

IN THE CHANCERY COURT OF HAMILTON COUNTY, TENNESSEE

JOHNNY H. FRAZIER, REUBEN K. SALTER,)

WILLIAM A. MELHORN, Jr., and JAMES G.)

GASTON,)

Plaintiffs)

Vs.)

Docket No: 14-0221

Part: _____

CITY OF CHATTANOOGA, TENNESSEE and)

THE CHATTANOOGA FIRE AND POLICE)

PENSION FUND,)

Defendants.

COMPLAINT

The Plaintiffs herein, by and through counsel, hereby bring this Complaint against Defendants, The City of Chattanooga, Tennessee and The Chattanooga Fire and Police Pension Fund, and for their causes of action would show unto the Court as follows:

(1) The Plaintiffs bring this action seeking a declaratory judgment and further seeking a permanent injunction against the respective Defendants, seeking to invalidate and permanently prevent the implementation by the respective Defendants of an ordinance recently adopted by the Chattanooga City Council which would purport to eliminate an annual three-percent (3%) increase to pensions earned by years of service and paid for

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with significant financial contributions by the respective Plaintiffs, which benefits have previously been vested, and are not subject to change, elimination, and/or modification by the respective Defendants.

(2) Plaintiffs Johnny Frazier and Rueben Salter are individuals who reside within Hamilton County, Tennessee, and are both retired from The Chattanooga Police Department. Plaintiff William Melhorn resides within Hamilton County, Tennessee and Plaintiff James Gaston resides within Bledsoe County, Tennessee, and both are retired from the Chattanooga Fire Department. The Plaintiffs are all retired and are currently receiving the pension benefits they earned and paid for while employed by The City of Chattanooga.

(3) There are numerous other retired policemen and firefighters from the City of Chattanooga who will also be adversely affected by actions undertaken by the Defendant which reduce the retirees vested pension benefits that had previously been guaranteed to them by the City of Chattanooga. The Plaintiffs bring this suit individually, and also ask, pursuant to Rule 23 of the Tennessee Rules of Civil Procedure, to be allowed to serve as representative parties for all other retirees from the City of Chattanooga who are similarly situated.

(4) Defendant City of Chattanooga, Tennessee, is a municipal corporation organized under the laws of the State of Tennessee.

(5) Defendant The Chattanooga Fire and Police Pension Fund is an entity established by the State of Tennessee in a series of Private Acts starting in 1949, thereby making it part of the Charter of the City of Chattanooga. The voters of the City of Chattanooga adopted an amendment of that Private Act thereby effectively removing it from the Charter and incorporating it into the Chattanooga City Code as Article III, Division

8, Sections 2-400 et seq. It is governed by a Board consisting of three active members of the Chattanooga Police Department and an equal number from the Chattanooga Fire Department. The Mayor's appointed representative and a member appointed by the City Council are also members of that board.

(6) The plaintiffs aver and charge that the city council for the City of Chattanooga passed, on March 11, 2014, an ordinance No. 12813, which effectively changes the terms of The Chattanooga Fire and Police Pension Fund to unnecessarily deprive current retirees and vested employees of a three-percent (3%) guaranteed annual benefit adjustment, and other benefits they were promised, which have vested, and to which they are entitled. A copy of this recently Enacted Ordinance No. 12813 *is attached hereto as Exhibit One.*

(7) The Plaintiffs would show that the Defendant City of Chattanooga had previously adopted an ordinance no. 11012 to amend the charter of the City of Chattanooga, and all acts, ordinances, and other charter provisions amendatory thereto, to make certain improvements to the firemen's' and policemen's insurance and pension fund. This ordinance no. 11012 was enacted and passed by referendum in the year 2000, (*hereinafter referred to as The 2000 Plan*).

(8) Among the changes thus enacted by the City of Chattanooga in The 2000 Plan, was a three-percent (3%) guaranteed annual benefit adjustment (Code of The City of Chattanooga, Section 2-417), which reads:

"Cost of Living Adjustments to Pension Benefits."

"The benefits payable to retired members or any of their survivors or beneficiaries shall be increased each January 1, following the first twelve months of benefit, by three-percent (3%)."

(9) The Plaintiff retirees, and on information and belief, all other retirees, have regularly received the three-percent (3%) annual adjustments in each year since the plan was adopted. The Plaintiffs aver and charge that representations were made to them at the time of the enactment by the City of Chattanooga of The 2000 Plan, that their future cost of living adjustments would be guaranteed, and one or more of the Plaintiffs actually made the decision to retire, when they did, based upon these representations and promises.

(10) The Plaintiffs aver and charge that the recent enactment by the Defendants of ordinance no. 12813 changes that guaranteed three-percent (3%) annual adjustment to the detriment of existing retirees and their survivors, and to the detriment of employees who are vested in future benefits under The 2000 Plan. Section six (6) of Ordinance no. 12813 purports to delete and repeal the vested provisions of Section 2-417 of the Chattanooga City Code, and replace the Plaintiffs' vested benefits with reduced pension benefits. Ordinance no. 12813 provision would limit the aggregate benefit to *one, point five-percent* (1.5%), with individuals receiving variable percentages capped at two-percent (2%), not compounded or placed under the base pension amount for the first two (2) years, beginning January 01st, 2015, and imposes other limitations based on the earnings of The Pension Fund, thus having no relationship to The 2000 Plan, and being substantially less than the guarantee under The 2000 Plan.

(11) Ordinance no. 11012, which passed and adopted The 2000 Plan, specifically provided that The City Council shall not decrease any vested benefits accrued by any participant or beneficiary of The Firemen's and Policemen's Insurance and Pension Fund. Section 2-411(d), of The 2000 Plan provides as follows:

[d] The City Council, City of Chattanooga, in its' discretion, only after a recommendation of the Board of Directors of The Firemen's and Policemen's Insurance and Pension Fund, upon advice by the Mayor, may, by ordinance, passed on three (3) separate readings, amend any Section of the private acts of 1949, as amended, provided that such amendment is not inconsistent with sound, actuarial principles, methods, and actuarial assumptions, and further provided that such amendment shall not in any way decrease any vested financial benefits accrued by any participant or beneficiary of The Firemen's and Policemen's Insurance and Pension Fund.

(12) The Plaintiffs aver and charge that the enactment by the Defendants of Ordinance no. 12813 is in violation of their vested rights under their pension, and that Ordinance no. 12813 effectively repeals and replaces Section 2-417 of The Chattanooga City code, to their financial detriment and in derogation of their vested financial rights.

(13) The City of Chattanooga adopted the recently repealed Section 2-417, despite having been placed on notice of at least two (2) decisions of The Tennessee Supreme Court, dealing with pensions for public officers and employees. Both decisions were, and are binding upon these Defendants.

(14) In 1981, The Tennessee Supreme Court in *Blackwell v. Quarterly County Court of Shelby County*, 622 S.W. 2d 535, was presented with the question of when a government may affect vested rights of its public employees under a pension plan. The Tennessee Supreme Court stated that vested benefits are "immutable", even if the funding municipality is in a financial crisis. "At some point after an employee has performed services, or has paid into a pensioned retirement plan, such employee acquires fixed and immutable rights to the system..." It seems to us that public policy demands that there be a right on the part of the public employer to make reasonable modifications in an existing plan if necessary to create or safeguard actuarial stability, provided that no then

accrued or vested rights of members or beneficiaries are thereby impaired". 622 S.W. 2d 535, @540.

(15) The Tennessee Supreme Court revisited this same issue in *Felts vs. Tennessee Consolidated Retirement System*, 650 S.W. 2d 371, 374 (Tenn. 1983). The Tennessee Supreme Court then reaffirmed the rule applicable to Tennessee local governments as follows:

A public employer may make changes in such a plan when reasonably required to do so for the fiscal integrity thereof, even though such changes be detrimental to the beneficiaries of the plan, except that, no such modification can be permitted to adversely affect an employee who has complied with all conditions necessary to be eligible for a retirement allowance.

(16) The Defendants adopted, in The 2000 Plan, and maintained the provision for an annual three-percent (3%) increase with knowledge of the applicable rules of The Tennessee Supreme Court.

(17) The Plaintiffs earned and paid for contractual rights to an annual three-percent (3%) increase in their pension benefit. Their service to the city and the citizens of the city of Chattanooga, and their payments paid for a contractual right to an annual three-percent (3%) increase, and their rights have been vested.

(18) The Plaintiffs aver and charge that the Defendants have violated the *Law of the Land* provision of The Tennessee Constitution as contained in Article I, Section 8, when they repealed the provisions of the pension plan which provided for an annual three-percent (3%) increase. The Plaintiffs would also state that the detrimental changes to their vested retirement benefits, sought to be undertaken by the Defendants, would violate the contract clause, due process clause, and the takings clause, found in Article I, Section 10, and the 5th & 14th amendments of the U.S. Constitution, and the law of the State of

Tennessee as articulated by The Supreme Court of Tennessee.

(19) The Plaintiffs and all others who are similarly situated are entitled to the continuation of the annual three-percent (3%) increase which had been previously guaranteed to them, or they will suffer considerable financial loss over the lengths of their retirements. Awarding the reliefs sought herein will confer a considerable benefit not only upon the Plaintiffs, but also all other persons entitled to such benefits, the Pension Fund itself, and the public at large.

(20) The Plaintiffs to this lawsuit would show that there are innumerable other retirees with The Chattanooga Police Department and The Chattanooga Fire Department who are similarly situated and who will suffer immediate and irreparable harm in the future unless Ordinance no. 12813 is invalidated. Pursuant to Rule 23 of The Tennessee Rules of Civil Procedure, the Plaintiffs ask that this action be maintainable as a Class Action, so that the interest of all other retirees can be protected and represented in this action.

WHEREFORE, the Plaintiffs pray for relief as follows:

(A) That process issue and be served upon the Defendants, requiring them to answer this Complaint within the time allowed by law;

(B) That the Court determine this matter be maintained as a Class Action for the benefit of all other retirees whose pension benefits are at risk;

(C) That the Court conduct a hearing, and enter a declaratory judgment, adjudicating that Ordinance no. 12813 is invalid and in violation of the Plaintiffs vested pension rights;

(D) That this Court enter an injunction that permanently enjoins the Defendants from implementing the changes to Section 2-417 of The Chattanooga City Code;

(E) That the Court award the Plaintiffs their reasonable attorney's fees and expenses incurred in connection with this matter, to be paid by the Defendants;

(F) That the Plaintiffs have such other and further relief to which they may be entitled.



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Attorney for Plaintiffs

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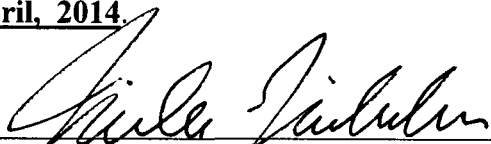
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Part: _____

COST BOND

The undersigned acknowledges and hereby binds the undersigned for the payment of all costs in this Court which may at any time be adjudged against PLAINTIFF, hereinafter "principal" in the event said principal shall not pay the same if so ordered by this Court.

Witness our Hand this 08th day of April, 2014.



SURETY

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(Surety on a bond for costs shall not be released from the obligation as surety until there is provision for surety as required for the commencement of a lawsuit)

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