

In This Case, There Was a Balm and It Was Menace

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In California, extortion is a crime. Section 518 of the Penal Code defines "extortion" as "the obtaining of property or other consideration from another, with his or her consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right". Is there a civil cause of action for extortion?

In an opinion published yesterday, the Fourth District Court of Appeal held:

Civil Code sections 1566, 1567, and 1570 establish a right to rescission in cases in which a person's consent to a transaction was obtained by "menace": threats of confinement, of unlawful violence to the person or his or her property, or of injury to a person's character. This is effectively the civil version of extortion.

Tran v. Nguyen, 2023 WL 8231809 (Nov. 28, 2023). In this case, the "menace" was the defendant's threat to expose the plaintiff's fathering of a child birthed by a woman other than the plaintiff's spouse.

The defendant argued that the plaintiff's claim violates "the policy behind the anti-heart-balm statute [sic]". That statute, Civil Code section 43.5, precludes causes of action based on acts of sexual seduction; specifically, "[a]lienation of affection", "[c]riminal conversation", "[s]eduction of a person over the age of legal consent", or "[b]reach of promise of marriage". The Court of Appeal disagreed finding that the plaintiff's claim was none of these.

Anti-heart-balm legislation became popular about a century ago in reaction to lawsuits known as "heart balm" suits. At the time, these suits were widely criticized as fruitful sources of fraud and extortion because of the ease with which they were employed to embarrass and harass individuals wholly innocent of wrongdoing. *In re Marriage of Buckley*, 133 Cal. App. 3d 927, 931–32, 184 Cal. Rptr. 290, 292 (1982).

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