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## Dunham v. Anderson-Dunham, Inc.: Duress by Circumstance

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## NOTES

### DUNHAM V. ANDERSON-DUNHAM, INC.: DURESS BY CIRCUMSTANCE

Formation of a contract under the Louisiana Civil Code requires "consent of the parties established through offer and acceptance,"<sup>1</sup> and that this consent result from the "free and deliberate exercise of the will" of both parties.<sup>2</sup> The code recognizes instances when the will of a party may be impaired to such a degree that the consent to the contract is "vitiating," thus allowing the party whose will is impaired to have the contract rescinded.<sup>3</sup> One such instance occurs when consent is obtained through "duress," as characterized by the revision of 1984, or by "violence or threats," as the code of 1870 provided.<sup>4</sup> Consistent with the elements of the other "vices of consent," a claim of duress will only support rescission if the party seeking annulment can prove that he was free from fault when he entered into the contract.<sup>5</sup> Thus, the duress must be "of such a nature as to cause a reasonable fear of unjust and considerable injury to a party's person, property, or reputation."<sup>6</sup> This requirement promotes the security of transactions by limiting the availability of the remedy of rescission to only those parties deserving protection.<sup>7</sup>

In *Dunham v. Anderson-Dunham, Inc.*,<sup>8</sup> the First Circuit Court of Appeal found that a party's consent to a contract had been vitiated by the "duress of the circumstances," and that rescission was therefore appropriate. This decision merits review for two reasons. First, while the party whose consent the court found to be vitiated was clearly indecisive about signing the contract, there does not appear to have been the degree of impairment of his free will that the code and jurisprudence require to support a finding of duress. Second, by basing its finding of duress upon the circumstances surrounding the signing of

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1. La. Civ. Code art. 1927.
2. La. Civ. Code art. 1819 (1870); see also La. Civ. Code art. 1948 and comments.
3. La. Civ. Code art. 1948-1965. Article 1948 states: "Consent may be vitiated by error, fraud, or duress."
4. La. Civ. Code arts. 1959-1964; La. Civ. Code arts. 1850-1859 (1870).
5. See Litvinoff, "Error" in the Civil Law, in *Essays on the Civil Law of Obligations* 222 (J. Dainow ed. 1969). See also La. Civ. Code arts. 1949, 1955, and 1959.
6. La. Civ. Code art. 1959.
7. Litvinoff, *supra* note 5.
8. 466 So. 2d 1317 (La. App. 1st Cir. 1985), cert. denied, 472 So. 2d 29 (La. 1985).

the contract, the court employed reasoning which has been explicitly rejected in prior jurisprudence, but which may find support in the theory underlying the duress provisions and in the language of the Louisiana Civil Code.

*Dunham* involved a contract which created a consultant position for the plaintiff, Ted Dunham, Jr. The contract was entered into on behalf of the Anderson-Dunham Corporation by long-time employee, J. C. Jackson. The parties executed the contract at a meeting which Jackson thought was called for the sole purpose of executing employment contracts between himself and the defendant-company, and between George Hamilton, another long-time employee, and the company. Dr. Fred Endsley, majority shareholder, Chairman of the Board, and Chief Executive Officer of Anderson-Dunham called the meeting.<sup>9</sup> To the surprise of Jackson and Hamilton, Endsley also arranged for the attendance of plaintiff in order to conclude the consultant services agreement. Two days prior to this meeting, the board of Anderson-Dunham had adopted a resolution granting Jackson extensive hiring and firing responsibilities. Endsley and plaintiff requested that Jackson use this newly-created authority by signing the consultant services contract on behalf of the company. Jackson initially resisted signing because he did not understand the need for his signature, since Endsley was available. Further, Jackson wanted assurance that the company would provide one of his co-workers with a contract similar to those executed in favor of Hamilton and himself. After nearly an hour of refusal by Jackson, and insistence by Endsley and plaintiff, Jackson signed the contract. Ten days later, Endsley resigned as corporate officer and director of Anderson-Dunham, and the board immediately repudiated the contract with plaintiff. Plaintiff sued to have the contract enforced.<sup>10</sup>

The trial court rejected plaintiff's demand and allowed rescission based on a finding that Jackson had not freely consented. Despite concluding that Jackson had not incurred any threat to "sign it or else," the court concluded that "[h]e was certainly fearful of his position, having been there for thirty-three years and also was not wanting to

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9. During this time Endsley was also executor and co-trustee of the estate of plaintiff's father, Ted Dunham, Sr. Despite court instructions to conclude the succession independently and impartially, Endsley had engaged in business dealings with plaintiff, and approximately seven weeks prior to this meeting, arranged for plaintiff's membership on the Anderson-Dunham board. Soon thereafter plaintiff was elected Chairman of the Board and Chief Executive Officer. One week prior to the meeting in question, the court handling the Dunham succession influenced Endsley to remove plaintiff from all positions with the company. It was in the wake of this removal that the consultant services contract was born. 466 So. at 1319, 1325-26.

10. *Id.* at 1319-20, 1325-28.

offend his—his [sic] bosses, Dr. Endsley and Ted Dunham, Jr.”<sup>11</sup> Based on this inference that Jackson was concerned about his job security, and on the fact that he was asked to sign a contract about which he had no previous knowledge, the court concluded that Jackson’s “was not a consent freely given and that it was under duress by those circumstances.”<sup>12</sup> The court of appeal affirmed and, like the trial court, found duress in spite of the absence of an ultimatum: “He admitted that his job was not put on the line, nor was he threatened or coerced in any other manner; he admitted that he could have left the room at any time, that no one required him to sign, and that he eventually signed the contract voluntarily.”<sup>13</sup> Nevertheless, because of the “nature of the transaction, combined with the background of the various witnesses and their relationships with each other,”<sup>14</sup> the court reasoned that there was sufficient evidence for the lower court to have found “duress of the circumstances.”<sup>15</sup>

The Louisiana Civil Code articles which concern duress provide both objective and subjective criteria for determining whether there has occurred an impairment of the will sufficient to rescind a contract: the fear in question must be “reasonable,” and the reasonableness is gauged according to the party’s “[a]ge, health, disposition, and other personal circumstances.”<sup>16</sup> Thus, the *Dunham* courts’ consideration of Jackson’s employment history, the fact that the meeting in question was called in part to settle his employment future, the suddenness with which he was confronted with the consultant services contract, and the particular individuals confronting him would have been valid if they had found that Jackson in fact signed the contract out of fear. However, these inquiries were unwarranted because the courts readily acknowledged that Jackson did not appear to suffer “just fear of great injury,”<sup>17</sup> and Jackson admitted that he could have left the meeting unscathed. While Jackson’s reluctance and indecisiveness were clear, these are poor bases upon which

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11. *Id.* at 1328. Plaintiff occupied no position with the company at the time of this meeting, and while he had held positions higher than Jackson in the past, he was not at the time of this event Jackson’s “boss.” See *supra* note 9.

12. *Id.* at 1328.

13. *Id.* at 1322.

14. *Id.*

15. *Id.*

16. La. Civ. Code art. 1959 states:

Consent is vitiated when it has been obtained by duress of such a nature as to cause a reasonable fear of unjust and considerable injury to a party’s person, property, or reputation. Age, health, disposition, and other personal circumstances of a party must be taken into account in determining reasonableness of the fear.

Article 1851 of the Louisiana Civil Code of 1870 was not significantly different.

17. La. Civ. Code art. 1851 (1870).

to invalidate a contract, in light of the damage inflicted upon the doctrine of security of transactions when courts rescind contracts. It does not seem that Anderson-Dunham was deserving of the protection afforded by the duress provisions of the code.<sup>18</sup>

Additionally, in granting rescission based upon a finding of duress by the circumstances, the two courts relied on a concept which was previously rejected in the Louisiana jurisprudence. *Wilson v. Aetna Casualty Co.*<sup>19</sup> contains the most explicit disapproval of the reasoning used by the courts in *Dunham*. In *Wilson*, defendant's insured seriously injured plaintiff in an automobile accident. Prior to any litigation, and while plaintiff was still in the hospital recovering from his injuries, defendant offered plaintiff five thousand dollars to settle his claim. Plaintiff rejected defendant's offer and made a counter-offer of ten thousand dollars, which defendant refused. Defendant stated, however, that the five thousand dollar offer would remain open should plaintiff wish to accept it. Subsequent to this meeting, plaintiff's doctor told plaintiff that his condition had improved sufficiently for him to be discharged from the hospital, and that if plaintiff were not discharged, he would be billed at an increased rate. Plaintiff's unpaid medical bills totalled approximately two thousand dollars, his medicare benefits had been exhausted, and he was in immediate need of nursing care and in future need of physical therapy. There was no one to provide free care for plaintiff upon his leaving the hospital, and his income, which prior to his accident was low, was limited to monthly social security payments, as his injuries precluded him from working.<sup>20</sup> While plaintiff apparently attempted to secure an attorney to assist him in his claim, he did not retain one. Instead, he relied on his doctor's advice and accepted defendant's offer, believing that his acceptance was the only means to obtain a prompt settlement.<sup>21</sup>

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18. See *New Orleans & N.E.R.R. Co. v. Louisiana Constr. & Improvement Co.*, 109 La. 13, 33 So. 51 (1902) (the court rejected a claim that payment had been made under duress because the claimant had "at hand other means of immediate relief" than payment); *Allen v. Volunteers of America*, 378 So. 2d 1030 (La App. 2d Cir. 1979), cert. denied, 381 So. 2d 509 (La. 1980) (the court held that vacillation over a decision to give up a child for adoption did not prove an impaired consent). See also La. Civ. Code art. 1854 (1870): "The mere reverential fear of a relation in the ascending line, where no violence has been offered, nor threats made, will not invalidate a contract." Although Jackson was not dealing with relatives, an analogy may be made under which the head of the company for which Jackson had worked for over thirty years assumes the same type of position as the "relation" in the code article, suggesting another basis upon which the finding of duress may be questioned. Cf. Restatement (Second) of Contracts § 175 (1979), which requires that a party seeking to have a contract voided on the basis of duress have had "no reasonable alternative" to entering the contract.

19. 228 So. 2d 229 (La. App. 3d Cir. 1969).

20. *Id.* at 230-32

21. *Id.* at 231.

Plaintiff later sued defendant for his injuries, and defendant raised the exception of *res judicata*, based on plaintiff's acceptance of the five thousand dollar release. The trial court rejected defendant's exception, finding instead that the compromise required annulment because of the "intolerable and untenable position in which this plaintiff found himself" when he executed the release.<sup>22</sup> The court of appeal reversed based on a conclusion that:

[T]he contract-invalidating duress referred to [in the code] is that which proceeds from a fear of force or violence which wipes out freedom of consent; it connotes an actor performing an exterior act which gives rise to the duress, rather than the entire set of objective circumstances causing the victim to act as he does.<sup>23</sup>

Plaintiff's lack of bargaining power to resist defendant's offer, and his poor economic condition, "[did] not constitute a Code-recognized ground to rescind a compromise."<sup>24</sup> Additionally, the doctor's advice was not a cause for rescission because it was not a threat to plaintiff's person or property.<sup>25</sup>

The refusal by the court in *Wilson* to consider "the entire set of objective circumstances" as a source of duress indicates that that court would not have rescinded the contract in *Dunham* on the same grounds as the *Dunham* courts. A Louisiana Supreme Court decision, *Bryant v. Levy*,<sup>26</sup> strikes a balance between the *Wilson* court's emphasis on the need for an "actor performing an exterior act," and the *Dunham* courts' willingness to look to the circumstances surrounding the party's claim. The fact patterns in the three cases provide a useful framework within which to evaluate the notion of duress by circumstance.

The dispute in *Bryant* arose in the wake of agreements within the cotton industry among laborers and "pressmen" to raise the price of handling cotton. Prior to these agreements, plaintiffs bound themselves under a verbal agreement to store and compress cotton belonging to defendants, who were cotton brokers. When plaintiffs told defendants that they would only handle defendants' cotton at the raised prices, defendants, the only local brokers who had refused to agree to the new pricing schedule, secured another press with which to do business. This new press agreed to handle defendants' cotton at a lower rate than that charged by the pressmen operating under the general agreements; for this reason, however, the laborers who hauled the cotton to the various

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22. *Id.* at 232.

23. *Id.*

24. *Id.*

25. *Id.*

26. 52 La. Ann. 1649, 28 So. 191 (1900).

presses refused to handle defendants' cotton, absent consent by the plaintiffs as to defendants' use of this new press. Plaintiffs, having extended defendants an offer (which expired in one more day) to handle their cotton at the raised prices, refused to so consent.

At the time, the cotton industry was in a precarious financial situation, and defendants' business was no exception. Further delays in operations would probably have forced defendants out of the market. As a result, defendants accepted plaintiffs' offer, but when plaintiffs later attempted to enforce the agreement, defendants claimed that they had accepted under coercion.<sup>27</sup> The Louisiana Supreme Court ruled in favor of defendants on the duress claim, concluding:

[D]efendants could not do otherwise than they did, and save their business; . . . Had they refused to sign this contract, the evidence shows that financial ruin would have been the inevitable result. . . . These circumstances were sufficient to wrest from defendants a consent which they did not wish to give. They were placed in a position where they must sign or perish financially.<sup>28</sup>

While this language seems in direct contradiction to the approach taken by the court in *Wilson*, the holding in *Bryant* is not based solely on these statements. The court also based its rejection of plaintiffs' claim upon the finding that the pricing agreements constituted illegal restraints of trade.<sup>29</sup> Thus, while in both *Wilson* and *Bryant* the party alleging duress suffered from circumstances independent of the particular situation which motivated the formation of the respective contracts (i.e., *Wilson* suffered from a low income prior to his accident and the defendants in *Bryant* from the general economic condition of the cotton industry), the cases may be distinguished in that the defendants in *Bryant* suffered in part from the deliberate, unlawful actions of others.

*Bryant* and *Wilson* both stand for the proposition that an exterior act is required for there to be coercion sufficient to constitute the duress described in the Louisiana Civil Code. *Bryant* further indicates, in compliance with specific code provisions and the jurisprudence, that the act in question does not improperly impair the will of the party claiming duress if that act is the exercise of a lawful right.<sup>30</sup> Finally, the *Bryant* court's emphasis on the fact that defendants entered the contract only

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27. *Id.* at 1653-56, 28 So. at 193-94.

28. *Id.* at 1657, 1661-62, 28 So. at 194, 196.

29. *Id.* at 1662-63, 28 So. at 196-97.

30. La. Civ. Code art. 1962; see, e.g., *Wright v. Sabine River Auth.*, 308 So. 2d 402 (La. App. 3d Cir. 1975); *Texas Co. v. MacDonald*, 228 La. 353, 82 So. 2d 37 (1955); *Storey v. Stanton*, 182 La. 876, 162 So. 649 (1935); *Patorno v. Vacaro*, 153 La. 364, 95 So. 864 (1923).

because no reasonable alternative was open to them complies with the theory underlying the vices of consent scheme that the party claiming the vice must have entered the contract without fault.<sup>31</sup>

*Dunham*, conversely, meets none of these requirements. The courts' acknowledgment of the fact that Jackson was free to leave the meeting evinces a disregard for the "no fault" requirement. Furthermore, the insistence by Endsley and plaintiff that Jackson sign the contract fails to meet the exterior act requirement, since by Jackson's own testimony there was nothing coercive in their insistence. Endsley and plaintiff's actions seem more analogous to the influence of the doctor in *Wilson* than to the pricing agreements found unlawful in *Bryant*.

Nevertheless, while the courts which decided *Dunham* may be criticized on the grounds that Jackson appears to have freely entered the contract, their reliance on a duress formula, which is not restricted to a particular actor exerting some particular force, is defensible. The "violence or threats" language of the code of 1870, which seems to have been the basis for the actor-induced theory employed by the *Wilson* court, does not necessarily require the limitations imposed by that theory. The purpose behind the duress provisions and the particular language of those provisions support a broader interpretation of those influences which may give rise to a valid claim of duress.

The interest served by rescinding contracts which are entered into under duress is the protection of the free will of contracting parties. In light of this end, it is logical to argue that it is the effect—the impaired consent—rather than the cause—the source of that impairment—which is most critical in the duress analysis. Planiol supported this proposition when he wrote that, while "[s]trictly speaking, the word 'duress' denotes the means of constraint used, and not the effect produced upon the mind of the victim. . . . [I]t is, as a matter of fact, far more the fear felt by the victim of the violence which gave rise to it which constitutes the vice of consent."<sup>32</sup> One need only look to the *Wilson* decision to see how focusing on the cause of the victim's fear, rather than on the effect, can defeat the purpose behind the duress provisions. Mr. Wilson's consent to the compromise was clearly impaired; the court of appeal recognized this when it stated, "the plaintiff Wilson had no bargaining power to resist the defendant's offer and was instead under strong economic duress to accept it."<sup>33</sup> Notwithstanding this finding, the court enforced the contract.

In addition to the general purpose behind the duress scheme, the language of the pertinent civil code articles supports an emphasis on

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31. See *supra* notes 15 and 17.

32. I M. Planiol, *Treatise on the Civil Law*, Pt. 1, No. 227 at 193 (12th ed. La. St. L. Inst. Trans. 1959).

33. 228 So. 2d at 232.

the effect, rather than the cause, of the alleged nullity. A contract may be rescinded for duress which is "of such a nature as to cause a reasonable fear of unjust and considerable injury. . . . Age, health, disposition, and other personal circumstances of a party must be taken into account in determining the reasonableness of the fear."<sup>34</sup> Thus, the ability of a party to have a contract rescinded depends solely on the quality of the fear which he experiences, i.e., whether the fear is sufficiently "reasonable." The significance of the source of the fear is limited to the nature of the effect which it produces. That the code allows rescission "even when duress is exerted by a third person,"<sup>35</sup> is further testimony to the fact that the source of the fear is of less consequence than the fear itself. In only one instance does the code allow the source of a victim's fear to prevail over the inquiry into the reasonableness of the fear: when there is a threat which involves the exercise of a legal right.<sup>36</sup> This is, however, the exception rather than the rule.

It follows then that "violence or threats," or "duress,"<sup>37</sup> may encompass a broader scope of pressures incurred by a contracting party than only those that are "actor-induced." Pressing financial, medical, or other physical needs may in certain situations be as threatening as anything an "actor" may inspire. The following hypotheticals illustrate this point: A parent owns a certain piece of valuable movable property which he refuses to sell until someone threatens to injure the parent's child unless the parent sells the object to the individual making the threat. If the parent subsequently wishes to have the sale annulled, duress would be an obvious and convincing basis for his claim. If, however, the child is sick, and the parent must sell the object to acquire funds to pay for medical treatment to save the child's life, has the parent entered the sale under any less of a threat, or any less reasonable a fear? Arguably not, despite that in the second situation the source of the fear was the child's illness, rather than an actor performing an unlawful act. Further, in the first instance, alternative means to solving the predicament may have been available to the parent (e.g., securing law enforcement assistance), while in the second situation the options are more limited.

Despite the support which the theory of duress by circumstance may find in the language of the code and in furthering the protection of the free contractual will, rescinding contracts for duress in the absence

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34. La. Civ. Code art. 1959.

35. La. Civ. Code art. 1961.

36. La. Civ. Code art. 1962.

37. See La. Civ. Code art. 1959 comment b, which states that "duress" is a technical term which means "violence or threats."

of threats or violence by a particular actor may produce undesirable results. A particularly troublesome area involves the party to the contract who benefits from the duress victim's execution of the agreement. Under the actor-induced theory of duress, this benefiting party is either responsible for the duress and thus is not unjustly injured by rescission, or he has an action against a third party who is responsible for the victim's fear. However, if circumstances alone impair the consent to the contract, and the court grants rescission, the innocent benefiting party has no one to bring an action against for compensation. While he would perhaps have an action in detrimental reliance against the victim of the duress,<sup>38</sup> he would still be deprived of the benefit of the bargain which he contracted. Further, the impairment of the victim's free will by circumstances alone may occur when the benefiting party initiated the formation of the contract by exercising a lawfully possessed right. This would have occurred, for instance, if the court in *Bryant* had found that while the pricing agreements did not unlawfully restrain trade, the financial circumstances experienced by the defendants had impaired their consent in a degree sufficient to warrant rescission.

The important question raised by these issues is how to balance the social interest in protecting the free will of contracting parties with the interest in the security of transactions. Since these issues would only arise when a court has determined that one party's free will was impaired by circumstances sufficient to vitiate consent, inquiry into whether the victim of the duress deserves the protection he seeks through rescission is redundant. Instead, it may be useful to inquire whether the party not suffering the duress, but who may be injured by rescission, is deserving of the protection afforded by the doctrine of the security of transactions.

The doctrine of good faith provides a mechanism to evaluate the situation of the benefiting party. Revised article 1759 of the Louisiana Civil Code, which states, "Good faith shall govern the conduct of the obligor and obligee in whatever pertains to the obligation," is broad enough to apply to the formation as well as the performance of a contract. The benefiting party who breaches this duty of good faith when negotiating a contract with a party under the duress of certain circumstances may be less deserving of the protection afforded by the doctrine of the security of transactions.

The facts in *Wilson*, *Dunham*, and *Bryant* illustrate how the doctrine of good faith may be employed in this context. The court in *Wilson*, having found that the plaintiff had not entered the contract freely, might

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38. Cf. La. Civ. Code art. 1952: "A party who obtains rescission on grounds of his own error is liable for the loss thereby sustained by the other party unless the latter knew or should have known of the error. . . ."

have inquired into defendant's conduct in the negotiation of the transaction. The court might have ascertained the extent of the defendant's knowledge of plaintiff's financial and medical needs and whether, in light of such knowledge, there was a settlement offer that the company could have proposed that would have been so low as to violate the principle of good faith.<sup>39</sup> The age of the plaintiff and the nature of his physical injuries might well be important factors in such a determination. Also, defendant's conduct might be considered in a different light if it had been plaintiff who initiated settlement discussions. In *Dunham*, if there were in fact circumstances to support a finding that Jackson had signed the contract with a "just fear of great injury," conduct by Endsley and plaintiff relevant to a good faith inquiry might have been: insinuations as to Jackson's future with the company;<sup>40</sup> making certain terms of Jackson's employment contract depend on his signing the consultant services contract; and making the execution of the employment contracts for his two colleagues depend on the same. In *Bryant*, the court could have found that the pricing agreements did not unlawfully restrain trade, but that the financial circumstances existing when defendants entered the contract were alone enough to support a finding of duress. Presuming such a finding, prior to deciding which party was more deserving of protection, the court could have considered plaintiffs' refusal to consent to defendants' use of another press and the length of time which plaintiffs allowed their offer to defendants to stand.

Another device by which to evaluate whether the benefiting party should be entitled to protection against rescission is the "abuse of rights" theory.<sup>41</sup> This theory normally provides relief to a party injured by another's exercise of a right when that right is exercised without a serious or legitimate interest, or is inspired only by the desire to harm the injured party.<sup>42</sup> It could logically be applied in cases of duress by circumstance to deprive the benefiting party of the protection that the security of transactions might provide him when he has abused a right in conjunction with the formation or performance of a contract. For example, if under the facts of *Wilson*, upon plaintiff's initial rejection

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39. In the trial court, plaintiff's damages were calculated as being in excess of \$16,000; defendant's settlement offer was \$5,000.

40. See *Standard Coffee Serv. Co. v. Babin*, 472 So. 2d 124 (La. App. 5th Cir. 1985) (the court invalidated an employment contract based on a finding that the defendant had been under duress when his employer required him to sign the contract or lose his job; while the good faith inquiry under this suggested analysis is distinct from the duress inquiry, this case suggests that any such insinuations by Endsley would have been in violation of good faith).

41. For a detailed discussion of this theory, see Cueto-Rua, *Abuse of Rights*, 35 La. L. Rev. 965 (1975).

42. *Id.* at 991-92.

of defendant's five thousand dollar offer to settle, defendant had told plaintiff that it intended to extend the litigation as long as possible by procedural means available to it, thus denying plaintiff access to damages, the court might justifiably have overlooked contentions by defendant that rescission for duress by circumstance would deprive defendant of both the benefit of the contract and any actionable relief. This theory does not conflict with the civil code provision that "a threat of doing a lawful act or a threat of exercising a right does not constitute duress,"<sup>43</sup> for two reasons. First, in the hypothetical, a finding of duress may be supported by the circumstances affecting plaintiff independent of any action by defendant; second, the abuse of right theory stands for the proposition that abusive exercises of lawfully possessed rights are unlawful. As this illustration indicates, the questions invoked by employing the abuse of rights analysis would be similar to those raised by the doctrine of good faith.

### *Conclusion*

While the facts in *Dunham* provide a weak foundation upon which to rest the theory of duress by circumstance, for the simple reason that the circumstances therein did not seem to inspire any fear within Jackson, the theory itself is not without merit. Duress by circumstance may find support in the purpose of the duress institution and in the language of the code articles. Nevertheless, the party asserting duress by circumstance may have to satisfy requirements beyond those necessary to succeed in an actor-induced claim. Not only must the victim prove that the duress was of a sufficient degree to justify rescission, it is also likely that he will have to prove some equitable basis upon which to deny the benefiting party the protection of the doctrine of the security of transactions.

*Jonathan A. Hunter*

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43. La. Civ. Code art. 1962.

