



Novel Coronavirus (COVID-19)

Business Law

March 2020

COVID-19: Doctrine of Frustration

By Glen Eddie

In the event that your contract does not have a *force majeure* clause, you may still be able to rely on the doctrine of frustration if the COVID-19 pandemic has made the purpose of the contract impossible to achieve.

The doctrine of frustration is a remedy for extreme events which have made the purpose of the contract substantively different than the parties had originally intended when they entered into the contract. The courts have held that the determination of whether the doctrine of frustration is available will, in most cases, be determined by the following elements:

1. **The Event:** The doctrine of frustration will spring forward where there has been an event that occurs through no fault of either party and where such event was neither contemplated nor reasonably foreseeable when the parties entered into the contract. The event must also be directly linked to the frustration of the original purpose of the contract.
2. **No Force Majeure Clause:** The contract must not have a *force majeure* clause or similar provision which the parties intended to govern unforeseen events. Specifically, if a *force majeure* clause exists then the court will rely on its interpretation of that provision to determine what is to happen as a result of the unforeseen event.
3. **The Purpose of the Contract:** The frustrating event must render performance impossible or for a purpose which is substantively different than that originally intended.

If you are a party to an agreement for which the COVID-19 pandemic has rendered performance impossible or radically different than that originally bargained for, then you should contact your legal advisor to determine your next steps.

For legal advice on issues arising from COVID-19, please contact your Torkin Manes lawyer. For more information about dealing with COVID-19, please visit our COVID-19 Resource Center.

Author

Glen Eddie
Partner

Tel: 416 777 5357
geddie@torkinmanes.com

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