

**IN THE SUPREME COURT OF ATHENS**

Theseus, Duke of Athens,	)	
Petitioner,	)	
v.	)	Civil No. 1200 BC - -2
Peter Quince,	)	
Respondent.	)	

In the Summer of 1200 BC, a few days before the events recorded in *A Midsummer Night's Dream*, Theseus, a respected Duke and future King of Athens, entered into an agreement with Peter Quince's company of amateur players called the "Rude Mechanicals" to perform *Pyramus and Thisbe*, a tragedy, on the Duke's wedding night at the Theater of Dionysus on the Acropolis. Theseus planned to invite his wedding guests to attend the play and he also decided to sell tickets to the nobility in Athens. He and his bride, Queen Hippolyta, expected a crowd of 300 of Athens' wealthiest Noblemen and women to attend. Money from the sale of tickets provided the sole source of support for the play and reception. Theseus agreed to pay each player the generous sum of 3,000 drachmae, one half in advance and one half after the performance. Their contract contained a standard *force majeure* clause whereby both parties were relieved from liability or obligation to the other upon proof that "an extraordinary and unforeseen event external to the contract had occurred, including war, revolution, crime, or an act of the gods." The clause further stated that acts of gods included hurricanes, floods, earthquakes, fires, volcanic eruptions, or epidemics. Under the agreement, the party who could no longer perform would notify the other and make all reasonable efforts to mitigate the harmful effects of non-performance.

Everyone in Athens was excited about the upcoming wedding and play, and expectations ran high as Quince set about the task of selecting the actors for the play. He brought the Mechanicals to the forest north of Athens where they usually rehearsed. Unbeknownst to Quince, though, the forest also was full of restless young lovers. There was Hermia, who was deeply in love with the handsome young Lysander. Her father, a Nobleman, however, wanted her to marry Demetrius, a "worthy man," and threatened her with death or banishment to a nunnery if she did not. At the same time, Helena, a close friend of Hermia's, was in love with Demetrius to whom she was recently betrothed before he dumped her. Hermia, after receiving her father's ultimatum, fled with Lysander to the forest. Hoping to win Demetrius back, Helena told him of the lovers' flight, causing Demetrius to search for them in the same forest, with Helena close on his heels.

There were others in the forest, too. The mischievous woodland fairies lived and frolicked there, unseen by human eyes. The king of the fairies, Oberon, enlisted his sprite, Puck, to cast spells with flowers and eye drops on the sleeping lovers, causing confusion as to who was in love with

whom. Ultimately the fairies set everything straight between the lovers with new fairy dust, putting Hermia and Lysander back together and reuniting Demetrius with Helena.

In the pandemonium, the fairies, again unseen, did one more thing. Quince had selected Nick Bottom, a local weaver, as the only one who could play the part of Pyramus in the play being prepared for Theseus's wedding. Bottom was more than a little conceited despite mixed reviews of his prior work and his reputation of being stubborn, stuck up and "mule-headed." During the casting call, he insisted that he could play all of the parts. Quince placated him by telling him that he was uniquely essential in the starring role of Pyramus. However, just before the dress rehearsal, Puck, as part of his forest mischief, turned Bottom's head into the head of an ass, causing the other Rude Mechanicals, when they saw him, to flee from the forest set in terror, and to refuse to come back to work. Given Bottom's now having the head of an ass, and the Mechanicals' reaction to Bottom's transformation, Quince, on behalf of the Mechanicals, promptly notified Theseus that the play could not go on.

Theseus was outraged. He was on the hook for non-refundable wedding deposits and he and Hippolyta agreed that it was too late to change the wedding date. He notified the ticket holders that the performance would be cancelled and that they would be told later if there would be a substitute performance at another time. Members of the audience threatened to sue for refund of the 100 drachmae each had paid for their tickets, which included language stating the ticket price was nonrefundable unless cancellation was caused by certain unspecified unforeseen events. They deferred filing suit when they learned that Theseus intended to sue Quince.

Theseus sued Peter Quince and the Mechanicals (together "The Players") for breach of contract and sought specific performance and/or damages. He argued that they had breached the contract without a legal basis because Bottom's transformation did not constitute an event within the meaning of the *force majeure* clause. Theseus sought the full consequential damages flowing from this breach, including the return of the money he had paid The Players, holding them liable for repayment of the audience ticket costs, as well as other costs associated with the planned performance, attorney's fees, and costs of the litigation. The Players answered that they should not be liable for costs Theseus had incurred in planning a lavish wedding party, and they should be permitted to retain the advance they had been paid because they had performed the preliminary expectations of the contract by learning their lines and rehearsing before Bottom's scary transformation that immediately preceded the final dress rehearsal. They also raised the affirmative defenses of *force majeure* and impossibility/impracticability of performance.

At the conclusion of discovery, The Players and Theseus both moved for summary judgment on the breach of contract claim. The Players argued that the physical changes in Bottom were due to some sort of enchantment that could only be viewed as an act of the gods comparable to the natural disasters specified in the contract as examples, not an exhaustive list of qualifying events. They argued that Bottom was not the only person affected with strange symptoms and that The Players justifiably feared a spread of the contagion that had afflicted him. Thus, they argued, the *force majeure* clause excused the company's non-performance. Alternatively, The Players argued that their non-performance should be excused because of the impossibility or impracticability of performance where a key and irreplaceable performer had been incapacitated.

They argued that the part Bottom was to play in *Pyramus and Thisbe* could not have been realistically portrayed while he was in the shape of an ass, regardless of whether he had previously acted like an ass in a more general sense, and that no other player was capable of performing the role of Pyramus.

Theseus argued that Bottom's transformation was not an event covered by the *force majeure* clause of the contract and that, absent a *force majeure* defense, The Players' breach meant that they were liable for the full extent of the damages the cancellation had caused him, including refund of the audience's ticket prices, if he were required to reimburse them. Further, and alternatively, he argued that The Players' defenses of impossibility or impracticability of performance were meritless. According to Theseus, Bottom was always an ass, and the play could have gone on with Bottom appearing in his ass's "costume" or with another player taking the part of Pyramus, since all the actors were completely fungible. Finally, Theseus argued that if The Players could not perform *Pyramus and Thisbe*, they were obliged to substitute another play.

Based on the full record as presented in the transcript of *Midsummer Night's Dream*, and the submissions of counsel, the court granted in part The Players' motion for summary judgment. The court held that Bottom's transformation was not an act of the gods excusing performance of the play so the *force majeure* clause did not apply, but then ruled that the performance was excused by the fact that it would have been either impossible or impracticable with Bottom in his altered state. The court denied most of Theseus's motion but held The Players had not done all they could to mitigate the harm of their inability to perform (since they could have chosen a different play to perform) and ordered that they return the advance payment they had received. The court ordered Theseus to pay The Players' legal fees and expenses, and held that Theseus must refund the price of the tickets to the audience.

Theseus and The Players both petitioned the Supreme Court of Athens for review of the lower court's orders, and the Supreme Court agreed to consider two legal issues:

- (1) Was the transformation of Bottom an act of the gods covered by the *force majeure* clause of the contract between Theseus and Peter Quince?
- (2) If not, was there any basis in law or fact for holding that the non-performance was excused by the doctrine of impossibility or impracticability?