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## Security Interests -- Garagemen's Liens and Duress of Goods

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they can delimit the warranty obligations. Second, because restrictive covenants that run with the land cannot be altered by subsequent buyers<sup>56</sup> absent court assistance,<sup>57</sup> it is only equitable that the original grantor who imposed the restriction be held liable.

Although the *Hinson* decision has left many important questions unanswered and therefore has undermined the efforts of the court to achieve stability in the land market, nevertheless, the problems are not insurmountable and future decisions along the lines suggested can achieve the desired objectives of the court. However, the North Carolina Supreme Court's novel decision in *Hinson v. Jefferson* does reflect an increasing willingness on behalf of the court to use implied warranties to protect purchasers of real property. Moreover, the decision may foreshadow future expansion of the implied warranty doctrine to other areas, such as landlord tenant relations.

IRA J. BOTVINICK

### Security Interests—Garagemen's Liens and Duress of Goods

The doctrine that an artisan who enhances the value of a chattel at the request of its owner has a lien on that chattel for his reasonable charges is deeply rooted in the common law.<sup>1</sup> Equally venerable is the concept of duress of goods, a rule that protects an individual who finds himself coerced in some fashion through the wrongful seizure or detention of his property.<sup>2</sup> These two principles are similar in that each finds its application in a bailment of goods situation.<sup>3</sup> In *Adder v. Holman & Moody, Inc.*,<sup>4</sup> the North Carolina Supreme Court was presented with a question that involved an interplay between the two concepts: whether duress of goods was perpetrated when a garageman insisted that an owner-bailor sign a document purporting to waive all defenses based on poor workmanship before the garageman relinquished an automobile on which he had made repairs. The court, in

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56. *Sheets v. Dillon*, 221 N.C. 426, 431, 20 S.E.2d 344, 347 (1942).

57. *E.g.*, *Muilenburg v. Blevins*, 262 N.C. 271, 87 S.E.2d 493 (1955).

1. R. BROWN, *THE LAW OF PERSONAL PROPERTY* § 13.1, at 394-95 (3d ed. 1975);  
2 G. GILMORE, *SECURITY INTERESTS IN PERSONAL PROPERTY* § 33.2, at 873 (1965).

2. This concept had its origin in the early eighteenth century. *See* note 23 *infra*.

3. *See* text accompanying notes 23-35 *infra*.

4. 288 N.C. 484, 219 S.E.2d 190 (1975).

finding no duress of goods, determined that the garageman had a valid lien on the car for the amount owing for services rendered. The court then held that although the owner-bailor had waived certain defenses by signing the document, he could still bring an affirmative suit.<sup>5</sup>

*Adder* was an action to recover damages for injuries allegedly resulting from defendant's negligence and breach of implied warranty in rebuilding plaintiff's automobile. Plaintiff James B. Adder entered into a contract with defendant that provided that defendant would convert plaintiff's 1971 Maverick automobile into a vehicle suitable for use on a drag strip or race track. By the time of the completion of the work, plaintiff had paid defendant approximately 10,000 dollars. Of this sum, twenty-five hundred dollars was borrowed from a bank by plaintiff, and defendant co-signed the bank note. Upon delivery of the automobile, defendant received plaintiff's personal check for \$1538.03, the balance due on the contract. The check, however, was not honored due to insufficient funds. Several weeks later, as plaintiff was warming up the car for a race, the engine "blew." Plaintiff returned the automobile to defendant and requested that defendant determine the trouble.

A few weeks after the incident, plaintiff asked defendant for the automobile but was told that it would not be released until plaintiff tendered the amount due on the contract and also paid the bank note endorsed by defendant. After telephone negotiations between the parties' attorneys, plaintiff went to defendant's place of business with a certified check to pay the note. Defendant, however, refused to return the car unless provisions were made regarding the balance due; plaintiff subsequently agreed to pay the balance in several weeks. Defendant then telephoned its lawyer, who dictated a promissory note<sup>6</sup> and a second instrument referred to by the parties as a "release,"<sup>7</sup> which attempted to limit entirely defendant's liability.<sup>8</sup> Plaintiff signed

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5. This latter finding was the subject of a dissenting opinion. See text accompanying notes 47-53 *infra*.

6. The text of this note is found in 288 N.C. at 487-88, 219 S.E.2d at 193.

7. *Id.* at 492, 219 S.E.2d at 195.

8. The text of the instrument is as follows:

This will acknowledge my indebtedness of \$1538.03 representing the balance due for labor and parts to finish my drag race car and that I have no defenses or set-offs against such indebtedness grounded upon poor workmanship or other objections.

In consideration for an extension of time until August 10, 1972, I agree to execute and deliver to you my promissory note in the amount of \$1538.03 and further agree that should I fail to pay by August 10, 1972, and you are

both documents and later testified that he had read and understood the writings before signing them and that he did not contact his attorney because the latter was in court at the time.<sup>9</sup>

The trial judge, at the close of testimony, ruled that the "release" was binding and dismissed plaintiff's action.<sup>10</sup> The court of appeals reversed the dismissal,<sup>11</sup> holding that plaintiff had been the victim of a scheme of duress designed to exact a release that would free defendant from liability. The supreme court similarly refused to dismiss the complaint,<sup>12</sup> but on different grounds. The court found the elements necessary for duress of goods to be absent because defendant's garage-man's lien, which the court of appeals had thought to be extinguished, was still in existence.<sup>13</sup> The court, however, found the instrument's waiver provisions ambiguous, construed the "release" against the defendant-drafter, and concluded that plaintiff's affirmative suit for negligence and breach of warranty was not barred.<sup>14</sup>

Duress of goods is but one component of the larger doctrine of economic duress.<sup>15</sup> "Duress is a form of coercion. . . . [which] usually involves the transfer of money or property as a result of that coercion."<sup>16</sup> Although its limits are not clear,<sup>17</sup> the doctrine may be employed, for example, by the coerced party in a suit to void a transfer or a contract,<sup>18</sup> or it may furnish an affirmative defense in a suit brought to enforce a transaction.<sup>19</sup> Duress is related to and sometimes confused

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required to turn this note over to an attorney for collection, I will pay reasonably [sic] attorney fees.

I further agree that in the event that you should undertake suit against me on the note, I will not plead any defenses against payment of same.

Signed: JAMES B. ADDER

*Id.* at 487, 219 S.E.2d at 193.

9. *Id.* at 486, 219 S.E.2d at 192.

10. *Id.* at 488, 219 S.E.2d at 193. Judgment was also entered on defendant's counterclaim, plaintiff being required to pay defendant the amount due on the contract plus interest. *Id.* at 489, 219 S.E.2d at 194.

11. 25 N.C. App. 588, 214 S.E.2d 227 (1975).

12. 288 N.C. 484, 219 S.E.2d (1975) (two justices dissented).

13. *Id.* at 491-92, 219 S.E.2d at 195; see text accompanying notes 36-39 *infra*.

14. *Id.* at 493, 219 S.E.2d at 196; see text accompanying notes 47-53 *infra*.

15. See Dalzell, *Duress by Economic Pressure*, 20 N.C.L. REV. 237 (1942).

16. D. DOBBS, HANDBOOK ON THE LAW OF REMEDIES § 10.2, at 655 (1973); see *Link v. Link*, 278 N.C. 181, 191, 179 S.E.2d 697, 703 (1971).

17. See Dawson, *Economic Duress—An Essay in Perspective*, 45 MICH. L. REV. 253, 288-89 (1947).

18. See, e.g., *Link v. Link*, 278 N.C. 181, 179 S.E.2d 697 (1971).

19. See, e.g., *People ex rel. Carpentier v. Daniel Hamm Drayage Co.*, 17 Ill. 2d 214, 161 N.E.2d 318 (1959); *Gallagher Switchboard Corp. v. Heckler Elec. Co.*, 34 Misc. 2d 256, 229 N.Y.S.2d 623 (Sup. Ct. 1962).

with the doctrines of fraud and undue influence. The victim of duress is fully aware that he is being coerced to act contrary to his will. The victim of fraud, however, does not know that he is the object of wrongful action, for "[f]raud rests upon deception by misrepresentation or concealment."<sup>20</sup> The distinguishing feature of undue influence is the fiduciary relationship of the parties, with one party trusting and relying on the judgment of the other. Undue influence is exerted when the dominant party uses his position of trust to affect the judgment of the dependent party, who, like the fraud victim, is unaware of any wrongdoing.<sup>21</sup> Undue influence may therefore exist when the conduct falls short of duress.<sup>22</sup>

"Duress of goods" is the label applied when economic duress is attempted or accomplished through the seizure or detention of another's personal property.<sup>23</sup> In order to establish duress of goods under North Carolina law, it must be shown that (1) the person who has seized or detained the property has done so wrongfully, and (2) the owner of the property has been compelled to act in a way that operated to deprive him of "free will."<sup>24</sup> The courts, in determining the existence of duress of goods, will look beyond the form of the transaction to all of the circumstances surrounding the transaction.<sup>25</sup>

Duress of goods will not be found by the North Carolina courts when personal property is withheld from its owner by means of a valid lien, because the requirement of wrongful seizure or detention is not met.<sup>26</sup> Such is the case when the possessor is a garageman or other artisan with a lien<sup>27</sup> on the property. At common law a garageman has "a

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20. 278 N.C. at 191, 179 S.E.2d at 703.

21. *Edwards v. Bowden*, 107 N.C. 58, 62-63, 12 S.E. 58, 59 (1890).

22. 278 N.C. at 191, 179 S.E.2d at 703.

23. Originally at common law, relief was restricted to those situations in which duress took the form of physical violence, imprisonment, or threats of such action. See *Dawson*, *supra* note 17, at 254. In the early eighteenth century it was recognized that economic pressure as well could constitute duress, and the first such pressure acknowledged as duress was the wrongful detention of another's property, which was termed "duress of goods." See *Astley v. Reynolds*, 2 Strange 915, 93 Eng. Rep. 939 (K.B. 1732).

24. *Joyner v. Joyner*, 264 N.C. 27, 31, 140 S.E.2d 714, 718 (1965); *Smithwick v. Whitley*, 152 N.C. 369, 371, 67 S.E. 913, 914 (1910). The concept of "free will" has long been criticized as being of little analytical value. See, e.g., *Dalzell*, *supra* note 15, at 238-40; *Dawson*, *supra* note 17, at 266-67.

25. See *Smithwick v. Whitley*, 152 N.C. 369, 67 S.E. 913 (1910).

26. See text accompanying notes 37-39 *infra*.

27. It is necessary to distinguish artisans' liens—of which the garageman's lien is one type—from "mechanics' liens." The latter term is more commonly employed to re-

possessory interest in a vehicle left in his care by the owner or legal possessor and in which he has invested labor and materials."<sup>28</sup> North Carolina General Statutes section 44A-2(d) codified this common law lien.<sup>29</sup> The power of a garageman to enforce his lien by sale of the motor vehicle, a right unavailable at common law,<sup>30</sup> is granted by North Carolina General Statutes section 44A-4.<sup>31</sup> Possession of the motor vehicle is essential to the lien,<sup>32</sup> and two rules relating to possession that had long been part of the case law are now statutory:<sup>33</sup> (1) the

fer to security interests in real property, the word "mechanic" being used in its older sense to mean "laborer." See R. BROWN, *supra* note 1, § 13.1, at 393. Liens on real property are governed by N.C. GEN. STAT. §§ 44A-7 to -24 (Cum. Supp. 1975).

28. *Caesar v. Kiser*, 387 F. Supp. 645, 648 (M.D.N.C. 1975). Artisans' liens in North Carolina also have a constitutional basis. N.C. CONST. art. X, § 3 instructs the General Assembly to "provide by proper legislation for giving to mechanics and laborers an adequate lien on the subject-matter of their labor." Provisions for liens on personal property are contained in N.C. GEN. STAT. §§ 44A-1 to -6 (Cum. Supp. 1975).

29. N.C. GEN. STAT. § 44A-2(d) (Cum. Supp. 1975) provides:

Any person who repairs, services, tows, or stores motor vehicles in the ordinary course of his business pursuant to an express or implied contract with an owner or legal possessor of the motor vehicle has a lien upon the motor vehicle for reasonable charges for such repairs, servicing, towing, or storing. This lien shall have priority over perfected and unperfected security interests.

30. 1 L. JONES, *THE LAW OF LIENS* §§ 11, 1033, 1038 (3d ed. 1914).

31. The original provisions of section 44A-4 enabled sale of the property to be accomplished without affording the owner the opportunity for notice and a hearing to determine judicially the validity of the underlying debt. These provisions were held to violate the due process clause of the fourteenth amendment because "actual [permanent] dispossession" of the personalty was possible without notice or hearing. *Caesar v. Kiser*, 387 F. Supp. 645 (M.D.N.C. 1975). The *Caesar* decision is primarily based on *Fuentes v. Shevin*, 407 U.S. 67 (1972) and *Sniadach v. Family Fin. Corp.*, 395 U.S. 337 (1969), which "make it clear that due process requires notice and a prior hearing before property may be taken from a debtor." 387 F. Supp. at 649. The statute was amended to comply with the *Caesar* ruling. Act of May 29, 1975, ch. 438, § 1, [1975] N.C. Sess. Laws 436-39.

The statutes that provide for the existence of artisans' liens, N.C. GEN. STAT. §§ 44A-2 & -3 (Cum. Supp. 1975), survived that same due process attack in *Caesar*. The district court termed the lien "a balancing of the interests between ownership rights and the right of a craftsman to have security for payment for his service," and held, on the basis of *Mitchell v. W.T. Grant Co.*, 416 U.S. 600 (1974), that "interim retention" of the property without fulfilling notice and hearing requirements was not unconstitutional. 387 F. Supp. at 648, 649.

32. *See Barbre-Askew Fin., Inc. v. Thompson*, 247 N.C. 143, 100 S.E.2d 381 (1957).

33. N.C. GEN. STAT. § 44A-3 (Cum. Supp. 1975) provides:

When lien arises and terminates.—Liens conferred under this article arise only when the lienor acquires possession of the property and terminate and become unenforceable when the lienor voluntarily relinquishes the possession of the property upon which a lien might be claimed, or when an owner, his agent, a legal possessor or any other person having a security or other interest in the property tenders prior to sale the amount secured by the lien plus reasonable storage, boarding and other expenses incurred by the lienor. The reacquisition of possession of property voluntarily relinquished shall not reinstate the lien.

lienor loses his possessory lien if he voluntarily surrenders possession of the property to the bailor,<sup>34</sup> and (2) once the lien is lost by voluntary surrender of possession, it cannot be reinstated by subsequent reacquisition.<sup>35</sup>

Thus, the issue of possession was crucial to the validity of the lien in *Adder*. The court of appeals found the defendant's refusal to return the car "wrongful" because its lien had been terminated by the previous surrender of the car.<sup>36</sup> Although seeming to comport with the statutes concerning possessory liens, the court of appeals committed a glaring error, for it ignored precedent nearly a half-century old which defined voluntary surrender of possession. In *Reich v. Triplett*,<sup>37</sup> a situation almost identical to the one in *Adder*, a check was tendered to a garageman for the full amount owed for repairs on an automobile and the vehicle was surrendered but the check was returned for insufficient funds. The North Carolina Supreme Court held that the garageman's lien still existed, for in those circumstances possession was not surrendered "voluntarily and unconditionally" as required.<sup>38</sup> In *Adder* the supreme court correctly applied *Reich*, held the lien to be valid, and thus found absent an essential element of duress of goods: wrongful possession of the property.<sup>39</sup>

This analysis by the supreme court was all that was necessary to find that plaintiff's signing of the "release" was a "voluntary adjustment of a dispute" and not duress of goods.<sup>40</sup> Unfortunately, the court con-

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34. See, e.g., *Barbre-Askew Fin., Inc. v. Thompson*, 247 N.C. 143, 100 S.E.2d 381 (1957); *Tedder v. Wilmington & W.R.R.*, 124 N.C. 342, 32 S.E. 714 (1899); *Block v. Dowd*, 120 N.C. 402, 27 S.E. 129 (1897).

35. See, e.g., *Barbre-Askew Finance, Inc. v. Thompson*, 247 N.C. 143, 100 S.E.2d 381 (1957); *Block v. Dowd*, 120 N.C. 402, 27 S.E. 129 (1897).

It is possible for a garageman to deliver the motor vehicle to its owner under an agreement that preserves the lien. However, such a preserved lien is one created by contract and does not arise by operation of law. See *Barbre-Askew Fin., Inc. v. Thompson*, 247 N.C. at 148, 100 S.E.2d at 385. A contractual lienholder does not have the statutory assurance that his lien will have priority over perfected and unperfected security interests. N.C. GEN. STAT. § 44A-2(d) (Cum. Supp. 1975) (set forth in note 29 *supra*); see *Lee, Liens on Personal Property Not Governed by the Uniform Commercial Code*, 44 N.C.L. Rev. 322, 330-31 (1966).

36. 25 N.C. App. at 591, 214 S.E.2d at 229.

37. 199 N.C. 678, 155 S.E. 573 (1930). The court of appeals correctly cited *Reich* for the proposition that "[p]ossession is necessary to the existence of the lien." 25 N.C. App. at 591, 214 S.E.2d at 229.

38. 199 N.C. at 682, 155 S.E. at 575. The court relied on *Maxton Auto Co. v. Rudd*, 176 N.C. 497, 97 S.E. 477 (1918), in which payment was stopped on a check tendered to a garageman and the court used an estoppel theory to reinstate the lien. *Id.* at 499, 97 S.E. at 478.

39. 288 N.C. at 491-92, 219 S.E.2d at 195.

40. *Id.* at 492, 219 S.E.2d at 195.

fused the problem by engaging in an unnecessary discussion of whether the parties were "on equal footing."<sup>41</sup> The relationship of the parties, particularly if it is a fiduciary one, is probative of the issue of whether the second element of duress of goods—the deprivation of the victim's "free will"—is present.<sup>42</sup> Even if the parties had been found to be on unequal footing, and they were not,<sup>43</sup> the absence of the element of wrongful possession alone would mean that there could be no duress of goods. The court seemed to say that, even if there is rightful possession by the bailee, a showing that he took advantage of an unequal relationship would support a finding of duress of goods.<sup>44</sup> Such a view is at odds with the court's affirmance of the two necessary elements of duress of goods (wrongful possession and subversion of "free will")<sup>45</sup> and is clearly incorrect. A finding of wrongdoing based solely on the abuse of an unequal relationship or of a position of trust is not duress of goods but rather undue influence.<sup>46</sup>

Although duress of goods was found not to be present, the court's final disposition of the case turned on an interpretation of the "release" signed by plaintiff.<sup>47</sup> The court found certain language to be ambiguous and construed it against the defendant-drafter. This language in the release acknowledged plaintiff's indebtedness and further stated that plaintiff had "no defenses or set-offs against such indebtedness grounded upon poor workmanship or other objections."<sup>48</sup> The court held that the writing only limited plaintiff's defenses or set-offs in the event defendant sued plaintiff for the amount due on the note that plaintiff contemporaneously executed and had no effect on plaintiff's claims based on negligence or implied warranty.<sup>49</sup> The serious diffi-

41. *Id.* at 491, 219 S.E.2d at 195.

42. *Cf.* *United States v. Bethlehem Steel Corp.*, 315 U.S. 289, 300 (1942); *Hellenic Lines, Ltd. v. Louis Dreyfus Corp.*, 372 F.2d 753, 758 (2d Cir. 1967); *Ingram v. Lewis*, 37 F.2d 259, 263-64 (10th Cir. 1930); *Annot.*, 70 A.L.R. 711 (1931).

43. 288 N.C. at 491, 219 S.E.2d at 195. The court placed great emphasis on the fact that plaintiff had counsel but chose to act without seeking his advice. Some courts have ruled that there can be no duress if the victim had an opportunity to consult with an attorney. *See, e.g., Alloy Prods. Corp. v. United States*, 302 F.2d 528, 530-31 (Ct. Cl. 1962); *Smith v. Lenchner*, 204 Pa. Super. 500, 504, 205 A.2d 626, 628 (1964); *Oremus v. Wynhoff*, 20 Wis. 2d 635, 641, 123 N.W.2d 441, 444 (1963).

44. 288 N.C. at 491-92, 219 S.E.2d at 195.

45. *Id.* at 490, 219 S.E.2d at 194; *see text accompanying notes 23-24 supra.*

46. *See text accompanying notes 21-23 supra. See generally D. DOBBS, supra note 16, § 10.3, at 672-74.*

47. *See note 8 supra* for the text of this instrument.

48. 288 N.C. at 492, 219 S.E.2d at 196.

49. *Id.* at 493, 219 S.E.2d at 196.

culty presented by this holding was the basis of the dissent,<sup>50</sup> which found such a reading of the document to be "impermissible and totally illogical."<sup>51</sup>

The final result in *Adder* is not sound for the reason cited in the dissent: those defenses determined by the court to have been waived by plaintiff are the very subjects of his affirmative suit, an action that the court permitted to be brought.<sup>52</sup> Had defendant brought suit first, the negligence and warranty claims, since they arose out of the same transaction, would have been compulsory set-offs and counterclaims.<sup>53</sup> As such they would have been disallowed by the language in the instrument as interpreted by the court. The court has thus imparted a schizophrenic quality to the negligence and warranty claims, a trait that is wholly devoid of any logical basis.

Both the supreme court and the court of appeals had the protection of the consumer in mind in their treatments of the case. The difference between the opinions is in the tools chosen to achieve that aim. The court of appeals reached the desired result through an application of the duress of goods doctrine, while the higher court, in a slightly more sophisticated fashion, employed contract interpretation. The reasoning of each court, however, is equally incorrect. Plaintiff *Adder*, although forced to scratch at the drag strip, won the supreme court-sponsored race to the courthouse and the spoils of victory were his warranty and negligence claims.

CHARLES B. WAYNE

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50. Chief Justice Sharp wrote a dissenting opinion in which Justice Copeland joined. *Id.*

51. *Id.* at 495, 219 S.E.2d at 198.

52. *Id.*

53. *Id.* at 495, 219 S.E.2d at 197. N.C.R. Civ. P. 13(a) provides:

**Compulsory Counterclaims.**—A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if

- (1) At the time the action was commenced the claim was the subject of another pending action, or
- (2) The opposing party brought suit upon his claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this rule.