

8.4.2 The current causation-led approach

Page 328 at (iii) **add** to the examples of cases where economic duress was found-

- ✓ In *Adam Opel GmbH and another v Mitras Automotive (UK) Ltd* [2007] EWHC 3205 (QB) AO informed M in February 2006 that it would cease to obtain parts from M in August 2006 for its manufacture of vans. In response, M demanded certain payments to 'compensate' for the loss of the contract and an increase in the price of parts to be supplied. AO unsuccessfully sought an injunction against M without notice to M. AO continue to attempt a negotiation until it calculated it had only 24 hours worth of supplies remaining and cessation of production would result in severe financial losses and have other adverse knock-on effects. When M threatened to supplies, AO then agreed to M's demands. The agreement was set aside for economic duress.

8.4.3 The victim had no practicable alternative

Page 329 at the end of the page **add**-

In *Adam Opel GmbH and another v Mitras Automotive (UK) Ltd* [2007] EWHC 3205 (QB) AO informed M its supplier that it intended to switch suppliers in six months' time. M then refused to continue supplying AO with car parts unless the latter agreed to certain payments to 'compensate' for M's anticipated loss of the contract and an increase in the price of parts to be supplied. AO was concerned to avoid any halt in production, which would have created a logistical nightmare and caused severe financial consequences for both AO and its other suppliers. The court set aside AO's agreement to M's demands for economic duress. The court found that AO's alternatives were not adequate to nullify the pressure created by M's threat. AO could not have obtained alternative supplies elsewhere, as O's new supplier was not ready to begin production for some time (at [36]). As for the alternative of seeking an injunction against M:

31 [AO made an application for an injunction without notice because of its] fear that notice might provoke Mitras into immediate discontinuance of supply. When the judge refused to entertain the application without notice, GMR was left in a quandary, compounded by a concern that failure by GMR in inter partes proceedings might lead Mitras to increase its final demands (though of course this would also have been a risk if an injunction had been obtained ex parte but subsequently discharged). In the event, the resolution of this delicate problem was pre-empted by the news early the next morning that supply had been stopped. GMR now saw capitulation as the only certain way to ensure resumption of supplies.

32 Mitras argued that application for an injunction inter partes was a practical alternative to capitulation. Mr Cawson submitted that a court would have beyond all doubt have granted an injunction compelling supply. He stressed that there was a clear threatened (and indeed actual) breach of contract devoid of any possible justification, and suggested that the balance of convenience was overwhelmingly in favour of granting the relief. Indeed, he submits that the case against his clients was so strong that their legal advisers would have compelled them to give an undertaking. This line of argument might be thought worthy of admission to Alice's wonderland: the more blatantly unjustified and illegal the action threatened, the more readily the defendant would escape liability in duress. However that may be, the situation cannot in my view be as simply resumed as Mr Cawson's submissions suggested. GMR had to take a rapid decision in circumstances where the threat had already become reality. Capitulation would ensure with certainty the restoration of supplies and at a price which, though seen by GMR as extortionate, would be a fraction of the loss which would otherwise be suffered. By contrast, there were serious imponderables about the injunction route, and despite what is now said Mitras could not necessarily have been expected to offer an undertaking. It was uncertain when a hearing inter partes might have been secured, and GMR were in my view entitled to consider that the outcome would not inevitably be in their favour. Apart from the uncertainties of any litigation, the contractual documentation was far from transparent, particularly as regards the central question of what, if any, obligation Mitras was under to supply the units, and the court's attitude to the grant of a mandatory interim injunction to supply an indeterminate number of units on an

indeterminate timetable could not in my view have been assumed.

33 Given GMR's legitimate concern to ensure security of supply, I do not in these circumstances consider that the injunction route was an alternative adequate to nullify the pressure created by Mitras' threat ...