NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued February 4, 2025
Decided February 27, 2025

Before

DIANE S. SYKES, *Chief Judge*

FRANK H. EASTERBROOK, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 24-1982

JER CREATIVE FOOD CONCEPTS, INC., *Plaintiff-Appellant*,	Appeal from the United States District Court for the Western District of Wisconsin.
v.	No. 23-cv-115-wmc
CREATE A PACK FOODS, INC., *Defendant-Appellee*.	William M. Conley, *Judge*.

O R D E R

After their business relationship soured, JER Creative Concepts, Inc., doing business as Golden Select Foods ("Golden"), sued Create A Pack Foods, Inc. ("CAP"), alleging that CAP breached its contract to produce food products for Golden from 2015 to 2022. In response, CAP asserted that Golden had released all claims against CAP, and it counterclaimed that Golden had breached its contract by failing to pay for goods that CAP had delivered. Golden acknowledged that it had signed the release but argued that it did so under economic duress and was therefore not bound.

The district judge entered summary judgment for CAP, rejecting the economic duress argument and concluding that Golden breached the contract through nonpayment. Golden appeals the decision on its claim but not on CAP's successful counterclaim. Because no reasonable jury could find that Golden's evidence establishes the four elements of economic duress, the release of its claim should be enforced, and we affirm.

Background

We construe the record in favor of Golden, the party opposing summary judgment. *See Stampley v. Altom Transp., Inc.*, 958 F.3d 580, 585 (7th Cir. 2020). Golden, a California-based business, creates recipes for kosher food products that are shipped to its customers for use in creating their own food products. Golden does not manufacture its own products; it contracts with "co-packers" who blend, cook, package, warehouse, and ship its products using formulas, ingredients, and equipment supplied by Golden.

In late 2014, Golden's president, Jonathan Freed, had been looking for a new co-packer for a year. He contacted CAP, a company that manufactures and packages food products at its facilities in Wisconsin. CAP and Golden negotiated an arrangement whereby Golden would pay CAP to process, package, warehouse, and ship Golden's products to its customers. The parties discussed pricing, and CAP informed Golden that Golden would have to invest over $100,000 to build out CAP's plant in Elmwood, Wisconsin, to accommodate Golden's specialized equipment. In December, Freed emailed a proposed agreement (the "Packing Agreement") with an eight-year term to Glenn Cochrane, CAP's president. The next month, Cochrane emailed to Freed a revised version of the Packing Agreement, which Cochrane had not signed. Freed also did not sign it. Still, Golden then paid for the build-out of CAP's plant and installed its equipment there. CAP began producing Golden's products in 2015.

In October 2021, CAP notified Golden that it was closing the Elmwood plant and that Golden would have to remove its equipment by June 1, 2022—about seven months before the expiration of the Packing Agreement's term. In response, Golden began searching for a co-packer to replace CAP. The search proved difficult because of the attributes Golden required of its co-packers. On February 27, 2022—before Golden found a new co-packer—CAP informed Golden that CAP would not accept any more production orders.

On March 11, 2022, Golden and CAP entered into a new agreement (the "Transition Agreement"). Under the Transition Agreement, CAP agreed to continue producing Golden's products until May 27 and to ship all of Golden's inventory by June 15. For its part, Golden agreed to remove its equipment before June 15 and to release any legal claims against CAP that pre-dated the Transition Agreement. Freed would later attest that when he objected to the release, CAP refused to fill any orders unless he signed the Transition Agreement with that provision. Freed was also uncertain when Golden would find a suitable co-packer, and he did not believe that the business could survive if it was unable to stockpile inventory and fulfill its customers' orders until it replaced CAP.

CAP continued to produce Golden's products until June. That month, CAP delivered to Golden finished product and inventory priced at over $50,000. Golden paid CAP only $625 and refused to pay more.

Golden then brought this suit against CAP, alleging that CAP breached the Packing Agreement by refusing to abide by the pricing arrangement or to perform required quality assurance. Golden invoked jurisdiction based on diversity of citizenship: it was incorporated and had its principal place of business in California, CAP was incorporated in and had its principal place of business in Wisconsin, and Golden sought compensatory damages "in an amount to be proven at trial, but in excess of $75,000." *See* 28 U.S.C. § 1332. The complaint asserted that the release in the Transition Agreement was unenforceable because CAP obtained it through economic duress. CAP filed a counterclaim, alleging that Golden breached the Transition Agreement by failing to pay for the products that Golden accepted in June 2022.

CAP moved for summary judgment, arguing that no reasonable jury could find CAP liable on Golden's breach-of-contract claim because (1) the Packing Agreement was unenforceable under the statute of frauds because it was not signed by CAP; (2) Golden released its claim against CAP under the Transition Agreement; and (3) Golden incurred no damages from CAP's alleged breach. CAP also moved for summary judgment on its counterclaim. For its part, Golden argued that factual disputes precluded summary judgment on either claim.

The district judge entered summary judgment for CAP on Golden's claim and CAP's counterclaim. The judge explained that, assuming the Packing Agreement was

an enforceable contract under Wisconsin law,[1] no reasonable jury could find that Golden signed the Transition Agreement under economic duress, and so the release barred Golden's claim.[2] As for CAP's counterclaim, the judge concluded that Golden was in breach and had to pay for the products it accepted from CAP with interest and costs.

Analysis

Golden now challenges only the ruling that it released its breach-of-contract claim, a decision that we review de novo. *See Stampley*, 958 F.3d at 585. Golden argues that the judge overlooked factual disputes that would allow a reasonable jury to find that Golden signed the Transition Agreement under economic duress from CAP, making the release unenforceable.

Before turning to Golden's argument about economic duress, we briefly address CAP's assertion that the Packing Agreement is unenforceable under Wisconsin law, and thus CAP had no contract with Golden that it could have breached. Neither party signed the Packing Agreement, and according to CAP, it is therefore not a valid contract.

But we need not decide whether the Packing Agreement is an enforceable contract—even if it is, Golden released its claim against CAP as part of the Transition Agreement. According to Golden, factual disputes about its economic duress precluded

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[1] The Packing Agreement contained a choice-of-law provision requiring that the contract be governed by California law. Because neither party invoked that provision in the district court, each relying instead on Wisconsin law, the district judge considered it waived and applied the forum state's law. *See Orgone Cap. III, LLC v. Daubenspeck*, 912 F.3d 1039, 1044 (7th Cir. 2019). On appeal, neither party disputes the decision to apply Wisconsin law.

[2] The district judge decided that Article 2 of the Uniform Commercial Code applied to the Packing Agreement and Transition Agreement after applying the predominant purpose test and deciding that the essential purpose of the parties' agreement was the sale of goods, namely food products that CAP manufactured for sale by Golden. Neither party challenges that decision on appeal.

summary judgment. But Golden cannot satisfy the elements of economic duress, and therefore the district judge was correct to enter summary judgment for CAP.

As the party raising economic duress as a defense to enforcing the release contained in the Transition Agreement, Golden needed evidence that: (1) it was the victim of a wrongful or unlawful act or threat; (2) the act or threat deprived Golden of its unfettered will; (3) as a result, Golden was compelled to make a disproportionate exchange of values or give up something—i.e., the release—for nothing; and (4) Golden had no adequate legal remedy. *See Wurtz v. Fleischman*, 293 N.W.2d 155, 160 (Wis. 1980). The district judge ruled that Golden failed to produce sufficient evidence on every element, and Golden contends that the judge was wrong on each.

1. CAP's Wrongful or Unlawful Act or Threat

Golden argues that the judge overlooked CAP's allegedly lawless decision to cease production of Golden's products in February 2022 and its subsequent refusal to resume production unless Golden signed the Transition Agreement (including a non-negotiable release). In Golden's view, no evidence supports the conclusion that CAP was entitled to stop production. Instead, Golden contends, the record shows that the Packing Agreement had a seven-month term remaining, and CAP had no legal right to withhold performance by refusing to accept new orders unless Golden signed the Transition Agreement.

Assuming the Packing Agreement was an enforceable contract, Golden is correct. Economic duress occurs when one party "use[s] the threat of breach to get the contract modified" in its favor where modification is not in the mutual interest of the parties, and such an act "undermines the institution of contract." *Selmer Co. v. Blakeslee-Midwest Co.*, 704 F.2d 924, 927 (7th Cir. 1983) (Wisconsin law). Here, the judge confusingly observed, with no elaboration, that CAP had "a legal right" to act as it did. Similarly, CAP states that, when it demanded a release, it had no obligation to continue making Golden's products. But that is incorrect if the Packing Agreement was a valid contract with an eight-year term.

Here, Freed, Golden's president, attested that he had no desire to execute the Transition Agreement and that he did not believe CAP had any right to require a further agreement. He further swore that he signed it only to prevent CAP from continuing to withhold performance under the Packing Agreement. It is not beyond

dispute, therefore, that CAP had a legal right to cease production at the time it sought the release of Golden's claims.

2. Deprivation of Golden's Unfettered Will

According to the district judge, Golden was freely exercising its will because the evidence showed that Golden willingly communicated with CAP about the terms of the Transition Agreement. Golden counters that Freed objected to the release, was rebuffed, and then told CAP that he was reluctantly signing the Transition Agreement only to save the business.

We agree with Golden that a jury could find that CAP's action deprived Golden of its unfettered will regardless of whether Freed "communicated willingly" with CAP about some terms of the proposed Transition Agreement. As Golden observes, this case is like *Austin Instrument, Inc. v. Loral Corp.*, 272 N.E.2d 533 (N.Y. 1971), which we have repeatedly cited as an example of a contract modification made under economic duress. *See United States v. Stump Home Specialties Mfg.*, 905 F.2d 1117, 1122 (7th Cir. 1990); *see also Pro. Serv. Network, Inc. v. Am. All. Holding Co.*, 238 F.3d 897, 901 (7th Cir. 2001). In *Austin Instrument*, a supplier threatened to stop delivering goods under a contract unless the purchaser agreed to pay new, higher prices. 272 N.E.2d at 534–35. After failing to find an alternative supplier, the purchaser capitulated to the supplier's demands, stating that "we are left with no choice or alternative but to meet your conditions." *Id.* at 535. The court decided that the supplier's threat deprived the purchaser of its free will. *Id.* at 536. Indeed, the purchaser had no reasonable choice but to agree to pay the higher prices given its obligations to its own customer and its liability for liquidated damages if it failed to fulfill orders. *Id*.

Similarly here, a jury could find that Golden was deprived of its unfettered will because Golden had no way of producing its products or filling its customers' orders if CAP refused to uphold its end of the Packing Agreement. (Even if it had found a new co-packer, the replacement would need time to obtain the equipment and start production.) CAP responds only that Golden and CAP freely negotiated the terms of the Transition Agreement. But that argument is unpersuasive because CAP does not dispute that it would not negotiate the release—the provision of the Transition Agreement that CAP wishes to enforce against Golden.

3. Disproportionate Exchange of Value

We also agree with Golden that the district judge overlooked evidence that Golden got little or nothing in exchange for the release. If the Packing Agreement was an enforceable contract, a jury could find that Golden gained nothing from the Transition Agreement while surrendering a legal right to assert claims against CAP. The judge seemed to believe that this exchange was not disproportionate because Golden benefited when CAP resumed production in March. But Golden already was entitled to receive that benefit through the end of the original contract term. Therefore, a reasonable jury could find that, under the Transition Agreement, Golden received nothing more than the performance that CAP had already promised, while relinquishing something of value.

4. Adequate Legal Remedy

As to the final element, Golden argues that it had no adequate legal remedy to signing the Transition Agreement in March 2022 because (1) Golden could not seek injunctive relief; and (2) Golden would not have survived if it sued for damages instead of signing the Transition Agreement.[3]

Golden fails to establish its first premise, however. Relying on our decisions in *Pro. Serv. Network, Inc. v. Am. All. Holding Co.*, 238 F.3d 897 (7th Cir. 2001) and *JPM, Inc. v. John Deere Indus. Equip. Co.*, 94 F.3d 270 (7th Cir. 1996), CAP counters that Golden indeed could have sued to compel CAP's performance. In *Professional Service Network*, we decided that Alliance, the party asserting economic duress, had an adequate legal remedy because Alliance could have sought injunctive relief instead of agreeing to PSN's terms. 238 F.3d at 901. We observed that Alliance, which was facing a liquidity crisis and already embroiled in litigation with PSN, could have moved for a mandatory injunction based on the irreparable harm that would occur if PSN refused to perform. *Id.* Similarly, in *JPM*, we decided that the party asserting economic duress had an adequate legal remedy because it could have sought injunctive relief. *JPM, Inc.*, 94 F.3d at 273.

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[3] The district judge did not separately discuss this fourth element. But when discussing the second element of Wisconsin's test for economic duress, he briefly observed that Golden "had other reasonable courses of action … including pursuing legal action to enforce the terms of the packing agreement."

We agree with CAP that Golden fails to establish any barrier to suing CAP for an injunction. Golden unpersuasively attempts to distinguish *JPM* because the dispute in that case involved a Wisconsin statute that required courts to presume that a breach of contract was an irreparable harm. But *JPM* relied on the "basic principles" of economic duress, not the specifics of that statute. *See JPM*, 94 F.3d at 274. Even though Golden likely would not benefit from a statutory presumption (it would have to be a "dealer"), it gives no good reason why it could not have sued for injunctive relief in October 2021, when CAP notified Golden that it intended to shut down the plant, or in February 2022, when CAP told Golden it would not accept additional orders. *See id.* at 273 (three-month span between threat and harm was "plenty of time to seek injunctive relief"). Golden also believes that it mattered in *Professional Service Network* that there was already litigation between the parties, but we simply observed that the party raising economic duress "would not even have had to file a new suit in order to obtain [injunctive] relief." *Pro. Serv. Network, Inc.*, 238 F.3d at 901. The pending litigation was not a decisive factor.

Golden asserts that it is disingenuous for CAP to suggest that a lawsuit was an alternative to signing the Transition Agreement because Golden's survival was doomed otherwise. But that seems precisely like the "irreparable harm" required for obtaining a preliminary injunction. *See DM Trans, LLC v. Scott*, 38 F.4th 608, 617–18 (7th Cir. 2022); *see also Serv. Emps. Int'l Union, Loc. 1 v. Vos*, 946 N.W.2d 35, 63 (Wis. 2020) (Wisconsin law). And the alleged imminence of Golden's demise meant that a suit for damages would not be an adequate remedy, further supporting its case for equitable relief. Thus, for purposes of its economic duress defense, Golden cannot establish that going to court was not an alternative to signing the release. And falling short on this element cause the duress defense to fail, even if Golden could satisfy some of the other elements of economic duress.

AFFIRMED