



**Michael R. Diliberto, Esq.**



### **No Third Party Duress**

May a party to a settlement agreement later rescind the agreement by claiming she was forced by a third party (her attorney) to take the deal? The answer is no, according to *Fettig v. Hilton Garden Inns Management LLC* (2022) 78 Cal.App.5th 264.

Plaintiff Fettig alleged that she was injured when a Hilton hotel shuttle bus hit her. The case went to trial. Fettig rested, and after a lunch recess, the trial lawyers announced a settlement: Hilton would pay \$85,000 for Fettig's release. On the record, the trial court asked Fettig if she agreed. Fettig seemed unsure, which resulted in a back-and-forth discussion that required 10 pages of transcript and two recesses to allow Fettig to confer with her attorney. After the second recess, Fettig declined the judge's offer to think about it overnight, and announced that she agreed to the \$85,000 settlement. The court excused the jury.

Months later, Fettig's new lawyers brought a motion to set aside the settlement. The motion asserted that prior counsel failed to prepare the case for trial and used duress to force her to accept the settlement. According to Fettig, her prior lawyer threatened that "the defense will take your house for costs" and if she did not settle, he would not return the next day to try her case. The motion contended that the settlement agreement should be rescinded for duress. The trial court denied the motion, finding that Fettig had the mental and physical capacity to settle her case.

The Court of Appeal affirmed. The Restatement (Second) of Contracts, section 175 provides: "If a party's manifestation of assent is induced by one who is not a party to the transaction, the contract is voidable by the victim *unless the other party to the transaction in good faith and without reason to know of the duress either gives value or relies materially on the transaction.*" Fettig had no grounds to rescind a contract with parties that knew nothing about the alleged duress by a third person, former counsel. "Hilton materially relied on the settlement: midtrial, it surrendered the possibility of a defense verdict. Throughout the process, Hilton was blameless."

Fettig also argued that the trial court had discretion to rescind based on equity. But “the trial court did weigh the equities and found the \$85,000 settlement was ‘generous’ to Fettig.” After considering Fettig’s “serious problems with respect to liability, causation and damages,” the court found the settlement was equitable.

### **The Takeaway**

“Duress by a third person” cannot void a contract when the other contracting party did not know about the duress and relied in good faith.