

# THE EFFECT OF COVID-19 ON COMMERCIAL CONTRACTS; FORCE MAJUERE

*By Robinson Robert Nweye*



The directive by the Federal Government of Nigeria for a lockdown of the major cities hit by the Coronavirus (COVID-19) outbreak in Nigeria like Lagos and Ogun States and the Federal Capital Territory, Abuja in a bid to combat the spread of the pandemic has no doubt affected businesses and the economy in general. Some states of the federation have also issued directives for a partial or complete lockdown. The effect of this on contracts goes to parties' capacity to perform their obligations in the contract.

The common law principle of force majeure which regulates instances where contractual obligations become difficult or impossible to perform due to unforeseen circumstances beyond the control of parties becomes instructive in this circumstance. How then does the COVID-19 outbreak affect contracts.

## **What is COVID-19?**

Coronavirus disease (COVID-19) is an infectious disease caused by a newly discovered coronavirus. COVID-19 symptoms can be very mild to severe and include a fever, cough and shortness of breath. It spreads from person to person among those in close contact.

## **What is force majeure?**

Under general principals of contract law, a party has a defense against performing under a contract where performance becomes impossible due to unforeseeable events outside of the parties' control. These unforeseeable events are called "force majeure" or "acts of God, see the case of **GLOBE SPINNING MILLS NIGERIA PLC v. RELIANCE TEXTILE INDUSTRIES LIMITED (2017) LPELR-41433(CA)**.

## **Does the COVID-19 outbreak qualify as a force majeure?**

On March 11, 2020 the World Health Organization declared COVID-19 to be a pandemic. Many Nations and States including Nigeria have also imposed restrictions on international and interstate travels while some areas have ordered total restriction of movements of persons and goods. These are circumstances capable of derailing the performance of contractual obligations by parties. As we know, all contracts carry their specific terms and so each force majeure provision must necessarily be considered based on the specific terms of each contract. However, where circumstances such as a pandemic are not expressly provided for as constituting a force majeure event in an agreement, the “test” below will be applied;

- i. That the event must be beyond the reasonable control of the affected party;
- ii. That the affected party’s ability to perform its obligations under the contract must have been prevented, impeded or hindered by the event; and
- iii. That the affected party must have taken all reasonable steps to seek to avoid or mitigate the event or its consequences.

### **Consequences of Force Majeure Claims**

The consequences for the parties will depend on the nature of the affected party’s obligations under the contract, as well as the consequences and remedies expressly contemplated by the force majeure provision. Parties may agree on extension of time to perform the obligations, suspension of contractual performance for the duration of the force majeure event, or where the force majeure event (In this case the COVID-19) extends over a longer period, the parties may as provided under their particular agreement, terminate the contract.

*This article is intended to provide a general guide to the subject. Expert legal assistance should be sought for your specific circumstances.*