

**STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT COURT
COUNTY OF WAYNE**

Rose Root, City of Detroit Resident;
Yolanda King, City of Detroit Resident;
and Yvonne Ross City of Detroit Resident;

Case No. 12-008780-CZ
Judge Amy Hathaway

Plaintiffs,

v.

The City of Detroit, Detroit City Council,
and Dave Bing, in his capacity as Mayor
of the City of Detroit,

Defendants.

HERBERT A. SANDERS (P-43031)
THE SANDERS LAW FIRM, P. C.
Attorney for Plaintiffs
615 Griswold, Suite 913
Detroit, MI 48226
haslawpc@gmail.com
Phone: (313) 962-0099
Fax: (313) 962-0044

**PLAINTIFF'S FIRST AMENDED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint or pending in this Court, nor has any such action been previously filed and dismissed after having been assigned to a judge.

Plaintiffs, for their complaint seeking declaratory relief, and a permanent injunction based upon the declaratory relief sought herein, say:

Parties, Venue and Jurisdiction

1. Plaintiffs at all times relevant hereto, and currently, are residents of the City of Detroit, and citizens of the State of Michigan.
2. Defendant City of Detroit (hereinafter “the City”) is a Michigan municipal corporation located in Wayne County.
3. The Plaintiffs Rose Root, Yolanda King and Yvonne Ross are City of Detroit residence and taxpayers.
4. Plaintiff Rose Root is a retiree from the City of Detroit, who gets a pension through the City. Plaintiff Root is also President of Retirees for the American Federation of State County and Municipal Employees (AFSCME).
5. Plaintiff Root as well as other retiree’s pensions will be affected as a result of the Consent Decree and appointment of individual with the city government in accordance with the Consent Decree who are not elected officials in accordance with the City Charter.
6. Plaintiff Yolanda King is a City of Detroit employee and President of the American Federation of State County and Municipal Employees (AFSCME) Local 2394. Decisions made by individuals who are appointed and not elected as a result of the Consent Decree with the City of Detroit will have a strong impact on her and the members of her Local.
7. Plaintiff Yvonne Ross is a City of Detroit employee and President of the American Federation of State County and Municipal Employees (AFSCME) Local 2799.

Decisions made by individuals who are appointed and not elected as a result of the Consent Decree with the City of Detroit will have a strong impact on her and the members of her Local.

8. The general rule for standing/jurisdiction is set forth in *Lansing Schools Education Ass'n v Lansing School Dist Bd. Of Ed.*, 487 Mich. 349, 372; 721 NW2d 686 (2010) which states:

[A] Litigant has standing whenever there is a legal cause of action. Further, whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment. Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected **Legislature intended to confer standing on the litigant.** [*Lansing Schools Ed Ass'n, supra at 372.*] (Emphasis supplied)

9. The City of Detroit is a home rule city organized under *PA 279 of 1909, as amended, the Home Rule City Act, MCL 117.1 et seq. (hereinafter "Act 279")*.
10. The City of Detroit has comprehensive home rule power under the *State Constitution of 1963, Act 279 and the 2012 Charter of the City of Detroit* (hereinafter the "2012 Detroit Charter"), subject to the limitations on the exercise of that power contained in the Constitution, Charter, or imposed by statute.
11. Defendant Detroit City Council consist of elected citizens of the City of Detroit serving in that capacity and with that authority given them in accordance with the *State Constitution of 1963, Act 279 and the 2012 Detroit Charter*.
12. Defendant Dave Bing, in his capacity as Mayor of the City of Detroit is an elected citizen of the City of Detroit serving in that capacity and with that authority given him

in accordance with the *State Constitution of 1963, Act 279 and the 2012 Detroit Charter*.

13. Venue and jurisdiction are proper in this Court because plaintiff seeks declaratory and injunctive relief as to a purported contract entered into by the Defendants on behalf of the citizens of the City of Detroit, including the Plaintiffs.

General Allegations

14. On or about April 9, 2012, the City and the State purported to enter into a contract entitled "*Financial Stability Agreement*" (hereinafter "the contract"). A copy of the Contract is attached as Exhibit A and made a part hereof. The contract was signed by Andy Dillon for the Treasury Department and as the State Financial Authority, by State of Michigan Governor, Richard D. Snyder, by City of Detroit Mayor Dave Bing, by City of Detroit Deputy Mayor, Kirk Lewis, acting for Mayor Dave Bing, and by members of the Financial Review Team for the City of Detroit. On April 4, 2011, the contract was approved by a resolution adopted by the Detroit City Council.

15. The contract states that it is made under the "comprehensive home rule and other powers, privileges and authority of the City to enter into Contracts on matters of municipal concern including, but not limited to, under Act 279, the Charter and other applicable law . . ."

16. Under *Section 5(f) of the Home Rule City Act, MCL 117.5(f)*, the City "*does not have the power . . . [t]o make a Contract with, or given an official position to, one who is in default.*"

17. *Section 2-113 of the 2012 Detroit Charter provides: "The City of Detroit, through its executive branch departments and legislative branch agencies, is prohibited from*

making a Contract with, or giving an official position to, one who is in default to the City.”

18. The phrase “in default to the City” used in section (f) of the *Home Rule City Act* and section 20113 of the 2012 Detroit City Charter, prohibits the City from making a contact with another person or entity if, at the point in time the contract is to be made or given, the other contracting party has failed to meet a financial, contractual, or other obligation to the City, which includes but is not limited to past due utility charges, fines and other debts.

19. The City lacks the power to make a Contract with the State if at the time the contract was made, the State was in default to the City.

20. On and prior to April 1, 2012, the State was in default to the City.

21. As shown in part by the documents attached as Group Exhibit D, on and prior to April 1, 2012, the State was in default to the City on financial, contractual, and other obligations including, but not limited to:

- a. \$39,730.58 past due on invoices for electrical services to the State of Michigan Department of Natural Resources and the Michigan Department of Transportation (Exhibit D1);
- b. \$1,225.00 for delinquent parking violations for vehicles registered to the State of Michigan (Exhibit D2);
- c. \$1,395,377.10 past due on invoices to the State of Michigan Department of Natural Resources and the Michigan Department of Transportation (Exhibit D3);

- d. \$4,723,926.65 in unpaid charges for water and sewerage service at the State of Michigan Fairgrounds (Exhibit D4);
- e. \$267,946.76 owed for the drainage of state highways (Exhibit D5); and
- f. Revenue sharing monies owed by the State to the City in the amount of \$224,000,000.00, as was admitted to by Andy Dillon in January, 2012.

22. Plaintiff adopts by reference the allegations of paragraphs 1 through 15.

23. A dispute has arisen between Plaintiffs and Defendants as to the existence of authority for the Defendants to enter into the contract on behalf of Plaintiffs, and resultingly, whether there exist a valid contract between the City of Detroit and the State of Michigan.

24. There is no valid contract between the parties because, on or before the date when the contract was made, the State was in default to the city. See copies of letters sent to the State of Michigan which are attached as Group Exhibit B.

25. The State of Michigan contends that the State is not in default on any obligation to the City, and that even if it were, the Financial Stability Agreement is valid and enforceable. The States' position in that regard is set forth in a letter sent by Andy Dillon to the City of Detroit, a copy of which is attached as Exhibit C.

26. The *Financial Stability Agreement* imposes numerous costly and time consuming operational and financial obligations on the City, some of which have been implemented, and more of which are due to occur in the near future.

27. Based upon information and belief, a majority of the City Council do not want to take actions that will affect the health, safety, and welfare of Detroit's citizens under a

contract that is void, unenforceable, or violates *Section 2-113 of the 2012 Detroit City Charter*.

28. An actual and existing controversy exists between the Plaintiffs and Defendants. A declaratory judgment is necessary to guide the future conduct of Defendants, and the result of that conduct upon the Plaintiffs, in order to preserve the plaintiff's legal rights.

29. For the reasons set forth above, plaintiffs seek a declaratory judgment that the contract is void and of no effect whatsoever, or such other relief as the Court deems just and appropriate.

Count II – Injunctive Relief

30. Plaintiffs adopt, by reference, the allegations of paragraphs 6 through 21.

31. Should the Court grant plaintiff declaratory relief, and to the extent that it may be necessary, plaintiff seeks a permanent injunction restraining the Defendants from taking any action contrary to the declaration of rights sought by the plaintiff.

32. If the Court finds that the contract is void or otherwise unenforceable, the Plaintiffs will suffer immediate and irreparable harm if the Defendants or any officer or agency of the Defendants seek to enforce, pursue, or otherwise take action under the contract.

33. In order to ensure that complete and effective relief is afforded to the Plaintiffs, and should the Court grant Plaintiffs' request for declaratory judgment, the public interest would be served by issuance of a permanent injunction granting such relief as the Court deems just and necessary to effectuate the declaratory relief granted.

WHEREFORE, the Plaintiffs pray that this Honorable Court will declare the rights and responsibilities of the parties hereto and issue a declaratory judgment that the *Financial Stability Agreement* is void ab initio and unenforceable because the State of Michigan was in default to the City of Detroit at the time that the contract purportedly was made or entered into.

Plaintiffs further pray that upon making the foregoing declaration, but only to the extent that it may be necessary, that the Court permanently enjoin the Defendants from taking any actions to enforce or pursue any terms, claims, rights or other obligations under the *Financial Stability Agreement*.

Herbert A. Sanders

HERBERT A. SANDERS (P-43031)
THE SANDERS LAW FIRM, P. C.
Attorney for Plaintiffs

Dated: July 11, 2012

PROOF OF SERVICE

The undersigned certifies that a copy of the attached documents were served upon all parties and/or attorneys of record and the court Clerk to the respective business addresses by hand delivery and/or email and/ or electronic filing on: July 11, 2012.

Signature: *Herbert A. Sanders*