

An elderly widow had one child, an adult son, who lived out-of-state. The widow was in poor health, so she hired a live-in caregiver to tend to her daily needs. Knowing that the widow owned a successful bakery business, the caregiver befriended the widow in order to convince her to sell her business to the caregiver. When the widow later decided to sell the business to her son, the caregiver became upset. She falsely told the widow that there were no other reliable caregivers available in the widow's community. The caregiver then threatened to quit her job and never speak to the widow again unless the widow agreed to sell the business to the caregiver. Although the widow knew that there were other caregivers available, she depended on the caregiver and was terrified of being without her. The widow therefore executed a contract selling the business to the caregiver for less than half its market value.

Shortly thereafter, the widow was placed under the son's guardianship. When the son learned about the contract and the caregiver's threat, he sued to have the contract annulled on the widow's behalf.

On what basis is the son most likely to prevail?

- A. Duress.
- B. Lack of capacity.
- C. Misrepresentation.
- D. Undue influence.

Explanation:

A contract is **voidable** for **undue influence** if a party's assent was the product of **unfair or excessive persuasion** by **someone who dominated** or shared a special relationship of trust and confidence with that party. Persuasion is unfair or excessive if it seriously impairs the assenting party's ability to exercise free and competent judgment. The following factors are relevant to making this determination:

- Susceptibility of the assenting party (eg, elderly, in poor health)
- Unfairness of the resulting bargain (eg, sale of business for less than half its market value)
- Unavailability of independent advice (eg, attorney unavailable to discuss sale)

Here, the widow relied on the caregiver to tend to her daily needs (dominant relationship). The caregiver's threat to quit and never speak to the widow again likely impaired the widow's judgment and persuaded her to sell the caregiver her business. This is further evidenced by the below-market sales price (unfair bargain) and the widow's age and poor health (susceptibility). Therefore, the son is most likely to prevail on this basis.

(Choice A) Duress renders a contract voidable if a party's assent was induced by an **improper threat** that left the party with no reasonable alternative but to succumb to that threat. Here, even if the caregiver's threat was improper, the widow had a reasonable alternative (eg, hiring a new caregiver).

(Choice B) A person placed under another's guardianship lacks the capacity to contract, so a contract entered by that person is void (not merely voidable). But here, the widow was placed under the son's guardianship *after* she agreed to sell her business to the caregiver.

(Choice C) A contract is voidable for a misrepresentation that (1) was fraudulent or material, (2) induced assent to the contract, and (3) was justifiably relied on by the assenting party. But since the widow knew other caregivers were available, her reliance on the caregiver's misrepresentation was unjustified.

Educational objective:

Undue influence renders a contract voidable when assent stemmed from unfair or excessive persuasion by someone who dominated or shared a special relationship of trust and confidence with the assenting party.

References

- Restatement (Second) of Contracts § 177 (Am. Law Inst. 1981) (when undue influence makes a contract voidable).

Undue Influence

Domination



Power over
victim



Victim's singular
dependence

Special relationship of trust and confidence



Family



Caregiver



Fiduciary