



Amendments to the Civil Code of Nuevo Leon regarding force majeure and commercial leases

Last October 2nd, Decrees No. 357 and 358 were published in the Official Gazette of the State of Nuevo Leon, whereby articles 2005 and 2326 of the Civil Code for the State of Nuevo Leon (the "Civil Code") were amended, referring to the theory of "unforeseen events" acts of god and force majeure, legal figures that have taken special relevance in contractual matters arising from the current economic crisis generated by the COVID-19 pandemic.

Well before this amendment was enacted, Article 2005 of the Civil Code referred only to acts of god as an exception to contractual liability, reason for which force majeure was also added to remove liability. The difference

between both concepts has to do with the origin of the intervening cause: the former refers to a natural cause, whereas the second has a human origin. Therefore, no party shall be held liable for the breach of an obligation in this respect, unless:

- A. The relevant party has caused or contributed to such cause;
- B. An agreement exists as to who would be held liable in this respect or else
- C. There is a legal obligation.

Regarding Article 2326 of the Civil Code, in reference to Rights and Obligations of

the Lessee, such provision, prior to the aforementioned amendment, stated that, if the use of the leased property was partially impeded by an act of god or force majeure, the lessee shall have the right to request a partial reduction of the rent. A paragraph was added to such article, to address specifically, in the context of commercial leases, the possibility that the lessee requests to the lessor a partial reduction of the rent in such events; said Article now reads as follows:

"Article 2326.- If the use of the property is impeded in part, the lessee may request a partial reduction of the rent, in the opinion of experts, unless, the parties decide

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on the termination of the contract, if the impediment continues for the time set forth in the preceding article.

The lessee of real estate in which commercial activities are carried out and that result disturbed in the use of such as a consequence of the application of an emergency declaration by civil protection or by a declaration of a health emergency issued by a competent authority, which orders the suspension of commercial operations in the commercial activity applicable to it, may be entitled to a reduction in rent during the time that the emergency declaration and the prohibition of the opening of their businesses are in force in the territory in which the property is located in the terms agreed between the lessor and lessee or, in the absence of an agreement, as determined by the competent authority."

From the abovementioned addition, it is clear that the lessee may be entitled to a rent reduction during the time that the emergency declaration lasts, provided that the following scenarios occur:

- A. That it is a commercial lease;
- B. That a civil protection or a health emergency declaration is issued; and
- C. That such declaration results in the suspension of commercial operations.

It is important to mention that, the reduction of the rent shall have effects only

while the declaration and the prohibition of the opening of the relevant businesses is in effect.

In addition, the legislator expressly acknowledges the option for individuals to agree on the applicable terms in order to balance the situation, however, in the absence of an agreement, the competent authority shall define the applicable terms. It is convenient that this is expressly addressed and agreed upon in the relevant lease agreements, that is, that the process to be followed when a force majeure or act of god occurs is laid down to avoid the need of resorting to the Judiciary.

It is important to note that the concepts of act of god or force majeure are not legal terms defined in any Law, and even though from the legal doctrine it could be stated that generally accepted definitions state that acts of god implies acts produced by nature and force majeure implies acts produced by men or by an authority, regardless of the adopted legal doctrine, the addition of the concept of force majeure to the Civil Code, in its article 2005, confirms that the fundamental elements and legal effects of both concepts are the same

The current situation and the amendments mentioned above, make clear the importance of evaluating the specific case, and of taking the necessary and appropriate contractual measures facing the possibility of any unforeseen scenario in order to create a favorable balance for the parties.

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