

Is A Poorly Written Force Majeure Clause Worth the Ink?

“We’ve all seen, or perhaps been assaulted by, a surfeit of articles about force majeure clauses and how all of our agreements should include one. Other pundits have gotten way ahead of this one by explaining how we will have a better world if the advice to include such clauses would be taken by all. They’ve noted that very few agreements with a force majeure provision have covered the kind of closures we have experienced and are still experiencing. But, what we’ve not seen is much understanding that there is nothing special about a ‘force majeure’ clause: it is no more than another risk-shifting device,” writes Ira Meislik in Meislik & Meislik’s *Retail Real Estate Law blog*.

At the beginning of this month, a Bankruptcy Court for the Northern District of Illinois published an opinion about one such force majeure clause in a restaurant lease. Consistent with the advice we are seeing from all corners of our industry, the clause (according to the court, and correctly so) covered the restaurant’s closing because of COVID-19 restrictions imposed by Illinois’ governor. Read the lease’s clause for yourself:

Read the article.