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Real Property - Business Compulsion: Exaction of Overpayment - Weinman Pump Manufacturing Co. v. B. F. Cline, 183 N.E.2d 465 (Court of Appeals of Ohio, 1961)

DePaul College of Law

REAL PROPERTY–BUSINESS COMPULSION: EXACTION OF OVERPAYMENT

Plaintiff was having part of his land appropriated for an expressway project by the City of Columbus. It was imperative, therefore, that he find other land so that he could relocate that part of his manufacturing plant which was then on the appropriated land. Owning some land immediately west of the present site, he planned to relocate there. The defendant owned a small parcel of land which was contiguous with this land. Desiring to obtain this small plot so that he could start relocating, he entered into a contract of sale with defendant which provided that defendant would deliver "merchantable title in fee simple," conveyance by "deed of general warranty with release of dower." In return, plaintiff was to pay $8,000 for the land. Plaintiff had considerable trouble obtaining a clear title from the defendant and subsequently commenced an action for specific performance. Defendant then disclosed that he was married and would not deliver a title free from dower right unless plaintiff paid an additional $7,000. Realizing that he could not get release of dower through his action for specific performance, as defendant's wife was not a party to the contract of sale, plaintiff paid the additional amount, since he urgently needed the land in order to relocate. Plaintiff immediately started this action for recovery of the $7,000 overcharge plus $10,000 in damages for late performance on the contract. To this action, the Court of Common Pleas of Franklin County, Ohio, sustained a general demurrer. Plaintiff appealed to the Court of Appeals of Ohio, and the court affirmed the lower court's decision, holding that the plaintiff paid the additional amount voluntarily and that he was not compelled to pay as he had an action for specific performance. *Weinman Pump Manufacturing Co. v. B. F. Cline*, 183 N.E.2d 465 (Court of Appeals of Ohio, 1961).[1]

The important question which this case poses involves the doctrine of business compulsion, on which the plaintiff relies for restitution of the $7,000 overcharge. A divided court held that not only was the doctrine not recognized in Ohio, but that if it were, it would not apply to this case.

At earliest common law, duress was only considered to be duress of person, which involves the exaction of illegal payment by threat of physical violence to the person.[2] This doctrine gradually was extended to cover situations of duress of goods, i.e., the seizure or detention of personal

[1] Plaintiff appealed to the Supreme Court of Ohio on a motion to direct the Court of Appeals to certify its record. The motion was denied. No records are kept on these motions.

[2] 1 BLACKSTONE, COMMENTARIES 131. For a good discussion of this topic, see Galusha v. Sherman, 105 Wis. 263, 81 N.W. 495.

property to extort payment from the owner.[3] Subsequently the business compulsion doctrine developed from common law duress. It has been defined thus:

> . . . while differing somewhat from the common law duress [it] is a species of duress involving involuntary action, in which one is compelled to act against his will in such a manner that he suffers a serious business loss or is compelled to make a monetary payment to his detriment.[4]

Although the doctrine of business compulsion is almost universally recognized in this country, the cases involving it have varied results. Cases affirming the doctrine are in a slight majority.[5] The reason for the varied results is that, "it is manifestly impossible . . . to frame a test to determine precisely what the nature or extent of the injury or interference must be in order to constitute duress. Each case must be judged in the light of its peculiar circumstances."[6]

A question which is relevant in almost all the decisions based on the doctrine is what constitutes voluntary or involuntary action. The reason for this is that a person who performs a voluntary action cannot be said to have done it under compulsion. Although this is a question of fact, there must be some sort of objective standard upon which a decision can be made. Necessarily then, "an involuntary payment imports a payment made against the will of the person who pays. It implies that there is some fact or circumstance which overcomes the will and imposes a necessity of payment in order to escape further ills."[7] Therefore, "to constitute a voluntary payment the party paying must have had the freedom of exercising his will. When he acts under any species of compulsion the payment is not voluntary."[8]

For a better understanding of the factual situations which will cause the doctrine to be applied, an examination of some clear cases must be made. In *Van Dyke v. Wood*[9] the husband (plaintiff) conveyed to his wife (de-

[3] Foshay v. Ferguson, 16 N.Y.C.L. 154 (1843). For a good discussion, see: Van Dyke v. Wood, 60 App. Div. 208, 70 N.Y.S. 324 (1901).

[4] Starks v. Field, 198 Wash. 593, 598, 89 P. 2d 513, 515 (1939). Also see 5 WILLISTON, CONTRACTS § 1618 (rev. ed., 1937).

[5] Leeper v. Beltrami, 53 Cal. 2d 195, 347 P. 2d 12 (1959); Gilmore v. Texas Co., 100 Fla. 169, 129 So. 587 (1930); Jones v. Sherwood Distilling Co., 150 Md. 24, 132 Atl. 278 (1926); Dale v. Simon, 267 S.W. 467 (Commission of Appeals of Texas, 1924); Homecrest Bldg. Co. v. Weinstein's Estate, 165 N.Y.S. 176 (1917); Kilpatrick v. Germania Life Ins. Co., 183 N.Y. 163, 75 N.E. 1124 (1905); Joannin v. Ogilvie, 49 Minn. 564, 52 N.W. 217 (1892). For a further discussion, see Annot., 79 A.L.R. 655 (1932).

[6] WOODWARD, THE LAW OF QUASI CONTRACTS § 218(5), p. 346 (1913).

[7] Tripler v. Mayor of New York, 125 N.Y. 617, 625, 26 N.E. 721, 723 (1891).

[8] Scholey v. Mumford, 60 N.Y. 498, 501 (Supreme Court of N.Y., 1875).

[9] 60 App. Div. 208, 70 N.Y.S. 324 (1901).

fendant) more land than she had in her inchoate right of dower in all his lands. In return she promised to release her dower rights in any of his lands upon request. There was a judgment of foreclosure on some of his lands, and since he had no funds, he requested her release of dower on some of his other lands in order that he could sell them and raise funds for payment of the mortgage. She refused to comply with the request unless he conveyed more of his land to her. He was forced to give in to her demand as foreclosure was sure to follow. He then sued to have the deeds, issued to his wife, voided, as he issued them under duress. The court held for the plaintiff, stating that although it may have been possible for the husband to have obtained release of dower through specific performance, the sale upon foreclosure would have taken place and made the release unnecessary. In *Ferguson v. Associated Oil Co.*,[10] plaintiff contracted to lease a gasoline station. The lease gave plaintiff an option to buy the land and provided that during the term of the lease plaintiff should handle products of the defendant exclusively. A sales contract was entered into whereby plaintiff received a discount on the gasoline. When the time came for the delivery of the gasoline, plaintiff was not granted the discount. He protested but paid for the delivery and paid for several deliveries thereafter. In a suit to recover the amount of the discount, a divided court held that the rule was that where money, illegally exacted, is paid to prevent the sacrifice of capital, under business compulsion, it may be recovered if paid under protest. The dissent stated that the payments were voluntary, that the plaintiff had a remedy in the courts, and that he delayed too long in bringing action. In a land case, the purchaser of land relying on a contract of purchase with the defendant had sold the houses on the purchased land. Time being of the greatest importance in view of the purchaser's commitment, he was forced to pay more money by the vendor in order to secure the deed to the land. The court held that the payment was made under duress and the purchaser could recover.[11]

In the many cases denying recovery, the courts do not refuse to accept the doctrine itself, but find, rather, that the factual situations do not conform to the doctrine.[12] In *New Jersey Brick Co. v. A. M. Krantz Co.*,[13] plaintiff sold defendant a quantity of brick at $7.00 per 1,000. Before deliveries were completed, plaintiff raised the price to $7.50. Defendant

[10] 173 Wash. 672, 24 P.2d 82 (1933).

[11] Smelo v. Girard Trust Co., 158 Pa. Super. 473, 45 A. 2d 264 (1946).

[12] Starks v. Field, 198 Wash. 593, 89 P. 2d 513 (1939); McCormick v. Dalton, 53 Kan. 146, 35 Pac. 1113 (1894); Cable v. Foley, 45 Minn. 421, 47 N.W. 1135 (1891); Hackley v. Headley, 45 Mich. 569, 8 N.W. 511 (1881).

[13] 94 N.J.L. 255, 109 Atl. 350 (1920).

objected but continued buying the brick. Plaintiff sued defendant on a small claim, and defendant counterclaimed duress on this overcharge. The court held that payment was voluntary, for the defendant was perfectly free to pay or not, and, if he did not pay, to defend on the ground that the plaintiff was entitled to only the original price. He chose not to do so. In *Boss v. Hutchinson*,[14] plaintiff contracted to buy potatoes from defendant at 93 cents per bushel. The potatoes were in a railroad car and in danger of spoiling. Defendant stated that the price was $1.93 per bushel and not 93 cents. Plaintiff claimed that he had to pay the extra money under duress. The court held for the defendant, stating that:

> [T]he instant case is merely one where a seller refuses to deliver the goods at the agreed price, and demands a higher price. The purchaser has a complete and adequate remedy at law. He can recover his damages for the breach of the contract: . . . In this case he elected to pay the increased price. Having done so, his payment was voluntary. . . . That he paid under protest does not make the payment involuntary. . . . [n]or in the instant case were any facts alleged or proved which would tend to show that the legal remedy afforded would not be adequate.[15]

Detroit Edison Co. v. Wyatt Coal Co.[16] involves an allegedly duressed overpayment for coal. Plaintiff alleged that he had to give heat and current to the City of Detroit and that he had to submit to defendant's demands for more money. The court held that, "the law affords relief only in cases of payments illegally and improperly exacted, or coerced under duress or compulsion. . . . [T]here must exist such conditions as to constitute a sure-enough emergency, making it necessary to submit to the unreasonable and unjust demand imposed. . . ."[17] The court found that the facts did not present such a situation and that "no necessity within the contemplation of the law is averred why such exaction should have been assented to."

In the cases previously discussed, there has been the question of alternative remedies. In many cases it has been held that if the party under duress has a remedy at law or in equity, and decides to pay a coerced overcharge instead of relying on the courts, he will be denied restitution of the overcharge.[18] The opposing view is that where a threat of serious financial loss will occur and the remedy allowed will not be adequate,[19]

[14] 182 App. Div. 88, 169 N.Y.S. 513 (1918).

[15] *Id.* at 90–1, 169 N.Y.S. at 515–6.

[16] 293 Fed. 489 (4th Cir., 1923).

[17] *Id.* at 493.

[18] 5 WILLISTON, CONTRACTS § 1620 (rev. ed. 1937).

[19] A loss which will occur from the *delay in invoking* the remedy cannot be called an adequate remedy in these cases.

the person at whom the threat is aimed has no realistic alternative but to pay the overcharge.[20] This seems to be the more logical approach.

Illinois has many cases involving the doctrine.[21] Most of these affirm it, and it is the law, today. The Illinois view is best stated in *Pittsburgh Steel Co. v. Hollingshead and Blei*[22] where the Appellate Court held it to be:

> a well settled rule of law that where one is compelled to pay money to another, who has no legal right to demand it, in order to prevent injury to his person, business or property, such payment is, in law, made under duress, and may be recovered back from the party receiving it, and it makes no difference that the payment was made with full knowledge.[23]

In the *Weinman* case, the court held that plaintiff obtained more by paying than he could have by proceeding with his action for specific performance because he could not obtain release of dower. According to the court's reasoning, he, therefore, paid voluntarily and obtained more by receiving the wife's release of dower since she was not a party to the original contract. It must be remembered, however, that plaintiff was to receive release of dower in the original contract. Thus the payment of the $7,000 was legally without consideration. In the words of Judge Duffey, who dissented, the plaintiff was in the same situation as "a purchaser who is faced with an unlawful refusal to perform unless an unlawful demand is satisfied; who faces a substantial direct financial loss and an immeasurable indirect loss as a result of a shutdown of production."[24]

Judge Duffey shows the inequity of the decision:

> We cannot ignore the fact that the law is an imperfect instrument. Legal rights exist for which, under particular circumstances, our remedies can provide only partial and incomplete protection. The inadequacies of legal remedies may arise from the delay necessary to invoke them, or because the remedy itself cannot

[20] The classic statement regarding this point is found in an old English case: "The plaintiff might have such an immediate want of his goods, that an action of trover would not do his business." Astley v. Reynolds, 2 Strange 915, 916, 93 Eng. Rep. 939. See also: DeGraff v. County of Ramsy, 46 Minn. 319, 320, 48 N.W. 1135 (1891).

[21] Cases aff'd.: Peterson v. O'Neill, 255 Ill. App. 400 (1930); Chicago & Eastern Ill. Rwy. Co. v. Miller, 309 Ill. 257, 140 N.E. 823 (1923); City of Chicago v. N.W. Mutual Ins. Co., 218 Ill. 40, 75 N.E. 803 (1905); Pemberton v. Williams, 87 Ill. 15 (1877); Chicago & Alton Rwy. Co. v. Chicago Vermilion & Wilmington Coal Co., 79 Ill. 121 (1875); Spaids v. Barrett, 57 Ill. 289, 11 Am. Rep. 10 (1870); Bradford v. City of Chicago, 25 Ill. 349 (1861). Cases denying recovery but recognizing doctrine: Ill. Merchants' Trust Co. v. Harvey, 335 Ill. 284, 167 N.E. 69 (1929); Koenig v. The Peoples Gas Light & Coke Co., 153 Ill. App. 432 (1910); Ill. Glass Co. v. Chicago Telephone Co., 234 Ill. 535, 85 N.E. 200 (1908); Elston v. City of Chicago, 40 Ill. 514, 89 Am. Dec. 361 (1866).

[22] 202 Ill. App. 177 (1916).

[23] *Id.* at 180.

[24] Weinman Pump Manufacturing Co. v. B. F. Cline, 183 N.E. 2d 465, 470 (Court of Appeals, Ohio, 1961).

accomplish the fulfillment of the right. Where the loss which may result from the effort to legally enforce a right is substantially greater than the loss which results from compliance with a wrongful demand, the will is surely overridden. There is no freedom of choice; only a choice of evils. To deny recovery and thereby upheld the extortion is to deny an effective protection for the contractual rights, and to encourage the breach.[25]

By its decision in this case, the Ohio court not only went against the weight of authority by not recognizing the doctrine of business compulsion, but it also is encouraging breach of contract under similar circumstances.

[25] *Id.* at 472.

REAL PROPERTY—CONDEMNATION OF NON-SLUM AREA FOR PRIVATE REDEVELOPMENT

The plaintiffs, sixty-eight home owners, brought suit for a declaratory judgement that, a section[1] of the New York General Municipal Law, was unconstitutional on its face and as it applied to a proposed redevelopment project in an area in which the plaintiffs lived. The challenged section authorizes cities to condemn, for the purpose of reclamation and redevelopment, predominantly vacant areas which are economically dead with the result that their existence and condition impairs the sound growth of the community. The section states that if one or more of the noted conditions exist,[2] the planning commission, after public hearings, may designate the area as one requiring redevelopment and that the municipalities may use the power of eminent domain, if necessary, to clear, replan, and redevelop the vacant land. The question presented to the court was whether this statute, which allows the condemnation of an area which is substandard but does not contain tangible physical blight, is unconstitutional because it allows a private use of condemned land which is not an actual slum. In effect the statute allows the use of the power of eminent domain for private industrial purposes. The court held that an area in a city does not have to be a slum in order to make its redevelopment a pub-

[1] N.Y. GENERAL MUNICIPAL LAW ARTICLE 15, § 72n.

[2] Subdivision of the land into lots of such form, shape, or size as to be incapable of effective development; obsolete and poorly designed street patterns with inadequate access; unsuitable topographic or other physical conditions impeding the development of appropriate uses; obsolete utilities; buildings unfit for use of occupancy as a result of age, obsolescence, etc.; dangerous, unsanitary or improper uses and conditions adversely affecting public health, safety, or welfare; scattered improvements which, because of their incompatibility with an appropriate pattern of land use and streets, retard the development of the land. GENERAL MUNICIPAL LAW ARTICLE 15 § 72n subd. 1, pars. a and b.