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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1892**

Whirlpool Corporation,
Respondent,

vs.

Alan John Roers,
Appellant.

**Filed June 22, 2010
Affirmed
Toussaint, Chief Judge**

Hennepin County District Court
File No. 27-CV-08-30786

Jerome A. Miranowski, Michael M. Krauss, S. Renee Dotson, Faegre & Benson LLP,
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(for appellant)

Considered and decided by Klaphake, Presiding Judge; Toussaint, Chief Judge;
and Crippen, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

Appellant Alan John Roers challenges the summary judgment granted to respondent Whirlpool Corporation, arguing that the district court erred in applying Minnesota law to a contractual guaranty signed by the parties that expressly required application of Michigan law. Because appellant's claim of coercion or force fails for a lack of evidence and because no conflict exists between Minnesota law and Michigan law, we affirm.

DECISION

Respondent is a manufacturer and marketer of major home appliances. Appellant was the president of Guyer's Builder Supply, Inc., a company that distributed respondent's products under a Major Appliances Associate Contract Distributor Sales Agreement. The sales agreement provided that respondent could revoke credit terms at any time.

Due to a slowdown in the home-building industry, Guyer's experienced financial difficulty, and respondent agreed to temporarily increase Guyer's credit line on the condition that, if Guyer did not begin paying its invoices within 20 days per its agreement with respondent, appellant would give a personal guaranty. Ultimately, appellant signed a personal guaranty for \$500,000. The guaranty states that its interpretation and enforceability are governed by Michigan law. After a different creditor began a proceeding to have Guyer's assets liquidated, respondent brought this action against appellant seeking payment under his personal guaranty.

On appeal from summary judgment, we review the record to “determine whether there are any genuine issues of material fact and whether a party is entitled to judgment as a matter of law.” *In re Collier*, 726 N.W.2d 799, 803 (Minn. 2007). We view the evidence in the record “in the light most favorable to the party against whom judgment was granted.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). This court will affirm a district court’s grant of summary judgment if it can be sustained on any ground. *Winkler v. Magnuson*, 539 N.W.2d 821, 827 (Minn. App. 1995), *review denied* (Minn. Feb. 13, 1996).

“Minnesota traditionally enforces parties’ contractual choice of law provisions.” *Hagstrom v. Am. Circuit Breaker Corp.*, 518 N.W.2d 46, 48 (Minn. App. 1994), *review denied* (Minn. Aug. 24, 1994). Reasoning that, if economic duress existed, it occurred before appellant signed the personal guaranty, the district court applied Minnesota law to appellant’s economic-duress claim. Appellant argues that the district court should have made a choice-of-law analysis in deciding whether there was coercion or force in requiring appellant to give a personal guaranty.

Initially, respondent cites to appellant’s deposition in which appellant testified that he read the guaranty before signing it and signed it of his own free will. That admission indicates that, whether we apply Minnesota law or Michigan law, appellant’s economic-duress claim fails for lack of evidence of coercion or force. *See St. Louis Park Inv. Co. v. R.L. Johnson Inv. Co.*, 411 N.W.2d 288, 291 (Minn. App. 1987) (stating elements of economic duress under Minnesota law), *review denied* (Minn. Oct. 30, 1987); *Farm Credit Servs. of Mich.’s Heartland, P.C.A. v. Weldon*, 591 N.W.2d 438, 447 (Mich. App.

1999) (stating elements of economic duress under Michigan law).

Respondent next argues that, even if there is evidence of coercion or force, no difference exists between Minnesota and Michigan law. “Before a choice-of-law analysis can be applied, a court must determine that a conflict exists between the laws of two forums. A conflict exists if the choice of one forum's law over the other will determine the outcome of the case.” *Nodak Mut. Ins. Co. v. American Family Mut. Ins. Co.*, 604 N.W.2d 91, 93-94 (Minn. 2000) (citation omitted) (footnote omitted). Under Minnesota law, “duress [is available] as a defense to a contract when there is coercion by means of physical force or unlawful threats, which destroys one’s free will and compels compliance with the demands of the party exerting the coercion.” *St. Louis Park*, 411 N.W.2d at 291 (citing *Wise v. Midtown Motors*, 231 Minn. 46, 51, 42 N.W.2d 404, 407 (1950)).

Appellant argues that, under Michigan law, economic duress can flow from a “wrongful” act, which is a lesser standard than an unlawful act. Appellant relies on *Transcontinental Leasing, Inc. v. Mich. Nat’l Bank*, 738 F.2d 163, 166 (1984) (stating that claimant who relies on economic duress must prove “wrongful or unlawful” act on defendant’s part); *Kelsey-Hayes Co. v. Galtaco Redlaw Castings Corp.*, 749 F. Supp. 794, 797 & n.5 (E.D. Mich. 1990) (noting that, under modern formulation, economic duress can be based on wrongful action and does not require illegal or tortious conduct but also that Michigan Supreme Court had not yet adopted modern formulation); and *Hungerman v. McCord Gasket Corp.*, 473 N.W.2d 720, 721 (Mich. App. 1991) (stating that, to void contract based on economic duress, “wrongful act or threat” must deprive

victim of unfettered free will but not addressing showing required to prove a “wrongful act or threat”).

But more recent Michigan case law states:

This Court has explained that to succeed with respect to a claim of duress, defendants must establish that they were illegally compelled or coerced to act by fear of serious injury to their persons, reputations, or fortunes. Fear of financial ruin alone is insufficient to establish economic duress; it must also be established that the person applying the coercion acted unlawfully. Because defendants have not alleged that plaintiff acted illegally, their claim of duress is meritless, and we conclude that the trial court erred in allowing it to proceed to the jury.

Weldon, 591 N.W.2d at 447 (quotations and citations omitted).

Appellant admitted that Guyer’s was far over its credit limit and therefore respondent had the right to refuse to ship additional product without a personal guaranty. Because both Minnesota law and Michigan law require an illegal act to support a claim of economic duress, the district court properly granted summary judgment based on appellant’s failure to allege any illegal conduct by respondent.¹

Affirmed.

¹ Appellant states in his brief that respondent’s actions “resulted in conduct which was wrongful and unlawful.” Appellant cites no facts or authority supporting the assertion of illegal conduct. An assignment of error based on “mere assertion” and unsupported by argument or authority is waived unless prejudicial error is obvious on mere inspection. *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997).