



18 August 2021

## PRESS SUMMARY

**Pakistan International Airline Corporation (Respondent) v Times Travel (UK) Ltd (Appellant)**  
**[2021] UKSC 40**  
*On appeal from [2019] EWCA Civ 828*

**JUSTICES:** Lord Reed (President), Lord Hodge (Deputy President), Lord Lloyd-Jones, Lord Kitchin, Lord Burrows

### BACKGROUND TO THE APPEAL

The issue in this appeal is whether, and if so in what circumstances, a party can set aside a contract on the ground that it was entered into as a result of the other party threatening to do a lawful act.

Times Travel (“**TT**”) was a travel agent whose business consisted almost exclusively of selling plane tickets to and from Pakistan. Pakistan International Airline Corporation (“**PIAC**”) was the sole operator of those flights. It allocated tickets to TT and paid commission to TT for the tickets it sold. This contractual arrangement could be terminated by PIAC at one month’s notice.

A dispute arose in 2011 and 2012 when certain travel agents, including TT, alleged that PIAC had not been paying them certain commission payments. Claims were brought to recover the unpaid commission. Under pressure from PIAC, TT did not join those claims. However, in September 2012 PIAC cut TT’s normal fortnightly ticket allocation from 300 to 60 tickets, as it was entitled to do, and gave notice that it would terminate their existing arrangement at the end of October 2012. This would have put TT out of business and so on 24 September 2012 TT agreed to accept new terms (the “**New Agreement**”) by which it waived any claims it might have for the previously unpaid commission. One of the directors of TT had been shown a draft of the New Agreement a few days beforehand but PIAC had refused his request to take a copy with him in order to discuss it and obtain legal advice.

TT subsequently brought a claim against PIAC for the unpaid commission. It argued that it could rescind the New Agreement for lawful act economic duress. The trial judge agreed but also found that PIAC had genuinely believed that the disputed commission was not due. The Court of Appeal allowed PIAC’s appeal as PIAC had not acted in bad faith in that sense. TT appealed to the Supreme Court.

### JUDGMENT

The Supreme Court dismisses the appeal. Lord Hodge gives the lead judgment with which Lord Reed, Lord Lloyd-Jones and Lord Kitchin agree. Lord Burrows gives a concurring judgment. TT cannot rescind the New Agreement for lawful act economic duress.

### REASONS FOR THE JUDGMENT

#### The elements of the doctrine of lawful act economic duress

When it is alleged that a defendant has induced a claimant to enter into a contract by duress, Lord Hodge and Lord Burrows agree that there are two essential elements that the claimant needs to establish to

rescind the contract: (i) the threat or pressure by the defendant must have been illegitimate and (ii) the threat or pressure must have caused the claimant to enter the contract [78]. Economic duress also has a third element: (iii) the claimant must have had no reasonable alternative to giving in to the threat or pressure [79]. It is not in dispute that TT entered into the New Agreement as a result of PIAC's threats, and that it had no reasonable alternative. This appeal solely concerns the first element: was PIAC's threat illegitimate [80]?

Lord Hodge and Lord Burrows also agree that, despite some academic suggestions to the contrary, the doctrine of lawful act duress does and should exist in English law for three reasons [86]. First, the case law refers to 'illegitimate' rather than 'unlawful' acts [87]. Second, the crime of blackmail includes threats of lawful action [88]. Third, there have been several cases in which it has been accepted that threats of lawful action entitle a threatened party to rescind a contract [91].

### **What constitutes illegitimate threats or pressure?**

Lord Hodge explains that there are two circumstances in which the English courts have recognised lawful act duress. The first is where a defendant uses their knowledge of the claimant's criminal activity, or that of a person close to the claimant, to threaten the claimant [5]. Though originally viewed as an example of the equitable doctrine of undue influence, this is now seen as lawful act duress [9]. The second is where the defendant, having exposed himself to a civil claim by the claimant, uses reprehensible means to manoeuvre the claimant into a position of vulnerability to force him to waive his claim [17]. In both circumstances, the courts have been influenced by the role of equity [19].

What constitutes an illegitimate threat or pressure is therefore closely aligned with the equitable concept of unconscionability [20]. This does not mean that judges are arbiters of what is morally and socially acceptable. Rather, equity has identified specific contexts which call for judicial intervention to protect the weaker party [23]. In the absence of a doctrine of inequality of bargaining power or a general principle of good faith in contracting, it will be rare that a court will find lawful act economic duress in the context of commercial negotiation [26-30]. Other jurisdictions are similarly cautious in declaring commercial behaviour illegitimate [39]. Lawful act economic duress should not depend on whether the defendant genuinely believed that it had a defence to the claimant's claim [45-57].

Lord Hodge holds that TT cannot rescind the New Agreement. PIAC giving notice that the previous contract would be terminated and cutting TT's ticket allocation was not reprehensible conduct in the sense used in the case law [58]. PIAC's genuine belief that it was not liable to pay the disputed commission further supports the view that its behaviour was not reprehensible [59]. The appeal is dismissed [61].

Lord Burrows agrees with Lord Hodge that the appeal should be dismissed but disagrees on what is meant by illegitimate threats in relation to economic duress. As the threat or pressure is of a lawful act, the question of whether it is illegitimate should focus on the justification for the demand [96]. Lord Burrows' view is that a demand is unjustified, so that the accompanying threat is illegitimate, if (i) the threatening party has deliberately created or increased the threatened party's vulnerability to the demand, and (ii) the demand is made in bad faith in the specific sense that the threatening party does not genuinely believe that it is owed what it is claiming or does not genuinely believe that it has a defence to the claim being waived [112]. On the facts of this case, TT's claim for lawful act economic duress fails because PIAC genuinely believed it was not liable for the unpaid commission [138].

*References in square brackets are to paragraphs in the judgment*

### **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

<http://supremecourt.uk/decided-cases/index.html>