

Lower Revision

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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

NO IL HYUNG,
and PARK SONG CHUN,

Plaintiffs,

v.

KIM KUL HYUNG,
and KTM BU MIN,

Defendants.

Case No. 98-133C

ORDER AFTER TRIAL

I. INTRODUCTION

THIS matter came before the Court for bench trial in former Courtroom A. Antonio M. Atalig, Esq. appeared on behalf of Plaintiffs No 11 Hyung and Park Song Chun. Stephen J. Nutting, Esq. appeared on behalf of Defendants Kim Kul Hyung and Kim Bu Min.^{1/} The Court, having reviewed the memoranda, declarations, and exhibits, having heard and considered the arguments of counsel, and being fully informed of the premises, now renders its written decision.

FOR PUBLICATION

^{1/}Prior to the start of the trial, the Court dismissed Defendant Kim Bu Min from the case with prejudice after finding that Plaintiffs never effectuated service on Mr. Kim. Additionally, at the conclusion of the evidence the Court dismissed Defendant Kim Kul Hyung's counter-claim for intentional infliction of emotional distress.

Atalig & Nutting

II. FINDINGS OF FACT

1. While in 'Australia, Plaintiff No 11 Hyung ("Plaintiff No") made loans totaling \$38,400 in Australian dollars to Defendant Kim Bu Min ("Defendant Kim Bu") on various dates between September 1991 and April 1992. Defendant Kim Bu is the son of co-Defendant Kim **Kul** Hyung ("Defendant Kim **Kul**").
2. At some point in 1992, Defendant Kim Bu abandoned his wife and children in Australia in an apparent attempt to evade his creditors.
3. In June/July 1992, Plaintiff No contacted Defendant Kim **Kul** in regard to the monies owed to him by Defendant Kim Bu. Plaintiff No then suggested to Defendant Kim **Kul** that he repay the loan on behalf of his son.
4. At a point subsequent to his conversation with Plaintiff No, Defendant Kim **Kul** and his wife began receiving telephone calls from a Mr. Park, a non-party associate of Plaintiff No. Mr. Park threatened to sell their daughter-in-law to a brothel and cause physical injury to their grandchildren if the debt was not repaid to Plaintiff No.^{2/}
5. In September 1992, Plaintiff No came to Saipan to meet with Defendant Kim Kul. At Plaintiff No's suggestion, Defendant Kim **Kul** provided a written document to Plaintiff No wherein Defendant Kim **Kul** promised to do his "very best" to repay his son's debt in return for "releasing from detention in Australia and safely returning to Saipan" Defendant Kim **Kul**'s daughter-in-law and **grandchildren**.^{3/}
6. After obtaining the necessary travel documents and airline tickets, Defendant Kim **Kul** mailed the same to Plaintiff No who then delivered Defendant Kim Kul's **daughter-in-law** and grandchildren to the airport in Australia.
7. After the family arrived on Saipan in late December 1992, Defendant Kim **Kul** failed to make any payments per his agreement with Plaintiff No.

^{2/}It is disputed whether Plaintiff No threatened to withhold the passports of the daughter-in-law and the grandchildren until the loan was repaid.

^{3/}See Plaintiff's Exhibit 4, entitled "Agreement", dated September 17, 1992.

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III. CONCLUSIONS OF LAW

1. Defendant Kim Kul seeks to void his agreement with Plaintiff No on the ground of duress by claiming that the threats of harm to his son's family prompted him to agree to repay his son's loan. Duress requires a showing of both a wrongful threat and the effect of precluding the exercise of free will. Kranitz v. Strober Organization, Inc., 580 N.Y.S.2d 351, 351 (A.D.1 Dept.1992). Moreover, the duress may be exercised by one who is not a party to the contract. In re Marriage of Hitchcock, 265 N.W .2d 599, 606 (1978). Here, the record does not reflect the exercise of free will on the part of Defendant Kim Kul. His principal motivation in drafting the agreement to repay his son's debt to Plaintiff No was to prevent any resulting physical harm to his daughter-in-law and grandchildren based on the threats by non-party Park.

IV. CONCLUSION

The Court concludes that the agreement entered into between Defendant Kim Kul and Plaintiff No is void on the ground of duress." Accordingly, Plaintiffs shall take nothing by way of this action.

So ORDERED this 09 day of November, 1999.


TIMOTHY H. BELLAS, Associate Judge

⁴Since the agreement between Plaintiff No and Defendant Kim Kul is void on the ground of duress, the Court will not discuss whether the terms of the agreement were reasonably certain to be enforceable.