

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

WILLIAM E. KRING, an Individual,

Plaintiff,

Case No. 1:16-cv-00800-PLM-RSK

v

Hon. Paul L. Maloney

HERITAGE BROADCASTING COMPANY OF MICHIGAN, INC., a Delaware corporation,
HERITAGE BROADCASTING GROUP, INC., a Delaware corporation, and **MICI, INC.**, a Delaware corporation,

Defendants.

SOMMERS SCHWARTZ, P.C.
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FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

NOW COMES Plaintiff, WILLIAM E. KRING, by and through his attorneys, SOMMERS SCHWARTZ, P.C. and for his First Amended Complaint against Defendants, HERITAGE BROADCASTING OF MICHIGAN, INC., a Delaware corporation, HERITAGE BROADCASTING GROUP, INC., a Delaware corporation (collectively referred to as “HERITAGE”) and MICI, INC. (“MICI”), a Delaware corporation, , states as follows:

PARTIES

1. Plaintiff, WILLIAM E. KRING (“KRING”), is an individual residing in Traverse City, Grand Traverse County, Michigan.

2. Defendants, HERITAGE BROADCASTING OF MICHIGAN, INC., HERITAGE BROADCASTING GROUP, INC., and MICI, INC., are Delaware corporations and maintain their principal places of business and conduct business in the village of Tustin, Osceola County, Michigan.

JURISDICTION AND VENUE

3. This Court has jurisdiction in connection with this case pursuant to 28 U.S.C. §1331 and 29 U.S.C. §2617(2).

4. The events and conduct giving rise to the claims in this action occurred in this Judicial District. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391.

GENERAL ALLEGATIONS

I. HERITAGE

5. HERITAGE owns and operates television stations 9 & 10, WWTV/WWUP, (“TV 9 & 10”) which are CBS affiliates. The stations serve 23 counties in the northern Lower Peninsula and 3 counties in the eastern Upper Peninsula.

6. HERITAGE maintains broadcast facilities in Cadillac and Traverse City, Michigan.

7. HERITAGE was founded by Mario Iacobelli.

8. HERITAGE is a wholly owned subsidiary of MICI, a holding company, which is owned and controlled by Mario Iacobelli and his family.

9. Mario Iacobelli served as HERITAGE’s president and the chairperson of its board of directors.

10. In April 2016, HERITAGE announced that Mario Iacobelli’s son, M. Peter Iacobelli, had become its chief executive officer, chief operating officer and president.

II. KRING

11. KRING is a fifty-nine year old, married, father of three.

12. In 1979, KRING graduated from Central Michigan University where he obtained an undergraduate degree in business administration.

13. In 1983, KRING become a certified public accountant.

14. From 1983 through 1988, KRING was employed by Grant Thornton, where he worked as an accountant in metropolitan Detroit.

15. While employed by Grant Thornton, KRING provided accounting services to HERITAGE.

16. In 1988, Mario Iacobelli solicited KRING to accept employment with HERITAGE as its chief financial officer. At the time, HERITAGE owned and operated radio stations in Texas and West Virginia and a television station in New York and was experiencing severe financial difficulties.

17. KRING began employment with HERITAGE on April 1, 1988 and throughout his 28 year tenure with HERITAGE, he reported directly to Mario Iacobelli.

18. KRING was instrumental in HERITAGE acquiring TV 9 & 10 in July 1989.

19. During his early years with HERITAGE, KRING was responsible for keeping the company afloat as it defaulted on its bank loans and was required to restructure by its lenders.

20. By way of KRING's efforts, in 1990/1991 HERITAGE refinanced its debt and resumed normal business operations.

21. Upon HERITAGE firing TV 9 & 10's general manager in 1992/1993, KRING was promoted to station manager while retaining his duties as the chief financial officer. Mario Iacobelli assumed the role of general manager.

22. In 1997, Mario Iacobelli promoted KRING to become TV 9 & 10's general manager while retaining his chief financial manager duties.

23. During the 1990s, KRING was instrumental in HERITAGE's sale of the radio stations and the New York television station.

24. As result of his successful operation of TV 9 & 10 and the stations' profitability, Mario Iacobelli promoted KRING to become Vice President, General Manager, General Sales Manager, and Chief Financial Officer of Defendant, HERITAGE BROADCASTING OF MICHIGAN, INC. Further, KRING was elected to the company's board of directors.

25. In addition, Mario Iacobelli promoted KRING to become Vice President and Treasurer of Defendant, HERITAGE BROADCASTING GROUP, INC., and he was elected to its board of directors.

26. Finally, Mario Iacobelli promoted KRING to become Vice President and Treasurer of MICI and he was elected to its board of directors.

27. As HERITAGE's Vice President, General Manager and Chief Financial Officer, KRING's responsibilities at TV 9 & 10 included, but were not limited to, the following:

- a. Managing a 135 person staff working in six different locations;
- b. Overseeing and managing HERITAGE's finances including, its banking relationships and cash management;
- c. Preparing HERITAGE's five year strategic plan (including capital expenditures);
- d. Coordinating the annual outside audit and preparation of tax returns;
- e. Managing the sales department and staff;
- f. Overseeing the purchase of capital assets;
- g. Creating annual budgets;
- h. Negotiating insurance contracts, leases and real estate purchases;

- i. Serving as the trustee of all employee benefit plans; and
- j. Serving as the corporate liaison with governmental entities at the federal, state and local level and the business community.

II. HERITAGE ACKNOWLEDGES KRING'S OUTSTANDING JOB PERFORMANCE

28. Over the decades, Mario Iacobelli consistently praised KRING's job performance and rewarded him with substantial salary increases, bonuses and fringe benefits.

29. Until shortly prior to his firing, KRING was never disciplined, subject to any performance related warnings or otherwise criticized regarding his job performance.

30. In 2008/2009, at a HERITAGE board of directors' meeting at an Arizona country club, Mario Iacobelli offered KRING an equity interest in the family's various mobile home park businesses. When KRING declined that offer, Mario Iacobelli offered him a generous retirement package and benefits, which offer KRING accepted.

31. At the time of his termination, KRING's annual base salary was \$375,000 and in 2015, HERITAGE awarded him a \$350,000 bonus. In addition, HERITAGE provided KRING with a BMW for his use and numerous other fringe benefits.

32. In recent years, Mario Iacobelli moved his residence from Michigan to Arizona and became less and less involved in HERITAGE's day-to-day business operations, shifting more and more responsibility to KRING.

33. A long time Park City, Utah resident, M. Peter Iacobelli was minimally involved in the day-to-day operations of HERITAGE, primarily through electronic communication and sporadic on site visits.

34. Typically on 3 to 6 occasions per year, Mario Iacobelli, M. Peter Iacobelli, a Kevin Dunaway (a close Iacobelli family friend and TV 9 & 10's News Director) and KRING attended various business meetings and conventions across the United States and business related

events involving the TV 9 & 10 in Michigan. At these events, Mario Iacobelli, M. Peter Iacobelli, Dunaway and KRING socialized and consumed alcoholic beverages.

IV. KRING'S MEDICAL LEAVE

35. On December 16, 2015 HERITAGE hosted its annual holiday party dinner for TV 9 & 10 employees at a restaurant in downtown Traverse City. Subsequently, a number of managers and other employees went to the Grand Traverse Resort Hotel where HERITAGE had reserved rooms.

36. At the hotel, KRING invited a number of employees to his room to gather and drink champagne. Only one female employee accepted his invitation.

37. KRING and the female employee talked and drank champagne and at approximately 1:00 A.M., KRING said: "Since you are not getting naked, I am going to bed." The female employee left KRING's room.

38. On or about December 23, 2015, KRING encountered Kevin Dunaway at a gas station where Dunaway told him that the female employee had reported KRING's comment to her at the hotel. Dunaway assured KRING that he had taken care of the matter with the employee. KRING told Dunaway that he wanted to apologize to the female employee.

39. On January 28, 2016 Mario Iacobelli requested that KRING come over to his condominium in Cadillac to discuss some business matters. Present at the meeting were Mario Iacobelli, M. Peter Iacobelli, Kevin Dunaway and KRING.

40. Dunaway states that a female employee informed him that KRING made an inappropriate comment to her after the December 16, 2015 holiday party but that the employee had not filed any sort of complaint or charge of sexual harassment.

41. KRING admitted to making an inappropriate comment to the employee.

42. M. Peter Iacobelli commented that for some time prior to the holiday party, KRING had been in a “bad mood” and difficult to communicate with. M. Peter Iacobelli admitted that prior to the January 28, 2016 meeting he had never brought his concern about KRING’s behavior to his attention.

43. At the conclusion of the 20 minute meeting, Mario Iacobelli told KRING that HERITAGE that effective immediately it was placing him on “leave”. KRING was told not to report to work during the leave and KRING abided by HERITAGE’s directive.

44. On February 1, 2016, HERITAGE sent KRING a document entitled “CONFIDENTIAL OPPORTUNITY FOR CONTINUED EMPLOYMENT AGREEMENT” (the “Continued Employment Agreement”).

45. KRING understood that in order to remain employed by HERITAGE, he had to sign the Continued Employment Agreement.

46. KRING had no input in drafting the Continued Employment Agreement.

47. In the Continued Employment Agreement, HERITAGE referenced “certain substance abuse related behaviors...” relating to KRING (page 1). HERITAGE required KRING to go to a “Substance Abuse Professional” for an evaluation and to complete a “treatment program” as specified by the Substance Abuse Professional (page 1, paragraphs 2 & 4).

48. HERITAGE stated that, “Although the parties have not determined if certain sexual harassment allegations are with merit, Employee will also be referred to a Professional Counselor to be evaluated for counseling.” (page 1, paragraph 3 of the Continued Employment Agreement) Also, HERITAGE directed KRING to “engage in treated and/or counseling related to the allegations of possible sexual harassment recommended by the Professional Counselor.

49. HERITAGE indicated that KRING could “utilize the Employer provided health care insurance to cover the costs” of the specified treatment and counseling (page 2, paragraph 6).

50. HERITAGE further told KRING the following: “After Employer receives written certification of Employee’s successful completion of the treatment programs to which he is referred, Employer shall determine if it will terminate or continue the Employee’s employment.” (page 2, paragraph 8)

51. HERITAGE informed KRING that he would be “considered on a paid leave of absence for a minimum of ninety days...”(page 2)

52. KRING signed the Continued Employment Agreement.

V. KRING’S CONTINUING MEDICAL TREATMENT

53. Pursuant to the Continued Employment Agreement, KRING went to Doug Moser, MA, LLP, CAADC, at Munson Medical Center, for a substance abuse evaluation.

54. On February 15, 2016, Moser issued a written evaluation and found that KRING did not have an “alcohol use disorder” and did not have any “withdrawal/detox needs”. Moser also found that KRING suffered from “mild ‘situational’ depression and anxiety/worry...”

55. On January 29, 2016 KRING began a course of continuing treatment with David Prince LPC, a licensed professional counselor pursuant to the Continued Employment Agreement.

56. Prince determined that KRING was suffering from “major depressive disorder moderate. General anxiety disorder mild.”

57. KRING participated in an ongoing mental health treatment program with Prince for approximately three months.

VI. KRING SEEKS TO RETURN TO WORK

58. On February 16, 2016 KRING sent a text message to HERITAGE advising it of the results of the substance abuse evaluation and provided it with a copy of Moser's evaluation. In addition, KRING informed HERITAGE of his ongoing counseling/treatment program with Prince. Finally, KRING asked to discuss with HERITAGE "resuming his career and working with all of you again."

59. In a second text message to HERITAGE dated February 16, 2016, KRING indicated that he felt "capable of resuming my responsibilities at Heritage Broadcasting." Again, he asked to meet with Mario Iacobelli, M. Peter Iacobelli and Dunaway.

60. Mario Iacobelli responded to KRING by way of a February 19, 2016 text message, indicating that HERITAGE was not prepared to meet and further: "The original arrangements stated that there would be a 90 day leave and at this point we are holding to that."

VII. HERITAGE FIRES KRING

61. HERITAGE failed and refused to communicate further with KRING until April 8, 2016 when it sent him a letter informing him as follows:

"We have determined it is in all of our best interests to conclude our business relationship. Your last day of employment is April 26, 2016, which is 90 days from the date your paid leave commenced."

(A copy of the April 8, 2016 letter is attached as *Exhibit "A"*)

62. By of the April 8, 2016 termination letter, HERITAGE further offered to pay him severance upon executing a written agreement pursuant to which he released any and all legal claims that he had against HERITAGE.

63. HERITAGE concluded the April 8, 2016 letter stating:

“Over the past 28 years, you have been an invaluable asset to our organization. On behalf of everyone at Heritage Broadcasting and the Iacobelli family, we sincerely thank you for your contribution.”

64. KRING refused to execute the proposed severance agreement.

COUNT I: VIOLATION OF FAMILY AND MEDICAL LEAVE ACT,
29 U.S.C. §2601 et seq. — INTERFERENCE

65. KRING incorporates paragraphs 1 through 64 of his Complaint.

66. It is unlawful under the Family And Medical Leave Act, 29 U.S.C. §2601 *et seq.* (“FMLA), for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under the FMLA. 29 U.S.C. §2615.

67. The FMLA entitles qualified employees to take up to twelve weeks of unpaid leave, without fear of termination, when the leave is taken for a serious health condition that makes the employee unable to perform the functions of their job. 29 U.S.C. §2612(a)(1)(D).

68. A serious health condition is “an illness, injury, impairment, or physical or mental condition” that involves “continuing treatment by a health care provider”. 29 U.S.C. §2611(11).

69. Employers are prohibited from interfering, restraining, or denying the exercise of or attempted exercise of any FMLA right. 29 U.S.C. §2615(a)(1).

70. KRING was an eligible employee for an FMLA leave. 29 U.S.C. §2611(2).

71. HERITAGE was KRING’s employer. 29 U.S.C. §2611(4).

72. KRING was entitled to leave under the FMLA. 29 U.S.C. §2612(a)(1).

73. Pursuant to the Continued Employment Agreement, HERITAGE was on notice of KRING taking an FMLA leave due to a serious health condition. 29 U.S.C. §2612(e)(1).

74. HERITAGE denied KRING the FMLA benefits to which he was entitled. 29 U.S.C. §2612(e)(1).

75. HERITAGE engaged in a prohibited acts under the FMLA by refusing to permit KRING to return from an FMLA leave and resume his position as its Vice President, General Manager and Chief Financial Officer and subsequently, firing him. 29 U.S.C. §2614.

76. HERITAGE knowingly and deliberately engaged in intentional violations of the FMLA and further, acted with malice and/or with reckless indifference to KRING's rights under the FMLA.

77. As a direct and proximate result of Defendants' adverse actions, KRING has suffered damages.

WHEREFORE, Plaintiff, WILLIAM E. KRING, requests that this Court enter its Judgment against Defendants, HERITAGE BROADCASTING OF MICHIGAN, INC., HERITAGE BROADCASTING GROUP, INC., and MICI, INC., in whatever amount of damages is shown to be established by the proofs in this cause, together with compensatory damages, liquidated damages, costs, pre-complaint, pre-judgment and post-judgment interest, and attorney fees in accordance with 29 U.S.C. § 2617(a)(3) as well as any equitable relief shown to be established by the proofs in this cause.

COUNT II: VIOLATION OF FAMILY AND MEDICAL LEAVE ACT,
29 U.S.C. §2601 et seq. — RETALIATION

78. KRING incorporates paragraphs 1 through 64 of his Complaint.

79. KRING is an eligible "employee" as defined by the FMLA. 29 U.S.C. §2611(2)(B)(ii).

80. HERITAGE is an "employer" as defined by the FMLA. 29 U.S.C. §2611(4).

81. Under FMLA, KRING was entitled to twelve (12) weeks of medical leave for any twelve (12) month period. 29 U.S.C. §2612(a)(1).

82. By way of the Continued Employment Agreement HERITAGE was on notice of KRING taking an FMLA leave due to a serious health condition.

83. The FMLA prohibits employers from retaliating against employees who exercise their FMLA rights. 29 U.S.C. §2615(a)(2).

84. As a result KRING taking an FMLA leave and exercising his FMLA rights, HERITAGE retaliated against him and violated the FMLA in ways which include, but are not limited to, the following:

- a. Retaliating against KRING because of his FMLA leave;
- b. Publicizing KRING taking a FMLA leave;
- c. Refusing to communicate with KRING about his health status during the leave;
- d. Refusing to allow KRING to return to work;
- e. Terminating his employment; and
- f. Otherwise discriminating against KRING because of his FMLA leave.

85. There is a causal connection between KRING's protected FMLA activity and HERITAGE's adverse employment actions.

86. HERITAGE knowingly and deliberately engaged in intentional violations of the FMLA and further, acted with malice and/or with reckless indifference to KRING's rights under the FMLA.

87. As a direct and proximate result of Defendants' adverse actions, KRING has suffered damages.

WHEREFORE, Plaintiff, WILLIAM E. KRING, requests that this Court enter its Judgment against Defendants, HERITAGE BROADCASTING OF MICHIGAN, INC., HERITAGE BROADCASTING GROUP, INC., and MICI, INC., in whatever amount of

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DEMAND FOR TRIAL BY JURY IS HEREBY MADE.

s/Daniel D. Swanson
DANIEL D. SWANSON (P29288)
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Dated: July 8, 2016

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DEMAND FOR TRIAL BY JURY

NOW COMES Plaintiff, WILLIAM E. KRING, by and through his attorneys, SOMMERS
SCHWARTZ, P.C., and hereby demands a trial by jury relative to the above matter.

s/Daniel D. Swanson
DANIEL D. SWANSON (P29288)
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Dated: July 8, 2016