

## COVID-19's Potential Impact On Contractual Obligations

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As we move forward in the new environment created by the spread of COVID-19, it is important for individuals and entities to carefully analyze and understand what impact, if any, the current reality has, or will have, on their contractual obligations.

### Force Majeure

Many contracts, leases, and other binding documents between parties, include a *force majeure* clause, which may excuse a party from performance in the event of certain unforeseen circumstances. The analysis of whether COVID-19 triggers a *force majeure* clause will hinge on the precise language in the contract. Like any other contractual provision, a *force majeure* clause will, generally speaking, be construed in light of the contractual terms, the surrounding circumstances, and the purpose of the contract. Facto v. Pantagis, 390 N.J.Super. 227, 231 (App. Div. 2007).

If your contract includes a *force majeure* provision, it should be analyzed to determine what impact it might have on your obligations, or the obligations owed to you. Depending upon the contractual terms, there may be limitations relating to how soon you must notify the other party that *force majeure* has been triggered.

### Frustration of Purpose and Impossibility of Performance

Even if a contract does not have an express *force majeure* provision, a court may relieve a party of the duty to perform, if performance has unexpectedly become impracticable as a result of a supervening event. Specifically, a court may void contractual obligations pursuant to the doctrines of impossibility of performance and frustration of purpose.

Recently, in Capparelli v. Lopatin, 459 N.J.Super. 584 (App. Div. 2019) we successfully argued that a contract was rendered void based upon the application of these doctrines. In that case, the Appellate Division explained that “both the impossibility and frustration doctrines are concerned with an extraordinary circumstance that may make performance of a contract so vitally different from what was reasonably to be expected as to alter the essential nature of that performance.”

Frustration of purpose applies when a party *can* perform under a contract, but a supervening event has fundamentally and severely changed the nature of the parties’ overall bargain. Similarly, “under the related doctrine of impossibility or impracticability of performance, a party is excused from having to perform his contract obligations where performance has become literally impossible, or at least inordinately more difficult, because of the occurrence of a supervening event that was not within the original contemplation of the contracting parties.”

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The question of whether COVID-19 will support arguments under any of these theories will be fact-specific and dependent upon the terms of each particular contract. While these doctrines are not commonly utilized, these are unprecedented times. Now is the time to determine whether COVID-19 has changed the nature of your contractual obligations, or the obligations owed to you.