

SHORTELL LAW LLC
911 w. 8th Avenue Suite 204
Anchorage, AK 99501
Telephone: (907) 272-8181
Facsimile: (888) 979-6148
cs.sgalaw@gmail.com

Counsel for PAMELA WASTELL

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT KENAI

PAMELA WASTELL,

Plaintiff,

vs.

KENAI PENINSULA BOROUGH and
CHARLIE PIERCE,

Defendants.

Case No.

COMPLAINT

PLAINTIFF, PAMELA WASTELL, by seeking claims for relief against
DEFENDANTS, KENAI PENINSULA BOROUGH and CHARLIE PIERCE, herein
alleges:

I. NATURE OF THE ACTION

1. This is an action for declaratory judgment and damages by Plaintiff Pamela Wastell (hereinafter “Wastell”), against Defendant, Kenai Peninsula Borough (hereinafter “KPB”) and Defendant Charlie Pierce (hereinafter “Pierce”). Plaintiff alleges Breach of the implied covenant of good faith and fair dealing; violations of A.S. §18.80.220(a)(1), The Alaska Human Rights Act; Assault and Battery; Negligence; Intrusion Upon Seclusion; and Infliction of Emotional Distress (Negligent and Intentional).

II. JURISDICTION AND VENUE

2. Plaintiff Wastell brings this Complaint for violations of Alaska law and state statute, and the amount in controversy exceeds the minimum required by this court. Accordingly, this court has jurisdiction over the claims in this matter. Given that the conduct took place within the Third Judicial District, that Plaintiff Wastell and Defendant Pierce reside within the Third Judicial District, and that Defendant KPB operates within the Third Judicial District, venue is proper.

III. PARTIES

3. Defendant KPB was Plaintiff’s employer from 2013 to 2022. At all relevant times, Defendant KPC has continuously been and is now operating in the State of Alaska and has continuously had more than fifteen (15) employees.

4. PAMELA WASTELL, at all times relevant to this complaint, is a resident of Kenai, Alaska. Wastell was employed by KPB and was directly supervised and served at the pleasure of former KPB Mayor, Charlie Pierce.
5. CHARLIE PIERCE, at all times relevant to this complaint, is a resident of Sterling, Alaska. Pierce was Mayor of the Borough and is a Republican candidate for Governor of Alaska in the 2022 election.

IV. GENERAL ALLEGATIONS

6. Wastell started working for KPB in 2013. Wastell loved her job and valued her friendships and working relationships with Borough employees as well as with constituents and officials.
7. In 2017, Charlie Pierce was elected Mayor of the Kenai Peninsula Borough.
8. In 2021 and 2022, Wastell was employed as Executive Assistant to Mayor Pierce.
9. KPB and Pierce subjected Wastell to hostile work environment sexual harassment starting in early 2021 and culminating in her constructive discharge on or about July 11, 2022.
10. At all times relevant, KPB implemented no procedures with which employees could report discrimination, sexual harassment, or retaliation without reprisal.
11. KPB knew or should have known that Pierce was a sexual harasser and bully. Prior to Wastell's constructive discharge, KPB, through Pierce, subjected at least four other employees to discrimination, bullying, harassment, retaliation, and/or termination.

12. Prior to Wastell's constructive discharge, KPB, through Pierce, terminated its female Human Resources Director, S.B., after she was diagnosed with cancer. S.B. filed suit and KPB settled the case.
13. Prior to Wastell's constructive discharge, on or about November of 2021, KPB, through Pierce, terminated its employee, K.S., in retaliation for his complaint of bullying by Pierce.
14. Upon information and belief, prior to Wastell's constructive discharge, KPB, through Pierce, subjected M.A., a female employee, then KPB Planning Director, to sexual harassment. KPB did not implement sexual harassment reporting procedures or otherwise protect M.A. from Pierce's sexual harassment, but M.A. confided in Wastell and to one other female KPB employee.
15. Upon information and belief, prior to Wastell's constructive discharge, Pierce sexually harassed J.B., a female employee, by offensive and unwelcome physical touching.
16. Upon information and belief, J.B. reported it to her supervisors, to the Borough Assembly, and to Borough Attorney, Sean Kelley. Another Borough employee confirmed that J.B. stated she had reported Pierce's sexual harassment to Kelley. Assembly President Johnson confirmed to Wastell that he knew about Pierce's sexual harassment of J.B. before Wastell's constructive discharge.

17. Upon information and belief, KPB, by and through Pierce, wrongfully terminated P.B., who is female, from her position as Acting Borough Attorney/ Deputy Borough Attorney. At all times relevant, KPB failed to implement procedures for employees to file complaints of discrimination, harassment, or retaliation.
18. Despite KPB's notice of Pierce's misconduct as to these four other employees, it failed to implement procedures to protect employees from discrimination, harassment, or retaliation and failed to protect Wastell from being subjected to sexual harassment by Pierce.
19. Starting in January 2021, then Mayor Charlie Pierce subjected Wastell to increasingly pervasive hostile work environment sexual harassment. Pierce's sexual harassment of Wastell interfered with Wastell's ability to work, altered the conditions of Wastell's employment, and resulted in her constructive discharge.
20. From January through June of 2022, Pierce subjected Wastell to increasingly frequent incidents of sexual harassment including: sexual remarks, embraces, kisses, touching her breast, false imprisonment in his private office, massages, discussion of his sex life, and questions as to Wastell's sexual preferences and desires. This conduct began happening several times per week and increased in frequency until the sexual harassment was constant.
21. On several occasions starting in March of 2022, Pierce would call Wastell into his office, shutting the door on most occasions. Pierce took advantage of his authority

- as Wastell's supervisor and her sequestration in his office, to grab her and pull her tight to his body, to rub her back, and to tell her how beautiful and sexy she was.
22. Many times, Wastell would openly cringe in response to Pierce's unwelcome and offensive sexual advances. In response to Wastell's evident discomfort and displeasure at his conduct, Pierce did not relent, but more than once got up from behind his desk and ordered her to come to him, where he would pull her in close, squeeze her so tight that she could not get away, kiss her neck and cheek, and detain her.
23. Pierce made it clear that if Wastell acceded to his sexual advances, it would benefit her. Pierce exclaimed over the things he would like to do for her and said he wanted to do so much more for her.
24. Pierce accompanied his unwanted sexual advances and offer of benefits to Wastell with the warning that she "wouldn't want to say no" to him.
25. Pierce's sexual harassment of Wastell was unrelenting and intruded into Wastell's personal space and privacy.
26. More than once in 2022, Pierce tried to give Wastell money and offered to buy Wastell something. Wastell told Pierce she didn't need him to buy her anything and tried to return the money to Pierce. Pierce refused and got angry. Since Pierce refused to take the money back and got angry, Wastell put the money in her desk drawer and used it for the office candy dish in the Mayor's Office rather than taking the money for her own personal use.

27. On some days, Pierce called Wastell into his office just to look her up and down.
- This made Wastell extremely uncomfortable, as she did not want to be the object of Pierce's sexual desire and merely wanted to do her job free of sexual harassment.
28. Pierce repeatedly reminded Wastell that she served at his pleasure and that he was the only one that could fire her.
29. On or about May of 2022, while Pierce was running as the Republican candidate for Governor, he said that if he became Governor, Wastell would work for him and no one else. Wastell told Pierce that she would never live in Juneau or Anchorage. Pierce said she would work in his Soldotna office. Pierce told her that she could not stay at the Borough.
30. In May of 2022, Wastell began to feel that she could not stand to be in the office alone with Pierce due to his constant unwanted physical touching, sexual remarks, and sexual advances toward her.
31. On one occasion on or about June of 2022, Pierce directed Wastell to come into his office. He then motioned her to lean into and bend over his desk towards him.
- When she hesitated, he continued to say, "Closer, closer." He then reached out and put both of his hands on Wastell's face and proceeded to pull her closer to him and continued to tell her what a beautiful, sexy lady she was and how gorgeous her eyes were. Wastell pulled back with a nervous laugh and returned to her desk. When Wastell left Pierce's office, he followed her and said, "I am worried about you."

Pierce put his hand on Wastell's shoulder, grabbed her hand and said, "I care so much about you, and if I was not in the situation that I am in now, I would grab you and steal you away and you would not want to say no!"

32. On or about July 7, 2022, when only Pierce and Wastell were in the office, he asked her to come into his private office. Wastell sat across from Pierce. He began to tell her how beautiful, sexy, and classy she was and that she deserved someone like him. He asked if she would ever want to go to dinner and have a drink with him if things were different. He then asked her if she ever thought about having sex with another woman. Wastell trembled with fear and could only manage a nervous laugh. As Wastell got up to return to her desk, he asked her to turn around and said, "Come here." Pierce then grabbed her and pulled her close and kissed her on the neck. When she turned away, he grabbed her from behind and pulled her close, squeezing her hard. Wastell pulled away and as she did, he continued rubbing her back and asked, "Am I making you feel uncomfortable?" Wastell pulled away and replied, "Yes, you are." Wastell then returned to her desk, where Pierce tried to apologize and then proceeded to tell her that she would probably care about him someday and that he should just quit and leave because of the strong feelings he had for her. Pierce then stated, "How do you tell yourself not to love someone?" and then stated that he should probably just stay the hell away from Wastell.

33. Pierce left the office soon afterward, and Wastell could no longer hold back her emotions. Wastell broke down, crying and shaking. The Borough risk manager,

returned to his temporary office located behind Wastell. Wastell told him she did not think she could work here anymore and that she needed to leave.

34. On or about July 11, 2022, at 11:30 a.m., Wastell's then counsel, Sara Bloom, contacted Sean Kelley at KPB and reported Wastell's allegation of sexual harassment by Pierce. KPB then placed Wastell on paid administrative leave.
35. On or about July 14, 2022, KPB signed a contract with law firm Ashburn & Mason for an investigation into Pierce's sexual harassment of Wastell.
36. On July 26, 2022, Ashburn & Mason delivered its report of investigation to KPB's Borough Attorney stating that the investigators found Wastell's claims to be credible. Subsequently, the Borough Assembly issued a public notice confirming that the investigation had found Wastell's claims of sexual harassment to be credible.
37. On or about August 26, 2022, Pierce resigned as Kenai Peninsula Borough Mayor and stated that his resignation was to focus full-time on his gubernatorial campaign.
38. At the time of filing of this Complaint, KPB has still not implemented procedures to protect employees who are victims of discrimination, harassment, and retaliation.
39. On or about October 6, 2022, KPB sent Wastell a Notice through her then counsel, Bloom, demanding that Wastell return to work. Wastell, through counsel, told KPB on October 10, 2022, that Wastell could not return to work because she was

suffering ongoing harm caused by the unlawful employment practices to which she had been subjected by KPB and Pierce.

40. On or about October 19, 2022, KPB sent a renewed request to Wastell, requiring Wastell to return to work or threatening “to sever the employment relationship due to a refusal to work.”

IV. CAUSES OF ACTION

COUNT I: Breach of the Implied Covenant of Good Faith and Fair Dealing-Kenai Peninsula Borough

41. PLAINTIFF re-alleges and incorporates herein by reference all the paragraphs of this complaint, inclusive, as though fully set forth herein, except those that are inconsistent with a cause of action for Breach of the Implied Covenant of Good Faith and Fair Dealing.

42. Every employment contract in Alaska is subject to the implied covenant of good faith and fair dealing. The implied covenant of good faith and fair dealing has two components, a subjective component and an objective component. If an employer breaches either component, the employer breaches the implied covenant.

43. An employer breaches the subjective component of the implied covenant of good faith and fair dealing when it subjects an employee to an adverse employment decision and the adverse decision is motivated by an improper or impermissible objective.

44. An employer breaches the objective component of the covenant of good faith and fair dealing if it treats an employee in a manner that a reasonable person would regard as unfair.
45. Defendant KPB violated the subjective component of the covenant and the public policy of the State when it subjected Plaintiff Wastell to a hostile work environment based on sexual harassment and failed to implement a procedure to report or remedy sexual harassment.
46. Defendant violated both the subjective and objective components of the implied covenant of good faith and fair dealing.
47. As a direct and proximate cause of Defendant KPB's breach of the Implied Covenant of Good Faith and Fair Dealing, Plaintiff experienced pain, suffering, mental anguish, physical injury, medical damages, lost wages, lost future wages, and loss of future earning capacity.

WHEREFORE: The Plaintiff claims compensatory monetary damages in excess of the jurisdictional minimum of the Superior Court against KPB, in an amount to be determined at trial, plus costs, post judgment interest at the applicable rate per annum from the date of judgment, and for any further relief that this Court determines necessary and appropriate.

COUNT II. Violation of A.S. §18.80.220(a)(1)

-Kenai Peninsula Borough

48. PLAINTIFF re-alleges and incorporates herein by reference all of the paragraphs of this complaint, inclusive, as though fully set forth herein, except those that are inconsistent with a cause of action for VIOLATION OF AS 18.80.220(a)(1). AS 18.80.220(a)(1) prohibits discrimination based on sex including sexual harassment.¹
49. Defendant KPB violated AS 18.80.220 (a)(1) when, by and through its agent, Defendant Charlie Pierce, it subjected Wastell to sexual harassment, creating a hostile work environment, and when Defendant KPB failed to take corrective action and failed to implement procedures for Wastell to report the sexual harassment, causing Wastell to be constructively discharged from her position.
50. Defendant KPB's violation of AS 18.80.220(a)(1) caused Plaintiff to experience pain, suffering, mental anguish, physical injury, medical damages, lost wages, lost future wages, and loss of future earning capacity.

WHEREFORE: The Plaintiff claims compensatory monetary damages in excess of the jurisdictional minimum of the Superior Court against KPB, in an amount to be

¹ AS 18.80.220(a)(1) provides, in pertinent part, "(a) Except as provided in (c) of this section, it is unlawful for (1) an employer to refuse employment to a person, or to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment because of the person's race, religion, color, or national origin, or because of the person's age, physical or mental disability, sex, marital status, changes in marital status, pregnancy, or parenthood when the reasonable demands of the position do not require distinction on the basis of age, physical or mental disability, sex, marital status, changes in marital status, pregnancy, or parenthood

determined at trial, plus costs, post judgment interest at the applicable rate per annum from the date of judgment, and for any further relief that this Court determines necessary and appropriate.

COUNT III: Assault and Battery – Charlie Pierce

51. PLAINTIFF re-alleges and incorporates by reference herein all the allegations contained in paragraphs above and further alleges as follows:

52. The conduct and actions of Charlie Pierce including the assault and battery of Plaintiff constitutes an intentional and offensive touching of Plaintiff to which Plaintiff did not consent.

53. The conduct and actions of Pierce including the assault and battery of Plaintiff were neither necessary nor justifiable.

54. The intentional, nonconsensual touching of Plaintiff by Pierce was highly offensive to Plaintiff's reasonable sense of dignity.

55. As a direct and proximate result of Pierce's assault and battery, the Plaintiff experienced pain, suffering, mental anguish, physical injury, medical damages, lost wages, lost future wages, and loss of future earning capacity.

WHEREFORE: The Plaintiff claims compensatory monetary and punitive damages in excess of the jurisdictional minimum of the Superior Court against Pierce, in an amount to be determined at trial, plus costs, post judgment interest at the applicable rate per annum from the date of judgment, and for any further relief that this Court determines necessary and appropriate.

Count IV. Negligence -Kenai Peninsula Borough and Charlie Pierce

56. PLAINTIFF re-alleges and incorporates herein by reference all of the paragraphs of this complaint, inclusive, as though fully set forth herein, except those that are inconsistent with a cause of action of Negligence. At all times relevant to this complaint, Defendants KPB and Pierce owed a duty of reasonable care toward Plaintiff Wastell. KPB owed a duty to supervise its agents, including Pierce.

57. When Defendant KPB and Pierce subjected Wastell to a hostile work environment with pervasive sexual harassment and failed to implement procedures to report sexual harassment without reprisal, Defendants KPB and Pierce breached their duty of reasonable care toward Wastell.

58. Defendants' negligence was the actual and proximate cause of damages to Wastell, including pain, suffering, mental anguish, physical injury, unnecessary medical care and expenses, lost wages, lost future wages, and loss of future earning capacity.

WHEREFORE: The Plaintiff claims compensatory monetary and punitive (as available) damages in excess of the jurisdictional minimum of the Superior Court against KPB and against Pierce, in an amount to be determined at trial, plus costs, post judgment interest at the applicable rate per annum from the date of judgment, and for any further relief that this Court determines necessary and appropriate.

Count V. Intrusion Upon Seclusion –Kenai Peninsula Borough and

Charlie Pierce

59. PLAINTIFF re-alleges and incorporates herein by reference all of the paragraphs of this complaint, inclusive, as though fully set forth herein, except those that are inconsistent with a cause of action of Intrusion Upon Seclusion. Alaska follows the Restatement (Second) of Torts § 652B: “One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.”
60. Consistent with other states, Alaska requires that the plaintiff show both an objective and subjective expectation of privacy and that the intrusion was both objectively and subjectively unreasonable. In other words, the plaintiff must believe her privacy was unreasonably invaded, and the jury must agree her belief is reasonable.
61. Defendant KPB and Pierce, intruded on Plaintiff Wastell’s privacy. By Pierce’s sexual harassment of Wastell, cornering and sequestering Wastell, discussion of his sexual feelings for her, his dissatisfaction with the lack of sex in his marriage, and other private issues in a manner that was unreasonable and/or done for an illegal purpose.
62. Wastell had both an objective and subjective expectation of privacy in matters regarding sex, and Pierce intruded upon that privacy when he trapped Wastell and

made repeatedly made comments and inquiries for sexual intimacy from Wastell. Reportedly, Pierce had previously sexually harassed at other female KPB employees, subjecting them to an invasion of privacy that he did not impose on men, and thus his intrusion of privacy was done in an unreasonable manner and for an illegal purpose of sexual harassment. Wastell felt that Pierce intruded upon her privacy, and a reasonable juror would agree that it was highly offensive that Pierce was allowed to intrude on Wastell's privacy as described in this Complaint.

63. KPB, through its agents, including Pierce, had a duty of reasonable care not to intrude upon Wastell and other employees' privacy and not to allow Pierce to intrude upon Wastell and other employees' privacy. KPB and Pierce's intrusion upon seclusion caused Wastell to suffer damages, including loss of privacy, pain, suffering, mental anguish, physical injury, unnecessary medical care and expenses, lost wages, lost future wages, and loss of future earning capacity.

WHEREFORE: The Plaintiff claims compensatory monetary and punitive (as available) damages in excess of the jurisdictional minimum of the Superior Court against KPB and against Pierce, in an amount to be determined at trial, plus costs, post judgment interest at the applicable rate per annum from the date of judgment, and for any further relief that this Court determines necessary and appropriate.

Count VI: Infliction of Emotional Distress (Negligent and/or Intentional)-Kenai Peninsula Borough and Charlie Pierce

64. PLAINTIFF re-alleges and incorporates herein by reference all of the paragraphs of this complaint, inclusive, as though fully set forth herein, except those that are

inconsistent with a cause of action of Negligent and/or Intentional Infliction of Emotional Distress.

65. At all times relevant, KPB and Pierce owed Plaintiff Wastell a duty of reasonable care; Defendants negligently breached that duty when they, intentionally and/or negligently, subjected Wastell to “extreme or outrageous conduct” that caused severe emotional distress and bodily harm to Wastell by subjecting Plaintiff Wastell to hostile work environment sexual harassment.
66. KPB’s agent Pierce’s conduct, which was in effect endorsed by KPB’s retention of Pierce after multiple employees reported sexual harassment, discrimination, and bullying, was so offensive and so extreme in degree and duration that it is beyond all possible bounds of decency, is to be regarded as atrocious, and is utterly intolerable in a civilized community. The infliction of emotional distress described herein is part of a continuing offense, as KPB has not adopted remedial procedures for employee complaints of discrimination, harassment, and retaliation.
67. The harms caused to Wastell are continuing, as she was constructively discharged, and KPB has failed to implement procedures to report sexual harassment, failed to take corrective action, and demanded that she return to work or have her employment terminated. KPB and Pierce caused Plaintiff damages, including pain, suffering, mental anguish, physical injury, unnecessary medical care and expenses, lost wages, lost future wages, and loss of future earning capacity.

68. **WHEREFORE:** The Plaintiff claims compensatory monetary and punitive (as available) damages in excess of the jurisdictional minimum of the Superior Court against KPB and against Pierce, in an amount to be determined at trial, plus costs, post judgment interest at the applicable rate per annum from the date of judgment, and for any further relief that this Court determines necessary and appropriate.

V. PRAYER FOR RELIEF

1. Because of Defendants' actions and omissions described herein, Plaintiff has suffered damages. Wherefore, Plaintiff prays that the Court enter a declaratory judgment finding that:
 - A. Defendant KPB breached the implied covenant of good faith and fair dealing as to Plaintiff Wastell;
 - B. Defendant KPB by and through its agent Pierce subjected Plaintiff Wastell to hostile work environment sexual harassment and constructive discharge in violation of the Alaska Human Rights Act at A.S. § 18.80.880.220(a)(1);
 - C. Defendants KPB and Pierce were negligent toward Wastell, and this negligence was an actual and proximate cause of damage and injury to Plaintiff Wastell;
 - D. Defendants KPB and Pierce subjected Plaintiff Wastell to highly offensive intrusions into her Privacy conducted in an unreasonable manner and/or for an illegal purpose, causing her damages.

E. There is clear and convincing evidence that Defendants' conduct demonstrated reckless indifference to the interests of others or was outrageous. Thus, KPB and Pierce are liable for Infliction of Emotional Distress (Negligent and/or Intentional) and Plaintiff is entitled to compensatory and punitive damages as available.

2. Plaintiff hereby requests that Court award Plaintiff a judgment for lost past and future wages and benefits; a judgment for compensatory and punitive monetary damages as available in excess of the jurisdictional minimum of the Superior Court against KPB and against Pierce, in an amount to be determined at trial, plus costs, post judgment interest at the applicable rate per annum from the date of judgment, and for any further relief that this Court determines necessary and appropriate.

DATED October 21, 2022 at Anchorage, Alaska.

SHORTELL LAW LLC
Attorneys for Pamela Wastell

By: /s Caitlin Shortell
Caitlin Shortell
ABA # 0405027

Certificate of Service

I, Caitlin Shortell, certify that on October 21, 2022 the Complaint and Summons was filed electronically. Service on Defendants will be effected once the court issues a signed summons, case number, and notice of judicial appointment.

/s Caitlin Shortell