Contract Law And Principles Of Duress

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Introduction

A lot of contracts happen every single day, ranging from minor ones to more valuable commercial contracts. Before one enters a contract, a basic principle of voluntariness that is acceptable to both parties is required. Nonetheless, issues may arise when one party is pressured to subscribe to the contract. Equally, when a party is denied an opportunity or their right to voluntarily enter into a contract, it may give rise to the defense of duress, which then makes the contract voidable (Chung 2017). The true meaning of duress was clearly explored in the famous court case, R versus Attorney General in 2003, in which it was established that duress amounts to a physical threat or other forms of illegitimate pressure applied to achieve a wrong objective that is sufficiently severe to undermine the consent of one party. If lawful pressures count as illegitimate threats, then the only viable basis for discriminating between acceptable and unacceptable pressures is not positive law but social morality because the law may not delve into whether one party was under duress and influenced by such duress, which disrupts the freedom of contract.

Lawful Pressure/Duress

Notably, the fundamental issue concerning duress is whether intimidation that emanates from a lawful act should be regarded as illegitimate duress/pressure. Thus, this issue is challenging since the contract itself is voidable despite the fact that every action in that contract was lawful. This was substantially explored in the court case between CTN Cash and Gallaher in 1994 (Friedman 2011). In this court case, the plaintiff agreed to order some items, cigarettes, after contractually making an agreement with a defendant; however, through their own fault, they incorrectly ordered those items to be delivered to the wrong warehouse. As a result, the cigarettes were shipped. The defendants claimed that the plaintiff should take responsibility for the risk of theft and pay for the items, whereby if they failed to pay for the cigarettes, then the defendant would withdraw any credit facility from their future contracts. Consequently, the court of appeal rejected the claim and established that there was no economic pressure since the threat was indeed made in good faith. They frankly believed that their claim for any payment was legitimate. Moreover, the plaintiff went further by stating that the defendant was, in law, allowed to reject or subscribe to any future agreements with the plaintiff for any motive, and thus, it was legitimate for the defendant, for any purpose whatsoever, to assert that they would not grant credit any further to the plaintiff, or rather have the legitimacy to refuse any party for whatever reason.

According to Friedman (2011), lawful pressures may validate the principle of duress. He further argues that the only possible ground for discerning between acceptable and unacceptable pressures is not constructive law but rather social morality (Chung 2017). The implication of this statement is that it significantly demonstrates that lawful act cases confound the principle since it is founded on social morality instead of the law, which implies that it may impede the freedom of voluntary contract as well as usual commercial dealings because parties may continuously be worried about their actions irrespective of whether they are lawful because of the fear of the agreement being challenged, or even a party disliking the positions of the agreement.

Conversely, this would interfere with commercial agreements because businesses threatening other businesses to achieve an advantage in a deal is regarded as a norm (Friedman 2011). When lawful acts become involved in duress, it provides an opportunity for several business contracts to become voidable and thus widens this section of law in order to permit numerous claims to be arrived at, which may later cause uncertainty in the law and subsequently disrupt the freedom to make agreements/contracts.

Voluntary

One may think that for a claim under duress to happen, an agreement must have been reached. One of the issues with duress is the fact that most claims do not come from parties who have been physically compelled to sign a contract. Appending a signature may appear to mean that they voluntarily agreed to the contract; the norm has been that claims are brought forward by parties who entered into the contract in its entirety but later allege duress (McKendrick 2014). Therefore, because a party willingly entered the contract, it may then be argued that pressure is in violation of the principle of liberty to enter into a contract, especially when the party can go back and review their agreement later after they have willingly entered an agreement. Notably, a contract is considered to be a promise that both parties have agreed upon; thus, going back on this promise amounts to a violation of the contract.

Besides, another important point that should be noted is the fact that in a scenario in which a party is threatened in order to enter into an agreement that they would still enter into anyway, Friedman (2011) proposes that duress is still available despite the contract being made without any threats. However, this can be interpreted as violating the principle that guarantees one the freedom to enter an agreement willingly because it efficiently enables parties to have entitlement within duress and make an agreement voidable without any reason since they would have subscribed to the agreement irrespective of the threats made. What is more, a lot of issues have been attributed to this approach; thus, Scarman's method in Pao On versus Lau Yiu Long in 1980 remains a more adequate approach. Lord Scarman's approach argues that whether duress is operative depends on whether the claimant has any alternative but to submit to it (Schwartz & Scott 2003). Therefore, this is more consistent with voluntary acceptance since it means that the contract would be impossible to reach without threats that sustain the basic principle of duress and fail to permit rights to be reached against agreements

they ought to have reached anyway, thereby preserving the principle of liberty to contract.

Moreover, in the court case of Barton versus Armstrong, 1976, the panelists tend to share Lord Cross's sentiments (Schwartz & Scott 2003). It was established that it was proper to find duress when the threat was a reason for the applicant to enter into an agreement, even if it was not the only reason. The panelists argued that their lordships had thought that a similar rule should be used in cases that deal with duress and that when the threat against Armstrong was a sufficient reason for executing Barton, he was entitled to relief despite the fact that he too may well have entered into an agreement when Armstrong had expressed no threats in order to intimidate him into signing the contract (McKendrick 2014). The panelists explained that in this scenario, they were restating that the threat against the defendant merely needs to be a motive among others for the applicant's agreeing to sign the contract so that a claim for duress can be established (Schwartz & Scott 2003). Thus, this assessment shows that the principle of duress mainly concentrates on the respondent's morally wrong acts instead of looking at their impact on the claimant. Hence, this may point to a lack of rational fundamentals within the principle since this case was found not to be binding as precedent. As a matter of fact, not every judge will have a similar view to that of Lord Cross or the Privy Council. The implication is that if a similar case like this one is brought to court, the verdict and reasoning may vary, which will bring about uncertainty within the law.

Illegitimate Pressure

What is more, for any right in duress to become fruitful, there must be illegitimate pressure. Chung (2017) describes illegitimate pressure as an unlawful threat applied and pursued by the respondent on the applicant. Thus, the question of whether a legitimate act may be regarded as illegitimate had been discussed earlier. Before economic duress, pressure from an individual was the only form of duress available for any party to make any claim. Therefore, a lot of issues came up when economic duress was made available.

One question that then arises is which threats should be regarded as illegitimate within economic duress. For instance, in the court case Pao On versus Lau Yiu, 1980, the applicants were found to have threatened that they would not finalize their contract unless the respondent was ready to buy the stocks back from the applicant at a cost of 2.50 dollars per portion at the close of April 1974 (Schwartz & Scott 2003). After that, the applicants would be allowed to seek the respondent's purchase of the stock back, although the respondent rejected it and asserted that they were subjected to intense duress at the time they were entering an agreement. Going by the judgment of Lord Scarman on this issue, the judge said that duress is mainly coercion of the will so as to corrupt consent. The judge placed a lot of focus on the compulsion of willpower rather than the unlawful pressure that makes a person question whether the illegitimacy of duress is less pertinent compared to the coercion of willpower with respect to a right for duress (Schwartz & Scott 2003). Further, the Lordships held that within a contractual context, pressure alone is not sufficient, thereby raising the issue of what is termed as being enough pressure within economic duress so that it can be regarded

as illegitimate. The implication is that the principle of duress does not have a rational foundation since illegitimate duress remains one of the key characteristics of an entitlement to duress. It is further implied that it is not essential compared to the coercion of willpower with respect to this case, which demonstrates that there is a lack of robust basic principles within the true doctrines of duress that will be able to assist judges in making decisions. Rather, this issue has been left to the judges to decide.

Fairness

In the view of McKendrick (2014), the main function of a principle of duress is to offer a platform that will guarantee fairness for all the contracting parties. For instance, in the court case Atlas Express Company versus Kafco Company, 1989, Atlas had uttered some threats to Kafco, affirming that if they failed to append their signature to the document, then Atlas Limited would also not deliver the products. Therefore, the Kafco Company gave in to the threat and signed an agreement because the products were essential to Kafco's business success, and it could not find alternative firms that supplied it with the same products. Nevertheless, when Atlas Company decided to collect the payment from Kafco as agreed, then the latter refused to pay, thereby claiming that it was under intense pressure to sign the new contract. Notably, this assertion was accepted. It was revealed that Kafco entered into the contract under intense pressure and reluctantly and, by that time, had no negotiating power (McKendrick 2014). Thus, as Kafco did not have any bargaining power and was compelled to sign the agreement, it is fair enough to make the agreement voidable.

Conversely, in the court case of Progress Bulk Carriers company against Tube City in 2012, two firms made a contract that each party would then offer a cargo ship. Though the cargo was provided to another firm, for the agreement to remain viable, another ship was to be given to offset the cost incurred (Schwartz & Scott 2003). However, the owners of the ship agreed to offer a substitute ship unless the parties waived their claims in case there was a violation of the contract. The parties refused the offer and later agreed. This was a clear case of an unfair condition, and a claim of duress would have made the agreement voidable. By examining the instances of the case stated above, it is obvious that the principle of duress offers rational ground because it forms a basis for the principle of justice and fairness for everyone. Equally, one can argue that the principles of duress also contribute to the violation of the freedom of forming an agreement.

What is more, compelling a party to enter into an agreement violates the true basis of the doctrine of freedom of forming an agreement voluntarily. Thus, duress can be interpreted as putting one party at a losing end when the contract is decided as void because there was duress. This is evident in the court case between Halpern and Halpern, 2007, in which both parties were involved in a disagreement over the inheritance of a property that was then settled (McKendrick 2014). The applicant wanted to be paid for the breach of contract, although the defendant argued that they were under duress. The case was taken forward to higher courts to solve the matter. The implication is that there is a challenge in making sure that the law provides justice.

Limited Use

It has been established that many judges are reluctant to make decisions in favor of claims of duress. For instance, in the above-discussed case of R versus Attorney General, 2003 (McKendrick 2014), the judges failed to define duress and only referred the issue to future cases. There is a need for judges to define duress and the overall tenets of the agreement between parties duly. To effectively regulate claims that support duress, most judges added a timeframe within which either party to an agreement can make a claim (Chung 2017). For instance, if the claim was not launched in time, then the judges would not make a decision in favor of duress. There is a need for fairness for both parties, just as it is embodied in the principle of duress. The judges should critically examine the case of duress before they make any decision in favor of duress or not.

Conclusion

In brief, the issues concerning the principle of the doctrine of duress remain a subject of discussion and criticism. However, scholars criticize the limitation of the principle of duress. Nonetheless, it is important to embrace any doctrine that seeks to serve justice and fairness to all parties. Moreover, the judges agree that the principles of duress substantially affect the freedom of entering into a contract, although judges tend to avoid making any conclusion unless it is merited. Despite the fact that the benefits of the principle of duress outweigh the disadvantages, it is important for the law and the judges to be fair to all the contracting parties.

References

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