



EFFECT OF FRUSTRATION IN CONTRACTS & DOCTRINE OF FORCE MAJEURE

Consequences the occurrence of the force majeure event will suspend the obligations of the parties to the contract.

Where in a contract, parties to a contract do not include a force majeure clause and an event which is beyond the control of either of the parties occurred which made it impossible for the parties to perform their obligations under the contract, the parties would have to rely on the common law doctrine of "frustration of purpose" or "impracticability".

It is of the truth that parties would have entered into different contracts before the impact of COVID-19 on human beings and countries worldwide. It is also of the truth that the devastating

effect of the unfortunate impact of the pandemic on human has also affected businesses nationwide and contracts between parties, either by making the contracts impracticable to perform or by making a man to dishonor his obligation under the contract due to the unforeseen circumstances.

It will then be interesting to see the stand which banks, employers and various contractors stand. Also it will be interesting seeing the stand point of the insurance companies vis-a-vis insurance policies taken by companies to cover loss arising due to certain unforeseen circumstances in their businesses and whether COVID-19 will be covered under these policies. This short article looks at the effect of failure of parties to

perform their obligations due to unforeseen circumstances and lock down due to the impact of COVID-19 in a contract.

The Concept of "Frustration"

The term "frustration" is common law doctrine which occurs if performance of an act becomes impossible or unlawful, after a contract has been executed, and such impossibility is due to an event which the party undertaking the performance could not prevent and was reasonably unforeseeable.

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“Frustration” as “a shield” after the impact of COVID-19

With the widespread disruption in business, manufacturing and transport activities, due to COVID-19 the stage seems set for Nigeria to see a flood of cases arising from breach of contracts between parties. This will enable parties to either invoke ‘force majeure’ defence or rely on the doctrine of frustration of contract as a defence. The courts would then have to ascertain whether the contract has become impossible to perform and whether the doctrine of frustration of contract could be made applicable to such a contract. Of course, in such events, the courts and arbitrators will have to evaluate and decide each dispute on individual merits, which would be based on the terms of the contract, the intent of the parties, steps taken to mitigate and such like.

“Effect of Law Reform (Contracts) law of Lagos State on Frustrated Contracts

Section 7 and 8 of the Law Reform (Contracts) law of Lagos State 2015 provides some solutions when a contract has become frustrated and the parties have for that reason been discharged from the further performance of the contract, to wit:

1. All sums paid or payable to a party in accordance with the provisions, the contract before the time when the parties were so discharged (“the time of discharge”) will, in the case of sums so paid, be recoverable by the person who paid the sum and in the case of sums payable, cease to be payable.

2. If the party to whom the sums were paid or payable has incurred expenses before the time of discharge in or for the purpose of the

performance of the contract, the court retain or recover the whole or part of the sums paid or payable.

3. Where any party to the contract has done anything or attained a valuable benefit other than a payment of money before the time of discharge, there will be recoverable by the other party such sum (if any) not exceeding the value of the said benefit to the party obtaining it.

It must however be noted that the use of the doctrine of “Frustration” as a shield after the unfortunate impact of COVID-19 by any of the parties in any dispute whatsoever, be it banking, insurance companies, contractors and empowerment contracts will largely depend as stated above on the terms of the contract, the intent of the parties, steps taken to mitigate the loss etc. Hence it is important for companies and organizations with contractual agreements to consult their solicitors for review and seek legal opinion on their various agreements even before disputes arise from such agreements.

