

UNITED STATES OF AMERICA
EASTERN DISTRICT OF MICHIGAN – SOUTHERN DIVISION

DAVID SHAND

 plaintiff
v

Case No. 07-131000
Hon. Julian Abele Cook, Jr.
Magistrate Judge Pepe

WILLIAM C. MARTIN, in his official
and individual capacity,

 defendant

Attorney for plaintiff:
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COMPLAINT AND JURY DEMAND

Plaintiff states his complaint as follows:

Parties/Jurisdiction/Venue

1. Plaintiff David Shand resides in Saline, Michigan.
2. Defendant William C. Martin is the Athletic Director at the University of Michigan, Ann Arbor, Washtenaw County, Michigan, and he is sued in his individual and official capacity.
3. The events described in this lawsuit occurred primarily in Washtenaw County, Michigan.
4. Jurisdiction in this court is proper per 42 USC § 1983, *Howlett v. Rose*, 496 US 356 (1990), and because the amount in controversy exceeds \$75,000.

Factual Allegations

5. Previous paragraphs adopted by reference.
6. Plaintiff was employed by WTKA-AM 1050 [“WTKA”], a radio station with an “all-sports” format, as an on-air radio host from approximately 2003 until his wrongful termination on April 20, 2007.
7. At all times relevant, Robert Bolak was the station manager of WTKA, and Brian Cowen was the program director.
8. Plaintiff was highly qualified and uniquely suited for the position, with a multi-faceted background as a former college and professional hockey player, college coach, media commentator, sports agent, licensed attorney, and adjunct professor.
9. Commencing March 15, 2006 plaintiff accepted WTKA’s offer to become a permanent co-host of the morning show on Monday through Friday, from 6AM – 10AM, which featured sports talk, interviews and listener participation.
10. Ratings for the station increased significantly for the morning show during the time that plaintiff was a host of that show.
11. Plaintiff was constantly praised for his performance and the commensurate rise in ratings, by Bolak and Cowen, among others.
12. Plaintiff was also encouraged by Bolak and Cowen to have an on-air personality that was humorous, opinionated, provocative, and controversial, which they believed was a significant factor in the increasing popularity of the morning show.
13. During the fall of 2006, plaintiff was tangibly rewarded for his role in revitalizing the station, when he was promoted to primary host and producer of the morning show, which was renamed “In The Locker Room With Dave Shand.” He also

was featured on football pregame broadcasts as well as the “Victor’s Lounge,” and became increasingly identified with WTKA. He had his compensation significantly increased by the station, and was encouraged to continue being more provocative and controversial.

14. Despite his outspokenness, plaintiff was generally a strong promoter of the University of Michigan athletic program, as he was a scholarship student-athlete on the hockey team from 1973 to 1975, and later an assistant coach for the hockey team from 1989 to 1993.

15. As we all know here in Ann Arbor, University of Michigan athletics are richly steeped in history, tradition, and widespread public fame, and a subject of great interest and passion to millions of alumni and other sports fans world wide.

16. WTKA is proud of its strong record of promotion and publicity for University of Michigan athletics, and in particular the football program. In fact, WTKA has often touted itself the “Unofficial Voice of University of Michigan Athletics.”

17. WTKA materially relies on its ability to broadcast University of Michigan football games, including pre-game and post-game analysis, interviews and press conferences, for substantial advertising revenue and increased listener ratings, especially around the football season.

18. However, WTKA can only broadcast football games and certain related programming by virtue of a licensing agreement with the University of Michigan, granted with primary approval through the athletic department, headed by defendant Martin.

19. This relationship became threatened when defendant Martin became increasingly irritated with plaintiff's occasional outspoken criticisms of the UM athletic program, and possibly other on-air comments.

20. On April 19, 2007, Martin communicated both indirectly and directly with Bolak and Cowen, and informed them that he would not allow WTKA to participate in a planned coverage of a UM charity golf event if they permitted plaintiff to broadcast it.

21. Martin further indicated that he wanted the station to fire the plaintiff, and stated that if they did not, he would no longer allow WTKA to carry University of Michigan football games.

22. Martin had no supervisory authority whatsoever over WTKA, Bolak, Cowen or plaintiff, and he and the UM Athletic Department were completely independent of the radio station except for the license to broadcast football games and related programming.

23. Martin's interference in WTKA's personnel decisions was spiteful, malicious, and wholly without justification.

24. Nonetheless, on April 20, 2007, kowtowing to Martin's edict, Cowen informed plaintiff that he was fired.

25. Cowen and Bolak later told plaintiff that Martin had effectively blackmailed the station, by threatening its football broadcasting rights unless it fired plaintiff.

26. Since plaintiff has been fired, WTKA has lost significant amounts of advertising revenue and listener ratings.

27. Plaintiff has also been damaged economically and non-economically, as set forth more fully below.

Count I - Defendant Martin – Intentional Interference With Business Relationship or Expectancy

28. Previous paragraphs adopted by reference.

29. Plaintiff had a valid business relationship and/or business expectancy with WTKA, through his continuing employment as an on-air radio host and producer.

30. This business relationship provided an economic benefit to plaintiff, and was likely to continue providing him with an economic benefit well into the foreseeable future.

31. Defendant Martin was well aware of this business relationship and/or expectancy.

32. Martin intentionally and improperly interfered with this business relationship and/or expectancy, by essentially using economic blackmail to induce WTKA, Bolak, and Cowen to fire the plaintiff, because the things plaintiff said were not to Martin's personal liking.

33. Martin's conduct was the cause of WTKA, Bolak and Cowen's actions in terminating plaintiff's continuing business relationship with them.

34. Martin is not immune from suit, because:

(a) his intentional interference with a private employment contract between WTKA and plaintiff was not performance of a governmental function; and

(b) he was not acting within the scope of his authority, nor could he have reasonably believed that he was so acting.

35. Martin's intentional interference has caused plaintiff considerable damages, as stated herein and below.

Count II – Defendant Martin - Termination in Violation of 1st Amendment 42 USC 1983

36. Previous paragraphs adopted by reference.

37. Plaintiff exercised his various First Amendment rights on matters of public concern relating to University of Michigan athletics.

38. Defendant Martin's actions, inducing WTKA, Bolak, and Cowen to terminate plaintiff's employment, was in retaliation for plaintiff's exercise of First Amendment rights.

39. This retaliation against plaintiff violates his First Amendment rights under 42 USC § 1983.

40. Defendant Martin's First Amendment retaliation against plaintiff damaged him as described herein and below.

Damages

41. Previous paragraphs adopted by reference.

42. As a direct and proximate result of defendant's actions, plaintiff suffered damages exceeding \$75,000, as follows:

- a. *Economic Damages* – lost wages, lost earning opportunity, lost value of benefits, attorney fees, incidental and consequential damages.
- b. *Non-Economic Damages* – harm to reputation, emotional distress, mental anguish and continuing mental anguish, denial of social pleasures and enjoyment, inconvenience, embarrassment, ridicule, humiliation, mortification, fear, and outrage.

43. At all times relevant, plaintiff has made a good faith effort to mitigate his damages.

Jury Demand

Plaintiff demands a jury trial.

Relief Requested

WHEREFORE plaintiff requests this honorable court grant him the following relief:

- a. In excess of \$75,000 damages against defendant, as warranted by the law and the proofs, including:
 - i. economic and non-economic damages as described above;
 - ii. the greatest possible combination of non-economic and exemplary damages;
 - iii. punitive or special damages as permitted by law;
- b. costs and pre- and post- judgment interest as permitted by law;
- c. attorney fees as permitted by law;
- d. other remedies as are just, appropriate, and permitted by law or equity.

Respectfully submitted:

s/Nicholas Roumel

Nicholas Roumel (P37056)
Attorney for plaintiff DAVID SHAND

July 24, 2007