

## Florida – Force Majeure Law

“Precedent on the enforcement of force majeure clauses is limited in Florida.” *ARHC NVWELFL01, LLC v. Chatsworth at Wellington Green, LLC*, No. 18-80712, 2019 WL 4694146, at \*3 (S.D. Fla. Feb. 5, 2019) (discussing limited precedent). Where the parties have included a force majeure clause in their contract, Florida courts will enforce the agreed terms, even if broader than Florida law’s impossibility of performance principles. *Stein v. Paradigm Mirasol, LLC*, 586 F.3d 849, 857 n.6 (11th Cir. 2009) (citing Florida state court precedent).

Where the parties have not agreed to a force majeure clause as part of their agreement, Florida law may excuse performance under the principles of impossibility or frustration of purpose. “Under the doctrine of impossibility of performance ..., a party is discharged from performing a contractual obligation which is impossible to perform and the party neither assumed the risk of impossibility nor could have acted to prevent the event rendering the performance impossible.” *Marathon Sunsets, Inc. v. Coldiron*, 189 So. 3d 235, 236 (Fla. Dist. Ct. App. 2016).

“In Florida, the doctrine of impossibility of performance ‘refers to those factual situations, too numerous to catalog, where the purposes, for which the contract was made, have, on one side, become impossible to perform.’” *Kamel v. Kenco/the Oaks at Boca Raton, LP*, No. 07-80905-CIV, 2008 WL 2245831, at \*3 (S.D. Fla. May 29, 2008), *aff’d*, 321 F. App’x 807 (11th Cir. 2008) (quoting *Crown Ice Machine Leasing Co. v. Sam Senter Farms, Inc.*, 174 So.2d 614, 617 (Fla. Dist. Ct. App. 1965)). “Florida courts do not limit the defense to specific categories of facts. Provided the ‘relevant business risk was not foreseeable at the inception of the agreement and could not have been the subject of an express contractual agreement,’ a defendant may assert the defense of impossibility of performance in a breach of contract action.” *Id.* (quoting *Home Design Center-Joint Venture v. County Appliances of Naples, Inc.*, 563 So.2d 767, 769 (Fla. Dist. Ct. App. 1990)). “The defense is less rigid than its name suggests, as the ‘doctrine is not limited to strict impossibility, but includes “impracticability” due to unreasonable expense.’” *Id.* (quoting *Hopfenspringer v. West*, 949 So.2d 1050, 1054 (Fla. Dist. Ct. App. 2006)).

Under Florida law, the “defense of frustration of purpose refers to the condition surrounding contracting parties where one of the parties finds that the purposes for which it bargained, and which purposes were known to the other contracting party, have been frustrated to the extent that the



breaching party is not receiving the benefit of the bargain for which they contracted." *In re Maxko Petroleum, LLC*, 425 B.R. 852, 872 (Bankr. S.D. Fla. 2010) (citing *Home Design Center–Joint Venture*, 563 So.2d at 770)). "The doctrine of commercial frustration is limited to cases where performance is possible but an alleged frustration, which was not foreseeable, totally or nearly totally destroyed the purpose of the agreement." *Valencia Ctr., Inc. v. Publix Super Markets, Inc.*, 464 So. 2d 1267, 1269 (Fla. Dist. Ct. App. 1985).