

Courts Less Than Receptive To Force Majeure, Impossibility, and Other Defenses

“The increase in loan and lease defaults in the wake of COVID-19 has brought to the forefront numerous legal defenses by borrowers and tenants, such as force majeure, impossibility, and frustration of purpose,” discuss Marc L. Hamroff and Danielle J. Marlow in *Moritt Hock & Hamroff’s COVID Litigation Task Force Blog*.

“Force majeure allows a party to suspend or terminate their obligations when certain circumstances beyond their control arise. Impossibility applies when the destruction of the subject matter of the contract or the means of performance makes contract compliance objectively impossible. Frustration of purpose applies when a change in circumstances makes one party’s performance virtually worthless to the other. The decision whether to permit these defenses boils down to allocation of risk, specifically (i) who should bear the risk of unforeseen circumstances, such as the pandemic; and (ii) does the governing contract address the allocation of risk?”

Read the article.