

A contractor was supervising a crew of subcontractors during a house renovation. The contractor saw one of the subcontractors, a carpenter, steal a watch from the house. The contractor said nothing about the theft, and the crew finished the work and left.

Several weeks later, the contractor was hired to renovate another house. The contractor called the carpenter and said that he would need the carpenter to do this job for 25% less than his previous rate. The reduced rate reflected the market value of the work, but the carpenter refused. The contractor then told the carpenter that he had seen the carpenter steal the watch and that he would notify the police if the carpenter did not agree to the contractor's terms. The carpenter agreed to do the work for the lower rate.

The carpenter never showed up to perform any work at the second house.

If the contractor sues the carpenter for breach of contract, will the contractor be likely to prevail?

- A. No, because the contractor did not notify the police immediately after he saw the carpenter steal the watch.
- B. No, because the contractor threatened to notify the police that the carpenter had stolen the watch.
- C. Yes, because the contractor's proposed rate, which reflected the fair market value of the carpenter's work, was not unconscionable.
- D. Yes, because the contractor was legally authorized to notify the police that the carpenter had stolen the watch.

Explanation:

Improper threats

Always improper

- Threat to commit crime or tort
- Threat of criminal prosecution
- Threat of civil litigation made in bad faith
- Threat that breaches contractual duty of good faith & fair dealing

Improper if resulting terms are unfair

- Threatened act would harm recipient & not significantly benefit threatening party
- Threat's effectiveness significantly increased by threatening party's prior unfair dealing
- Threatened act would otherwise constitute use of power for illegitimate ends

Some threats made during contract negotiations are proper—eg, threats to walk away if an offer is rejected. But the following **threats** are **always improper**:

- Threats to commit a crime or a tort
- Threats of **criminal prosecution**, even if the person threatened committed the crime
- Threats of civil litigation made in bad faith
- Threats that breach the duty of good faith and fair dealing under an existing contract with the recipient

A contract is **voidable** on **duress** grounds if either party's **assent was induced** by an improper threat that left the recipient with **no reasonable alternative** but to assent.

Here, the contractor made an improper threat of criminal prosecution when he said that he would notify the police that the carpenter had stolen a watch. This induced the carpenter to accept the contractor's terms, as evidenced by the carpenter's initial rejection of the lower rate. And since the carpenter actually stole the watch, he had no reasonable alternative but to assent to avoid prosecution. Therefore, the contract is voidable due to duress, and the contractor is unlikely to prevail.

(Choice A) The contractor had no duty to notify the police that the carpenter stole the watch. Therefore, had the contractor refrained from making an improper threat, his failure to notify the police immediately would not prevent him from prevailing in a breach-of-contract suit.

(Choice C) A contract may be unenforceable based on **unconscionability** if its terms were so unfair to one party that no reasonable person would have agreed to it (not seen

here). But a contract whose terms are not unconscionable may still be unenforceable on duress grounds.

(Choice D) The contractor was legally authorized to notify the police about the theft. But this did not give the contractor the right to use the criminal justice system as leverage in his contract negotiation with the carpenter.

Educational objective:

A contract is voidable due to duress if either party's assent was induced by an improper threat (eg, threat of criminal prosecution) that left the recipient with no reasonable alternative but to assent.

References

- Restatement (Second) of Contracts § 175 (Am. Law Inst. 1981) (when duress by threat makes a contract voidable).
- Restatement (Second) of Contracts § 176 (Am. Law Inst. 1981) (improper threats).