

Supreme Court dismisses Times Travel (UK) Ltd's lawful act economic duress appeal (Pakistan International Airline Corporation v Times Travel (UK) Ltd)

The Supreme Court has unanimously ruled in favour of dismissing the appeal by Times Travel (UK) Ltd. The judgment sets out the essential elements on the doctrine of lawful act economic duress and what constitutes an illegitimate threat or pressure. The Supreme Court determines that the doctrine of lawful act duress should, and does, exist. The judgment also sets out the role of equity and the concept of unconscionability, and states a cautious approach should be taken to lawful act duress in commercial negotiation. Tom Bell, barrister at Gatehouse Chambers acting for the respondent, Tom Beard, associate at Lewis Silkin, and Joshua Cainer, barrister at Outer Temple Chambers, comment on the Supreme Court's judgment.

Pakistan International Airline Corporation v Times Travel (UK) Ltd [\[2021\] UKSC 40](#)

This analysis was first published on Lexis®PSL on 19 August 2021 and can be found [here](#) (subscription required).

Background

Times Travel (UK) Ltd (TT) is a small family-owned travel agency in Birmingham that almost exclusively sells plane tickets for flights to and from Pakistan. Pakistan International Airline Corporation (PIAC) is the national flag carrier airline of Pakistan and, at the time, it was the only airline operating between the UK and Pakistan. TT entered into a contractual relationship with PIAC in 2006.

On 25 February 2011 and 25 October 2012, TT and other travel agents claimed that PIAC had not been paying the commission from the sale of PIAC tickets. Several ticketing agents had initiated claims to recover the unpaid amounts from PIAC. Following this, in September 2012, PIAC gave notice, as it was entitled to do, to end its contractual relationship with TT in October 2012 and offered a new contract that released PIAC from all claims relating to unpaid commission in the previous contract. PIAC also reduced TT's ordinary ticket allocation from 300 to 60 tickets, which was within its legal rights. TT agreed to the new terms (New Agreement) to waive the stated claims on the basis that it would potentially have been put out of business without PIAC's tickets.

On 31 December 2014, TT initiated proceedings to recover the unpaid commission from the prior contractual agreement on the grounds it had entered into the New Agreement under economic duress. At first instance, the High Court ruled in favour of TT, stating that the New Agreement could be rescinded, and that TT had an entitlement for the 9% basic commission, which should be worked out using the fuel surcharge on the ticket price.

The Court of Appeal overturned this decision and held that the relevant threat was lawful as PIAC did not act in bad faith and had a genuine belief that it had a defence to TT's claims for the unpaid commission, thus lawful act duress could not be established.

TT appealed the Court of Appeal decision and the case was taken to the Supreme Court.

For further information on the Court of Appeal judgment, see News Analysis: [Commercial contract not avoided on economic duress grounds where duress was lawful \(Times Travel \(UK\) LTD v Pakistan International Airlines Corporation\)](#).

Judgment

The Supreme Court unanimously ruled to dismiss the appeal by TT. Lord Hodge gave the lead judgment, with which Lord Reed, Lord Lloyd-Jones and Lord Kitchin agreed. Lord Burrows gave a minority judgment. The Court held that lawful act duress had not been established and the New Agreement could not be rescinded.

The doctrine of lawful act economic duress

The Supreme Court's decision outlined the three essential elements of lawful act economic duress: the presence of an illegitimate threat or pressure by the defendant, the threat of pressure must cause the claimant to enter the contract, and the claimant must have no reasonable alternative to giving in to the threat or pressure. The judgment focused on whether PIAC's threat was illegitimate.

The ruling also unanimously affirmed that the doctrine of lawful act duress does, and should, exist in English law for rescinding a contract. The judgment established that the lawful act of duress focuses on 'illegitimate' acts rather than 'unlawful' ones, section 21 of the Theft Act 1968 includes threats of lawful action, and there is existing case law that has entitled threatened parties to rescind a contract based on threats of lawful action.

The judgment unanimously agreed that the law on lawful act economic duress should not be stated too widely.

Lord Hodge set out that where good faith in contracting is present and there is not an inequality of bargaining power, then lawful act economic duress is very rarely present in commercial negotiations.

What constitutes an illegitimate threat or pressure?

Lord Hodge stated that the doctrine of lawful act economic duress needs to consider the role of equity. Two circumstances were highlighted in which lawful act duress has been recognised: threats made to the claimant based on the claimant's criminal activity, and using reprehensible means to put the claimant in a vulnerable position to waive a claim against the defendant.

Lord Hodge added that interpreting illegitimate threats closely aligns with the equitable concept of unconscionability in which certain contexts allow for judicial intervention to protect a weaker party. Lord Hodge ruled that PIAC did not act in an 'unconscionable' or 'reprehensible' manner, therefore the New Agreement could not be rescinded for lawful act duress.

The judgment given by Lord Hodge outlines that the defendant's belief that it had a defence to the claimant's claim does not itself determine whether the threat was illegitimate. However, PIAC's genuine belief that it was not liable for paying the commission supported the decision that PIAC's conduct was not 'reprehensible' and the appeal was dismissed.

Lord Burrows disagreed on what determines the illegitimacy of the threat or pressure. In his view the illegitimacy is determined by the nature of and justification for the demand. If the threatening party has deliberately increased the claimant's vulnerability to the demand, and the demand is made in bad faith

whereby the defendant does not believe it has a defence to the claim being waived, then the demand is unjustified. Lord Burrows' judgment dismissed the lawful act economic duress appeal on the grounds that PIAC had a genuine belief that they were not liable for the unpaid commission and were not acting in bad faith.

Comment

Tom Bell, barrister at Gatehouse Chambers acting for the respondent, has stated the following:

'Whilst the decision has made clear that there will be few circumstances in which lawful act duress will be found, the door to lawful act duress has not been shut. It will be interesting to see whether claimants are put off from pleading lawful act duress, and in turn to what extent trial judges feel able, in light of the judgment, to set aside contracts on that basis.'

Tom Beard, associate at Lewis Silkin, also commented on the judgment:

'It is important to note that Lord Hodge and Lord Burrows were in agreement that the doctrine of lawful act economic duress does and should exist in English law.'

That said, the majority judgment could be seen to narrow the Court of Appeal's formulation (which mirrors Lord Burrows' formulation) insofar as it leaves open the possibility that even demands made in bad faith might not lead to duress. What matters are the circumstances in which that demand was made and, in particular, whether the defendant manoeuvred the claimant into a position of vulnerability. Lord Burrows' judgment, on the other hand, departs from the view of Lord Hodge as to what constitutes an illegitimate threat. His view is that pressure that involves the threat of a lawful act is illegitimate only when the demand is made in bad faith (that being where the threat-making party does not believe that it has a defence to the claim being waived).

It is clear from Lord Hodge and Lord Burrows that the doctrine should be applied infrequently, and they rejected the appellants' attempt to apply the doctrine more widely. In this regard, Lord Hodge's judgment acknowledged the rough and tumble of 'hard-nosed commercial negotiations' and accepted that they are part and parcel of commercial activity. In the view of the majority, such conduct did not cross the threshold of what it considered to be illegitimate threats or pressure.'

Joshua Cainer, barrister at Outer Temple Chambers, has added the following:

'This decision brings welcome clarity by confirming that the defence of lawful act duress, including lawful act economic duress, exists in English law. The majority's judgment also provides helpful further guidance as to what qualifies as an illegitimate threat for the purposes of lawful act duress.'

Both the majority's and Lord Burrows' judgments recognise the importance of establishing criteria for lawful act duress which allow courts to effectively police the boundaries of the defence. It is welcome, in that regard, that both judgments seek to balance the reasonable expectations of honest people when they enter into contracts against the importance of clarity and certainty in English commercial law. In particular, both judgments reject the idea of a general principle of good faith contracting and accept the general legitimacy of pursuing commercial self-interest, the 'rough and tumble' of normal commercial bargaining and exploiting a position of strength in an unequal bargaining relationship – the defence of lawful act duress will only be available in 'rare exceptional cases'. However, practitioners will have to consider carefully the differences between the majority's approach to identifying an 'illegitimate threat', which is closely tied to the concept of unconscionability, and Lord Burrows' alternative approach, when trying to locate the precise boundaries of lawful act duress in

future cases.

It is also worth observing as a practice point that, in addition to the more traditional kind of intervener in the form of the All Party Parliamentary Group on Fair Business Banking, the first and second interveners were Ukraine and The Law Debenture Trust Corporation Plc. This was almost definitely because the Supreme Court is due to decide the case of *The Law Debenture Trust Corporation Plc v Ukraine* [UKSC 2018/0192](#) which also involves aspects of the defence of duress. This highlights that where more than one case raises related, important points of principle, yet they are not suitable to be tried together, it is still open to parties to preserve their position by applying to intervene in the related case.'

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Source: [Pakistan International Airline Corporation v Times Travel \(UK\) Ltd \[2021\] UKSC 40](#)

Tom Bell is a barrister at Gatehouse Chambers specialising in commercial, professional negligence and insurance disputes. Tom Bell accepts instructions from banks, mortgage companies, insurers and commercial enterprises, and is recommended by Legal 500 for Professional Negligence.

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