

Hawker Pacific Pty Ltd v Helicopter Charter Pty Ltd

(1991) 22 NSWLR 298

Chapter 5 (page 231)

Relevant facts

In 1986, Helicopter Charter Pty Ltd ('HC') had two helicopters available for hiring but it became necessary to repaint one of them. HC agreed to pay Hawker Pacific Pty Ltd ('Hawker') \$5,200 to undertake the repainting. However, HC was not satisfied with the job Hawker did. HC and Hawker then agreed the price would become \$5,500 and that further work would be done on the repainting. On 28 May 1986, Hawker delivered the repainted helicopter back to HC. HC remained dissatisfied with the work but used the helicopter in its business until 25 February 1987. At this time, HC had still not made any payment to Hawker but had been complaining to Hawker about defects in the repaint work. By agreement, the helicopter was delivered back to Hawker on 25 February 1987 for rectification work.

On 4 March 1987, HC was told the helicopter was ready for collection and its representatives attended the following day to pick it up. HC urgently needed the helicopter for charter work on 5 March 1987. One of HC's representatives signed an agreement in which HC agreed to pay Hawker \$4,300 for the paint job on delivery of the helicopter and release Hawker from any liability in relation to it. Although Hawker's representatives did not make the threat in so many words, HC's representatives believed that Hawker would prevent them taking the helicopter unless they signed the agreement.

HC took possession of the helicopter but did not pay the \$4,300.

In May 1988, HC commenced proceedings seeking a declaration that the agreement signed on 5 March was voidable on the grounds of duress. The trial judge decided in favour of HC and, based on an arbitrators report about the repainting work performed, awarded damages. Hawker appealed the decision that the agreement was made under duress to the NSW Court of Appeal.

Legal issue

Had the 5 March agreement been signed by HC under duress?

Decision

On 28 February 1991, the NSW Court of Appeal (Priestly, Clarke and Handley JJA) unanimously dismissed Hawker's appeal. The Court decided that Hawker's conduct in holding out to HC that the helicopter would not be released until HC promised to sign the agreement was analogous to threatened duress applied to HC's property and/or HC's right to take the helicopter away.

Justice Priestley (with whom Clarke and Handley JJA agreed on this point) considered the authorities in relation to what amounted to 'compulsion' and concluded at 302:

'[C]ompulsion' in relation to a contract which is sought to be set aside, includes every species of duress or conduct analogous to duress, actual or threatened, exerted by or on behalf of the promisee and applied to the person or the property or any right of the person who promises...

In relation to the factual circumstances of the case, Justice Priestley said at 302-3:

The appellant's conduct showed, and Mr Barnao believed, that the appellant would not permit it to be taken away unless the respondent did what the appellant wanted. On Brownie J's findings, in my opinion fully supported by the evidence, the respondent's need for the helicopter for business purposes that day was so urgent that recourse to legal proceedings for its recovery clearly would not have solved the company's practical problem.

... [I]t does not seem to me to be sufficient for the appellant's purposes to show that no express threat was made. If circumstances for which the appellant was responsible conveyed the threat to the respondent, then the threat of duress would operate as forcefully as if it were put into words.

Significance

This case is authority for the proposition that a threat made to the safety of a party's goods or property to induce the threatened party to enter a contract may amount to duress entitling the threatened party to avoid the contract.