

Pressures from a Bank.

Pressure from a bank is not always wrong. Below are some hints as to when threats are legitimate or illegitimate.

If the threat is to do with something that there is a legal right to do, the maker of the threat is on safe ground – for example, if a bank threatens to appoint a receiver because of a default in money due.

If there is a threat to use means to which there is no entitlement, the threat is wrong.

If the threat amounts to unconscionable conduct the pressure is illegitimate. Unconscionable conduct is the knowing exploitation by one party of the special disadvantage of another. The High Court recently examined this question when the ACCC took a landlord to court claiming that it was engaging in unconscionable conduct because it refused to grant of renewal of lease unless the tenant abandoned proceedings against it in the Commercial Tribunal.

The Court said that the tenant had no special disadvantage and the pressure from the landlord was not wrong. The special disadvantage must be one seriously affecting the ability of the innocent party to make a judgment as to its own best interest.

I hope that this information is of some interest and benefit to you, and to your clients.

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