

Force Majeur, Acts of God, and Others

Many of our clients have raised questions over the status of Force Majeur, Acts of God and other similar clauses in construction contracts.

The subject is hardly at the forefront of construction legislation but nevertheless is worth revisiting.

Force Majeur is a French term which was introduced into English Case Law in *Lebeaupin v Crispin* as

“ All circumstances independent of the will of man AND which is not in his power to control”

Vis Majeur is more commonly known as An Act of God. Such a term is rarely seen in construction contracts but is noted here to identify that the phrase is narrower than Force Majeur because, arguably, some acts of God are within the power of man to control.

I ChemE form of Contract defines Force Majeur as

“..... any circumstances beyond the reasonable control of a party which prevent or impede the due performance of a Contract including but not limited to war or hostilities; riot or civil commotion; epidemic; earthquake flood or other natural disaster;.....”

Similarly MF/1 standard Form of Contract defines Force Majeur as war, hostilities.....ionising waves.....radio activity.....pressure waves.....revolution.....riot.....any other circumstances beyond the reasonable control of the contractor.

JCT forms of Contract list Force Majeur as a Relevant Event without defining its meaning.

Most other standard forms of construction no longer use the phrases Vis Majeur & Force Majeur and are more specific in dealing with actual circumstances beyond mans will and control. In such event no automatic entitlement exists which affords either party to rely on a Force Majeur clause.

Where the terms and conditions of contract do make an expressed provision for a particular circumstance then those terms and conditions must prevail.

However circumstances such as weather may not be expressed in the terms and conditions and it is typically this scenario where the question of liability for the parties costs, time and damages arises

The ICE and JCT both deal with weather by limiting the Employers liability to granting and extension of time only in the event of exceptionally adverse weather. Accordingly the Employer therefore loses his right to recover LDs for this period and the Contractor is unable to recover his own delay costs. In this scenario the costs are said to “*lay where they lay*”. This can be described as a Neutral Event as neither party is suffering or benefiting from the circumstance.

When the Contract is silent on such a matter, ie there are no expressed clauses to deal with the circumstance, then the parties cannot recover their costs from each other and again costs will lay where they lay. LDs would however become chargeable if Contract Completion is overrun as no extension of time remedy is available to the Contractor.

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