



الجامعة الإسلامية العالمية ماليزيا  
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA  
يُونَيْبَرِيْتِيْ اِسْلَامْ، اِنْتَارَا اِيْخْسَا مَلْدِيْسِيَا

**CASE REVIEW  
CONTRACTS 2  
(SECTION 3)**

**CASE REVIEW ON UNDUE INFLUENCE**

Name of the Case

**Polygram Records Sdn Bhd v The Search  
[1994] 3 MLJ 127**

Tutorial Section

**Tuesday (16:00-17:00)**

Name of the Group Members

**Shahida Mardhiah Syarqawi (1818298)**

**Nivisha bt Anuar (1810866)**

**Rozenbeth Chin Kind Yin (1818792)**

| No | Item   | Answer  | Explanation   | Relevant Provision(s)  |
|----|--|---|---|--|
| 1  | Why did the plaintiff bring the case?  | The plaintiff had sued defendants for breach of contract.   | The defendant had previously signed a contract with the plaintiff to have exclusive recording rights for the defendants. However, at the end of 1987, the group decided to record an album under a new company, Go-Search, a company that was incorporated by the defendants' themselves. This caused the plaintiff to take action against the defendants for breach of contract. |  |
| 2  | What is the nature of relationship between the disputing parties? (Who are they) | The plaintiff is the recording company that has exclusive rights to record the defendants, a rock band. | The plaintiff is the recording company that had exclusive recording rights to the defendants, whereas the defendants were a famous rock band signed under the plaintiff. This gave their relationship to that akin of employer and employees.   |  |
| 3  | Was the plaintiff in a position to dominate the will of the defendant?           | Yes   | There were evidence of trust and confidence between the defendants and the plaintiff, especially in the form of the defendants' manager, Eric Yeoh, who worked for the plaintiff. It was also found that the defendants had total reliance on Eric when they executed the second contract.  |  |
| 4  | Was there a real or apparent authority?  | Not relevant  | There is no real and apparent relationship between the defendants and the plaintiff as the evidence provided by the defendants showed that their relationship was solely based on trust and confidence.   | Barclays Bank plc v O'Brien & Anor [1993] 4 All ER 417 (p.423) |

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|---|--|-----|---|---|
| 5 | Was there a fiduciary relationship?                      | yes | The plaintiffs, especially Eric Yeoh, the group's then manager, had been working with the defendants for a while and they had developed a relationship of trust and confidence over the years of working together. This therefore constitutes as a fiduciary relationship.  | s16 (2) (a) of the Contracts Act 1950   |
| 6 | Was there an affected mental capacity?                   | No  | No, because the defendants were not mentally incapacitated by reasons of age, illness, or mental or bodily distress. However, in respect of the second contract, the defendants did not have enough mental capacity to understand the contract as the contract was written in English, and they were not well-versed in the English language.   | s 16 (2) (b) of the contracts act 1950  |
| 7 | Did the plaintiff use his dominating position?           | Yes | The plaintiff who is the then manager used his dominating position when they executed the second contract. The defendants was not allowed to employ a new manager and was in full reliance towards the plaintiff since they trusted him to act in their best interest. The court also find that plaintiff ( Eric) was in a position to procure them to enter into the second contract because of the evidence of trust and confidence in their relationship . | Clifford Davis [1975] 1 All ER 237 [1975] 1 WLR 61; Elton John [1991] FSR 397; O'Sullivan [1985] QB 428; [1984] 3 WLR 488; [1984] 3 WLR 488 |
| 8 | Was there an unfair advantage obtained by the plaintiff? | No  | There was no unfair advantage obtained by the plaintiff as the terms of the second contract were similar to the first contract, which the defendants had already agreed upon even without   |   |

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|    |  |           | <p>undue influence.</p> <p>However, the terms of the first contract itself was already less advantageous to the defendants as it was.</p>   |   |
| 9  | <p>Was the claim of Undue Influence successful? Why/Why not?</p> | No        | <p>Although the Court found that the plaintiff was in a position of trust and confidence and allowing him to procure the defendants into the contract, however in a case of presumed undue influence such as this, there is a requirement to establish manifest disadvantage and the defendants couldn't proof that the contract was 'unconscionable'.</p>  | <p>s28 of the Contracts Act; Bank of Credit and Commerce International SA v Aboody [1990] 1 QB 923; [1992] 4 All ER 955; [1989] 2 WLR 759</p> |
| 10 | <p>What was the remedy given by court?</p>                       | Royalties | <p>-The plaintiffs are to pay the defendants all royalties due to them under the second contract in respect of the sales of all the four albums recorded by the group in accordance with cl 5(1) of the second contract.</p> <p>-The plaintiff's claims towards the defendant was also dismissed by the court for the reason of the second contract, being valid, however expired on 11 June 1987. As there is no evidence that the duration of the second contract was extended for any further periods by the plaintiffs in exercise of their right, the second contract, having lapsed on 11 June 1987, was not binding on the defendants at the time when they began recording for Go-Search.</p> |   |