



## ENGLISH COURT OF APPEAL RULES ON LAWFUL DURESS IN PAKISTAN AIRLINES CASE

*Times Travel (UK) Ltd v Pakistan International Airlines Corporation [2019] EWCA Civ 828 (14 May 2019)*

### **Introduction**

In a decision handed down on 14 May 2019, the English Court of Appeal allowed an appeal by Pakistan International Airlines Corporation against the setting aside of a contract based on lawful duress.

### **Background**

The appellant, Pakistan International Airlines (PIAC) had entered into a contract with the Respondent, Times Travel (UK) Limited (Times Travel) as an agent for the sale of flight tickets on terms that included a waiver by Times Travel of its claims for unpaid commission under prior arrangements. The business of Times Travel was almost exclusively the sale of flight tickets to members of the Pakistani community in and around Birmingham for travel to and from Pakistan, and as, at the relevant time, PIAC was the only airline operating direct flights between the United Kingdom and Pakistan, Times Travel's business was largely dependent on its ability to sell PIAC tickets (for which it needed a contract with PIAC).

In 2012, a significant number of agents had commenced or were threatening proceedings to recover substantial sums said to be due by way of commission. In September 2012, PIAC terminated all existing contracts and entered into new contracts only if agents waived their existing claims. Times Travel accepted PIAC's terms (although many other agents rejected these or renegotiated more favourable terms).

In 2014, Times Travel brought proceedings to recover the commission and other payments which it said were due under the earlier arrangements. PIAC relied, inter alia, on the waiver given by Times Travel.

At first instance, Warren J held that Times Travel (UK) Limited (Times Travel) was entitled to avoid, on grounds of economic duress, a contract with the appellant Pakistan International Airline Corporation. Warren J held that, because of its dependence on PIAC for so much of its business, Times Travel had no

practical alternative to accepting those terms if it wished to remain in business; and accordingly the contract containing the waiver had resulted from economic duress on the part of PIAC.

PIAC appealed against this decision.

### **Decision**

The Court of Appeal (David Richards, Moylan and Asplin LJJ) allowed the appeal.

The main issue for the Court of Appeal was whether lawful act duress (where a contract results from a threat of a lawful act or omission) existed at all, and, if so, in what circumstances it could be invoked.

Lord Justice David Richards, giving the decision of the Court of Appeal, observed that the first instance judge had identified three ingredients necessary for a successful claim – (1) there must be illegitimate pressure applied to the claimant; (2) the pressure must be a significant cause inducing the claimant to enter into the contract; (3) the practical effect of the pressure is that there is compulsion on, or a lack of practical choice for, the claimant. The present appeal concerned only the first of those ingredients, there being no challenge to the judge's findings of fact that the pressure applied by PIAC was a significant cause inducing Times Travel to enter into the contract and that Times Travel had no practical choice other than to enter into the contract.

Considering the law on duress, David Richards LJ noted that while historically, the avoidance of contracts on grounds of duress was confined to acts or threats of personal violence or imprisonment and, more recently, unlawful threats to property, the scope of duress was significantly broadened with the acknowledgement that a contract might be avoided on grounds of economic duress (as in *Occidental Worldwide Investment Corp v Skibbs A/S Avanti* [1976] 1 Lloyd's Rep 293 and *North Ocean Shipping Co Ltd v Hyundai Construction Co Ltd* [1979] QB 705).

David Richards LJ concluded that the critical issue for the purposes of this case is whether economic duress can, in a commercial context, arise where lawful acts or threats are made by A in support of a demand which A genuinely believes he is entitled to make. If that belief is reasonably, as well as genuinely, held, there was no basis on which a plea of economic duress could succeed. The same applied even where the belief was unreasonably held. This position was consistent with the principle that contractual certainty should be respected. Furthermore, While PIAC was able to exert the pressure that it did due to its monopoly position, it was not the role of the courts to seek to control the lawful use of monopoly power, which should instead be left to statute.