

IN THE COURT OF APPEALS OF IOWA

FILED

JUN 15 1989

CLERK SUPREME COURT

OMNI INVESTMENT CORPORATION,)

Plaintiff-Appellant,)

vs.)

INTERNATIONAL CONCESSIONS, INC.,)

MARCUS G. WAGNER and)

REBECCA S. WAGNER,)

Defendants-Appellees.)

9-139
88-1269

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Appeal from the Iowa District Court for Jefferson
County (CL-1108-0885), James P. Rielly, Judge.

Plaintiff appeals from an adverse judgment in a
contract suit. **REVERSED AND REMANDED.**

William A. Wickett of Galligan & Conlin, P.C., Des
Moines, and Gregg A. Pieper, Fairfield, for
plaintiff-appellant.

Brent B. Green and Joseph G. Van Winkle of Gamble,
Riepe, Webster, Davis & Green, Des Moines, for
defendants-appellants.

Considered by Donielson, P.J., and Schlegel and
Sackett, JJ. Hayden, J., takes no part.

PER CURIAM

Plaintiff appeals from an adverse jury verdict in a breach of contract action contending there was not substantial evidence to submit the issue of duress to the jury. We agree and reverse and remand for new trial.

Plaintiff-appellant Omni Investment Corporation sued defendants-appellees International Concessions, Inc., Marcus G. Wagner and Rebecca S. Wagner for breach of a contract entered into by the parties on May 5, 1983. Plaintiff claimed damages as a result of the breach.

The case was tried to a jury which on special verdict found there was a contract and it was breached by defendants. The jury also found defendants proved duress induced them to enter into the contract. It further determined plaintiff did not prove any damages proximately resulted from the breach. Plaintiff appeals contending there was not sufficient evidence to submit the issue of duress to the jury. Defendants contend the issue need not be addressed because it was rendered moot by the jury's determination no damages were due plaintiff for the breach.

Duress if proven allows the victim of the duress to void the contract. Duress exists where (1) one party involuntarily accepts the terms of another, (2) circumstances permit no other alternative and (3) such circumstances were the result of coercive acts of the other party. See Turner v. Low Rent Housing Agency, 387 N.W.2d

596, 598-99 (Iowa 1986); Totem Marine Tug & Barge, Inc. v. Alyeska Pipeline Service Co., 584 P.2d 15, 21 (Alaska 1978). Additionally, to substantiate an allegation of economic duress or business compulsion there must be proof the duress resulted from the other party's wrongful and oppressive conduct and not from one's own necessities. Turner, 387 N.W.2d at 598; W.R. Grimshaw Co. v. Nevil C. Withrow Co., 248 F.2d 896, 904 (8th Cir. 1957). An alleged victim may not use a claim of duress to obtain the benefits of part of an agreement but disavow the rest. Turner, 387 N.W.2d at 598; IMO Development Corp. v. Dow Corning Corp., 135 Cal. App.3d 451, 458, 185 Cal. Rptr. 341, 345 (1982).

On review of the evidence we agree with plaintiff there was not substantial evidence to support submission of duress to the jury. Defendants received benefits from the contract and have not shown the contract was the only reasonable alternative available to them when the contract was entered into. See Turner, 387 N.W.2d at 598-99.

We next address defendants' argument error if any is harmless because the jury found no damages. However, the jury first found there was a breach of contract and only then did it find there were no damages. There is an inconsistency between finding a contract was breached and a finding there was duress, allowing the party claiming duress to void the contract. For in order to find a contract was breached there must be a contract to be

breached. Additionally, there is a valid question as to the consistency of a finding there was a breach with the finding there were no damages. See Shewry v. Heuer, 255 Iowa 147, 152, 121 N.W.2d 529, 532 (1963); Gray v. Gardiner, 95 Ariz. 208, 375 P.2d 562, 564 (1962); Callaham v. Slusky, 385 P.2d 674, 676 (Colo. 1963).

Because of our determination we need not discuss this issue except as it relates to plaintiff's contention the matter should be returned for new trial on the damage issue only. Because of the inconsistencies in the verdict, we reverse on all issues and remand for a new trial.

REVERSED AND REMANDED.