

Andreas Dracoulis and Jonathan Morton Author Article - Wrongful Termination in Good Faith - Reconciling the Authorities in the Context of Force Majeure

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In the rush to seek relief under force majeure clauses following the devastating impact of the Covid-19 pandemic, it is likely that some claims were made incorrectly, albeit in good faith. Particularly in circumstances where force majeure relief is linked to a purported termination, the party seeking to terminate needs to comply with any contractual requirements and ensure that the event relied upon is capable of being caught by the force majeure clause.

While a failure to do so may mean that it is, in principle, open to the other party to terminate the contract and claim damages, this may not be so in all circumstances. Difficulties can arise where there is a genuine dispute as to the construction of the contract or, say, where the terminating party has acted in good faith but on a mistaken understanding of the contract.

In this paper, we explore the sometimes conflicting case law on this critical issue, examining current judicial thinking by reference to a party's wrongful termination in reliance upon a force majeure clause.

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