

## UNDERSTANDING EXTORTION IN THE BAHAMAS

Currently one of the more popular water cooler discussions in The Bahamas stem from the recent discoveries and testimonies of the John Travolta extortion trial where it seems that the local politicians just can't get away from the burning flames of international controversy. Sadly the politician caught up in the flames also happens to be a member of the Bahamas bar and had acted in that capacity during the time the alleged extortion took place. The report on Mr. Travolta's testimony on the alleged extortion attempt can be found in this report: [http://www.tribune242.com/news/10012009\\_nmtravolta\\_news\\_pg1](http://www.tribune242.com/news/10012009_nmtravolta_news_pg1) .

The topic of extortion/blackmail is a wavering one. The term is often used metaphorically to refer to usury or to price-gouging, as the term is often used loosely to refer to everyday situations where one person feels indebted against their will, to another, in order to receive an essential service or avoid legal consequences. For example, certain lawsuits, fees for services such as banking, automobile insurance, gasoline prices, and even taxation, have all been labeled "legalized extortion" by people with various social or political beliefs. Our friend Clement Chigbo has taken the time to provide a detailed description of illegal extortion/blackmail in his recent legal commentary in the Bahamas Journal seen here: <http://www.jonesbahamas.com/news/135/ARTICLE/20596/2009-09-29.html> .

Despite the popular legal action surrounding the alleged extortion of John Travolta, one may ask, what acts do not constitute extortion/ blackmail? Certainly documents or other varieties of factual information concerning a celebrity or major corporation are provided to an interested party in return for some service, monetary, or any other beneficial act is done all the time, and many individuals have found themselves in similar situations as the Defendants listed in the John Travolta legal action. The question remains, how can a demand for service, payment, or any other act from an individual (or other legal entity) while remaining within the thresholds of Bahamian law?

### *Determining an Act of Extortion/ Blackmail*

You will find the definition of extortion/blackmail in Chigbo's published article (see reference above). In order to address the issue, we will examine the technical aspect of the definition as provided by the UK legislation. Under S21 of the Theft Act, 1968 an act of extortion/blackmail is committed if:

...with a view to gain for himself or another or with intent to cause loss to another, he makes any unwarranted demand with menaces; and for this purpose a demand with menace is unwarranted unless the person making it does so in the belief –

- (a) That he has reasonable grounds for making the demand; and
- (b) That the use of the menaces is a proper means of reinforcing the demand.

Thus, determining whether an act may lead to extortion/ blackmail will require proof that:

- (a) A **demand** with;
- (b) **menaces** is made.
- (c) That the demand was **unwarranted**; and

- (d) That at the time of making the demand the individual made it with a view to **gain** for himself or another or with the intent to **cause loss** to another.

By using the factors set forth by UK precedent (which is applicable to the laws of The Bahamas), it is possible to one to determine whether they will suffer criminal liability while engaging in a potentially extortive act. By gauging their approach to the execution of their demands, it may be possible to remain within the legal threshold of the law by refraining themselves from committing all of the legal elements listed above during the execution of the act.

### *The Demand*

The demand is a vital part of the act of extortion/ blackmail as this is a means of communicating with all parties. The demand may be in writing, by speech, or by conduct, and it need not be explicit provided that if implicit, the demand is such that “the demeanor of the accused and the circumstances of the case were such that an ordinary reasonable man would understand that a demand... was being made of him...” (*R v. Collister and Warhurst*, 39 *Cr.App.R.* 100 at 102, *CCA*). Furthermore the demand does not have to be communicated to the person of whom it is made (*Treacy v. DDP* [1971]*A.C.* 537, *HL*), as communication to a third (or fourth) party would constitute a demand.

### *Menaces*

The demand must also be made with menaces in order to constitute extortion/ blackmail. The definition of menaces has been in continuous development since 1937, being established that the word “menace” is to be “liberally construed and not as limited to threats of violence but also includes threats of any action detrimental to or unpleasant to the person addressed. It may also include a warning that in certain events, such action is intended” (*Thorne v. Motor Trade Association* [1937] *A.C.* 797, *HL*).

Further analysis of the definition of menace led Lord Justice Sellers in 1968 to determine that “...Words or conduct which would not intimidate or influence anyone to respond to the demand would not be menaces..., but by **threats** and **conduct** of such a **nature** and extent that the mind of an ordinary person of normal stability and courage might be **influenced** or **made apprehensive** so as to **accede unwillingly** to the demand would be sufficient (for a jury’s consideration)...” (*R v. Clear* [1968]1*Q.B.*670, 52 *Cr.App.R.*58, *CA*).

In light of the definition, an objective test is raised which would render a third person to determine (and not necessarily the victim of the extortion/ blackmail) whether an *ordinary person of normal stability and courage might be influenced or made apprehensive so as to accede unwillingly to the demand*. Thus, in order to remain within the threshold of the law, it is advised that one should remove himself from the possibility of ‘acting with menace’ by threatening or warning a party of any detrimental or unpleasant consequences potentially suffered when making a demand unless such actions are warranted in accordance with the law. These actions include a threat to conduct legal action for an outstanding debt, or repayment of a credit facility, as seen below.

### *Unwarranted Acts*

As mentioned in our discussion of the term extortion/ blackmail, we indicated that a demand with menace is considered unwarranted unless the person making it does so in the belief that he has reasonable grounds for making the demand, and that the use of the menaces is a proper means of reinforcing the demand. Thus, the essential element of the offence of extortion/ blackmail is that the accused demands with menaces when he believes he is not entitled to the thing demanded or when he believes the use of menaces is improper notwithstanding his genuine claim.

In determining the standard to be applied in relation to the issue of the defendant's belief that the use of the menaces was a proper means of reinforcing the demand, Bingham J. indicated that "...the word "proper" is plainly a word of wide meaning, certainly wider than 'lawful'. But the greater includes the less and not act which was not believed to be lawful could be believed to be proper within the meaning (of the subsection)... The test is not what (the defendant) regards as justified, but what **he believed to be proper**. And where... the threats were to do acts which any sane man knows to be against the laws of every civilized country no jury would hesitate long before dismissing the contention that the defendant **genuinely believed** the threats to be a **proper means** of reinforcing even a legitimate demand..."(*R v. Harvey*, 72 Cr.App.R. 139, CA).

A threat to do some harm disproportionate to the sum or property legally claimed would be strong evidence of the absence of any belief in the propriety of the threat, hence the illegalities associated with demanding payment while threats of making media reports in order to damage the reputation of another. Further evidence of unwarranted demands with menaces can be found the overwhelming disproportionate benefit demanded compared to the actual value of the item or service at hand. In the Travolta case this is found in the allegation that up to 25 million dollars was demanded by the defendants in exchange for a medical document implying that the Travolta family did not wish for their dying son to be taken to the local hospital.

In reviewing this subjective test used to determine whether a demand with menaces is warranted, one can see that the circumstances of each case will bring about varied results. However should an individual feel he is in a position to make a demand with menaces, it is important that he first observe the circumstances and determine whether that demand is proper in that particular circumstance. This may include determining whether the amount payment demanded in exchange for an item which may be used to report to the local press is proportionate to the value of the item, or if a demand should be made at all.

### *In Withholding a Criminal Complaint*

Such circumstances may also exist in situations in which criminal acts have been committed against a victim, and the victim makes a demand for payment from the defendant in return for not filing a complaint to the police. As tempting as it looks to seek compensation for injuries sustained during a criminal act, one must be mindful of Section 260 of the Penal

Code which indicates *that an individual who obtains any sum of money or other reward from any person by threatening, directly or indirectly, to make a complaint before a magistrate for any summary offence when no grounds exist for the complaint, or as an inducement to forbear to make the complaint shall be liable to imprisonment for six months.* Therefore it is advised that the victim make complaint be made to the authorities and the victim should pursue a civil action, rather than risking imprisonment for making a demand for payment.

*A View to Gain for Himself or Another or with Intent to Cause Loss to Another*

The demand must be accompanied by either a view to gain or an intention to cause loss. Although the term 'gain' or 'loss' is to be legally construed as extending only to money or other property, case law has proven that there is no requirement of economic interest nor should the term 'gain' be limited to making a profit. This is illustrated in situations where a person makes a demand for payment of debt owed by another, as it may be construed that the individual does not make a demand to do so with a view to profit, but does so with a view to getting what he has not. Banks, credit card companies and other members of the financial industry tend to operate on this framework, as demand for repayment of loans, mortgages and other credit facilities of their clients are considered to be within the threshold of the law.

Be advised however, that the judicial courts have rendered an act to be gainful in circumstances where in demanding the repayment of a debt, the lender had obtained cash payment as opposed to a right of action in respect of the debt, as it was held that the lender was getting more than he already had (*R v. Parkes [1973] Crim.L.R 358, Crown Court (H.H.J Dean Q.C.)*).