

# Missouri Court Rejects Impossibility Defense During COVID-19

Article

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In a case of first impression, (*Premier Valet, LLC v. Premier Valet Services, LLC, et al.*), the Missouri Court of Appeals, Eastern District, considered the viability of the “impossibility defense” in regard to the COVID-19 pandemic.

In that case, the plaintiff loaned the defendant (a valet business) \$260,000 which required the defendant to repay the balance in monthly installments. At first, the defendant made the monthly payments, but stopped when the COVID-19 pandemic resulted in numerous executive orders closing restaurants, bars, and clubs. Accordingly, the defendant’s valet business came to a halt. The plaintiff sued for breach of contract and the defendant raised the defense of “impossibility”, arguing the COVID-19 pandemic made it impossible to continue operating their valet business, which made it impossible to make the monthly payments.

The question before the court was the following: Was the defendant’s performance rendered impossible by the COVID-19 pandemic?

The impossibility doctrine provides that “[i]f a party, by contract, is obligated to a performance that is possible to be performed, the party must make good unless performance is rendered impossible by an Act of God, the law, or the other party.” *Breitenfeld v. School Dist. of Clayton*, 399 S.W.3d 816, 835 (Mo. banc 2013) (quoting *Farmers’ Elec. Co-op., Inc. v. Missouri Dep’t of Corr.*, 977 S.W.2d 266, 271 (Mo. banc 1998)). The party asserting impossibility must demonstrate that “virtually every action possible to promote compliance with the contract has been performed.” *Id.*

The defendant argued that the parties’ agreement “implied” that the continued operation of their business was necessary to make the payments. The court disagreed and held that the fact that it may *have been impossible* to operate a valet services business during the COVID-19 pandemic does not render it impossible to make the required monthly payments. The court was unpersuaded by the defendant’s attempts to perform, stating that Missouri courts require the breaching party to demonstrate “virtually every action possible” to perform.

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The decision demonstrates that going forward, if you have breached contractual obligations during the COVID-19 pandemic, that defense will only be successful if you demonstrate “virtually every action possible” to perform. Based on this decision, we expect a flood of similar breach of contract claims.

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