

as a defense to a suit on the original cause of action if brought by the creditor before breach of the accord. The court indicates approval, however, of the common law rule that an executory accord is not a bar to a suit on the original claim. The sounder view would seem to be that the right to enforce the original cause of action is suspended until breach of the contract of accord.¹⁷ This would give effect to the apparent intent of the parties, namely, that the debtor should have the chance to give the satisfaction within the specified time during which he could not be subjected to an action on the original claim.

The decision, limited by the facts of the case, leaves unanswered the questions: whether the original cause of action is suspended until breach of the accord and whether, upon breach of the accord by the creditor, the debtor can maintain an action for damages or specifically enforce the accord. It would seem however, that since the court has now apparently adopted the view that an executory accord is an enforceable contract, the breaching creditor should be liable to the debtor in an action for damages. Further, it would not be too great a step to hold that the original cause of action is suspended until breach of the executory accord. These remedies are provided in § 417 of the Restatement of Contracts, which also provides that upon breach by the creditor the debtor may specifically enforce the accord. It is suggested that when cases arise in these areas the better course would be to follow these provisions.

JOSEPH P. WARNER

Contracts—Economic Duress.—*Wolf v. Marlton Corporation*.¹—Defendant housing developer contracted to build a house for the plaintiff, title to pass on completion. A down payment of \$2450 was made, with a second payment to be made on the final enclosing of the house. Plaintiff, prior to the time when the second payment was due, sought to terminate the contract and proposed that the contractor keep \$450 of the down payment upon cancellation. Upon the developer's refusal to cancel, plaintiff threatened that if agreement was not reached on his proposition, he would, on completion of the contract, resell the house and lot to an undesirable purchaser and thus ruin the developer's business. Defendant took plaintiff's threats as a breach of the contract and refused to continue. In suit for recovery of the down payment, the trial court found for the plaintiff, and the defendant appealed. The Superior Court of New Jersey, Appellate Division, remanded for further findings of facts. If, on further hearings, it is found that the threats were in fact made and defendant actually believed that they would be carried out, as a result of which his will was overborne, he was justified in treating the contract as breached and is entitled to recover whatever damages resulted therefrom.

¹⁷ See *supra* note 6.

¹ 57 N.J. Super. 278, 154 A.2d 625 (1959).

CASE NOTES

It is well settled that where one party to a contract makes it impossible for the other to carry out the terms thereof, the latter may regard the contract as breached and recover damages.² It is further well settled that a contract induced by duress will be nullified at the option of the party subjected to the duress. The common law concept of duress, which required an unlawful constraint in terms of threats of death, bodily harm, or imprisonment, has been greatly enlarged by the doctrine of economic duress or, as it is commonly referred to, business compulsion.³ Under this enlarged concept threats of wrongful economic pressure constitute duress sufficient to invalidate a contract at the election of the threatened party. As to the requirement that the economic pressure be wrongful,⁴ it is often said in the cases that a threat to do only what one has a legal right to do is not sufficient.⁵ However, recent cases dealing with compulsion take the position that threatened acts technically legal, yet, wrongful in a moral or equitable sense, are sufficient to constitute duress.⁶ A further development of the business compulsion doctrine is that the traditional objective standard utilized in determining whether threatened acts actually constitute duress has been abandoned. Once it is determined that the threatened acts are wrongful, the only further question is whether the person complaining has been constrained to do what he otherwise would not have done.⁷ An affirmative finding here makes the action complete.

The rationale underlying economic duress as a cause of action is that the duress factor nullifies the mutual consent essential to the making of a contract. Consequently, a judgment based on economic duress or business compulsion ordinarily requires only the specific restitution of property to its former possessor or the cancellation of an executory contract. The New Jersey court in the instant case has gone further and has allowed the threatened party to treat the contract as having been breached, has excused

² *Tannenbaum v. Francisco*, 110 N.J.L. 559, 166 Atl. 105 (1933); *Langer v. Lemke*, 78 N.D. 383, 49 N.W. 2d 641 (1951); *Kroop v. Scala*, 5 N.J. Misc. 89, 135 Atl. 501 (Sup. Ct. 1927).

³ *Dawson, Economic Duress—An Essay in Perspective*, 45 Mich. L. Rev. 253 (1947); *Dalzell, Duress by Economic Pressure*, 20 N.C.L. Rev. 237, 341 (1942); 17A Am. Jur. Duress § 7 (1957).

⁴ 5 Williston, *Contracts* § 1606 (Rev. ed. 1937).

⁵ *Marshall v. Packard—Bell Co.*, 106 Cal. App. 2d 770, 236 P.2d 201 (2d Dist. 1951).

⁶ *Hochman v. Zigler's, Inc.*, 139 N.J. Eq. 139, 50 A.2d 97 (1946), (Court found duress when a tenant who was selling his business paid over half the purchase price to his landlord upon the latter's threat not to renew the tenant's lease unless he made such payment); *Harris v. Flack*, 289 Ill. 222, 124 N.E. 377 (1919), (a threat to institute guardianship proceedings in order to procure favorable property settlements held to constitute duress); *Wise v. Midtown Motors, Inc.*, 231 Minn. 46, 42 N.W.2d 404 (1950), (a threat to sue made solely for the purposes of harassment is duress); see also: *Miller v. Eisele*, 111 N.J.L. 268, 168 Atl. 426 (1933); *Rubenstein v. Rubenstein*, 20 N.J. 359, 120 A.2d 11 (1956); *Fowler v. Mumford*, 9 Terry 282, 102 A.2d 535 (Del. Super. Ct. 1954) *Restatement, Contracts*, § 492(g) (1932).

⁷ *S. P. Dunham v. Kudra*, 44 N.J. Super. 565, 131 A.2d 306 (1957); *Woodside Homes, Inc. v. Town of Morristown*, 26 N.J. 529, 141 A.2d 8 (1958).

his failure to continue performance, and has permitted him to recover damages for the breach. The decision is reasonable in the light of the modern trend away from the rigidity of the common law principles restricting duress to threats of physical violence or actionable wrongs. Economic duress can prevent performance of a contract as readily as can physical duress, and if the latter constitutes grounds for treating the contract as breached, there seems to be no valid reason why the former should not be treated in the same manner. The legality of plaintiff's right to sell to whomever he may choose can not be questioned; yet, it can be understood why the court considered as wrongful his threat to sell to an undesirable purchaser solely for the purpose of ruining defendant's business. The case was decided on grounds of fundamental fairness, a concept found far more frequently at equity than at law, but since the ultimate object of the business compulsion doctrine seems to be the promotion of fair dealing in business contracts, and since the handling of this case by the New Jersey court is in accord with this objective, the decision is a sound one.

DAVID R. MELINCOFF

Corporations—Constitutional Law—State's Reserved Power to Amend Corporate Charters.—*Coyne v. Park & Tilford Distillers Corporation*.¹

—Plaintiffs, minority stockholders owning approximately 4 per cent of the stock of a subsidiary seek to enjoin its merger pursuant to Delaware General Corporation Law, Ch. 8, § 253, with its parent which owned the balance of its stock. Plaintiffs contend that the provisions of the merger statute empowering the parent to pay minority dissident shareholders the value of their stock in cash, thereby eliminating their vested interest in the merged corporation, is unconstitutional. From a decision granting defendant's motion for summary judgment, the Supreme Court of Delaware on appeal affirmed. Held: The statute requiring a statement from the parent to the shareholders of the subsidiary being merged of "the terms and conditions of the merger, including the securities, cash, or other consideration to be issued, paid or delivered by the parent corporation upon surrender of each share of the merged corporation not owned by the parent corporation,"² empowers the parent to pay dissenting minority shareholders of the subsidiary the value of their stock in cash. The statute as so construed is not unconstitutional despite being enacted after the plaintiffs acquired their stock in the subsidiary, even though at that time the statute permitted only conversion of shares of the subsidiary into like shares of the parent corporation on a merger.

Coyne represents a further chipping away of the doctrine of *Keller v. Wilson*,³ and the rights of minority interests. In the *Keller* case an amendment to the corporate charter, pursuant to statutory authorization, elimi-

¹ 154 A.2d 893 (Del. Ch. 1959).

² Del. Rev. Code 1935, § 253.

³ 21 Del. Ch. 391, 190 Atl. 115 (1936).