

IN THE CHANCERY COURT OF FORREST COUNTY, MISSISSIPPI

FILED
JUL 28 2014

GROUNDWORX, LLC

PLAINTIFF

VS.

Jimmy C. Howard
Chancery Clerk

CAUSE NO.: 14-0544-GN-D0

CITY OF HATTIESBURG,
MISSISSIPPI

DEFENDANT

MOTION TO INTERVENE

COMES NOW Thomas A. Blanton and moves to intervene as a Cross-Plaintiff in the above-entitled and numbered cause, and in support of this Motion, said Thomas A. Blanton would state as follows:

1. Thomas A. Blanton brings this Motion pursuant to Rule 24(a)(2) of the Mississippi Rules of Civil Procedure as an intervention of right. Movant seeks a declaratory judgment under Rule 57 of the Mississippi Rules of Civil Procedure holding that the "Agreement for the Treatment of Wastewater Between the City of Hattiesburg, Mississippi and Groundworx, LLC," executed on January 21 and January 27, 2014, violates Article VII, Section 183 of the Mississippi Constitution of 1890 which prohibits a municipal corporation from loaning its credit in aid of a private corporation and/or violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution. Thomas A. Blanton as a taxpayer of the City of Hattiesburg is being required to finance the construction of the wastewater "System" to be established by Groundworx prior to the

implementation of service by Groundworx and without any assurance that said system will be operational.

2. Thomas A. Blanton has an interest in the subject matter of the above cause of action, since he owns property located within the City of Hattiesburg and is a taxpayer of the City of Hattiesburg.
3. Thomas A. Blanton is so situated that the disposition of the present cause of action will as a practical matter impair or impede his ability to protect his interest as a property owner and taxpayer of the City of Hattiesburg. Further, Blanton's interest are not adequately represented by the Plaintiff or Defendant in this cause of action, since Groundworx, LLC seeks to enforce a contract Movant contends is unconstitutional and the City of Hattiesburg entered into that same contract. However, given the Mayor's veto of the proposed Special Sewage Assessment and the City Council's rejection of a one percent (1%) sales tax referendum, until now, there has not been a clear and present threat that taxpayers such as Mr. Blanton will be required to finance construction of Groundworx's System.
4. Alternatively, Thomas A. Blanton seeks permissive intervention under Rule 24(b)(2), since proposed intervener has a question of law in common with and inherent in the Complaint brought by Groundworx, LLC against the City of Hattiesburg, Mississippi, specifically Thomas A. Blanton's claim that the contract between Groundworx and the City of Hattiesburg, Mississippi regarding treatment of wastewater creates a payment mechanism which is in violation of Article VII, Section 183 of the Mississippi

Constitution of 1890 and/or the Due Process Clause of the Fourteenth Amendment of the United States Constitution.


- 5. In support of this Motion, Thomas A. Blanton has attached hereto his proposed Cross-Complaint in Intervention (Exhibit "A") with a true and correct copy of "Agreement for the Treatment of Wastewater Between the City of Hattiesburg, Mississippi and Groundworx, LLC," (Exhibit "B") attached thereto.

WHEREFORE, PREMISES CONSIDERED, Thomas A. Blanton prays that he be granted leave to intervene in the above-entitled and numbered cause and to file his proposed Cross-Complaint in Intervention.

RESPECTFULLY SUBMITTED, this, the 20th day of July,

A.D., 2014.

THOMAS A. BLANTON, CROSS-PLAINTIFF

BY: 

 MICHAEL ADELMAN, ESQ.

CERTIFICATE OF SERVICE

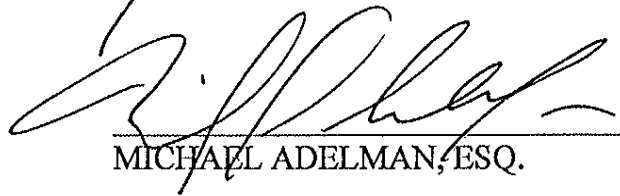
This is to certify that I, Michael Adelman, counsel for Thomas A. Blanton, has served *via* U.S. Mail, postage fully prepaid, a true and correct copy of the foregoing **MOTION TO INTERVENE** to the following:

R. Andrew Taggart, Jr., Esq.
Taggart, Rimes & Graham, PLLC
1022 Highland Colony Parkway
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Ridgeland, MS 39157

Lawrence E. Allison, Jr., Esq.
John E. Milner, Esq.
Joseph Anthony Sclafani, Esq.
Brunini, Grantham, Grower & Hewes, PLLC
The Pinnacle Building, Suite 100
190 East Capitol Street
Post Office Drawer 119
Jackson, MS 39205

Charles E. Lawrence, Jr., Esq.
Hattiesburg City Attorney
Post office Box 1624
Hattiesburg, MS 39403-1624

This, the 28th day of July, A.D., 2014.


MICHAEL ADELMAN, ESQ.

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IN THE CHANCERY COURT OF FORREST COUNTY, MISSISSIPPI

GROUNDWORX, LLC

PLAINTIFF

VS.

CAUSE NO.: 14-0544-GN-D0

CITY OF HATTIESBURG,
MISSISSIPPI

DEFENDANT

THOMAS A. BLANTON

CROSS-PLAINTIFF

CROSS-COMPLAINT IN INTERVENTION

COMES NOW the above-named Thomas A. Blanton, Intervener and Cross-Plaintiff and brings this Cross-Complaint requesting that this Honorable Court find that the contract between Groundworx, LLC and the City of Hattiesburg, Mississippi which is the subject of the Complaint herein be held void as unconstitutional under Article VII, Section 183 of the Mississippi Constitution of 1890 as well as the Fourteenth Amendment of the United States Constitution, and in support of this Cross-Complaint and Intervention, Cross-Plaintiff Thomas A. Blanton would show as follows:

PARTIES

1. Groundworx is a Mississippi limited liability company in good standing, whose principal place of business is located thin the city limits of Hattiesburg, Mississippi.
2. The City is a Mississippi municipal corporation and a political sub-division of the State

EXHIBIT "A"

of Mississippi located in Forrest County, Mississippi. Service may be had upon the City by personal service on the Honorable Johnny Dupree, Mayor of the City of Hattiesburg, Mississippi or the City Clerk of the City of Hattiesburg, Mississippi, at City Hall, 200 Forrest Street, Hattiesburg, Mississippi.

3. Thomas A. Blanton owns real property within the City of Hattiesburg and is a City of Hattiesburg taxpayer.

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction over this matter by virtue of the Mississippi Constitution of 1890, Article VII Section 183 and Rule 57 of the Mississippi Rules of Civil Procedure.
5. Venue is proper in this Court because the Defendant is located in this district and division, and the cause of action arose in this district and division.

FACTS

6. On January 21 and January 27, 2014, Plaintiff Groundworx, LLC and Defendant City of Hattiesburg, Mississippi executed and entered into a contract for services styled "Agreement for the Treatment of Waste Water between the City of Hattiesburg, Mississippi and Groundworx, LLC." A true and correct copy of the contract is attached hereto as Exhibit "A" and incorporated by reference.
7. ARTICLE VII, Section 183 of the Mississippi Constitution of 1890 prohibits a municipal corporation from loaning its credit in aid of a private corporation. The test to determine whether or not a corporation is a private corporation or public corporation is the

corporation's continuity, control and management under power of public agents who are responsible and accountable to the municipal government.

8. Exhibit "A", the contract between Groundworx, LLC and the City of Hattiesburg regarding treatment of wastewater is in direct violation of said Section 183. Article IV of said contract provides the mechanism for payments by the City to Groundworx.

Section 4.1.1 specifically provides as follows:

"City unconditionally and irrevocably covenants and agrees to pay to Groundworx: (i) beginning on the Effective Date, *the interest portion of Groundworx's Debt Service payments*, with the same to be billed and paid in a manner to ensure that Groundworx receives the payments at least fifteen (15) days prior to the due date for the Debt Service payment; (ii) beginning on the date the work required by Exhibit 2.2.4.2 is complete and subject to Section 2.2.7, and continuing until the payments provided for by the following sentence commence, the amount set forth in Exhibit 4.1.1 which may be adjusted based upon changed requirements of the City, and additional requirements which may be imposed by the Commission or the EPA and Groundworx's Debt Service payments, with the same to be billed and paid in a manner to ensure that Groundworx receives the payments at least fifteen (15) days prior to the due date for the Debt Service payment; and (iii) during each Fiscal Year or part thereof during the Term from any monies legally available for such purpose to the City, at the time and in the manner hereinafter provided, commencing with the Accounting Effective Date of this Agreement, the Total Annual Requirement for such Fiscal Year." (Emphasis supplied).

9. Under the above payment mechanism, the City of Hattiesburg is both financing and lending its credit to Groundworx. The City's payments are tied directly into "the interest portion of Groundworx's Debt Service payments."
10. Further, under Article II of said contract, Groundworx constitutes a private corporation.

Section 2.3 of the contract specifically provides as follows:

“The Parties hereto acknowledge that Groundworx shall be the sole owner of the System, including all real property used in operation of the System, some of which will be owned by Groundworx in fee simple and some of which will be leased by Groundworx, and that all Wastewater collection, transportation, storage, disposal and/or treatment facilities owned by City shall remain the property of, and sole responsibility of, the City. City hereby waives any and all rights, title and/or claims of ownership to System, any real property or personal property included as part of the System and any and all Wastewater facilities constructed, or to be constructed, or included as part of the System, except for any rights granted to City as provided in the Option.

11. The “option” referred to in Section 2.3 is an option on the part of the City to purchase the system owned by Groundworx. It does not grant to the City any element of control of the system established by Groundworx, unless and until the City purchases that system.
12. Further, under Section 2.1 of the contract, the “plans and specifications” to be included in the System are to be “determined solely by Groundworx and MDEQ.” While Groundworx will consider in good faith comments or recommendations by the City of Hattiesburg, under Section 2.2.1, Groundworx is under no obligation to adopt any comments or recommendations by the City.

CAUSE OF ACTION

13. Intervener and Cross-Plaintiff, Thomas A. Blanton, seeks a declaratory judgment under Rule 57 of the Mississippi Rules of Civil Procedure finding that the contract attached hereto as Exhibit “A” is in direct violation of Article VII, Section 183 of the Mississippi Constitution of 1890 and as such, said contract shall be held to be void and unenforceable. Further, since said contract shall be held to be void, Plaintiff Groundworx is not entitled to any of the relief set forth in the Demand section of Plaintiff’s Complaint.

14. Either as an alternative to the relief requested in the paragraph immediately prior hereto, or in conjunction with said relief, Thomas A. Blanton further seeks a declaratory judgment that the funding mechanism set forth in said contract is in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution. Under said funding mechanism as set forth in Exhibit "A" hereto, Thomas A. Blanton as a taxpayer of the City of Hattiesburg is being required to finance the construction of the "System" to be established by Groundworx prior to the implementation of service by Groundworx and without any assurance that said system will be operational.

WHEREFORE, PREMISES CONSIDERED, Thomas A. Blanton, Intervener and Cross-Plaintiff, seeks a declaratory judgment holding that the contract between Groundworx, LLC and the City of Hattiesburg, Mississippi, attached hereto as Exhibit "A", is unconstitutional in violation of Article VII, Section 183 of the Mississippi Constitution of 1890 and/or that said contract is in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

THIS, the _____ day of _____, A.D., 2014.

THOMAS A. BLANTON, CROSS-PLAINTIFF

BY:

MICHAEL ADELMAN, ESQ.

CERTIFICATE OF SERVICE

This is to certify that I, Michael Adelman, counsel for **Thomas A. Blanton, Cross-Plaintiff**, has served *via* U.S. Mail, postage fully prepaid, a true and correct copy of the foregoing **CROSS-COMPLAINT IN INTERVENTION** to the following:

R. Andrew Taggart, Jr., Esq.
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Charles E. Lawrence, Jr., Esq.
Hattiesburg City Attorney
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Hattiesburg, MS 39403-1624

This, the _____ day of _____, A.D., 2014.

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