

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

DEC 05 2003

GREGORY C. LANGHAM
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 03-N-1371 (MJW)

GARY L. CUMMINGS, an individual; YELENA Z. CUMMINGS, an individual; JAMES BITTLE, an individual; BONNIE BITTLE, an individual; and SEAN STEINER, an individual.

Plaintiff(s),

v.

FEDEX GROUND PACKAGE SYSTEMS, INC., a Delaware corporation; and FISHER ANDERSON, L.C., an Iowa company et al.

Defendant(s).

AMENDED COMPLAINT

Plaintiffs Gary L. Cummings, Yelena Z. Cummings, James Bittle, Bonnie Bittle and Sean Steiner (collectively "Plaintiffs"), by and through their attorneys, Max Minnig, Jr. & Associates, L.L.C., for their complaint against the Defendants, states as follows:

PARTIES, VENUE AND JURISDICTION

1. Plaintiffs, Gary L. Cummings, and Yelena Z. Cummings ("Cummings"), are individuals an address of 3615 SE 33rd Way, Gainesville, FL 32641.
2. Plaintiff James Bittle and Bonnie Bittle ("Bittles") are individuals residing in Adams County with an address of 11450 Community Center Drive, Apt. #317, Northglenn, CO 80233.
3. Plaintiff Sean Steiner ("Steiner") is an individual residing in Illinois.
4. Defendant FedEx Ground Package System, Inc., ("FedEx") is a Delaware corporation with an address of 1000 Fedex Drive, Moon Township, PA 15708.
5. Defendant, Fisher Anderson, L.C., is an Iowa corporation with an address of 4632 Elm Street, West Des Moines, Iowa 50265.
6. This case involves contracts entered into between Plaintiffs and one or more of the

Defendants in Adams County, Colorado, which were also to be performed in Adams County, Colorado. This Court has jurisdiction over the subject matter and parties hereto, and venue is proper. This case was removed to the United States District Court for the District of Colorado by FedEx Ground Package Systems, Inc., based on diversity of citizenship.

GENERAL ALLEGATIONS

7. Each of the Plaintiffs was the owner of a package delivery route with FedEx, operating out of the FedEx facility located in Adams County (The "Facility"). Each of the Plaintiffs entered into a relationship with FedEx based on income, workload and other representations by FedEx, each of the Plaintiffs purchased a new FedEx style delivery truck in connection with their receipt of an allegedly viable and valuable route from FedEx, through a choice of financing or leasing agencies supplied by FedEx, which agencies were willing to finance or lease to Plaintiffs based on the income projections made by FedEx. Following their respective resignations, each of the Plaintiffs lost their route without receiving any compensation, and lost their trucks to repossession.

8. In August of 2000, after reviewing written advertisements by FedEx, Gary Cummings met with a regional recruiter for FedEx, to inquire about a FedEx route for he and his wife. At this meeting and at subsequent meetings, Cummings was informed that in order to be a contractor with FedEx, the Cummings would have to purchase a truck, that they would be given a route, that they would have to work Monday through Friday for ten to eleven hours per day, and they would make approximately \$1,500.00 per week, plus bonuses, on another occasion they were informed that they would make over \$55,000 per year. Cummings was also told that to make that amount of money, he would have 55 to 85 stops per day. Cummings was informed that the purchase of a used truck and a route from another driver was strongly discouraged, and the purchase or lease of a new truck was strongly encouraged.

9. Based on these representations, in February of 2001, Yelena Cummings entered into a contract with FedEx and entered into a lease with Fisher Anderson L.C., one of the financing companies recommended by FedEx, putting down \$17,000.00 on the lease. Gary Cummings also entered into a contract with FedEx. The income represented to Fisher Anderson for qualifying for the lease was the projections made by FedEx.

10. It became immediately apparent to the Cummings that they were not going to be making the type of money as represented, they were clearing less than \$400.00 per week. Mr. Cummings was working fourteen or more hours per day and was handling well over 100 packages per day. In mid-March, Cummings gave his 30 day notice, and stopped working at the end of March of 2001.

11. Following the resignation, The Cummings received no help in placing the route or selling the truck; to the contrary, Mr. Cummings was not allowed to remove his wife's truck

from the Facility, it was taken with no explanation at the time, the truck was sold to a third party with no notice or involvement by the Cummings, and the Cummings received no compensation from the sale of the truck, including their original \$17,000.00 outlay. Mrs. Cummings was denied the right to hire another driver for the truck or take any other action as to the truck.

12. As a result of the actions of FedEx, the Cummings lost substantial money, lost other job opportunities, suffered credit problems and suffered emotional distress. Because of the actions of FedEx and Fisher Anderson, their truck was taken with no explanation, and no compensation was received. The Bittles received no notice that the truck was to be sold, or informed whether they had any right to purchase the truck themselves or informed of any rights they may have had.

13. In October of 2000, after reviewing written advertisements by FedEx, James Bittle and Bonnie Bittle met with a regional recruiter for FedEx, to inquire about a FedEx route for Mr. Bittle. At this meeting and at subsequent meetings, the Bittles were informed that , in order to be a contractor with FedEx, they would have to purchase a truck, that they would be given a route, that they would have to work Monday through Friday for ten to eleven hours per day, and, based on the worksheet they were supplied, they would make approximately \$1,500.00 per week, plus bonuses. The Bittles were informed that the purchase of a used truck and a route from another driver was strongly discouraged, and the purchase of a new truck was strongly encouraged. The Bittles also were informed that there was a market for routes and trucks, and that if the Bittles should leave FedEx, FedEx would aid in selling such route and truck.

14. Based on the representations of FedEx, the Bittles entered into a contract with FedEx, and purchased a truck financed through Stearns Bank. The income that was the basis for receiving the financing for the truck was the income represented by FedEx.

15. The Bittles soon learned that there was no way they could earn the amounts represented, that the route was often taking well over twelve hours to complete, that the route was spread over too wide an area, and his truck was constantly being overloaded, underloaded or misloaded. The Bittles were encouraged by FedEx to misstate the amount of hours he spent on his route with the Department of Transportation as there is a twelve hour daily limitation. The Bittles were making less than \$400.00 per week. As the Bittles complained, they were given a new route, which proved even less profitable.

16. The Bittles ended their relationship in June of 2001. The Bittles attempted to post a sign to sell the truck and the route, but it was removed by FedEx and they were informed that they could not post, and no effort was made by FedEx to aid in the sale of the route or the truck.

17. As a result of the actions of FedEx, the Bittles lost substantial money, lost other job opportunities, suffered credit problems and suffered emotional distress. Their truck was repossessed.

18. The Bittles also made an insurance claim for damages done to the truck by FedEx employees who were loading and unloading the truck.. A total claim was made of \$3,059.47, of which FedEx stated it would pay only \$1,570.13, but no such payment has been made. The refusal of FedEx to pay the entire amount was wrongful, and the Bittles have been damaged thereby.

19. In November of 2000, Sean Steiner met with a regional recruiter for FedEx, to inquire about a FedEx route for Mr. Steiner. At this meeting and at subsequent meetings, Steiner was informed that in order to be a contractor with FedEx, he would have to purchase a truck, that he would be given a route, that he would have to work Monday through Friday for ten to twelve hours per day, and he would make approximately \$1,625.00 per week, plus bonuses. Steiner was also were informed that the purchase of a used truck and a route from another driver was strongly discouraged, and the purchase of a new truck was strongly encouraged, in fact, FedEx told Steiner that the contractor whose route Steiner was to receive "needed to be taught a lesson" and therefore Steiner could not buy that truck. Steiner was also informed that there was a market for routes and trucks, and that if Steiner should leave FedEx, FedEx would aid in selling such route and truck.

20. In December of 2000, based on the representations of FedEx, Steiner entered into a contract with FedEx, and purchased a truck financed through Stearns Bank. The income that was the basis for receiving the financing for the truck was the income represented by FedEx.

21. Steiner soon learned that he could not make the amount of money that had been represented, that his route was spread out too far, that there was substantial poor work performance by FedEx employees effecting him and his route, and that he was going to have to work substantially longer and harder than represented. When he complained, he was warned that bankruptcy was a distinct possibility for those who left FedEx. Based on this threat, Steiner remained with FedEx until the Fall of 2001, at which time he left.

22. As a result of the actions of FedEx, Steiner lost substantial money, lost other job opportunities, suffered credit problems and suffered emotional distress. His truck was repossessed.

23. The actions of FedEx as to the Plaintiffs constitutes a pattern and practice of wrongdoing as to each of the Plaintiffs.

24. All claims against FedEx stated herein are based on oral representations concerning income, workload and aid in selling the trucks and route, and do not arise from the terms of the signed contract between FedEx and the Plaintiffs.

25. Plaintiffs have fulfilled all conditions precedent to bringing this lawsuit

FIRST CLAIM FOR RELIEF
(Rescission - FedEx and Fisher Anderson)

26. Plaintiffs reallege paragraphs 1 through 25.

27. FedEx has materially breached its contracts with Plaintiffs and/or made substantial misrepresentations of fact, sufficient to allow Plaintiffs to rescind their contract with FedEx.

28. The Cummings ability to rescind is conditioned upon the disgorgement of any monies paid Fisher Anderson.

29. Fisher Anderson has sufficient connection and participation in the material breach and/or misrepresentation that such rescission should, in equity, be applied as to Fisher Anderson.

30. Plaintiffs have suffered damages in connection with these contractual relationships and should be entitled to all damages incurred in connection with rescission of these contractual relationships.

WHEREFORE, Plaintiffs request that the Court rule in their favor and against Defendants, find that there has been a sufficient material breach of the contract and/or fraud to allow for rescission of all agreements, the return to Plaintiffs all things of value, including any monies paid, any notes or other indebtedness they may have executed, and all rescission damages, including but not limited to credit damage and repair, lost investment, lost income, interest, costs, attorney fees, and all other relief that the Court deems proper.

SECOND CLAIM FOR RELIEF
(Fraud - FedEx)

31. Plaintiffs reallege paragraphs 1 through 30.

32. FedEx falsely represented to Plaintiffs the amount of income that could be made, the conditions required to earn the income quoted, the need for a new truck for the route and the ability and effort by FedEx to aid in the sale of a truck.

33. Defendants made the representations and nondisclosures knowing them to be false.

34. Defendants made the representations and nondisclosures with the intent that the Plaintiffs would rely on the representations and nondisclosures, and that further actions, including loan approval for a truck, would take place.

35. Plaintiffs justifiably relied on the representations and nondisclosures.

36. Plaintiffs have been damaged by their reliance.

WHEREFORE, Plaintiffs request judgement enter in their favor and against FedEx for all direct and consequential damages in an amount to be determined at trial, including interest, costs and attorney fees and any other relief the Court deems proper.

THIRD CLAIM FOR RELIEF
(Negligent Misrepresentation - FedEx)

37. Plaintiffs reallege paragraphs 1 through 36.

38. FedEx represented to Plaintiffs the amount of income that could be made, the conditions required to earn the income quoted, the need for a new truck for the route, the ability and effort by FedEx to aid in the sale of a route, and the ability and effort by FedEx to aid in the sale of a truck.

39. Defendants made the representations and nondisclosures not knowing them to be true, and should have known them to be false.

40. Defendants made the representations and nondisclosures with the intent that the potential Plaintiffs would rely on the representations and nondisclosures, and that further actions, including loan approval of a truck, would take place.

41. Plaintiffs justifiably relied on the representations and nondisclosures, which were not true.

42. Plaintiffs have been damaged by their reliance.

WHEREFORE, Plaintiffs request judgement enter in their favor and against FedEx for all direct and consequential damages in an amount to be determined at trial, including interest, costs and attorney fees and any other relief in the Court deems proper.

FOURTH CLAIM FOR RELIEF
(Breach of Contract/Promissory Estoppel - FedEx)

43. Plaintiffs reallege paragraphs 1 through 42.

44. FedEx contracted with Plaintiffs, either directly or through promissory estoppel, to aid the Plaintiffs in selling their routes and or trucks if things did not work out. Such agreement does not arise from the terms of the written Contract supplied by FedEx.

45. FedEx breached this agreement with Plaintiffs and Plaintiffs have been damaged

thereby.

WHEREFORE Plaintiffs request judgement in their favor and against FedEx for all direct and consequential damages in an amount to be determined at trial, including interest, costs and attorney fees and any other relief the Court deems proper.

FIFTH CLAIM FOR RELIEF

(Breach of Covenant of Good Faith and Fair Dealing - FedEx)

46. Plaintiffs reallege paragraphs 1 through 45.

47. Plaintiffs had an implied contractual relationship with FedEx concerning income, time to complete routes and aid in selling trucks and routes upon termination, and implied thereby is the covenant of good faith and fair dealing.

48. By failing to inform Plaintiffs of the efforts necessary to make the type of money being represented, by failing to aid Plaintiffs in selling their routes or trucks, and by other similar or related acts, FedEx has breached the covenant of good faith and fair dealing with the Plaintiffs.

49. Plaintiffs have been damaged by such breach.

WHEREFORE, Plaintiffs request judgement in their favor and against FedEx in an amount to be determined at trial, including costs and attorney fees and any other relief the Court deems proper.

SIXTH CLAIM FOR RELIEF

(Deceptive Trade Practices - FedEx)

50. Plaintiffs reallege paragraphs 1 through 49.

51. In the course of FedEx's business, FedEx committed the following deceptive trade practices as defined in C.R.S. §§ 6-1-105(l)(e),(g), (l) and (u):

- (a) Defendants knowingly made false representations as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, services, or property;
- (b) Defendants represented that goods, food, services, or property are of a particular standard, quality, or grade, or that goods are of a particular style or model, if he knows or should know that they are of another;

- (c) Defendants made false or misleading statements of fact concerning the price of goods, services, or property for reasons for, existence of, or amounts of price reductions and
- (d) Defendants failed to disclose material information concerning goods, services, or property which information was known at the time of an advertisement or sale and intended thereby to induce Plaintiffs to enter into the foregoing transaction.

52. Plaintiffs have suffered actual damages in an amount to be proven at trial.

53. Plaintiffs are entitled to recover three times the amount of their actual damages sustained, or Five Hundred Dollars (\$500.00), whichever is greater, pursuant to C.R.S. § 6-1-113(2)(a).

54. Plaintiffs are entitled to recover reasonable costs and attorney fees pursuant to C.R.S. § 6-1-113(2)(b).

WHEREFORE Plaintiffs request judgment in their favor and against FedEx in an amount to be determined at trial, plus interest, costs, attorney fees and any other relief the court deems proper.

SEVENTH CLAIM FOR RELIEF
(Insurance Claim- FedEx, Bittles only)

57. Plaintiffs reallege paragraphs 1 through 57.

58. The Bittles had repairs done to their truck that were to be insured through FedEx under the terms of the agreement between the parties.

59. The Bittles were told by FedEx to undertake the repairs, and that they would be reimbursed.

60. The Bittles has made proper demand for reimbursement, but no such reimbursement has been made.

WHEREFORE, Plaintiff Bittles requests that judgement enter in their favor and against FedEx for the total amount of the repairs, less any payments made, plus interest and any other relief the court deems proper.

EIGHTH CLAIM FOR RELIEF
(Exemplary Damages - FedEx)

61. Plaintiffs reallege paragraphs 1 through 60 .

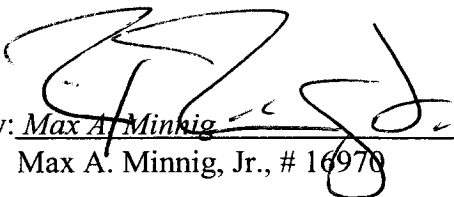
62. FedEx's actions as to Plaintiffs were wilful and wanton.

Wherefore, Plaintiffs request that damages enter in their favor and against FedEx and Defendant Lenders for exemplary damages in accordance with C.R.S. §13-17-202, including attorney fees.

63. Plaintiffs demand a jury on all issues so triable.

Dated this 10th^h day of November, 2003.

MAX MINNIG, JR & ASSOCIATES, LLC


By: Max A. Minnig
Max A. Minnig, Jr., # 16970

CERTIFICATE OF SERVICE

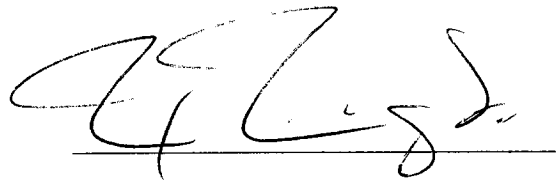
I, the undersigned, hereby certify that I served the foregoing Schedule of Depositions, this 10th day of November, 2003, by depositing a true copy thereof in the U.S. Mail and by telecopy addressed to the following:

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A handwritten signature in black ink, appearing to read "R. T. McAllister", is written over a horizontal line. The signature is stylized and cursive.