

**STATE OF MICHIGAN
IN THE 34th CIRCUIT COURT FOR THE COUNTY OF OGEMAW**

WARNER FAMILY TRUST,
PEGGY R. WARNER, TRUSTEE;

Plaintiff;

vs.

Case No. 16-650221-CK
Hon. Robert W. Bennett

CF BROADCASTING LLC,
a Domestic Limited Liability Company;
CHARLES A. COBB; and
MICHAEL D. FLEMING;
Jointly and Severally;

Defendants.

MOIR LAW OFFICE
KEITH E. MOIR (P-35685)
Attorney for Plaintiff
116 W. State Street, Suite 2
East Tawas, MI 48730
(989) 362-9930

J. RUSSELL HUGHES, JR. (P-15239)
Attorney for Defendants
PO Box 737
Rose City, MI 48654-0737
(989) 473-3333

ORDER SETTLING CASE

At a session of court held in the Ogemaw County Building in
West Branch, Michigan, on August 6, 2020
Present: Hon. Robert W. Bennett
Circuit Court Judge

During a hearing held regarding this matter on August 6, 2020, the Court determined the parties had previously settled this case.

The procedural history of this matter is summarized, as follows:

This matter concerns a radio station known as WBMI 105.5fm located in West Branch, Michigan, which is referred to hereinafter at times simply as WBMI.

On or about November 22, 2016 Plaintiff initiated this litigation against the Defendants.

The Complaint filed by the Plaintiff sought damages sustained as a result of Sale of Asset¹ Breach of Promissory Note that Plaintiff alleged the Defendants are responsible for due to non-payment of a promissory note entered into between the parties.

The Complaint filed the Plaintiff also sought Enforcement of a Security Agreement and Request for Possession of Collateral, and Foreclosure of a Mortgage.

The Defendants untimely asserted a Counterclaim against the Plaintiff. That untimely Counterclaim was previously dismissed by the Court.

On the eve of a hearing in this matter and two days prior to depositions of the individual parties, the parties arrived at a settlement, which was acknowledge by defense counsel in an e-mail to Plaintiff's counsel, as follows:

“Dear Mr. Moir,

Greetings in the Name of Jesus.

This is to acknowledge that the parties have agreed to a settlement by their respective attorneys and it shall include the following:

The defendants Michael Fleming and Charles Cobb, will sign any and all agreements to transfer the business, the assets, and anything that is needed to be transferred including but not limited to the FCC license and will cooperate fully with the court system and the FCC to have the license transferred from CF Broadcasting and/or the receiver Mark Sanger to Peggy Rose Warner. There will be a court order acknowledging this and it will be part of the public record.

There will be releases of liability signed by all parties releasing the others from any and all claims that they might have in law or equity.

Thank you and...

¹ The WBMI radio station.

May God bless you in all
you do for Him,
J. Russell Hughes
Bible Believing Attorney”

For reasons stated on the record IT IS ORDERED AS FOLLOWS:

1. Defendants Charles A. Cobb, Michael D. Fleming, and CF Broadcasting LLC have withdrawn any and all claims to entitlement of FCC License – WBMI(FM), 105.5 MHz, Channel 288A. West Branch, MI FCC Facility ID#29288 or FCC License – STL Station WQFN283 or any other FCC License utilized by WBMI(FM). The Defendants shall consent to the assignment of any and all FCC Licenses from the Court Appointed Receiver Mark Sanger to Plaintiff Warner Family Trust or any entity designated by Plaintiff.

2. All Defendants shall transfer all equipment and all collateral previously obtained from Plaintiff Warner Family Trust pursuant to the sale of the asset in 2011, which is the radio station known as WBMI(FM) 105.5 and all assets associated therewith, including but not limited to the following specifically pledged assets:

- A. Accounts,
- B. Equipment,
- C. General Intangibles,
- D. Deposits Accounts and Certificates of Deposit,
- E. Records and Related Property,
- F. Other Property,
- G. Products and Proceeds, and
- H. Specific items of personal property as specified on the WBMI 105.5 Equipment List a copy of which is attached to this Agreement.

3. All Defendants shall also transfer and grant title to a van purchased for use of the radio station WBMI during the time Defendants were in possession of the

radio station license, business and collateral, and which currently is in the possession of Cobb and/or Fleming. All Defendants shall defend, indemnify, and hold Plaintiff harmless from any and all liabilities concerning said vehicle.

4. Defendants shall assign the domain name <https://wbmiradio.com/> back to Plaintiff and/or 105.5fm, LLC a subsidiary in which Plaintiff has an ownership interest in and properly execute and promptly deliver to Plaintiff the documents required to effectuate said assignment.

5. Defendants shall provide to Plaintiff the following:

- A. Copies of all company tax returns for tax years of 2016, 2017, 2018, 2019 and 2020 these are needed for filing all Music Rights reporting and are property of the radio station. The returns are also needed for "record retention" requirements for the station;
- B. Full access to the "wbmi1055@yahoo.com" email box (this is the "Main" station email and it appears that all company communications go thru this email box);
- C. Full access to the contents of any and all post office boxes maintained for the radio station WBMI at the United States Post Office located in West Branch, Michigan, including but not limited to Boxes 333 and 807.
- D. Any and all client documents, agreements, contracts, email communications, contacts and all client records (needed for the required records retention requirements);
- E. All vendor documents, invoices, bills, and vendor agreements or contracts (needed for record retention purposes);
- F. Any and all radio station related equipment known or unknown to all parties: microphones, mixers, computers, cords, mic processors, EAS equipment, transmitters, receivers, radios, monitoring, optimods, audio recorders, stands, remote pick-ups, antennas, connectors and/or like equipment;

G. Any and all documents in the local FCC file (this file is kept or should be kept at the radio station).

6. Defendants shall immediately transfer any and all bank accounts utilized by the radio station WBMI 105.5 FM and the balances therein to Plaintiff.

7. The following real property located in Ogemaw County is awarded to Plaintiff Warner Family Trust, Peggy R. Warner, Trustee:

A parcel of real property situated in the Township of Ogemaw, County of Ogemaw and State of Michigan and described as follows:

The South 28.3 rods of the West 28.3 rods of the Southwest ¼ of the Northwest ¼ of Section 13, T22N, R1E.

Defendants shall properly execute and promptly deliver a Quit Claim Deed and such other documents to carry out this provision of this Order as to the transfer of this real estate. In the alternative a certified copy of this Order may be recorded or filed with a register of deeds, the secretary of state, or any other agency necessary to effectuate this Order.

8. FLEMING CENTENNIAL FARM: The major basis for the settlement of this matter has to do with Warner receiving WBMI license and the protection of the Centennial Farm of Michael D. Fleming who is to receive a total discharge of any claim that Peggy Warner or Warner Family Trust has or believes that they now have or formerly acquired because of a Note signed by Mr. Fleming to assure payment under the 2011 Contract, especially as to other property and liens which may attach, Warner will sign a Quit Claim deed to Michael D. Fleming concerning the following property.

The East ½ of the NW ¼, Section 24, T19N, R2W, Township of Sage, Gladwin County, Michigan, EXCEPT that part of the East ½ of the NW ¼ of Section 24, described as commencing at the NW corner of the E ½ of the NW ¼ of said Section 24; running thence S 20 rods; thence E 35 rods; thence N 20 rods; thence W 35 rods, back to the point of beginning: EXCEPT Part of the SE ¼ of the NW ¼, Section 24, T19N, R2W, Sage Township, Gladwin County, State of Michigan, described as: Beginning N 89 Deg. 34'06" E, along the E-W ¼ line, 1808.42 feet from the West Quarter corner of said Section 24; thence continuing N 89 Deg. 34'06" E, along the East-West Quarter Line, 320.00 feet; thence N 00 Deg. 25'54" W at the right angle to said E-W quarter line, 204.00 feet; thence S 89 Deg. 34'06" W parallel to said E-W quarter line, 320.00 feet; thence S 00 Deg.

25'54" E at a right angle to said E-W quarter line, 204.00 feet back to the place of beginning. This property is subject to an easement for the installation and maintenance of public utilities within the right-of-way of Riley Road.

In the alternative a certified copy of this Order may be recorded or filed with a register of deeds, the secretary of state, or any other agency necessary to effectuate this Order.

9. Any and all property transferred by Defendants to Plaintiff or a designee on Plaintiff's behalf pursuant to the terms of the parties' settlement shall indicate that the monetary amount for the transfer is nominal - specifically One (\$1.00) Dollar.

10. Defendants shall cease and desist and no longer make any claims to anyone including but not limited to third parties that they work for the radio station known as WBMI.

11. Defendants shall defend, indemnify, and hold Plaintiff harmless from any and all liabilities relating to the operation and/or indebtedness of the radio station known as WBMI, including but not limited to liability for any and all mortgages or liens asserted against radio station property or equipment, taxes owing or coming due (including but not limited to property taxes, payroll taxes and employer contributions), insurance premiums, royalty fees, bills of suppliers and/or vendors, utilities and monthly charges and expenses incurred by WBMI prior to the date of execution of this Agreement by the parties.

12. Plaintiff agrees to surrender any claim for an unpaid balance due and owing under the promissory note between the parties. Plaintiff acknowledges for purposes of this settlement that the note has been satisfied.

13. Defendants will submit a written stipulation to the Ogemaw County Circuit Court that the Order entered by that court in Docket Number 20-651402-CK will not be pursued on appeal. In exchange for a relinquishment of the assessment of sanctions against Defendants and their counsel in that matter Defendants will sign an amended stipulated order dismissing the Complaint asserted in Docket Number 20-651402-CK with prejudice and without payment of costs or attorney fees.

14. The parties shall surrender any and all claims for payment of attorney fees to them by any of the other parties.

15. The parties must properly execute and promptly deliver to each other the documents required to carry out the terms of this agreement. A copy of this agreement or any court orders entered adopting the terms of this agreement may be recorded or filed with a register of deeds, the secretary of state, or any other agency necessary to effectuate this agreement.

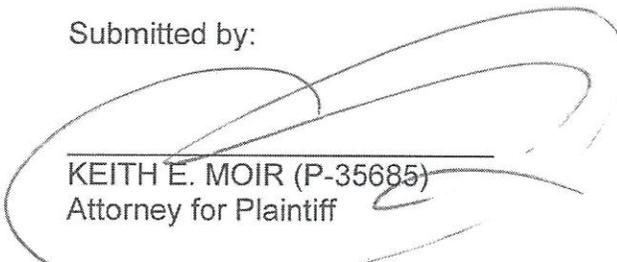
16. **Remedies in the event of default or breach of the Settlement Agreement.** Conduct of any party prohibiting, interfering with and/or altering the terms of this Order, or failing to cooperate with or abide by the terms of this Order shall be deemed a separate and material breach of this Order. Jurisdiction and venue for any breaches of this Order shall be in this Court the Ogemaw County Circuit Court. If an action is filed alleging a breach of this Order, the non-prevailing party(ies) shall pay the prevailing party's(ies') actual costs and attorney fees.

Dated: 8-18-2020



Hon. Robert W. Bennett
Circuit Court Judge

Submitted by:



KEITH E. MOIR (P-35685)
Attorney for Plaintiff

Dated: August 6, 2020