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QUASI-CONTRACTS--DURESS--RECOVERY OF PAYMENTS MADE UNDER ECONOMIC PRESSURE

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QUASI-CONTRACTS—DURESS—RECOVERY OF PAYMENTS MADE UNDER ECONOMIC PRESSURE—On September 1, 1939, plaintiff company, engaged in the business of refining, purchasing, transporting and selling gasoline and other petroleum products, entered into two written contracts with defendant retailer. One contract provided for purchase by defendant from plaintiff of real property by monthly installments totaling $32,000, and the other stipulated for purchase from plaintiff of all the gasoline and petroleum products handled by defendant for a period of five years from date. Defendant defaulted in the payment of monthly installments on the real estate contract, and plaintiff brought suit to recover the unpaid balance of $15,200 and sought foreclosure of the contract. Defendant admitted the material allegations of the complaint and counterclaimed for the sum of $10,188.86; alleging that plaintiff had overcharged defendant by that amount under the supply contract and that defendant had paid the overcharge under protest rather than risk jeopardizing his position under the supply contract or incur the penalty stipulated for purchasing elsewhere. The trial court entered judgment for the plaintiff on the complaint and for the defendant on the counterclaim, finding as a matter of law that defendant was overcharged under the contract in the amount claimed and that defendant waived no known right in paying the overcharges when demanded.[1] On appeal by plaintiff from the judgment on the counterclaim, *held*, reversed. (1) Defendant could not recover money paid voluntarily and without compulsion and with full knowledge of the facts and without fraud, duress or extortion. (2) Where there was no evidence of a threat to cancel the supply contract, defendant had an adequate remedy for construction of the contract under the Federal Declaratory Judgment Act.[2] *Pure Oil Co. v. Tucker*, (C.C.A. 8th, 1947) 164 F. (2d) 945.

That money paid under claim of right cannot be recovered is a general rule of law,[3] but a recognized exception permits recovery of payments made under economic duress,[4] in which case the policy favoring finality of settlements of disputed claims is outweighed by the policy opposing unjust enrichment.[5]

[1] (D.C. Iowa 1947) 70 F. Supp. 766.

[2] Judicial Code, § 274d, 28 U.S.C. (1940) § 400.

[3] 40 AM. JUR., Payment, § 157.

[4] 40 AM. JUR., Payment, § 161. With reference to the use of the word "voluntary," it has been said, "This form of statement seems objectionable because it uses the word 'voluntary' in a very artificial sense, embracing the negation not only of duress but of all the other grounds for recovery of money paid, a use of the term which is liable to misunderstanding." Durfee, "Recovery of Money Paid under Duress of Legal Proceedings in Michigan—Welch v. Beeching," 15 MICH. L. REV. 228 at 228, note 2 (1917).

[5] See 15 MICH. L. REV. 228-230 (1917); and Dawson, "Duress Through Civil Litigation," 45 MICH. L. REV. 571 at 578 (1947).

The problem, then, is to define economic duress—in other words, to determine what types and degrees of pressure are condemned.[6] As in other phases of the law of restitution, the extent of permissible pressure varies with the type of fact situation presented.[7] The problem in the principal case involves a payment exacted because of an underlying fear that a refusal would result in a breach of contract causing large capital and business losses. The courts have not always been willing to recognize such pressure as ground for recovery,[8] but refusal has been severely criticized, especially where there is extreme divergence in the respective bargaining positions of the parties.[9] By placing the decision in the principal case on two grounds, the court leaves some doubt as to the relative weight given to each. If the court was convinced that the facts show no threat of breach of contract, it is unnecessary to consider the adequacy of the remedy suggested as a source of relief to the defendant at the time of payment. On the other hand, if the court concerned itself with the plight of the defendant in case of refusal of further deliveries of gasoline arising out of nonpayment, then the question of the adequacy of the proposed remedy becomes vital.[10] Even if it be recognized that the procedure followed under the Federal Declaratory Judgment Act is a summary one, the defendant is forced to specu-

[6] That we can neither look exclusively, on the one hand, for acts on the part of the dominant party that are independently unlawful, nor exclusively, on the other hand, to the subjective position of the dominated party, seems clear. Durfee, "Recovery of Money Paid under Duress of Legal Proceedings in Michigan—Welch v. Beeching," 15 MICH. L. REV. 228 at 229-230 (1917); Dawson, "Economic Duress—An Essay In Perspective," 45 MICH. L. REV. 253 at 287-288 (1947).

[7] Explanation for such differences has been attributed partly to the interplay of legal and equitable doctrines that form the historical background for the concept of economic duress. See Dawson, id., 45 MICH. L. REV. 253 at 288-289 (1947).

[8] See Niedermeyer v. Univ. of Mo., 61 Mo. App. 654 (1895), where plaintiff recovered an excessive tuition fee paid at the start of his senior year at law school; Pittsburgh Steel Co. v. Hollingshead, 202 Ill. App. 177 (1916), where defendant was allowed to recover an illegal payment made to obtain delivery of steel urgently needed; Brown v. Worthington, 162 Mo. App. 508, 142 S.W. 1082 (1912), involving refusal to deliver hogs as required by contract of sale, purchaser having in the meantime resold; and Sunset Copper Co. v. Black, 115 Wash. 132, 196 P. 640 (1921), where plaintiff recovered excessive interest payments paid on a land contract to avoid loss by forfeiture of improvements valued at $200,000. But see, contra: Hackley v. Headley, 45 Mich. 569, 8 N.W. 511 (1881), wherein the plaintiff creditor accepted a note for less than the undisputed amount of an unliquidated indebtedness simply because of pressing need for cash at the particular time; Alexander v. S. A. Trufant Commission, (Tex. Civ. App. 1895) 34 S.W. 182, wherein plaintiff seller of oats was forced to enter into unfavorable contracts with the buyer defendant because of buyer's fraudulent threat of non-acceptance of the oats at a time of pressing financial need on the part of the plaintiff.

[9] See Dalzell, "Duress by Economic Pressure: I," 20 N.C. L. REV. 237 at 255-276 (1942) and cases therein discussed.

[10] See Dalzell, "Duress by Economic Pressure: II," 20 N.C. L. REV. 341 at 367-382 (1942), for a discussion of the legal effect of a ruling that there was an adequate remedy for the alleged victim of duress at the time of the application of pressure.

late on the consequences of doing without gasoline, the lifeblood of his business and the source of income for payment on the real estate contract, while the resulting decision is reached.[11]

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[11] Two cases presenting substantially similar fact situations were cited in the principal case but dismissed as not in point: Ferguson v. Assoc. Oil Co., 173 Wash. 672, 24 P. (2d) 82 (1933), wherein recovery was allowed; and Standard Oil Co. v. Petroleum Products Storage Co., 163 Tenn. 565, 44 S.W. (2d) 317 (1931), recovery not allowed.