

3070 FRUSTRATION OF PURPOSE

Frustration of purpose is a defense to enforcement of a contract. To excuse a party claiming this defense of their obligation under the contract, that party must prove:

1. Their principal purpose(s) in making the contract was (were) frustrated; (The purpose that is frustrated must have been a principle purpose of the party claiming the defense in making that contract. It is not enough that they had in mind some specific object without which they would not have made the contract. The object must be so completely the basis of the contract that as both parties understood, without it the transaction would have made little sense.)
2. The frustration of purpose was not their fault;
3. The purpose(s) was (were) frustrated by an event, the non-occurrence of which was a basic assumption under the contract. (The frustrating event must strike at the foundation of the contract where the basic assumption on which the contract was made was such that the party's performance was virtually worthless or meaningless due to the unexpected occurrence.)

COMMENT

This instruction was approved by the Committee in 1975, and the comment was revised in 2011. This revision was approved by the Committee in January 2020; it revised the elements of the doctrine of frustration, as well as added to the comment.

It is a “well-settled rule” in Wisconsin that death alone does not discharge contractual obligations. In re Estate of Sheppard, 2010 WI App 105, 328 Wis.2d 533, 789 N.W.2d 616; Volk v. Stowell, 98 Wis. 385, 390, 74 N.W.118 (1898). One of the many exceptions to this rule include personal service contracts. In re Estate of Sheppard, supra.

See also Restatement (Second) of Contracts § 265.

The doctrine of frustration of purpose, referred to generally as “frustration” or as “discharge by supervening frustration” by Restatement (Second) of Contracts § 265, is as follows:

Where, after a contract is made, a party’s principal purpose is substantially frustrated without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his remaining duties to render performance are discharged, unless the language or the circumstances indicate the contrary. Section 265.

In 1974, the Wisconsin Supreme Court adopted a tentative draft of Section 265 into the common law. Wm. Beaudoin & Sons, Inc. v. Milwaukee County, 63 Wis.2d 441, 217 N.W.2d 373 (1974).

Frustration of purpose requires that “(1) the party’s principal purposes in making the contract is frustrated; (2) without that party’s fault; (3) by the occurrence of an event, the non-occurrence of which was a basic assumption on which the contract was made.” Chicago, Milwaukee, St. Paul & Pac. R.R. Co. v. Chicago & N.W. Transp. Co., 82 Wis.2d 514, 523-24, 263 N.W.2d 189 (1978). This doctrine addresses situations in which “a change in circumstances makes one party’s performance virtually worthless to the other, frustrating his purpose in making the contract.” Restatement (Second) of Contracts § 265 cmt. a. If these elements are met, a party’s duties under an agreement are discharged. Ryan v. Estate of Sheppard, *supra*.

The doctrine of frustration is “given a narrow construction” and “applied sparingly.” Convenience Store Leasing and Management v. Annapurna Marketing, 388 Wis.2d 353, 933 N.W.2d 110, 2019 WI App 40, citing 17A Am. Jur. 2d Contracts § 641 (2016). This is so because it renders null the explicit terms of the contract and is counter to the strong impulse in the law to enforce contracts as written. Id. The party asserting the defense has the burden to prove frustration of purpose. Id. §§ 632, 640.

Principal Purpose: As the restatement explains: “[T]he purpose that is frustrated must have been a principal purpose of that party in making the contract. It is not enough that he [or she] had in mind some specific object without which he [or she] would not have made the contract. The object must be so completely the basis of the contract that, as both parties understand, without it the transaction would make little sense.” RESTATEMENT (SECOND) OF CONTRACTS § 265 cmt. a. For example, in Convenience Store Leasing and Management v. Annapurna Marketing, 388 Wis.2d 353, 933 N.W.2d 110, 2019 WI App 40, AP Marketing executed a fuel supply agreement (FSA) with Bulk Petroleum Corporation. Under this agreement, AP Marketing agreed to submit to certain branding requirements that might be imposed by the “branded” fuel supplier chosen by Bulk Petroleum. After the branded supplier was chosen, AP failed to comply with the agreement, citing the cost that it would incur if forced to meet the suppliers branding requirements of indoor restrooms. In deciding this matter, the second district court of appeals held that the principal purpose of the FSA was to supply fuel to AP’s gas station. The prospect of reduced profitability or financial losses incurred by AP in complying with the branding requirements did not constitute a substantial frustration of the FSA’s principal purpose. Id. at ¶22. As the court noted in its decision reversing the district court, “While the modification may have been more expensive than AP hoped, costs that are unwanted or higher than expected are not the same as ones that are unforeseeable, the non-occurrence of which underlie the making of the deal.” Id. at ¶23.

Excuse of performance: Frustration of purpose only excuses performance where the frustration is “so severe that it is not fairly to be regarded as within the risks ... assumed under the contract.”

Convenience Store Leasing and Management v. Annapurna Marketing, 388 Wis.2d 353, 363, 933 N.W.2d 110, 2019 WI App 40 citing RESTATEMENT (SECOND) OF CONTRACTS § 265 cmt. a. The frustrating event must strike at the foundation of the contract – a basic assumption on which the contract was made such that the party’s performance, due to this unexpected circumstance, would be “virtually worthless” and “meaningless.” Convenience Store Leasing and Management v. Annapurna Marketing, 388 Wis.2d 353, 933 N.W.2d 110, 2019 WI App 40 citing 17A Am. Jur. 2d Contracts § 641 (2016).