Submitted On: 6/24/2022 7:35:25 PM
Accepted On: 6/27/2022 8:44:10 AM

COURT OF APPEAL

FIFTH CIRCUIT

STATE OF LOUISIANA

DOCKET NO. 22-C-264

THE DESCENDANTS PROJECT,

JOCYNTIA BANNER, AND JOYCEIA BANNER,

Plaintiffs/Respondents

VERSUS

ST. JOHN THE BAPTIST PARISH, THROUGH IT CHIEF EXECUTIVE OFFICER, PARISH PRESIDENT JACLYN HOTARD, ET AL,

Defendants/Applicants

On Application for Writ of Certiorari or Review to the 40th Judicial District Court, Parish of St. John the Baptist, State of Louisiana, Docket No. 77305, Division "C"

HONORABLE J. STERLING SNOWDY, PRESIDING

A CIVIL PROCEEDING

PLAINTIFFS' OPPOSITION TO DEFENDANTS' APPLICATION FOR SUPERVISORY WRIT ON JUDGMENT DENYING EXCEPTIONS OF NO CAUSE OF ACTION AND PRESCRIPTION

Respectfully submitted,

William P. Quigley
La. Bar Roll No. 7769
Professor of Law
Loyola University College of Law
7214 St. Charles Avenue
New Orleans, LA 70118
Tel. (504) 710-3074
Fax (504) 861-5440
quigley77@gmail.com

Pamela C. Spees
La. Bar Roll No. 29679
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012
Tel. (212) 614-6431
Fax (212) 614-6499
pspees@ccrjustice.org

Attorneys for Plaintiffs/Respondents

Submitted On: 6/24/2022 7:35:25 PM
Accepted On: 6/27/2022 8:44:10 AM

TABLE OF CONTENTS

Submitted On: 6/24/2022 7:35:25 PM
Accepted On: 6/27/2022 8:44:10 AM

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Ordinances

Submitted On: 6/24/2022 7:35:25 PM
Accepted On: 6/27/2022 8:44:10 AM

Other Authorities

Submitted On: 6/24/2022 7:35:25 PM
Accepted On: 6/27/2022 8:44:10 AM

SUMMARY OF ARGUMENT IN OPPOSITION

Defendants have failed to meet their high burden to justify a departure from the "general policy" against consideration of interlocutory appeals because: 1) the trial court's ruling was correct; 2) factual disputes remain that should be fully resolved by the fact-finder; and 3) Defendant Greenfield Louisiana LLC ("Greenfield" or "Defendant") will not suffer irreparable injury from a ruling that cannot, if necessary, be corrected on appeal. *See e.g., Barnett & Associates, LLC. v. Whiteside,* 308 So. 3d 1218, 1221 (La. App. 5th Cir. 2020) *citing Herlitz Construction Co. v. Hotel Investors of New Iberia, Inc.*, 396 So.2d 878 (La. 1981).

First, reflecting the weakness of its position on the merits, Defendant chooses to attack a straw man. Greenfield spends much of its writ application complaining of a ruling that the trial court explicitly did *not* render, and an argument that Plaintiffs have never made. Contrary to Greenfield's insistence, the trial court explicitly stated it did not rely on the applicability of La. C.C.P. arts. 7 (juridical acts) and 2030 (absolute nullity of contract) to the ordinance at issue as a basis for its ruling. Plaintiffs likewise have repeatedly confirmed that they were not arguing the ordinance at issue was a contract.

As to the ruling the trial court *did* render, it was correct in finding that Plaintiffs stated a claim that the ordinance at issue in this case was enacted in violation of St. John the Baptist Parish's own laws and was void *ab initio*. It was also enacted in violation of state law as discussed more *infra*. This is not as novel or controversial a proposition as Defendant suggests. It has long been held that a municipal ordinance enacted in violation of a local government's own laws or other applicable laws is void *ab initio* and in legal effect as though "it had never been passed." *McMahon v. City of New Orleans*, 2018-0842, p. 5 (La.App. 4 Cir. 9/4/19); 280 So.3d 796, 800, *writ denied*, 2019-01562 (La. 11/25/19); 283 So.3d 498, *citing Vieux Carre Property Owners and Associates, Inc. v. City of New*

Submitted On: 6/24/2022 7:35:25 PM
Accepted On: 6/27/2022 8:44:10 AM

Orleans, 246 La. 788, 167 So.2d 367, 371 (1964) (ordinance that violated home rule charter was null and void *ab initio*).

Second, contrary to Greenfield's assertions and as its own brief illustrates, there are factual disputes in this matter that strongly counsel against premature interlocutory review. Indeed, one key factual assertion in Greenfield's writ application must be addressed at the outset. Greenfield suggests to this Court that its property "has been in an industrial zoning district for over thirty years."[1] This is factually contested, and indeed, incorrect. As discussed in more detail herein, Greenfield purchased parcels of this tract in 2021 and 2022 and its own conveyance records show the land to be zoned as R-1, a residential zoning designation. That particular designation was approved by St. John the Baptist Parish officials who reviewed and signed off on an official survey done in 2006. In addition, a map held out to the public by the Parish as "the official zoning map" as recently as October 18, 2021, also showed the land zoned as R-1 / residential. Moreover, the land has been farmed for sugarcane since 2006. All of this was pled in the Second Amended Complaint and supported by official records obtained by the Clerk of Court of St. John the Baptist Parish which were annexed thereto.

All of this also suggests that even Parish officials and previous property owners were not aware of Ordinance 90-27 or did not deem it to be in effect. At a minimum, this is one of the factual disputes that exists in the case – and it is material as evidenced by the fact that Greenfield repeats it more than once in its brief.[2] Appellate review in the face of such contested – and incorrect – factual grounds is inappropriate.

Third, Greenfield has not shown it would suffer irreparable injury if this Court does not dispose of its assignments of error by supervisory review, or that

---

1 Greenfield Writ Application at 1.

2 *See id.* at 1, 3.

Submitted On: 6/24/2022 7:35:25 PM
Accepted On: 6/27/2022 8:44:10 AM

the ruling cannot, as a practical matter, be corrected on appeal. "Merely requiring the parties to undergo a trial on the merits does not constitute irreparable harm." *Cole v. Whitfield*, 89-CA-011 (La. App. 4 Cir. 12/28/89), 566 So. 2d 96, 98.

Respectfully, Plaintiffs ask this Court to decline to exercise its supervisory jurisdiction over the trial court's ruling on Defendant's exceptions.

I. STATUS OF THE CASE

This case asserts the absolute nullity of St. John the Baptist Parish Ordinance 90-27, which was passed in violation of federal, state, and parish laws. This matter is in the pre-trial stage. Defendants filed exceptions of no cause of action, no right of action, and prescription which were overruled by the trial court on April 28, 2022, with written reasons issued on May 10, 2022. As to the exception of no cause of action, the trial court found that Plaintiffs stated a claim that the ordinance was passed in violation of parish laws. There are no pending hearing or trial dates.

II. CORRECTED STATEMENT OF THE CASE

Plaintiffs largely agree with the procedural history and posture of the case as set out in Greenfield's writ application. However, Greenfield makes an assertion of fact that is controverted by the record evidence. Greenfield asserts that Ordinance 90-27 was adopted in 1990 and that it "zoned land now owned by Greenfield as I-3, which is an industrial zoning district."[3] Elsewhere, Greenfield asserts the "property has been in an industrial zoning district for over thirty years."[4]

These assertions of "fact" are contradicted by several official parish records which were pled in Plaintiffs' Second Amendment Petition and annexed thereto as exhibits, including Greenfield's own records of its purchase of the parcels of property in 2021 and 2022.[5] Greenfield purchased the larger parcel of property on

[3] Greenfield Writ Application at 3.

[4] *Id*. at 1.

[5] *See* Second Amended Petition with exhibits annexed to Greenfield's Writ Application, Ex. F at p. 409.

Submitted On: 6/24/2022 7:35:25 PM
Accepted On: 6/27/2022 8:44:10 AM

July 8, 2021, and a second parcel of property on January 5, 2022, both of which were within the boundaries of land purportedly rezoned by the ordinance.[6] However, the acts of sale for both purchases specifically reference the preceding conveyances of the properties which occurred in 2006, and which included survey maps prepared at the time in consultation with parish officials and which show the property zoned as R-1.[7] In addition, the parish's "Land Use Administration" webpage linked to a map it described as "the official zoning map" and showed the property at issue in this litigation zoned as R-1 as recently as October 18, 2021.[8] The land has been farmed for sugar cane in the intervening years.[9]

These official parish records and allegations are relevant to show that parish officials and previous property owners did not view the ordinance as having any effect and are also relevant to claims of prescription.

In addition, the property is situated in a historic community with adjacent cultural sites that have been designated as National Historic Landmarks or that have been deemed as eligible for listing on the National Register of Historic Places,[10] and experts believe the land to be home to burial grounds of people enslaved on the plantations that once operated there.[11]

Finally, Plaintiffs also extensively alleged and argued another basis for nullity of the ordinance – that the ordinance was the product of, and a means of furthering, an illegal and corrupt scheme involving extortion, money laundering, and violation of the federal Travel Act, for which the Parish President was later

---

6 *Id*. at pp. 424-25, ¶¶ 99-102.
7 *Id*. at pp. 421-23, ¶¶ 85-94.
8 *Id*. at pp. 430-31, ¶¶130-32.
9 *Id.* at p. 420, ¶ 77.
10 *Id.* at pp. 435-39, ¶¶141-169.
11 *Id*. at pp. 439-41, ¶¶ 170-183.

Submitted On: 6/24/2022 7:35:25 PM
Accepted On: 6/27/2022 8:44:10 AM

convicted in federal court.[12] While it did not factor into Judge Snowdy's ruling, Plaintiffs believe it provides an additional basis for maintaining the action for nullity.

III. ARGUMENT

The Louisiana Supreme Court has emphasized a "general policy" against interlocutory appeals. *Herlitz Construction Co. v. Hotel Investors of New Iberia, Inc.*, 396 So.2d 878 (La. 1981). Review of interlocutory judgments is to be undertaken sparingly so as not to encourage "routine applications for supervisory review of interlocutory judgments" which "would substantially disrupt the dockets of the courts at both levels." *Mangin v. Auter,* 360 So. 2d 577, 578 (La. App. 4th Cir. 1978). *See also,* Supervisory writs, 1 La. Civ. L. Treatise, Civil Procedure § 14:17 (2d ed.) (supervisory review "can lead to piecemeal litigation and to appellate decisions which may not be based upon completely developed facts").

In *Herlitz*, the Court identified three factors to guide appellate courts in determining the appropriateness of interlocutory review, including whether a) the trial court ruling is arguably incorrect, b) whether reversal would terminate the proceedings, and c) whether there are factual disputes. *Id.* In applying *Herlitz*, this Court has looked to those factors, and whether irreparable injury would occur if the Court were not to dispose of the assignments of error by supervisory review. *Barnett & Associates, LLC. v. Whiteside*, 308 So. 3d 1218, 1221 (La. App. 5th Cir. 2020); *see also, Plauche v. Plauche,* 673 So. 2d 1053, 1054 (La. App. 5th Cir. 1996) ("An interlocutory judgment causes 'irreparable injury' and is therefore appealable when the ruling cannot, as a practical matter, be corrected on appeal") *citing Herlitz, supra.*

---

[12] *Id.* at pp. 409, 411-14, ¶¶ 12-26; pp. 417-19, ¶¶ 43-53, 59-68, pp. 444-46; *See also,* Petitioners' Memorandum in Opposition to Defendants' Exceptions, April 20, 2022, Ex. N at pp. 668, 672-76.

Submitted On: 6/24/2022 7:35:25 PM
Accepted On: 6/27/2022 8:44:10 AM

Here, the trial court's ruling was correct; factual disputes exist; and Greenfield has not shown how it would suffer irreparable injury from a ruling that could not be corrected, if necessary, on appeal. This Court should decline Greenfield's request to engage in a premature interlocutory review.

A. The Trial Court's Ruling Was Correct.

1.) What Was <u>Not</u> in the Trial Court's Ruling or Argued by Plaintiffs.

At the outset, it must be noted that Greenfield devotes a substantial portion of its brief to complaining of a ruling that the trial court did *not* make. Greenfield argues at length that "Plaintiffs Fail to State a Cause of Action for Absolute Nullity under Louisiana Civil Code Articles 7 and 2030."[13] This Court should not attempt review a question on interlocutory review not addressed by the trial court.

However, in his written reasons for his ruling, Judge Snowdy explicitly stated that even though "Plaintiffs and Defendants focus much of their argument on the applicability of La. C.C. arts. 7 and 2030," "none of this Court's research regarding nullity of an ordinance has produced arguments on either side."[14] Judge Snowdy, having set those provisions aside, then applied the basic and uncontroversial rule that "Louisiana courts have found that ordinances that violate the law are null and void *ab initio*" and found that "Plaintiffs here have stated a cause of action, these Plaintiffs are the proper party to bring this suit, and prescription has not run against the Plaintiffs' challenge to Ordinance 90-27."[15]

Likewise, Plaintiffs have consistently maintained that they are not arguing or claiming that the ordinance should be treated as a contract. In fact, in their Memorandum of Law in Opposition to Defendants' Exceptions, Plaintiffs included a point heading entitled, **"D. The Ordinance Is Not a Contract."**[16] There,

---

13 Greenfield Writ Application at pp. 7-11.

14 Written Reasons, Ex. D at p. 30 of Greenfield Writ Application.

15 *Id.*

16 *See* Exhibit N at p. 677 of Greenfield's Writ Application (bold in original).

Submitted On: 6/24/2022 7:35:25 PM
Accepted On: 6/27/2022 8:44:10 AM

Plaintiffs explained that the petition references those provisions in Title IV of Book III governing the law of contracts because "they state principles and rules that apply to absolute nullities in general – as does article 7, pertaining to juridical acts."[17] Plaintiffs pointed to an expert on the law of nullity who explained that the provisions "have a much broader ambit and applicability" that "appl[y] well beyond the limited realm of contract law."[18]

It is thus a mystery as to why Greenfield argues to overturn a non-existent ruling and against a proposition that Plaintiffs have not put forward. In any event, this question cannot be resolved on interlocutory appeal.

2.) What <u>Is</u> in the Trial Court's Ruling Is Correct.

The trial court correctly found that Plaintiffs pled two ways in which the ordinance violated the Parish's own laws.

a) The 2,000-foot Distance Requirement and Unlawful Zoning Amendment.

First, Judge Snowdy ruled that "[b]ecause the Plaintiffs allege that Ordinance 90-27 violates the parish's own Land Use Regulation, they have stated a cause of action in their petition."[19] Judge Snowdy cited to *McMahon v. City of New Orleans*, 2018-0842, p. 5 (La. App. 4 Cir. 9/4/19); 280 So. 3d 796, 800, *writ denied*, 2019-01562 (La. 11/25/19), which held a city ordinance that violated Parish's Home Rule Charter was null and void *ab initio*. In *McMahon*, the Fourth Circuit observed that "[i]t has long been the law in Louisiana that an unlawful ordinance is in reality no law and in legal contemplation is as inoperative as if it had never been passed" and, further, that "Louisiana jurisprudence is replete with decisions striking municipal and parish ordinances as unlawful, and therefore being considered as null and void and/or inoperative." *Id.*

---

[17] *Id.*
[18] *Id.*
[19] Written Reasons, Ex. D at p. 28 of Writ Application.

Submitted On: 6/24/2022 7:35:25 PM
Accepted On: 6/27/2022 8:44:10 AM

The trial court based this part of its ruling on Plaintiffs' allegations that Ordinance 90-27 violated Sec. 113-410 of the Parish Code of Ordinances which required that heavy industry / I-3 zones be located "a minimum of 2,000 feet from residential dwellings with a density of 1 dwelling per acre cross area" by inserting instead a 300-foot light industrial, or I-1, buffer area the I-3 and residential zones.[20]

Greenfield –without any authority whatsoever – suggests that *McMahon* stands for the proposition that a parish government may not violate its Home Rule Charter but is not beholden to its own land use regulations, because "it can amend, repeal, modify or make exceptions to ordinances that it has authority to adopt."[21] *McMahon* itself says nothing of the sort; and Greenfield's argument wrongly assumes –without evidence – that the Parish properly enacted the 300-foot, light industrial buffer. Greenfield toys with characterizations, attempting to cast the 300-foot buffer as a harmless "additional regulation ***supplementing*** rather than modifying the rule that sites to be designated I-3 be within 2000 feet of the concentration of one dwelling unit per acre (du/ac) gross area."[22]

In fact, the 300-foot I-1 buffer zone was unlawfully inserted into Ordinance 90-27 at the last minute as shown in the minutes of the Parish Council meeting where the ordinance was adopted.[23] The minutes show that at 9 p.m., two-and-a-half hours after the final public hearing on Ordinance 90-27 began and immediately before the Parish Council voted to approve the ordinance, a council member moved to amend the proposed zoning maps to reflect the 300-foot I-1

---

[20] *See* Second Amended Petition, Ex. F at p. 415, ¶¶ 31-34, of Greenfield Writ Application.

[21] Writ Application at p. 12.

[22] *Id.* (emphasis added).

[23] *See* Minutes of Parish Council Meeting of April 19, 1990, Ex. F at p. 312 of Greenfield Writ Application. (The minutes were annexed to the First Amended Petition and incorporated into the Second.)

Submitted On: 6/24/2022 7:35:25 PM
Accepted On: 6/27/2022 8:44:10 AM

buffer.[24] The amendment was approved and immediately thereafter the Council proceeded to pass the ordinance.[25]

This last-minute insertion of a buffer zone violated the provisions of the Parish's Code of Ordinances as well as state law governing changes or modifications to zoning regulations. Sec. 113-76 of the Parish Code of Ordinances provides that "no amendment shall become effective unless it shall have been proposed by or shall first have been submitted to the planning commission for review and recommendation," and only after the planning commission has given public notice and held a public hearing on the amendment in accordance with the provisions of the Code. In a section of the code of ordinances pertaining to amendments to the parish's zoning regulations, including the official zoning map, Sec. 113-77(b) further provides that "No amendment shall be made unless it is determined by the planning commission that the amendment, or ***supplement***, or change to the regulations, restrictions or boundaries should be made, except as otherwise provided herein." (emphasis added).

In addition, La. R.S. 33:4726(A) prohibited a zoning authority from taking action on "any ***supplements***, changes, or ***modifications***" of zoning regulations until it has received a final report from the zoning, or planning, commission, which is required to hold a public hearing, prepare findings and recommendations, and provide a report to the governing body.[26] Failure to refer such changes or

---

[24] *Id.* at 313.

[25] *Id.*

[26] La. R.S. 33:4726(A) states in full:

> A. In order to avail itself of the powers conferred by R.S. 33:4721 through 4729, the legislative body of the municipality shall appoint a zoning commission whose function it shall be to recommend the boundaries of the various original districts as well as the restrictions and regulations to be enforced therein, and any **supplements**, changes, or **modifications** thereof. Before making any recommendation to the legislative body of the municipality, the zoning commission shall hold a public hearing. Notice of the time and place of the hearing shall be published at least three times in the official journal of the municipality, or if there be none, in a paper of general circulation therein, and at least ten days shall elapse between the first publication and date of the hearing. After the hearing has been held by the zoning

Submitted On: 6/24/2022 7:35:25 PM
Accepted On: 6/27/2022 8:44:10 AM

"supplements" to a planning commission has resulted in the invalidity of municipal ordinances. *See, e.g., Schmitt v. City of New Orleans*, 461 So.2d 574, 578 (La. Ct. App.1984), *writ denied,* 464 So.2d 318 (La.1985), and *writ denied*, 464 So.2d 319 (La.1985). (holding two ordinances invalid for lack of referral to the planning commission). *See also, Talbert v. Planning Comm'n, City of Bogalusa*, 230 So.2d 920, 925 (La. Ct. App.1970) (holding that the requirements of La. R.S. 33:4726 applied as well to amendments to zoning ordinances and regulations provided for in La. R.S. 33:4725).

Thus, whether the last-minute 300-foot buffer amendment was a "supplement" to and "not inconsistent with" or an amendment of the 2000-foot provision, it was added and passed in violation of state and parish laws governing the enactment and amendment of zoning regulations. It was also in violation of, or an unlawful overriding of, the pre-existing 2,000-foot distance requirement in Sec. 113-410(1)(b) *See also, De Latour v. Morrison*, 213 La. 292, 298; 34 So.2d 783, 784 (1948) (ordinance repealing zoning law by changing classification of certain property without granting owner thereof notice and hearing required by such law was unenforceable).

The last-minute amendment was a clear betrayal of a very significant provision that affected entire neighborhoods, in addition to violating state and parish law governing the amendment, supplementation, or modification of zoning regulations.

Greenfield also goes so far as to suggest that Plaintiffs did not allege that there was a residential area with the required concentration of dwellings. Yet this

---

commission, it shall make a report of its findings and recommendations to the legislative body of the municipality. The legislative body shall not hold its public hearings or take action until it has received the final report of the zoning commission. (emphasis added).

Submitted On: 6/24/2022 7:35:25 PM
Accepted On: 6/27/2022 8:44:10 AM

was precisely the point of including those paragraphs in the petition along with the point heading which reads, "***B. Wallace Gets a Smaller Buffer Zone Than That Required by the Parish Code."*** [27] The trial court clearly understood Plaintiffs' allegations and understood the key legal instruction that in considering exceptions of no cause of action, any doubt as to interpretation of a pleading should be resolved in favor of petitioner. *See Flotte v. Thomas Egan's Sons*, 18 La.App. 116; 137 So. 220 (1931).

b. Council Secretary's Failure to Authenticate Ordinance 90-27

The trial court also held that because "Plaintiffs here have alleged that the Parish did not follow its own statutory procedures for enactment of an ordinance when the secretary allegedly failed to authenticate Ordinance 90-27… the Plaintiffs have stated a cause of action on this allegation as well."[28]

In doing so, Judge Snowdy cited a number of authorities for the rule that while the validity of municipal legislative acts is presumed, because "zoning laws are in derogation of the rights of private ownership," "strict compliance with the statutory procedures regulating enactment of zoning laws has been required by the courts" and "failure to comply with such procedures is fatal to the validity of the zoning ordinance."[29]

Greenfield cites to no authority for its argument that violation of an ordinance requiring that the Council secretary authenticate a zoning ordinance does not render it null. The only case to which it cites concerns the creation of a gravity a drainage district.[30] But as Judge Snowdy noted in his written reasons, *zoning* laws are treated differently from other municipal acts because they are in

---

27 Second Amended Petition, Ex. F at 415 (bold and italic in original).

28 Written Reasons, Ex. D at 29.

29 *Id.*at 28-29.

30 *See* Writ Application at 15 citing *Shautin v. Bd. Of Comm'rs of St. Landry & St. Martin Gravity Drainage Dist. No. 1*, 107 So. 897 (La. 1926).

Submitted On: 6/24/2022 7:35:25 PM
Accepted On: 6/27/2022 8:44:10 AM

derogation of the rights of private ownership, requiring strict compliance statutory procedures regulating their enactment.[31]

B. Plaintiffs' Claims that the Ordinance Is Absolutely Null Have Not Prescribed.

Judge Snowdy's ruling that "prescription cannot run against the Plaintiffs' cause of action" because the "ordinance challenged here could potentially be, in effect, no law," is correct. Greenfield correctly concedes that a claim that an ordinance is illegal does not prescribe but argues that Plaintiff's claims about Ordinance 90-27 are distinguishable from the ordinance at issue in *McMahon v. City of New Orleans*, 2018-0842 (La. App. 4 Cir. 9/4/19); 280 So. 3d 796, to which Judge Snowdy cited.[32]

As shown above, Plaintiffs have stated claims that the ordinance is unlawful under state and parish law, and thus their cause of action has not prescribed; and Judge Snowdy's ruling was correct.

C. Existing Factual Disputes Make Appellate Review Inappropriate and Premature.

As discussed in Sec. II, *supra*, there are factual disputes in this matter – not least the current zoning status of the tract of land at issue in this case as reflected on official parish maps as recent as October, 2021, and in Greenfield's own records of its purchase of the property in July 2021 and January 2022. This issue is relevant and material as it tends to show that even parish officials reviewing the land and an official survey in 2006 did not deem the property to be zoned I-3/heavy industrial, or governed by Ordinance 90-27. Still, Greenfield asserts that the "property has been in an industrial zoning district for over thirty years."[33]

---

31 Written Reasons, Ex. D at 28-29 (collecting cases).

32 Writ Application at 16.

33 Writ Application at 1.

Submitted On: 6/24/2022 7:35:25 PM
Accepted On: 6/27/2022 8:44:10 AM

In addition, the question of the last-minute insertion of the 300-foot buffer zone into Ordinance 90-27 and its relationship to the 2,000-foot distance requirement provided for in Sec. 113-410(1)(b) are factual issues that are disputed.

These questions of fact are also relevant to claims of prescription, to notice to Greenfield of the invalidity of the ordinance and residential zoning of the property.

D. Greenfield Will Not Suffer Irreparable Harm from the Interlocutory Ruling Which Can be Corrected on Appeal, if Necessary.

As discussed above, Judge Snowdy's ruling was correct *and* there are factual disputes remaining in this matter. Greenfield has not shown that it will suffer irreparable injury in the absence of interlocutory review. *Barnett & Associates, LLC. v. Whiteside*, 308 So. 3d 1218, 1221 (La. App. 5th Cir. 2020) *citing Herlitz Construction Co. v. Hotel Investors of New Iberia, Inc.*, 396 So.2d 878 (La. 1981). *See also*, *Plauche v. Plauche*, 673 So. 2d 1053, 1054 (La. App. 5th Cir. 1996) ("An interlocutory judgment causes 'irreparable injury' and is therefore appealable when the ruling cannot, as a practical matter, be corrected on appeal") *citing Herlitz, supra.*

Greenfield does not address at all how it would be irreparably harmed absent interlocutory review of Judge Snowdy's overruling of its exceptions. Appellate courts have found irreparable harm that cannot be remedied on appeal in interlocutory judgments as to exceptions of improper venue. *See, e.g., Herlitz* ("once the trial court overrules an exception to the venue and the case is tried on the merits in the wrong venue, an appellate court has no practical mans of correcting the error on appeal").

However, "[m]erely requiring the parties to undergo a trial on the merits does not constitute irreparable harm." *Cole v. Whitfield*, 89-CA-011 (La. App. 4 Cir. 12/28/89), 566 So. 2d 96, 98.

Submitted On: 6/24/2022 7:35:25 PM
Accepted On: 6/27/2022 8:44:10 AM

E. Additional Grounds Supporting the Trial Court's Decision Counsel Against Interlocutory Review.

As mentioned above in Sec. II, Plaintiffs alleged and argued another basis for nullity of the ordinance – that the ordinance was the product of, and a means of furthering, an illegal and corrupt scheme involving extortion, money laundering, and violation of the federal Travel Act, for which the Parish President was later convicted in federal court.[34] While the trial court did not base its ruling as to the claim of nullity on this ground and it was not necessary to defeat Defendants' exceptions, Plaintiffs believe it provides an additional basis for maintaining the action. Plaintiffs intend to further develop it as part of summary judgment and obtain a ruling on that ground as well.

Briefly, the argument is that while ordinances that are enacted in violation of local, state, or parish law governing procedure and due process are absolutely null, allegations of fraud, corruption, or bad faith in the proceedings or enactments are accorded special consideration by the courts. *See McCann v. Morgan City*, 173 La. 1063, 1075; 139 So. 481, 485 (1932). *See also, Saint v. Irion*, 165 La. 1035, 1057; 116 So. 549, 556 (1928) (courts will "not undertake to control the discretion of a public officer or board, unless arbitrarily or fraudulently exercised"), *Truitt v. W. Feliciana Par.* Gov't, 2019-0808, p. 5 (La.App. 1 Cir. 2/21/20); 299 So.3d 100, 103–04 ("[W]hen there is room for two opinions, an action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed an erroneous conclusion has been reached.") (emphasis added).

"Fraud or bad faith with respect either to context or manner of arriving at a decision in an administrative zoning matter, is sufficient ground for judicial reversal of the decision." 8A McQuillin Mun. Corp. § 25:417 (3d ed.) (internal

[34] *See* Second Amended Petition, Ex. F at pp. 409, 411-14, ¶¶ 12-26; pp. 417-19, ¶¶ 43-53, 59-68, pp. 444-46; *See also,* Petitioners' Memorandum in Opposition to Defendants' Exceptions, April 20, 2022, Ex. N at pp. 668, 672-76.

Submitted On: 6/24/2022 7:35:25 PM
Accepted On: 6/27/2022 8:44:10 AM

citations omitted). *See also,* Ronald J. Scalise Jr., Rethinking the Doctrine of Nullity, 74 La. L. Rev. 663, 718 (2014) ("the violation of the public fraud statute should also result in the violative act being considered an absolute nullity").

When a zoning ordinance is the product of – and means of furthering – such a profoundly corrupt, illegal scheme, it is a betrayal of the public trust and a flagrant violation of laws intended for the preservation of the public interest and to safeguard the democratic process.

This alternative ground, which is also fact-dependent, is an additional reason why interlocutory review is inappropriate. This Court should wait until all factual disputes are resolved and this alternative ground is fully adjudicated below, and then address these issues on appeal in the ordinary course and on a fuller record.

CONCLUSION

In light of the foregoing, Plaintiffs respectfully request this Court deny Greenfield's application for a supervisory writ of review.

June 24, 2022

Respectfully submitted,

PAMELA C. SPEES
La. Bar Roll No. 29679
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012
Tel. (212) 614-6431
Fax (212) 614-6499
pspees@ccrjustice.org

William P. Quigley
La. Bar Roll No. 7769
Professor of Law
Loyola University College of Law
7214 St. Charles Avenue
New Orleans, LA 70118
Tel. (504) 710-3074
Fax (504) 861-5440
quigley77@gmail.com

Attorneys for Plaintiffs/Respondents

Submitted On: 6/24/2022 7:35:25 PM
Accepted On: 6/27/2022 8:44:10 AM

AFFIDAVIT OF VERIFICATION AND SERVICE

STATE OF LOUISIANA

PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally came and appeared, WILLIAM P. QUIGLEY, who, being duly sworn, deposed and said:

1. He is counsel for Plaintiffs/Respondents Descendants Project, Jocyntia Banner, and Joyceia Banner, and that he has assisted in the preparation, read and reviewed the foregoing Response in Opposition to the Writ Application and hereby verifies that all of the allegations of fact contained therein are true and correct to the best of his knowledge, information and belief at the time of this verification;

2. In compliance with Rules 4-4 and 4-5 of the Uniform Rules of Courts of Appeal and Rule 9 of the Local Rules of the Fifth Circuit Court of Appeal, this Response in Opposition has been served upon the Honorable J. Sterling Snowdy, presiding over this case at the 40th Judicial District Court for the Parish of St. John the Baptist, 2393 Hwy. 18, Suite 107, Edgard, LA 70049, tel. (985) 497-5580, fax (985) 497-5572, email divc@stjohnclerk.org; and upon all parties and their counsel of record as listed below, via email, and/or Federal Express, and/or United States mail, on this 24th day of June, 2022:

Samuel J. Accardo, Jr. Accardo Law Firm, LLC 325 Belle Terre Blvd., Suite A LaPlace, LA 70068 Tel. (985) 359-4300 Fax (985) 359-4303 accardo@rtconline.com ***Counsel for Parish Defendants*** Louis Buatt Liskow & Lewis, APLC 822 Harding Street Lafayette, LA 70503 Tel. (337) 232-7424 Fax (337) 267-2399 lbuatt@liskow.com ***Counsel for Defendant/Applicant***	James L. Breaux Clare M. Bienvenu Liskow & Lewis, APLC 701 Poydras Street, Suite 5000 New Orleans, LA 70139-5099 Tel. (504) 581-7979 Fax (504) 556-4108 jlbreaux@liskow.com cbienvenu@liskow.com ***Counsel for Defendant/Applicant*** Paul M. Adkins Liskow & Lewis, APLC 450 Laurel Street, Suite 1601 North Tower Baton Rouge, LA 70801 Tel. (225) 341-4660 Fax (225) 341-5653 padkins@liskow.com ***Counsel for Defendant/Applicant***

WILLIAM P. QUIGLEY

SWORN TO AND SUBSCRIBED BEFORE ME, THIS 24TH DAY OF JUNE, 2022,

NOTARY PUBLIC

Davida Finger
Attorney & Notary Public
La Bar No.: 30889
Notary Public ID: 85500
State of Louisiana
My Commission is for Life