

NOTES

FORCE MAJEURE IN CHINA

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## I. INTRODUCTION

In the first months of 2020, COVID-19 (Coronavirus) spread rapidly across the globe: on January 11, China reported 41 confirmed cases;<sup>1</sup> by the end of the month, 21 countries reported 9976 cases;<sup>2</sup> and as of March 18, 157 countries and regions reported 212,616 cases;<sup>3</sup> In response to the rapid infection rate, the Chinese government issued a number of sweeping orders, requiring city quarantines and public transit closures,<sup>4</sup> extending the Lunar New Year holiday by three days,<sup>5</sup> and, in most cities, closing all non-essential companies.<sup>6</sup> In addition, many businesses voluntarily shut down.<sup>7</sup>

Due to these major disruptions, many businesses found refuge in the contract doctrine of *force majeure*. *Force majeure* (French for “a

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<sup>1</sup> World Health Organization, *Novel Coronavirus – China*, WORLD HEALTH ORGANIZATION (Jan. 12, 2020), <https://www.who.int/csr/don/12-january-2020-novel-coronavirus-china/en/>.

<sup>2</sup> Holshue et al., *First Case of 2019 Novel Coronavirus in the United States*, THE NEW ENGLAND JOURNAL OF MEDICINE 929, 929 (2020), <https://www.nejm.org/doi/pdf/10.1056/NEJMoa2001191?articleTools=true>.

<sup>3</sup> *Coronavirus COVID-19 Global Cases*, CENTER FOR SYSTEMS SCIENCE AND ENGINEERING AT JOHNS HOPKINS UNIVERSITY (visited Mar. 18, 2020), <https://gisanddata.maps.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6>.

<sup>4</sup> Aylin Woodward & Rosie Perper, *Wuhan, China, and at Least 15 Other Cities Have Been Quarantined as China Attempts to Halt the Spread of the Coronavirus. That’s About 50 Million People on Lockdown*, BUSINESS INSIDER (Jan. 28, 2020), <https://www.businessinsider.com/wuhan-coronavirus-officials-quarantine-entire-city-2020-1>.

<sup>5</sup> Shunsuke Tabet, *China’s Industrial Core at Standstill as Cities Extend Shutdown*, NIKKEI ASIAN REVIEW (Jan. 28, 2020), <https://asia.nikkei.com/Spotlight/Coronavirus/China-s-industrial-core-at-standstill-as-cities-extend-shutdown>.

<sup>6</sup> *Id.*

<sup>7</sup> *Coronavirus: Much of ‘The World’s Factory’ Still Shut*, BBC NEWS (Feb. 10, 2020), <https://www.bbc.com/news/business-51439400>.

superior force”<sup>8</sup> is “an event or effect that can be neither anticipated nor controlled” and “includes both acts of nature [...] and acts of people.”<sup>9</sup> Breaching parties to a contract raise this defense to be excused from performance or liability, in part or in whole.<sup>10</sup> In the case of COVID-19, many Chinese businesses petitioned the national and local government to issue *force majeure* certificates.<sup>11</sup> These certificates prove that specific, objective *force majeure* events such as delays in factory reopening, transit restrictions, and production closures occurred; it does not, however, automatically terminate or modify existing contracts.<sup>12</sup> If one of the business’s contractual counterparties later argues the business delayed performance and breached the contract, the *force majeure* certification would be proof that the underlying events occurred, but it would be up to the business to show that these *force majeure* events caused their delay or breach, at least in part.<sup>13</sup> As of March 11, 2020, the China Council for the Promotion of International Trade had issued 5637 *force majeure* certificates to 103 companies.<sup>14</sup> Together, these certificates involve contracts worth 503.5 billion Yuan (approximately \$71.44 billion USD).<sup>15</sup> By issuing these certificates,

<sup>8</sup> *Force Majeure* Definition, *Black’s Law Dictionary* (11th ed. 2019), available at Westlaw.

<sup>9</sup> *Id.* There are common law *force majeure* doctrines and many civil law countries have statutory definitions of *force majeure*, though parties often negotiate detailed *force majeure* clauses. 14 Joseph M Perillo & Helen Hadjiyannakis Bender, *Corbin on Contracts* § 74.19; Marel Katsivela, *Contracts: Force Majeure Concept or Force Majeure Clauses?*, 12 UNIF. L. REV. 101 (2007). For more information about *force majeure* and whether COVID-19 qualifies, see Lius Perez, *Tackling Uncertainty in Pandemic-Related Int’l Disputes*, LAW360 (Mar. 27, 2020).

<sup>10</sup> 30 *Williston on Contracts* § 77:31 (4th ed. 2019).

<sup>11</sup> Zhongguo Ribao Wang (中国日报网) [China Daily], Zhongguo Maocu Hui: Yi Kaiju Bukekangli Shishixing Zhengming 5637 Jian Yue Liu Cheng Hetong Youwang Baoliu (中国贸促会: 已开具不可抗力事实性证明 5637 件六成合同有望保留) [China Council for the Promotion of International Trade: We Have Already Written Up 5637 Force Majeure Certificates and Are Hopeful 60% of Contracts Will Be Retained], Baidu (百度) [BAIDU] (Mar. 12, 2020), <https://baijiahao.baidu.com/s?id=1660913032678713071&wfr=spider&for=pc>.

<sup>12</sup> See *infra* Section II.B. “Current *Force Majeure* Laws in China’s Contract Law.”

<sup>13</sup> Hetong Fa (合同法) [Contract Law] (promulgated by the Standing Comm. Nat’l People’s Cong., Mar. 15, 1999, effective Oct. 1, 1999) art. 118 (China), [http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content\\_4732.htm](http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content_4732.htm). This will be discussed in greater detail in Section II.B. “Current *Force Majeure* Laws in China’s Contract Law.”

<sup>14</sup> See China Daily, *supra* note 11.

<sup>15</sup> *Id.*

COVID-19 joins other traditional categories of *force majeure*, such as natural disasters,<sup>16</sup> wars,<sup>17</sup> and strikes.<sup>18</sup>

Given the attention COVID-19 has brought to *force majeure* clauses, this Note aims to provide a glimpse into the Chinese domestic *force majeure* law. This Note provides a case study of 73 Chinese court cases involving *force majeure* claims and analyzes the underlying claims, success rates, and common reasons for and against finding *force majeure*.<sup>19</sup> In recent years, in an effort to be more transparent, Chinese courts have uploaded tens of millions of judicial opinions online.<sup>20</sup> This Note draws on a subset of these cases, all roughly 41 million cases made public between 2014 and mid-2018.<sup>21</sup> These 73 cases consist of 30

<sup>16</sup> 22 *Williston on Contracts* § 59:29 (4th ed. 2019); for Chinese law, see Li Xinming, Liao Hehua yu Sanming Zhongxiang Fangdichan Kaifa Youxian Gongsì Fangwu Maimai Hetong Jiufen Yishen Minshi Panjueshu (李新明、廖荷花与三明众祥房地产开发有限公司房屋买卖合同纠纷一审民事判决书) [*Li Xinming et al. v. Zhongxiang Real Estate Development Co.*], Min 0402 Minchu 2787 Hao (闽 0402 民初 2787 号) [MIN 0402 MINCHU NO. 2787] (Meilie Dist. People's Ct. 2016).

<sup>17</sup> 30 *Williston on Contracts* § 77:35 (4th ed. 2019); for Chinese law, see Li Xinming, *supra* note 16.

<sup>18</sup> 30 *Williston on Contracts* § 77:32 (4th ed. 2019); for Chinese law, see Li Xinming, *supra* note 16.

<sup>19</sup> This Note does not discuss any cases adjudicated outside of China, whether or not the case involves China or Chinese parties. In addition, it does not analyze any cases in Chinese courts with one or more non-Chinese parties. Therefore, any issues unique to foreign (non-Chinese) parties, such as domestic favoritism and foreign language contracts, are beyond the scope of this note. This note also does not discuss any settlement issues, arbitration issues, or other alternative dispute resolution issues.

<sup>20</sup> See *infra* note 21 and accompanying text.

<sup>21</sup> A research team at Columbia Law School downloaded the dataset. The cases in this note were located by searching for specific legal provisions in the database. I then read a random selection of these cases. Each case is available on the Chinese court system's own website, China Judgements Online (<http://wenshu.court.gov.cn/>). To find a case cited in this note, search the Chinese case number on China Judgements Online. For example, to find the case cited as: Shangsuren Shenzhenshi Xianghe Jixie Shebei Zulin Youxian Gongsì, Guangzhoushi Suilong Diaochuan Fuwu Youxian Gongsì yu Beishangsuren Shenzhenshi Yuesheng Jianzhu Gongcheng Youxian Gongsì Chanpin Zhiliang Sunhai Peichang Jiufen Yi An Minshi Panjueshu (上诉人深圳市祥和机械设备租赁有限公司、广州市穗龙吊船服务有限公司与被上诉人深圳市悦盛建筑工程有限公司产品质量损害赔偿纠纷一案民事判决书) [*Xianghe Machinery Leasing Co. v. Yuesheng Construction Engineering Co.*], Shen Zhongfa Min Yizhong Zi Di 1632 Hao (深中法民一终字第 1248 号) [SHEN ZHONGFA MIN YIZHONG ZI NO. 1632] (Shenzhen Intermediate People's Ct. 2011), simply search the case number in Chinese with the year in front in parenthesis (“(2011)深中法民一终字第 1248 号”) on China Judgements Online. For

randomly selected<sup>22</sup> cases that cite Chinese Contract Law Article 94(1)(1)<sup>23</sup> and 43 randomly selected<sup>24</sup> cases that cite Chinese Contract Law Article 117,<sup>25</sup> two articles that involve *force majeure* liability.<sup>26</sup>

The Note proceeds as follows. Section II provides a background of the history of *force majeure* in China and its codification in modern Chinese Contract Law. Section III provides summary statistics of the 73 judicial opinions analyzed, including year adjudicated, venue, type of *force majeure* event, success rate, party identity, type of underlying contract, appeal outcome, presence of *force majeure* and/or liquidated damages clauses, and common reasons courts find *force majeure* inapplicable. Section IV synthesizes the analysis from Section III and applies it to the current COVID-19 crisis. Section V concludes by discussing the overall findings of the case analysis and its implications generally. Lastly, all cases analyzed in this note can be found in the appendix, along with how each case fits into the summary statistics in Section III.

## II. PAST AND PRESENT LAW OF *FORCE MAJEURE* IN CHINA

### A. HISTORY OF *FORCE MAJEURE* IN CHINA

Historically, the Chinese legal system gave little attention to *force majeure* due to several factors.<sup>27</sup> First, private commercial

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convenience, the second column of the appendix provides the full Chinese case number for each case analyzed in this note.

<sup>22</sup> See *supra* note 21.

<sup>23</sup> Contract Law, *supra* note 13, art. 94(1)(1). For more information on Chinese Contract Law Article 94(1)(1), see *infra* Section II.B. “Current *Force Majeure* Laws in China’s Contract Law.”

<sup>24</sup> See *supra* note 21.

<sup>25</sup> Contract Law, *supra* note 13, art. 117. For more information on Chinese Contract Law Article 117, see *infra* Section II.B. “Current *Force Majeure* Laws in China’s Contract Law.”

<sup>26</sup> The author also searched for and analyzed 50 randomly selected cases that cite article 118. However, since article 118 only involves notice and providing proof of *force majeure*, these cases rarely turned on whether the particular event qualified as a *force majeure* event. Therefore, the author decided not to include these cases in the data analysis.

<sup>27</sup> In addition to the two factors discussed, some scholars also argue that Chinese society traditionally did not give much emphasis to the rule of law; law was dismissed as an “imperfect and even harmful effort by mortal beings to govern society.” Lester Ross, *Force Majeure and Related Doctrines of Excuse in Contract Law of the People’s Republic of China*, 5 J. CHINESE L. 58, 63 (1991).

practices, an indirect source of statutory law in the West, did not achieve “comparable levels of development” in China.<sup>28</sup> Second, the Communist Party of China rejected “several decades of market-oriented development” during the very end of the Qing dynasty and the Republic of China (1911-1949).<sup>29</sup>

It was not until the death of Mao Zedong in 1976 and the end of the Cultural Revolution that the doctrine of *force majeure* began to develop in China.<sup>30</sup> The new leader, Deng Xiaoping, led a movement to shift the country from a centralized economy towards a more market-oriented economy.<sup>31</sup> As part of this effort, China revamped its contract laws to encourage more foreign trade and investment; in particular, the National People’s Congress enacted the Economic Contract Law of the People’s Republic of China in 1981,<sup>32</sup> the Foreign-related Economic Contract Law of the People’s Republic of China in 1985,<sup>33</sup> and the Technology Contract Law of the People’s Republic of China in 1987.<sup>34</sup> Each of these laws explicitly mentioned *force majeure*,<sup>35</sup> and, in contrast to its modern counterpart, the articles about contract rescission

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<sup>28</sup> Lester Ross, *supra* note 27, at 64. Starting with the Ming dynasty (1368–1644) and culminating with the Qing dynasty (1644–1911), China turned decisively inward and rejected trade with the West, believing it had nothing to gain from trade. *Id.*

<sup>29</sup> *Id.* The Communist Party embraced a Stalinist view of economic development, focusing on a state-planned economy and repression of any private economy. Though the brief Hundred Flowers Period (1957) saw some development of criminal and civil law, it ended with the Anti-Rightist Campaign (1957–1958). *Id.* at 65.

<sup>30</sup> *Id.* at 65–66.

<sup>31</sup> *Id.* at 59 (citing H. HARDING, CHINA’S SECOND REVOLUTION, REFORM AFTER MAO (1987); *The People’s Republic of China After 40 Years (Special Issue)*, 119 CHINA Q. 419 (1989)).

<sup>32</sup> Jingji Hetong Fa (经济合同法) [Economic Contract Law] (promulgated by the Standing Comm. Nat’l People’s Cong., Dec. 13, 1981, effective July 1, 1982) preamble (China), [http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content\\_4408.htm](http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content_4408.htm).

<sup>33</sup> Shewai Jingji Hetong Fa (涉外经济合同法) [Foreign Economic Contract Law] (promulgated by the Standing Comm. Nat’l People’s Cong., Mar. 21, 1985, effective July 1 1985) preamble (China), [http://www.npc.gov.cn/wxzl/gongbao/2000-12/06/content\\_5004455.htm](http://www.npc.gov.cn/wxzl/gongbao/2000-12/06/content_5004455.htm).

<sup>34</sup> Jishu Hetong Fa (技术合同法) [Technology Contract Law] (promulgated by the Standing Comm. Nat’l People’s Cong., June 23, 1987, effective Nov. 1, 1987) preamble (China), [http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content\\_4484.htm](http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content_4484.htm).

<sup>35</sup> Economic Contract Law, *supra* note 32, arts. 27, 32–34; Foreign-related Economic Contract Law, *supra* note 33, arts. 24–25, 29.

in the domestic laws focused heavily on government actions as a basis for rescission.<sup>36</sup>

On March 15, 1999, at the second session of the ninth National People's Congress, the Congress adopted the Contract Law of the People's Republic of China.<sup>37</sup> The law took effect on October 1, 1999, and, simultaneously, repealed the three previously-mentioned laws that co-governed contract law: the Economic Contract Law of the People's Republic of China, the Foreign-related Economic Contract Law of the People's Republic of China, and the Technology Contract Law of the People's Republic of China.<sup>38</sup> Thus, the *force majeure* articles in each of the three prior laws were repealed and replaced by *force majeure* articles in a single law.

#### B. CURRENT *FORCE MAJEURE* LAWS IN CHINA'S CONTRACT LAW

Contract Law of the People's Republic of China explicitly mentions *force majeure* in three instances.<sup>39</sup> The first mention is in

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<sup>36</sup> Economic Contract Law, *supra* note 32, art. 27(2) (conclusion or amending of state plan as basis for rescission); Ross, *supra* note 27, 75–76 (arguing article 27(3) of Economic Contract Law, which lists stopping or changing production as a basis for rescission, is intended to cover state-ordered closure); Economic Contract Law, *supra* note 32, art. 33 (inability to perform due to higher-level authorities); *cf.* Foreign-related Economic Contract Law, *supra* note 33, arts. 24–25, 29 (no explicit reference to government actions). For further discussion of the *force majeure* articles of these prior laws, see Ross, *supra* note 27, at 71–83.

<sup>37</sup> Contract Law, *supra* note 13, preamble.

<sup>38</sup> *Id.* art. 428.

<sup>39</sup> Outside of Contract Law, *force majeure* is also explicitly referenced in article 153 of the General Principles of the Civil Law. Minfa Tongze (民法通则) [General Principles of the Civil Law] (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 12, 1986, effective Jan. 1, 1987, revised Aug. 27, 2009) art. 153 (China). [http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content\\_4470.htm](http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content_4470.htm). Besides Contract Law, this note does not discuss *force majeure* in other areas of substantive law in China. For a discussion of *force majeure* in other substantive law, see Wei Hongchun (魏宏春), Qiantan “Qinquan Zeren Fa” Zhong de Bukekangli (浅谈《侵权责任法》中的不可抗力) [A Brief Talk About Force Majeure in Tort Law], 311 Fazhi yu Jingji (法制与经济) [LEGAL & ECON.] 20 (2012), (discussing *force majeure* in Chinese Tort Law); Cao Xianfeng & Kong Fanxue (曹险峰 & 孔凡学), Lun Bukekangli Zai Huanjing Wuran Zeren Zhong de Faguifan Shiyong – Jianping “Qinquan Zeren Fa” Di 29 Tiao (论不可抗力在环境污染责任中的法规范适用—兼评《侵权责任法》第 29 条) [Regarding the Legal Use of Force Majeure with Environmental Pollution Liability – Comments with Tort Law Article 29], 5 Dangdai Faxue (当代法学)

article 94, which falls under chapter 6, entitled “Termination of Rights and Obligations.”<sup>40</sup> Article 94 lists circumstances under which a contract may be rescinded.<sup>41</sup> The first states: “[t]he parties to a contract may rescind the contract [if] ... the purpose of the contract is impossible to realize because of *force majeure*.”<sup>42</sup> Both the *force majeure* event and the impossibility to achieve the purpose of the contract are important elements.<sup>43</sup> The purpose of this article is to enumerate the several circumstances when a party can rescind a contract, terminating their obligation to perform.<sup>44</sup> However, it does not define *force majeure* or provide guidance on notice, damages, or burdens of proof.

The second explicit mention of *force majeure* in Chinese Contract Law is in article 117, which falls under chapter 7, “Responsibility for Breaching a Contract.”<sup>45</sup> Article 117 states:

A party who was unable to perform a contract due to *force majeure* is exempted from liability in part or in whole in light of the impact of the event of *force majeure*, except otherwise provided by law. Where an

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[CONTEMPORARY L. REV.] 101 (2013), (discussing the use of *force majeure* in environmental pollution cases).

<sup>40</sup> The Chinese chapter name is 权利义务终止.

<sup>41</sup> The Chinese term *jiechu* (解除) has been translated as cancellation, termination, and rescission. For the purpose of this note, 解除 will be translated as rescission.

<sup>42</sup> Contract Law, *supra* note 13, art. 94(1)(1) (“有下列情形之一的，当事人可以解除合同：（一）因不可抗力致使不能实现合同目的”). In this note, this article is cited as 94(1)(1), not 94(1). This is because the cases cite “Contract Law Article 94 Paragraph 1 Section 1” (“《中华人民共和国合同法》第九十四条第一款第一项”).

<sup>43</sup> See Xu Linfa, Qiu Rongquan deng yu Anji Xian Lingtong Zhiye Youxian Gongsi Zulin Hetong Jiufen Yishen Minshi Panjueshu (徐林法、邱荣泉等与安吉县灵通纸业股份有限公司租赁合同纠纷一审民事判决书) [*Xu Linfa v. Lingtong Paper Co.*], Hu De Shangchu Zi Di 223 Hao (湖德商初字第 223 号) [HU DE SHANGCHU ZI NO. 223] (Deqing Cty. People’s Ct. 2012) (though the government’s change in regulation and forced removal of machinery from a leased factory constituted *force majeure*, because the plaintiff could still use the leased factory building, it was not impossible to achieve the purpose of the contract).

<sup>44</sup> Article 91 enumerates circumstances where a party’s contractual rights and obligations terminate. Contract Law, *supra* note 13, art. 91. Article 91(2) lists “rescission of a contract.” *Id.* art. 91(2) (“第九十一条 有下列情形之一的，合同的权利义务终止：...（二）合同解除”). Therefore, if a contract is rescinded due to *force majeure* events via article 94(1)(1), then the contractual rights and obligations of the parties terminate.

<sup>45</sup> The Chinese chapter name is 违约责任.



event of *force majeure* occurred after the party's delay in performance, it is not exempted from liability.

For purposes of this Law, *force majeure* means any objective circumstance which is unforeseeable, unavoidable and insurmountable.<sup>46</sup>

Article 117 serves two important functions: it defines *force majeure* and specifies the scope of obligations that may be avoided. Article 117 defines *force majeure* across Chinese Contract Law as any “objective circumstance which is unforeseeable, unavoidable and insurmountable.”<sup>47</sup> The courts interpret this definition as including three elements: unforeseeable, unavoidable, and insurmountable.<sup>48</sup> However, in practice they focus heavily on unforeseeable.<sup>49</sup> Chinese academics discuss three types of *force majeure*: “objective” (客观), “subjective” (主观), and “compromise” (折中).<sup>50</sup> In this context, objective *force majeure* is defined as an event that has no relation to the party's subjective factors, occurs outside of the parties, and does not normally

<sup>46</sup> Contract Law, *supra* note 13, art. 117.

<sup>47</sup> *Id.* (“本法所称不可抗力，是指不能预见、不能避免并不能克服的客观情况”). Here, 不能预见 is defined as “unforeseeable,” 不能避免 is defined as “unavoidable,” and 不能克服 is defined as “insurmountable.”

<sup>48</sup> See, e.g., Yichang Donghai Nengyuan Kaifa Youxian Gongsi, Tao Jijun Gongyong Reli Hetong Jiufen Ershen Minshi Panjueshu (宜昌东海能源开发有限公司、陶纪军供用热力合同纠纷二审民事判决书) [*Yichang Donghai Energy Development Co., Ltd. v. Tao Jijun*], E 05 Minzhong 712 Hao (鄂 05 民终 712 号) [E 05 MINZHONG NO. 712] (Yichang Intermediate People's Ct. 2017) (“因此不可抗力应当符合“不能预见、不能避免、不能克服”三大要件”[“[T]herefore, *force majeure* must conform to the three major elements: unforeseeable, unavoidable, and insurmountable.”]).

<sup>49</sup> See *infra* Section III.D. “Common Reasons to Find an Event Not *Force Majeure* or the Party Still Liable.”

<sup>50</sup> Wang Yi (王轶), Xinguan Feiyan Yiqing, Bukekangli yu Qingshi Biangeng (新冠肺炎疫情、不可抗力与情势变更) [*COVID-19, Force Majeure, and Change of Circumstance*], 3 Faxue (法学) [L. SCI.] 36, 37–38 (2020) (discusses the similarities and differences between each of the three types of *force majeure*); Lu Qian & Fan Guohua (鲁茜&范国华), Zhengfu Xingwei Yinfa de Shangpinfang Yuqi Jiaofu Falü Wenti Fenxi (政府行为引发的商品房逾期交付法律问题分析) [*Analysis of Legal Issues from Delayed Delivery of Commercial Housing Caused by Government Actions*], Zhengfu yu Fazhi (政府与法治) [GOV. & RULE OF L.] 50, 51–52 (2018).

occur;<sup>51</sup> subjective *force majeure* is defined as an event that is unavoidable despite the party's subjective utmost attention;<sup>52</sup> and compromise *force majeure* not only considers the party's subjective factors (whether the parties have paid the appropriate attention), but also emphasizes objective aspects (whether it is an abnormal event that occurred outside of the parties).<sup>53</sup> Commentators agree that Chinese courts follow the compromise view of *force majeure*—in essence, a blend of the subjective and objective views of *force majeure*.<sup>54</sup> As for scope of obligations, courts excuse all or a portion of a party's obligation based on the impact of the *force majeure* event.<sup>55</sup> However, when the *force majeure* event in question occurs after the party delayed performance, the party may not use *force majeure* to excuse its obligations under the contract.<sup>56</sup>

Article 118 is the only other article in Chinese Contract Law that explicitly references *force majeure*. Article 118 states:

If a party is unable to perform a contract due to *force majeure*, it shall timely notify the other party so as to mitigate the loss that may be caused to the other party, and shall provide proof of *force majeure* within a reasonable time.<sup>57</sup>

Article 118 focuses on the responsibility of the party claiming *force majeure* to notify the other party of the *force majeure* event and to

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<sup>51</sup> Wang Yi, *supra* note 50, at 38 (“不可抗力是与当事人主观因素无关、发生在当事人外部的、非通常发生的事件”).

<sup>52</sup> *Id.* at 37–38 (“不可抗力是指当事人主观上虽尽最大注意仍不能防止其发生的事件”).

<sup>53</sup> *Id.* at 38 (“不可抗力既要考虑当事人的主观因素，即当事人是否尽到了应有的注意；又要强调客观方面，即是否属于当事人以外的原因发生的异常事故”).

<sup>54</sup> *Id.* at 38; Lu Qian & Fan Guohua, *supra* note 50, at 51.

<sup>55</sup> Contract Law, *supra* note 13, art. 117 (“因不可抗力不能履行合同的，根据不可抗力的影响，部分或者全部免除责任”). This is also subject to other laws. *Id.* (“但法律另有规定的除外”).

<sup>56</sup> *Id.* (“当事人迟延履行后发生不可抗力的，不能免除责任”).

<sup>57</sup> *Id.* art. 118.

provide proof<sup>58</sup> of *force majeure* within a reasonable time.<sup>59</sup> To mount a successful *force majeure* defense, the party claiming *force majeure* must prove each of the three elements (unforeseeable, unavoidable, and insurmountable); a failure to prove one element is fatal.<sup>60</sup>

In addition to the statutory language of China's Contract Law, the Supreme People's Court of China has issued two important judicial interpretations<sup>61</sup> related to Contract Law.<sup>62</sup> Under article 26 of the second judicial interpretation of Contract Law, if major changes from business risks that were unforeseeable (but not *force majeure*) cause performance to be clearly unfair or frustrate the purpose of the contract,

<sup>58</sup> Proof is sometimes in the form of a *force majeure* certification issued by the Chinese government. Companies that apply for them and are granted certificates if the underlying event qualifies as *force majeure*. For example, as of March 3, 2020, the Chinese government has issued 4811 *force majeure* certificates to companies due to the outbreak of the coronavirus. See *China Council for the Promotion of International*, *supra* note 12. Importantly, *force majeure* certificates are not the only type of proof allowed. In contrast, in the prior contract law, *force majeure* certificates were technically required to raise a *force majeure* defense, but in practice not absolutely required. Economic Contract Law, *supra* note 32, art. 34; Ross, *supra* note 27, at 78–9.

<sup>59</sup> Contract Law, *supra* note 13, art. 118.

<sup>60</sup> *Id.* art. 117.

<sup>61</sup> Under Chinese law, the Supreme People's Court of China may issue judicial interpretations, which are interpretations of questions involving the specific application of law and decrees, independent of any specific case. Guanyu Jiaqiang Falü Jieshi Gongzuo de Jueyi (关于加强法律解释工作的决议) [Resolution Providing an Improved Interpretation of the Law], art. 2 (promulgated by Standing Committee of the National People's Congress, June 10, 1981, effective June 10, 1981), <http://www.lawinfochina.com/display.aspx?lib=law&id=28&CGid=>; Lifa Fa (立法法) [Legislative Law] (promulgated by Standing Comm. Nat'l People's Cong., Mar. 15, 2000, effective Mar. 15, 2015) art. 104 (China), [http://www.npc.gov.cn/zgrdw/npc/dbdhhy/12\\_3/2015-03/18/content\\_1930713.htm](http://www.npc.gov.cn/zgrdw/npc/dbdhhy/12_3/2015-03/18/content_1930713.htm); Susan Finder, *The Supreme People's Court and Interpreting the law, revisited*, SUPREME PEOPLE'S COURT MONITOR (July 10, 2015), <https://supremepoplescourtmonitor.com/2015/07/10/the-supreme-peoples-court-and-interpreting-the-law-revisited-part-one/>.

<sup>62</sup> Guanyu Shiyong “Zhonghua Renmin Gongheguo Hetongfa” Ruogan Wenti de Jieshi (1) (关于适用《中华人民共和国合同法》若干问题的解释(一)) [Interpretation Regarding Questions about Using Contract Law (1)] (promulgated by the Supreme People's Ct. Dec. 1, 1999, effective Dec. 29, 1999), <http://www.mofcom.gov.cn/article/b/bf/200207/20020700031352.shtml>; Guanyu Shiyong “Zhonghua Renmin Gongheguo Hetongfa” Ruogan Wenti de Jieshi (2) (关于适用《中华人民共和国合同法》若干问题的解释(二)) [Interpretation Regarding Questions about Using Contract Law (2)] (promulgated by the Supreme People's Ct. Apr. 24, 2009, effective May 13, 2009).

the courts should decide the issue of rescission using principles of fairness combined with the specific situation.<sup>63</sup>

Chinese courts also recognize a change of circumstances defense, apart from *force majeure*.<sup>64</sup> Though many scholars argue change of circumstance and *force majeure* are two completely different doctrines, the difference is not always so clear in application.<sup>65</sup> However, one important, clear difference is the remedy: the remedy for *force majeure* is partial or total excuse of performance and/or rescission, whereas the remedy for change of circumstance is modification.<sup>66</sup> Because of this distinction, some scholars have argued that courts decide between *force majeure* and change of circumstance by working backwards; first, they determine the warranted remedy, and then they choose the corresponding defense.<sup>67</sup>

### III. THE DATA

#### A. YEAR, VENUE, AND JURISDICTION

This Note predominantly analyzes cases between 2011 and 2018, with one case from 2008. The vast majority (85%) were adjudicated between 2014 and 2017, 15 years after the passage of Chinese Contract Law. Table 1 below shows the number of cases I read from each year.

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<sup>63</sup> Interpretation Regarding Questions about Using Contract Law (2), *supra* note 62, art. 26.

<sup>64</sup> *Id.* Given the extensive Chinese language scholarship involving comparisons of the change of circumstance and *force majeure* defenses, this note does not engage in such an analysis. Instead, the discussion of change of circumstance simply serves to provide more background about the Chinese legal system and related defenses in Chinese Contract Law.

<sup>65</sup> See Han Shiyuan (韩世远), Bukekangli, Qingshi Biangeng yu Hetong Jiechu (不可抗力、情事变更与合同解除) [*Force Majeure, Change of Circumstances and Contract Rescission*], 11 Faxue Luntan (法学论坛) [LEGAL FORUM] 61, 62; Wan Fang (万方), Woguo Qingshi Biangeng Zhidu Yaojian ji Dingwei Moshi zhi Fansi (我国情势变更制度要件及定位模式之反思) [*Reflections on the Requirements and Orientation of China's Change of Circumstance*], 212 Faxue Pinglun (法学评论) [L. REV.] 57, 57–58 (2018); Ye Lin (叶林), Lun Bukekangli Zhidu (论不可抗力制度) [*Discussing the Force Majeure System*], 1(5) Beifang Faxue (北方法学) [NORTHERN LEGAL SCI.] 36, 40 (2007).

<sup>66</sup> Contract Law, *supra* note 13, art. 94; Interpretation Regarding Questions about Using Contract Law (2), *supra* note 62, art. 26.

<sup>67</sup> See Han Shiyuan, *supra* note 65, at 62.

Year	Number of Cases	Percent of Cases
2008	1	1.37%
2011	1	1.37%
2012	3	4.11%
2013	4	5.48%
2014	8	10.96%
2015	18	24.66%
2016	17	23.29%
2017	19	26.03%
2018	2	2.74%

Table 1: The year each case was adjudicated and the percent of cases adjudicated in that year in the sample.

In China, the first administrative division lower than national is the provincial level, which consists of provinces, autonomous regions, and direct-administered municipalities.<sup>68</sup> Mainland China has 22 provinces,<sup>69</sup> five autonomous regions,<sup>70</sup> and four direct-administered municipalities.<sup>71</sup> Each province, autonomous region, and direct-administered municipality has three levels of Local People's Courts: Higher People's Courts, Intermediate People's Courts, and Basic People's Courts.<sup>72</sup> In addition, there are several specialty courts, including 11 Maritime Courts, and 75 Railway Transport Courts.<sup>73</sup> At

<sup>68</sup> Susan V. Lawrence & Michael F. Martin, *Understanding China's Political System*, CONGRESSIONAL RESEARCH SERVICE, at 9 (2013), <https://fas.org/sgp/crs/row/R41007.pdf>.

<sup>69</sup> The People's Republic of China's official province count of 23 includes the 22 mainland provinces and Taiwan. However, though the PRC claims sovereignty over Taiwan, it does not control the island. *Id.*

<sup>70</sup> Autonomous regions are province-sized regions that have a large population of minority groups. They are Guangxi, Inner Mongolia, Tibet, Xinjiang, and Ningxia. *Id.*

<sup>71</sup> Direct-administered municipalities are cities that are governed directly by the national government rather than through a provincial government. They are Beijing, Shanghai, Chongqing, and Tianjin. *Id.*

<sup>72</sup> Chenyang Zhang, *Magnificent Four-level Pyramid – China's Court System*, CHINA JUSTICE OBSERVER (May 18, 2019), <https://www.chinajusticeobserver.com/a/magnificent-four-level-pyramid-chinas-court-system>

<sup>73</sup> *Id.* In addition to maritime and railway courts, China also has three Intellectual Property Courts, three Internet Courts, and one Financial Court. *Id.*

the very top, the Supreme People's Court of China serves as the court of last resort.<sup>74</sup>

Province/Autonomous Region/Direct-Administered Municipality	Intermediate People's Court	Basic People's Court	Total
Guangdong	9	3	13 <sup>75</sup>
Zhejiang	1	3	4
Guangxi	1	2	3
Gansu	0	4	4
Shandong	4	2	6
Shaanxi	0	2	2
Fujian	1	3	4
Hunan	0	3	3
Jiangsu	1	3	4
Sichuan	1	2	3
Henan	2	0	2
Liaoning	1	0	1
Anhui	3	2	5
Shanxi	1	2	3
Hebei	1	1	2
Chongqing	1	2	3
Guizhou	4	0	4
Jiangxi	1	0	1
Hubei	2	1	3
Jilin	0	1	1
Beijing	0	1	1
Total	34	37	73 <sup>76</sup>

<sup>74</sup> *Id.*

<sup>75</sup> The total number of cases for Guangdong includes one case in the Guangzhou Maritime Court. Yuangao Zhanjiang Shi Guantong Wuliu Youxian Gongsi yu Beigao Zhongguo Waiyun Guangdong Zhanjiang Chuyun Gongsi Matou Zulin Hetong Jiufen Yishen Minshi Panjueshu (原告湛江市冠通物流有限公司与被告中国外运广东湛江储运公司码头租赁合同纠纷一审民事判决书) [*Guantong Logistics Co. v. China Sinotrans Storage and Transportation Co.*], Guang Hai Fa Chu Zi Di 288 Hao (广海法初字第288号) [GUANG HAI FA CHU NO. 288] (Guangzhou Maritime Court 2012).

<sup>76</sup> The total number of cases includes one case in the Supreme People's Court, as well as one case in the Guangzhou Maritime Court mentioned *supra* note 75. Beijing Jiangong Yijian Gongcheng Jianshe Youxian Gongsi yu Tianjin Jinfa Xin Cailiao

Table 2: Jurisdiction and venue of each case. Percentage represents the portion of the given court level or province in that court or province.

Unsurprisingly, the majority of cases (50.68%) were in the main court of first impression, the Basic People's Court.<sup>77</sup> As the main court of first impression, the Basic People's Court hears an overwhelming number of cases.<sup>78</sup> In contrast, the Intermediate People's Court is overrepresented in the data; the data include 34 intermediate level cases (46.57%), but only 10.2% of civil cases on China's online case repository (China Judgments Online) were adjudicated at the intermediate level.<sup>79</sup> In addition, the data include one case from the Guangzhou Maritime Court (which does not have the same hierarchical court system) and one case from the Supreme People's Court.<sup>80</sup>

As for jurisdiction, 21 of the 31 provinces, autonomous regions, and direct-administered municipalities are represented, as well as the Supreme People's Court. The most heavily represented jurisdiction is Guangdong province, which is the most populous province in China and

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Youxian Gongsijianshe Gongcheng Shigong Hetong Jiufen Shenqing Zaishen Minshi Caidingshu (北京建工一建工程建设有限公司与天津金发新材料有限公司建设工程施工合同纠纷申请再审民事裁定书) [*Beijing Construction Engineering Co. v. Jinfa New Material Co.*], Minshen Zi Di 1632 Hao (民申字第 1632 号) [MINSHEN ZI NO. 1632] (Supreme People's Ct. of China 2013).

<sup>77</sup> Under the Chinese court system, the Intermediate- and Higher-level courts can also be the court of first impression. Yifan Wang et al., *A Brief Introduction to the Chinese Judicial System and Court Hierarchy*, ASIAN LAW CENTRE (2017), [http://law.unimelb.edu.au/\\_\\_data/assets/pdf\\_file/0004/2380684/ALC-Briefing-Paper-6-Wang,-Biddulph,-Godwin\\_5.pdf](http://law.unimelb.edu.au/__data/assets/pdf_file/0004/2380684/ALC-Briefing-Paper-6-Wang,-Biddulph,-Godwin_5.pdf). In other words, they serve as the court of first impression for some types of cases and as a court of appeal for others. *Id.* All of the cases at the Intermediate level included in the appendix of this note were appeals; none of them involved the Intermediate level court acting as the court of first impression.

<sup>78</sup> China's own online case repository includes 57,192,102 civil cases. 50,547,251 were adjudicated at the Basic People's Court. Zhongguo Caipan Wenshu Wang (中国裁判文书网) [China Judgements Online], <http://wenshu.court.gov.cn/website/wenshu/181217BMTKHNT2W0/index.html?pageId=a9aa59f983b420d9c92497d7e0f6fc8b&s21=%E4%B8%8D%E5%8F%AF%E6%8A%97%E5%8A%9B>.

<sup>79</sup> *Id.* 6,018,526 of the 57,192,102 civil cases were adjudicated at the Intermediate level.

<sup>80</sup> See *Guantong Logistics Co. v. China Sinotrans Storage and Transportation Co.*, *supra* note 75; see also *Beijing Construction Engineering Co. v. Jinfa New Material Co.*, *supra* note 76.

the province with the largest economy.<sup>81</sup> No other provincial-level region is similarly represented in the sample.

## B. PARTY IDENTITY

This subsection discusses the legal identity of the parties involved in each of the cases and looks to whether there is a correlation between party identity and the success rate of the *force majeure* defense. Table 3 shows the number and success rate of cases, categorized by both the plaintiff's and defendant's legal identity (either individual, company, or government). Here, "government" includes city governments<sup>82</sup> as well as government committees.<sup>83</sup>

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<sup>81</sup> As of 2018, Guangdong has a population of 113.46 million and a GDP of 9.73 trillion Chinese yuan (1.47 trillion US Dollars). *National Data*, NATIONAL BUREAU OF STATISTICS OF CHINA, <http://data.stats.gov.cn/english/easyquery.htm?cn=E0103>. If Guangdong was its own country, it would rank 13<sup>th</sup> in the world by GDP, in between South Korea and Australia. *GDP by Country*, WORLDOMETER, <https://www.worldometers.info/gdp/gdp-by-country/>.

<sup>82</sup> See, e.g., Shen Yan yu Jiumiao Zhen Zhengfu Jiufen An Ershen Minshi Panjueshu (沈岩与旧庙镇政府纠纷案二审民事判决书) [*Shen Yan v. Jiumiao Town Gov't*], Fu Shen Min Zai Zi Di 41 Hao (阜审民再字第 41 号) [FU SHEN MIN ZAI ZI NO. 41] (Fuxin Intermediate People's Ct. 2015).

<sup>83</sup> See, e.g., Li Xingguang yu Fujian Sheng Lianjiang Xian Pandu Xiang Dongyan Cun Min Weiyuanhui Nongcun Tudi Chengbao Hetong Jiufen Ershen Minshi Panjueshu (李星光与福建省连江县潘渡乡东雁村民委员会农村土地承包合同纠纷二审民事判决书) [*Li Xingguang v. Dongyan Villager Committee*], Rong Min Zhong Zi Di 130 Hao (榕民终字第 130 号) [RONG MIN ZHONG ZI NO. 130] (Fujian Intermediate People's Ct. 2014); Sun Hongjiang, Yantai Shi Muping Qu Renmin Zhengfu Dayao Jiedao Banshichu Yangjiaodu Cun Min Weiyuanhui Hetong Jiufen Ershen Minshi Panjueshu (孙洪江、烟台市牟平区人民政府大窑街道办事处羊角埠村民委员会合同纠纷二审民事判决书) [*Sun Hongjiang v. Yangjiaodu Villager Committee*], Lu 06 Min Zhong 125 Hao (鲁 06 民终 125 号) [LU 06 MIN ZHONG NO. 125] (Yantai Intermediate People's Ct. 2017).



	Plaintiff Individual	Plaintiff Company	Plaintiff Government	Total
Defendant Individual	7 (71.4%)	5 (40%)	4 (100%)	16 (68.75%)
Defendant Company	42 (21.43%)	10 (80%)	1 (100%)	53 (33.96%)
Defendant Government	2 (100%)	1 (100%)	0 (N/A)	3 (100%)
Total	51 (31.37%)	16 (68.75%)	5 (100%)	

Table 3: Lists number of cases where the plaintiff and defendant are individuals, companies, or a combination of both. The percent in parenthesis indicates the percent of cases with the corresponding party identities where the *force majeure* defense was successful. This table does not include: *Wang Chunjun v. Liban Village Economic Cooperative* (Individual vs. Cooperative).<sup>84</sup>

The majority of parties raising a *force majeure* defense are companies, not individuals. Where the defendant is a company, its *force majeure* defense is significantly less successful against an individual, as opposed to another company. One potential reason for this is the prevalence of the sophisticated party argument,<sup>85</sup> a court faced with the choice of placing liability on an individual or a company would rather place liability on the company because it is sophisticated and likely is financially better able to bear liability.<sup>86</sup>

<sup>84</sup> Yu Chunjun yu Shengzhou Shi Shanhu Jiedao Li Bancun Jingji Hezuoshe Qiye Zulin Jingying Hetong Jiufen Ershen Minshi Panjueshu (王春君与嵊州市剡湖街道里坂村经济合作社企业租赁经营合同纠纷二审民事判决书) [*Wang Chunjun v. Liban Village Economic Cooperative*], Zhe Shao Shang Zhong Zi Di 383 Hao (浙绍商终字第 383 号) [ZHE SHAO SHANG ZHONG ZI NO. 383] (Shaoxing Intermediate People's Ct. 2012).

<sup>85</sup> See *infra* Section III.D.1. "Reasons Events are Considered Foreseeable."

<sup>86</sup> See, e.g., He Dongru yu Conghua Guotai Tiantong Fangdichan Kaifa Youxian Gongsu Shangpinfang Yuzhou Hetong Jiufen Ershen Minshi Panjueshu (何冬茹与从化国天彤房地产开发有限公司商品房预售合同纠纷二审民事判决书) [*He Dongru v. Guotai Tiantong Real Estate Development Co.*], Sui Zhong Fa Min Wu Zhong Zi Di 641 Hao (穗中法民五终字第 641 号) [SUI ZHONG FA MIN WU ZHONG ZI NO. 641] (Guangzhou City Intermediate People's Ct. 2015); Liu Yafu, Chen Xiangling Su Chenzhou Junlian Fangdichan Kaifa Youxian Gongsu Fangwu Maimai Hetong Jiufen Yi An Yishen Minshi Panjueshu (刘亚夫、陈湘玲诉郴州君联房地产开发有限公司房屋买卖合同纠纷一案一审民事判决书) [*Liu Yafu v. Junlian Real*

In every other configuration besides plaintiff company versus defendant individual, the defendant's *force majeure* defense succeeded more often than not.

### C. TYPE OF EVENT

This subsection discusses the success rate of *force majeure* defenses by underlying event. Table 4 represents all of the claims raised by parties in the 73 cases listed in appendix 1. Rather than categorizing by case, Table 4 classifies and categorizes the individual *force majeure* events raised by parties.<sup>87</sup> Each event has been categorized under a main category (e.g. Government Action) and a sub-category (e.g. Land Confiscation). The number listed in each cell represents the total number of claims raised that fall into the given subcategory or overall category. The percentages listed in parenthesis represent the percent of claims found to be *force majeure*.

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*Estate Development Co.*], Xiang 1002 Min Chu 1103 Hao (湘 1002 民初 1103 号) [XIANG 1002 MIN CHU NO. 1103] (Beihu Dist. People's Ct. 2017); Xia Fangmin yu Chongqing Gangtie Jituan Duoli Fangdichan Gufen Youxian Gongsi Fangwu Maimai Hetong Jiufen Yishen Minshi Panjueshu (夏方敏与重庆钢铁集团朵力房地产股份有限公司房屋买卖合同纠纷一审民事判决书) [*Xia Fangmin v. Iron and Steel Group Duoli Real Estate Co.*], Chang Fa Min Chu Zi Di 04138 Hao (长法民初字第 04138 号) [CHANG FA MIN CHU ZI NO. 04138] (Changshou Dist. People's Ct. 2014); *cf.* Mou Xiuting yu Lanzhou Lanshi Jituan Youxian Gongsi, Lanzhou Lanshi Jituan Youxian Gongsi Shengda Fuwu Bu Fangwu Zulin Hetong Jiufen Yishen Minshi Panjueshu (牟秀婷与兰州兰石集团有限公司、兰州兰石集团有限公司圣达服务部房屋租赁合同纠纷一审民事判决书) [*Mou Xiuting v. Lanshi Group Co.*], Qi Min Chu Zi Di 30096 Hao (七民初字第 30096 号) [QI MIN CHU ZI NO. 30096] (Qilihe Dist. People's Ct. 2014) (court declined to place liability on the defendant real estate company where government confiscated underlying real estate for subway construction).

<sup>87</sup> The core data are the individual *force majeure* event raised by the parties. Therefore, cases where the parties raised more than one different *force majeure* event have been listed in multiple places in the tables (e.g., if one party claims heavy rain, new regulations, and theft were all *force majeure*, the case has been listed under weather – rain, government action – new law/regulation, and other). In a few situations, both the lower court opinion and the appeal are present in the dataset. Those cases have been listed separately because a separate tribunal heard the case and could have ruled differently on the point of *force majeure*. For more about appeals, see *infra* section III.G. “Liquidated Damages and *Force Majeure* Clauses.”

<i>Force Majeure</i> Event	Article 94(1)(1)	Article 117	Overall
<b>Government Action</b>	<b>19 (89.5%)</b>	<b>39 (12.8%)</b>	<b>57 (38.6%)</b>
Land Confiscation	9 (88.8%)	2 (100%)	11 (90.9%)
Other Executive Action	3 (66.7%)	14 (0%)	17 (11.8%)
Law/Regulation	5 (100%)	17 (11.8%)	22 (31.8%)
Utilities/Infrastructure	2 (100%)	6 (16.6%)	8 (37.5%)
<b>Weather</b>	<b>2 (100%)</b>	<b>10 (30%)</b>	<b>12 (41.6%)</b>
Natural Disasters	2 (100%)	0 (N/A)	2 (100%)
Unusual Weather	0 (N/A)	10 (30%)	10 (30%)
<b>Other</b>	<b>9 (88.8%)</b>	<b>7 (14.3%)</b>	<b>16 (56.3%)</b>
<b>Total Force Majeure Claims</b>	<b>30 (90%)</b>	<b>56 (16.1%)</b>	<b>86 (41.9%)</b>

Table 4: Categorization of claims. The number represents the number of cases that raise each claim, and the percent represents the percent of claims found to be *force majeure*.

Importantly, this data only reflects adjudicated decisions; it does not include cases that settled, claims parties chose not to litigate, or negotiations between parties without a final judicial opinion. Due to litigation costs, parties are most likely to be reflected in the data set if their *force majeure* claim could come out either way. It is important to keep this in mind while analyzing the data; it only reflects its input (adjudicated cases) and nothing else.

### 1. Article 94(1)(1) vs Article 117

The first notable observation is the stark difference in success rate between cases that cite articles 94(1)(1) and 117.<sup>88</sup> Overall, courts found 90% of *force majeure* claims that cited article 94(1)(1) to be *force majeure*;<sup>89</sup> a paltry 16.1% of *force majeure* claims that cited article 117 were found to be *force majeure*.<sup>90</sup> The likely reason for this is based on the different purpose each article serves. Article 117 supplies a definition of *force majeure* and limits the scope of excuse to *force*

<sup>88</sup> For a discussion of the differences between Chinese Contract Law articles 94(1)(1) and 117, see *supra* Section II.B. “Current *Force Majeure* Laws in China’s Contract Law.”

<sup>89</sup> See Table 4.

<sup>90</sup> *Id.*

*majeure* events that occur before a party delays performance.<sup>91</sup> In other words, the two main reasons a court would cite article 117 are to either provide the definition of *force majeure* or to state that though an event might be considered *force majeure* on its own, it does not excuse performance because the event occurred after the party delayed performance. Both of these are likely citations if the court believes the party raising the *force majeure* defense should not be excused from liability. In contrast, article 94(1)(1)'s focus is on whether it is impossible to achieve the purpose of the contract.<sup>92</sup> Thus, the most likely reason to cite article 94(1)(1) is to determine whether it is impossible to achieve the purpose of the contract, not whether the claimed *force majeure* event is in fact *force majeure*.

Two category subsets illustrate this difference. First, under the "Weather" category, both natural disaster claims cited article 94(1)(1) and all unusual weather claims cited article 117.<sup>93</sup> This reflects the fundamental difference between article 94(1)(1) and article 117: article 94(1)(1) focuses on whether a *force majeure* event makes it impossible to achieve the purpose of the contract, whereas article 117 focuses on whether an event is *force majeure*.<sup>94</sup> Thus, when a party argues that a contract should be terminated due to a natural disaster, because natural disasters are a classic type of *force majeure*, the court focuses on whether the natural disaster makes the purpose of the contract impossible to achieve. On the other hand, when a party argues that a contract should be terminated due to unusual weather (e.g., heavy rain, winter etc.), since these are not clear, quintessential examples of *force majeure*, the court focuses its analysis on the foreseeability of the weather.

Second, cases involving land confiscation mostly cite article 94(1)(1), whereas all other types of government events disproportionately cite article 117.<sup>95</sup> In most of the land confiscation cases, the underlying contract is a lease or purchase of real estate. Once the government confiscates the land, the issue changes from whether the confiscation was *force majeure* to whether the purpose of the contract was impossible to achieve. In contrast, many of the other government cases involved temporary closures or issues with government regulations and applying for permits and certifications. Often, courts in

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<sup>91</sup> Contract Law, *supra* note 13, art. 117.

<sup>92</sup> *Id.* art. 94(1)(1).

<sup>93</sup> See Table 4.

<sup>94</sup> See *supra* Section II.B. "Current *Force Majeure* Laws in China's Contract Law."

<sup>95</sup> See Table 4.

those cases focused on whether the defendant was in a position to foresee the claimed *force majeure* event at the time the contract was signed, and therefore cited to the definitional article 117.

D. COMMON REASONS TO FIND AN EVENT NOT *FORCE MAJEURE* OR THE PARTY STILL LIABLE

This section and the corresponding subsections discuss common reasons the party raising the *force majeure* defense was unsuccessful. Table 5 categorizes the court's rationale. Similar to Table 4, each of the reasons stated by the court has been categorized into several bolded categories. The main category, "not unforeseeable, unavoidable, or insurmountable," is a direct reference to the definition of *force majeure* provided by article 117.<sup>96</sup> Its four subcategories enumerate the main reasons a court found that a potential *force majeure* event did not fit the statutory definition of *force majeure*. The other main categories represent reasons not directly related to the definition of *force majeure*, such as providing insufficient evidence that the event qualified as *force majeure*.

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<sup>96</sup> Contract Law, *supra* note 13, art. 117.

Reason <i>Force Majeure</i> Defense Unsuccessful	Number of Cases Reason Cited
<b>Not unforeseeable, unavoidable, or insurmountable</b>	<b>34</b>
Sophisticated party (Should Have Known)	12
Knew or Could Have Known of Event at Time of Signing	8
Law/Regulation Change Not a Substantive Change	6
Other reasons	8
<b>Purpose not frustrated</b>	<b>1</b>
<b>Barred by <i>Force Majeure</i> Clause in Contract</b>	<b>2</b>
<b>Event occurred after delay</b>	<b>7</b>
<b>Insufficient Evidence</b>	<b>6</b>
<b>Other</b>	<b>7</b>
<b>No Reason Given</b>	<b>5</b>
<b>Total</b>	<b>62</b>

Table 5: Reasons courts gave for finding party not excused.

When analyzing a *force majeure* event under the definition of unforeseeable, unavoidable, and insurmountable, the courts focused almost exclusively on whether the event was unforeseeable. Upon finding it lacking, they simply state that the event is also not unavoidable or insurmountable.<sup>97</sup>

<sup>97</sup> Yuangao Zhang Jun yu Beigao Nanjing Guangjia Zhiye Youxian Gongsi Shangpinfang Yushou Hetong Jiufen Yian de Minshi Panjueshu (原告张俊与被告南京广佳置业有限公司商品房预售合同纠纷一案的民事判决书) [*Zhang Jun v. Guangjia Real Estate Co.*], Su 0111 Min Chu 5613 Hao (苏 0111 民初 5613 号) [SU 0111 MIN CHU NO. 5613] (2016) (court found events not unforeseeable but did not discuss or analyze whether events were unavoidable or insurmountable); cf. *Li Xinming v. Zhongxiang Real Estate Development Co.*, *supra* note 16 (analyzed all three elements, though the analysis of unforeseeable was longer than the analysis of unavoidable and insurmountable combined).

### 1. Reasons Events are Considered Foreseeable

As mentioned, the unforeseeable element is the most analyzed of the three elements. Therefore, in the majority of cases where the court rejected an event as not *force majeure*, the court reasoned that the event was not unforeseeable. One common reason courts found an event not unforeseeable was because the party claiming *force majeure*, by virtue of it being a sophisticated party in that market, should have known this could happen, so the event was not unforeseeable. A typical case is *Li Zhuofeng v. Guotai Tiantong Real Estate Development Co.*<sup>98</sup> Li Zhuofeng entered into a contract with Guotai Tiantong Real Estate Development Company (“Guotai”) for the sale of a yet-to-be-built apartment.<sup>99</sup> The contract included a transfer date and a liquidated damages clause that calculated damages based on the number of days the transfer was late. However, the contract was silent on *force majeure* liability.<sup>100</sup> Well after the transfer date, Guotai still had not transferred the apartment, so Li Zhuofeng sued for damages based on the liquidated damages clause. Guotai argued that the company delayed performance because of weather, demolition, and government related issues, and that the contract should be terminated due to *force majeure*. In rejecting Guotai’s *force majeure* defense, the lower court reasoned that, as a real estate development company, Guotai should have made a reasonable prediction on timing and made sure to negotiate for a long enough performance window to deal with these issues.<sup>101</sup>

The sophisticated party rationale was also used by other courts to reject *force majeure* defenses based on issues with government

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<sup>98</sup> Li Zhuofeng yu Conghua Shi Guotai Tiantong Fangdichan Kaifa Youxian Gongsì Shangpinfang Yuzhou Hetong Jiufen Ershen Minshi Panjueshu (李灼锋与从化市国泰天彤房地产开发有限公司商品房预售合同纠纷二审民事判决书) [*Li Zhuofeng v. Guotai Tiantong Real Estate Development Co.*], Sui Zhong Fa Min Wu Zhong Zi Di 597 Hao (穗中法民五终字第 597 号) [SUI ZHONG FA MIN WU ZHONG ZI NO. 597] (Guangzhou Intermediate People’s Ct. 2015).

<sup>99</sup> *Id.*

<sup>100</sup> For a discussion of *force majeure* clauses and liquidated damages clauses, see *infra* Section III.G. “Liquidated Damages and *Force Majeure* Clauses.”

<sup>101</sup> *Id.* “Guotai Tiantong Company, as a real estate development enterprise, should have reasonably anticipated and reserved enough time to deal with weather, demolition, and other issues in the real estate development process.” (“国泰天彤公司作为房地产开发企业对于房地产开发过程中的天气、拆迁等事件应有合理预期, 预留足够的时间予以应对”).

approvals,<sup>102</sup> financial troubles due to paying fines from other court cases,<sup>103</sup> public bidding,<sup>104</sup> residential utilities stoppages,<sup>105</sup> construction stoppages due to major events,<sup>106</sup> and government-sanction demolition.<sup>107</sup> This is a “better position” argument. Courts in these cases reasoned that between an individual and a development company, the development company is in a better position *ex ante* to predict these potential issues and provide a more accurate timeline.<sup>108</sup>

As for the broader “should have known” or “could have known” argument,<sup>109</sup> two interesting cases stood out. The first involved a new environmental regulation, where Tao Jijun sued Yichang Donghai

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<sup>102</sup> Xiantao Tianxia Dichan Kaifa Youxian Gongsi, Dai Wenyan Shangpinfang Xiaoshou Hetong Jiufen Ershen Minshi Panjueshu (仙桃天下地产开发有限公司、戴文燕商品房销售合同纠纷二审民事判决书) [*Tianxia Real Estate Development Co. v. Dai Wenyan*], E 01 Min Zhong 269 Hao (鄂 01 民终 269 号) [E 01 MIN ZHONG NO. 269] (Wuhan City Intermediate People’s Ct. 2018); Chongqing Huateng Shiye Fazhan Youxian Gongsi yu Peng Xiaoyong, Wen Hongying Fangwu Maimai Hetong Jiufen Ershen Minshi Panjueshu (重庆华腾实业发展有限公司与彭小勇、温红英房屋买卖合同纠纷二审民事判决书) [*Huateng Industrial Development Co. v. Peng Xiaoyong*], Yu Er Zhong Fa Min Zhong Zi Di 01533 Hao (渝二中法民终字第 01533 号) [YU ER ZHONG FA MIN ZHONG ZI NO. 01533] (Chongqing City Second Intermediate People’s Ct. 2015).

<sup>103</sup> Zhu Xiaolian yu Conghua Guotai Tiantong Fangdichan Kaifa Youxian Gongsi Shangpinfang Yushou Hetong Jiufen Yishen Minshi Panjueshu (朱小莲与从化国泰天彤房地产开发有限公司商品房预售合同纠纷一审民事判决书) [*Zhu Xiaolian v. Guotai Tiantong Real Estate Development Co.*], Yue 0184 Min Chu 2509 Hao (粤 0184 民初 2509 号) [YUE 0184 MIN CHU NO. 2509] (Conghua Dist. People’s Ct. 2016).

<sup>104</sup> Jiangmen Shi Jianghai Qu Lianhai Beilu Jianshe Touzi Youxian Gongsi, Huang Bing Shangpinfang Yuhou Hetong Jiufen Ershen Minshi Panjueshu (江门市江海区连海北路建设投资有限公司、黄兵商品房预售合同纠纷二审民事判决书) [*Lianhai North Road Construction Investment Co. v. Huang Bing*], Yue 07 Min Zhong 3126 Hao (粤 07 民终 3126 号) [YUE 07 MIN ZHONG NO. 3126] (Jiangmen City Intermediate People’s Ct. 2017).

<sup>105</sup> *He Dongru v. Guotai Tiantong Real Estate Development Co.*, *supra* note 86.

<sup>106</sup> *Zhang Jun v. Guangjia Real Estate Co.*, *supra* note 97.

<sup>107</sup> *Li Xinming v. Zhongxiang Real Estate Development Co.*, *supra* note 16.

<sup>108</sup> See *supra* notes 68, 71–74 and accompanying text.

<sup>109</sup> In this Note, the difference between the “sophisticated party” and “knew or could have known” reasons is that the sophisticated party argument relies on the party’s sophistication to argue that they *should* have known about the issue, whereas the “knew or could have known” argument relies on specific circumstances to argue that the party either *actually* knew about what happened or easily *could* have known, without specific reference to the party’s level of sophistication.



Energy Development Limited (“Donghai”) over a utilities contract.<sup>110</sup> Under the contract, Donghai agreed to provide centralized heating to Tao Jijun’s apartment starting that winter for no less than 20 years.<sup>111</sup> Five years into performance, the government passed regulations barring the use of small thermal steam generators to provide power.<sup>112</sup> Donghai stopped providing heat and Tao Jijun sued.<sup>113</sup> Donghai argued this new regulation constituted *force majeure*.<sup>114</sup> In rejecting this defense, the court noted that because of increasing societal awareness of environmental protection and Donghai’s implied awareness of the environmental issues with its power generation methods, the regulation was neither unforeseeable nor unavoidable.<sup>115</sup> In other words, the regulation targeted a harm that society at large knew about and Donghai ought to have known about.

The second case also involved a new regulation, but the *force majeure* defense was rejected for a different reason. In the case, Lan Hai sued Hisense Properties Limited (“Hisense”) for breaching a real estate purchase contract by not transferring the real property in the designated window.<sup>116</sup> Hisense raised a *force majeure* defense, arguing that a government notice about applying for initial housing registration altered the registration requirements, causing Hisense’s registration to be denied and therefore delaying performance.<sup>117</sup> The court rejected this argument, finding that the government’s notice merely clarified which government bodies were in charge of each portion of an existing, comprehensive registration system.<sup>118</sup> It further stated that because the laws laying out this comprehensive registration system were already effective when Lan Hai and Hisense entered into the real estate purchase contract, Hisense should have foreseen that the local government would

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<sup>110</sup> *Yichang Donghai Energy Development Co. v. Tao Jijun*, *supra* note 48.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> Jinan Haixin Zhiye Youxian Gongsi yu Lan Mei Fangwu Maimai Hetong Jiufen Ershen Minshi Panjueshu (济南海信置业有限公司与兰梅房屋买卖合同纠纷二审民事判决书) [*Hisense Real Estate Co. v. Lan Mei*], Lu 01 Min Zhong 7264 Hao (鲁01民终7264号) [LU 01 MIN ZHONG NO. 7264] (Jinan Intermediate People’s Ct. 2017).

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

issue this kind of procedural, clarifying notice.<sup>119</sup> This reasoning is similar to another common reason for rejection: the change in law did not substantively affect the legal rights of the party. Perhaps this court, like the court in *Liu Yong v. Rongsheng Real Estate Development Co.* with respect to burden of proof,<sup>120</sup> was worried that if any change in regulation could be considered *force majeure*, a party could delay performance forever, knowing that if it was sued to perform, it would have an air-tight *force majeure* defense. Alternatively, courts may be worried about getting in the way of important government functions; if the threshold for triggering *force majeure* by changes in laws is too low, governments may be less willing to issue important clarifications. However, in so doing, the courts adopt an expansive view of foreseeability.

## 2. Force Majeure Occurred After Delayed Performance

A common reason courts found an event not *force majeure* was because the event occurred after the party delayed performance. Article 117 addresses this situation directly, stating that a party's contractual obligation may not be excused by a *force majeure* event that occurs after the party has already delayed performance.<sup>121</sup> The most straightforward cases involving this issue are ones where the only claimed *force majeure* event clearly occurred after the party had delayed performance. For example, in *Kong Feng v. Hengfa Real Estate Development Co.*,<sup>122</sup> the

<sup>119</sup> *Id.*

<sup>120</sup> Liu Yong yu Rongsheng (Xuzhou) Fangdichan Kaifa Youxian Gongsi Shangpinfang Xiaoshou Hetong Jiufen Ershen Minshi Panjueshu (刘勇与荣盛(徐州)房地产开发有限公司商品房销售合同纠纷二审民事判决书) [*Liu Yong v. Rongsheng Real Estate Development Co.*], Su 03 Min Zhong 8530 Hao (苏03民终8530号) [SU 03 MIN ZHONG NO. 8530] (2017) (“另上诉人该主张因涉及到合同内容的变更，应由主张合同内容变更的一方即上诉人承担相应的举证责任，否则，上诉人可以政策调整为由无期限的延长房屋权属登记的时间从而予以抗辩免责，进而不用承担相应的违约责任，这显然对被上诉人是不公平的” [“The burden of proof for appellant’s claim involving changing the contract should be borne by the party advocating changing the contract, i.e., the appellant. Otherwise, the appellant rely on a government policy adjustment to indefinitely extend the timeframe for house ownership registration and, therefore, not bear the corresponding liability for breach of contract. This is obviously unfair to the appellee.”]).

<sup>121</sup> Contract Law, *supra* note 13, art. 117. See *supra* Section II.B. “Current *Force Majeure* Laws in China’s Contract Law.”

<sup>122</sup> Kong Feng, Kong Hui, Kong Shen yu Guangzhou Hengfa Fangdichan Kaifa Youxian Gongsi Fangwu Chaiqian Anzhi Buchang Hetong Jiufen Ershen Minshi

defendant argued that an archeological dig constituted *force majeure*, but the dig occurred three months after the defendant was required to perform.<sup>123</sup> A more interesting case is *Beijing Construction Engineering Co. v. Jinfa New Material Co.*<sup>124</sup> Here, the defendant claimed winter weather was *force majeure* and requested a corresponding reduction in the penalty laid out by the liquidated damages clause in their contract.<sup>125</sup> However, the contract's final performance date was in early November, before the winter weather happened.<sup>126</sup> In addition, the defendant claimed that changes to the property certification process that occurred prior to performance were *force majeure*.<sup>127</sup> Taken together, the defendant argued that the regulation changes caused the company to delay performance into the winter, at which point the winter weather also delayed performance.<sup>128</sup> Because the court ruled that the changes in regulations were not *force majeure*, it found the winter weather to be a *force majeure* event occurring after the defendant delayed performance and it was therefore not a basis for termination or excuse.<sup>129</sup> However, its opinion suggested that had the change in regulation been considered *force majeure*, the winter weather would have also partially excused liability.

#### E. TYPES OF UNDERLYING CONTRACTS

This section discusses the types of contracts involved in the cases analyzed in this note and the corresponding success rates of the *force majeure* defense. Similar to Tables 4 and 5, the main categories are in bold and the corresponding subcategories below the main category are not in bold.

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Panjueshu (孔丰、孔晖、孔申与广州恒发房地产开发有限公司房屋拆迁安置补偿合同纠纷二审民事判决书) [*Kong Feng v. Hengfa Real Estate Development Co.*], Sui Zhong Fa Min Wu Zhong Zi Di 1889 Hao (穗中法民五终字第 1889 号) [SUI ZHONG FA MIN WU ZHONG ZI NO. 1889] (Guangzhou City Intermediate People's Ct. 2014).

<sup>123</sup> *Id.*

<sup>124</sup> *Beijing Construction Engineering Co. v. Jinfa New Material Co.*, *supra* note 76.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

Type of Contract	Number of Cases (Percent of Total)	<i>Force Majeure</i> (Percent of cases finding <i>force</i> <i>majeure</i> )
<b>Real Estate</b>	<b>53 (72.60%)</b>	<b>18 (33.96%)</b>
Real Estate Purchase	35 (47.95%)	5 (14.29%)
Real Estate Lease	17 (23.29%)	13 (76.47%)
Other Real Estate	1 (1.37%)	0 (0%)
<b>Other<sup>130</sup></b>	<b>20 (27.40%)</b>	<b>16 (75%)</b>

Table 6: Cases categorized by underlying contract type and the corresponding *force majeure* defense success rate.

Most of the cases analyzed involve real estate contracts (72.97%).<sup>131</sup> Of note, the *force majeure* success rate for cases involving real estate contracts is much lower than for all other types of contracts combined. However, not all real estate contracts are created equally; there is more than a 60% difference in success rates of *force majeure* between real estate purchases (14.29%) and real estate leases (76.47%).<sup>132</sup> The main reason for this stark difference is the different contexts in which *force majeure* defenses are used between real estate purchases and real estate leases. In the case of real estate purchases, the predominant issue was the defendant's delay in transferring the underlying real estate due to issues with government procedures, regulation change, or weather.<sup>133</sup> In contrast, real estate leases usually

<sup>130</sup> Each subcategory had 3 or fewer cases. The included contract types are: Bus Transit Agreement, Construction Contract, Utility Contract, Development Contract, Management Contract, Moveable Asset Purchase, Land Conservation Agreement, Water Reservoir Contract, Supply Contract, Equipment Lease, Mining Rights, Land Use Contract, and Goods Transport Agreement.

<sup>131</sup> Table 6.

<sup>132</sup> *Id.*

<sup>133</sup> See, e.g., Wu Zhenhong yu Xi Ziyu Fangdichan Kaifa Youxian Gongsi Shangpinfang Xiaoshou Hetong Jiufen Yishen Panjueshu (伍镇鸿与西紫域房地产开发有限公司商品房销售合同纠纷一审民事判决书) [*Wu Zhenhong v. Xi Ziyu Real Estate Development Co.*], Jiang Min Chu Zi Di 468 Hao (江民初字第468号) [JIANG MIN CHU ZI NO. 468] (Liujiang Cty. People's Ct. 2015) (heavy rain delayed performance); *Xia Fangmin v. Iron and Steel Group Duoli Real Estate Co.*, *supra* note 86 (upgrade to ministry infrastructure); Yuangao Xiong Xiuying yu Beigao Yibin Shi Nanxi Qu Xinlei Fangdichan Kaifa Youxian Gongsi Shangpinfang Xiaoshou Hetong

involved the government confiscating the underlying real estate for use in a different development or government plan.<sup>134</sup>

#### F. APPEALS

This subsection discusses cases at the appellate level and their holding with respect to the lower court's judgment. Under Civil Procedure Law, parties have the right to file an appeal<sup>135</sup> to the people's court at the next highest level.<sup>136</sup> The appeals court (referred to as the court of second-instance) has four options:

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Jiufen Minshi Yishen Panjueshu (原告熊秀英与被告宜宾市南溪区鑫磊房地产开发有限公司商品房销售合同纠纷民事一审判决书) [*Xiong Xiuying v. Xinlei Real Estate Development Co.*], Chuan 1503 Min Chu 1520 Hao (川 1503 民初 1520 号) [CHUAN 1503 MIN CHU NO. 1520] (Nanxi Dist. People's Ct. 2016) (change to local approvals procedure); *Zhang Jun v. Guangjia Real Estate Co.*, *supra* note 97 (new regulation restricting work hours); *Tianxia Real Estate Development Co. v. Dai Wenyan*, *supra* note 102 (natural gas approval denied).

<sup>134</sup> See, e.g., *Guantong Logistics Co. v. China Sinotrans Storage and Transportation Co.*, *supra* note 75 (confiscation of leased port); Chen Guanglong yu Yulin Shi Guopin Shiza Gongsi Tudi Zulin Hetong Jiufen Ershen Minshi Panjueshu (陈广龙与玉林市果品是杂公司土地租赁合同纠纷二审民事判决书) [*Chen Guanglong v. Guopin Shiza Co.*], Yu Zhong Min Yizhong Zi Di 128 Hao (玉中民一终字第 128 号) [YU ZHONG MIN YIZHONG ZI NO. 128] (Yulin Intermediate People's Ct. 2014) (government transferred possession rights of underlying leased real estate); Shaoguan Shi Wujiang Qu Xilian Zhen Yangshan Cun Huangshaping Yongfa Shichang, Chen Yulin deng yu Shaoguan Shi Wujiang Qu, Shaoguan Shi Wujiang Qu Huangshaping Cun Xiaozu Tudi Zulin Hetong Jiufen Yishen Minshi Panjueshu (韶关市武江区西联镇阳山村黄沙坪永发石场、陈育麟等与韶关市武江区、韶关市武江区黄沙坪村小组土地租赁合同纠纷一审民事判决书) [*Yongfa Quarry v. Huangshaping Village Group*], Shao Wu Fa Min Yi Chu Zi Di 40 Hao (韶武法民一初字第 40 号) [SHAO WU FA MIN YI CHU ZI NO. 40] (Wujiang Dist. People's Ct. 2015) (confiscation of leased quarry); Lanzhou Yatai Shiyou Jixie Peitao Youxian Gongsi yu Lanzhou Lanshi Jituan Youxian Gongsi, Lanzhou Lanshi Jituan Youxian Gongsi Shengda Fuwu Bu Fangwu Zulin Hetong Jiufen Yishen Minshi Panjueshu (兰州亚泰石油机械配套有限公司与兰州兰石集团有限公司、兰州兰石集团有限公司圣达服务部房屋租赁合同纠纷一审民事判决书) [*Yatai Petroleum Machine Co. v. Lanshi Group Co.*], Qi Min Chu Zi Di 30037 Hao (七民初字第 30037 号) [QI MIN CHU ZI NO. 30037] (Qilihe Dist. People's Ct. 2014) (land confiscated due to subway construction).

<sup>135</sup> Minshi Susong Fa (民事诉讼法) [Civil Procedure Law] (promulgated by Standing Comm. Nat'l People's Cong., Apr. 9, 1991, effective Apr. 9, 1991, revised Oct. 28, 2007, revised Aug. 31, 2012) art. 50 (China), [https://www.spp.gov.cn/sscx/201502/t20150217\\_91465.shtml](https://www.spp.gov.cn/sscx/201502/t20150217_91465.shtml) (last visited April 24, 2020).

<sup>136</sup> *Id.* art. 147.

- (1) if the facts were clearly ascertained and the law correctly applied in the original judgment, the appeal shall be rejected and the original judgment shall be sustained;
- (2) if the law was incorrectly applied in the original judgment, the judgment shall be amended according to law;
- (3) if in the original judgment the facts were incorrectly ascertained or were not clearly ascertained and the evidence was inconclusive, the judgment shall be rescinded and the case remanded by an order to the original people's court for retrial, or the people's court of second instance may amend the judgment after investigating and clarifying the facts; or
- (4) if in the original judgment a violation of the prescribed procedure may have affected the correctness of the judgment, the judgment shall be rescinded and the case remanded by an order to the original people's court for retrial.<sup>137</sup>

Each of the cases analyzed fell under either subsection 1 or subsection 2. This decision is usually final.<sup>138</sup>

In Table 7 below, the left-most column represents the lower court's finding and the upper-most horizontal row represents the appeals court's finding with respect to the lower court's judgment.

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<sup>137</sup> *Id.* art. 153.

<sup>138</sup> *Id.* art. 158. *Cf. Beijing Construction Engineering Co. v. Jinfu New Material Co.*, *supra* note 76 (two trials before reaching the Supreme People's Court of China).

	Sustained	Amended and Changed <i>Force Majeure</i> Outcome	Amended but Did Not Change <i>Force Majeure</i> Outcome
Lower Court Held <i>Force Majeure</i>	12	1	1
Lower Court Held Not <i>Force Majeure</i>	21	0	0

Table 7: Decision of the court of second instance with respect to the original judgment.

Almost none of the intermediate level courts overturned or disagreed with the lower courts. However, this was not universal. For example, in *Chen Guanglong v. Guopin Shiza Co.*,<sup>139</sup> Chen Guanglong and Guopin Shiza Co. (“Guopin”) entered into a lease of state-owned land.<sup>140</sup> Later, the city government permitted Guopin to reform its property rights system and publicly transfer property rights (including rights to the land already leased to Chen Guanglong).<sup>141</sup> The lower court held that the property rights system reform and the transfer of the rights of the leased property constituted a *force majeure* event that frustrated the purpose of the lease, and therefore could be terminated.<sup>142</sup> Though the intermediate court agreed with the lower courts conclusion, it found the reliance on *force majeure* improper.<sup>143</sup> The intermediate court noted that the lease was clear about what property rights were involved and it allowed Guopin to transfer the property during the term of the lease, provided that Guopin gave adequate notice.<sup>144</sup> Since Guopin gave notice and transferred the property rights, the lease should be terminated by its own terms.<sup>145</sup> In other words, the intermediate court looked to the language of the contract for termination rather than labeling the property

<sup>139</sup> *Chen Guanglong v. Guopin Shiza Co.*, *supra* note 134.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

right system reform and subsequent public exchange of property rights for the land as *force majeure*.

Though Chinese court cases are not binding law, there is ample evidence to show that Chinese judges consider other court cases when deciding an issue.<sup>146</sup> One reason for this decision might be to send a signal to lower courts that these kinds of changes involving state-owned land should not be considered *force majeure* and, instead, courts should follow the terms of the contracts the parties enter into.

#### G. LIQUIDATED DAMAGES AND *FORCE MAJEURE* CLAUSES

This section looks at what relationship the presence of a *force majeure* or liquidated damages clause has with the outcome. The *force majeure* defense goes hand in hand with liability; without potential liability, there is no reason to raise the defense. In most of the cases, especially housing cases, the contracts include a liquidated damages clause that provides an amount or formula that indicates how much the party that breaches the contract must pay in the event it breaches the contract.<sup>147</sup> Often, the triggering event is a failure to perform the contract by a certain day—for example, failure to transfer a house within a few months of signing the contract.<sup>148</sup> Thus, the case reaches the court because one party sues the other for damages pursuant to the liquidated damages clause, and the breaching party raises the defense of *force majeure* in the hopes of avoiding paying damages. This argument is

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<sup>146</sup> Eric C. Ip, *The Supreme People's Court and the Political Economy of Judicial Empowerment in Contemporary China*, 24 COLUM. J. ASIAN L. 367, 409–10 (2011); Benjamin Liebman & Tim Wu, *China's Network Justice*, 8 CHI. J. INT'L L. 257 (2007). For a discussion of China's newest Guiding Cases System, see Guilherme Rizzo Amaral, *China's Guiding Cases System and Its Potential Impact on Arbitration*, CHINA GUIDING CASES PROJECT, at n.1 (Mar. 15, 2018).

<sup>147</sup> See, e.g., *Wu Zhenhong v. Xi Ziyu Real Estate Development Co.*, *supra* note 133 (housing contract contained liquidated damages clause stipulating real estate development company must pay purchaser 0.001% of the total housing price already paid to real estate development company if real estate development company delays house transfer by one to 120 days, and 0.005% if it delayed performance by more than 120 days).

<sup>148</sup> See, e.g., *id.* (failure to transfer house within seven months of signing); *Tianxia Real Estate Development Co. v. Dai Wenyan*, *supra* note 102 (failure to transfer house within 11 months of signing).



usually a request to reduce the number of days counted in the liquidated damages clause.<sup>149</sup>

Table 8 below categorizes the cases by whether the court opinion indicates the underlying contract has a *force majeure* clause, a liquidated damages clause, both, or neither.

		Does the Court explicitly reference a <i>force majeure</i> clause in the contract?	
		Yes	No
Does the Court explicitly reference a liquidated damages clause in the contract?	Yes	23 (26.09%)	20 (10%)
	No	14 (78.57%)	16 (81.25%)

Table 8: Whether the court explicitly referenced a *force majeure* and/or liquidated damages clause in the opinion. The percentages represent the percent of corresponding cases where the *force majeure* defense was successful.

Comparing the presence of these two clauses is interesting because the Supreme People's Court has issued a binding judicial interpretation<sup>150</sup> about the legal limits of liquidated damages clauses.<sup>151</sup>

<sup>149</sup> See, e.g., Wei Tingyang, Zhang Qiufang deng yu Luzhai Xian Dule Fangdichan Kaifa Youxian Gongsi Shangpinfang Yushou Hetong Jiufen Yishen Minshi Panjueshu (韦廷样、张秋芳等与鹿寨县都乐房地产开发有限公司商品房预售合同纠纷一审民事判决书) [*Wei Tingyan v. Dule Real Estate Development Co.*], Gui 0223 Min Chu 71 Hao (桂 0223 民初 71 号) [GUI 0223 MIN CHU NO. 71] (Luzhai Cty. People's Ct. 2018) (court compared days of water utility stoppage and days with major rainfall to reduce the number of days the defendant delayed performance without double-counting days).

<sup>150</sup> All official judicial interpretations (not to be confused with judicial opinions) are binding on both the Supreme People's Court and all lower courts. Eric C. Ip, *supra* note 146, at 382, 393; see also Keith J. Hand, *Understanding China's System for Addressing Legislative Conflicts: Capacity Challenges and the Search for Legislative Harmony*, 26 COLUM. J. ASIAN L. 139 (2013).

<sup>151</sup> Interpretation Regarding Questions about Using Contract Law (2), *supra* note 62, art. 29. The second line reads: "If the liquidated damages agreed to by the parties exceeds the losses caused by 30%, the liquidated damages can generally be considered 'excessively higher than the losses caused' as stipulated in the second paragraph of Article 114 of Contract Law." *Id.* ("当事人约定的违约金超过造成损失的百分之三十的，一般可以认定为合同法第一百一十四条第二款规定的'过分于造成的损失'").

Because of this judicial interpretation, the defendant's argument usually progresses in this order: (1) *force majeure* fully excuses performance; (2) *force majeure* partially excuses performance; and (3) the total liquidated damages should be lowered to the ceiling set by the judicial interpretation on liquidated damages.<sup>152</sup> Faced with this series of arguments, the court can reduce damages by either finding *force majeure* excuses all or partial performance, finding the total liquidated damages is above the ceiling set by the judicial interpretation, or both.

In some cases, the court looked to the explicit language of the *force majeure* clause to determine whether performance was excused.<sup>153</sup> For example, in *Longshunda Transportation Co. v. Shenzhen Eastern Public Transportation Co.*,<sup>154</sup> Longshunda and Eastern Public Transportation Company ("Eastern Public") entered into a bus transit agreement where Longshunda leased 23 busses to Eastern Public and allowed Eastern Public to operate the number 995 bus route for 5 years.<sup>155</sup> Article 8 of the contract provided the *force majeure* clause:

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<sup>152</sup> See, e.g., *Li Zhuofeng v. Guotai Tiantong Real Estate Development Co.*, *supra* note 98; Ren Deyong yu Shangqiu Zhongzheng Zhiye Youxian Gongsi Shangpinfang Xiaoshou Hetong Jiufen Ershen Minshi Panjueshu (任德永与商丘中正置业有限公司商品房销售合同纠纷二审民事判决书) [*Ren Deyong v. Zhongzheng Real Estate Co.*], Yu 14 Min Zhong 3780 Hao (豫 14 民终 3780 号) [YU 14 MIN ZHONG NO. 3780] (Shangqiu City Intermediate People's Ct. 2016); Bian Jianxun, Bian Songjie yu Pei Xian Hengsheng Fangdichan Kaifa Youxian Gongsi Fangwu Maimai Hetong Jiufen Yishen Minshi Panjueshu (卞建勋、卞松杰与沛县恒盛房地产开发有限公司房屋买卖合同纠纷一审民事判决书) [*Bian Jianxun v. Hengsheng Real Estate Development Co.*], Su 0322 Min Chu 3839 Hao (苏 0322 民初 3839 号) [SU 0322 MIN CHU NO. 3839] (Pei Cty. People's Ct. 2017).

<sup>153</sup> See, e.g., Guangdong Chenshi Baichuan Wuliu Youxian Gongsi Gonglu Huowu Yunshu Hetong Jiufen Ershen Minshi Panjueshu (广东陈氏百川物流有限公司公路货物运输合同纠纷二审民事判决书) [*Charm Eastern Freight Market Mingshengfa Freight Information Service Department v. Chen's Baichuan Logistics Co.*], Yue 71 Min Zhong 81 Hao (粤 71 民终 81 号) [YUE 71 MIN ZHONG NO. 81] (Guangzhou Intermediate Railway Transport Ct. 2016) (court looked to *force majeure* clause to determine theft did not qualify as *force majeure*).

<sup>154</sup> Shenzhen Shi Longshunda Yunshu Youxian Gongsi yu Chen Shuo, Shenzhen Shi Dongbu Gonggong Jiaotong Youxian Qiyehengbao Jingying Hetong Jiufen Ershen Minshi Panjueshu (深圳市龙顺达运输有限公司与陈硕、深圳市东部公共交通有限公司承包经营合同纠纷二审民事判决书) [*Longshunda Transportation Co. v. Shenzhen Eastern Public Transportation Co.*], Shen Zhong Fa Shang Zhong Zi Di 2295 Hao (深中法商终字第 2295 号) [SHEN ZHONG FA SHANG ZHONG ZI NO. 2295] (2015).

<sup>155</sup> *Id.*

During the operational time of this agreement, [Eastern Public] may not unilaterally terminate the contract or subcontract the vehicles to a third party, otherwise, [Longshunda] has the right to take back the vehicles, not return [Eastern Public's] security deposit, and all harms caused by this are borne by [Eastern Public]. *If government policy-related or force majeure elements makes performance of this contract impossible, this contract automatically terminates, and the parties are to proceed as though the contract's lease time came due.*<sup>156</sup>

During the course of the lease, the local government changed transit regulations, allowing only specially permitted transit companies to operate certain bus routes, including the number 995 bus route.<sup>157</sup> Since Eastern Public was not considered a specially permitted transit company, it could no longer operate line 995.<sup>158</sup> Longshunda then sued Eastern Public for damages due to the depressed value of the leased buses.<sup>159</sup> In rejecting the Longshunda's claim, the lower court looked to the language of the *force majeure* clause, noting that the transit regulation change clearly qualified as a "government policy-related or *force majeure* element" and therefore the contract automatically terminated and damages were to be calculated as though the contract finished.<sup>160</sup>

In contrast, the court in *Hongshun Sandstone Co. v. Fuzhou Water Conservation Bureau* looked to the *force majeure* clause to find that the claim did not qualify as *force majeure*.<sup>161</sup> Here, Fuzhou Water Conservation Bureau entered into a contract with Hongshun Sandstone to a mining rights contract where Hongshun Sandstone had the right to

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<sup>156</sup> *Id.* (*emphasis added*) (“在本协议经营期内，乙方不得单方终止合同或将车辆转包给他人，否则，甲方有权收回车辆，没收保证金，所造成的损失由乙方承担，如因政府政策性或不可抗力因素导致本协议无法履行时，本协议自行终止，双方按合同满期处理”）。

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.* (“其后因深圳市公共交改革，该协议自动终止”）。

<sup>161</sup> *Fuzhou Shi Hongshun Shashi Youxian Gongsì, Fuzhou Shi Shuiliju Hetong Jiufen Ershen Minshi Pnajuèshu* (抚州市鸿顺砂石有限公司、抚州市水利局合同纠纷二审民事判决书) [*Hongshun Sandstone Co. v. Fuzhou Water Conservation Bureau*], Gan 10 Min Zhong 895 Hao (赣 10 民终 895 号) [GAN 10 MIN ZHONG NO. 895] (Fuzhou City Intermediate People's Ct. 2016).

mine in a specified area of Fuzhou city for two years.<sup>162</sup> However, the contract contained a broad *force majeure* clause:

If city-level or above government projects involving river dredging, flood prevention, or key projects require the removal of riverway sandpit installations or require occupying and using the purchased portion of the river, [Hongshun Sandstone] must unconditionally obey and may not use issues with investments or the inability to mine normally as a reason to request compensation or extend the length of granted mining rights. *Besides an earthquake or war, if any natural disaster or policy influences [Hongshun Sandstone's] ability to mine, [Hongshun Sandstone] automatically bears all loses and [Fuzhou Water Conservation Bureau] is not responsible.*<sup>163</sup>

During the course of the contract, Hongshun Sandstone sent a request to Fuzhou Water Conservation Bureau to extend the length of the mining rights by one year for free, citing interruptions in mining operations from a government flood prevention project, the winter flood season, and dike construction.<sup>164</sup> Fuzhou Water Conservation Bureau responded, agreeing to extend mining rights for 141 days.<sup>165</sup> Hongshun Sandstone then sued Fuzhou Water Conservation Bureau, requesting an extension for 20 months.<sup>166</sup> The court rejected Hongshun Sandstone, finding that Fuzhou Water Conservation Bureau had already adequately remedied<sup>167</sup> the effect of the flood prevention project by extending

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<sup>162</sup> *Id.*

<sup>163</sup> *Id.* (*emphasis added*) (“如因市级以上人民政府的河道整治、防洪工程建设及重点工程建设需要拆除河道采砂设施或占用买受河段的，鸿顺公司必须无条件服从，不得以投资或影响采区无法正常开采为由要求赔偿或延长砂石开采权时间，除地震和战争以外，因自然灾害和国家政策因素造成原告开采影响的，由鸿顺公司自行承担一切损失，抚州市水利局概不负责等内容”).

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> For a discussion of the importance of the availability of government compensation to *force majeure*, see Li Hu (李虎), Daozhi Hetong Buneng Lüxing de Zhengfu Chouxiang Xingzheng Xingwei Keshi Wei Bukekangli (导致合同不能履行的政府抽象行政行为可视为不可抗力) [*Abstract Government Actions That Lead to Failure*

mining rights for 141 days, that the dike construction fit into the *force majeure* clause, absolving Fuzhou Water Conservation Bureau of liability, and that another part of the contract stipulated that flood season was a no-mining period.<sup>168</sup>

#### IV. ALL TOGETHER: COVID-19

Pandemics are a traditional type of *force majeure*. COVID-19 almost certainly qualifies as a pandemic: SARS qualified as *force majeure*, and COVID-19 has infected more people, caused more death, and led to sweeping, country-wide lockdowns.

However, there will still be a question of causation.<sup>169</sup> Though entities can apply for *force majeure* certifications, they still need to show that the *force majeure* event caused the delay in performance.

For frustration of purpose, courts may take a narrow view. In *Xu Linfa v. Lingtong Paper Co.*,<sup>170</sup> the court focused on what the lease involved: a factory building, rather than the machinery inside of it. Once government regulations required the removal of the machinery, the purpose was not frustrated because the leased factory could still be used. In the context of COVID-19, it is possible the court could use similar logic to argue that any similar orders would not frustrate the purpose. However, this seems like an unlikely outcome.

The sophisticated party argument will not be as convincing in this context. Usually, it is used to argue that one party, by virtue of its sophistication, should understand the potential issues with performance.

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*to Perform a Contract Can be Regarded as Force Majeure*], 20 Renmin Sifa (人民司法) [THE PEOPLE'S JUDICATURE] 83 (2009).

<sup>168</sup> *Hongshun Sandstone Co. v. Fuzhou Water Conservation Bureau*, *supra* note 161. The Hongshun Sandstone also raised other possible *force majeure* events, including road construction, road closure, and local village strife. The court declined to find the Fuzhou Water Conservation Bureau liable for any of these other events, reasoning that the road construction was an important civic project and that the Fuzhou Water Conservation Bureau was the wrong party to sue for damages with respect to these claims. *Id.*

<sup>169</sup> Gong Baihua (龚柏华), Guoji Shangshi Hetong Bukekangli Tiaokuan de “Xinguan Feiyan” Yiqing Shiyong Falü Wenti (国际商事合同不可抗力条款对“新冠肺炎”疫情适用法律问题) [*Legal Issues with Applying International Commercial Contract Force Majeure Clauses to COVID-19*], 27(2) Shanghai Duiwai Jingji Daxue Xuebao (上海对外经济大学学报) [J. OF SUIBE] 5, 13 (2020) (discusses the importance of case-specific showing of causation).

<sup>170</sup> *Xu Linfa v. Lingtong Paper Co.*, *supra* note 43.

However, these issues are relatively common issues, e.g., government approval delays, changes in regulations, and delays in demolition.<sup>171</sup> In contrast, COVID-19 is an epidemic closer to a once-in-a-hundred-years event. Therefore, a reliance on the sophisticated party argument would have to follow a better position argument: the sophisticated party is likely the better party to bear the liability due to its financial situation and knowledge.

The event occurring after delay in performance was a common reason to find an otherwise qualifying event not a source of excusal. Parties would still need to make sure that any liability they want to be excused from does not stem from a delay in performing prior to the COVID-19 outbreak.

As for contracts signed during the beginning of the outbreak, courts may argue this made the situation foreseeable. It is a parallel argument to saying that a government regulation is foreseeable when the contract was signed while the regulation was in the public comment or other approval system. However, this would also be a very fact intensive inquiry, since early coverage of COVID-19 did not make clear how infectious the disease turned out to be. Since the foreseeability inquiry is at the time of signing, the correct analysis would involve what the parties knew about COVID-19 at the time of signing. However, this is an area that may lead to hindsight bias,<sup>172</sup> as we learn more about the virus, courts may impute this knowledge on the parties. This is especially true for contracts signed between December 2019 and January 2020, before the major shutdowns began.

In addition, the court will likely look to the *force majeure*<sup>173</sup> and liquidated damages clauses negotiated by the parties. The data suggest that the presence of *force majeure* clauses increases the success rate of the defense. In other words, they are more likely than not to follow what is agreed on. As for the liquidated damages clause, courts focused on whether the clause was too penalizing to the breaching party. Here, any concern a court might have with holding that a particular event was *force majeure* is lessened by the fact that pandemics are a traditional type of *force majeure* event. Thus, they would be more likely to engage

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<sup>171</sup> Lu Qian & Fan Guohua, *supra* note 50, at 53 (discussing frequency of government actions).

<sup>172</sup> *See also id.* (discussing how probability and frequency of government actions lead to hindsight bias).

<sup>173</sup> For a discussion of types of *force majeure* clauses and their application to COVID-19, *see* Gong Baihua, *supra* note 169.

directly with the *force majeure* analysis, rather than focus on whether the amount of liquidated damages was too high.

#### V. CONCLUSION

Overall, based on the analyzed cases, Chinese courts are most likely to not find *force majeure* where they cite article 117, the underlying contract is a real estate purchase, the defendant is a company being sued by an individual, and the court explicitly discusses a liquidated damages clause in the contract. Applied to the current COVID-19 crisis, the analysis suggests that Chinese courts will look to the *force majeure* clauses in the contracts, focus on case-specific causation, and rely on different reasons if they rule against a particular defendant. However, it is important to remember that these are correlations and most likely do not indicate causation; instead, they reflect the contexts where defendants tend to raise successful *force majeure* defenses.

## Appendix of Cases

## Cases that cite Article 94(1)(1)

Case Number	Jurisdiction	P <sup>a</sup>	D <sup>b</sup>	K Type	Type of <i>Force Majeure</i>	<i>Force Majeure</i> ?	Liability?	LD <sup>c</sup>	FM <sup>d</sup>	View of Lower Court opinion?
(2011) 深中法民一终字第1248号	Shenzhen, Guangdong Intermediate People's Court	C	C	Equipment Lease	Government Action – Law/Regulation (gondola safety changes, forced grounding)	Yes	No	Yes	No	Sustain
(2012) 广海法初字第288号	Guangzhou Province Maritime Court	C	C	Real Estate Lease (Port)	Government Action – Land Confiscation	Yes	No	No	Yes	N/A
(2012) 湖德商初字第223号	Deqing County, Zhejiang Basic People's Court	I	C	Real Estate Lease	Government Action – Law/Regulation (emission regulations, forced removal of machinery)	Yes	Yes – purpose not frustrated	Yes	Yes	N/A
(2014) 玉中民一终字第128号	Yulin, Guangxi Zhuang Autonomous Region Intermediate People's Court	C	I	Real Estate Lease	Government Action – government transferred possession right of underlying real estate	Not <i>force majeure</i>	Yes	No	No	Amended
(2015) 七民初字第30517号	Qilihe, Lanzhou, Gansu Basic People's Court	C	I	Real Estate Lease	Government Action – Land Confiscation	Yes – followed notification procedure in <i>force majeure</i> clause	No	Yes	Yes	N/A
(2015) 杭萧民初字第2182号	Xiaoshan, Hangzhou, Zhejiang Basic People's Court	I	C	Real Estate Lease	Government Action – Land Confiscation	<i>Force Majeure</i> – purpose frustrated	No	No	No	N/A
(2015) 深中法商终字第2295号	Shenzhen, Guangdong Intermediate People's Court	C	C	Bus Transit Agreement	Government Action – Law/Regulation (changes to transit regulations)	<i>Force Majeure</i> – contract language	No	No	Yes	Sustain

<sup>a</sup> This column refers to the identity of the plaintiff (P). “I” is an individual, “C” is a company, “G” is the government, and “Coop” is a cooperative.

<sup>b</sup> This column refers to the identity of the defendant (D). “I” is an individual, “C” is a company, and “G” is the government, and “Coop” is a cooperative.

<sup>c</sup> This column refers to the presence of liquidated damages clauses. See *supra* Section III.G. “Liquidated Damages and *Force Majeure* Clauses.”

<sup>d</sup> This column refers to the presence of *force majeure* clauses. See *supra* Section III.G. “Liquidated Damages and *Force Majeure* Clauses.”



Case Number	Jurisdiction	P <sup>a</sup>	D <sup>b</sup>	K Type	Type of Force Majeure	Force Majeure?	Liability?	LD <sup>c</sup>	FM <sup>d</sup>	View of Lower Court opinion?
(2015) 历城民初字第 2648 号	Licheng, Jinan, Shangdong Province Basic People's Court	I	C	Real Estate Purchase	Other (underlying house never built, so bank did not disburse loan)	Force majeure – purpose frustrated	No	No	No	N/A
(2015) 咸秦民初字第 00939 号	Qindu, Xianyang, Shaanxi Basic People's Court	I	C	Utility Construction	Other (investment issues)	Force Majeure	No	No	Yes	N/A
(2014) 榕民终字第 130 号	Fuzhou, Fujian Intermediate People's Court	I	G	Development Contract	Government Action – Land Confiscation	Force Majeure	No	Yes	Yes	Sustain
(2013) 肇四法民初字第 1151 号	Sihui, Guangdong Basic People's Court	C	I	Real Estate Lease	Other (building cannot meet fire safety standards)	Force Majeure – can't be changed, so neither party liable	No	No	No	N/A
(2013) 岳民初字第 1310 号	Yueyang, Hunan Basic People's Court	C	C	Construction Contract	Other (terrain too complicated to lay natural gas pipe for remaining distance)	Force Majeure – followed contract procedure to rescind	No	Yes	Yes	N/A
(2012) 浙绍商终字第 383 号	Shaoxing, Zhejiang Intermediate People's Court	I	Coop	Management Contract	Weather – Natural Disaster (typhoon)	Force Majeure	No	No	No	Sustain
(2008) 下民二初字第 748 号	Xiacheng, Hangzhou Basic People's Court	I	C	Asset Purchase (Heavy Cars)	Government Action – Law/Regulation (change in registration requirements)	Force Majeure – purpose frustrated	No	No	No	N/A
(2016) 川 3301 民初字第 172 号	Kangding, Sichuan Basic People's Court	I	I	Commercial Real Estate Lease	Government Action – Utilities (electricity cut off)	Force Majeure – purpose frustrated.	No	No	No	N/A
(2016) 苏 0115 民初字第 13608 号	Jiangning, Nanjing, Jiangsu Basic People's Court	I	I	Real Estate Purchase	Government Action – Law/Regulation (new law restricting real estate purchases)	Force majeure – Change not within defendant's control; defendant didn't breach	No	No	No	N/A
(2017) 鲁 06 民终 125 号	Yantai, Shandong Intermediate People's Court	G	I	Land Conservation Agreement	Weather – Natural Disaster (bug infestation)	Force Majeure – government cut down trees in response	No	No	Yes	Sustain

Case Number	Jurisdiction	P <sup>a</sup>	D <sup>b</sup>	K Type	Type of Force Majeure	Force Majeure?	Liability?	LD <sup>c</sup>	FM <sup>d</sup>	View of Lower Court opinion?
(2017) 陕 0103 民初 896 号	Beilin, Xi'an, Shaanxi Basic People's Court	I	I	Commercial Real Estate Lease	Government Action – Land Confiscation (unable to get business license)	Not force majeure – relevant government documents had been published before parties signed the contract; plaintiff did not provide evidence that he could not get a business license because the property was in within the area to be confiscated by the government to build a subway.	No	No	No	N/A
(2016) 川 33 民 终 123 号 <sup>e</sup>	Ganzi Zang, Sichuan Intermediate People's Court	I	I	Real Estate Lease	Government Action – Utilities (electricity cut off)	Force Majeure	No	No	No	Amended
(2015) 韶武法民 一初字第 40 号	Wujiang, Shaoguan, Guangdong Basic People's Court	I	G	Real Estate Lease (Quarry)	Government Action – Land Confiscation	Force Majeure – can't achieve purpose	No	Yes	Yes	N/A
(2015) 阜审民再 字第 41 号	Fuxin, Liaoning Intermediate People's Court	G	I	Water Reservoir Contract	Other (reservoir had no water)	Force Majeure – neither side able to refill water	No	Yes	Yes	Sustain
(2015) 铜民二初 字第 00279 号 <sup>f</sup>	Tongling, Anhui Basic People's Court	G	I	Real Estate Lease	Government Action – Land Confiscation	Force majeure – followed contract clause	No	No	No	N/A
(2016) 皖 1522 民初 456 号	Huoqiu, Anhui Basic People's Court	C	C	Supply Contract	Other (supplied products cannot fulfil purpose of the contract)	Force majeure	No	No	Yes	N/A
(2016) 皖 15 民 终 854 号 <sup>g</sup>	Liu'an, Anhui Intermediate People's Court	C	C	Supply Contract	Other (supplied products cannot fulfil purpose of the contract)	Force majeure	No	No	Yes	Sustain

<sup>e</sup> This is the appeal of Jiang Lin yu Chen Jinxing Fangwu Zulin Hetong Jiufen Yishen Minshi Panjueshu (姜林与陈金兴房屋租赁合同纠纷一审民事判决书) [*Jiang Lin v. Chen Jinxing*], Chuan 3301 Min Chu 172 Hao (川 3301 民初 172 号) [CHUAN 3301 MIN CHU NO. 172] (Kangding City People's Court 2016).

<sup>f</sup> Same underlying event as Tongling Xian Wusong Zhen Renmin Zhengfu yu Tongling Xian Suling Muye Youxian Gongsu Zulin Hetong Jiufen Ershen Minshi Panjueshu (铜陵县五松镇人民政府与铜陵县苏陵木业有限公司租赁合同纠纷二审民事判决书) [*People's Government of Wusong Town v. Suling Wood Industry Co., Ltd.*], Wan 07 Min Zhong 32 Hao (皖 07 民终 32 号) [WAN 07 MIN ZHONG NO. 32] (Tongling City Intermediate People's Court 2016).

<sup>g</sup> This case is an appeal of Huoqiu Xian Jin Ying Shangmao Youxian Gongsu yu Huoqiu Xian Qisheng Jingmao Youxian Gongsu Gaolu Jiajiu Jiudian Xiaoshou Hetong Jiufen Yishen Minshi Panjueshu (霍邱县金樱商贸有限公司与霍邱县齐升经贸有限公司高炉家酒酒店销售合同纠纷一审民事判决书) [*Jinying Trading Co., Ltd. v. Qisheng Economic and Trade Co., Ltd.*], Wan 1522 Min Chu 456 Hao (皖 1522 民初 456 号) [WAN 1522 MIN CHU NO. 456] (Huoqiu County People's Court 2016).

Case Number	Jurisdiction	P <sup>a</sup>	D <sup>b</sup>	K Type	Type of Force Majeure	Force Majeure?	Liability?	LD <sup>c</sup>	FM <sup>d</sup>	View of Lower Court opinion?
(2016) 晋 0781 民初字第 98 号	Jielin, Shanxi Basic People's Court	I	C	Cooperative Management Lease	Other (department store shut down because Defendant had dispute with a third party)	Force majeure – not plaintiff's fault	No	No	No	N/A
(2016) 皖 07 民 终 32 号	Tongling, Anhui Intermediate People's Court	G	C	Real Estate Lease	Government Action – Land Confiscation	Force majeure – followed contract clause	No	No	Yes	Sustain
(2015) 鄂恩施民 初字第 03372 号	Enshi, Hebei Basic People's Court	I	C and I	Real Estate Purchase	Other (didn't have the property right certification)	Not force majeure – it was known that the defendant didn't have the property right certification, as evidenced by the low price.	No	Yes	Yes	N/A
(2015) 湛中法民 一终字第 801 号	Zhanjiang, Guangdong Intermediate People's Court	I	I	Real Estate Lease	Government Action – Other Executive Action (ordered demolition)	Force majeure – unforeseeable circumstance	No	No	Yes	Sustain
(2014) 七民初字第 第 30037 号	Qilihe, Lanzhou, Gansu Basic People's Court	C	C	Real Estate Lease	Government Action – Land Confiscation (subway construction)	Force majeure – defendant provided appropriate notice, plaintiff's evidence showed termination due to government action.	No	No	Yes	N/A
(2014) 七民初字第 第 30096 号	Qilihe, Lanzhou, Gansu Basic People's Court	I	C	Real Estate Lease	Government Action – Land Confiscation (subway construction)	Force majeure – defendant provided appropriate notice, plaintiff's evidence showed termination due to government action.	No	No	Yes	N/A

## Cases that cite Article 117

Case Number	Jurisdiction	P	D	K Type	Type of Force Majeure	Force Majeure?	Liability?	LD	FM	View of Lower Court Opinion?
(2014) 晋源民初 字第 12 号	Puyuan, Taiyuan, Shanxi Basic People's Court	C	I	Asset Purchase (car)	Other (asset destroyed)	Force majeure	Yes	Yes	No	N/A
(2016) 川 1503 民初 1520 号	Nanxi, Yibin, Sichuan Basic People's Court	I	C	Real Estate Purchase	Government Action – Law/Regulation (changed local approvals)	Not force majeure – the change didn't have a substantive effect on transferring property rights	Yes	Yes	Yes	N/A

Case Number	Jurisdiction	P	D	K Type	Type of <i>Force Majeure</i>	<i>Force Majeure?</i>	Liability?	LD	FM	View of Lower Court Opinion?
(2016) 苏 0111 民初 5613 号	Pukou, Nanjing, Jiangsu Basic People's Court	I	C	Real Estate Purchase	Government action – Law/Regulation (regulation restricting working hours)	Not <i>force majeure</i> – first regulation finished before contract was signed; second regulation was foreseeable because the parties included a 3-month transfer window in the contract (and the stoppage only lasted a month).	Yes	Yes	No	N/A
(2016) 豫 14 民 终 3780 号	Shangqiu, Henan Intermediate People's Court	I	C	Real Estate Purchase	Government Action – Other Executive Action (military halted construction over safety concerns) Weather Other (workers' vacation)	Not <i>force majeure</i> – vacation and weather are not plaintiff's fault; defendant know or should have known military would not want a high building near its buildings, based on the property's close proximity to the military buildings.	Yes	Yes	No	Sustained
(2017) 甘 0111 民初 1583 号	Honggu, Lanzhou, Gansu Basic People's Court	C	I	Utility Contract (Heating)	Other (inability to pay for heating)	Not <i>force majeure</i> – inability to pay is not <i>force majeure</i>	Yes	No	No	N/A
(2017) 苏 0322 民初 3839 号	Pei, Jiangsu Basic People's Court	I	C	Real Estate Purchase	Government action – Utility (unable to complete inspections due to electrical equipment being constructed.)	Not <i>force majeure</i> – Reason unclear	Yes	Yes	No	N/A
(2017) 黔 27 民 终 1666 号	Qiannan Buyei and Miao Autonomous Prefecture, Guizhou Intermediate People's Court	I	C	Real Estate Purchase	Government – Law/Regulation (change in development plan)	Not <i>force majeure</i> – defendant provided insufficient evidence	Yes	Yes	No	Sustain
(2018) 桂 0223 民初 71 号	Luzha, Guangxi Basic People's Court	I	C	Real Estate Purchase	Weather – Unusual Weather (rain) Government Action – Utilities (water and electricity closure)	<i>Force majeure</i> – defendant provided documentation from utility and weather bureau; court reduced penalty by total number of days, less double-counted days and partial days.	No	Yes	No	N/A
(2014) 穗中法民 五终字第 1889号	Guangzhou, Guangdong Intermediate People's Court	I	C	Real Estate Demolition Compensation Contract	Government action – Other Executive Action (archeological digs)	Not <i>force majeure</i> – event occurred after defendant was supposed to transfer the property.	Yes	Yes	No	Sustained

Case Number	Jurisdiction	P	D	K Type	Type of Force Majeure	Force Majeure?	Liability?	LD	FM	View of Lower Court Opinion?
(2015)穗中法民五终字第641号	Guangzhou, Guangdong Intermediate People's Court	I	C	Real Estate Purchase	Weather – Unusual Weather (rainstorm) Government Action – unclear what kind	Not <i>force majeure</i> – the government actions were foreseeable because defendant is a real estate company; the rainstorm occurred after defendant was contractually required to transfer the property (i.e., after delay of performance)	Yes	Yes	No	Sustained
(2017)湘1002民初1103号	Beihu, Chenzhou, Hunan Basic People's Court	I	C	Real Estate Purchase	Government – Utilities Weather – Unusual Weather (heavy rain)	Not <i>force majeure</i> – no record of unusual rains; as an apartment builder, should understand the local government regulations and timeline.	Yes	Yes	Yes	N/A
(2017)晋11民终986号	Lüliang, Shanxi Intermediate People's Court	I	C	Real Estate Purchase	Government – road construction Weather – Unusual Weather	Not <i>force majeure</i> – not enough proof; road construction was almost done when the contract was signed	Yes	Yes	Yes	Sustain
(2016)赣10民终895号 <sup>h</sup>	Fuzhou, Jiangxi Intermediate People's Court	C	G	Mining Rights Contract	Several Government action -- construction Weather – Unusual Weather (winter) Other -- (disturbance)	Not <i>force majeure</i> – the contract has a very tight clause that basically only excuses plaintiff for earthquakes and war. Court rejects view that clause adds too much liability and takes away too many rights.	No	No	Yes	Sustain
(2013)民申字第1632号	Supreme People's Court of China	C	C	Construction Contract	Weather – Unusual Weather (construction during winter)	<i>Force majeure</i> – the winter weather would be <i>force majeure</i> , but had defendant performed per the contract, winter would have been irrelevant ( <i>force majeure</i> event occurred after delay in performance).	Yes	No	Yes	Sustained
(2015)江民初字第468号	Liujiang, Guangxi Zhuang Autonomous Region Basic People's Court	I	C	Real Estate Purchase	Weather – Unusual Weather (heavy rain)	<i>Force majeure</i> – weather bureau data showed rain patterns; contract provision stipulated: for each day with four or more hours of continuous rain, or six or more total hours of rain, defendant could transfer the property one day late.	Yes	Yes	Yes	N/A

<sup>h</sup> Same underlying facts as *Li Zhuofeng*, *supra* note 98.

Case Number	Jurisdiction	P	D	K Type	Type of Force Majeure	Force Majeure?	Liability?	LD	FM	View of Lower Court Opinion?
(2015) 穗中法民五终字第597号 <sup>i</sup>	Guangzhou, Guangdong Intermediate People's Court	I	C	Real Estate Purchase	Weather – Unusual Weather (rainstorm) Government Action – unclear what kind	Not <i>force majeure</i> – the government actions were foreseeable because defendant is a real estate company; the rainstorm occurred after defendant was contractually required to transfer the property (i.e., after delay of performance)	Yes	Yes	No	Sustain
(2016) 鄂0281民初4043号	Daye, Hubei Basic People's Court	I	C	Real Estate Purchase	Government Action – Law/Regulation (changed room size regulation) Weather – Unusual Weather (rain and high temperatures)	Not <i>force majeure</i> – defendant did not provide enough proof that regulation change caused lost days of work; rain and high temperatures are normal and should be considered at the time of signing the contract.	Yes	Yes	Yes	N/A
(2016) 粤0184民初2509号	Conghua, Guangzhou Basic People's Court	I	C	Real Estate Purchase	Other (court fees from other cases drained defendant's cash, causing a delay in performance)	Not <i>force majeure</i> – as a developer, defendant should foresee some issues during development.	Yes	Yes	No	N/A
(2014) 长法民初字第04138号 <sup>j</sup>	Changshou, Chongqing Basic People's Court	I	C	Real Estate Purchase	Government Action – Other Executive Action (upgrade ministry infrastructure)	Not <i>force majeure</i> – defendant was able to use a different system; the upgrade occurred after defendant was supposed to perform.	Yes	Yes	No	N/A
(2013) 天民一初字第1783号	Tianqiao, Jinan Basic People's Court	I	C	Real Estate Purchase	Government Action – Other Executive Action (government document)	Not <i>force majeure</i> – in addition, defendant had already delayed performance when the <i>force majeure</i> event in question happened.	Yes	Yes	No	N/A
(2014) 长法民初字第04135号 <sup>k</sup>	Changshou, Chongqing Basic People's Court	I	C	Real Estate Purchase	Government Action – Other Executive Action (upgrade ministry infrastructure)	Not <i>force majeure</i> – defendant was able to use a different system; the upgrade occurred after defendant was supposed to perform.	Yes	Yes	No	N/A
(2015) 大舍民初字第170号 <sup>l</sup>	Da'an, Jilin Basic People's Court	G	I	Project Contract	Government Action – Land Confiscation (contract landed involved in new development)	<i>Force majeure</i> – the existing contract would upset the development project and harm the public interest	No	No	No	N/A

<sup>i</sup> Same underlying facts as *He Dongru v. Guotai Tiantong Real Estate Development Co., Ltd.*, *supra* note 86.

<sup>j</sup> Same underlying situation as *Lu Chunyan, Zhang Lunyuan yu Chongqing Gangtie Jituan Duoli Fangdichan Gufen Youxian Gongsi Fangwu Maimai Hetong Jiufen Yishen Minshi Panjueshu* (卢春艳、张伦原与重庆钢铁集团朵力房地产股份有限公司房屋买卖合同纠纷一审民事判决书) [*Lu Chunyan et al. v. Iron and Steel Group Duoli Real Estate Co., Ltd.*], Chang Fa Min Chu Zi Di 04135 Hao (长法民初字第04135号) [CHANG FA MIN CHU NO. 04135] (Changshou District People's Court 2014).

<sup>k</sup> Same underlying situation as *Xia Fangmin v. Iron and Steel Group Duoli Real Estate Co., Ltd.*, *supra* note 86.

<sup>l</sup> This case also cites article 94(1)(1).

Case Number	Jurisdiction	P	D	K Type	Type of <i>Force Majeure</i>	<i>Force Majeure?</i>	Liability?	LD	FM	View of Lower Court Opinion?
(2015) 朝民初字第43409号	Chaoyang, Beijing Basic People's Court	I	I	Real Estate Lease	Government Action – Other Executive Action (renovations)	Not <i>force majeure</i> – no other explanation	Yes	Yes	Yes	N/A
(2015) 珠中法民三终字第254号	Zhuhai, Guangdong Intermediate People's Court	C	C	Land Use Contract	Government Action – Land Confiscation	<i>Force majeure</i> – since government condemned land, defendant does not need to transfer and has no liability to compensate plaintiff.	No	No	No	Sustained
(2016) 闽0504民初2460号	Luojiang, Quanzhou, Fujian Basic People's Court	I	C	Real Estate Lease	Government Action – road construction Other – (local and national furniture making businesses much less profitable.)	Not <i>force majeure</i> – road construction was done per the city government plans which were available. Change in furniture market is a market risk issue, not an unforeseeable risk.	Yes	Yes	No	N/A
(2017) 冀09民终4886号	Cangzhou, Hebei Intermediate People's Court	I	C	Real Estate Purchase	Government Action – Law/Regulation (various meetings, celebrations, and smog prevention measures)	Not <i>force majeure</i> – No extra analysis	Yes	Yes	No	Sustain
(2017) 皖12民终3811号	Fuyang, Anhui Intermediate People's Court	I	C	Real Estate Purchase	Government Action – Other Executive Action (land transfer disallowed because land unclean (未净地))	Not <i>force majeure</i> – at the time the contract was signed, the defendant knew the land was unclean.	Yes	Yes	Yes	Sustain
(2017) 苏03民终8530号	Xuzhou, Jiangsu Intermediate People's Court	I	C	Real Estate Purchase	Government Action – change of regulation	Not <i>force majeure</i> – the changes were not substantive; concern that if any change of regulation was a <i>force majeure</i> event, one party could delay performance forever and disclaim liability if sued.	Yes	Yes	Yes	Sustain

Case Number	Jurisdiction	P	D	K Type	Type of Force Majeure	Force Majeure?	Liability?	LD	FM	View of Lower Court Opinion?
(2017) 鄂05民终712号	Yichang, Hubei Intermediate People's Court	I	C	Utility Contract (Heat)	Government Action – Law/Regulation (new regulation energy source restriction)	Not <i>force majeure</i> – societal knowledge of climate change makes this not unforeseeable or unavoidable; availability of government compensation makes this not insurmountable. Lastly, regulations banned some methods, not overall providing heat.	Yes	No	No	Sustain
(2017) 鲁01民终1562号 <sup>m</sup>	Jinan, Shandong Intermediate People's Court	I	C	Real Estate Purchase	Government Action – new regulations	Not <i>force majeure</i> – changes only clarified procedure; the existence of prior laws that set up the inspection system make clarifying laws foreseeable.	Yes	Yes	Yes	Sustain
(2017) 鲁01民终7264号 <sup>n</sup>	Jinan, Shandong Intermediate People's Court	I	C	Real Estate Purchase	Government Action – new regulations	Not <i>force majeure</i> – changes only clarified procedure; the existence of prior laws that set up the inspection system make clarifying laws foreseeable.	Yes	Yes	Yes	Sustain
(2017) 黔06民终1469号	Tongren, Guizhou Intermediate People's Court	I	C	Real Estate Purchase	Several Government Action – Other Executive Action (government had not yet destroyed the existing building) Weather – Unusual Weather (flooding)	Not <i>force majeure</i> – as a business, rain is foreseeable; government action only potentially affected basic utilities, not the ability to transfer the house.	Yes	Yes	Yes	Sustain

<sup>m</sup> Same underlying situation as *Hisense Real Estate Co., Ltd. v. Lan Mei*, *supra* note 116 and Jinan Haixin Zhiye Youxian Gongsi yu Chen Yan Shangpinfang Xiaoshou Hetong Jiufen Ershen Minshi Panjueshu (济南海信置业有限公司与陈艳商品房销售合同纠纷二审民事判决书) [*Hisense Real Estate Co., Ltd. v. Chen Yan*], Ji Min Yi Zhong Zi Di 865 Hao (济民一终字第865号) [JI MIN YI ZHONG NO. 865] (Jinan City Intermediate People's Ct. 2015).

<sup>n</sup> Same underlying situation as Jinan Haixin Zhiye Youxian Gongsi yu Yin Bo Shangpinfang Xiaoshou Hetong Jiufen Ershen Minshi Panjueshu (济南海信置业有限公司与银波商品房销售合同纠纷二审民事判决书) [*Hisense Real Estate Co., Ltd. v. Yin Bo*], Lu 01 Min Zhong 1562 Hao (鲁01民终1562号) [LU 01 MIN ZHONG NO. 1562] (Jinan Intermediate People's Ct. 2017) and *Hisense Real Estate Co., Ltd. v. Chen Yan*, *supra* note m.



Case Number	Jurisdiction	P	D	K Type	Type of Force Majeure	Force Majeure?	Liability?	LD	FM	View of Lower Court Opinion?
(2017) 黔26民终1834号	Qiandongnan, Guizhou Intermediate People's Court	I	C	Real Estate Purchase	Government Action – various orders to stop working; change in local plan	Not <i>force majeure</i> – both the orders to stop working and change in local plan happened before contract formation, thus foreseeable; defendant's lack of transfer documents breached the contract and goes against the civil principles of honesty and trustworthiness. The breach of contract (failure to transfer documents) happened before <i>force majeure</i> (change in local plan).	Yes	Yes	No	Sustain
(2018) 鄂01民终269号	Wuhan, Hubei Intermediate People's Court	I	C	Real Estate Purchase	Government Action – Other Executive Action (natural gas approval denied)	Not <i>force majeure</i> – as a developer, defendant is in a better position to understand the regulations around natural gas in small apartments and could have foreseen and avoided this problem.	Yes	No	Yes	Sustained
(2017) 粤07民终3126号	Jiangmen, Guangdong Intermediate People's Court	I	C	Real Estate Purchase	Government Action – Law/Regulation (change of regulation, caused bids for utilities construction to be ineffective)	Not <i>force majeure</i> – as a developer, the risks and complications of public bidding should be foreseeable to defendant; not enough evidence to prove utility ministry illegally delayed inspections.	Yes	Yes	No	Sustain
(2015) 济民一终字第865号 <sup>o</sup>	Jinan, Shandong Intermediate People's Court	I	C	Real Estate Purchase	Government Action – Law/Regulation	Not <i>force majeure</i> – changes only clarified procedure; the existence of prior laws that set up the inspection system make clarifying laws foreseeable. The registration deadline is eight months after the new regulations are effective; sufficient time for the defendant to perform the obligation; unavailability and inability to overcome cannot be shown.	Yes	Yes	Yes	Sustain

<sup>o</sup> Same underlying situation as *Hisense Real Estate Co., Ltd. v. Lan Mei*, *supra* note 116 and *Hisense Real Estate Co., Ltd. v. Yin Bo*, *supra* note n.

Case Number	Jurisdiction	P	D	K Type	Type of Force Majeure	Force Majeure?	Liability?	LD	FM	View of Lower Court Opinion?
(2015) 渝二中法民终字第01533号	Chongqing Second Intermediate People's Court	I	C	Real Estate Purchase	Government Action – Law/Regulation (ownership certificate issues, part of the land was involved in a relocation plan and unable to transfer)	Not <i>force majeure</i> – as a developer, the defendant should know what materials are needed and what the process is like for government to issue certificates; this is an issue for the developer and the utility company.	Yes	Yes	No	Sustain
(2017) 湘0111民初6720号	Yuhua, Changsha, Hunan Basic People's Court	I	I	Real Estate Purchase	Government Action – Law/Regulation (local restrictions on purchasing housing)	Not <i>force majeure</i>	Yes	Yes	Yes	N/A
(2017) 豫01民终18653号	Zhengzhou, Henan Intermediate People's Court	I	C	Real Estate Purchase	Government Action – Law/Regulation (environmental regulation)	<i>Force majeure</i> – defendant excused for 30% because didn't provide enough evidence to be excused for 100%; evidence submitted could not prove how much <i>force majeure</i> contributed to the delay.	Yes/No – 70% liable	Yes	Yes	Sustain
(2017) 黔01民终4816号	Guiyang, Guizhou Intermediate People's Court	I	C	Real Estate Purchase	Government Action – Law/Regulation (changes in law and registration procedures)	Not <i>force majeure</i>	Yes	Yes	No	Sustain
(2016) 粤71民终81号	Guangzhou Railway Transport Intermediate Court	C	C	Goods Transport Agreement	Other (theft)	Not <i>force majeure</i> – doesn't fit the <i>force majeure</i> clause of the contract	Yes	No	Yes	Sustain
(2016) 闽0402民初2787号 <sup>P</sup>	Meilie, Sanming, Fujian Basic People's Court	I	C	Real Estate Purchase	Government Action – Other Executive Action (government delayed in demolishing building)	Not <i>force majeure</i> – government had already delayed performance when contract signed. Additionally, as a building company, should foresee the possible delay of the government demolition.	Yes	Yes	Yes	N/A

<sup>P</sup> Same underlying situation as *Yu Bingling v. Sanming Zhongxiang Fangdichan Kaifa Youxian Gongsi Fangwu Maimai Hetong Jiufen Yishen Minshi Panjueshu* (余冰玲与三明众祥房地产开发有限公司房屋买卖合同纠纷一审民事判决书) [*Yu Bingling v. Zhongxiang Real Estate Development Co., Ltd.*], Min 0402 Minchu 3354 Hao (闽0402民初3354号) [MIN 0402 MINCHU NO. 3354] (Meilie Dist. People's Ct. 2016).

Case Number	Jurisdiction	P	D	K Type	Type of <i>Force Majeure</i>	<i>Force Majeure?</i>	Liability?	LD	FM	View of Lower Court Opinion?
(2016) 闽 0402 民初 3354 号 <sup>9</sup>	Meilie, Sanming, Fujian Basic People's Court	I	C	Real Estate Purchase	Government Action – Other Executive Action (government delayed in demolishing building)	Not <i>force majeure</i> – government had already delayed performance when contract signed. Additionally, as a building company, should know government demolition is a slow process.	Yes	Yes	Yes	N/A

<sup>9</sup> Same underlying situation as *Li Xinming v. Zhongxiang Real Estate Development Co., Ltd.*, *supra* note 16.