Neutral Citation Number: [2026] EWHC 160 (Comm)

Case No: LM-2024-000169

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
LONDON CIRCUIT COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 11/02/2026

Before :

His Honour Judge Bird sitting as a Judge of this Court

Between :

GB Europe Management Services Limited	**Claimant**
- and -	
RMH Asset GmbH	**Defendant**

- -
- -

Mr Tom Gentleman and Miss Chinmayi Sharma (instructed by **Squire Patton Boggs**) for the **Claimant**
Mr Jaswinder Singh Kohli (in person and with the leave of the court) for the **Defendant**

Hearing dates: 20, 21, 22 January 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 11 February 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

His Honour Judge Bird:

Introduction and overview

1. On 31 January 2023 ***RMH Asset GmbH*** ("**RMH**") borrowed €2,505,000 from the Claimant under the terms of a "secured term loan" or facility agreement ("**the January 2023 facility**"). The purpose of the loan was to provide working capital to ***Rohrwerk Maxhütte GmbH*** ("***RMH Newco***").

2. The loan was due to be repaid on 31 January 2024 ("***the termination date***"). **RMH** failed to repay the debt and associated costs so that a substantial debt remains outstanding. This is the Claimant's action to recover those sums. The claim is defended on the sole ground that it was secured by economic duress so that **RMH** is entitled to rescission. **RMH** was represented at trial (with my permission) by Mr Jaswinder Kohli who is a director. It is debarred from relying on any witness evidence.

3. The terms of the January 2023 facility are agreed and there is no dispute as to their meaning. In summary the position under the facility agreement is this:

    a. Clause 7.1 required **RMH** to repay the loan by monthly instalments of €69,600 with a final payment of all sums due under the facility on the termination date.

    b. By clause 13.2 it agreed to pay a further €2,500 per month as a "monitoring and valuation fee".

    c. By clause 18.5 **RMH** was to pay all fees, costs and expenses incurred by the Claimant "….*in connection with the enforcement of or the preservation of any rights under [the facility agreement] and any [relevant] proceedings instituted by or against [the Claimant]*"

    d. By clause 11.1, it was to pay interest for each "Interest Period" of the EURIBOR rate plus 11.3 percentage points. That rate rose by a further 5 percentage points in the event of default.

e. By clause 13.3 **RMH** agreed to pay a "termination fee" on the termination date, calculated at 10% of the aggregate principal amount then due and

f. By clause 2.2 **RMH** could seek an extension of the loan period or termination date.

4. Before the termination date, **RMH** met its obligations under the January 2023 facility agreement. By the time of the trial, **RMH** had paid the Claimant a total of €1,285,882.76 arrived at as follows:

Repayments of principal	€ 765,600.00
Interest payments	€ 335,132.76
Total monitoring fees paid	€ 35,000.00
Total legal fees paid	€ 75,000.00
Arrangement fee paid	€ 75,150.00
Total paid	**€ 1,285,882.76**

5. The sum now claimed (after appropriate allowance for the above sums) is €2,694,990.12 arrived at as follows:

Loan balance (principal) outstanding	€ 1,739,400.00
Termination fee outstanding	€ 173,940.00
Interest outstanding (to 26/01/26)	€ 464,796.27
Default interest outstanding (to 26/01/26)	€ 172,986.87
Monitoring and valuation fees due	€ 55,000.00
Legal fees due (pre-termination date only)	€ 88,866.98
Total outstanding (to 26/01/26)	**€ 2,694,990.12**

6. There is no dispute about the sums paid or the sum that is due, if the January 2023 facility is not rescinded.

7. On 15 January 2024, RMH sought an extension of the loan period. It sought an extension to "*at least…..[the] end of July*". The request was refused.

Economic Duress the law

8. Mr Gentleman, who appears for the Claimant, submitted (by reference to paragraphs 2-026 and 2-027 of *Contractual Duties Performance, Breach, Termination and Remedies 4th ed*.) that to establish a right to rescind, RMH needs to show three things:

    a. that the Claimant used illegitimate commercial pressure or threats,

    b. the pressure or threats caused RMH to enter into the facility agreement, and

    c. at the time RMH had no reasonable alternative.

9. The second and third elements are distinct. The causation question is a subjective one (did the illegitimate conduct actually bring about the facility agreement?) and the reasonable alternative question is addressed objectively (would a reasonable person see a reasonable alternative?). Mr Gentleman submits that the relevant causation test is a simple but for test. Would RMH have entered into the facility agreement if it was not for the relevant conduct?

10. Mr Gentleman made good the requirement for the 3 elements by reference to ***Times Travel (UK) Limited v Pakistan International Airlines Corp.*** [2021] 3 WLR 727, a decision of the Supreme Court. He referred, in particular to paragraphs 78 and 79 of the opinion of Lord Burrows with which Lord Reed, Lord Hodge, Lord Lloyd-Jones and Lord Kitchin agreed.

11. It is well established that a contract entered into under duress is voidable and not void. It follows that even if RMH establishes economic duress, the right to rescind will be lost if the contract was affirmed after the duress had ceased (see for example ***DSND Subsea Limited v Petroleum Geo-Services ASA and another*** [2000] BLR 530 at paragraph 146 to 147).

The pleaded case on duress

12. I agree with Mr Gentleman that the pleaded case on duress is not always easy to follow. Absent any witness evidence from RMH and without any written (or meaningful oral) opening of RMH's case, it is however all there is. Before dealing with the pleaded case, it is important to set out a summary of the uncontroversial factual background:

a. In the Summer of 2022 ***Mertex UK Limited*** ("**Mertex**") was in discussions with Gordon Brothers to finance the acquisition of the business and assets of ***Rohrwerk Maxhütte GmbH*** ("**RMH Oldco")**. The Claimant is a part of the Gordon Brothers group. Mr Kohli is a director of **Mertex**.

b. On 22 June 2022 Gordon Brothers International LLC (the parent company of the Claimant) provided an "indicative" term sheet to **Mertex** proposing outline terms for an advance to **Maxhütte Tubulars GmbH** of up to €7m. The term sheet was signed by Mr Kohli for **Mertex** on the following day. It contained a time limited exclusivity clause and an obligation to pay €250,000 as a "break-up fee" to Gordon Brothers in the event that **Mertex** entered into a secured term loan of up to €7m with a party other than Gordon Brothers International LLC ("or one of its affiliates") within 90 days (before 20 September 2022). The Claimant was not a party to the discussions. The loan did not go ahead.

c. On 7 July 2022 (after provision of various term sheets by Gordon Brothers), the Claimant entered into a 3-month facility agreement with **RMH Oldco** ("**the RMH Oldco facility**"). At the time, **RMH Oldco** was in an insolvency process regulated by German law. The loan was secured subject to conditions about the value of **RMH Oldco** stock, and its purpose was to fund running costs so that **RMH Oldco** could continue operating. It has been referred to as DIP (debtor in possession) financing.

d. In August 2022 the Claimant asserted that **RMH Oldco** was in default of the **RMH Oldco facility**. The Claimant expressly reserved its rights in respect of specified events of default by letters of 8 and 22 August 2022. On 8 September 2022 the Claimant issued a letter of forbearance and by 23 November 2022 the facility had been repaid in its entirety.

e. It took some time for the security held by the Claimant under **the RMH Oldco facility** to be released. On 24 November 2022, as soon as payment of the final due sums was confirmed, the Claimant asked if **RMH Oldco** wanted to draft the relevant documentation required to release the security, or if the Claimant should do it. The response came almost immediately that **RMH Oldco** would prefer to prepare the documents and would revert with a final answer. The Claimant chased a response and on 21 December 2022, **RMH Oldco** asked what was needed to formally secure the release. The following day, the Claimant responded with a suggestion that it would instruct its lawyers to draft the release and asked RMH Oldco to let them know if they

disagreed. It appears that there was no response. The Claimant provided a first draft to **RMH Oldco** on 29 December 2022. There was some discussion about the drafting, with the final draft being agreed on 26 January 2023 when the security was released.

f. **Mertex** bought the business and assets of **RMH Oldco** on 31 December 2022. That was the deadline date imposed by those controlling RMH Oldco. An indicative term sheet setting out terms for the **January 2023 facility** was provided to **RMH Oldco** on 24 December 2022 as evidence of the availability for funds for working capital.

g. On 12 February 2023, Mr Kohli, acting for **Mertex,** approached Gordon Brothers asking for fresh finance to facilitate the purchase of supplies to allow it to enter into a potential $15.8m contract for the supply of steel products.

h. The **January 2023 facility** contained an express waiver of "*the breakup fee under the [June 2022] term sheet*".

13. The Defendant's pleaded case on duress relies on the following apparently wrongful acts:

a. The assertion that **RMH Oldco** was in breach of the **RMH Oldco facility** was wrong. As a direct consequence of the wrongful assertion of breach, further funding to RMH Oldco under the facility was refused and Gordon Brothers International (not the Claimant) refused to advance funds under an agreement that might have arisen following the June 2022 term sheet. This left **RMH** without working capital and effectively deterred alternative lenders.

b. The Claimant should have released the security it held under the **RMH Oldco facility** immediately on satisfaction of the facility (no later than 23 November 2022). The failure meant that there was no reasonable alternative funder available because **RMH**'s assets were incumbered and by then there was very little time to meet the acquisition deadline of 31 December 2022 so that there was no alternative other than to borrow from Gordon Brothers.

c. Gordon Brothers insisted on payment of "costs" (which **RMH** understood to be a reference to break up fees) under the 22 June 2022 term sheet (to which the Claimant was not a party) before the security held by the Claimant under the **RMH Oldco facility** could be released.

d. These wrongful acts caused RMH to enter in the January 2023 facility and at the time there was no reasonable alternative funding available.

The Claimant's position

14. The Claimant's first position is that the allegations raised by **RMH** are not made out on the documents and not supported by any evidence, be it advanced by RMH (which would be the usual way to make out the allegations) or otherwise. Secondly, and in any event, it has exerted no improper (or indeed any) pressure and committed no wrongful act. Thirdly, if I find there was any wrongful act sufficient to ground a claim in duress, such act or acts were not the cause of RMH entering into **the January 2023 facility**. Finally, even if all that is wrong, once the apparent duress came to an end (there is no suggestion it continued after the facility was entered into) the facility agreement was plainly affirmed.

15. In its Reply, the Claimant asserts

a. As a general point, it is not responsible for acts of Gordon Brothers International its parent company, or any other company in the Gordon Brothers family.

b. **RMH Oldco** was, as a matter of fact, in breach of the **RMH Oldco facility** and **RMH Oldco** accepted that breach had occurred. The assertion of breach was not therefore wrongful. In any event, the breach was not acted on. What the Claimant did was entirely in accordance with the contract and so not wrongful.

c. Any refusal to provide finance under the June 2022 term sheet (by Gordon Brothers International LLC) was nothing to do with the Claimant and, in any event, not wrongful.

d. The **RMH Oldco facility** was extended to allow repayment. The right to call in the borrowing arose on 7 October 2022 (after the 3-month term had expired) but extra time to pay (until 23 November 2022) was allowed.

e. The release of security was delayed because of slow administration on the part of **RMH Oldco**. It took some time for the relevant paperwork to be prepared and agreed. Any delay was not caused by the Claimant and if it was then the delay was plainly not deliberate and so not wrongful. The security was, as a matter of fact, released by the

time of **the January 2023 facility**.

f. Any demand for fees under the June 2022 term sheet was nothing to do with the Claimant and in any event was not unlawful. The Claimant asserts the point is, in any event, insufficiently particularised.

g. There was no exploitation.

h. Any pressure felt by RMH was attributable to acts and matters beyond the Claimant's control. In particular the causes came from **RMH Oldco** (for example failing to provide relevant documents to allow release of the security), from the insolvency office holders of RMH Oldco or arose as a result of **RMH**'s own commercial decisions.

i. RMH freely entered into the January 2023 facility, commented on drafts and made no reference to duress at the time.

j. Finally, the Claimant asserts that **RMH** affirmed the January 2023 facility by performance between 1 February 2023 and 31 January 2024, making substantial payments and asking for an extension of the termination date.

16. There is no rejoinder from **RMH** (or Reply to the Defence to the counterclaim seeking rescission) so the pleadings contain no response to the Claimant's answer to **RMH**'s case.

How **RMH** is to make out its case

17. Leaving aside the merits of the duress argument, it is necessary to consider how **RMH** will actually advance its defence. It has provided no evidence that goes to the relevant point. It has failed to serve any witness statements at all for trial. It is not clear how a defence of duress can be made out without evidence of its existence and operation in practice.

18. By CPR 32.10 "*If a witness statement or a witness summary for use at trial is not served in respect of an intended witness within the time specified by the court, then the witness may not be called to give oral evidence unless the court gives permission*." This is a sanction. Any application for relief from sanction falls to be dealt with by the application of CPR 3.9.

19. I also bear in mind the following further provisions of the CPR:

    a. By CPR 32.2(1)(a) the general rule is that any fact which needs to be proved by the evidence of witnesses is to be proved…at trial, by their oral evidence given in public;…

    b. By CPR 32.6 at hearings other than trial, evidence is to be provided in writing. A party may rely on a witness statement (without the need for oral evidence) or the content of a statement of case verified by a statement of truth, or the content of an application notice verified by a statement of truth.

20. It follows from CPR 32.2 and CPR 32.6 that a party may not rely on the content of his statement of case at trial as evidence, even if the statement of case is verified by a statement of truth.

21. The Defendant made an application for relief from sanction and for permission to file a witness statement late. I refused the application and dealt with my reasons in a separate judgment I gave on the first day of trial.

Where does this leave the Defendant?

22. It follows from the above that Mr Kohli was debarred from giving evidence. He was able to cross examine the Claimant's witness but not to put a positive case, unless the case could be gleaned from disclosed documents. He was entitled to use the disclosed documents to cross examine and to challenge the evidence of the Claimant's witness. He was entitled to address me in closing on the law and on the evidence. It seems to me that Mr Kohli took full and proper advantage of these opportunities.

The evidence

23. Dr Andreas Kemper was called to give evidence on behalf of the Claimant. His witness statement had been served in accordance with the timetable set down by the court. I found Dr Kemper to be a helpful and plainly truthful witness. I formed the clear view that he was keen for me to have as full a picture of events as possible. On a number of occasions, he supplemented answers to questions put by Mr Kohli with comment. I formed the view he did that (and for the most part I allowed him to do it) in order to further his aim of giving me the

full picture.

24. Mr Kohli cross-examined by reference to a mixture of a prepared numbered list of questions and supplementary unprepared questions. Save that it was clear that the questions were not prepared by Mr Kohli and save that I formed the view they were not prepared by lawyers, I was not told how the list was compiled.

25. The premiss of a large number of questions put by Mr Kohli appeared to me to be that the Claimant was under a duty to look after the interests of RMH and actively investigate RMH's state of mind. He suggested for example that a list of available financial products offered by Gordon Brothers should have been provided and that efforts should have been to explore if **RMH** felt "under pressure" and whether it had a choice. That premiss is plainly false.

26. There were times when the questions appeared to be dealing with apparent breach of contract. But there is no such claim. I can only deal with the case pleaded by **RMH**.

27. I accept the totality of Dr Kemper's evidence without hesitation. I find as a fact, bearing in mind the absence of a positive case advanced by the Defendant, in particular that:

    a. Mr Kohli and **RMH** (and Mertex) were very satisfied with the work done by the Claimant. That is why he sent the email on 12 February 2023 inviting the provision of further finance. There was no hint of dissatisfaction with the Claimant's actions.

    b. Any urgency in the transactions was introduced by RMH and not manufactured or caused by the Claimant or any of the Gordon Brothers companies.

    c. The delay in releasing security was administrative and was in the main attributable to delay on the part of **RMH Oldco**. It was not a deliberate act on the part of the Claimant.

    d. The breach of the **RMH Oldco facility** was as a result of the fall in the price of scrap which resulted in a lowering of security margins. The price fall was brought about as the result of geo-political events and not as a result of manipulation by the Claimant. I accept **RMH Oldco** was aware (because the Claimant had provided a full explanation) of the consequences of such a fall in the value of scrap. I accept that it was keen, nonetheless, to take higher borrowing even though that increased the risk

of default. I find the asserted breach was real.

e. There was no complaint from **RMH** that it had been put under pressure at all until 13 March 2024.

f. **RMH** paid sums due under the January 2023 facility in accordance with its terms for a period of 11 months and sought an extension of time for the facility to delay repayment of the principal sum.

g. As to the apparent demand for the "break fee" I accept Dr Kemper's evidence that there was no such demand. Indeed, the term sheet which preceded the January 2023 facility made plain that no break-up fee would be due.

h. Alternative financing is likely to have been available.

28. When pressed about duress, Dr Kemper said: "*When I got hired initially by Gordon Brothers, I spoke to Michael Frieze, fourth generation of Gordon Brothers. He said, 'Our core DNA is our reputation. It took us 100 years to build it up and a single deal can ruin it'. And that is the principle of acting. For me, personal note, it wouldn't make any sense to risk our $2.5 billion business with a 120-year history in such a deal*". I accept that evidence. It was given because Dr Kemper believes that reputation is important. The findings I have made are supported by what I consider Dr Kemper's clear desire to do business in a trustworthy and straightforward fashion.

RMH closing

29. Mr Kohli stressed the view that **RMH** had no realistic alternative funding available to it when it entered the **January 2023 facility** because security over relevant assets had not been released in time (even if the security was released by the date of the facility), the declaration that there had been default of the **RMH Oldco facility** (even absent enforcement) acted to deter other lenders and so whilst alternative funding might have been available in theory, in practice, the circumstances meant that there was no real choice but to borrow from the Claimant. The choice for **RMH** was stark; accept **the January 2023 facility** or collapse. Dealing with affirmation he suggested that the duress was continuing at all material times.

Conclusion

30. There is no positive evidence from the Defendant to support its case on unlawful conduct, causation or borrowing alternatives. This absence causes an almost impossible difficulty for RMH because the burden of establishing a right to rescind is its burden.

31. I am satisfied in light of my findings that RMH entered into the January 2023 facility voluntarily. There was no economic duress in the sense recognised by the authorities.

32. If I am wrong about that, there is no positive case about causation in any event. I would have expected Mr Kohli (or others) to explain, in an admissible format why the January 2023 facility was entered into. Mr Kohli's closing submissions cannot amount to (and are not) evidence. I am not satisfied, if there had been economic duress, that such duress was the relevant cause of RMH entering into the January 2023 facility agreement.

33. I am not satisfied that there were no reasonable alternative lenders. Again, there is no admissible evidence of such absence.

34. For all these reasons the claim succeeds and the counterclaim is dismissed.

35. If I am wrong on each and every one of these points then I find in any event that the January 2023 facility has been affirmed by the acts of the Defendant. The following clear acts of affirmation on the Defendant's part occurred after (by reference to the pleaded case) any possible coercion or duress had ceased:

    a. The payment of monthly monitoring and valuation fees due under the 2023 facility
    b. The payment of interest to March 2024 even after the end of the term
    c. The request for an extension of the term

36. Any suggestion that the duress continued whilst the affirming actions were going on was nothing more than a suggestion that went well beyond the limits of the pleaded case.

37. Still further, and if the facility had not been affirmed, the right to rescission has in my judgment been lost because there can be no counter restitution. If the contract was rescinded there is no doubt that **RMH** would be unjustly enriched. It is for that reason that there cannot in any event be rescission.

38. I am grateful to Mr Kohli and to Mr Gentleman and Miss Sharma for their helpful and thoughtful submissions both oral and in writing.