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Contracts--Economic Duress--Threat to Sell Property to an "Undesirable Party" Held Sufficient to Constitute Duress (Wolf v. Marlton Corp., 57 N.J. Super. 278 (1959))

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whose exit might be seriously detrimental to the national security. More specifically, a question arises where the disclosure of the reasons for denying an individual's passport or the government's confidential sources of information might be equally deleterious to the country's welfare. It seems that some specific legislation could be passed which would both relieve the government of this dilemma and still effectively safeguard the right of the individual. Nonetheless, until further specific legislation is passed, the Secretary's discretionary power is limited to the areas in which it had been generally exercised since 1856 and the regulations hinging upon the "interests of the United States" clause have been substantially invalidated.[38] Just how specific such legislation must be is presently a divided question.[39] The *Worthy* case has affirmed the Secretary's right to place *area* restrictions upon travel for *all* Americans. Whether, and to what extent, an *individual* can be so restricted, are the still unanswered questions which now await further legislation before the court has an opportunity to consider them.

CONTRACTS—ECONOMIC DURESS—THREAT TO SELL PROPERTY TO AN "UNDESIRABLE PARTY" HELD SUFFICIENT TO CONSTITUTE DURESS.—Defendant-builder and plaintiffs-purchasers entered into an agreement calling for the construction of a house in the defendant's housing development. The contract provided for the making of a cash down payment. The plaintiffs, after making the down payment, desired to be released from the contract and recover the purchase money paid. Upon defendant's refusal to release them, plaintiffs allegedly threatened to resell the house to an "undesirable person" for the purpose of damaging the builder's business unless he acceded to the plaintiffs' terms. Defendant agreed but thereafter refused to return the money. Plaintiffs sued on the release agreement. The lower court held for the plaintiffs. On appeal, the Court reversed, *holding* that if the threats were in fact made and the builder actually believed they would be carried out and his will was thereby overcome, he was justified in treating the original contract as breached and was entitled to recover whatever damages resulted therefrom. *Wolf v. Marlton Corp.*, 57 N.J. Super. 278, 154 A.2d 625 (1959).

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[38] Kent v. Dulles, 357 U.S. 116 (1957); *accord,* Dayton v. Dulles, 357 U.S. 144 (1957).

[39] See, *e.g.,* THE REPORT OF THE SPECIAL COMMITTEE TO STUDY PASSPORT PROCEDURES OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, FREEDOM TO TRAVEL 81-86 (1958); Jaffe, *The Right to Travel; The Passport Problem,* 35 FOREIGN AFFAIRS 17, 27-28 (1956); Boudin, *The Constitutional Right to Travel,* 56 COLUM. L. REV. 47, 72-77 (1956); Comment, 61 YALE L.J. 171, 198-201 (1952).

The primary purpose of the duress doctrine is the prevention of unjust enrichment.[1] In the majority of duress cases, the coerced party is seeking restitution of transfers or payments made in settlement of a non-existent debt.[2] Other cases involve transactions induced by duress contemplating an exchange of values through payments made, property transferred or services rendered by the coercing party.[3] As a condition to rescission the party under duress will be required to tender or account for the value received by him.[4] "A contract obtained by duress is not ordinarily void, but is merely voidable, and a party seeking to avoid such a contract must act promptly to repudiate it. . . ." [5]

Judicial intervention, in situations of undue economic pressure, was recognized in a few areas in early English jurisprudence.[6] The doctrine of duress of goods developed with the courts' realization of the unfortunate plight of a merchant whose goods are illegally withheld. In such circumstances the merchant could hardly protect himself adequately.[7] "Freedom of Contract," the recognition and encouragement of each man's initiative and ambition by giving him the right to use his economic powers to the fullest, and the courts' reluctance to concern themselves with the equivalence of the consideration for a promise were in the main the deterrent factors in the recognition of economic pressure as a form of duress.[8]

The modern tendency of courts of law is to regard any transaction as voidable in which the party seeking to avoid was coerced to enter by the fear of the wrongful act of the other party.[9] Although the pressure extended in most cases is wrongful, *i.e.*, the person exerting the influence is doing it by an unlawful means, the courts have recognized that although coercive means may be lawful they must not be so oppressively used as to amount to an abuse of legal remedy.[10]

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[1] Dawson, *Economic Duress—An Essay in Perspective,* 45 MICH. L. REV. 253, 282 (1947).

[2] *Id.* at 283.

[3] *Id.* at 284.

[4] Graham v. Fisher, 244 App. Div. 740, 278 N.Y. Supp. 982 (2d Dep't 1935), *aff'd mem.,* 273 N.Y. 652, 8 N.E.2d 331 (1937).

[5] In the Matter of Minkin, 279 App. Div. 226, 233, 108 N.Y.S.2d 945, 954 (2d Dep't 1951) (concurring opinion), *aff'd mem.,* 304 N.Y. 617, 107 N.E.2d 94 (1952).

[6] Dalzell, *Duress By Economic Pressure,* 20 N.C.L. REV. 237, 241 (1942). Among the areas in which the common-law courts interfered with freedom of contract were the mortgagor's equity of redemption, and sales of reversionary interests. See Pound, *Liberty of Contract,* 18 YALE L.J. 454, 482-83 (1909).

[7] *Ibid.* See Astley v. Reynolds, 2 Str. 915, 93 Eng. Rep. 939 (K.B. 1732).

[8] Dalzell, *supra* note 6, at 237.

[9] 5 WILLISTON, CONTRACTS § 1603, at 4495 (rev. ed. 1937). See also RESTATEMENT, CONTRACTS § 495 (1932).

[10] See, *e.g.,* Harmony v. Bingham, 12 N.Y. 99 (1854) (threat to withhold property until fare was paid in full thereby cutting off prior right to rebate);

Areas in which economic duress has been recognized in New York are where: a common carrier exacted unreasonable terms for the performance of a service,[11] threats by governmental agencies have induced a party to enter into an agreement,[12] a party to a contract threatens a breach which in effect would cause irreparable harm to the other party to the contract,[13] a wife demanded property before she would fulfill her prior valid agreement to sign all deeds as asked, thereby releasing her right to dower,[14] a void tax has been paid to prevent seizure or levy on real property.[15]

In the instant case, although the Court recognized that the owner of property is free to sell to whomever he wishes, the Court held that the plaintiffs' actions were wrongful, not necessarily in a legal, but in a moral or equitable sense. The Court stated:

> [W]here a party for purely malicious and unconscionable motives threatens to resell such a home to a purchaser, specially selected because he would be undesirable, for the sole purpose of injuring the builder's business, fundamental fairness requires the conclusion that his conduct in making this threat be deemed "wrongful," as the term is used in the law of duress.[16]

Concededly, if duress is to be tested, not by the nature of the threats, but by the state of mind induced in the victim,[17] any type of action which is wrongful in any sense might result in duress. The type of "duress" exercised in the instant case, however, is distinguishable from those normally recognized in the area of economic compulsion. The damage resulting from a threat to sell to an "undesirable party" [18] is speculative and dependent upon the actions of third persons, whereas, for example, in the case of a threat to wrongfully breach an existing contract the damage is direct and depends upon the action of the person making the threats. In addition, in view of the decision of *Shelly v. Kramer*,[19] which held that

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Rose v. Owen, 42 Ind. App. 137, 85 N.E. 129 (1908) (threat to apply for a receiver of a corporation); Chandler v. Sanger, 114 Mass. 364, 19 Am. Rep. 367 (1874) (attachment of perishable property).

[11] Baldwin v. Liverpool & G.W.S.S. Co., 74 N.Y. 125, 30 Am. Rep. 277 (1878).

[12] American Dist. Tel. Co. v. City of New York, 213 App. Div. 578, 211 N.Y. Supp. 262 (1st Dep't 1925), *aff'd mem.*, 243 N.Y. 565, 154 N.E. 607 (1926).

[13] Criterion Holding Co. v. Cerussi, 140 Misc. 855, 250 N.Y. Supp. 735 (Sup. Ct. 1931).

[14] Van Dyke v. Wood, 60 App. Div. 208, 70 N.Y. Supp. 324 (1st Dep't 1901).

[15] Adrico Realty Corp. v. City of New York, 250 N.Y. 29, 164 N.E. 732 (1928).

[16] Wolf v. Marlton Corp., 57 N.J. Super. 278, 154 A.2d 625, 630 (1959).

[17] See Rubenstein v. Rubenstein, 20 N.J. 359, 120 A.2d 11, 15 (1956).

[18] The phrase "undesirable party" is neither defined nor is an example thereof given in the report of the case. In light of this lack of clarity it may be assumed that the content of the threat was of a racial or religious nature.

[19] 334 U.S. 1 (1948).

enforcement by a state court of a privately created racially discriminatory restrictive covenant or agreement relative to the ownership or occupancy of land is "state action," which violates a thereby excluded person's rights under the equal protection clause of the fourteenth amendment,[20] it is surprising that the Court in the present case recognized that the threat to sell to an "undesirable party" constituted duress. Although doing what a person has a legal right to do, when done in a wrongful manner may constitute duress, it would seem that the judicial taboo in the area of enforcing covenants and agreements concerning discrimination in housing should have precluded the Court from holding as it did.

COPYRIGHTS — GOVERNMENT EMPLOYEE — APPLICATION OF PATENT LAW "SHOP RIGHT" RULE TO SPEECHES OF NAVAL OFFICER.—A prominent naval officer delivered several addresses on the subject of naval technical advances, coupled with remarks on the state of education in this country. In an action for declaratory judgment, a publishing house, seeking to quote from these speeches without the author's permission, alleged that the material was official government property and thus by statute [1] not subject to copyright. The United States District Court for the District of Columbia *held* that even though some of the material was gained from the author's official relationships and paid for in part by the government, the property rights remained in the author and consequently were protected by copyright. *Public Affairs Associates v. Rickover,* 177 F. Supp. 601 (D.D.C. 1959).

In 1854 the House of Lords, in *Jefferys v. Boosey* [2] recognized that common-law copyright *after publication* had never, in fact, existed. Previously, in 1834 the United States Supreme Court in *Wheaton v. Peters* [3] had held similarly, predicating its decision on the constitutional provision for copyrights.[4] In view of this statutory

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[20] U.S. CONST. amend. XIV.

[1] 17 U.S.C. § 8 (1958). "No copyright shall subsist in the original text of any work which is in the public domain . . . or in any publication of the United States Government . . . ." *Ibid.*

[2] See Jefferys v. Boosey, 4 H.L. 815, 977, 10 Eng. Rep. 681, 744 (1854). See generally Rogers, *A Chapter in the History of Literary Property; The Booksellers' Fight for Perpetual Copyright,* 5 ILL. L. REV. 551, 559 (1911).

[3] Wheaton v. Peters, 33 U.S. 590, 660 (1834). See generally Rogers, *supra* note 2, at 560.

[4] U.S. CONST. art. I, § 8, cl. 8. This clause provides that Congress shall have the power: "to promote the Progress of Science and the useful Arts, by *securing* for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries. . . ." (Emphasis added.) Wheaton v. Peters, *supra* note 3, at 660, construed the word "securing" to be