

A landowner, having suffered severe losses on bad investments, was money-poor but land-rich by inheritance, owning several thousand acres of unencumbered timberland. He had a large family, and his fixed personal expenses were high. Pressed for cash, he advertised a proposed sale of standing timber on a choice 2,000-acre tract. The only response was an offer by a logger who owned a large, integrated construction enterprise, after inspection of the advertised tract.

The logger offered to buy, sever, and remove the standing timber from the advertised tract at a cash price 70% lower than the regionally prevailing price for comparable timber rights. The landholder, by then in desperate financial straits and knowing little about timber values, signed and delivered to the logger a letter accepting the offer.

If, before the logger commences performance, the landholder's investment fortunes suddenly improve and he wishes to get out of the timber deal with the logger, which of the following legal concepts affords his best prospect of effective cancellation?

- A. Bad faith.
- B. Duress.
- C. Equitable estoppel.
- D. Unconscionability.

Explanation:

The defense of **unconscionability** is available when a contract's **bargaining process** and/or the **contract terms** were **so unfair** to one party that **no reasonable person would have agreed** to it. When this occurs, the court can modify or cancel (ie, refuse to enforce) the contract. **Factors** used to determine whether a contract is unconscionable include:

- **sophistication and knowledge** of each party (eg, the parties' unequal knowledge of the timber industry)
- disparity between the parties' **bargaining power** (eg, the landowner is money-poor and the logger is the only potential buyer)
- disparity between the **value of consideration exchanged** by the parties (eg, the sale of timber rights on *choice* land for a price that is significantly lower than the prevailing rate) *and*
- **one-sidedness** of contract terms (eg, the contract terms overwhelmingly favor the logger).

Therefore, unconscionability provides the landowner his best prospect of effective cancellation of the contract.

(Choice A) Good faith and fair dealing demand only actual honesty; here, there is no indication that the logger failed to meet this standard. Therefore, bad faith is not the landowner's best argument.

(Choice B) Duress serves as a defense to contract enforceability only if a contracting party's assent was induced by an **improper threat**—which did not occur here.

(Choice C) Equitable estoppel is a doctrine that prevents one party from changing its position after the other party has detrimentally relied on a misrepresentation of fact made by the first party. Here, however, the logger did not make a misrepresentation of fact to the landowner, so this doctrine does not apply.

Educational objective:

A party may assert the defense of unconscionability if the bargaining process and/or terms of the contract were so unfair to that party when the contract was made that no reasonable person would have agreed to it.

References

- Restatement (Second) of Contracts § 208 (Am. Law Inst. 1981) (unconscionable contract or contract term).

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Unconscionability



Unfair bargaining process

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Unfair contract terms