

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

Whitney Nichols, of the City of Caribou,
County of Aroostook, State of Maine

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Plaintiff,

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v.

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City of Caribou, of the County of
Aroostook, State of Maine

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and

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CIVIL ACTION NO.

Roy E. Woods, of the City
of Caribou, County of Aroostook,
State of Maine, individually

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Defendants

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PLAINTIFF’S COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Whitney Nichols, by and through her attorneys, hereby complains against
Defendants, City of Caribou and Roy E. Woods, as follows:

JURISDICTION AND ADMINISTRATIVE PROCEEDINGS

1) This action arises under the Equal Protection Clause of the Fourteenth Amendment to the
United States Constitution (“Equal Protection Clause”); 42 U.S.C. § 1983; and the Maine Human
Rights Act (the “MHRA”), 5 M.R.S. §§ 4551 *et seq.*

2) This court has proper subject matter jurisdiction over Plaintiff’s federal claims pursuant
to 28 U.S.C. § 1331.

3) This court has proper supplemental jurisdiction over the Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a).

4) On July 13, 2012, Plaintiff filed a charge of employment discrimination against the City of Caribou with the Maine Human Rights Commission ("MHRC").

5) On June 12, 2014, the MHRC issued Plaintiff a right-to-sue letter pursuant to 5 M.R.S. § 4612(6).

PARTIES

6) Plaintiff Whitney Nichols is a citizen of the United States and the State of Maine who resides in the City of Caribou, County of Aroostook, State of Maine.

7) Defendant City of Caribou is a municipality located in the County of Aroostook, State of Maine.

8) Defendant Roy E. Woods is a resident of the City of Caribou, County of Aroostook, State of Maine.

9) All of the discriminatory employment practices alleged herein were committed within the State of Maine, in Aroostook County.

10) This action properly lies in the District of Maine pursuant to 28 U.S.C. § 1391(b), because the claims arose in this judicial district.

STATEMENT OF FACTS

11) The City of Caribou maintains a municipal fire department known as the Caribou Fire and Ambulance Department.

12) The Fire Chief is the head of the Caribou Fire and Ambulance Department.

13) Defendant Woods was the Fire Chief for 21 years from 1991 until January 21, 2012.

14) On November 18, 2011, Defendant Woods hired Plaintiff Whitney Nichols to work as a part-time janitor for the City of Caribou Fire and Ambulance Department cleaning the Emergency Operations Center (“EOC”) building.

15) Ms. Nichols turned 18 on November 28, 2011.

16) Between November 18, 2011, and December 23, 2011, Defendant Woods subjected Ms. Nichols to sexual harassment, including unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of sexual nature.

17) The sexual harassment included, but is not limited to, the following:

- a) He repeatedly hugged her, putting his hands around her waist;
- b) He repeatedly asked her what she had gotten him for Christmas;
- c) He referred to her as his “girlfriend”;
- d) He sent her text messages such as, “how are you doing” or “you miss me?”;
- e) He sent her text messages after hours;
- f) He texted her saying, “you’re still my girlfriend”; and
- g) He sexually assaulted her on December 23, 2011.

18) The sexual harassment was directed at Ms. Nichols because of her sex.

19) The sexual harassment was unwelcome.

20) The sexual harassment affected the terms, conditions, or privileges of Ms. Nichols’ employment and created an intimidating, hostile, and offensive working environment.

21) The sexual harassment was both objectively and subjectively offensive, such that a reasonable person would find it hostile and abusive, and Ms. Nichols in fact did perceive it to be so.

22) In early December, Defendant Woods asked Ms. Nichols to be on the City of Caribou Community Emergency Response Team (“CERT”), and Ms. Nichols agreed.

23) Defendant Woods told Ms. Nichols that she was required to have a physical exam to be a CERT member and that he was the one who conducted the physical exams.

24) On December 23, 2011, Ms. Nichols received a phone call from Defendant Woods, and he instructed her to come to work to clean.

25) When she arrived Defendant Woods took her to his office in the EOC building, where he instructed her to clean the counters.

26) The EOC building was closed at that time, and nobody else was in it.

27) When she finished cleaning, Defendant Woods told Ms. Nichols that he was going to check her lungs, her chest, and her hips for the CERT.

28) Defendant Woods had Ms. Nichols sit on a table and used a stethoscope to listen to her lungs. He then touched her breasts.

29) Defendant Woods then made Ms. Nichols lie back on the table, and he touched her hips and the bottom of her belly.

30) Defendant Woods then put his hand down the front of Ms. Nichols’ pants and reached inside her underwear. Defendant Woods said it was part of the exam. Ms. Nichols vehemently protested and got off the table.

31) Defendant Woods then grabbed Ms. Nichols’ sides from behind and put his hand down the front of her pants again. Ms. Nichols again protested. Defendant Woods hugged her and tried to kiss her.

32) Ms. Nichols escaped and ran out the door.

33) Defendant Woods used the physical exam as a ruse to sexually assault Ms. Nichols.

34) Defendant Woods lied when he told her that she was required to have a physical exam in to participate on the CERT and that he was the one who conducted them.

35) After the sexual assault, Ms. Nichols ran home crying.

36) Defendant Woods soon arrived at her home where he asked her to act like the sexual assault never happened, offered to give her extra hours, and offered to give her a water bottle.

37) Ms. Nichols was highly distraught by what had happened and said no to what Defendant Woods was asking.

38) Defendant Woods had previously sexually harassed and sexually assaulted other women while working for the City of Caribou.

39) For example, in 2009 and 2010, Defendant Woods sexually harassed and sexually assaulted a woman in her early twenties who was volunteering for the City of Caribou in order to receive government benefits.

40) Defendant Woods was generally known within the City of Caribou to inappropriately hug and touch female employees and make inappropriate sexual comments.

41) The City of Caribou designated Defendant Woods as the person responsible for administering the City of Caribou sexual harassment policy within the Caribou Fire and Ambulance Department.

42) Neither the City of Caribou nor Defendant Woods provided Ms. Nichols with a copy of the City's sexual harassment policy prior to December 23, 2011.

43) Prior to December 23, 2011, neither the City of Caribou nor Defendant Woods provided training to Ms. Nichols in the illegality of sexual harassment, a description of sexual harassment, or how to report sexual harassment.

44) When Ms. Nichols began employment with the City of Caribou, Defendant Woods told her that if she ever needed anything she should ask Judy Greenier.

45) Judy Greenier worked in the EOC building.

46) Ms. Nichols reported the sexual harassment to Ms. Greenier.

47) As the Fire Chief, Defendant Woods was statutorily required to “[p]rovide for the maintenance of all fire equipment owned by the municipality and buildings used by the municipal fire department.” 30-A M.R.S. § 3153(2)(C).

48) The Caribou Fire and Ambulance Department used the EOC building.

49) Pursuant to the City of Caribou Grievance Procedure Section 2-119, City of Caribou employees were required to submit grievances to their department head before bringing the grievance to the attention of the Human Resources Director or the City Manager.

50) Steven Buck was the City Manager for the City of Caribou from July 2001 until June 2012.

51) Pursuant to the City of Caribou Charter § 3.04, the City Manager had the final authority within the City to supervise and remove the Fire Chief.

52) Steven Buck knew or should have known about Defendant Woods’ sexual harassment of City of Caribou employees, including Ms. Nichols.

53) The City of Caribou knew or should have known about Defendant Woods’ sexual harassment of City of Caribou employees, including Ms. Nichols.

54) Defendant Woods' sexual harassment of City of Caribou employees was so well settled and widespread that the policymaking officials of the City of Caribou can be said to have had either actual or constructive knowledge of it yet did nothing to end the practice.

55) Both Defendant Woods and Steven Buck were City of Caribou policymaking officials.

56) Neither Steven Buck nor the City of Caribou ever took disciplinary action against Defendant Woods to stop or prevent sexual harassment by him.

57) This failure caused Defendant Woods to sexually harass Ms. Nichols.

58) On December 27, 2011, Ms. Nichols resigned her employment because of the sexual harassment by Mr. Woods.

59) On December 30, 2011, the City of Caribou wrote to Ms. Nichols stating that it was declining to accept her letter of resignation and was putting her on paid administrative leave while it investigated her allegation of sexual harassment.

60) Following the investigation, Defendant Woods was given the option to resign his employment in lieu of termination, which he did on January 21, 2012.

61) On January 26, 2012, Ms. Nichols returned to active employment with the City of Caribou.

62) On May 10, 2012, the City of Caribou informed Ms. Nichols that her position would be split between two different buildings in different parts of the community.

63) On May 25, 2012, the City of Caribou refused Ms. Nichols' request to only work in the EOC building.

64) After her sexual harassment complaint became known, Ms. Whitney perceived that some members of the Caribou Fire and Ambulance Department were ostracizing her through gestures and expression.

65) Ms. Nichols resigned her employment with the City of Caribou on June 27, 2012.

66) Ms. Nichols resigned, in part, because of the sexual assault and sexual harassment by Defendant Woods, and because she perceived that she was being retaliated against for reporting it.

67) Ms. Nichols also resigned, in part, because of her pregnancy.

68) On July 25, 2013, Defendant Woods was convicted of unlawful sexual touching in violation of 17-A M.R.S. § 260, and assault in violation of 17-A M.R.S. § 207, for his December 23, 2011, sexual assault on Ms. Nichols described above.

69) On July 25, 2013, Defendant Woods was convicted of three counts of unlawful sexual contact in violation of 17-A M.R.S. § 255-A, and two counts of assault in violation of 17-A M.R.S. § 207, for his earlier sexual assault on the City of Caribou volunteer described above.

70) Defendant Woods' sexual harassment of Ms. Nichols was intentional.

71) Defendants' unlawful employment discrimination and constitutional violations alleged herein were undertaken with malice or with reckless disregard for Ms. Nichols' rights under the Maine Human Rights Act and the Equal Protection Clause.

72) As a result of Defendants' unlawful employment discrimination and constitutional violations alleged herein, Ms. Nichols has suffered emotional distress, loss of enjoyment of life, loss of self-esteem, injury to reputation, injury to career, lost wages, and other pecuniary and non-pecuniary losses.

COUNT I: MHRA – CITY OF CARIBOU

73) Plaintiff repeats and realleges each of the allegations set forth in paragraphs 1-72 as if fully set forth herein.

74) Defendant Woods' sexual harassment of Ms. Nichols was because of her sex.

75) Defendants Woods and the City of Caribou knew that the MHRA prohibited the sexual harassment.

76) Ms. Nichols was subjected to unlawful employment discrimination in violation of the MHRA.

77) The City of Caribou is vicariously liable for Defendant Woods' sexual harassment because he had supervisory authority over Ms. Nichols.

78) The City of Caribou is liable for Defendant Woods' sexual harassment because his high rank within the City made him the City's alter ego and his actions were automatically imputed to the City.

COUNT II: EQUAL PROTECTION CLAUSE – DEFENDANT WOODS

79) Plaintiff repeats and realleges each of the allegations set forth in paragraphs 1-78 as if fully set forth herein.

80) At the time of the sexual harassment, it was clearly established that the Equal Protection Clause prohibited it.

81) Defendant Woods knew that the Equal Protection Clause prohibited his sexual harassment of Ms. Nichols.

82) When Defendant Woods sexually harassed Ms. Nichols, he was acting under color of his authority as the Fire Chief.

83) Defendant Woods violated the Equal Protection Clause when he sexually harassed Ms. Nichols.

COUNT III: EQUAL PROTECTION CLAUSE – CITY OF CARIBOU

84) Plaintiff repeats and realleges each of the allegations set forth in paragraphs 1-83 as if fully set forth herein.

85) Defendant Woods' sexual harassment of Ms. Nichols was undertaken pursuant to the official policy or custom of the City of Caribou.

86) The City of Caribou knew that its policy or custom violated the Equal Protection Clause when Defendant Woods sexually harassed Ms. Nichols.

87) The City of Caribou violated the Equal Protection Clause when Defendant Woods sexually harassed Ms. Nichols.

DEMAND FOR JURY TRIAL

88) Plaintiff demands a trial by jury on all matters to which Plaintiff has a right to trial by jury.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

- (a) Enter Judgment in her favor;
- (b) Declare the conduct engaged in by Defendants to be in violation of Plaintiff's rights;
- (c) Award Plaintiff compensatory damages and lost wages in an amount to be determined at trial of this matter;

- (d) Award Plaintiff an amount to offset the state and federal taxes she will be required to pay for compensatory damages and any increased taxes she will have to pay because she has received a lump sum for lost wages;
- (e) Award Plaintiff nominal damages;
- (f) Award Plaintiff punitive damages in an amount to be determined at trial of this matter;
- (g) Award Plaintiff attorney's fees, including legal expenses, expert witness fees, and costs of suit;
- (h) Award Plaintiff prejudgment interest; and
- (i) Grant Plaintiff such other and further relief as may be just and proper.

Dated: September 8, 2014

/s/ John P. Gause

John P. Gause, Esq., Bar No. 8192
Lead Attorney for Plaintiff Whitney Nichols
Eastern Maine Law, LLC
One Cumberland Place, Suite 314
Bangor, ME 04401
(207) 947-5100
jgause@easternmainelaw.com

Dated: September 8, 2014

/s/ Sarah LeClaire

Sarah LeClaire, Esq., Bar No. 2841
Attorney for Plaintiff Whitney Nichols
409 Main Street
Presque Isle, ME 04769
207-762-2244
sleclair1@mac.com

Dated: September 8, 2014

/s/ Frank H. Bishop

Frank H. Bishop, Esq., Bar No. 0454
Attorney for Plaintiff Whitney Nichols
99 Fort Road, Suite 5
PO Box 311, Presque Isle, ME 04769
(207) 768-5481
Fbishop@myfairpoint.net