

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AMY McPHEE,

Plaintiff,

vs.

THE CITY OF DETROIT, A Municipal
Corporation, VICKI YOST, CHARLES
TURNER, DANIEL BUGLO and
RAYMOND SMITH,

Defendants.

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COMPLAINT AND JURY DEMAND

JURISDICTION

1. This is a civil action, and the claims made against Defendants Vicky Yost (*Yost*), Charles Turner (*Turner*), Daniel Buglo (*Buglo*) and Raymond Smith (*Smith*), are made against them in their individual capacities and arise under 42 U.S.C. § 1983.

2. The claims made against the City of Detroit are made on the bases of its policies and procedures and arise under 42 U.S.C. § 1983.

3. Amy McPhee (*McPhee*) seeks to redress the deprivation by the named Defendants, under color of law, of her rights secured by the First, Fourth and Fourteenth Amendment to the Constitution of the United States, and jurisdiction therefore lies under 28 U.S.C. §§ 1331 and 1343.

VENUE

4. These claims arise from events occurring in the City of Detroit, in Wayne County, Michigan, in the Eastern District of Michigan, between February 24, 2007 and October 12, 2008.

3. Each and all of the named parties reside within or do business within the Eastern District of Michigan.

4. Venue is therefore appropriate in this district, under 28 U.S.C. §§ 1391(a) and 1391(b).

PARTIES

5. McPhee is a United States citizen and a resident of the City of Southfield, Oakland County, Michigan.

6. Defendant City of Detroit (*the City*) is a municipal corporation, chartered under the laws of the State of Michigan, which is located completely within the County of Wayne, State of Michigan; because the City is a governmental entity, it is a “person” amenable to suit within the meaning of 42 U.S.C. § 1983.

7. Defendant Vicki Yost is a Lieutenant in the Detroit Police Department, in

titular charge of the Vice Enforcement Unit of that Department, and acted under color of law.

8. Defendant Charles Turner, Badge S-1260, is a sergeant in the Detroit Police Department, employed in the Vice Enforcement Unit of that Department, and acted under color of law.

9. Defendant Daniel Buglo, Badge S-444, is a sergeant in the Detroit Police Department, employed in the Vice Enforcement Unit of that Department, and acted under color of law.

10. Defendant Raymond Smith, Badge 1619, is a police officer in the Detroit Police Department, employed in the Vice Enforcement Unit of that Department, and acted under color of law.

FACTUAL ALLEGATIONS

11. McPhee is, and has been for several years, an employee at Platinum Sports, Ltd. dba All Stars' (*All Stars*).

12. All Stars is a domestic profit corporation, organized under and authorized by Michigan law, having its principal place of business at, and doing business at, 14541 West 8 Mile Road, in the City of Detroit, within this judicial district.

13. All Stars' possesses a Group "D" Adult Cabaret license issued by the City, and offers for its patrons performances of dance intended to convey an erotic message, which is expressive conduct protected by the First Amendment; All Stars'

is also licensed by the Michigan Liquor Control Commission, holding a Group C liquor license.

14. Chapter 5, Article II, Divisions 1, 2 and 3 (§§ 5–2–1 through 5–2–44) of the Detroit City Code (*the Code*) are commonly and collectively referred to as the Adult Cabaret Ordinance (ACO).

15. The ACO creates a comprehensive licensing and regulatory scheme for Group “D” Adult Cabarets and for the entertainers who perform at Group “D” Adult Cabarets. That comprehensive licensing and regulatory scheme mandates not only that Group “D” Adult Cabarets be licensed by the City of Detroit, but that entertainers who wish to perform in Group “D” Adult Cabarets obtain an adult entertainer identification card from the Detroit Police Department. That comprehensive licensing and regulatory scheme establishes elaborate requirements that must be complied with before a business may obtain a Group “D” Adult Cabaret license and before an entertainer may obtain an adult entertainer identification card. That comprehensive licensing and regulatory scheme provides for the suspension, revocation, denial of and/or refusal to renew licenses and cards, under a litany of circumstances. Finally, that comprehensive licensing and regulatory scheme imposes broad regulation upon the conduct, including protected expressive conduct, of adult entertainers, employees and agents of Group “D” Adult Cabarets, and all other persons on the premises of any Group “D” Adult

Cabaret.

16. The City, through its agents and employees, regularly issues citations (notices to appear containing verified complaints) for claimed violations of various provisions of the ACO, and seek criminal sanctions for claimed violations of various provisions of the ACO.

17. The City thus regularly prosecutes as crimes conduct claimed to violate the ACO.

18. The individual named Defendants, acting on behalf of the City and in compliance with its policy, and acting under color of law, have regularly since February 24, 2007, entered onto the premises of All Stars' without consent, without a search warrant and in the absence of probable cause, with the announced purpose of enforcing compliance with the rules and regulations of the Michigan Liquor Control Commission (*MLCC*), but with the actual purpose of investigating for violations of the ACO.

19. The individual named Defendants, acting on behalf of the City and in compliance with its policy, have conspired and agreed to enter on the premises of All Stars', without consent, without a search warrant and in the absence of probable cause, with the announced purpose of enforcing compliance with the rules and regulations of the Michigan Liquor Control Commission (*MLCC*), but with the actual purpose of investigating for violations of the ACO.

20. Those entries are part of an official policy of the City to censor and discourage dance conveying an erotic message, through the detention, groundless arrests, harassment and intimidation of both patrons and employees of All Stars' by law enforcement officers acting under color of law, as agents of the City.

21. That official policy – to censor, sanction and otherwise discourage dance conveying an erotic message – has been the policy of the City of Detroit since at least February 24, 2007, and continues to be such a policy.

22. The City, through its agents and employees including the individual Defendants, harasses and intimidates the employees working at All Stars', including the managerial employees who assist in presenting performances which are expressive conduct protected by the First Amendment, under the guise of regulating adult entertainment.

23. On February 24, 2007, several named Defendants together with other Detroit Police Officers, acting in concert and on behalf of the City and in compliance with its policy, and acting under color of law, entered onto the premises of All Stars' without consent, without a search warrant and in the absence of probable cause, with the announced purpose of enforcing compliance with the rules and regulations of the Michigan Liquor Control Commission (*MLCC*), but with the actual purpose of investigating for violations of the ACO. During that investigation, McPhee was unreasonably seized and detained against her will.

24. On April 13, 2007, several named Defendants together with other Detroit Police Officers, acting in concert and on behalf of the City and in compliance with its policy, and acting under color of law, entered onto the premises of All Stars' without consent, without a search warrant and in the absence of probable cause, with the announced purpose of enforcing compliance with the rules and regulations of the Michigan Liquor Control Commission (*MLCC*), but with the actual purpose of investigating for violations of the ACO. During that investigation, McPhee was unreasonably seized and detained against her will.

25. On April 25, 2007, several named Defendants together with other Detroit Police Officers, acting in concert and on behalf of the City and in compliance with its policy, and acting under color of law, entered onto the premises of All Stars' without consent, without a search warrant and in the absence of probable cause, with the announced purpose of enforcing compliance with the rules and regulations of the Michigan Liquor Control Commission (*MLCC*), but with the actual purpose of investigating for violations of the ACO. During that investigation, McPhee was unreasonably seized and detained against her will.

26. On May 9, 2007, several named Defendants together with other Detroit Police Officers, acting in concert and on behalf of the City and in compliance with its policy, and acting under color of law, entered onto the premises of All Stars' without consent, without a search warrant and in the absence of probable cause,

with the announced purpose of enforcing compliance with the rules and regulations of the Michigan Liquor Control Commission (*MLCC*), but with the actual purpose of investigating for violations of the ACO. During that investigation, McPhee was unreasonably seized and detained against her will.

27. On May 16, 2007, several named Defendants together with other Detroit Police Officers, acting in concert and on behalf of the City and in compliance with its policy, and acting under color of law, entered onto the premises of All Stars' without consent, without a search warrant and in the absence of probable cause, with the announced purpose of enforcing compliance with the rules and regulations of the Michigan Liquor Control Commission (*MLCC*), but with the actual purpose of investigating for violations of the ACO. During that investigation, McPhee was unreasonably seized and detained against her will.

28. On September 14, 2007, the named Defendants together with other Detroit Police Officers, acting in concert and on behalf of the City and in compliance with its policy, and acting under color of law, entered onto the premises of All Stars' without consent, without a search warrant and in the absence of probable cause.

29. On that date, the named Defendants, acting in concert and on behalf of the City, conspired and agreed to conduct an undercover investigation, for the

purpose of enforcing compliance with the rules and regulations of the Michigan Liquor Control Commission (*MLCC*).

30. On that date, the named Defendants, acting in concert and on behalf of the City, conspired and agreed to accuse McPhee of a criminal violation of law; pursuant to that agreement, Raymond Smith issued Citation U 340 055 07 (i.e., a notice to appear and verified complaint) to McPhee, accusing McPhee of acting in violation of § 33-5-1 of the Detroit City Code.

31. In accusing McPhee of acting in violation of § 33-5-1 of the Detroit City Code, Raymond Smith charged McPhee with the commission of a misdemeanor offense.

32. The named Defendants lacked probable cause to believe that McPhee had violated § 33-5-1 of the Detroit City Code, and MCL § 436.1701(1) barred Raymond Smith (or any named Defendant) from charging McPhee with the commission of a misdemeanor for her actions.

33. Case No. U34005507 was dismissed without prejudice on October 24, 2007, by the Honorable Beverly Hayes-Sipes of the 36th District Court, at Raymond Smith's request.

34. On information and belief, Raymond Smith caused or was complicit in causing an entry on the official court record that Amy McPhee had stipulated that probable cause existed to charge her with violation of § 33-5-1.

35. In fact, Amy McPhee was neither advised of nor aware of court proceedings on October 24, 2007, and did not – in fact could not – stipulate to probable cause.

36. On February 5, 2008, the named Defendants conspired and agreed to refile charges against Ms. McPhee, and Raymond Smith issued verified complaint U39701608, again charging Ms. McPhee with violation of § 33-5-1 of the Detroit City Code; the named Defendants again lacked probable cause to believe that McPhee had violated § 33-5-1 of the Detroit City Code, and MCL § 436.1701(1) barred Raymond Smith (or any named Defendant) from charging McPhee with the commission of a misdemeanor for her actions.

37. That case was set for trial on July 2, 2007.

38. Officer Smith, after purportedly signing in, failed to appear for trial, and at approximately 11:00 a.m., the Honorable Lydia Nance Adams dismissed the case.

39. Raymond Smith, in concert and in agreement with the named individual Defendants, issued citation U34005507, and reissued citation U39701608, with the intent to harasses and intimidate McPhee, in retaliation for McPhee's actions in assisting in presenting performances which are expressive conduct protected by the First Amendment.

COUNT ONE: FOURTH AMENDMENT CLAIM

40. Each and all of the Defendants, in the acts complained of and in violation of 42 U.S.C. § 1983, intentionally deprived McPhee of the right to be free from unreasonable seizure, guaranteed to McPhee under the Fourth and Fourteenth Amendments.

41. Each and all of the Defendants, in the acts complained, acted with reckless or callous disregard to McPhee's Fourth and Fourteenth Amendment rights.

42. As a direct and proximate result of the acts complained of, McPhee has incurred attorney fees in defending against the baseless charge resulting from her malicious prosecution, has suffered wage loss, and has suffered mental anguish, embarrassment and humiliation.

COUNT TWO: PENDENT CLAIM OF MALICIOUS PROSECUTION

43. Raymond Smith, in the acts complained of and in violation of MCL § 600.2907, maliciously commenced and continued a criminal prosecution against McPhee.

44. As a direct and proximate result of the acts complained of, McPhee has incurred attorney fees in defending against the baseless charge resulting from her malicious prosecution, has suffered wage loss, and has suffered mental anguish, embarrassment and humiliation.

COUNT THREE: PENDENT CLAIM OF ABUSE OF PROCESS

45. Raymond Smith, in the acts complained of, abused lawful process in the criminal prosecution against McPhee.

46. As a direct and proximate result of the acts complained of, McPhee has incurred attorney fees, has suffered wage loss, and has suffered mental anguish, embarrassment and humiliation.

RELIEF REQUESTED

McPhee therefore requests the following relief:

- (a) economic damages in an amount to be determined by the trier of fact;
- (b) noneconomic damages in an amount to be determined by the trier of fact;
- (c) punitive damages, and
- (d) reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988.

JURY DEMAND

Plaintiff demands trial by jury.

Respectfully submitted,
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