



O'Donnell, Weiss & Mattei, P.C.



OWM Law Special Newsletter

April 16, 2020

COVID-19 Additional Information

You may be receiving more Client Alert emails and COVID-19 updates than you care to at this point and for that we apologize. As issues come up, we want to be sure to address them, however, so if any of the articles pertain to you or someone you know, we hope you find them helpful. If not, please excuse the Inbox clutter! Stay well!

•FEATURE ARTICLES:

- *Force Majeure and Commercial Leases*
- *Criminal Justice System in the Time of COVID-19*

•OWM FIRM NEWS

***Force Majeure* and Commercial Leases**



Joseph K. Koury, Esq.



Gary L. Stein, Esq.

We previously wrote about *force majeure*, a common clause in contracts that excuses a failure to perform when the contract cannot be performed due to extraordinary events or circumstances beyond the control of the parties. Today we briefly address their application to commercial leases. We reiterate that in most instances where *force majeure* may apply, applications of the rules are less than clear, and for that reason, an attorney should be involved at the earliest possible time to review the issues.

We remind readers that in every contract, including commercial leases, there is implied a promise of good faith and fair dealing, and thus, the norm is that performance of a contract is expected. Should a party believe the facts and circumstances of a particular situation might excuse their performance, the party should look closely at the language of their contract with their legal counsel.

Economic hardship is not sufficient for this purpose. The failure to pay rent under a claim of *force majeure*, for instance, is a fact-intensive inquiry that requires review of the precise language of the lease, and a judgment call on the part of both the tenant and the landlord as to whether performance should be excused. If a Tenant guesses wrong that the coronavirus pandemic legally excuses its obligation to pay rent, that decision may constitute a repudiation of the lease, which is an unlawful breach of the lease. That could lead to eviction and a significant claim for damages.

As opposed to risking a legally incorrect position, tenants should attempt to negotiate a practical approach with landlords. Clear communication between tenant and landlord will determine the direction the claim will proceed. A landlord receiving word from a tenant concerning the possibility of non-performance, such as an inability to pay rent, should respond within the confines of the tenant's lease. Landlord responses to tenants should be consistent for all tenants in the building or shopping center.

A well-drafted lease will address the precise circumstances under which *force majeure* will apply, and may include the payment of rent under that given set of circumstances. Additionally, doctrines outside of a lease, such as impossibility of performance, may provide tenants with relief. Severe and extreme hardship in a situation in which it is not reasonable to expect performance is required.

As always, the [business attorneys of OWM Law](#) are prepared to assist with analyzing or responding to a claim of *force majeure* or otherwise offering their assistance. If you would like to discuss the above in more detail, please call [Joseph Koury, Esq.](#), at 610-323-2800 or send an email to jkoury@owmlaw.com.

Criminal Justice System in the Time of COVID-19

The Pennsylvania criminal justice system has been affected by the ongoing COVID-19 pandemic. Many criminal defendants and their families and friends query as to when their cases will be heard and, for those who are incarcerated, the present status of their exposure risk. In Chester County, the Courts, Public Defender's Office and the District Attorney's Office, as well as the private defense bar, have been working to reduce the prison population in a safe and efficient manner that seeks to simultaneously serve two (2) goals: protecting the community from the release of potential violent offenders while, at the same time, reducing the likelihood of an endemic outbreak spreading throughout the Chester County Prison System.



Thomas P. McCabe, Esq.

In order to alleviate the potential for the courthouse being an epicenter of COVID-19, the Chester County Court of Common Pleas is increasing and implementing the use of telecommunication technology to allow not only inmates to participate in proceedings via two-way video, but to also allow defense attorneys to do so as well. This reduces the amount of people present in a courtroom, and reduces the likelihood of spreading any potential infections.

Although the Pennsylvania Supreme Court's Order deeming a judicial emergency throughout the entire Commonwealth is still in effect throughout the end of April, the court system within Chester Counties, and several other counties, have been trying to balance the constitutional and due process needs of criminal defendants while also adhering to the safety requirements set forth by the Pennsylvania Department of Health and Governor Wolf.

The courts are taking a case by case analysis regarding bail motions, potential paroles and time-served pleas to allow cases to move forward but in a manner that reduces the risk for potential health issues both for the defendants and the community at large.

Defendants should be aware that the procedural right to a speedy trial is still suspended and to expect delays for cases in which defendants are not incarcerated or are incarcerated but do not have underlying health issues, or otherwise have procedural detainees that will keep them incarcerated.

The entire Chester County Legal Community, including law enforcement, District Attorney's Office, Public Defenders and private attorneys, as well as the judges, have been working to ensure that the criminal justice system continues to work in this uncertain time but in a manner that protects the litigants, court personnel and the community.

If you have questions about how COVID-19 may be affecting either your case, or a family member's case within the criminal justice system, please do not hesitate to contact [Thomas P. McCabe, Esq.](mailto:tmccabe@owmlaw.com), at 610-323-2800 or send an email to tmccabe@owmlaw.com.

On behalf of [O'Donnell, Weiss & Mattei, P.C.](#), we hope that you and your family and loved ones are staying safe and healthy during this unprecedented global pandemic. If you need legal advice, please be aware that O'Donnell, Weiss & Mattei, P.C. is still fully operational, through telecommunication with electronic access to all of our files, and available to help serve your needs.

DISCLAIMER: The contents of this article are not legal advice, and are not to be used for that purpose. If you charged with a criminal offense, you should contact a lawyer immediately in the order to ensure that your rights are protected. Thomas P. McCabe, Esq., is a licensed Pennsylvania lawyer, and does not purport to comment on any other jurisdiction in the United States of America.

Firm News

In complying with Governor's Order, as of March 20, 2020, our OWM Law physical office locations are closed; however, we are still operating remotely with full service for our clients and our referral sources. You can reach all of our attorneys and staff by phone or email as usual.

Read our article in 422 Business Advisor March 2020 edition and learn a little more about OWM Law: http://www.422business.com/sites/default/files/Rt422BA_Mar2020_Pottstown.pdf?fbclid=IwAR2XyhGwR5lY3m6kHhgkUehC2qSt_HfM6yjZI_FSnh_jzYHs3OXf93NeliVg



Watch OWM's Legal Talk on PCTV or on our website [here](#).

Read Legal Ease every first and third Sunday in the [Pottstown Mercury](#).



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