

# Quasi-Contracts - Duress Through Business Compulsion

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## QUASI-CONTRACTS—DURESS THROUGH BUSINESS COMPULSION

In 1933 the plaintiff, in *Norton v. Michigan State Highway Department*,<sup>1</sup> was awarded a contract for certain highway construction work. After the work was commenced there was a resurvey of the project and a change of plans which resulted in a substantial increase in the amount of work and a necessity for the acquiring of additional equipment by the plaintiff. By the spring of 1935 he did not have sufficient funds with which to complete the work, suits were being started and claims were being filed with his surety. He was given financial aid by the state highway department and by his surety and completed the work in October, 1935.

In 1936 he submitted a claim for \$52,854.23, which he claimed to be the balance due him on his contract. After an audit, the highway department paid the surety approximately \$27,000, with plaintiff's approval, which was applied on his obligations.

In 1939 he submitted to the highway department a claim for the unpaid balance of his original claim, in the sum of \$25,500.28. This claim was in the form of a letter which read in part, "I am submitting a statement of profits and losses in connection with project 31-30 which shows a loss amounting to \$25,500.28." Another audit was made which disclosed the fact that there was actually due the plaintiff the sum of \$27,423.69, and this amount was paid to the surety and plaintiff together and turned over to the plaintiff after the surety had taken out the amount coming to it. At this time the plaintiff executed a release of further liability, which was approved by the surety.

Almost three years later, in 1942, the plaintiff filed the suit under discussion for \$30,900 claiming it as a fair and reasonable compensation for his services under the modified contract. As an affirmative defense, the highway department alleged that in 1939 it had paid the plaintiff \$27,423.69, that this amount was accepted by him in full accord and satisfaction of his alleged claim, and that he had released the highway department from further liability. For reply, the plaintiff alleged that the purported release was obtained without consideration, by duress and business compulsion, and was therefore void.

The basis for the plaintiff's claim of duress or compulsion, as indicated by the testimony, was that he was hard up at the time he signed the release and his motive was to take the \$27,000 as better than nothing. He admitted that at the time of signing the release he

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<sup>1</sup> *Norton v. Michigan State Highway Department*, 24 N.W. 2d 132 (1946).

was of sound mind; there was no physical force and nobody was mean to him.

There are scores of cases on "business compulsion" in the books.<sup>2</sup> By far the great majority of these cases involve a plaintiff who has paid more than he felt he owed and later sued for the difference between the legal debt and the amount paid, claiming the difference was paid under duress of business compulsion. In very few cases has the plaintiff accepted less than was due him and later sued for the difference between the legal debt and the amount received, claiming the lesser amount was accepted under duress of business compulsion. However, it seems apparent that the reasoning in the one type of case should apply with as much force as in the other.

In its decision, the court cited the *City of Saginaw* case,<sup>3</sup> in which the plaintiffs sued to recover overpayments for gas. Under an ordinance, the gas company could shut off the plaintiffs' supply of gas if payment was not promptly made. The court there said:<sup>4</sup>

"Thus, as a matter of law, the circumstances herein presented created a necessity of payment. This being the case, the payments were made under compulsion to a party who had no right to receive them and they are, therefore, recoverable."

The *Headley* case,<sup>5</sup> cited by the court, was a suit to recover compensation for cutting, hauling and delivering logs. Payment was to be based upon the quantity of logs determined in accordance with the standard rules or scales in general use in the vicinity. Plaintiff, calculating by the Scribner scale, claimed there was a balance of \$6,200 due him. Defendants, calculating by the Doyle scale, claimed they owed the plaintiff a balance of \$4,260, but refused any payment other than a promissory note for \$4,000. The plaintiff insisted he had over \$2,000 more than that due him, but finally took the \$4,000 note and gave a receipt because he could do no better at the time and believed he would be financially ruined unless he could realize immediately the amount offered him.

He then sued for the difference of upwards of \$2,000, claiming the receipt in full he had given was given by him under duress. In the lower court the verdict was in accordance with this claim. The Supreme Court of Michigan held that the method of scaling contemplated by the contract was the Doyle scale, and reversed the lower court's decision, saying:<sup>6</sup>

"Duress exists when one by the unlawful act of another is induced to make a contract or perform some act under circum-

<sup>2</sup> For a collection of such cases see the annotation "Doctrine of Business Compulsion," 79 A.L.R. 655 (1931).

<sup>3</sup> *City of Saginaw v. Consumers Power Co.*, 304 Mich. 491, 8 N.W. 2d 149 (1943).

<sup>4</sup> 304 Mich. at page 500, 8 N.W. 2d at page 153.

<sup>5</sup> *Hackley v. Headley*, 45 Mich. 569, 8 N.W. 511 (1881).

<sup>6</sup> 45 Mich. at page 574, 8 N.W. at page 512.

stances which deprive him of the exercise of free will. It is commonly said to be of either the person or the goods of the party. \* \* \* It is not pretended that Hackley & McGordon (the defendants) had done anything to bring Headley to the condition which made this money so important to him at this very time, or that they were in any manner responsible for his pecuniary embarrassment except as they failed to pay this demand."

On a second appeal of this case<sup>7</sup> it was held that plaintiff could recover the balance of the debt up to the amount that defendants actually admitted to have been due.

In the *Soo Line* case<sup>8</sup> the plaintiff, finding it necessary to borrow not less than \$10,000,000, issued \$10,000,000 of 6½% notes payable in ten years, and \$15,000,000 of 6% first-mortgage bonds to mature in 25 years. Of these bonds, \$12,500,000 were collateral security for payment of the notes, and the balance were to be held by the railroad pending further orders of the Railroad Commission. The Wisconsin statutes required a public service corporation to obtain the authority of the Railroad Commission of Wisconsin to issue securities; provided that securities issued without this authority were void; imposed penalties upon any public service corporation which issued securities without such authority; and provided further that a certificate of authority should not be given until the public service corporation paid certain fees to the Commission.

The railroad paid, under protest, the \$2,500 fee required, believing that the Wisconsin statutes were superceded and nullified by section 20(a) of the Transportation Act of 1920, and brought suit to recover that fee, which it claimed to have paid under duress.

In affirming a judgment for the plaintiff, the court said:<sup>9</sup>

"The old rule that there could be duress only where there was a threat of loss of life, limb, or liberty has been so changed that duress may sometimes be implied when a payment is made or an act performed to prevent great property loss or heavy penalties when there seems no adequate remedy except to submit to an unjust or illegal demand and then seek redress in the courts."

In the *Guetzkow* case<sup>10</sup> the defendants leased to the plaintiff a factory building and boiler house which together had cost about \$6,200 to construct. The ten year lease provided that plaintiff should rebuild any building destroyed by fire, that defendants should have

<sup>7</sup> *Headley v. Hackley*, 50 Mich. 43, 14 N.W. 693 (1883).

<sup>8</sup> *Minneapolis, St. Paul & Sault Ste. Marie Railway Co. v. Railroad Commission of Wisconsin*, 183 Wis. 47, 197 N.W. 352 (1924).

<sup>9</sup> 183 Wis. at page 56, 197 N.W. at page 355.

<sup>10</sup> *Guetzkow Brothers Co. v. Breese et al.*, 96 Wis. 591, 65 Am. St. Rep. 83, 72 N.W. 45 (1897).

a lien upon a dry kiln, barn and boilers to be erected by plaintiff at a cost of at least \$5,800, to secure the payment of rent, and that plaintiff should keep the buildings and machinery insured for not less than \$6,200. The total insurance on the main building amounted to \$3,333.26, that on the boiler house to \$833.50, and that on the engine and boiler to \$3,333.26. Insurance on the property of the plaintiff, consisting of machinery, office furniture and fixtures, lumber, manufactured and unmanufactured, on the same premises, aggregated \$21,125.20.

The main building, which the defendants valued at \$4,000, and its contents, which plaintiff valued at \$14,444.40, were totally destroyed by fire.

The defendants refused to sign the proofs of loss and drafts payable to the joint order of the parties unless they were assured that they would receive \$4,000. The plaintiff at that time had numerous contracts on hand and it was absolutely necessary to settle the loss at once in order to go on with its business. By stress of these facts, the plaintiff alleged that it was compelled under duress to agree to pay the defendants \$666.74 which, added to the \$3,333.26 of insurance money, made up the \$4,000, and it did actually pay \$506.74, the amount sought to be recovered. The court said,<sup>11</sup> in affirming a judgment for the plaintiff:

"The plaintiff was in a position where it must obtain its insurance money at once in order to go on with its business and fulfill valuable outstanding contracts, or it would suffer great loss. Under these circumstances it submitted under protest to the unjust demand in order to obtain its own money from the insurance company."

In the *Fitzgerald* case<sup>12</sup> the construction company made a contract to construct 150 miles of railroad, according to certain specifications, for the Denver, Memphis & Atlantic Railroad Co., a part of the Missouri Pacific system, for an agreed price of \$11,000 per mile to be paid in cash or 5% trust bonds of the Missouri Pacific Co. Payment was to be made as each 10 miles of railroad was completed. The majority of the stock of the construction company was owned by Jay Gould and his associates who also controlled the Missouri Pacific Co.

As work progressed, the construction company, by its president, made repeated calls upon the railroad for money or bonds. The only result was assessments of the stock of the construction company,

<sup>11</sup> 96 Wis. at page 598, 65 Am. St. Rep. at page 83, 72 N.W. at page 47.

<sup>12</sup> *Fitzgerald v. Fitzgerald & Mallory Construction Co. et al.*, 44 Neb. 463, 62 N.W. 899 (1895), writ or error dismissed in 160 U.S. 556, 40 L. Ed. 536, 16 S. Ct. 389 (1896).

until increasing demands had exhausted not only the resources of the company but the private funds as well of Mallory and Fitzgerald.

When the contract had been completed, Gould argued at a meeting of the directors of the Missouri Pacific Co. that the company should refuse to pay more than \$10,000 per mile for the Denver railroad, claiming that certain portions of it were unsatisfactorily constructed. The Missouri Pacific Co. then voted to take the Denver railroad at \$10,000 per mile. At this time both Fitzgerald and Mallory and the construction company were confronted by bankruptcy and financial ruin. Under these circumstances the construction company chose to accept payment at the rate of \$10,000 per mile, instead of the contract price, rather than the alternative of an entire abandonment of the enterprise in which it was engaged.

The Supreme Court of Nebraska said:<sup>13</sup>

"The alleged settlement is voidable. \* \* \* It was procured under circumstances amounting to practical compulsion, which is nearly related to duress, and may be made the ground of relief, either at law or equity. A payment or concession exacted will be held compulsory when made or allowed through necessity in order to obtain possession of property illegally withheld, where the detention is fraught with great immediate hardship or irreparable injury."

Therefore, the Supreme Court of Michigan had ample authority to grant Norton<sup>14</sup> the relief he demanded, by finding a lack of consideration, due to duress by business compulsion, for the release he had signed. But Norton failed to show facts which would bring his case within the rules permitting relief for an act performed under duress by business compulsion.

Norton's proof failed in at least four particulars. First, there was no showing that he made any attempt to collect the 15% customary compensation on modified contracts such as he had performed at any time prior to institution of his suit to collect that profit. Secondly, in his letter written in 1939 demanding further payment he expressly stated that he was submitting "a statement of profits and losses" and that "statement" did not include the \$30,900 he sought to recover by his suit. Thirdly, there was no showing of a threat of loss of life, limb, liberty, or property to Norton at any time such as would impel him to forego demanding any profit justly due him.

Finally, and probably the most serious, was the lack of showing of business compulsion. Norton was able to prove that he was "hard up" at the time he signed the release. Being hard up, a man may be lacking in ready funds, which in itself is not sufficient. The

<sup>13</sup> 62 N.W. at page 909.

<sup>14</sup> Plaintiff in 24 N.W. 2d 132, *supra*.

lack of funds must threaten a further loss such as the cutting off of the supply of gas, as in the *City of Saginaw* case;<sup>15</sup> the forfeiture by a public service corporation of its right to continue in business, as in the *Soo Line* case;<sup>16</sup> the inability to fulfill valuable outstanding contracts and consequent liability for damages for such failure, as in the *Guetzkow* case,<sup>17</sup> or the present alternative of bankruptcy, financial ruin and an entire abandonment of its enterprise, as in the *Fitzgerald* case.<sup>18</sup>

Norton did not show that being hard up would result in any further loss to himself or any-one else, nor that if paid the profit he demanded he would not suffer such further loss.

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<sup>15</sup> *City of Saginaw v. Consumers Power Co.*, *supra*.

<sup>16</sup> *Minneapolis, St. P. & S. Ste. M. R. Co. v. Railroad Commission of Wisconsin*, *supra*.

<sup>17</sup> *Guetzkow Brothers Co. v. Breese et al.*, *supra*.

<sup>18</sup> *Fitzgerald v. Fitzgerald & Mallory Construction Co. et al.*, *supra*.