

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Case No. 03-43322-NCD

Steven Eric Ness,

Debtor.

ADV. NO. _____

Lisa M. Ingalls,

Plaintiff,

COMPLAINT

v.

Steven Eric Ness,

Defendant.

Plaintiff, Lisa M. Ingalls (“Ingalls”), for her Complaint against defendant Steven Eric Ness, (“Ness”), states and alleges as follows:

1. This is an action brought by Ingalls as a creditor of Ness to determine whether the claims held by Ingalls against Ness in the above-captioned bankruptcy case are, under the provisions of 11 U.S.C. §523(a)(6), excepted from the discharge available under 11 U.S.C. §727.

2. Ness is subject to the jurisdiction of this court in his pending Chapter 7 case. The case was commenced by a Voluntary Petition for relief under Chapter 7 filed on May 6, 2003 (the “Petition Date”).

3. This Court has jurisdiction over this proceeding pursuant to 11 U.S.C. §523, 28 U.S.C. §1334 (a) and 28 U.S.C. §157 (a). This proceeding arises out of the Chapter 7 bankruptcy case entitled In Re Steven Eric Ness, Bky. No. 03-43322 – NCD,

now pending in the United States Bankruptcy Court for the District of Minnesota, Fourth Division. This adversary proceeding is a core proceeding.

4. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The meeting of creditors in this case took place on June 12, 2003.

6. August 11, 2003, is the deadline in this case within which to commence proceedings to determine the dischargeability of certain debts pursuant to 11 U.S.C. § 523.

7. Lisa M. Ingalls is a citizen of the State of Minnesota, and she resides at 14781 Waco Street NW, Ramsey, MN 55303.

8. At all times material to this Complaint, the debtor Ness was an officer and shareholder of the law firm, H.C.N.D., P.A., the former employer of Ingalls.

9. In March, 2001, Ingalls resigned from her employment with the law firm of H.C.N.D., P.A. The Debtor was then the Chief Executive Officer of the firm. She filed a discrimination charge with the Minnesota Human Rights Department, alleging that she had been forced to resign because of sexual harassment and that she had also been discriminated against in the terms and conditions of her employment. She subsequently withdrew the charge to commence legal action. Her claims against the defendants were for sexual harassment in violation of the Minnesota Human Rights Act, Minn. Stat. Chapter 363, and other state law claims. She served the Summons and Complaint in that action on October 1, 2002.

10. The pending case is:

Lisa M. Ingalls, vs. H.C.N.D., P.A., d/b/a Henretta, Cross, Ness & Dolan, and Steven E. Ness and Thomas F. Cross, Jr., No. 02-21978, Hennepin County District Court, Minnesota.

11. Ingalls' pending Hennepin County District Court Complaint is attached to and incorporated in this Complaint as Exhibit A.

12. The damages by the actions of Ness against Ingalls as alleged in the Hennepin County District Court Complaint are indebtedness caused by his willful and malicious injury without justification or excuse.

13. On July 18, 2003, Ingalls filed and served a Motion for Relief from the Automatic Stay in this bankruptcy proceeding to permit her to proceed in the pending state court action. The hearing on the motion is scheduled for August 14, 2003.

14. Ingalls has commenced this action to preserve her rights. If the Court grants the motion for relief from the stay, Ingalls intends to proceed in the state court action. If Ingalls is successful in the state court action, Ingalls will have timely commenced this case so she can seek a determination that any amounts awarded to her in the state court action are non-dischargeable debts of the Debtor.

15. Ingalls seeks statutory remedies for sexual harassment, including damages for pain and suffering and emotional distress, back pay, front pay, injunctive relief, punitive damages, and attorneys' fees and costs, along with prejudgment interest.

16. Accordingly, the entire amount of damages, if any, that may be adjudged, along with attorney's fees and costs, should be excepted from discharge in accord with 11 U.S.C. § 523 (a).

WHEREFORE, Plaintiff demands judgment against the Defendant:

- a. That the monetary judgments which may be awarded to Ingalls in the pending state court action are debts which are excepted from discharge pursuant to 11 U.S.C. Section 523(a)(6); and
- b. Awarding such other and further relief as may be deemed just and equitable.

Dated: July 29, 2003

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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Lisa M. Ingalls,

Case Type: 7
(Employment)

Plaintiff,

v.

COMPLAINT

H.C.N.D, P.A., d/b/a

Henretta, Cross, Ness & Dolan, and

Steven E. Ness and Thomas F. Cross, Jr.,

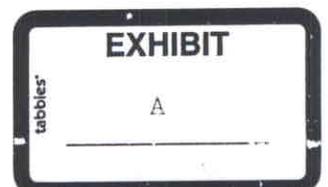
Defendants.

Court File No.:

Plaintiff, for her Complaint against the defendants, states and alleges as follows:

I. INTRODUCTION

1. This action is brought by Lisa M. Ingalls against her former employer, defendant Henretta, Cross, Ness & Dolan ("HCND"), for violation of her civil rights and other damages up to and including constructive discharge sustained by her while she was employed by the defendant. During the last two years or so of her employment at HCND, the two sole officers and managers, Steven E. Ness and Thomas F. Cross, Jr., subjected the plaintiff and other female employees of the firm to sexual harassment discrimination by creating and maintaining a hostile work environment in which pornography was a constant presence in the workplace along with inappropriate derogatory sexual comments. Despite her many efforts to oppose and change such practices, the two officers refused or failed to address these issues or take steps to change the discriminatory work environment, in violation of the Minnesota Human Rights Act, Minn. Stat. §363.01 *et seq.* This action is also against individual defendants Ness and Cross for breach of



their fiduciary duty as officers and majority shareholders of the defendant professional corporation to the plaintiff as a minority shareholder.

II. PARTIES

2. The plaintiff, Lisa M. Ingalls, is a citizen of the State of Minnesota and resides with her family at 5751 – 145th Court NW, Ramsey, Minnesota 55303. She was employed by the firm from June, 1993, until March 30, 2001, when she involuntarily resigned.

3. The defendant, HCND, is a Minnesota professional corporation located at 9800 Bren Road East, Suite 250, Minnetonka, Minnesota 55343.

4. Defendant Steven E. Ness is, on information and belief, the President and a director and majority shareholder of HCND.

5. Defendant Thomas F. Cross, Jr. is, on information and belief, the Secretary/Treasurer and a director and majority shareholder of HCND.

6. During all relevant times herein, the plaintiff was an "employee" of defendant HCND within the meaning of Minnesota Stat. §363.01, subd. 16. It was her "employer", as well, as defined in Minn. Stat. §363.01, subd. 17.

III. COUNT ONE

(Sexual Harassment under the Minnesota Human Rights Act)

7. During the plaintiff's employment, defendant HCND discriminated against her on the basis of her sex within the meaning of Minnesota Stat. §363.03 with respect to the terms, conditions and privileges of her employment. The defendant's actions included sexual harassment and gender-based discrimination salary, as further described below.

8. Plaintiff Lisa M. Ingalls was hired as a law clerk by the defendant law firm on June 1, 1993, while she was in law school. She graduated from law school and subsequently

became licensed to practice law in Minnesota in October of 1995. At that time, she became an associate attorney in the firm.

9. Her supervisors during her employment both as a law clerk and as an associate attorney were Steven E. Ness and Thomas F. Cross, Jr., the two sole directors, officers and majority shareholders of the firm.

10. Effective January, 1999, Ms. Ingalls received a promotion. She was the first woman ever in the firm to become a shareholder. She received a ten percent ownership interest, although HCND did not ask her to buy in to obtain that interest. Her work remained at all times subject to the supervision and direction of Ness and Cross.

11. In approximately some time in 1997, HCND obtained internet access for the office personnel, through its integrated computer system. In the beginning, for a number of months, there was one single-user modem, such that only one employee at a time could utilize it to gain access to the internet. Continuously from the first day of such access, the plaintiff frequently observed pornographic images on the computer screens of Ness and Cross, on virtually a daily basis.

12. In January, 1998, the plaintiff went on pregnancy leave. During that time, she continued to perform legal work at home, thereby requiring access to the office network via the internet to work from documents on the system. She was often prevented from doing so because the modem was unavailable for long periods during the day. When she returned from leave in June, 1998, the same situation was clearly evident. Cross and Ness, on information and belief, were tying the modem up for many hours during the day, on a daily basis, for the personal use described above, thereby interfering with the plaintiff's ability to do research and perform other legal tasks.

13. Because both Ness and Cross were the plaintiff's supervisors, she often had to go into their offices to discuss various client-related matters. It had always been the firm practice for its employees simply and informally to walk into the offices of others without waiting to be invited or asking, first. Such constant and in person interaction made her observation of the pornographic materials inevitable during the working day. The materials included but were not limited to graphic pictures of one or more nude women. Although the senior attorneys generally tried quickly to remove the materials from their computer screens once they were aware of her presence, they were not quick enough and the same scene took place time and time again.

14. It was very difficult for the plaintiff to attempt to discuss business under these working conditions. Cross and Ness were often fidgety, blushing, and distracted. The plaintiff's unrelenting exposure to the explicit and graphic sexual images caused her great humiliation, embarrassment, pain and anger.

15. The plaintiff became aware that other employees in the office were suffering from the same exposure. A number of female employees complained to her and some asked her to speak on their behalf to Cross and Ness and ask them to cease and desist.

16. In, December, 1998, the plaintiff met with Cross and Ness and informed them that their viewing of pornographic materials in the workplace made her and the other female employees extremely uncomfortable. Ness said little during the meeting. Cross became irate. He paced around the conference room, raised his voice, and bizarrely asserted that the employees had no right to complain because the firm provided free soda and snacks to the staff. He also personally attacked certain complaining employees.

17. Following the meeting, Ness approached the plaintiff by himself and assured her that she would never be compelled to have such a discussion with him again. The plaintiff reported to the other female employees that she had spoken with Cross and Ness as requested.

18. Despite the discussion, there was no cessation of the behaviors; female support staff continued to observe Cross and Ness viewing pornography on their computer screens and continued to complain to the plaintiff about it and continued to be highly offended and disturbed by it.

19. After the December, 1998, meeting, the working atmosphere did change in one respect. In general, Cross became more rude to and short tempered with the employees. In addition, he began working with his door closed. The office practice had previously been to work with office doors open except during meetings with clients, because of the significant amount of interaction that takes place during the work day. This purported solution to the problem only made it more difficult to carry on the regular work of the firm. It was common knowledge that the closed door meant that Cross was looking at his pornographic web sites, and so the plaintiff and other employees became even more beleaguered. They were concerned that if they walked into the office too soon they would risk observing the pornography, because they frequently did. Ness continued to keep his door open, presumably because there was a large window next to it, making any attempt at privacy useless and the pornography still visible.

20. The pornography had a significant presence in the office in other respects. For example:

a. Upon information and belief, on multiple occasions, either Cross or Ness printed a screen from a pornographic website. Female employees found the pages on the office printer and brought them to the plaintiff to register their complaints.

b. Upon information and belief, Cross and Ness registered for multiple pornographic websites. Consequently, the firm's e-mail began receiving regular communications from these sites. The firm's e-mail had to be opened and distributed by the female support staff. Again, they brought their complaints to the plaintiff.

c. Upon information and belief, Cross and Ness also ordered materials from such websites. They began receiving mail addressed to them, including catalogs and brochures advertising more pornographic materials and even packages containing such materials from time to time. Again, female support staff who routinely opened and distributed office mail brought complaints about these mailings to the plaintiff.

d. With respect to all such incidents, the plaintiff was also aware of the content and nature of and often exposed to the offensive materials, to her detriment.

21. As a result of Cross and Ness's ineffectual attempts to hide their viewing of pornographic material, as well as of the escalating presence of such materials, the plaintiff felt humiliated and insulted by such treatment and deeply sad and frustrated that her attempts to eliminate the hostile working environment for other female employees in the office, as well, were unsuccessful.

22. The plaintiff repeatedly continued to attempt to speak with Cross and Ness about this matter many times after the first such discussion in December, 1998, all to no avail. They simply ignored her entreaties and her appeals to their legal obligations as employers and ethical obligations as lawyers. Instead, they denied responsibility for the presence of the materials and disregarded the complaints.

23. Ironically, as part of their law practice, Cross and Ness from time to time provided and, on information and belief still provide, sexual harassment training for clients.

24. Cross further contributed to the hostile environment of the office on a continuous basis by making frequent and regular crude and demeaning comments and remarks in the presence of the plaintiff and other employees, clients, and colleagues about women and particularly about women's anatomies. In addition, he frequently told to the plaintiff and other employees numerous jokes of a sexual nature and/or that were racially, culturally or religiously biased or biased in other respects. Ness heard or was aware of such comments and jokes but apparently took no visible steps to stop or correct this conduct, because it never changed.

25. On information and belief, during the plaintiff's employment, a number of other employees quit at least in part because of the intolerable working conditions caused by illegal discrimination. These departures, however, had no impact on the continuing illegal conduct of Cross and Ness.

26. The plaintiff had tried both to change and tolerate these intolerable working conditions, to no avail. She made the painful decision to resign because she could no longer tolerate the sexual harassment and because the working atmosphere was causing her emotional distress and anguish.

27. Further, the plaintiff had no recourse. Because the sexual harassment came from the two officers and managers of the law firm, there was no one else to whom she could turn to complain about the harassment. Although the firm had a sexual harassment policy, Cross and Ness conducted themselves in such a manner as to make it clear to their employees that it was not to be applied with respect to their own conduct. She had tried to stay on until, in or about the fall of 2000, she had begun to develop physical manifestations of her emotional distress, including crying spells and sleeplessness.

28. The plaintiff held off leaving right away because an arbitration proceeding in which she had been integrally involved was scheduled for the end of January, 2001, and she did not want to prejudice the firm's client by leaving before the arbitration was completed.

29. Just prior to the arbitration, Cross informed the plaintiff that he and Ness had decided to add her name to the name of the law firm. Despite the great prestige and pride that should have come from the name change, it could not override the intolerable working conditions.

30. On February 15, 2002, the plaintiff submitted a letter of resignation to defendant. In the letter, she informed Cross and Ness that her reason for leaving was the continued viewing of pornography despite her many attempts to effect change. Cross and Ness attempted to persuade her not to leave; Cross even admitted to the pornography. Although she agreed to reconsider, her distress was too great. Her last day of work was March 30, 2001.

31. The continuing sexually harassing conduct described herein had the purpose and effect of unreasonably interfering with and adversely affecting the plaintiff's ability to work. Further, such conduct created an intimidating, hostile and offensive work environment for her and caused her constructive discharge from her employment by the defendant. The harassment was so severe that it forced the plaintiff involuntarily to terminate her employment on March 30, 2001.

32. The defendant knew or should have known that there was sexual harassment both in the workplace generally and of the plaintiff in particular, but it neither investigated nor took prompt corrective action to stop such harassment. Instead, the harassment continued.

33. As a result of the defendant's discriminatory actions, the plaintiff has suffered mental and emotional distress and anguish and loss of trust. As a further result of the

defendant's discriminatory actions, she was constructively discharged, thereby suffering loss of salary and fringe benefits, all such damages in excess of \$50,000.

34. Following her involuntary resignation, the plaintiff made reasonable and diligent efforts to mitigate her damages.

35. During the course of the plaintiff's employment, the defendant discriminated against her on the basis of her sex within the meaning of Minn. Stat. §363.01, subds. 40 and 41, with respect to the terms, conditions and privileges of her employment and its actions, therefore, constitute an unfair employment practice against her in violation of Minn. Stat. §363.03, subd. 1(2).

36. On October 5, 2001, the plaintiff filed a charge of sex discrimination against the defendant with the Minnesota Department of Human Rights which designated it as Case No. 38049. A copy of the plaintiff's charge is attached as Exhibit A. The Department of Human Rights issued a Notice of Right to Sue, to and at the request of the plaintiff, which she received on August 22, 2002, and this action is timely commenced within 45 days after the plaintiff's receipt of this notice, a copy of which is attached as Exhibit B.

IV. COUNT TWO

(Salary Discrimination under the Minnesota Human Rights Act)

37. The plaintiff realleges the allegations contained in paragraphs 1-36, above.

38. During the course of the plaintiff's employment, her salary and other compensation was disproportionately lower than that of male employees and was calculated without regard to policies and practices the defendant purported to follow for equitable salary decisions. This difference in treatment was, on information and belief, on account of the plaintiff's gender.

39. During the course of the plaintiff's employment, the defendant discriminated against her on the basis of her sex within the meaning of Minn. Stat. §363.01, subds. 40 and 41, with respect to the terms, conditions and privileges of her employment and its actions, therefore, constitute an unfair employment practice against her in violation of Minn. Stat. §363.03, subd. 1(2).

40. As a direct and proximate result of the defendant's discriminatory actions against the plaintiff, she has suffered loss of salary and fringe benefits, along with emotional pain, suffering, and distress, each in amounts to be determined at trial.

V. COUNT THREE

(Breach of Fiduciary Duty)

41. The plaintiff realleges the allegations contained in paragraphs 1 – 40, above.

42. As majority shareholders of HCND, defendants Ness and Cross had a fiduciary duty to the plaintiff as a minority shareholder employee to deal with her fairly and in good faith, and not to mismanage and waste corporate property.

43. Ness and Cross breached such fiduciary duties by the actions described above, including but not limited to causing the constructive discharge of the plaintiff.

44. As a direct and proximate result of the breach by Ness and Cross of their respective fiduciary duties, the plaintiff has suffered loss wages and benefits, loss of corporate profits, and other damages in amounts to be determined at trial.

VI. PRAYER FOR RELIEF

WHEREFORE, the plaintiff demands judgment against the defendant:

a. With respect to Counts One and Two, awarding the plaintiff all relief available under the Minnesota Human Rights Act, including an amount equal to three times her lost salary and fringe benefits, and compensatory damages for mental anguish and distress, in amounts to be determined at trial, interest on those amounts, and awarding the plaintiff her attorney's fees and the costs of this action pursuant to Minn. Stat. §363.14, subd. 3.

b. Pursuant to Minn. Stat. §363.071, subd. 2 (a) and §363.14, subd. 2, enjoining the defendant, its agents, employees, successors and assigns from engaging in any employment practices which discriminate against its employees because of their sex, ordering the defendant to adopt, implement and enforce written company policies prohibiting sex discrimination, sexual harassment and reprisal against employees who complain of discrimination; requiring counseling as needed to put an end to the discriminatory practices described herein; and retaining jurisdiction of this case until such time as this court is assured from the activity of the defendant that its violations of the Human Rights Act have ceased and are no longer threatened and that the effects of the past violations have been remedied.

c. With respect to Count Three, awarding the plaintiff damages for lost salary and fringe benefits, loss profits and other damages, in amounts to be determined at trial.

d. Awarding such other and further relief as may be deemed just and equitable.

Dated: October 1, 2002

/s/Andrea F. Rubenstein

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AN ADVISORY JURY IS REQUESTED.