



# Gerstein v. Broad Hollow Co Case Brief Summary

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75 AD2d 292 (1980).

## Facts

This is an appeal of an action arising out of an alleged breach of contract.

It concerns plaintiff David Gerstein's contract with defendant 532 Broad Hollow, Inc., a Real Estate Holding firm which owns and operates office buildings in Melville, Suffolk County, Long Island, New York.

The contractual dispute in question concerned a lease entered into on June 1, 1966, covering the premises located at 532 Broad Hollow Road, which was subsequently amended for a period of 23 years and 6 months with two renewal options, each for a period of 10 years.

## Issue:

The question the court determined was whether the contract between the parties was impaired and voidable due to duress exerted by David Gerstein.

## Holding and Rule

(Opinion written by Appellate Division Justice Bernard Bloom)

The court found that:

- Duress, generally speaking, may be said to exist where one is compelled to perform an act which he has the legal right to ab-stain from performing;
- The compulsion must be such as to overcome the exercise of free will;
- It must "involve an act, or a threat of action from, which the person sought to be influenced is entitled to be free";
- Where such exists, the threatened party enters into a contract, or agrees to a contractual provision, in order to avoid a threatened danger.
- Such danger may be physical harm to the person or their property, called physical duress, or it may be a financial loss for such person, called economic duress.
- Although economic duress is called by the defendant in their affirmative defense against Mr. Gerstein's claim to damages, no such duress has been proven;
- A threat to do that which one has the right to do does not constitute duress;
- Here, in this case Gerstein was granted, by agreement, the right of first refusal when the Company entered into a contract to sell without offering the premises to him;
- The Company accordingly breached its agreement to him;
- Gerstein did no more than assert the rights conferred upon him by the 1969 and 1972 agreements;
- Such was not a threat or any form of economic duress, for in sum, he only asserted a claim which, under the law, he was entitled to assert;
- Defendant recognized this in its letter to him of April 6, when it assured him that his share of the sale proceeds would be calculated on a total purchase price.
- In reliance of this promise, Gerstein waived his right under the agreement, hence, the trial court properly dismissed the this affirmative defense.