

A husband lost his job and decided to borrow money against his marital home. Each time he applied for a mortgage, his wife contacted the lender and withdrew the mortgage application. One Saturday evening, the husband forced the wife to sit at the kitchen table and placed a mortgage application in front of her. As he waved a large pair of scissors in front of the wife's face, he demanded that she promise to sign the application by the end of the week. The wife, frightened by her husband, agreed to do so. On Monday morning, the wife went to a notary public's office alone and signed the application. The notary asked the wife if she signed the application of her own free will, and the wife replied, "It is what it is." Several months later, the mortgage went into default.

Does the lender have a breach-of-contract claim against the wife?

- A. No, because the husband physically compelled the wife to sign the mortgage application.
- B. No, because the husband threatened the wife with serious bodily harm.
- C. Yes, because the wife never voided the contract.
- D. Yes, because the wife was no longer under duress when she signed the mortgage application.

Explanation:

Duress is a **defense to contract enforceability** when a party was induced to assent by any of the following:

- **Physical compulsion** – rendering the contract void if the party's assent was compelled by physical force OR **imminent threat** of **death or serious bodily harm**
- **Improper threat by contracting party** – rendering the contract voidable by the threatened party if he/she had **no reasonable alternative** but to succumb to the **improper threat**
- **Improper threat by third party** – rendering the contract *voidable* by the threatened party if he/she had no choice but to succumb to the third party's improper threat (not seen here), unless the other contracting party did not know of the duress AND relied on the contract in good faith

Here, the wife manifested her assent to the contract by signing the mortgage application. The husband did not physically compel her to do so—eg, by grabbing her hand and using it to sign **(Choice A)**. And though waving scissors in front of the wife's face on Saturday may have threatened serious bodily harm, that threat was no longer imminent when she signed the application on Monday **(Choice B)**. Therefore, duress is no defense, and the lender has a breach-of-contract claim against the wife.

(Choice C) A contract may be **voidable** in certain situations, none of which are seen here. Therefore, the wife could not have voided the contract after willingly signing it.

Educational objective:

Duress occurs when a party's assent to a contract is compelled by physical force or imminent threat of death or serious bodily harm. Duress also occurs when a party receives an improper threat and has no reasonable alternative but to succumb.

References

- Restatement (Second) of Contracts §§ 174–176 (Am. Law Inst. 1981) (discussing duress caused by physical compulsion and improper threat).

Types of duress

(defense to contract enforceability)

Physical compulsion



Improper threat

