

TEMPORARY FRUSTRATION OF PURPOSE—A NEW AVENUE FOR CONTRACT DISPUTES?



By Kathryn Campbell

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Under Minnesota law, litigants can now officially claim temporary frustration of purpose as an affirmative defense for nonperformance of a contract—and potentially claim the doctrine as a basis for a breach of contract claim. Litigants should be aware, however, that absent a showing that performance under the contract is “materially more burdensome” after the frustration ceases, full performance of the contractual obligation is necessary once the frustration has ended.

In *Fitness International, LLC v. City Center Ventures, LLC*, ___ N.W.3d ___, 2024 WL 3514539 (Minn. July 24, 2024), the Minnesota Supreme Court officially recognized the doctrine of temporary frustration of purpose established in

the Restatement (Second) of Contracts § 269 as justification for non-performance of a contract, in addition to the previously-recognized doctrines of “permanent” frustration of purpose and temporary “impossibility” of performance.

As many recent breach of contract cases do, *Fitness International* involved a unique set of facts based on circumstances arising from the COVID-19 pandemic. Fitness International, LLC operated a health club and fitness center in a space owned by City Center Ventures, LLC and leased to Fitness International. During the COVID-19 pandemic, when Fitness International was unable to operate its business due to mandated closures, Fitness International suspended its rental payments. After City Center pursued an eviction against Fitness International, Fitness International paid the overdue rent but stated that it did so “under protest.” Fitness International then brought suit against City Center for breach of contract, claiming that the rent payments were excused under the frustration of purpose doctrine.

In its ruling, the Court recognized that the temporary frustration of purpose doctrine may be asserted as an affirmative defense. The Court declined, however, to determine whether the doctrine could be used as a basis for a breach of contract claim, because Fitness International had failed to demonstrate that paying rent after the COVID-19 closure period would be “materially more burdensome,” such that the rental payment obligation would be completely discharged.

The Court’s conclusion is significant. First, the Court noted that “materially more burdensome” requires a showing “more than inconvenience or increased costs.” The Court gave some indica-

tion as to what may satisfy the “materially more burdensome” standard, such as a showing that a party may suffer financial distress or financial loss as a result of the contractual obligation, or that the party is unable to satisfy the contractual obligation.

Second, litigants seeking to assert frustration of purpose of a defense should be sure to take into account whether the frustration was permanent and therefore completely discharged the litigant’s obligation to perform, or whether the frustration was only temporary, such that the obligation to perform was only suspended rather than discharged. If a litigant seeks to completely excuse their obligation to perform based on a temporary frustration, litigants should be prepared to satisfy the “materially more burdensome” standard.

Finally, although the Court declined to find that a party may premise a breach of contract claim based on temporary frustration of purpose, the fact that the Court declined to do so based on the underlying record suggests that the Court has left the door open for a future litigant to bring a breach of contract based on this doctrine. Before proceeding with this strategy, however, litigants should, again, confirm whether facts exist to establish that it is “materially more burdensome” to satisfy the obligation following its temporary suspension.

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