

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

WALTER MCCARTY)	
)	
Plaintiff,)	
)	Case No. 1:21-cv-3071
v.)	
)	JURY DEMANDED
UNIVERSITY OF EVANSVILLE,)	
)	
)	
Defendants.)	

COMPLAINT FOR DAMAGES

Comes now Plaintiff, Walter McCarty, by counsel, and files his Complaint for Damages against Defendant as follows:

INTRODUCTION

Walter McCarty was the much-hailed former NBA star and current assistant coach with the Boston Celtics, when the University of Evansville (“UE”) hired in order to save its basketball program. What follows is a description of how UE breached its employment contract with Mr. McCarty after he was terminated from his position in early 2020. Mr. McCarty revived the University of Evansville basketball program, bringing it back to national prominence by defeating then NCAA nationally number one ranked University of Kentucky in the fall of 2019. Mr. McCarty was terminated shortly after the win over Kentucky in January of 2020 for alleged Title IX violations which he disputes; however, Mr. McCarty’s termination did not abrogate UE’s contractual obligations to Mr. McCarty—the University of Evansville fired Walter McCarty because it could not afford the contractual obligations resulting from Mr. McCarty’s success. Mr. McCarty now brings this action to enforce the agreement between him and the University of Evansville.

PARTIES

1. Walter McCarty is a natural person, over the age of 18 and a citizen of the United States. He currently lives in Boston, Massachusetts. He can served via the undersigned attorneys.

2. The University of Evansville (“UE”) is a non-profit corporation, located in Evansville, Indiana, whose registered agent is Donna Teague. It can be served at 1800 Lincoln Avenue, Evansville, IN 47722.

JURISDICTION, CAUSE OF ACTION AND VENUE

1. This Court has jurisdiction over the matter due to diversity of the parties and the amount in controversy is in excess \$75,000 pursuant to 28 U.S.C. § 1332(a).

2. Venue is in this Court is proper pursuant to 28 U.S.C. § 1391(b), for the events or omissions giving rise to these claims arose here.

FACTUAL ALLEGATIONS

3. From March of 2018 to January of 2020, Walter McCarty was employed as the Head Men’s Basketball Coach at University of Evansville.

4. Mr. McCarty signed an Employment Agreement (“Agreement”) and it is attached as Exhibit 1.

5. Mr. McCarty had several responsibilities while head coach, including fundraising for the program as well as selling tickets to the games.

6. Mr. McCarty complied with these responsibilities as per the language in the Agreement.

7. Per the terms of the agreement, the Defendant, was required to pay Mr. McCarty \$48,000 by August 1, 2019 as an “exceptional fundraising bonus” for the 2018-2019 season.

8. The Agreement states the following:

Subsection Two: Exceptional Fundraising Bonus and Exceptional Ticket Revenue Bonus.

Each contract year COACH shall be eligible to earn one bonus payment based on exceptional fundraising and another bonus payment based on exceptional ticket revenue as follows:

(a) To be eligible for an exceptional fundraising bonus, each contract year COACH shall submit a fundraising plan, including a schedule of events with revenue and expense budgets, to the DIRECTOR or the DIRECTOR's designee for approval. The cost to the UNIVERSITY of COACH'S use of departmental facilities and personnel to implement the fundraising plan must be included in the calculation of expenses for the plan. All revenue from restricted Men's Basketball funds must be included in the calculation, including the current Men's Basketball Operations Fund, 6th Man Fund, and the Champion's Fund. If the plan receives the DIRECTOR's approval, fundraising income (e.g. revenue from donor gifts and special events), less expenses and operational budget coverage actually derived from the COACH's plan, shall be distributed 25% to COACH and 75% to the applicable sport, except that total exceptional fundraising bonus payments paid to COACH for any contract year may not exceed 20% of COACH's BASE SALARY paid in the year in which the bonus was earned. If earned, COACH's fundraising bonus shall be distributed to him by August 1st after the fiscal year has been closed and all revenue and expenses have been accounted for.

Section 4(a).

9. As of the date of this filing, the Defendant has not paid Mr. McCarty the \$48,000 as required by the Agreement.

10. Further UE owes Mr. McCarty additional monies for the 2019-2020 season in an amount to be determined.

11. It is believed that this amount is equal to or greater than the monies owed to Mr. McCarty for the 2018-2019 season.

COUNT I: BREACH OF CONTRACT

12. Plaintiff reincorporates all prior allegations as if fully pled herein.

13. A contract for employment existed between the parties. See Ex. 1.

14. Mr. McCarty performed the services obligated of him.

15. University of Evansville breached its Agreement with the Plaintiff by not paying him \$48,000 for the work that the Plaintiff completed in 2018-19.

16. This delay has materially harmed the Plaintiff.

COUNT II: BREACH OF CONTRACT

17. Plaintiff reincorporates all prior allegations as if fully pled herein.

18. A contract for employment existed between the parties. See Ex. 1.

19. Mr. McCarty performed the services obligated of him.

20. University of Evansville breached its Agreement with the Plaintiff by not paying him what he was owed for the 2019-2020 season.

21. UE also owes Mr. McCarty a yet to be determined sum for the 2019-2020 season.

22. This delay has materially harmed the Plaintiff.

WHEREFORE, the Plaintiff prays this Court award all damages available under federal and Indiana law for breach of contract, including the full payment of the amount due as well as costs of this action.

JURY TRIAL REQUEST

The Plaintiff requests a trial by jury in this matter.

Respectfully submitted,

/s/Jonathan Little

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