine.[59] "The clean hands doctrine

54. *See* Narasimhan, *supra* note 7, at 87. "When the promisee achieves self-help specific performance, the court is involved in the remedy at the stage when performance is satisfactorily completed. The court does not have to enforce and oversee the contract's performance. It simply refuses to enforce the modification." *Id.*

55. *Id.*

56. Johnson, *supra* note 3, at 112.

57. *Id.*

58. There may be other grounds upon which the self-help specific performance remedy may be fought. This Comment, however, limits its analysis to the clean hands doctrine.

59. *See* Johnson, *supra* note 3, at 111.

allows courts to refuse relief to any plaintiff who has acted inequitably."[60] Accordingly, a player, when brought into court by a club that wants its money back, can claim the defense that the club acted inequitably, and if the court agrees, the club will be denied relief by the court.[61] The player will most likely claim that the club acted inequitably by fraudulently and deceptively entering into the renegotiated contract without any intention of abiding by the contract.[62]

Professor Johnson argues that the clean hands doctrine does not apply because it was the player's wrongful and opportunistic behavior in seeking the renegotiated contract that forced the club to act.[63] Following that line of thinking, Professor Johnson also claims that the use of the self-help specific performance remedy actually promotes the public interest in the sanctity of contracts and allows for the efficient utilization of judicial remedies.[64] And, similarly, the remedy has a positive value which, in the long run, outweighs any negligible costs occasioned by the determination of rights through trial.[65] Believing self-help specific performance will lead to the best outcome, Professor Johnson urges that players not even attempt to use the clean hands doctrine as a defense to the self-help specific performance remedy.[66]

A. History of the Clean Hands Doctrine

The clean hands doctrine originated in the courts of equity and demanded that a plaintiff who seeks equitable relief must come into court having acted equitably in the matter for which he seeks a remedy.[67] Even though the doctrine originated in equity courts, it has arguably been expanded to actions at law involving damages.[68]

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60. William J. Lawrence, III, Note, *The Application of the Clean Hands Doctrine in Damage Actions*, 57 NOTRE DAME L. REV. 673, 673 (1982).

61. *Id.* "The clean hands doctrine allows courts to refuse relief to any plaintiff who has acted inequitably." *Id. See also* 2 J. POMEROY, EQUITY JURISPRUDENCE §§ 397, 399 (S. Symons ed., 5th ed. 1941).

62. *See* Lawrence, *supra* note 60, at 674. "The inequitable conduct which causes the doctrine to be invoked must be willful, and usually involves fraud, illegality, unfairness, or bad faith." *Id. See also* Monsanto Co. v. Rohm & Haas Co., 456 F.2d 592, 598 (3rd Cir. 1972). "[The clean hands doctrine] does require that [the complaining party] shall have acted fairly and without fraud or deceit as to the controversy in issue." *Id.*

63. Johnson, *supra* note 3, at 112.

64. *Id.*

65. *Id.* at 113.

66. *Id.*

67. *See* Lawrence, *supra* note 60, at 674.

68. *See id.* "In California, the doctrine of unclean hands may apply to legal as well as equitable claims and to both tort and contract remedies." Camp v. Jeffer, 41 Cal. Rptr. 2d 329, 340 (Cal. Ct. App. 1995). "Furthermore, although the unclean hands doctrine originally arose in cases seeking equitable relief, courts have expanded its application to contractual claims and

Since it has been proposed that the clean hands doctrine may be a bar to the self-help specific performance remedy,[69] this Comment assumes the doctrine would be applicable as a defense to a contract claim.

In order to invoke the clean hands doctrine as a defense, the defendant must show that the plaintiff's conduct toward the defendant was willful, inequitable, and related to the plaintiff's claim.[70] In deciding whether inequitable conduct occurred, it must be determined whether the conduct "would be condemned and pronounced wrongful by honest and fair-minded" individuals.[71] For the conduct to be considered willful and inequitable toward the defendant, the misconduct must actually affect the equitable relations which existed between the plaintiff and defendant.[72] The general types of conduct which may invoke the doctrine involve fraud, illegality, unfairness, or bad faith.[73] Once the defense of the clean hands doctrine has been raised, the trial court has the discretion to rule on the availability of the defense.[74] Although the court has wide latitude in making its decision, as the Supreme Court of Kansas emphasized in *Green v. Higgins*,[75] when applying the clean hands doctrine, courts should be primarily concerned with their own integrity.[76]

B. Rationales Behind the Clean Hands Doctrine

There are three fundamental rationales behind the clean hands doctrine, forming the basis for its utilization by the courts.[77] The first rationale is to protect judicial integrity.[78] Courts fear that if

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other matters in law." Grassman v. Evangelical Lutheran Good Samaritan Society, Inc., 921 P.2d 224, 230 (Kan. Ct. App. 1996).

69. *See* Johnson, *supra* note 3, at 111. "There is, perhaps, one major impediment to the effective utilization of self-help specific performance by clubs: the 'clean hands' doctrine." *Id.*

70. *See* Lawrence, *supra* note 60, at 674.

71. Bazyk v. Barter, No. 390715, 1995 WL 27477, at *2 (Conn. Supr. Ct. Jan. 19, 1995) (quoting Boretz v. Segar, 199 A.2d 548 (Conn. 1938)).

72. Fina Oil and Chem. Co. v. Pester Mktg. Co., No. 95-1367-JTM, 1997 WL 225900 at *36 (D. Kan. 1997). *See also In re* Casa Nova of Lansing, Inc., 146 B.R. 370, 380 (Bankr. W.D. Mich. 1992). "The plaintiff's iniquity must have resulted in injury to the defendant." *Id. But see* Gaudiosi v. Mellon, 269 F.2d 873, 873 (3d Cir. 1959) (holding that a defendant who invokes the doctrine of unclean hands need not be damaged).

73. Lawrence, *supra* note 60, at 674. *See also Fina Oil*, 1997 WL 225980, at *35.

74. The clean hands doctrine gives wide sweep to the court's exercise of discretion in denying aid to an unclean litigant. Precision Instrument Mfg. Co. v. Automotive Maintenance Mach. Co., 324 U.S. 806, 815 (1945).

75. 535 P.2d 446 (Kan. 1975).

76. *Id.* at 449.

77. *See* Lawrence, *supra* note 60, at 674-75.

78. Fibreboard Paper Products Co. v. East Bay Union of Machinists, 39 Cal. Rptr. 64, 96 (Cal Dist. Ct. App. 1964).

people are entitled to recover in court after acting inequitably, serious doubts would be raised concerning the justice served through the courts.[79] In following such a theory, the courts are acting to protect their own, rather than a defendant's, interests.[80]

The second rationale for the doctrine is to ensure justice[81] and to make plaintiffs answer for what they have done.[82] It would be unjust for a court to allow the inequitable conduct of a plaintiff to go unanswered. This is especially true if plaintiffs, by their own actions, have been party to conduct unfair to the defendant, causing the action to be brought into court. The doctrine ensures a fair result by preventing "a wrongdoer from enjoying the fruits of his transgression."[83]

The third rationale is to promote the public interest.[84] The reasoning behind this rationale is that when a public interest is threatened, the "doctrine assumes wider and more significant proportions."[85] Courts are allowed to use the rule not only to prevent an "unclean" plaintiff from recovering, but also to restrict conduct which may infringe upon the public interest.[86]

III. SELF-HELP SPECIFIC PERFORMANCE V. THE CLEAN HANDS DOCTRINE

A. The Club's Actions Allow the Player to Invoke the Clean Hands Doctrine

In our hypothetical, the Saints agreed to accept Blutarski's demands, placed his demands into writing as a newly formed contract,

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79. *See* Lawrence, *supra* note 60, at 675.

80. *See, e.g., Gaudiosi*, 269 F.2d at 881. "Courts are concerned primarily with their own integrity in the application of the clean hands doctrine." *Id. See also* Winmark Limited Partnership v. Miles 693 A.2d 824 (Md. 1997) (holding the clean hands doctrine is not applied for the protection of the parties, but to protect the court from having to endorse or reward inequitable conduct); *Bazyk*, 1995 WL 27477, at *3 (finding the trial court enjoys broad discretion in determining whether public policy and the preservation of the court's integrity dictate the invocation of the clean hands doctrine).

81. *See* Lawrence, *supra* note 60, at 675. *See also* Keystone Driller Co. v. General Excavator Co., 290 U.S. 240, 245 (1933); Mas v. Coca Cola Co., 163 F.2d 505, 509 (4th Cir. 1947); Dunscombe v. Amfot Oil Co., 256 S.W. 427, 428 (Ky. 1923).

82. *See Precision Instrument Mfg. Co.*, 324 U.S. at 806.

83. *Id.* at 815.

84. *See* Lawrence, *supra* note 60, at 675. *See also Precision Instrument*, 324 U.S. at 815; Republic Molding Corp. v. B.W. Photo Util., 319 F.2d 347, 349-50 (9th Cir. 1963); Baue v. Embalmers Federal Labor Union, 376 S.W.2d 230, 236 (Mo. 1964).

85. *Precision Instrument*, 324 U.S. at 815.

86. *See* Lawrence, *supra* note 60, at 675. The defense of public interest arises mostly in business competition cases. *See* Morton Salt Co. v. C.S. Suppinger Co., 314 U.S. 488 (1942).

and promised to abide by all the new terms. In order for the player to invoke the clean hands doctrine as a defense against the club, the club's conduct must have been willful, inequitable, directed toward the defendant, and related to the proceeding before the court.[87] When analyzing the club's conduct under the clean hands doctrine, the club's actions satisfy all the prerequisites for allowing the player to invoke the clean hands doctrine as a defense against the club's suit.

It would not be difficult for a court to determine that the club's actions were willful. The club listened to the player and his demands, thought of its reaction, agreed to the player's demands, and then entered into a new contract with the player. In order for the club to argue that its actions were not willful, it must claim it was giving into duress initiated by the player. However, regardless of the player's demands for a new contract, the club did not have to renegotiate with the player. It could have traded or released him. Also, in order for the club to successfully argue that its actions were not willful, the court must perceive the player as holding all the cards; but such a situation cannot exist. Economic duress, though a theoretical possibility, would not be workable in the NFL context.

The club would have had to think of fighting the renegotiated contract when it initially acquiesced to the player's demands; the club would not enter into the renegotiated contract unless it knew it would fight the agreement after the player performed his part of the contract.[88]

Just as the court will be able to find that the club acted willfully, it will be able to find that the club acted inequitably. The club acted to defraud the player from the beginning. Black's Law Dictionary defines fraud as "[a]n intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right."[89] The club knew that it was not going to honor the contract when it agreed to the terms with the player. It knew the player would rely on the new contract, and expected him to rely on it, since the player needed to believe in the validity of the new contract in order to play for the club.

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87. *See Bazyk*, 1995 WL 27477, at *2.

88. Although it can be argued that the club entered into the renegotiation not expecting to fight the contract, learned of the self-help specific performance remedy during the contract, and then later decided to use the remedy to get its money back, the odds are that the club would not want to fight the renegotiated contract since it originally entered into the contract willing to pay the higher price. *See also infra* note 90.

89. BLACK'S LAW DICTIONARY 660 (6th ed. 1990).

While performing, the player parted with something very valuable—his unique athletic skills.[90]

Fraud is considered inequitable conduct, and as such, courts have set out fraud specifically as being a basis for invoking the clean hands doctrine: "Conduct which will render a party's hands unclean so as to deny him access to a court of equity must be willful conduct which is *fraudulent*, illegal or unconscionable."[91] The club's fraudulent action was directed at the player and was in direct relation to the action brought into court. There should be no question that a fraud was perpetrated against the player.

The club's action to deceive the player is also easily shown to be directly linked to the action before the court. The club's suit is to negate the renegotiated contract. The club's fraudulent formation of the renegotiated contract is the conduct in question. Therefore, the fraudulent behavior is directly linked to the action before the court.

Following all this, one could predict that the case will be dismissed because the club had unclean hands. However, Professor Johnson argues that the clean hands doctrine defense runs into trouble.

B. Possible Questions Regarding the Clean Hands Doctrine and Responses

Despite the power of the clean hands doctrine, Professor Johnson claims that it can be bypassed because "the player started it."[92] But equity is not concerned with who "started it"; what matters is who brought the suit to court. The clean hands doctrine requires "that where a party comes into equity for relief *he* must show *his* conduct has been fair, equitable and honest as to the particular controversy in issue."[93] Similarly, "[t]his maxim . . . closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the

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90. It can be argued that a club could originally agree to a new contract without knowing of the self-help specific performance remedy, and then later, during the new contract, be counseled to try this self-help remedy, negating the intentional aspect of fraud from the time period covering the signing of the contract. For the sake of simplicity, this Comment assumes all club owners know of the self-help specific performance remedy and players have not yet been informed, since players who know of this possible remedy will likely contract against such actions when creating their new contracts.

91. Fina Oil and Chem. Co. v. Pester Mktg. Co., No. 95-1367-JTM, 1997 WL 225900, at *36 (emphasis added) (citing Seal v. Seal, 510 P.2d 167 (Kan. 1973)).

92. Johnson, *supra* note 3, at 112. "However, any claim that self-help specific performance should be barred through the use of the clean hands doctrine . . . ignores that it is the player's wrongful and opportunistic behavior in seeking the renegotiated contract that precipitates the club's actions to agree to and later seek rescission of the modified agreement." *Id.*

93. *Bazyk*, 1995 WL 27477, at *2 (emphasis added). This Comment will proceed with the notion that the equity requirement has been enlarged to include actions at law as well.

matter in which he seeks relief, *however improper* may have been the behavior of the defendant."[94] Although the player did initiate the situation, application of the clean hands doctrine will deny relief to the plaintiff because the court will refuse to lend its aid to either party in such a transaction.

Professor Johnson claims that the player has also entered court with unclean hands and therefore should not be allowed to invoke the defense to benefit from his own inequitable conduct.[95] Case law has addressed this exact situation where both parties have come into court after acting inequitably: "If a defendant has been guilty of conduct more unconscionable and unworthy than that of the plaintiff, the rule may be relaxed."[96] According to this rule, if the defendant has been guilty of conduct more unconscionable than the plaintiff, the court *may* choose to relax the equity principle. The plaintiff's conduct is considered more important to the court than the defendant's actions.

Regardless of the decision the court comes to—whether to consider the player's conduct or not—the player's conduct does not sink to the low level of the club's. The player may be guilty of unsavory conduct; however, this type of conduct is not worse than intentional fraud and deceit. The player's conduct was definitely willful. He notified the club of his intention to hold out if his demands were not met, without any outside influences on this decision.

The player's conduct also might have been inequitable. The player, arguably, acted opportunistically with regard to his original contract by getting the club to agree to a renegotiated contract. This opportunistic behavior technically could have breached the original contract and provided the club with the opportunity to seek remedy in the courts. The club, however, would not have gone to court. It knew the player took advantage of a loophole because there is no adequate remedy provided by the judicial system to a club fighting this type of behavior.

However, the player's inequitable conduct was not more unconscionable than the club's. No matter how bad the player's conduct may seem, he put the club on notice about the actions he was about to

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94. Camp v. Jeffer, 41 Cal. Rptr. 2d 329, 340 (Cal. Ct. App. 1995) (emphasis added).

95. See Johnson, *supra* note 3, at 112.

96. Goodyear Tire & Rubber Co. v. Overman Cushion Tire Co., 95 F.2d 978, 983 (6th Cir. 1937). *See also* USACO Coal Co. v. Carbomin Energy, Inc., 689 F.2d 94, 100 (6th Cir. 1982) (following *Goodyear* and allowing an injunction against the plaintiff while recognizing the questionable conduct of the plaintiff, holding "the 'clean hands' doctrine does not absolutely bar a 'culpable' plaintiff from equitable relief, for if the defendant's conduct has been more unconscionable than that of the plaintiff the rule may be relaxed.")

take. The player was up front about what he planned to do and left nothing unsaid. Although he took advantage of a situation in which he knew the club had no effective legal remedy, there was no deceit involved.

The club, on the other hand, acted with full intention to deceive the player. It attempted to get the player to perform for it, knowing that the player would have chosen not to perform under their newly renegotiated agreement had the player known the truth about the club's motives. The club did have other avenues to pursue which were not covert—such as trading the player to another team for one or more players whose work would be the approximate equivalent of the holdout player—yet the club decided to proceed covertly.

Courts have already faced issues similar to those in our hypothetical, in which both parties allegedly have been involved in improper conduct. In analyzing the issue of fault, courts have found the clean hands doctrine "is far more than a mere banality. It . . . closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant."[97] Given this ruling, it appears courts choose to focus their behavior analysis primarily on the plaintiff. This is especially evident in the case of *Green v. Higgins*.[98] In *Green*, the court faced issues regarding a contract for the sale of real estate.[99] Although the court did not deal with a professional sports contract, the issues discussed involved general contract law and specific performance, which parallel the issues presented in self-help specific performance.

C. Green v. Higgins: *The End of Self-Help Specific Performance*

In *Green*, the plaintiff and defendant conspired to form a fraudulent sales contract for land in order to avoid paying a sales commission to a third party.[100] After the conspiracy succeeded, the defendant wanted neither to sell the land nor to carry out the contract.[101] The plaintiff attempted to fulfill the rest of the contract by offering the defendant the remainder of the contract price for the land, but the defendant refused to accept the payment.[102] The plaintiff filed suit requesting specific performance of the contract, and

97. Burton v. Sosinsky, 250 Cal. Rptr. 33, 40 (Cal. Ct. App. 1988).
98. 535 P.2d 446 (Kan. 1975).
99. *Id.* at 447.
100. *Id.* at 447-48.
101. *Id.* at 448.
102. *Id.*

the defendant counter-filed a claim to quiet title to the land, utilizing the clean hands doctrine against the plaintiff.[103] The case was dismissed against both parties by the trial judge based on a finding that both parties had engaged in conduct that was "willful, fraudulent, illegal, and unconscionable,"[104] and that neither party had come into court with clean hands; therefore, neither party should be allowed relief by the court.[105]

The plaintiff appealed, claiming this was not an appropriate defense since the defendant was a party to the inequitable conduct which formed the contract.[106] The Supreme Court of Kansas affirmed the decision, looking solely at the plaintiff's actions and holding that "[a] court may refuse its relief to the plaintiff though the defendant himself participated in the misconduct, not because it is a privilege of such a defendant, but because the court refuses to lend its aid to either party to such a transaction."[107] The Supreme Court of Kansas was willing to rule against the plaintiff even though the defendant was party to the inequitable conduct that led to the court proceeding.[108]

Following the lead of the court in *Green*, any court faced with the self-help specific performance remedy should limit examination of the parties' conduct solely to that of the plaintiff. In our hypothetical, because the club entered into the contract with the player knowing it would go to court to rescind the contract, it is fair and equitable to the player and the judicial system that the club's conduct be the sole bearer of scrutiny.

The facts of our hypothetical case are analogous to those in *Green*. Both the player and the club are culpable in our scenario, just as the plaintiff and defendant were in *Green*. The plaintiff in *Green* sought to enforce a fraudulent contract seeking specific performance, and the NFL club is seeking rescission of a fraudulent contract for unique services. Just as the court in *Green* ruled against the plaintiff for his fraudulent conduct, a court should rule against the club for its fraudulent conduct.

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103. *Id.*
104. *Green*, 535 P.2d at 448.
105. *Id.*
106. *Id.* at 449.
107. *Id.*
108. *Id.* at 450.

IV. CONCLUSION

The world of sports creates a legal beast completely separate from regular business life. It allows players to engage in renegotiations which resemble blackmail without any fear of criminal repercussions and only a marginal fear of civil repercussions. The self-help specific performance remedy was created to help level the playing field by allowing an injured sports club the opportunity for restitution, where the current legal system is largely unable to provide an adequate remedy. Although Professor Johnson may believe that the self-help specific performance remedy benefits our society, helps the judicial process, and protects the public's interest in the sanctity of contracts, in reality, it does exactly the opposite. The most viable argument for the self-help specific performance remedy is that after one judicial decision on the matter, regardless of the outcome, the subject will be closed. Only one judicial decision is necessary because, following that decision, players will realize the potential for clubs using the self-help remedy and contract against such practices by clubs, rendering the remedy moot.

This author does not condone the opportunistic actions of professional athletes seeking to renegotiate their contracts; it is completely unacceptable in the sporting industry. However, the intentional deceit utilized by the club under the cover of the self-help specific performance remedy causes the stomach to turn slightly more than when faced with a player's potential holdout. Even though the club is at a distinct disadvantage when faced with a potential player holdout, the owner entered the industry with her eyes wide open.[109]

Fraud is a line that should never be crossed. "Equity will not permit a person to derive any benefit from fraud perpetrated by him."[110] This should be the main policy reasoning behind denying the self-help remedy. Fraud not only deceives the party at which it is

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109. Another important point is that in the modern day of professional sports, the potential for a hold out "superstar" is a very real possibility. Although, the clubs may not like the circumstances when a holdout arises, owners voluntarily entered the professional football arena knowing the likelihood that they would face the situation one day. This risk is a known part of club management and should not allow the club to operate covertly and get away with the deception. The decision to use the self-help specific performance remedy is understandable if the club did not foresee the holdout, and it was a horrible surprise. The truth, however, is that currently every owner can realistically expect a holdout renegotiation to happen to them. Although the topic of assumption of risk requires more in-depth analysis, this Comment merely raises the concept as a minor, alternative theory and will leave any further analysis to future authors.

110. Duncan v. Dazey, 149 N.E. 495, 505 (Ill. 1925).

aimed, but it undercuts the public's faith in the party perpetrating the fraud. This case involves a public entity deceiving an individual who is well-known to the public.[111] This type of conduct undermines peoples' faith in the validity of contracts. The public is witnessing conduct that says, "We as the management of a professional football team choose not to abide by the contract we made with this player, because he forced us into it."

A perfect example of the behavior clubs should exhibit when faced with a holdout player is the situation that occurred in Charlotte, North Carolina, early in the 1997 football season. Kevin Greene, an outstanding outside linebacker for the Carolina Panthers, held out for more money. The club tried to negotiate with him, but he chose not to accept its offer and the club released him.[112]

A similar situation occurred in Washington, D.C. Sean Gilbert wanted approximately $500,000 more than the Washington Redskins were offering in their multimillion dollar deal. The club did not sign him to a renegotiated contract, and he spent the rest of the football season watching games from his couch at home.[113]

These are examples of actions clubs should take in response to holdout players, rather than getting involved in sneaky, deceptive, contract tactics. Removing these holdouts from the league is one way

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111. As indicated in note 11, *supra*, the author does not endorse holdout players, but rather hopes they will get what they deserve later in their careers.

112. The facts surrounding Kevin Greene's holdout were as follows:

Kevin Greene was signed to a two year contract with the Carolina Panthers to play defensive end. During the first year of the contract (1996), Greene led the National Football League in sacks with 14.5. The Panthers proceeded to win throughout the playoffs that year, with the season culminating in a loss to the Green Bay Packers in the National Football Conference championship game (the only remaining game is the Superbowl).

Following such a great year, Greene wanted the Panthers to rework the second year of his contract, giving him more money. The Panthers did not waste much time and released Greene after giving up on trying to meet his demands. *PRO FOOTBALL; Panthers Let Greene Go, Sign Turnbull in His Place*, N.Y. TIMES, Aug. 25, 1997, at C3.

113. Sean Gilbert's situation was a bit different than Kevin Greene's. Gilbert was not signed to a contract with the Redskins when he decided to holdout, but was designated the Redskins "franchise" player. Under NFL rules, a player designated as a franchise player is prohibited from entering into talks with other clubs as long as his team offers him a salary at least equal to the average of the five highest salaries at his position—roughly $2.977 million per year in this case.

Since the Redskins offer exceeded this amount, $20 million for five years, Gilbert was not allowed to talk with other clubs. Gilbert, however, wanted approximately $500,000 more per year than his club offered, despite recently having subpar years in sacks (11.5 sacks in the last three years) when compared to the other top three pass rushers in the NFL. Since the two sides were unable to come to an agreement by the signing date set by the NFL, Gilbert was forced to sit out the rest of the season. Richard Justice, *Gilbert Done Before He Starts; Deadline Passes to Sign 'Franchise' Defensive Tackle*, WASH. POST, Nov. 5, 1997, at C1.

for the NFL to show its strength. They may be good players, but they are not good morale builders for the team. Although it is possible for a player to hold a club by the reins, a National Football League club should not be allowed to utilize fraud and deception to level the playing field.