

CAUSE NO. 18-1431-C368

AIMEE RAMOS,
PLAINTIFF

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IN THE DISTRICT COURT

V.

WILLIAMSON COUNTY, TEXAS

MICHAEL ANTHONY FRANCES,
INDIVIDUALLY, AND
FEDEX CORPORATION
DEFENDANTS

Williamson County - 368th Judicial District Court

_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, **Aimee Ramos, Plaintiff**: hereby makes and files this Plaintiff's Original Petition.

I. Selection of Discovery Level

1. The Plaintiffs affirmatively plead that Plaintiffs seek monetary relief of over \$100,000.00 but not more than \$200,000.00, and that discovery should be conducted in accordance with a discovery level control plan under Civil Procedure Rule 190.3.

II. Parties and Provision for Service of Citation

- 2. The **Plaintiff, Aimee Ramos** is an individual residing in Williamson County, Texas.
- 3. The **Defendant, Michael Anthony Frances** (Frances), is an individual residing in Williamson County that can be served at 17804 Rochelle Cove, Pflugerville, Texas 78660.
- 4. The **Defendant, Federal Express Corporation** (FedEx) is an Foreign Corporation that provides courier delivery services. Its headquarters is located at 3630 Hacks Cross Road, Building C, 3rd Floor, Memphis, TN, 38125-8800. **Defendant, FedEx Corporation** may be served through its registered agent CT Corp. System, at 1999 Bryan Street, Suite 900, Dallas,

Texas 75201-3136. For purpose of jurisdiction over non-residents, Plaintiff would plead that pursuant to Tex. C. Prac. and R. Code §17.042 FedEx entered into contracts with Texas residents and/or committed torts in Texas and as such has sufficient related and unrelated minimum contacts with Texas to make it amenable to the jurisdiction of its Courts.

III. Venue

5. Because the incident upon which this suit is based occurred in Williamson County, Texas, and both Defendant Frances and Plaintiff Ramos reside in Williamson County venue is proper in that county, as prescribed by Texas Civil Practice and Remedies Code Section 15.002(a)(1-3).

IV. Statement of Facts

6. On or about August 8, 2018, **Plaintiff, Aimee Ramos** (hereinafter referred to as “Plaintiff”) had a package delivered by **Defendant, Frances** who is an employee of **Defendant, FedEx**.

7. While Defendant was delivering Plaintiff’s package at her home, her husband, (hereinafter referred at “Mr. Ramos) opened the front door to retrieve their package. When Mr. Ramos opened the front door to their home, their Yorkshire Terrier, Lola, walked out the front door and down the steps barking. Mr. Ramos ordered Lola to go back into their home and as Lola turned around to walk back inside, Defendant, Michael Anthony Frances, threw his package scanner at Lola, striking her in the head and knocking her unconscious. Lola had barely left the porch and never left her yard. Defendant Frances was well on his way to his vehicle when he threw his scanner at Lola without any provocation.

8. Plaintiff wrapped Lola in a towel as she lay unconscious and rushed her to Comanche Trail Veterinary Center, their local veterinary clinic. Upon arriving at the veterinary clinic, Lola

began seizing. The veterinarian instructed Plaintiff and Mr. Ramos to rush Lola to an emergency animal hospital. Lola was hospitalized for nine days in the intensive care unit (ICU) at the Emergency Animal Hospital of Northwest Austin. Lola suffered head trauma with neurologic damage. She was mentally altered but unable to ambulate due to her inability to move her extremities. She suffered non-displaced skull fractures, mostly frontal with parietal skull fracture, seizures and bruising over eyes. The Defendant Frances' horrendous attack on Lola left her unable to swallow, stand on her forelimbs or walk and consequently, unable to eat on her own. The placement of a feeding tube was necessary to provide Lola with the vital nutrients she needed to stay alive.

V. First Cause of Action: Negligence and Gross Negligence

Plaintiff incorporates paragraphs 1-9 as if fully set out herein under and in addition would plead as follows:

10. A negligence cause of action has three elements: (1) a legal duty owed by one person to Another (2) a breach of that duty, and (3) damages proximately caused by the breach. *D. Houston, Inc. v. Love*, 92 S.W.3d 450, 454 (Tex. 2002). Defendants owed a duty to the Plaintiff not to harm the occupants of her home while conducting their for-profit delivery business. Frances wanton act of throwing his scanner at the six-pound Yorkie Lola was a clear breach of that duty. As a direct result of Frances' conduct, Ramos has been damaged as set out herein below.

11. Frances' conduct however goes beyond mere negligence and falls squarely within the definition of gross negligence in Texas. There are two basic elements to a claim of gross negligence under Texas law. First, when "viewed objectively from the actor's standpoint, the act or omission must involve an extreme degree of risk, considering the probability and magnitude

of the potential harm to others." It is inconceivable from an objective stand point, that Frances could not have known that Lola posed no threat to him and that if he struck her with his scanner that not only was there a strong likelihood of injury, but given her small size and the weight of the scanner, that he might easily kill her.

12. The second element requires that "the actor must have actual, subjective awareness of the risk involved, but nevertheless proceed in conscious indifference to the right, safety or welfare of others." *Mobil Oil Corp. v. Ellender*, 968 S.W.2d 917, 921 (Tex. 1998). Again, under the circumstances, it is inconceivable that Francis could not have been aware of the consequences of striking Lola with his scanner and that he proceeded to act with clear conscious indifference toward Lola's safety under circumstances where no objective evaluation of the situation justified such action. **Defendant Frances individually and FedEx**, were therefore grossly negligent during the course of his delivery. **Defendant Frances**, at all times material to this cause of action, was acting within the course and scope of his employment with **FedEx**. Therefore, **FedEx** is vicariously liable for **Frances'** acts and omissions under the doctrine of *respondeat superior*. The Williamson County, Texas law enforcement authorities have actually indicted **Defendant Frances** for cruelty to animals, thus offering more evidence of the wanton behavior of **Defendant Frances**.

VI. Second Cause of Action: Negligent Hiring and/or Training

Plaintiff incorporates paragraphs 1-9 as if fully set out herein under and in addition and/or the alternative would plead as follows:

13. Employers have a broad duty to ensure that each of their employees receives adequate training for the job that they have to perform. In addition, employers who send their employees into their customers' homes are under a higher standard of care than those whose employees do

not enter customers' homes. As set out herein above **Defendant, FedEx** is liable for the acts of **Defendant Frances** to the extent that he was the apparent and ostensible agent of **FedEx**, and practicing under their apparent direction and auspices. However, **FedEx** is liable for its own negligent failure to properly train **Defendant Frances**. The presence of animals at a customer's home is an almost certain occurrence in the United States. According to the American Veterinarian Medical Association, in 2012, 36.5%, or 43,346,000 American households had dogs as pets. The same survey indicates most households own more than one dog, meaning that there were 69,926,000 dogs in American homes as of 2012.

14. Given the clear foreseeability that encounters with animals will be a daily occurrence, in all likelihood on multiple occasions throughout a delivery route, for **FedEx** to not have properly trained **Defendant Frances** as to how to properly deal with a animal that posed no threat is negligent. **FedEx** failed to prevent Lola's injuries by allowing an improperly trained employee to deliver packages. Each and every one of the foregoing acts and omissions, taken separately and collectively, constitute a direct and proximate cause of the injuries and damages described as set forth below.

VII. Actual Damages

15 Prior to this incident, Lola was a cooperative, full spirited and playful dog. Her personality has changed since she was injured by **Defendant, Frances**. She is frightened and weak, and due to her severe physical injuries, will require extensive long-term medical care. **Plaintiff, Aimee Ramos** will now inevitably be faced with emotional trauma as she has to care for a sick and injured beloved pat day after day. Lola will also need physical rehabilitation for the rest of her life, placing a huge financial burden upon Plaintiff. Due to Defendants' violent actions directed towards Lola, there in not a shred of doubt that her quality of life has been

compromised as a direct result of the Defendants' gross negligence and with it the quality fo life of the Plaintiff. By reason of the injuries described above, the Plaintiff has suffered losses and damages in a sum that is within the jurisdictional limits of the Court, Plaintiff sues for an amount not less than \$100,000.00 but not more than \$200,000.00.

VIII. Special Damages

16. As a further result of the above and foregoing, the Plaintiff has incurred expenses for veterinary care and attention, veterinary fees, medical supplies and medicine, surgical procedures and hospitalization. These expenses were incurred for necessary care and treatment of the injuries resulting from the incident complained of. The charges are reasonable, and they were the usual and customary charges veterinarians charge for such services in Williamson County, Texas.

IX. Punitive Damages

17. In Texas, punitive damages may be assessed against a corporation for gross negligence, but "only if the corporation itself commits gross negligence." The grossly negligent act or omission must be directly attributable to the corporation. A corporation can be held liable for punitive damages (1) if it authorizes or ratifies" the gross negligence of an employee or agent or (2) "if it commits gross negligence through the actions or inactions of a vice principal. It is Plaintiffs contention that both **Defendants Frances and FedEx** are guilty of gross negligence and that Plaintiff is therefore entitled to punitive damages.

X. Jury Demand

18. **Plaintiff, Aimee Ramos** make her demand for jury trial in the above styled and numbered cause in accordance with the Rules of Civil Procedure. Simultaneous with the making

of said demand for jury trial, Plaintiffs hereby tender their jury fee to the Williamson County Clerk in accordance with the applicable statutes and laws of the State of Texas.

11. Prayer

The Plaintiffs request that the Defendants be cited to appear and answer, and that on final trial the Plaintiffs have the following:

1. Judgment against the Defendants for a sum within the jurisdictional limits of the Court for their actual damages, special damages, and punitive damages for gross negligence.
2. Prejudgment and postjudgment interest as provided by law.
3. Costs of suit.
4. Such other and further relief to which the Plaintiff may be justly entitled.

Respectfully submitted,

/S/ Mark a. Weitz

MARK A. WEITZ

State Bar No. 21116500

mweitz@weitzmorgan.com

KRISTI ARONICA

State Bar No. 24048677

kristi@weitzmorgan.com

Weitz Morgan, PLLC

100 Congress Avenue, Suite 2000

Austin, Texas 78701

Tele: 512.657.1849

Fax: 512.852.4446

OF COUNSEL:

Reynaldo Ortiz

State Board No. 1532427

Law Office of Reynaldo Ortiz, L.P.

1305 East Nolana Loop, Suite F

McAllen, Texas 78504

(956) 687-4567

(956) 631-1384

rey@leydeortiz.com