

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, TENNESSEE

LCQ Logistics, Inc.

Plaintiff,

v.

Federal Express Corporation

Defendant.

Case No.

43263

JURY DEMAND

Filed 28 day of

Feb. 25 at

4:35 o'clock P m

Brenda Downes, Clerk

COMPLAINT

Plaintiff, LCQ Logistics, Inc., ("LCQ"), a Tennessee corporation, alleges and seeks injunctive relief as follows:

NATURE OF THE ACTION

1. This is an action for breach of contract. As stated in greater detail below, LCQ had contracted with Defendant Federal Express Corporation ("FEC") to deliver packages within specified geographical regions in Washington and Sullivan Counties, Tennessee in October 2024. In November 2024, the contracting parties agreed that the existing contract would run through February 28, 2025, and the parties would negotiate in good faith to enter into a new contract commencing on March 1, 2025. In January and February 2025, Federal Express breached its contract through the following acts:

- a. Asserting without basis that LCQ had breached its contract, and billing plaintiff for \$116,000 in purported liquidated damages for its alleged breach;
- b. Taking away part of the territory for which LCQ had exclusive delivery rights, due to alleged contract breaches by LCQ, thereby decreasing its obligation to

compensate LCQ for those deliveries and forcing LCQ to lay off almost half of its drivers; and

- c. Refusing to negotiate the terms of a new contract to commence after the expiration of the existing contract.

2. LCQ seeks money damages in the amounts of lost profits due to FedEx's breaches, and also seeks a Temporary Restraining Order precluding FedEx from forcing it out of business by transferring all of its business to other franchisees. Absent grant of the requested Temporary Restraining Order, Plaintiff will suffer irreparable catastrophic harm, as it will have no business and no means of paying its employees or its other expenses. A grant of money damages will not make it whole, because its employees will no longer.

PARTIES

3. Plaintiff LCQ is a Tennessee corporation, with its principal place of business at 516 Sharps Hollow Road, Bluff City, Tennessee. Its business is delivering Federal Express packages in an exclusive territory in Washington and Carter Counties pursuant to a contract with Federal Express that expires on February 28, 2025.

4. Defendant Federal Express Corporation is a Delaware corporation with its principal place of business in Memphis, Tennessee. It is a wholly-owned subsidiary of FedEx Corporation, a publicly traded Fortune 100 company, also organized in Delaware and based in Memphis. FedEx has a market capitalization of greater than \$60 billion. Its principal business is delivery of packages throughout the United States and the world. It relies on local franchisees to complete deliveries in many parts of the United States, including Washington and Carter Counties.

JURISDICTION AND VENUE

5. Washington County Circuit Court has personal jurisdiction over this matter as this case concerns a contract that required performance in this district in Washington and Carter Counties. Further, Defendant is based in Tennessee, and conducts substantial business throughout this judicial district.

6. Washington County Circuit Court is the proper venue for this matter as a substantial part of the events giving rise to this action accrued in Washington and Carter Counties. T.C.A. § 20-4-104(1).

7. The Circuit Court has general jurisdiction over this matter as it has jurisdiction over all cases where jurisdiction is not conferred on another tribunal. T.C.A. § 16-10-101.

FACTUAL ALLEGATIONS

8. In September 2023, Acie Perry began working in a management position as Redan Logistics, Inc. , a company engaged in pickup and delivery services as a franchisee for FEC. . Affidavit of of Acie Perry, at ¶ 2 (attached hereto).

9. In 2024, Perry and two partners, created the new entity LCQ Logistics, Inc. (“Plaintiff” or “LCQ”), In which they were shareholders. Perry Aff. at ¶ 4. Perry’s partners at LCQ had previously been shareholders of Redan. LCQ then purchased the assets of Redan, including the delivery routes that it had franchised from FEC.

10. Following Mr. Perry’s purchase of LCQ, he attended a training session for franchise owners Defendant Federal Express Corporation (“FEC”). Perry Aff., at ¶ 4.

11. At this training session, Mr. Perry was informed that he would be given a “grace period”—typically 60 or 90 days—during which time LCQ would not have to meet certain requirements. Perry Aff., at ¶5.

12. The training session also included a discussion of what to do when bad weather or other factors rendered delivery of packages impossible. Defendant FEC informed Mr. Perry that LCQ would have sole discretion to determine if a weather exception for service routes applied—that is, to determine whether, in the event of particularly serious weather events, it would be dangerous or impossible to perform the delivery duties expected under the contract on any particular day. In such a scenario, the minimum performance quote for package deliveries would no longer apply. Perry Aff., at ¶ 6.

13. However, LCQ was never allowed a grace period or its promised discretionary decision-making power. Indeed, Defendant FEC routinely oversaw LCQ’s performance, overrode its discretion and decision-making power, dictated performance objectives, and punished alleged breaches of contract. Perry Aff., at ¶ 7.

14. For example, on September 26, 2024, Hurricane Helene made landfall in Florida’s Big Bend region, “with heavy rains and roaring winds that raged at 140 miles (225 km) per hour.”¹ “Helene moved inland during the early morning hours of September 27, and by 5:00 AM EDT, with the storm’s center located over central Georgia, [National Oceanic and Atmospheric Administration] NOAA officials downgraded it to a tropical storm. However, some three hours later, Helene turned northwest, its center cutting across western North Carolina and eastern Tennessee.”²

15. “Although Helene’s winds had diminished to tropical-storm strength, the storm delivered a broad and deadly swath of heavy rain across the southeastern U.S. In parts of Florida,

¹ Hurricane Helene | Path, Damage, Deaths, & Facts | Britannica, <https://www.britannica.com/event/Hurricane-Helene> (last visited Feb. 28, 2025).

² *Id.*

Georgia, North and South Carolina, Tennessee, and Virginia, record rainfall caused rivers to overflow and produced flash flooding, road washouts, and even landslides in some areas.”³

16. “Helene’s high winds and flooding killed more than 230 people, making it the deadliest hurricane to strike the U.S. since Hurricane Maria ravaged Puerto Rico in 2017.”⁴

17. More than half of Mr. Perry’s service routes were impacted by Hurricane Helene. Some streets on the routes were impassable for weeks after the hurricane. Perry Aff., at ¶ 7.

18. Despite dangerous flooding throughout eastern Tennessee, which caused numerous roads to become impassable, FEC still expected Redan to make deliveries in the area. Perry Aff., ¶ 8.

19. In fact, when Mr. Perry informed an FEC representative, Al Malburg, that it was either too dangerous or impossible (because certain areas were impassible or unreachable) to deliver packages, Mr. Malburg stated that “there was no reason why routes should not be dispatched.” Malburg also stated that he “was more concerned with a volcano erupting in the middle of Elizabethton [Tennessee] than any of those rivers.” Perry Aff. at ¶ 9.

20. Defendant FEC overrode Mr. Perry’s discretionary determination and ignored the dangers Mr. Perry and his team faced. Perry Aff., at ¶ 10.

21. FEC asserted that LCQ (formerly, and at the time of Hurricane Helene, Redan) was in breach of its contract, presumably for not completing routes in the wake of one of the worst hurricanes of Tennessee’s history. Indeed, FEC considered LCQ in breach of contract for failure to perform under conditions in which it would be *impossible* to perform, all while overriding the sound discretion of Mr. Perry. Perry Aff., at ¶ 11.

³ *Id.*

⁴ *Id.*

22. However, LCQ does not and cannot know what constituted the breach FEC alleges occurred because FEC has neither explained how LCQ (or its predecessor at the time of Hurricane Helene, Redan) was in breach nor provided any proof of an alleged breach. Perry Aff., at ¶ 12 __.

23. On October 4, 2024, LCQ and FedEx Ground Package System, Inc. (“FXG”) entered into an Independent Service Provider Agreement (the “ISPA”).⁵ (Attached as Exhibit 1).⁶

24. Also on October 4, 2024, Plaintiff and FXG simultaneously executed a Schedule of Amendments (the “Amendments”) to the ISPA on October 4, 2024. (Attached as Ex. 2).

25. The ISPA created a business-to-business relationship between the Plaintiff LCQ and Defendant Federal Express Corporation (and previously with FedEx Ground Package System, Inc.), in that LCQ would pick up and/or deliver packages distributed by FEC.

26. Under the ISPA, LCQ’s Contracted Service Area’s (“CSA”) geographical description code was “308714” and included the pickup and deliveries in the following zip codes: 37601, 37605, 37643, 37644, 37650, 37657, 37682, 37692, and 37694. (Attached as Exhibit 1A2).

27. Specifically, the ISPA provides that “[a]s a corporate entity and employer, and consistent with the terms of this Agreement, LCQ has the sole right and obligation to supervise, manage, direct, procure, perform or cause to be performed, all Contracted Services[.]” Ex. 1 at ¶ 1.2.

28. Further, “[n]o officer, agent, or employee of [FEC] has authority to hire, train, discipline, or terminate [LCQ]’s Personnel ... nor to set their compensation, payment, work schedules and times, assignments, or other essential terms and conditions of employment, nor to

⁵ In approximately June 2024, FedEx Ground Package System, Inc. merged with Defendant Federal Express Corporation. Thus, FedEx Ground Package System, Inc. no longer exists. Ex. 2 at ¶ 1. FedEx Ground Package System, Inc. assigned its rights and obligations under the ISPA to Federal Express Corporation. Ex. 3 at ¶ 1.

⁶ The ISPA included numerous exhibits, some of which are attached as Exhibits 1A1, 1A2, and 1A3.

supervise the methods, manner or means employed by [LCQ] or its Personnel in providing the Contracted Services.” *Id.*

29. Despite the clear language of the ISPA (which was substantially the same in Redan’s agreement with FXG at the time of Hurricane Helene), FEC began to “supervise, manage, direct” and dictate “the methods, manner or means” of LCQ’s contracted services.

30. On November 14, 2024, just one month after signing the ISPA, FEC presented LQ with a Confidential Phased Incentive and Transition Amendment to Independent Service Provider Agreement and Limited Release (the “Transition Amendment”) (relevant portions of this document are attached as Exhibit 3).

31. FEC presented the Transition Amendment to LCQ in an informal setting where FEC’s representative, Matt Jones, quickly flipped through the pages before demanding Mr. Perry to sign on LCQ’s behalf immediately. In fact, Jones told Mr. Perry to “read it later.” Perry Aff., at ¶ 21.

32. The Transition Amendment, the ISPA’s expiration date was set for February 28, 2025. Ex. 3, at ¶ 1.

33. Additionally, the Transition Amendment contained an “Exclusive Negotiation for New ISPA(s)” clause. The clause stated that “[t]he Parties shall engage in good faith negotiations for a New ISPA for each Optimized CSA during a ‘Negotiation Period’ that shall be designated by FEC and shall consist of no fewer than ten (10) Business Days, unless a tentative agreement is reached in a lesser period.” *Id.* at ¶ 2.

34. Further, “[d]uring the Negotiation Period, [LCQ] shall have the exclusive opportunity to accept a New ISPA that includes the applicable Optimized CSA and terms consistent with the Notice of Modifications.” *Id.*

35. On November 14, 2024, Mr. Perry, on LCQ's behalf, signed the Transition Amendment while under duress due to the informal and rushed nature of the "meeting," as well as FEC's insistence to "just sign" and "read it later." Perry Aff., at ¶ 22.

36. Although the Transition Amendment required FEC to designate a Negotiation Period for the Parties to engage in good-faith negotiations for a new ISPA, FEC refused to do so. Perry Aff., at ¶ 23 . Thus, FEC breached its contractual obligations in addition to breaching its duty to negotiate in good faith.

37. Instead, FEC sent LCQ a draft ISPA around December 17, 2024, right before the holidays, and made no effort to negotiate the new ISPA prior to the February 10, 2025 meeting despite several requests. Perry Aff., at ¶ 24.

38. As FEC is well-aware, the holiday season is the busiest time of year for delivery services, including LCQ. It appears that FEC strategically provided a draft ISPA during this time, understanding that it was unlikely to be reviewed by LCQ or that LCQ would be unable to negotiate a new ISPA. Thus, FEC breached its duty to negotiate in good faith.

39. In January, 2025, a snowstorm rendered the roads on two of LC's routes unsafe for trucks for one or two days. Perry Aff., at ¶ 26. Perry had no choice but to invoke a weather exception for those routes until the snow had been cleared. However, FEC refused to waive contractual penalties for non-deliver packages during the weather exception.

40. Over the next few days, FEC attempted to direct LQC's efforts to reliver the packages that had been delayed as a consequence of the snowstorm, despite the contractual provisions stating that day-to-day management was the province of LCQ, not FEC. On Thursday, January 23, FEC required LCQ to create a plan to deliver all backlogged packages by Saturday, January 25.

41. LCQ submitted the plan as directed. However, on Saturday, January 25, LCQ discovered that the two routes affected by the storm had been taken away from it, and the packages were being delivered by other franchisees or by FEC itself. Perry Aff., at ¶ 28.

42. Subsequently, FEC refused to honor the existing contract, describing LCQ's territory. It removed a significant number of routes within LCQ's territory from LCQ, purportedly because of LCQ's inability to deliver packages during the weather exception events. This left LCQ with no work for 8 of its 18 drivers, who remained on the payroll for one month but were then laid off.

February 10, 2025 Meeting

43. On February 10, 2025, at a meeting between the Parties, Al Malburg and William Brown of FEC presented LCQ with yet another contract. This contract was titled "Mutual Agreement to Terminate Tentative Independent Service Provider Agreement" (the "Termination Agreement"). (Attached as Exhibit 4). Perry Aff., at ¶ 30.

44. Brown advised LCQ that it had two options: (1) sign the Termination Agreement and agree to mutually end the ISPA on February 28, 2025, or (2) refuse to sign the Termination Agreement and the ISPA would be immediately terminated. Perry Aff., at ¶ 31.

45. Brown also presented Mr. Perry with an invoice for \$77,556. Perry Aff., at ¶ 32. FEC claimed that these invoices were for "liquidated damages" that LCQ owed to FEC, apparently related to the two situations when Perry had declared weather exceptions, but was provided no other explanation of how the purported damages had been calculated. Perry Aff., at ¶ 33..

46. Brown presented the invoice purportedly for "liquidated damages" at a meeting with Mr. Perry to apply pressure to force Mr. Perry and LCQ either to agree to allow the current ISPA to lapse within 18 days or to immediately terminate the ISPA that day. This effectively

created substantial duress, and, under no circumstance, could such tactics be considered negotiating in good faith. Perry Aff., at ¶ 34.

47. During this meeting, Mr. Perry advised William Brown and Al Malburg that he wanted to discuss the decision with his wife. However, he was told that he would not be allowed to do so, and instead he had to make a decision before leaving the room. Perry Aff., at ¶ 35. This, again, was done to create substantial duress.

48. Mr. Perry was ultimately allowed fifteen minutes to call his wife. Following the phone call with his wife, Mr. Perry returned to the meeting and asked what would be the consequences if he did not sign. William Brown told Mr. Perry that “it would not matter, [FEC] will not accept a new agreement.” Perry Aff., at ¶ 36.

49. Mr. Perry felt he had no other option than to sign the Termination Agreement on February 10, 2025. Given the threats made by FEC and the circumstances of this meeting, Mr. Perry signed under duress. Perry Aff., at ¶ 37 .

Other Egregious Conduct by FEC

50. Another example of FEC’s egregious conduct was its’ implementation of Dynamic Route Optimization (“DRO”).

51. EC explained the DRO as giving independent service providers, including LCQ, the ability to freely place stops on routes and create routes as they saw fit. Perry Aff., at ¶ 39.

52. This explanation created an atmosphere and belief that independent service providers, including LCQ, would have control over what resources to use and how many drivers to have scheduled on any given day. Perry Aff., at ¶ 40. Effectively, independent service providers, including LCQ, believed that the DRO would permit them more discretion, in alignment with statements FEC had already made regarding their abilities to exercise discretion.

53. However, this was not the case. FEC had much more control over the DRO than the independent service providers, which effectively further limited any discretion they had. Perry Aff., at ¶ 41.

54. For example, FEC could reassign stops to other entities within the same terminal location at any time. Perry Aff., at ¶ 42.

55. As a result, independent service providers, including LCQ, suffered economic harm due to being told they had a certain number of scheduled stops while preparing for the next day of service, only to then receive a substantially lower number of scheduled stops on the day of service. Perry Aff., at ¶ 43.

56. This would cause the independent service provider to have too many drivers for the day of service and would be forced to send some drivers' home. Perry Aff., at ¶ 44.

57. Due to FEC's actions under the DRO, independent contractors suffered from high turnover. This created financial stress due to the turnover and having to remain in a hiring phase throughout a contract's lifetime. Perry Aff., at ¶ 45.

IRREPARABLE HARM

58. The termination of the ISPA contract on February 28, 2025, without another contract in place, will effectively put LCQ out of business. Money damages cannot supply an adequate remedy. Perry Aff., at ¶ 46.

59. FEC has informed LCQ that on February 28, it will be locked out of FEC's computer systems, and will not receive any packages to deliver. In addition, all revenue LCQ receives for leasing the trucks that it owns to FEC will end. Perry Aff., at ¶ 47.

60. LCQ will be unable to continue to pay its truck drivers, and they will have no choice but to find other employment. It also will be unable to continue to maintain its fleet of trucks. LCQ

will also be unable to pay other debts, which may result in the loss of its trucks and other equipment to creditors. Even if FEC were to comply with its obligation to negotiate a new contract at some time in the future, LCQ will be unable to restart operations without a significant lead time and expenditures of substantial amounts of money to hire or contract with new drivers and other employees, and acquire trucks and other equipment. Perry Aff., at ¶ 48.

61. All of these costs are the consequence of FEC's breaches of the existing contracts.

62. Accordingly, LCQ seeks a temporary restraining order to prevent FEC from unilaterally terminating it, in breach of the existing contract.

CLAIM FOR RELIEF
Breach of Contract,
And Breach of the Covenant of Good Faith and Fair Dealing

63. LCQ realleges and incorporates all paragraphs above as if fully set forth.

64. The contract between FEC and LCQ, as modified by the November 14 Transition Agreement, expressly requires FEC to designate a 10 day negotiating period between the Parties to negotiate in good faith concerning a renewal of the contract's terms, and also required the parties to negotiate in good faith. FEC breached these terms of the contract. As a consequence of FEC's breach, LCQ was unable to negotiate a contract renewal.

65. Aside from the contractual requirement, the course of conduct between the Parties made clear that there was an expectation on both sides that absent unsatisfactory performance, the contract could be renewed. FE was aware that LCQ had hired up to 18 truck drivers, and purchased trucks that it leased to FEC, investments that clearly demonstrated the mutual expectation that contractual relationships would continue beyond the February 28, 2025 expiration date.

66. The resulting damage to LCQ is that the contract is coming to an end and absent relief from this Court, LCQ will be driven out of business.

67. In addition, FEC's removal of several routes from LCQ in January 2025 caused substantial monetary damage to LCQ, consisting of the lost revenue LCQ has experienced.

68. FEC's invoices for purported "liquidated damages" connected to non-delivery during periods of weather exceptions also breach the contract between the party, which recognized that weather exceptions can occur, and damages LCQ in the amount of the invoices.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

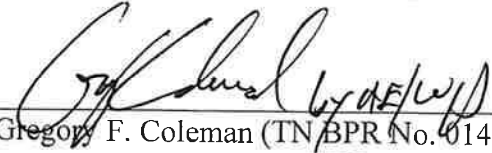
- a. Enter a Temporary Restraining Order precluding FEC from locking it out of its ongoing business relationship with FEC, and restrain FEC from ceasing providing it with packages to be delivered within its exclusive territory, as defined in the ISPA Ex. 1A1;
- b. Declare FEC's actions described herein to be unlawful and a breach of contract;
- c. Declare that LQC has not breached its contract with FEC;
- d. Grant LQC a trial by jury on all issues so triable;
- e. Award Plaintiff actual, statutory, and punitive damages in an amount to be proven at trial;
- f. Award Plaintiff pre-judgment interest in the amount permitted by law;
- g. Award Plaintiff attorneys' fees and costs as permitted by law;
- h. Grant leave to amend these pleadings to conform to evidence produced at trial; and
- i. Grant such other relief as the Court deems just and proper.

JURY DEMAND

Plaintiff, by counsel, demands trial by jury.

MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN PLLC

By



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VERIFICATION

I affirm that the facts stated in this Complaint are true to the best of my knowledge.

This 28th day of February, 2025.

By:




Acie Perry

COST BOND

We, the undersigned, pursuant to T.C.A. § 20-12-125, acknowledge ourselves as sureties for amounts required by law or included in the Clerk's bill of costs in this cause.

By:

A handwritten signature in black ink, appearing to read "Gregory F. Coleman" with a stylized flourish at the end.

Gregory F. Coleman (TN BPR No. 014092)
MILBERG COLEMAN BRYSON PHILLIPS
GROSSMAN PLLC