

Litigation Alert

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Ohio District Court: COVID-19 Does Not Excuse Payment Under Settlement Agreement

As the pandemic continues to take its financial toll on businesses across the country, courts continue to consider the impact of the pandemic on parties' contractual obligations under doctrines like force majeure, impossibility of performance and frustration of purpose. For example, one federal bankruptcy court held in June that a commercial tenant was entitled to a rent reduction under its force majeure clause due to a local "stay at home" order that impacted the operation of the tenant's business. (Read our client alert [here](#).) More recently, in *Belk v. Le Chaperon Rouge Co.*, the U.S. District Court for the Northern District of Ohio held that the pandemic did not excuse a party to a settlement agreement that was reached in March 2020 from its payment obligation under the doctrine of impossibility.

Key Takeaways:

- Parties may have difficulty avoiding performance under agreements that were reached in mid-March 2020 (and later) on the basis that COVID-19 renders performance impossible, because the financial impact of the pandemic may have been reasonably foreseeable as of that time. It remains to be seen whether courts will regard the financial impact of COVID-19 as being reasonably foreseeable before the World Health Organization declared a global pandemic and U.S. states commenced measures to curb the virus' spread.
- Parties seeking to avoid a contractual payment obligation on the basis of impossibility may be held to a strict standard in demonstrating that the pandemic rendered them financially unable to perform.



Belk v. Le Chaperon Rouge Co., 2020 U.S. Dist. LEXIS 117985 (N.D. Ohio July 6, 2020)

The plaintiffs in *Belk* filed a putative class action against the owner and operator of child care facilities in Northern Ohio alleging violations of the overtime provisions of the Fair Labor Standards Act. The parties reached a settlement in principle at a court-administered mediation on March 12, 2020, involving, among other things, a \$200,000 payment to plaintiffs within 40 days of court approval.

Just one day prior to the mediation, on March 11, the World Health Organization had declared a worldwide pandemic. On March 12, the same day as the mediation, Ohio Gov. Mike DeWine took a variety of steps to curb the spread of COVID-19 within the state, including ordering kindergarten through 12th-grade schools in Ohio to close for several weeks and authorizing emergency changes in child day care rules.

Following these events, the defendants refused to execute the settlement agreement, "citing financial constraints

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imposed by the pandemic and Executive Orders issued by the State of Ohio." On April 11, the plaintiffs moved to enforce the agreement. In response, the defendants argued that the agreement, which lacked a force majeure clause, was unenforceable due to the doctrine of impossibility of performance.

The court rejected defendants' argument and granted plaintiffs' motion. As the court noted, the doctrine of impossibility under Ohio law requires an unforeseen event arising after the contract is entered into which renders a party's performance "impossible" and not merely "difficult, dangerous, or burdensome." Here, the court was "not convinced that the financial difficulties posed by COVID-19 'could not have been reasonably foreseen' when the parties reached a settlement on March 12, 2020." It added: "[E]ven assuming the financial impact of COVID-19 was not reasonably foreseeable on March 12, 2020, . . . Defendants have failed to carry their burden

of demonstrating that it is impossible for [the individual defendant] to fund the settlement payment." As to this point, the court found it noteworthy that the individual defendant indicated in a sworn declaration that she possessed substantial assets, including several homes that generated rental income, and that other tenants in one of the child care center buildings paid rent to her personally or to a third-party entity that she solely owned.

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