

4.23 DURESS (Approved 6/79)

A contract obtained by duress can be set aside at the option of the person against whom the duress was directed. A contract is deemed obtained by duress if the person against whom the charge of duress is asserted has used threats, moral compulsion, physical force or psychological pressure to overbear the other party to the contract and thereby deprive the other party of the exercise of free will. But the actions of the person against whom the charge of duress is asserted must be wrongful. Actions may be wrongful if unlawful or so oppressive under the circumstances as to compel one to do what his/her free will would refuse. The controlling factor is the condition of the mind of the person subjected to such kinds of coercive measures at the time the contract is entered into. The age, capacity, education and relationship of the parties are among the factors you should consider in determining if there was duress.

A party entitled to set aside a contract obtained by duress is not required to do so. When and if the duress is no longer being asserted against him/her, he/she may at his/her option either set aside the contract or confirm it. But once the party makes the decision he/she cannot later change it. If the duress is no longer being asserted against him/her, he/she must act with diligence and without delay if he/she desires to set aside the contract. He/She will be deemed to have confirmed the

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contract if after the duress is no longer being asserted he/she (1) waits an unreasonable time to disaffirm the contract; or (2) does any material act which assumes the transaction to be valid; or (3) deals with the subject matter of the contract as if the contract were still valid.¹

Cases and Commentary:

For definition of duress *see McBride v. Atlantic City*, 146 N.J. Super. 498 (Law Div. 1974), *aff'd* 146 N.J. Super. 406 (App. Div. 1975), *aff'd*, 72 N.J. 201 (1976); *Rubenstein v. Rubenstein*, 20 N.J. 359 (1956); *Konsuvo v. Netzke*, 91 N.J. Super. 353 (Ch. Div. 1966). If a party is entitled to void a contract by reason of duress he/she may ratify it by treating it as valid when no longer under duress. *Cf. Ajamian v. Schlanger*, 20 N.J. Super. 246 (App. Div. 1952).

¹A paragraph as to ratification is included in the above charge. It may be appropriate for use in certain cases depending on the evidence.