

Missouri – Force Majeure Law

Missouri courts construe force majeure clauses in keeping with general rules of contract construction, starting with the plain meaning of the language used. A force majeure clause that lists specific events that excuse performance and also includes a general catch-all phrase will be construed narrowly pursuant to the principle of *ejusdem generis*. *Clean Unif. Co. St. Louis v. Magic Touch Cleaning, Inc.*, 300 S.W.3d 602, 610 (Mo. Ct. App. 2009). “This precept holds that ‘generally, when words of general description are used in connection with a specific enumeration of articles, the general description will include only articles similar to those specifically mentioned.’” *Id.* (quoting *West v. Nichols*, 227 S.W.2d 760, 762 (Mo.App.1950)). Further, broad force majeure language referencing events beyond the parties’ control will be interpreted to include only unforeseeable events, unless the parties expressly agree otherwise. *Id.* at 610-611.

In the absence of a force majeure clause in the contract, under Missouri law performance may be excused pursuant to the doctrines of impossibility or commercial frustration. It is not enough to show performance is prevented by unforeseen difficulties; the doctrine of impossibility is limited to situations where impossibility of performance results from an act of God, the law, or an action of the other party. *Bolz v. Hatfield*, 41 S.W.3d 566, 573 (Mo. Ct. App. S.D. 2001); *Minor v. Rush*, 216 S.W.3d 210, 213 (Mo. Ct. App. W.D. 2007). “A party pleading impossibility as a defense must demonstrate that it took virtually every action within its powers to perform its duties under the contract.” *Id.* (quoting *Farmers’ Elec. Co-op., Inc. v. Missouri Dept. of Corrections*, 977 S.W.2d 266, 271 (Mo. banc 1998)).

“Under the doctrine of commercial frustration, if the occurrence of an event, not foreseen by the parties and not caused by or under the control of either party, destroys or nearly destroys the value of the performance or the object or purpose of the contract, then the parties are excused from further performance.” *Adbar, L.C. v. New Beginnings C-Star*, 103 S.W.3d 799, 801 (Mo. Ct. App. 2003). “If, on the other hand, the event was reasonably foreseeable, then the parties should have provided for its occurrence in the contract.” *Id.* “In determining foreseeability, courts consider the terms of the contract and the circumstances surrounding the formation of the contract.” *Id.* “The doctrine of commercial frustration should be limited in its application so as to preserve the certainty of contracts.” *Id.* at 802.