

REFJ

The Real Estate Finance Journal

A THOMSON REUTERS PUBLICATION

SPRING 2022

FROM THE EDITOR

The Rise of Commercial Real Estate Derivatives and Their Role in the Real Estate Market *Jesse Stein*

COVID-19 as a Force Majeure Event: Key Judicial Decisions

Michael C. Lynch, Cameron R. Argetsinger and Noah Lindenfeld

Five Commercial Real Estate Trends to Watch in the Wake of COVID-19

Timothy G. Little and Scott M. Vetri

Delaware Supreme Court Finds COVID-19 Business Adjustments Entitle Company's Buyer to Terminate Contract

Oderah C. Nwaeze

Real Estate Outlook: Three Ways to Combat Challenges in 2022

James "Chip" Stuart and Lindsay Shapiro

FinCEN Issues a Proposed Beneficial Ownership Rule

Marc-Alain Galeazzi and Malka Levitin

Real Estate and Money Laundering: FinCEN Issues Advanced Notice of Regulations for the Real Estate Industry

Peter D. Hardy, Richard J. Andreano, Jr., Michael P. Robotti and Nikki A. Hatza

New York's Green Amendment: How Guidance from Other States Can Shape the Development of New York's Newest Constitutional Right

Sheila L. Birnbaum, Mark S. Cheffo, Rachel Passaretti-Wu, Lincoln Wilson, Allie Ozurovich and Marina Schwarz

You Win Some, You Lose Some: The Second Circuit Affirms Dismissal of Landlords' Free Speech Challenge to Harassment Laws and Reverses Dismissal of Landlords' Contract Clause Challenge to Guaranty Law

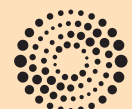
Steven M. Herman and Eunji Jo

Massachusetts' Push for More Multifamily: DHCD Releases Draft Guidelines for MBTA Communities

Karla L. Chaffee

A Legal Update for the Title Insurance Industry

Michael J. Heller, Peter P. McNamara and Matthew V. Spero



THOMSON
REUTERS

REFJ

The Real Estate Finance Journal

A THOMSON REUTERS PUBLICATION

Spring 2022

<i>FROM THE EDITOR</i>	3	Real Estate and Money Laundering: FinCEN Issues Advanced Notice of Regulations for the Real Estate Industry	
The Rise of Commercial Real Estate Derivatives and Their Role in the Real Estate Market <i>Jesse Stein</i>	5	<i>Peter D. Hardy, Richard J. Andreano, Jr., Michael P. Robotti and Nikki A. Hatza</i>	39
COVID-19 as a Force Majeure Event: Key Judicial Decisions <i>Michael C. Lynch, Cameron R. Argetsinger and Noah Lindenfeld</i>	9	New York's Green Amendment: How Guidance from Other States Can Shape the Development of New York's Newest Constitutional Right <i>Sheila L. Birnbaum, Mark S. Cheffo, Rachel Passaretti-Wu, Lincoln Wilson, Allie Ozurovich and Marina Schwarz</i>	45
Five Commercial Real Estate Trends to Watch in the Wake of COVID-19 <i>Timothy G. Little and Scott M. Vetri</i>	17	You Win Some, You Lose Some: The Second Circuit Affirms Dismissal of Landlords' Free Speech Challenge to Harassment Laws and Reverses Dismissal of Landlords' Contract Clause Challenge to Guaranty Law <i>Steven M. Herman and Eunji Jo</i>	51
Delaware Supreme Court Finds COVID-19 Business Adjustments Entitle Company's Buyer to Terminate Contract <i>Oderah C. Nwaeze</i>	23	Massachusetts' Push for More Multifamily: DHCD Releases Draft Guidelines for MBTA Communities <i>Karla L. Chaffee</i>	55
Real Estate Outlook: Three Ways to Combat Challenges in 2022 <i>James "Chip" Stuart and Lindsay Shapiro</i>	27	A Legal Update for the Title Insurance Industry <i>Michael J. Heller, Peter P. McNamara and Matthew V. Spero</i>	59
FinCEN Issues a Proposed Beneficial Ownership Rule <i>Marc-Alain Galeazzi and Malka Levitin</i>	31		

EDITOR

Robert G. Koen
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.

MANAGING EDITOR

Erbayne W. Jarvis
Thomson Reuters

SUBMISSIONS EDITOR

Steven A. Meyerowitz
Meyerowitz Communications Inc.
All editorial correspondence, manuscripts, etc.,
should be sent to:
Steven A. Meyerowitz, Esq.
President/Meyerowitz Communications Inc.
26910 Grand Central Parkway, # 18R
Floral Park, NY 11005
631.291.5541
smeyerowitz@meyerowitzcommunications.com

THE REAL ESTATE FINANCE JOURNAL
(ISSN 0898-0209) is published quarterly by Thomson
Reuters, 610 Opperman Drive, Eagan, MN 55123-1396.

Editorial Offices: Thomson Reuters, 50 Broad Street
East, Rochester, NY 14694. All editorial correspondence,
manuscripts, etc., should be sent to this address.
Although the utmost care will be given material
submitted, we cannot accept responsibility for unsolicited
manuscripts.

Subscription: For subscription information or for customer
service, call 1-800-328-4880. Periodicals postage paid at
St. Paul, MN.

© 2022 Thomson Reuters. No part of this journal may be
reproduced in any form—by microfilm, xerography, or
otherwise—or incorporated into any information retrieval
system without the written permission of the copyright
owner. This publication is designed to provide accurate
and authoritative information in regard to the subject
matter covered. It is sold with the understanding that the
publisher is not engaged in rendering legal, accounting
or other professional service. If legal or accounting
advice or other expert assistance is required, the
services of a competent professional should be sought.

Nothing contained herein is intended or written to be
used, and may not be used, for the purposes of 1)
avoiding penalties imposed under the Internal Revenue
Code, or 2) promoting, marketing or recommending to
another party any transaction or matter addressed
herein.

CONTRIBUTING EDITORS

Ronald B. Bruder
President
The Brookhill Group

Stevens A. Carey
Partner
Pircher, Nichols & Meeks

Jonathan L. Kempner
Fellow, Advanced Leadership Initiative
Harvard University

Yonguo Liang, Ph.D.
Head, Global Research and
Public Markets
Abu Dhabi Investment Authority (ADIA)

Stephen Rushmore
President and CEO
HVS

Stuart M. Saft
Partner
Holland & Knight LLP

Joshua Stein
Partner
Joshua Stein PLLC

BOARD OF ADVISORS

Jason Barnett
Vice Chairman & General Counsel
RXR Realty LLC

Cia Buckley
Partner
Dune Capital Management

Dino P. Christoforakis
Acquisitions Director
CBRE Investment Management

Frederick N. Cooper
Senior Vice President
Toll Brothers, Inc.

Louis M. Dubin
Managing Partner
Redbrick LMD

Andrew L. Farkas
CEO
Island Capital

Kyle Gore
Managing Director, Real Estate Finance
CGA Group

David Hamm
Senior Managing Director
WAFRA, Inc.

Ross Hilton Kemper
President
Kingswood Capital LLC

Ronald J. Kravit
Chairman and President
RJK Partners Inc.

Richard J. Mack
Mack Real Estate Group

Joseph Mizrahi
Managing Member
Third Millennium Group

Anthony Orso
President, Capital Markets Strategies
Newmark

Shelby E.L. Pruett
CEO
Capri EGM, LLC

Lorenz Reibling
Chairman and Senior Partner
Taurus Investment Holdings LLC

Stephen Siegel
Chairman, Global Brokerage
CB Richard Ellis

Rick H. Singer
President
Winter Properties

David R. Soares
President and CEO
Lexden Capital, LLC

COVID-19 as a Force Majeure Event: Key Judicial Decisions

By Michael C. Lynch, Cameron R. Argetsinger and
Noah Lindenfeld*

Two years into the pandemic, several courts now have had occasion to address the application of force majeure clauses in the COVID-19 context. This article provides an overview of those recent court decisions.

COVID-19 upended business plans and economic expectations across all industries worldwide from the earliest days of the pandemic in March 2020. Many businesses that were left reeling by the abrupt change and unable to meet contractual obligations sought relief under “force majeure” provisions in their contracts. A force majeure—or “superior force”—clause excuses a party from performance upon the occurrence of an unanticipated event, outside either party’s control. Depending on the scope of the clause, events such as a pandemic or government shutdown order may qualify as a force majeure event excusing a party’s performance or breach of a contract.

Two years into the pandemic, several courts now have had occasion to address the application of force majeure clauses in the COVID-19 context. This article provides an

overview of those recent court decisions. The first section of the article examines decisions holding that the pandemic or consequent government restrictions on non-essential businesses may constitute a force majeure event. The second section looks at decisions that have rejected the operation of force majeure clauses in the COVID-19 context.

COURTS FINDING THE COVID-19 PANDEMIC OR GOVERNMENTAL RESTRICTIONS MAY CONSTITUTE A FORCE MAJEURE EVENT

*JN Contemporary Art LLC v. Phillips Auctioneers LLC*¹

After the pandemic hit and various executive orders were issued, an auctioneer cancelled a scheduled auction of an art gallery’s painting and refused to pay the gallery the

*Michael C. Lynch (mlynch@kelleydrye.com) is a partner at Kelley Drye & Warren LLP, chair of the firm’s Litigation practice and a member of the firm’s Executive Committee. He represents major businesses in litigation where the stakes have been valued into the billions of dollars. Cameron R. Argetsinger (cargetsinger@kelleydrye.com) is special counsel at the firm focusing his practice on insurance recovery litigation and helping insurance policyholders maximize coverage under their policies and navigate disputes with their insurers. Noah Lindenfeld (nlindenfeld@kelleydrye.com) is an associate at the firm focusing his practice on complex commercial litigation, including breach of contract, deceptive trade practices, products liability, and real property matters.

minimum price it guaranteed in connection with the auction. The court analyzed the force majeure provision in the parties' contract, which allowed the auctioneer to cancel the auction and terminate the agreement "for circumstances beyond our or your reasonable control, including, without limitation, as a result of natural disaster, fire, flood, general strike, war, armed conflict, terrorist attack or nuclear or chemical contamination."²

On the auctioneer's motion to dismiss, the court relied on dictionary definitions of "natural" and "natural disaster" as well as government proclamations referring to the pandemic as a "State disaster emergency" and "major disaster declaration," to conclude that the pandemic was a "natural disaster," which excused the auctioneer's performance under the contract's force majeure clause.³ The court also noted that a "pandemic requiring the cessation of normal business activity is the type of 'circumstance' beyond the parties' control that was envisioned" by the force majeure clause and was similar to the other events listed in this clause, including "environmental calamities such as floods or fires" and "widespread social and economic disruptions such as 'general strikes,' 'war,' 'chemical contamination,' and 'terrorist attack.'"⁴

*Sanders v. Edison Ballroom LLC*⁵

Plaintiffs sued the defendant, the owner of an event hall, after the defendant terminated their agreement to host plaintiffs' party in its hall after Governor Cuomo issued executive orders limiting the number of individuals allowed to lawfully gather and the maximum occupancy of facilities like the defendant's venue. The agreement contained the following "Acts of God, Force Majeure" clause:

Neither party shall be responsible for failure to perform [the Agreement] if circumstances beyond its reasonable control, including, but not limited to, acts of God, . . . [or] governmental authority . . . make it illegal or impossible for the affected party to hold [the Event]. For the Avoidance of Doubt, in the event of any such acts of God, [Defendant] shall refund all payments made by [Plaintiffs] to [Defendant] and [Plaintiffs] shall have no further obligation to [Defendant].⁶

On the parties' motions for summary judgment, the court held that "plaintiffs have shown that defendant breached the Agreement by refusing to refund plaintiffs under the Force Majeure clause, which provides for such a refund in the event performance of the Agreement becomes 'illegal or impossible' because of 'acts of a governmental authority.'"⁷ The court held "it is undisputed that the Agreement's performance, including after the agreement to postpone Event was made, was illegal or impossible as a result of 'acts of a governmental authority,' such as the Governor's Executive Orders."⁸

*In re Hitz Rest. Grp.*⁹

At issue was whether the governor's executive order restricting in-person dining constituted a force majeure event under restaurant's lease agreement with its landlord. The force majeure clause under the parties' agreement provided in relevant part:

Landlord and Tenant shall each be excused from performing its obligations or undertakings provided in this Lease, in the event, but only so long as the performance of any of its obligations are prevented or delayed, retarded or hindered by . . . laws, governmental action or inaction, orders of government . . .

The court held the force majeure clause was "unambiguously triggered" by the governor's executive order.

First, the court explained, "his order unques-

tionably constitutes both ‘governmental action’ and issuance of an ‘order’ as contemplated by the language of the force majeure clause.”¹⁰

Second, “that order and its extensions unquestionably ‘hindered’ [the restaurant’s] ability to perform by prohibiting [the restaurant] from offering ‘on-premises’ consumption of food and beverages.”¹¹

Third, the court concluded, “the order was unquestionably the proximate cause of [the restaurant’s] inability to pay rent, at least in part, because it prevented [the restaurant] from operating normally and restricted its business to take-out, curbside pick-up, and delivery.”¹²

However, the court held that the restaurant was “not off the hook entirely” from paying as the executive order “did not prohibit [the restaurant] from performing carry-out, curbside pick-up, and delivery services” so to the extent the defendant “could have continued to perform those services, its obligation to pay rent is not excused by the force majeure clause.”¹³

*Lampo Grp., LLC v. Marriott Hotel Servs.*¹⁴

The plaintiff here had agreed with Marriott to hold a seminar at one of Marriott’s hotels and sought to terminate the agreement after Marriott made it clear, after the pandemic hit, that it would enforce certain restrictions on the event, including limitations on social gatherings, the closure of various hotel amenities, the provision of self-service food and beverage, and mask mandates. Plaintiff also sought a refund of the monies it already paid to Marriott.

The force majeure clause at issue in this case provided that “[e]ither party may be

excused from performance without liability if circumstances beyond its reasonable control, such as acts of God, war, acts of domestic terrorism, strikes, or similar circumstances, make it illegal or impossible to provide or use the Hotel facilities.”¹⁵

The court found that the “COVID pandemic plus the attendant restrictions on business operations could, indeed, be deemed a *force majeure* that would authorize termination of the Agreement.”¹⁶ The court then analyzed whether Marriott’s restrictions actually rendered performance by either party “illegal” or “impossible,” ultimately concluding that this was a question of fact.¹⁷

*Rudolph v. United Airlines Holdings*¹⁸

Customers of United Airlines sought refunds when it cancelled certain flights when the pandemic hit in mid-March 2020. The airline argued that the COVID-19 pandemic and its fallout constituted a Force Majeure Event under its agreement with its customers, which meant it was not contractually required to provide a refund to customers.¹⁹ The court cast doubt on this argument, noting the customers’ allegations that the airline cancelled the flights in mid-March 2020 “because of a desire to save on operating expenses,” and “not because COVID-19 had been declared at that time as a public health emergency and global pandemic.”²⁰ The customers also pointed to the airline’s “various public statements in public filings . . . regarding ‘adjustments’ to its flight schedule due to ‘reduced demand,’ ” and to the fact that the airline “continued to operate some flights during this time,” which “cuts against blaming the pandemic itself.”²¹

The court explained, “even assuming

COVID-19 and/or the related restrictions United cites qualify as Force Majeure Events, that is not enough to excuse United from offering a refund for flights it cancels” as “[t]hose events also must have directly and proximately caused the cancellations.”²² Nevertheless the court held that whether the cancellations at issue occurred because of economic considerations, or were due to restrictions and warnings related to the pandemic, can only be answered with discovery.²³

With respect to one customer whose flights to and from Costa Rica were cancelled because of that country’s border closures, the court held that the airline was not obligated to provide him a refund since that “[s]uch government-ordered closure falls comfortably within the definition of a Force Majeure Event” and [i]t is simply not plausible that such closures were not a proximate cause of at least the cancellation of [the customer’s] travel in and out of Costa Rica in March and April 2020.²⁴

*In re Cinemex USA Real Estate Holdings, Inc.*²⁵

The force majeure clause in the parties’ lease provided, “[i]f the performance by Landlord or Tenant of any of its obligations under this Lease is delayed by reason of ‘Force Majeure’, the period for the commencement or completion thereof shall be extended for a period equal to such delay.”²⁶ The lease defined force majeure as “acts of God” and “governmental restrictions” and, “any other act over which the performing party has no control, excluding financial ability of the performing party.”²⁷ Based on this clause, the court found that the tenant movie theater “was excused from paying rent until the [its theater] was al-

lowed to reopen” following the abrogation of the government shutdown orders.²⁸

COURTS REJECTING THE OPERATION OF FORCE MAJEURE CLAUSES IN THE COVID-19 CONTEXT

While numerous courts have held that the pandemic or consequent government restrictions qualify as force majeure events as a matter of law, other courts have not hesitated to reject a defendant’s invocation of a force majeure clause where the defendant could not show that its nonperformance was “caused” by the purported force majeure event, as required under the relevant contract.

*Store SPE LA Fitness v. Fitness Int’l, LLC*²⁹

A landlord sued its tenants for failure to pay rent under their lease, which included the following force majeure clause:

If either party is delayed or prevented from any of its obligations under this Lease by reason of strike, labor troubles or any other cause whatsoever beyond such party’s control, then the period of such delay or such prevention shall be deemed added to the time provided herein for the performance of any such obligation.³⁰

On their motion to dismiss, tenants argued that “government closure orders were ‘beyond [their] reasonable control’ because they made it illegal for Tenant to use the premises during such period of time, and therefore, excusing its obligations.”³¹ The court denied the motion, holding that the force majeure clause was not triggered, as the tenants failed to show that they were “prevented from making payments under the Leases ‘by reason of’ the COVID-19 pandemic or government orders or that the orders were the cause of the failure to pay.”³² The court pointed to the tenant’s statements

“that they do have ability to pay, which is why they cannot raise a lack of funds defense.”³³

*Palm Springs Mile Assocs. v. Kirkland's Stores, Inc.*³⁴

A landlord sued its tenant for failing to pay rent and related charges beginning in April 2020 with the onset of the pandemic. The parties' lease contained the following force majeure clause:

Whenever a period of time is prescribed in this Lease for action to be taken by either party, such party will not be liable or responsible for, and there will be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes of any kind whatsoever which are beyond the reasonable control of such party.

On its motion to dismiss, the tenant argued that “restrictions on business operations and non-essential activities qualify as force majeure events, and therefore its obligation to pay rent is automatically suspended.”³⁵ The court found the tenant's position to be “unavailing” because it “fails to explain how the governmental regulations it describes as a force majeure event resulted in its inability to pay its rent.”³⁶ The court explained that “restrictions on non-essential activities and business operations must directly affect Kirkland's ability to pay rent,” which the tenant did not show.³⁷

*Future St. Ltd. v. Big Belly Solar, LLC*³⁸

The parties' license agreement contained the following force majeure clause:

Neither party shall be deemed in default pursuant to this Agreement so long as its failure to perform any of its obligations hereunder is occasioned solely by fire, labor disturbance, acts of civil or military authorities, acts of God, or any similar cause beyond such party's control.³⁹

The court doubted that the COVID-19 pandemic would excuse a party's payment obligations under the agreement at issue, explaining, “[e]ven assuming *arguendo* that the pandemic and effects of same are a force majeure under the Agreement, [plaintiff] has not shown that its failure to perform its obligations under the Agreement were caused by same as required under [the force majeure clause] of the Agreement.”⁴⁰

*La Simple Co. v. SLP Enters., LLC*⁴¹

In a dispute over breach of a distribution agreement, the plaintiff argued that the agreement's force majeure clause, “which would suspend its obligation to meet the 2020 quota, was triggered by COVID-19.”⁴² The clause provided:

No failure or omission by either of the parties hereto in the performance of any obligation of this Agreement shall be deemed a breach of this Agreement nor create any liability if the same shall arise from any cause or causes beyond the control of the party affected, including, but not limited to, the following, which, for the purposes of this Agreement, shall be regarded as beyond the control of the party in question (“Force Majeure”): Acts of God, acts or omissions of any Government or any agency thereof; compliance with requests, recommendations, rules, regulations, or orders of any government authority or any officer, department, agency, or instrumentality thereof; fire, storm, flood, earthquake, acts of the public enemy, war, rebellion, riots, invasion, strikes, or lockouts. During any such case of Force Majeure, the Agreement shall not be terminated, but only suspended, and the party affected shall continue to perform its obligations to the extent possible and resume the performance of its suspended obligations as soon as such case of Force Majeure is removed or alleviated.⁴³

The court “consider[ed] this express contract provision and the unprecedented nature of the COVID-19 pandemic” and “view[ed] this as the far more tenable basis for [the plaintiff's]

claims in this action.”⁴⁴ However, quoting from *Future St. Ltd. v. Big Belly Solar, LLC*,⁴⁵ the court held that “even ‘assuming *arguendo* that the pandemic and its effects . . . are a force majeure under the Distribution Agreement,’ [the plaintiff] has not shown that its failure to perform its obligations was ‘caused by’ the pandemic as required by the language of the Force Majeure clause.”⁴⁶

The court pointed to evidence reflecting that the plaintiff was “failing to satisfy its obligations under the Distribution Agreement even before the pandemic (i.e., in 2019), and where [the plaintiff’s] own exhibits reflect that it had a team of employees based in China through which it continued to ‘generate[] lots of interest and attention’ and ‘move plenty of’ [the defendant’s] products through the summer and fall of 2020.”⁴⁷

NOTES:

¹*JN Contemporary Art LLC v. Phillips Auctioneers LLC*, 507 F. Supp. 3d 490 (S.D. N.Y. 2020).

²*JN Contemporary Art LLC v. Phillips Auctioneers LLC*, 507 F. Supp. 3d at 496.

³*JN Contemporary Art LLC v. Phillips Auctioneers LLC*, 507 F. Supp. 3d at 501.

⁴*JN Contemporary Art LLC v. Phillips Auctioneers LLC*, 507 F. Supp. 3d at 501.

⁵*Sanders v. Edison Ballroom LLC*, 2021 WL 1089938 (N.Y. Sup 2021).

⁶*Sanders v. Edison Ballroom LLC*, 2021 WL 1089938 at *2.

⁷*Sanders v. Edison Ballroom LLC*, 2021 WL 1089938 at *3.

⁸*Sanders v. Edison Ballroom LLC*, 2021 WL 1089938.

⁹*In re Hitz Restaurant Group*, 616 B.R. 374, 376, 68 Bankr. Ct. Dec. (CRR) 221 (Bankr. N.D. Ill. 2020).

¹⁰*In re Hitz Restaurant Group*, 616 B.R. at 377.

¹¹*In re Hitz Restaurant Group*, 616 B.R. at 377.

¹²*In re Hitz Restaurant Group*, 616 B.R. at 377–78.

¹³*In re Hitz Restaurant Group*, 616 B.R. at 379.

¹⁴*Lampo Group, LLC v. Marriott Hotel Services, Inc.*, 2021 WL 3490063 (M.D. Tenn. 2021).

¹⁵*Lampo Group, LLC v. Marriott Hotel Services, Inc.*, 2021 WL 3490063 at *2.

¹⁶*Lampo Group, LLC v. Marriott Hotel Services, Inc.*, 2021 WL 3490063 at *8.

¹⁷*Lampo Group, LLC v. Marriott Hotel Services, Inc.*, 2021 WL 3490063 at *9–10.

¹⁸*Rudolph v. United Airlines Holdings, Inc.*, 519 F. Supp. 3d 438 (N.D. Ill. 2021).

¹⁹*Rudolph v. United Airlines Holdings, Inc.*, 519 F. Supp. 3d at 448.

²⁰*Rudolph v. United Airlines Holdings, Inc.*, 519 F. Supp. 3d at 450.

²¹*Rudolph v. United Airlines Holdings, Inc.*, 519 F. Supp. 3d at 450.

²²*Rudolph v. United Airlines Holdings, Inc.*, 519 F. Supp. 3d at 450.

²³*Rudolph v. United Airlines Holdings, Inc.*, 519 F. Supp. 3d at 450.

²⁴*Rudolph v. United Airlines Holdings, Inc.*, 519 F. Supp. 3d at 450.

²⁵*In re Cinemex USA Real Estate Holdings, Inc.*, 627 B.R. 693, 700 (Bankr. S.D. Fla. 2021).

²⁶*In re Cinemex USA Real Estate Holdings, Inc.*, 627 B.R. at 700 (emphasis added).

²⁷*In re Cinemex USA Real Estate Holdings, Inc.*, 627 B.R. at 700.

²⁸*In re Cinemex USA Real Estate Holdings, Inc.*, 627 B.R. at 700.

²⁹*STORE SPE LA Fitness v. Fitness International, LLC*, 2021 WL 3285036 (C.D. Cal. 2021).

³⁰*STORE SPE LA Fitness v. Fitness International, LLC*, 2021 WL 3285036 at *8.

³¹*STORE SPE LA Fitness v. Fitness International, LLC*, 2021 WL 3285036 at *8.

³²*STORE SPE LA Fitness v. Fitness International, LLC*, 2021 WL 3285036 at *8.

³³*STORE SPE LA Fitness v. Fitness International, LLC*, 2021 WL 3285036 at *8.

³⁴*Palm Springs Mile Associates, Ltd. v. Kirkland’s Stores, Inc.*, 2020 WL 5411353 (S.D. Fla. 2020).

³⁵*Palm Springs Mile Associates, Ltd. v. Kirkland’s Stores, Inc.*, 2020 WL 5411353 at *5.

³⁶*Palm Springs Mile Associates, Ltd. v. Kirkland’s Stores, Inc.*, 2020 WL 5411353.

³⁷*Palm Springs Mile Associates, Ltd. v. Kirkland’s Stores, Inc.*, 2020 WL 5411353.

³⁸*Future Street Limited v. Big Belly Solar, LLC*, 2020 WL 4431764 (D. Mass. 2020).

COVID-19 as a Force Majeure Event: Key Judicial Decisions

³⁹*Future Street Limited v. Big Belly Solar, LLC*, 2020 WL 4431764 at *6.

⁴⁰*Future Street Limited v. Big Belly Solar, LLC*, 2020 WL 4431764 at *6.

⁴¹*La Simple Co, Ltd. v. SLP Enterprises, LLC*, 2021 WL 1648762 (D. Mass. 2021).

⁴²*La Simple Co, Ltd. v. SLP Enterprises, LLC*, 2021 WL 1648762 at *6.

⁴³*La Simple Co, Ltd. v. SLP Enterprises, LLC*, 2021

WL 1648762 at *2.

⁴⁴*La Simple Co, Ltd. v. SLP Enterprises, LLC*, 2021 WL 1648762 at *6.

⁴⁵*Future Street Limited v. Big Belly Solar, LLC*, 2020 WL 4431764 (D. Mass. 2020).

⁴⁶*Future Street Limited v. Big Belly Solar, LLC*, 2020 WL 4431764 at *7.

⁴⁷*Future Street Limited v. Big Belly Solar, LLC*, 2020 WL 4431764 at *7.