

insights

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Court grants TRO preventing abrupt termination of essential services during COVID-19

Does your business provide essential services? Are you in a contract dispute with a provider of essential goods or services? A recent Illinois federal court decision illustrates that, during the COVID-19 pandemic, businesses which provide essential goods or services should exercise due care before abruptly terminating a contract or face potential injunctive action.

Since an alternative source of essential services may not be available right now, it may be easier than normal for a plaintiff to establish the irreparable harm necessary to obtain a TRO for continuation of the contract. Where possible, business solutions, even temporary ones, are recommended and may be ordered when businesses do not find interim solutions on their own.

In *Lexington Healthcare Center of Bloomingdale, Inc. et al. v. Morrison Management Specialists, Inc.* (N.D. Ill.) Case No. 20-cv-01792, a dispute arose between Lexington Health Network, which operates 11 senior living centers and nursing homes, and Morrison Management, the vendor Lexington had retained to provide food and cleaning services for nearly 1,600 residents. The parties' relationship soured, and both sides accused the other of breaching the contract. Morrison ultimately invoked a 7-day termination provision, citing alleged late payments.

Lexington's motion for temporary restraining order was assigned to emergency Judge Robert Dow, Jr., who promptly granted the motion. The Court required that Morrison continue providing the food supply and cleaning services on a temporary basis in exchange for new payments, with the prior alleged payment defaults to be addressed later.

Judge Dow Jr. acknowledged that the "question of breach is up in the air at this stage" and that "[w]ith each side pointing fingers at the other, it is not obvious who will ultimately prevail." Nevertheless, Judge Dow Jr. ordered that Morrison continue performing under the contract, largely because of the public interest at issue, stating: "It is difficult to overstate the strength of the public interest in making sure senior citizens get the services [Morrison] contracted to supply to them."

The case provides a clear-cut example of "essential services"—food and cleaning for 1,600 senior living residents—but the same rationale may apply to disputes in other essential industries and their supply chains. This case, and the remedy directed by the Court, may provide guidance to businesses seeking to negotiate a temporary resolution in the face of a threatened supply disruption.

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