



STATE OF MARYLAND FORCE MAJEURE LAW COMPENDIUM (during COVID-19 pandemic)

Prepared by

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A. Introduction

This memorandum will seek to provide a Maryland exemplar for the USLAW NETWORK Compendium of Law on relevant considerations with respect to invoking force majeure clauses in contracts given the ongoing COVID-19 crisis.

B. Force Majeure in Maryland

1. Introduction

Managing a business has become increasingly difficult during the COVID-19 pandemic and across the country businesses have become unable to follow through with contract obligations. A force majeure clause or an “Act of God” clause provides an excuse to suspend performance due to circumstances beyond a party’s control.

2. Requirements to Obtaining Relief Using Force Majeure

Unlike other states, Maryland has limited case law regarding force majeure clauses. In the few cases assessing this issue, the force majeure clause is usually narrowly construed and rarely applied. In Maryland, a party seeking contractual protection from a force majeure event due to COVID-19 will have to demonstrate that the COVID-19 related event is, in fact, a force majeure event and that the force majeure event is the sole cause that led to the party’s inability to perform. For example, in *Langham-Hill Petroleum Inc. v. South Fuels Co.*, the U.S. Court of Appeals for the Fourth Circuit held that a considerable drop in oil prices did not fall within the scope of a force majeure clause. *Langham-Hill Petroleum Inc. v. S. Fuels Co.*, 813 F.2d 1327, 1329-30 (4th Cir. 1987). The court reasoned that price fluctuations and shortage of cash are foreseeable financial hardships in a fixed-price contract. *Id.* at 1330. The court further distinguished that the purpose of the force majeure clause is not to protect a party from the normal risks of a contract, instead, to protect a party from unforeseen events beyond a party’s control. *Id.*

In *Habliston v. City of Salisbury*, the Court of Appeals considered a zoning matter in which one plot of land was reclassified from industrial to residential land, and the City of Salisbury was sued by a landowner who alleged his property would be devalued as a result of the zoning change. 258 Md. 350 (1970). A decline of a brick business located on the affected land had, in part, led to the zoning change. The court rejected the argument that the deteriorating brick business did not constitute a force majeure event. Instead, the court reasoned that the business changes were due to “the voluntary, informed and deliberate decision of the officer of the company for the apparent purpose of facilitating... the sale of the property.”

While no Maryland cases deal specifically with pandemics and their impact on force majeure clauses, the above cases show that a force majeure provision is triggered by an event out of a party’s control. The government shutdown in Maryland, among other effects of the COVID-19 pandemic, are likely sufficient in some contracts to satisfy force majeure clauses.

3. Scope of Relief

If a force majeure clause applies, the affected party can stop contract performance during the time of the force majeure event.

4. Other Considerations

Generally, since force majeure clauses are narrowly construed in Maryland, businesses should avoid broad language, and when possible, list the specific events and conditions that would excuse non-performance of a contract. For example, in *Wootton Enterprises, Inc. v. Subaru of America, Inc.*, the District Court of Maryland noted that a force majeure clause sufficiently covered “all contingencies, foreseen and unforeseen, from acts of God to business mismanagement.” See *Wootton Enterprises, Inc. v. Subaru of Am., Inc.*, 134 F. Supp. 2d 698 (D. Md. 2001). Thus, the court reasoned that the clause was enforceable to limit Subaru’s delayed delivery of cars to Wootton, the car dealer, because delayed delivery was clearly excused per the listed events in the force majeure clause. Significantly, the court also noted that the delays were caused by factors outside of Subaru’s control. This case should serve as a warning to businesses that precise language, in this contractual context, can assist to enforce force majeure clauses. For instance, while a pandemic is likely to be found to meet most requirements of a contract’s force majeure clause, it would help to identify that specific qualifying event in the provision to avoid ambiguity.

Additionally, while there is little case law in Maryland on this issue, courts are generally hesitant to enforce a force majeure clause if a party could have mitigated the damages or performed the contract obligations in some alternative way. For instance, if a seller cannot deliver goods at an agreed contractual location due to a natural disaster, then the court might consider whether delivery could have been made at a nearby location to mitigate damages.

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