

# Understanding if the force is with you

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'May the force be with you' is usually the concern of Jedi knights heading to battle in Star Wars, rather than something that company directors look for. But for those companies looking to claim that the coronavirus pandemic has given rise to circumstances beyond their control in delivering on contracts, another major 'force' is concentrating minds.

In one of the few cases to consider the impact of the pandemic on company contracts to date, the High Court has ruled that a force majeure event took place when a Drain Doctor franchisee needed to self-isolate due to the risk of Covid-19 on his vulnerable child.

A force majeure clause in a contract can excuse one or both parties from their obligations, without being liable for any failure to perform, if acts, events or circumstances occur which are beyond their control, such as a natural disaster or a state of war.

In the case of [Dwyer \(UK\) Franchising Ltd v Fredbar Ltd & Bartlett](#), the franchise agreement contained a clause for suspension during any period that either party was prevented or hindered from complying with their obligations by any cause designated as force majeure by the franchisor.

When Fredbar (franchisee) asked to invoke the clause as work levels were reduced and he needed to self-isolate, Dwyer (UK) (franchisor) argued that plumbing services could still be provided during lockdown and a drop in demand was insufficient grounds for force majeure. When the franchisee terminated the agreement, arguing Dwyer (UK) had failed to meet its obligations, the company retaliated by initiating legal action, claiming damages.

In assessing the case, the High Court drew on what is known as the Braganza duty, from the 2015 case of [Braganza v BP Shipping](#), which saw the Supreme Court rule that a unilateral power to call a force majeure event must be exercised 'honestly, in good faith and genuinely'.

In this case, the judge ruled that Dwyer (UK) was in breach of the Braganza duty in refusing to agree force majeure, as they had failed to consider all the relevant factors. These extended beyond the general situation regarding plumbing services during the pandemic and included the importance of family welfare and the franchisee's need to isolate to protect his son, who was in a vulnerable category for Covid purposes.

Corporate lawyer [Victoria Holland](#) explains:

*"The ruling reflects the specific facts of this case and the wording of the force majeure clause. But while the wording of Drain Doctor's clause was not typical, it is an interesting outcome for anyone currently pursuing action on these grounds in relation to the pandemic. However, each case will hang on individual circumstances and the wording of the particular contract concerned.*

*The past year has taken us all into uncharted territory, demonstrating how the unexpected can, and does, happen. It is therefore even more important than ever before to have well drafted contracts, as having clear terms in place can make all the difference. And because the concept of force majeure is derived from civil law, and not fully recognised under English common law, it should always be fully and clearly defined in a contract."*

Contact [Victoria Holland](#) today to see if the force is with you.

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