

**IN THE CHANCERY COURT OF MADISON COUNTY, MISSISSIPPI**

**CITY OF CANTON, Mayor William Truly, Jr.,  
Aldermoman Alice Scott, Aldermen, Rodriquez  
Brown, Billy Myers, Charles Weems, Louis Smith,  
Reuben Myers and Eric Gilkey**

**PLAINTIFFS**

**v.**

**CIVIL ACTION NO. CI-2011-0158-JC**

**NISSAN OF NORTH AMERICA, INC.**

**DEFENDANT**

**FIRST AMENDED COMPLAINT FOR  
DECLARATORY JUDGMENT**

COMES NOW, Plaintiffs, City of Canton, William Truly in his official capacity as Mayor, Alice Scott, in her official capacity as Aldermoman, Rodriquez Brown, in his official capacity as Alderman, Billy Myers, in his official capacity as Alderman, Charles Weems, in his official capacity as Alderman, Louis Smith, in his official capacity as Alderman, Reuben Myers, in his official capacity as Alderman, and Eric Gilkey, in his official capacity as Alderman, and through their undersigned counsel and in support thereof would show unto the Court the following, to-wit:

**NATURE OF THE CASE**

This is an action for Declaratory Judgment pursuant to Rule 57, Mississippi Rules of Civil Procedure; for the purpose of determining questions of actual controversy between the parties as hereinafter, more fully appears. This Complaint is filed under Rule 57 and involves an actual, real and substantial controversy, justiciable in character, touching the legal relationships of parties having adverse legal interests, admitting of specific relief through a decree conclusive in character involving the respective rights, duties and liabilities of the parties hereto which prohibits the City of Canton from annexing Nissan North America, Inc. when it is

in its path of growth, unless Nissan North America, Inc. through written consent allows the City of Canton to annex it.

**PARTIES**

1. Plaintiff, City of Canton, is an incorporated municipality operating under the laws of the State of Mississippi.
2. Plaintiff, William Truly, is the duly elected Mayor of the City of Canton, Mississippi.
3. Plaintiff, Alice Scott, is the duly elected Alderwoman at Large of the City of Canton, Mississippi.
4. Plaintiff, Rodriquez Brown, is the duly elected Alderman of the City of Canton, Mississippi.
5. Plaintiff, Billy Myers, is the duly elected Alderman of the City of Canton, Mississippi.
6. Plaintiff, Charles Weems, is the duly elected Alderman of the City of Canton, Mississippi.
7. Plaintiff, Louis Smith, is the duly elected Alderman of the City of Canton, Mississippi.
8. Plaintiff, Reuben Myers, is the duly elected Alderman of the City of Canton, Mississippi.
9. Plaintiff, Erik Gilkey, is the duly elected Alderman of the City of Canton, Mississippi.
10. Defendant, Nissan North America, Inc., is a foreign corporation with its principal office address as One Nissan Way, M.S. A-5-C, Franklin, Tennessee and may be

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served with process through its registered agent, CSC of Rankin County, Inc., Mirror Lake Plaza 2829 Lakeland Drive, Ste 1502, Flowood, MS 39232.

11. Necessary party pursuant to MRCP 24(d), the Attorney General of Mississippi, Jim Hood. Plaintiffs have raised in their pleadings the question of whether or not House Bill Number 1 in its Third Extraordinary Session, 2000 (the "Act"), is unconstitutional, therefore, pursuant to MRCP 24(d), notice upon the Attorney General of Mississippi of the pendency of this action, setting forth the Act thought to be unconstitutional, may be served upon the Honorable Jim Hood at the Walters Sillers Building, 550 High Street, Suite 1200, Jackson, MS 39201.

#### **JURISDICTION AND VENUE**

12. This Court has jurisdiction over the subject matter and parties; and venue is proper in this Court.

#### **FACTS**

13. The Mississippi Legislature on November 6, 2000, adopted House Bill Number 1 in its Third Extraordinary Session, 2000 (the "Act")
14. Pursuant to Section 18(2) of the Act, a municipality is authorized to agree that said municipality will not change its boundaries for a period of up to thirty (30) years so as to include within the limits of such municipality the site of a project, as defined in Sections 57-75-5(f) and 57-75-5(g) of the Mississippi Code of 1972, as amended (a "Project"), unless consent thereto shall be obtained in writing from the enterprise operating the Project.
15. On November 6, 2000 the Mayor and Board of Aldermen, through a resolution agreed to the terms of Section 18(2) of the Act relying upon a letter from James C.

Burns, Executive Director, Mississippi Development Authority. See Exhibits "A" and "B"

16. On February 11, 2011 the Mayor and Board of Alderman authorized a Declaratory Judgment be sought to determine whether an agreement whereby a city administration agrees not to annex a certain parcel of land would be binding on a successive administration.

#### CLAIMS

17. The City of Canton presently seeks against the Defendant relief in this action, including declaratory relief.
18. The City of Canton seeks a declaration of this Court as to the following:
  - a. Whether the governing authorities of Canton, Mississippi can bind their successors in office beyond their terms of office by resolution and/or contract prohibiting the municipality of Canton from annexing the site of a project as defined in Sections 57-75-5(f) and 57-75-5(g) of the Mississippi Code of 1972, as amended, also known as the "Nissan Project," thereby taking away from them rights and responsibilities conferred by law.
  - b. Whether House Bill Number 1, Section 18(2) is violative of the Fourteenth Amendment's Equal protection Clause and the Mississippi Constitution's equivalent found in Article 3, Section 14, which provides that "no person shall be deprived of life liberty, or property except by due process of law." Miss. Const. Art. 3, Section 14.
  - c. Whether the agreement between the City of Canton and Nissan North America is ultra vires and unenforceable.

- d. Whether House Bill Number 1 of the third extraordinary session, 2000, singles out the City of Canton, MS with language that appears on its face to be general legislation, but in its application subjects only the City of Canton, MS to separate and disparate treatment in violation of the Equal Protection Clause of the 14<sup>th</sup> Amendment, and the Due Process Clause of the 5<sup>th</sup> Amendment to the U.S. Constitution.
- e. Whether House Bill Number 1 of the third extraordinary session, 2000 violates the Constitution of the State of Mississippi § 87.
- f. Whether House Bill Number 1 of the third extraordinary session, 2000 violates the Constitution of the State of Mississippi § 90(h).
- g. Whether House Bill Number 1 of the third extraordinary session, 2000 violates due process and equal protection clauses of the U.S. Constitution.
- h. Whether the authority vested in the municipality in Section 21-1-7 cannot by contract or agreement, be prohibited beyond the term of office of the elected municipal officers.
- i. Whether, enforcement of House Bill Number 1 of the third extraordinary session, 2000 will allow a former governing body to perpetuate its policies beyond its terms and thereby limit a successor governing body's ability to respond to the public's changing needs, which is contrary to law and public policy.
- j. Whether the agreement between the City of Canton and Nissan North America which restricts the City of Canton's free exercise of a discretion vested by law is contrary to public policy and law, and utterly null and void.

- k. Whether the agreement between the city of Canton and Nissan North America is contrary to public policy, and utterly null and void.
  - l. Whether the agreement between the city of Canton and Nissan lacks adequate consideration and is thereby in violation of the Constitution of the State of Mississippi §96, and/or is unconscionable and thereby unenforceable.
19. Plaintiffs have no adequate remedy at law or in equity other than this action to have its rights, duties and responsibilities to the Defendant determined. Otherwise, Plaintiffs will continue to suffer irreparable damage because of restrictions placed the governing body's freedom to exercise a discretion vested in them by.

**WHEREFORE, PREMISES CONSIDERED**, based on the above, Plaintiffs request that this Court grant the following relief:

- (a) A declaratory judgment that Plaintiffs are not bound by the prior board's agreement not to annex Nissan North America, Inc.
- (b) A declaratory judgment that the governing authorities of Canton, Mississippi cannot bind their successors in office beyond their terms of office by resolution and/or contract prohibiting the municipality of Canton from annexing the site of a project as defined in Sections 57-75-5(f) and 57-75-5(g) of the Mississippi Code of 1972, as amended, also known as the "Nissan Project," thereby taking away from them rights and responsibilities conferred by law.
- (c) A declaratory judgment that House Bill Number 1, Section 18(2) is violative of the Fourteenth Amendment's Equal Protection Clause and the Mississippi

Constitution's equivalent found in Article 3, Section 14, which provides that "no person shall be deprived of life liberty, or property except by due process of law." Miss. Const. Art. 3, Section 14.

- (d) A declaratory judgment that the agreement between the city of Canton and Nissan North America is ultra vires and unenforceable.
- (e) A declaratory judgment that House Bill Number 1 of the third extraordinary session, 2000, singles out the City of Canton, MS with language that appears on its face to be general legislation, but in its application subjects only the City of Canton, MS to separate and disparate treatment and thereby unconstitutional.
- (f) A declaratory judgment that House Bill Number 1 of the third extraordinary session, 2000 violates the Constitution of the State of Mississippi § 87.
- (g) A declaratory judgment that House Bill Number 1 of the third extraordinary session, 2000 violates the Constitution of the State of Mississippi § 90 (h).
- (h) A declaratory judgment that House Bill Number 1 of the third extraordinary session, 2000 violates due process and equal protection clauses of the U.S. Constitution.
- (i) A declaratory judgment that the authority vested in the municipality in Section 21-1-7 cannot by contract or agreement, be prohibited beyond the term of office of the elected municipal officers.
- (j) A declaratory judgment that, enforcement of House Bill Number 1 of the third extraordinary session, 2000 will allow a former governing body to perpetuate its policies beyond its terms and thereby limit a successor

governing body's ability to respond to the public's changing needs, which is contrary to law and public policy.

- (k) A declaratory judgment that the agreement between the City of Canton and Nissan North America which restricts the City of Canton's free exercise of a discretion vested by law is contrary to public policy and law, and utterly null and void.
- (l) A declaratory judgment that the agreement between the city of Canton and Nissan North America is contrary to public policy, and utterly null and void.
- (m) A declaratory judgment that the agreement between the city of Canton and Nissan lacks adequate consideration and is thereby in violation of the Constitution of the State of Mississippi §96, and/or is unconscionable and thereby unenforceable.
- (n) Plaintiffs pray for such further, supplemental, alternative, different or additional equitable relief as may be appropriate under the premises.

THIS the 10<sup>th</sup> day of May, 2011.

RESPECTFULLY SUBMITTED,  
CITY OF CANTON, PLAINTIFF

By: /s/ Barbara Martin Blackmon, Esq.  
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