

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF CHARLEVOIX

MICHAEL CAIN,

Plaintiff,

CASE NO. 25- 0911-28 -CD

v

HON. Ray C. Hayes III

CITY OF BOYNE CITY,

Defendant.

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TRUE COPY
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Charlevoix County Clerk



COMPLAINT

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in this Complaint.

NOW COMES Plaintiff, Michael Cain, by and through his attorneys, PARKER HARVEY PLC, and for his Complaint, states as follows:

INTRODUCTION

1. Michael Cain, a dedicated public servant with over twenty years of service to the City of Boyne City, seeks justice following a retaliatory termination.
2. This case is about a retaliatory termination orchestrated in secret, in violation of the Michigan Open Meetings Act, where a municipality trampled on due process rights and breached an employment contract.

PARTIES, JURISDICTION, & VENUE

3. Plaintiff Michael Cain is a resident of Charlevoix County, Michigan.
4. Defendant City of Boyne City (“Defendant,” “Boyne,” or “Defendant Boyne”) is a Michigan municipal corporation located in Charlevoix County.
5. The events giving rise to this action occurred in Charlevoix County.
6. The amount in controversy exceeds \$25,000.00, exclusive of interest, costs, and attorney fees.
7. This Court has personal jurisdiction over the Plaintiff and the Defendant.
8. Venue is proper in this Court under MCL § 600.1615 and MCL § 600.1621.
9. This Court has the power to issue declaratory relief pursuant to MCR 2.605(A)(2) because there is an actual controversy within this Court’s jurisdiction necessitating a declaration of legal rights between parties.

STATEMENT OF FACTS

10. Plaintiff Michael Cain began as City Manager for Defendant Boyne City on December 10, 2002.
11. In 2011, Plaintiff executed an Employment Agreement (the “Agreement”) with procedural safeguards, including a provision that termination without “just cause” entitled Plaintiff to nine months' salary and benefits and required a due process hearing, if requested by the Plaintiff, with the opportunity for Plaintiff to present evidence and call witnesses Plaintiff deemed relevant.
12. In 2024, Defendant’s Mayor, Tim Nemecek, pressured Plaintiff to be excluded from a Commission meeting that Plaintiff reasonably believed he was legally entitled or obligated to attend under MCL § 15.268 and the City Charter.

13. Plaintiff objected to his exclusion, asserting his legal right or obligation to attend.

14. Despite Plaintiff's good faith belief and objection, Mayor Tim Nemecek threatened to circumvent the Michigan Open Meetings Act by conducting individual meetings if the Plaintiff would not agree with his position, thereby coercing the Plaintiff to remain excluded.

15. Plaintiff's report of a violation or potential violation of the Open Meetings Act and the City Charter called out the Mayor and the Commission for their conduct in May of 2024.

16. The Plaintiff's report of a violation or potential violation of the Michigan Open Meetings Act and the City Charter was protected activity under the Michigan Whistleblower Protection Act.

17. In the months after reporting the Commission and Mayor's potential violation of the law, Plaintiff's overall performance evaluation score suddenly dropped by over 50%.

18. The Commissioner's scores for Plaintiff's performance evaluation dropped in practically all categories.

19. In the months that followed Plaintiff's protected activity, the Plaintiff suddenly faced escalating hostility, criticism, and blame from the City Commission and the Mayor, indicating retaliatory actions linked to his whistleblower activity.

20. On information and belief, in the late summer or fall of 2024, City Commissioners deliberated in violation of the Open Meetings Act, using round-the-horn decision-making related to Plaintiff's employment:

We had two votes already. Would Marty or George support

All we need is 3 😊

I believe so.

21. On information and belief, on or about February 25, 2025, City Commissioners deliberated in violation of the Michigan Open Meetings Act, using round-the-horn decision making, in furtherance of a plot to terminate Cain:

I want to talk before the meeting if we can

Now works for me

22. The hostility and criticism against Cain culminated in a March 11, 2025, meeting, during which the Defendant moved on its plan and resolved to terminate Plaintiff's employment, citing "cause" without substantiating or even mentioning "just cause" as required by the relevant Agreement to deny the nine months of pay and benefits owed.

23. On March 21, 2025, ten days after the vote to terminate, Defendant began assembling after-the-fact evidence in hopes of "establishing a defenseable [sic] position" for its decision to terminate Plaintiff and deny Plaintiff pay and benefits.

24. On or about April 8, 2025, Plaintiff requested a hearing pursuant to Section 6.2 of his Agreement, which would require the Commission to vote on rescinding or affirming their prior decision to terminate him.

25. On or about April 21, 2025, Defendant provided Plaintiff with his personnel file, per the Plaintiff's request pursuant to the Bullard Plawecki Employee Right-to-Know Act. MCL § 423.501, et. seq.

26. After April 21, 2025, Defendant has indicated reliance on documents to support its termination decision, which were not provided in Plaintiff's personnel file or even mentioned at the March 11, 2025, meeting.

27. Since Defendant terminated Plaintiff, Defendant has already begun interviewing potential candidates to replace the Plaintiff.

28. Defendant denies Plaintiff has the right to call Commissioners as witnesses during any hearing under his Agreement, though no such provision exists in the Agreement.

**COUNT I –
MICHIGAN WHISTLEBLOWER PROTECTION ACT**

29. Plaintiff realleges and incorporates by reference all preceding paragraphs.

30. Plaintiff engaged in protected activity under the Michigan Whistleblower Protection Act by reporting a perceived violation of the Open Meetings Act and the City's Charter to a public body, specifically to Mayor Nemecek and the City Commission.

31. Defendant knew of Plaintiff's protected activity.

32. Following Plaintiff's protected activity, Defendant engaged in a pattern of retaliatory conduct, including drastic reductions in performance evaluation scores and increased hostility from Defendant's officials by shifting blame on the Plaintiff on almost any available occasion.

33. The temporal proximity between Plaintiff's protected whistleblower activity and the adverse actions, culminating in termination, establishes a causal connection, demonstrating retaliation.

34. Defendant's termination of Plaintiff's employment was motivated, in significant part, by retaliation for his protected whistleblowing activity.

35. Defendant's actions violate the Michigan Whistleblower Protection Act.

36. As a direct and proximate result of Defendant's retaliatory actions, Plaintiff has suffered and continues to suffer economic losses and damage to his professional reputation.

WHEREFORE, Plaintiff requests that this Court enter judgment in favor of Plaintiff and against Defendant for compensatory damages, including but not limited to lost wages, benefits, and other economic losses, and award Plaintiff damages for harm to his professional reputation resulting from Defendant's discriminatory and retaliatory actions. Further, Plaintiff requests that this Court award reasonable attorney fees, costs, and expenses incurred in bringing this action, and grant such other and further relief as the Court deems just and proper.

**COUNT II -
VIOLATION OF THE OPEN MEETINGS ACT**

37. Plaintiff realleges and incorporates by reference all preceding paragraphs.

38. Under MCL § 15.271(1), if a public body is not complying with the Michigan Open Meetings Act, a person may “commence a civil action to compel compliance or to enjoin further noncompliance with this act.”

39. Under MCL § 15.271(4), if a “public body is not complying with this act, and a person commences a civil action against the public body for injunctive relief to compel compliance or to enjoin further noncompliance with the act and succeeds in obtaining relief in the action, the person shall recover courts costs and actual attorney fees for the action.”

40. Defendant violated the Michigan Open Meetings Act when Commissioners deliberated in secret in 2024 and 2025 with regard to Plaintiff's employment, including but

not necessarily limited to deliberations in the late summer or fall of 2024 and February of 2025 related to Cain's employment.

41. Defendant's actions have caused substantial harm to Plaintiff, undermining his professional reputation and denying him the transparency and fairness guaranteed by law.

42. Defendant should be enjoined from further violations of the Open Meetings Act.

WHEREFORE, Plaintiff requests that this Court declare Defendant to have violated the Michigan Open Meetings Act, enjoin Defendant from further violations of the Open Meetings Act, award Plaintiff his actual attorney fees and costs pursuant to MCL § 15.271(4), and award such other relief that this Court deems just and reasonable.

**COUNT III –
VIOLATION OF PROCEDURAL DUE PROCESS**

43. Plaintiff realleges and incorporates by reference all preceding paragraphs.

44. This claim is included as an alternative claim under MCR 2.111.

45. Plaintiff has a protected property interest in his continued employment, and nine months of pay and benefits if not terminated for "just cause," arising from the specific terms of his Agreement, which therefore guaranteed procedural protections.

46. The Fourteenth Amendment to the U.S. Constitution and Article I, Section 17 of the Michigan Constitution guarantee that no person shall be deprived of life, liberty, or property without due process of law.

47. Procedural due process requires that a person receive adequate notice and a fair opportunity to be heard.

48. Defendant violated due process by concocting a plan in secret and in violation of the Open Meetings Act to terminate Plaintiff.

49. Defendant violated due process by “establishing” a “defenseable” [sic] position and evidence after-the-fact, thereby tainting any future hearing Plaintiff is entitled to.

50. Defendant violated due process by “establishing” a “defenseable” [sic] position and evidence after-the-fact to deny nine months of pay and benefits owed under Plaintiff’s Agreement.

51. Defendant violated or will violate due process by denying the Plaintiff the right to call the Commissioners as witnesses, even though no such restriction exists in the Agreement, thereby denying a fair opportunity to be heard.

52. As a direct and proximate result of Defendant’s violation of Plaintiff’s procedural due process rights, Plaintiff has suffered and will continue to suffer economic losses and damage to his professional reputation.

WHEREFORE, Plaintiff requests that this Court issue any injunctive relief it deems appropriate and enter judgment in favor of Plaintiff and against Defendant for compensatory damages, including but not limited to lost wages, benefits, and other economic losses, and award Plaintiff damages for harm to his professional reputation resulting from Defendant's discriminatory actions. Plaintiff requests any declaratory relief this court deems just and reasonable to ensure procedural fairness. Further, Plaintiff requests that this Court award reasonable attorney fees, costs, and expenses incurred in bringing this action.

**COUNT IV –
BREACH OF CONTRACT**

53. Plaintiff realleges and incorporates by reference all preceding paragraphs.

54. Plaintiff and Defendant were parties to a valid and enforceable Agreement, which outlined specific conditions under which Plaintiff could be terminated while being denied his nine months of pay and benefits.

55. The Agreement required "just cause" for termination without compensation and detailed procedural safeguards, including a due process hearing Plaintiff could request where he could present evidence and call witnesses to challenge a termination decision.

56. The Agreement does not restrict the right to call Commissioners as witnesses, yet the Defendant denies this right, ensuring no fair hearing under the contract can occur.

57. A plain and ordinary reading of the contract would allow Plaintiff to call the Commissioners as witnesses, as the Commissioners are essential to ensure information and testimony he deems relevant is entered into the record.

58. Defendant terminated Plaintiff without "just cause[.]"

59. Defendant failed to even mention the term "just cause" in the motion voted on to terminate Plaintiff's employment.

60. Defendant's attempt to provide "just cause" to deny pay and benefits has been the result of efforts by the Defendant in "establishing a defenseable [sic] position" after-the-fact.

61. Defendant has breached the Agreement by failing and refusing to pay the nine months of salary and benefits owed under the Agreement.

62. Defendant's breach has caused and will cause the Plaintiff financial harm in an amount to be determined at trial.

WHEREFORE, Plaintiff requests that this Court enter judgment in favor of Plaintiff and against Defendant for compensatory damages, including but not limited to lost wages, benefits, and other economic losses, and award Plaintiff damages for harm to his professional reputation resulting from Defendant's discriminatory actions. Further, Plaintiff requests that this Court award reasonable attorney fees, costs, and expenses incurred in bringing this action, as permitted by the Agreement, and grant such other and further relief as the Court deems just and proper.

**COUNT V –
REQUEST FOR DECLARATORY RELIEF**

63. Plaintiff realleges and incorporates by reference all preceding paragraphs.

64. Plaintiff has a protected property interest in continued employment, nine months of pay and benefits if terminated without just cause, and a due process hearing before the City Commission.

65. Under the applicable Agreement, Plaintiff is entitled to call witnesses and present information he deems relevant at the due process hearing.

66. Plaintiff identifies the Commissioners and certain communications and writings drafted by the Commissioners as highly relevant to this matter.

67. On information and belief, Defendant denies or intends to deny Plaintiff the right to call the Commissioners as witnesses.

68. Defendant's refusal to allow Plaintiff to call the Commissioners as witnesses effectively excludes essential testimony and information Plaintiff deems relevant.

69. Defendant's refusal to allow Plaintiff to call the Commissioners as witnesses undermines Plaintiff's ability to present critical information and therefore violates his due process and contractual rights.

70. Defendant's ongoing efforts to establish an after-the-fact defensible position for its termination decision indicate an intent to introduce or consider evidence at any due process hearing considered only after the termination, further threatening Plaintiff's due process and contractual rights.

71. Further, on or about April 4, 2025, Plaintiff requested his personnel file pursuant to the Bullard-Plawecki Employee Right to Know Act.

72. On or about April 21, 2025, Defendant provided Plaintiff with his personnel file.

73. After April 21, 2025, Defendant has indicated reliance on documents and information not included in the personnel file provided to the Plaintiff, for purposes of its termination decision, thereby contravening MCL § 423.502.

74. After April 21, 2025, Defendant has indicated reliance on documents and information not considered at the March 11, 2025, meeting or referred to therein.

75. Admission and reliance on such after-the-fact documents withheld from the personnel file likely further violates due process rights and would be in violation of MCL § 423.502, which allows for the exclusion of such evidence from judicial or quasi-judicial hearings by a judge or hearing officer, unless specific conditions are met or consent from the employee is given.

76. Plaintiff's reputation and career stand at risk of further, significant, and potentially irreparable harm if a due process hearing proceeds without this Court's intervention to clearly define and uphold the rights and obligations of the parties.

77. Plaintiff requests a declaration from this Court that, due to Defendant's conduct, including but not limited to its failure to comply with the Open Meetings Act, City Charter, and post hoc creation of a justification to deny pay and benefits, that the due process hearing provided under the Agreement cannot be conducted fairly and impartially, and therefore, that Plaintiff is entitled to the nine months of pay and benefits under the Agreement without further hearing.

78. In the alternative, if this Court determines that such a hearing can go forward fairly and impartially, Plaintiff requests a declaration from this Court that:

- a) Plaintiff, or his counsel, has the right to call witnesses, including Commissioners, in any due process hearing related to his termination;
- b) Plaintiff, or his counsel, has the right to present evidence and witnesses he deems relevant;
- c) Defendant may not present evidence, information, or documents that it produced only after the March 11, 2025, meeting or did not provide or specifically reference at the March 11, 2025, meeting; and
- d) Consistent with due process, and MCL § 423.502, Defendant may not present evidence, documents, or information not provided in

response to Plaintiff's personnel file request, unless consented to by the Plaintiff.

79. A declaratory judgment is necessary to prevent further due process and contractual violations and to provide clarity and certainty regarding the parties' rights and obligations, considering due process rights protected by law and the Agreement, and the threat of irreparable harm.

WHEREFORE, Plaintiff requests that this Court issue a declaratory judgment clarifying the procedural and contractual rights and obligations of the parties under the Agreement, as set forth above, and award any further relief deemed just and proper.

Dated: June 2, 2025



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