THE BENCH & THE BARD: A MOOT COURT SERIES BY KENAI PERFORMERS

COVER PAGE

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2023 – 2024 Season Case Problem Scenario
"The Tempest"

Following the events of "The Tempest," Ariel (an airy spirit), brings a timely cause of action against Prospero (the right Duke of Milan), in the Superior Court for the First Judicial District at Milan. Ariel's complaint raises four allegations; namely, (1) breach of contract, (2) assault, (3) false imprisonment, and (4) intentional infliction of emotional distress.

Ariel's allegations flow principally from the following excerpt:

Enter ARIEL.

ARI. All hail, great master! grave sir, hail! I come
To answer thy best pleasure; be 't to fly,
To swim, to dive into the fire, to ride
On the curl'd clouds, to thy strong bidding task
Ariel and all his quality.

PROS. Hast thou, spirit,
Perform'd to point the tempest that I bade thee?

ARI. To every article.
I boarded the king's ship; now on the beak,
Now in the waist, the deck, in every cabin,
I flamed amazement; sometime I 'ld divide,
And burn in many places; on the topmast,
The yards and bowsprit, would I flame distinctly,
Then meet and join. Jove's lightnings, the precursors
O' the dreadful thunder-claps, more momentary
And sight-outrunning were not: the fire and cracks
Of sulphurous roaring the most mighty Neptune
Seem to besiege, and make his bold waves tremble,
Yea, his dread trident shake.

PROS. My brave spirit!
Who was so firm, so constant, that this coil
Would not infect his reason?

ARI. Not a soul
But felt a fever of the mad, and play'd
Some tricks of desperation. All but mariners
Plunged in the foaming brine, and quit the vessel,
Then all afire with me: the king's son, Ferdinand,

With hair up-staring, - then like reeds, not hair, –
Was the first man that leap'd; cried, "Hell is empty,
And all the devils are here."

PROS. Why, that's my spirit!
But was not this nigh shore?

ARI. Close by, my master.

PROS. But are they, Ariel safe?

ARI. Not a hair perish'd;
On their sustaining garments not a blemish,
But fresher than before: and, as thou badest me,
In troops I have dispersed them 'bout the isle.
The king's son have I landed by himself;
Whom I left cooling of the air with sighs
In an odd angle of the isle, and sitting,
His arms in this sad knot.

PROS. Of the king's ship,
The mariners, say how thou hast disposed,
And all the rest o' the fleet.

ARI. Safely in harbour
Is the king's ship; in the deep nook, where once
Thou call'dst me up at midnight to fetch dew
From the still-vex'd Bermoothes, there she 's hid:
The mariners all under hatches stow'd;
Who, with a charm join'd to their suffer'd labour,
I have left asleep: and for the rest o' the fleet,
Which I dispersed, they all have met again,
And are upon the Mediterranean flote,
Bound sadly home for Naples;
Supposing that they saw the king's ship wreck'd,
And his great person perish.

PROS. Ariel, thy charge
Exactly is perform'd: but there 's more work.
What is the time o' the day?

ARI. Past the mid season.

PROS. At least two glasses. The time 'twixt six and now
Must by us both be spent most preciously.

ARI. Is there more toil? Since thou dost give me pains,
Let me remember thee what thou hast promised,
Which is not yet perform'd me.

PROS. How now? moody?
What is 't thou canst demand?

ARI. My liberty.

PROS. Before the time be out? no more!

ARI. I prithee,
Remember I have done thee worthy service;
Told thee no lies, made thee no mistakings, served
Without or grudge or grumblings: thou didst promise
To bate me a full year.

PROS. Dost thou forget
From what a torment I did free thee?

ARI. No.

PROS. Thou dost; and think'st it much to tread the ooze
Of the salt deep,
To run upon the sharp wind of the north,
To do me business in the veins o' the earth
When it is baked with frost.

ARI. I do not, sir.

PROS. Thou liest, malignant thing! Has thou forgot
The foul witch Sycorax, who with age and envy
Was grown into a hoop? has thou forgot her?

ARI. No, sir.

PROS. Thou hast, Where was she born? speak; tell me.

ARI. Sir, in Argier.

PROS. O, was she so? I must
Once in a month recount what thou has been,
Which thou forget'st. This damn'd witch Sycorax,
For mischiefs manifold, and sorceries terrible
To enter human hearing, from Argier,
Thou know'st, was banish'd: for one thing she did
They would not take her life. Is not this true?

ARI. Ay, sir.

PROS. This blue-eyed hag was hither brought with child,
And here was left by the sailors. Thou, my slave,
As thou report'st thyself, wast then her servant;
And, for thou wast a spirit too delicate
To act her earthy and abhorr'd commands,
Refusing her grand hests, she did confine thee,
By help of her more potent ministers,
And in her most unmitigable rage,
Into a cloven pine; within which rift
Imprison'd thou didst painfully remain
A dozen years; within which space she died,
And left thee there; where thou didst vent thy groans
Save for the son that she did litter here,
A freckled whelp hag-born – not honour'd with
A human shape.

ARI. Yes, Caliban her son.

PROS. Dull thing, I say so; he, that Caliban,
Whom now I keep in service. Thou best know'st
What torment I did find thee in; thy groans
Did make wolves howl, and penetrate the breasts
Of ever-angry bears: it was a torment
To lay upon the damn'd, which Sycorax
Could not again undo: it was mine art,
When I arrived and heard thee, that made gape
The pine, and let thee out.

ARI. I thank thee, master.

PROS. If thou more murmur'st, I will rend an oak,
And peg thee in his knotty entrails, till
Thou hast howl'd away twelve winters.

ARI. Pardon, master:
I will be correspondent to command,
And do my spiriting gently.

PROS. Do so; and after two days
I will discharge thee.

ARI. That's my noble master!
What shall I do? say what; what shall I do?

PROS. Go make thyself like a nymph o' the sea:
Be subject to no sight but thine and mine; invisible
To every eyball else. Go take this shape,
And hither come in 't: go, hence with diligence!

Exit ARIEL. [Tr. 9 – 12] (Act I, Scene II).

Ariel acknowledges the existence of a once-lawful and enforceable contract with Prospero. However, based upon the above-cited excerpt, Ariel asserts that the contract was breached by Prospero's unilateral alteration of the contract's terms. Specifically, Ariel argues that Prospero changed the contract by forcing Ariel to undergo additional labors and to remain in servitude for an additional period of time beyond the terms of the original contract, all of which Prospero instigated through duress and/or undue influence against Ariel's will, and therefore without Ariel's true consent. Ariel further argues that, in the course of instigating such duress and/or undue influence, Prospero's conduct gave rise to the separate and independent wrongful acts of assault, false imprisonment, and intentional infliction of emotional distress.

In response, Prospero answers that he did not breach the contract with Ariel because the contract was not unilaterally altered. Instead, the contract was amended pursuant to the parties' mutually agreed-upon modifications. Prospero argues that it was actually Ariel who was seeking to breach the contract, because Ariel was the one attempting to evade duly bargained-for obligations by demanding early release from the contract. As such, Prospero insists that he possessed no lawful duty to oblige Ariel's demand for early release from the contract, and that he was in fact justified in refusing Ariel's request under the circumstances. However, in the interest of avoiding needless confrontation, and out of sheer benevolence, Prospero contends that he offered to modify the contract in Ariel's favor, and that he in fact did so, insofar as Prospero substantially reduced Ariel's bargained-for period of service in exchange for Ariel's continued good faith performance of various duties. Finally, Prospero argues that Ariel's acceptance of the contract's mutually agreed-upon modifications was manifestly voluntary under the circumstances so as to constitute a total defense against all of Ariel's allegations, including the alleged wrongful acts of assault, false imprisonment, and intentional infliction of emotional distress.

The Honorable Christopher Marlowe, Superior Court Judge for the First Judicial District at Milan, presides over the parties' bench trial in this matter. Upon the close of evidence, Judge Marlowe rules in Prospero's favor on all counts.

Relevant portions from Judge Marlowe's decision include the following:

I. Regarding Ariel's Contract Claim & The Existence of Duress and/or Undue Influence.

This matter's uncontested facts reveal that the parties entered into a once-lawful and enforceable contract. Though the available evidence is not entirely clear regarding the contract's exact terms, the specific details surrounding previous modifications to the contract, if any, and the precise nature of how the contract was altered during the events giving rise to this lawsuit, the parties stipulate that – for purposes of trial – the only issue before this Court stemming from Ariel's breach of contract claim is whether Prospero engaged in duress or compulsion so as to force Ariel's alleged involuntary acceptance of Prospero's modified contract terms. Accordingly, the parties' briefing and arguments regarding Ariel's contract claim rely upon Milan's "economic duress" doctrine. This Court herein applies the "economic duress" doctrine to the facts at hand, and in so doing, finds in Prospero's favor.

First, and as a general proposition of law, it is well-established that a contract requires mutual assent by both parties. Therefore, modifications to pre-existing contracts also require mutual assent by both parties if such modifications are to be enforceable. A truly unilateral change to a contract by one party against another party can – and likely will in most situations – give rise to a contract breach, especially if there are outstanding unperformed duties or obligations under the original contract's terms, because mutual assent for the modification is necessarily lacking.[1] However, it must be remembered that contracting parties generally possess an unlimited ability to agree to contract modifications,[2] and because a contract is assessed under an objective standard, so long as a party objectively manifests an intention to be bound by the terms of a contract, such assent cannot be defeated by evidence of the party's unexpressed reservations or subjective contrary intentions.[3]

The same holds true for contract modifications. The objective manifestation of a party's intention to be bound to a contract modification can arise where, despite the absence of a formal writing, a party's spoken words or response – along with that party's subsequent conduct or behavior – is legally sufficient to bind the party to the modification.[4] Of course, it is entirely possible that a party may be forced to accept the terms of a contract or modified contract against their will. This is where the "economic duress" doctrine comes into play.

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[1] *See*, *ConocoPhillips Alaska, Inc. v. Williams Alaska Petroleum, Inc.*, 322 P.3d 114, 125 n.28 (Alaska 2014) (internal citations omitted).

[2] *See*, *Notti v. Hoffman*, 513 P.3d 245, 252 (Alaska 2022) (citing generally 17A AM. JUR. 2D *Contracts* §§ 496, 500, 502, 505 (2022) (describing interplay between modified contract and original)).

[3] *See*, *Dutton v. State*, 970 P.2d 925, 928 (Alaska Ct. App. 1999). *See also, Kingik v. State, Dept. of Admin., Div. of Retirement & Benefits*, 239 P.3d 1243, 1250 – 1251 (Alaska 2010) (analyzing whether there was a lack of mutual assent and affirming that an agreement to a contract may be imputed based on the reasonable meaning of a party's words and acts).

[4] *See*, *Baker v. Ryan Air, Inc*., 345 P.3d 101, 110 – 111 & 111 nn.25 – 26 (Alaska 2015).

The "economic duress" doctrine essentially sets out the method for determining whether one party has been unlawfully coerced into accepting what might otherwise constitute a legally binding contract. According to the law of Milan, "economic duress" exists where (1) one party involuntarily accepts the terms of another, (2) circumstances permit no other alternative, and (3) such circumstances are the result of coercive acts of the other party.[5] All three elements must exist and be supported by the available evidence to establish a basis for relief. This Court finds that the available evidence does not support all three elements under Milan's "economic duress" doctrine, and as such, Ariel's claim for breach of contract fails.

Looking to the first element, the available evidence demonstrates that Ariel not only expressed a willing and enthusiastic acceptance of Prospero's modified terms, but Ariel's subsequent conduct throughout the remaining passages of "The Tempest" manifests a subjective intention – and as far as this Court can tell, an exuberant willingness – to be bound to the modified terms. Ariel's acceptance of Prospero's modified terms thus strikes this Court as overwhelmingly voluntary in nature.

However, in its *Hawken Northwest* decision, the Supreme Court of The Duchy of Milan states that the first element "simply requires an assertion of subjective[ ] involuntary acceptance" such that the mere "*claim* of economic duress satisfie[s] this prong."[6] The *Hawken Northwest* decision similarly affirms an earlier characterization of this first element as being "almost meaningless[.]"[7] Curiously, despite its statements regarding the extreme and apparent ease with which the first element may be satisfied, *Hawken Northwest* simultaneously establishes that each element of the economic duress doctrine must be proved by the heightened clear and convincing evidence standard.[8] As such, it is not entirely clear to this Court how such principles are to be properly reconciled, or for that matter, how these principles ought to be assessed against evidence of a party's words and actions that, in turn, demonstrate that party's intention and willingness to be bound to a contract modification.[9] This Court suspects that *Hawken Northwest* unintentionally enshrines a lower threshold than is truly warranted for satisfying the first element, given the circumstances surrounding the precedent it cites in support of its characterization of the first element.[10] Regardless, a proper reconciliation

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[5]*See, Smallwood Creek, Inc. v. Build Alaska General Contracting*, LLC, 513 P.3d 253, 262 (Alaska 2022) (quoting *Totem Marine Tug & Barge, Inc. v. Alyeska Pipeline Serv. Co.*, 584 P.2d 15, 21 (Alaska 1978)). *See also, Zeilinger v. SOHIO Alaska Petroleum Co.*, 823 P.2d 653, 657 (Alaska 1992), *distinguished on separate grounds by Baker v. Ryan Air, Inc.*, 345 P.3d 101, 115 (Alaska 2015).

[6]*Hawken Northwest, Inc. v. State, Dept. of Admin.*, 76 P.3d 371, 377 (Alaska 2003) (internal citations omitted) (emphasis added), *distinguished on other grounds by State v. Alaska Public Employees Ass'n, AFT, AFL-CIO*, 199 P.3d 1161, 1163 – 1164 (Alaska 2008).

[7]*Id., at* 377 n.10 (citing *Northern Fabrication Co., Inc. v. UNOCAL*, 980 P.2d 958, 960 (Alaska 1999) (per curiam)).

[8]*Id.*, at 377 (citing *Helstrom v. N. Slope Borough*, 797 P.2d 1192, 1197 (Alaska 1990)).

[9]*See*, *Baker v. Ryan Air, Inc*., 345 P.3d 101, 110 – 111 & 111 nn.25 – 26 (Alaska 2015).

[10]The Supreme Court's *Hawken Northwest* decision relies upon an earlier decision; namely, the Supreme Court's *Northern Fabrication* decision, which is based upon a summary judgment standard of review (where, in order to survive summary judgment, the party claiming involuntary acceptance need only show the existence of a genuine issue of material fact, with the facts themselves being construed in a light most favorable to that party, and with all reasonable inferences being drawn in that party's favor). The *Northern Fabrication* decision also appears to be a mere cut-and-paste affirmation of a lower court's

of these principles is not necessary in order to determine whether Ariel should prevail in the matter at hand, because even assuming for the sake of argument that this first element aligns in Ariel's favor, Ariel nonetheless fails to satisfy the subsequent two elements of the economic duress doctrine.

As for the second element, the reasonableness of any alternatives available to Ariel must be analyzed objectively.[11] As such, the available evidence does not sufficiently establish that the circumstances presented Ariel with no choice but to accept Prospero's terms. This is true for at least two reasons.

(a) As a matter of law, the availability of a legal remedy may constitute a reasonable alternative to accepting undesirable terms,[12] and given the evidence, this Court is convinced that Ariel could have pursued legal action against Prospero immediately following Prospero's alleged unlawful conduct as opposed to waiting until the conclusion of "The Tempest," by which point Ariel had successfully performed all that was required of him under the modified terms, and Prospero, in turn, had fulfilled his obligation by releasing Ariel from service.

(b) Looking to the facts, it is clear that Ariel is a spirit whose powers are particularly potent. The events of "The Tempest" demonstrate that Ariel is capable of many supernatural feats. As such, it is not readily apparent that Ariel possessed no viable alternative to accepting Prospero's modified terms. Even if Ariel lacked the ability to resist Prospero in the moment, it does not appear that Ariel was – as mentioned above – prevented from using his airy powers to pursue legal remedies immediately following Prospero's alleged unlawful conduct, or from subsequently fleeing the island and taking refuge in an undisclosed location while seeking alternative remedies or assistance from the authorities.

Finally, turning to the third element, the available evidence does not support a finding that Prospero engaged in coercive conduct that, by virtue of such conduct, forced Ariel to accept Prospero's modified terms. Though it is true that this third prong of the "economic duress" test is liberally construed so that the alleged strained circumstances can be the result of acts which are criminal, tortious (*i.e.*, based in tort), or even merely wrongful in a moral sense,[13] it does not seem that mere emotional outbursts against a perceived injustice qualify as a coercive act. Prospero appears to have been justified in his demonstrated frustrations with Ariel. At most, Prospero's expressed frustrations were the hyperbolic exasperations of a disgruntled curmudgeon, nothing more. No reasonable person (or reasonable spirit for that matter), subjected to these same circumstances would perceive Prospero's conduct as coercive.

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decision, wherein the Supreme Court literally adopted wholesale the lower court's written order as its own without further analysis, exploration, or comment regarding the first element of the economic duress test. It is also important to note that a good number of the Supreme Court's decisions that deal with the first element of the economic duress test appear to do so in context of summary judgment.

[11] *Helstrom v. North Slope Borough*, 797 P.2d 1192, 1198 (Alaska 1990).

[12] *See, Smallwood Creek,* 513 P.3d at 262 – 263 (Alaska 2022) (internal citations omitted).

[13] *See*, *Helstrom v. North Slope Borough*, 797 P.2d 1192, 1198 (Alaska 1990).

For all these reasons, Ariel fails to establish the existence of "economic duress," and because the parties stipulated that the only issue before this Court regarding Ariel's contract claim is whether Prospero engaged in duress or compulsion so as to force Ariel's alleged involuntary acceptance of the modified contract terms set by Prospero, Ariel's contract claim fails.

Insofar as Ariel's remaining claims of assault, false imprisonment, and intentional infliction of emotional distress all constitute what are known as "intentional torts" (*i.e.*, a class of purposeful wrongful acts other than breach of contract for which civil relief may be obtained in the form of damages or an injunction), and given that consent by the complaining party constitutes a defense to claims alleging intentional torts,[14] this Court finds that Ariel's manifest consent to Prospero's modified contract terms serves as a sufficiently cross-applicable "consent defense" in Prospero's favor against all of Ariel's remaining intentional tort claims in this matter.

However, assuming for the sake of argument that Ariel did <u>*not*</u> consent to Prospero's modified contract terms so as to leave his remaining intentional tort claims standing, this Court concludes that Ariel would still be barred from prevailing on his intentional tort claims for at least two reasons; namely, (1) Ariel's intentional tort claims properly merge into Ariel's contract claim as a matter of law, and (2) even if such merger is not legally required, Ariel's intentional tort claims nonetheless fail on their merits.

II. Regarding Ariel's Intentional Tort Claims & The Necessity of Merger.

Assuming for a moment that Ariel did <u>*not*</u> consent to Prospero's modified contract terms (thereby negating any cross-applicable "consent defense" against Ariel's three separate intentional tort claims), Ariel is still not entitled to relief on his intentional tort claims because, as a matter of law, they ought to merge with his contract claim.

The law of Milan appears clear on this matter. Claims arising out of a contract dispute sound in contract rather than in tort, and promises set forth in a contract must be enforced by an action on that contract.[15] If it were otherwise, then any contract case involving a potential claim for breach might also transform into an independent tort claim, but every contract breach cannot be turned into a tort.[16] Only where the duty breached is one imposed by law, such as a traditional tort law duty furthering social policy, may an action between contracting parties sound in tort.[17]

In the matter at hand, Ariel's three separate intentional tort claims are nothing more than perfunctory shadows of the first and principal contract claim. The overall nature of the interaction between Ariel and Prospero in this matter concerns their relationship as parties to a contract, and Ariel's overarching reason for bringing suit in

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[14] *See, Taylor v. Johnston*, 985 P.2d 460, 464 n.18 (Alaska 1999), *distinguished on factual grounds by Notti v. Hoffman*, 513 P.3d 245, 249 – 250 (Alaska 2022).

[15] *K & K Recycling, Inc. v. Alaska Gold Co.*, 80 P.3d 702, 717 (Alaska 2003), *distinguished on other grounds by Brannon v. Continental Cas. Co.*, 137 P.3d 280, 284 n.8 & 285 n.19 (Alaska 2006).

[16] *Id*.

[17] *Id.*, at 717 n.29.

the first place flows from Prospero's alleged unilateral modification of the parties' contract. Accordingly, to allow Ariel to proceed on his three separate intentional tort claims *in addition to* his contract claim is to allow Ariel to "double-dip" (or in this instance, "quadruple-dip"), in seeking legal relief.

For these reasons, even if Prospero is not entitled to a total consent-based defense against Ariel's intentional tort claims, Ariel's three intentional tort claims must nonetheless fall away and merge into Ariel's contract claim.

III. Regarding The Merits Of Ariel's Intentional Tort Claims.

Assuming further that merger of Ariel's intentional tort claims is *not* required as a matter of law, Ariel's three intentional tort claims nonetheless fail on their merits respectively because the available evidence does not establish that these three individual torts occurred.

(a) Ariel's Assault Claim.

Milan looks to the Restatement (Second) of Torts for the elements of assault and battery. Thus, pursuant to the Restatement (Second) of Torts, an assault occurs if (1) a person acts intending to cause a harmful or offensive contact with the person of another or a third person, or an imminent apprehension of such a contact, and (2) the other person is thereby put in such imminent apprehension.[18] Battery, on the other hand, occurs when (1) an actor intends to cause harmful or offensive contact with another, and (2) an offensive contact actually results.[19]

Though it is true that, as a matter of law, it is not necessary for a person to be inspired by malicious motives to be liable for an assault,[20] and despite the fact that the law of Milan accepts the principle of "transferred intent" such that the intent for committing an assault and the intent for committing a battery are functionally one and the same,[21] the available evidence does not sufficiently establish that Prospero assaulted Ariel.

As previously stated above, this Court perceives Prospero's expressed frustrations to be hyperbolic exasperations. He uttered mere words. True enough, these words may have been hurtful and offensive to Ariel, but Prospero engaged in no demonstrable action – as far as this Court can tell – that manifested intent to cause a harmful or offensive contact to Ariel, or to cause Ariel to suffer an imminent apprehension of such contact.[22]

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[18] *See, Taylor v. Johnston*, 985 P.2d 460, 464 (Alaska 1999), *distinguished on separate grounds by Notti v. Hoffman*, 513 P.3d 245, 249 – 250 (Alaska 2022). *See also*, RESTATEMENT (SECOND) OF TORTS § 21 (1965).

[19] *See, State, Dept. of Corrections v. Heisey*, 271 P.3d 1082, 1092 n.47 (Alaska 2012). *See also*, RESTATEMENT (SECOND) OF TORTS § 18 (1965).

[20] *See*, *Merrill v. Faltin*, 430 P.2d 913, 917 (Alaska 1967).

[21] *See generally*, *Williams v. Alyeska Pipeline Co.*, 650 P.2d 343 (Alaska 1982).

[22] *See*, RESTATEMENT (SECOND) OF TORTS § 31 (1965) ("Words do not make the actor liable for assault unless together with other acts or circumstances they put the other in reasonable apprehension of an imminent harmful or offensive contact with his person.")

To conclude otherwise would be to place a chilling effect on speech, and render anyone who employs potentially unserious, hyperbolic, dramatic, or joking language automatically liable for assault.

Additionally, and as previously stated above, it does not appear that any reasonable person (or reasonable spirit) in Ariel's shoes would – under the circumstances presented by these facts – perceive an imminent apprehension of harmful or offense contact based upon Prospero's mere words (or even his conduct, assuming one could realistically argue that Prospero engaged in anything constituting conduct.)

For all these reasons, Ariel's claim for assault fails.

(b) Ariel's False Imprisonment Claim.

An individual is subject to liability for false imprisonment if (1) the individual in question acts intending to confine another or a third person within boundaries fixed by the individual, (2) the individual's act directly or indirectly results in such a confinement of the other person, and (3) the other person is conscious of the confinement or is harmed by it.[23] At its core, false imprisonment – just like false arrest, which this jurisdiction does not appear to distinguish from false imprisonment – requires a finding that there is a restraint upon the plaintiff's freedom, and that such restraint is without proper legal authority.[24]

As noted above with respect to Ariel's assault claim, this Court is unable to determine that Prospero engaged in any specific action that served to satisfy the essential elements of this particular tort. True, by his words, Prospero may have indeed manifested an intent to confine Ariel within the "knotty entrails" of an oak tree, but Prospero took no specific action or conduct to accomplish this. Furthermore, the available evidence demonstrates that no such actual confinement ever took place. Prospero did not, in fact, confine Ariel within an oak tree.

Even so, Ariel appears to argue for a much broader application of false imprisonment, suggesting that Prospero's alleged "action" was the unilateral altering of the parties' contract via coercion which, in turn, allegedly "confined" Ariel to additional labors for an additional period of time so as to leave Ariel effectively captive to Prospero's every whim and fancy. Thus, while Ariel may not have been "confined" to a specific physical space as such, Ariel argues "confinement" in the sense that, though free to roam a virtually unlimited expanse of space (whether in or upon air, water, and/or earth), Ariel was nonetheless limited to the fixed "boundaries" of Prospero's overbearing magical powers and will, which Ariel dared not transgress for fear of very real and undoubted reprisal. Ariel further argues not only consciousness of, but also harm by, such confinement, at least to the extent that Ariel was due his freedom, but then forced to undergo additional labors for an additional period of time on the basis of what Ariel characterizes as Prospero's arbitrary whim.

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[23] *See, Helstrom v. North Slope Borough,* 797 P.2d 1192, 1199 (Alaska 1990) (discussing application of both the doctrine of economic duress and the tort of false imprisonment).

[24] *See, Waskey v. Municipality of Anchorage*, 909 P.2d 342, 345 (Alaska 1996).

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This expansive application of false imprisonment is too tenuous to adopt. The breadth of Ariel's desired application places too much stress upon the fundamental principles undergirding the essential elements of this intentional tort. Just as with Ariel's assault claim, applying such an expansive reading of the law would mean that any number of perfectly innocent or innocuous activities would then become actionable as false imprisonment. Ariel's desired application of false imprisonment to the facts at hand is inappropriate, and this Court rejects it. Additionally, and again, as noted earlier in this decision, it is not readily apparent that Ariel possessed no reasonable means of escape from such alleged "confinement" immediately after Prospero's alleged unilateral alteration of the parties' contract. For this reason, to the extent it appears Ariel could have reasonably escaped Prospero's powers or enforceable influence, Ariel's claim of false imprisonment also falters.

Accordingly, for all these reasons, Ariel's claim of false imprisonment fails.

(c) Ariel's Intentional Infliction of Emotional Distress Claim.

To establish a *prima facie* case of intentional infliction of emotional distress, the plaintiff must prove that the defendant, through extreme or outrageous conduct, intentionally or recklessly caused severe emotional distress or bodily harm to another.[25] Under the law of Milan, a trial court must make a threshold determination whether the severity of the emotional distress and the conduct of the alleged offending party warrant a claim of intentional infliction of emotional distress.[26] (In this particular matter, the parties stipulated that this Court should delay its ruling on the threshold question until such time all evidence had been presented during trial.)

The law of Milan further establishes that liability for intentional infliction of emotional distress should only be found when the alleged conduct is so outrageous in character, and so extreme in degree, that it goes beyond all possible bounds of decency, and is to be regarded as atrocious, and utterly intolerable in a civilized community.[27] To put this standard in perspective, threats to life are necessarily extreme and outrageous as a matter of law.[28]

Ariel's claim for intentional infliction of emotional distress fails because the available evidence does not establish that Prospero's conduct was extreme or outrageous. Once again, this Court perceives no "conduct" by Prospero in connection to Ariel's tort claims, but instead, merely words. Although Prospero's words may have been insulting, rude, and possibly even a bit scary in the moment, they hardly constituted conduct or actions. Furthermore, looking at the nature of Prospero's words in-and-of themselves, and assuming this tort can apply to language alone, such utterances hardly rise to the extreme and outrageous level contemplated by this jurisdiction's law governing claims for intentional infliction of emotional distress. Alternatively, assuming Prospero actually

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[25] *Lybrand v. Trask*, 31 P.3d 801, 803 (Alaska 2001).

[26] *Id*.

[27] *Id*., at 803 – 804 (Alaska 2001). *See also, Odom v. Fairbanks Memorial Hosp.*, 999 P.2d 123, 133 (Alaska 2000).

[28] *See, Teamsters Local 959 v. Wells*, 749 P.2d 349, 358 (Alaska 1988).

did anything that could possibly be construed as action or conduct, such action or conduct did not – under the facts presented – transgress all possible bounds of decency, cannot be regarded as atrocious, and did not amount to something utterly intolerable in a civilized community.

The simple truth is that "[t]he rough edges of our society are still in need of a good deal of filing down, and in the meantime[,] plaintiffs must necessarily be expected and required to be hardened to a certain amount of rough language, and to occasional acts that are definitely inconsiderate and unkind. There is no occasion for the law to intervene in every case where some one's feelings are hurt."[29]

As for the existence of severe emotional distress, the available evidence simply does not demonstrate the existence of any such distress on Ariel's part. Though Ariel may have suffered some distress, it seems necessary to remind Ariel that "[c]omplete emotional tranquillity [*sic*] is seldom attainable in this world, and some degree of transient and trivial emotional distress is a part of the price of living among people. The law intervenes only where the distress inflicted is so severe that no reasonable man [or no reasonable spirit] could be expected to endure it."[30]

For all these reasons, Ariel's claim for intentional infliction of emotional distress fails.

IV. Conclusion

This Court rules in Prospero's favor on all counts.

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Following Judge Marlowe's decision, Ariel petitions the Supreme Court of the Duchy of Milan for discretionary review, asking the high Court to overturn Judge Marlowe's decision on all points raised. Upon invitation, Prospero files an opposition, asking the high Court to deny Ariel's petition for review. The high Court ultimately grants Ariel's petition for review and invites the parties to file briefing on the issues identified within the high Court's *Order Granting Review*. Oral argument is scheduled to take place on November 18, 2023.

[29]RESTATEMENT (SECOND) OF TORTS § 46, comment d, (1965).
[30]RESTATEMENT (SECOND) OF TORTS § 46, comment j, (1965).

In the Supreme Court of the Duchy of Milan

ARIEL, AN AIRY SPIRIT,

Petitioner,

v.

PROSPERO, THE RIGHTFUL DUKE OF MILAN, IN HIS PERSONAL CAPACITY,

Respondent.

Supreme Court No. **S-00001**

Notice of Granting Petition for Review

Date of Notice: **09/01/2023**

Trial Court Case No. **1MI-23-00001CI**

The Court hereby grants the Petition for Review lodged by Petitioner concerning the final order entered by Judge Marlowe in Case No. 1MI-23-00001CI. Review is granted and briefing is ordered on the following issues:

1. Whether Ariel's acceptance of Prospero's modified contract terms was consensual or instead the product of coercion under this jurisdiction's economic duress doctrine.

2. Assuming Ariel possesses a valid breach of contract claim based upon economic duress, whether Ariel's intentional tort claims should merge into Ariel's breach of contract claim.

3. Assuming Ariel's intentional tort claims properly exist separate and apart from Ariel's breach of contract claim, whether the available facts satisfy the unique elements of Ariel's intentional tort claims; namely, assault, false imprisonment, and intentional infliction of emotional distress.

_____//s//_____
CLERK OF THE SUPREME COURT
OF THE DUCHY OF MILAN

Procedural Aspects, Stipulations, & Parameters

The parties and justices may review a present-day English version of "The Tempest" for purposes of better understanding the nature of the facts and proceedings in this matter at the following site:[https://www.litcharts.com/shakescleare/shakespeare-translations/the-tempest/act-1-scene-2]. This is merely an aid. The present-day English translation is not binding and may not be relied upon as an authoritative interpretation of the facts and proceedings. Only the Official Transcript is authoritative in this regard.

The Official Transcript consists of the 1999 Dover Thrift Editions publication of "The Tempest" by William Shakespeare, along with all footnotes and commentary contained therein. Written citations to the Official Transcript shall take the following form: [Tr. 45] (Act III, Scene III).

The Record consists of the Season Case Problem Scenario Packet, which includes (1) the 2023 – 2024 Season Case Problem Scenario, (2) the Notice of Granting Petition for Review, and (3) the Procedural Aspects, Stipulations, & Parameters Document. Citations to The Record shall take the following form: [R. 1].

All stipulations and procedural agreements entered into by the parties as outlined within the 2023 – 2024 Season Scenario Case Problem are binding.

The law of Milan is the law of Alaska in all respects unless otherwise noted herein or within The Record.

Under the unique laws of Milan, economic duress claims are essentially treated as a sub-class or type of breach of contract claim.

The Statute of Frauds is not applicable to these proceedings.

Immunity of any kind, whether qualified or otherwise, is not at issue in these proceedings.

Jurisdiction is proper and not at issue in these proceedings.

Constitutionality is not at issue in these proceedings.

Under the unique laws of the Duchy of Milan, there is no ability to appeal to the Supreme Court of the Duchy of Milan. A party may only petition for review.

A *de novo* standard of review applies to all issues for which review is granted as to both law and fact. This is to say that the Supreme Court of the Duchy of Milan affords no deference to the findings and conclusions within Judge Marlowe's decision, but instead, the Supreme Court applies its own independent judgment. The Supreme Court will assess for itself, as guided by the parties' briefing and oral arguments, whether the available facts and applicable law support the parties' various assertions regarding the issues presented.

The precise nature of the relief, remedy, and/or damages, if any, to which Ariel may be entitled is not at issue. However, to the extent relevant when considering the issues for which review is granted, such possible relief, remedy, and/or damages may be explored/discussed.

Any doctrine regarding mootness that would otherwise foreclose Ariel's ability to seek relief for purposes of these proceedings is set aside, or applied in such a way so as to allow these proceedings to be entertained by the Supreme Court.

Briefs are to be no more than 15 numbered pages in length, not including the cover page. Petitioner may elect to file a Reply Brief if Petitioner so chooses. The Reply Brief is to be no more than 5 numbered pages in length.

Briefs *shall omit* the following standard substantive requirements: (1) a table of contents, (2) a table of authorities cited, (3) a table of authorities relied upon, (4) a jurisdictional statement, (5) a list of all parties to the case, (6) a statement of the issues presented for review, and (7) a statement of the standard(s) of review. Otherwise, briefs should reasonably conform to the substantive requirements outlined within the Alaska Rules of Appellate Procedure. Parties need not worry about the final form of bound copies. This will be addressed and prepared by the event's production team. A brief cover page template will be provided to each party.

Citations to legal authorities within the parties' briefs should reasonably conform to The Bluebook: A Uniform System of Citation.

The time allowed for oral argument is 30 minutes per side. Parties will be afforded 3 minutes to argue their case without interruption before the justices begin to ask questions. The Petitioner is permitted to reserve a portion of oral argument time for rebuttal, and for purposes of this exercise, is encouraged to do so.

THE BENCH & THE BARD: A MOOT COURT SERIES BY KENAI PERFORMERS

CONCLUDING PAGE

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