

COURT OF APPEAL
FIFTH CIRCUIT
STATE OF LOUISIANA

DOCKET NO.

THE DESCENDANTS PROJECT,
JOCYNTIA BANNER, and JOYCEIA BANNER
Plaintiffs/Respondents

VERSUS

ST. JOHN THE BAPTISH PARISH, THROUGH ITS 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

**APPLICATION FOR SUPERVISORY WRIT ON JUDGMENT DENYING
EXCEPTIONS OF NO CAUSE OF ACTION AND PRESCRIPTION
ON BEHALF OF GREENFIELD LOUISIANA, LLC**

Respectfully submitted,

Louis Buatt (Bar No. 19503)
lbuatt@liskow.com
LISKOW & LEWIS, APLC
822 Harding Street
Lafayette, LA 70503
Telephone: (337) 232-7424
Facsimile: (337) 267-2399

Paul M. Adkins (Bar No. 14043)
padkins@liskow.com
LISKOW & LEWIS, APLC
450 Laurel Street
Suite 1601 North Tower
Baton Rouge, LA 70801
Telephone: (225) 341-4660
Facsimile: (225) 341-5653

James L. Breaux (Bar No. 26817)
jlbreaux@liskow.com
LISKOW & LEWIS, APLC
Clare M. Bienvenu (Bar No. 29092)
cbienvenu@liskow.com
LISKOW & LEWIS, APLC
701 Poydras Street, Suite 5000
New Orleans, LA 70139-5099
Telephone: (504) 581-7979
Facsimile: (504) 556-4108

*Attorneys for Intervenor/Applicant
Greenfield Louisiana, LLC*

TABLE OF CONTENTS

TABLE OF EXHIBITS..... ii

TABLE OF AUTHORITIES..... iii

I. STATUS OF THE CASE 1

II. STATEMENT OF THE GROUNDS UPON WHICH
JURISDICTION IS INVOKED..... 1

III. STATEMENT OF THE CASE..... 3

IV. THE ISSUES AND QUESTIONS OF LAW PRESENTED
FOR DETERMINATION..... 5

V. ASSIGNMENTS OF ERROR 5

VI. ARGUMENT 6

A. Exception of No Cause of Action..... 6

 1. Plaintiffs Fail to State a Cause of Action for
 Absolute Nullity under Louisiana Civil Code
 Articles 7 and 2030..... 7

 2. Plaintiffs Fail to Allege Facts to Nullify Ordinance
 90-27 *Ab Initio*..... 11

 3. Plaintiffs Fail to Allege Facts to Support
 Nullification of Ordinance 90-27 for Failure to
 Follow Enactment Procedures..... 14

B. Exception of Prescription..... 15

VII. CONCLUSION AND PRAYER FOR RELIEF 16

AFFIDAVIT OF VERIFICATION AND SERVICE 18

TABLE OF EXHIBITS

	<u>PAGE #</u>
Exhibit A: Greenfield’s Notice of Intent to Apply for Supervisory Writ	20
Exhibit B: Order Setting Return Date	22
Exhibit C: May 10, 2022 Judgment	24
Exhibit D: May 10, 2022 Written Reasons for Judgment	25
Exhibit E: May 13, 2022 Notice of Mailing Judgment.....	32
Exhibit F: <i>In globo</i> Petition for Writ of Mandamus; First Amended Petition for Declaratory and Injunctive Relief; and Second Amended Petition for Declaratory and Injunctive Relief.....	33
Exhibit G: Greenfield’s Petition to Intervene.....	603
Exhibit H: Greenfield’s Memorandum in Opposition of Mandamus and In Support of Intervenor’s Exceptions, dated December 10, 2021.....	605
Exhibit I: Petitioners’ Reply to Exceptions, dated December 14, 2021	614
Exhibit J: December 16, 2021 Order Granting Motion to Intervene	623
Exhibit K: December 20, 2021 Notice of Judgment and Judgment.....	624
Exhibit L: Answer to Second Amended Petition for Declaratory and Injunctive Relief	629
Exhibit M: Greenfield’s Memorandum in Support of Greenfield’s Peremptory Exceptions of No Cause of Action, No Right of Action, and Prescription, dated March 2, 2022	657
Exhibit N: Petitioners’ Opposition to Exceptions, dated April 20, 2022.....	668
Exhibit O: Minutes from April 28, 2022 Hearing.....	680
Exhibit P: Transcript from April 28, 2022 Hearing.....	681

TABLE OF AUTHORITIES

Cases

<i>Bank of New York Mellon v. Oldemeyer</i> , 2019-348 (La. App. 3 Cir. 10/9/19), 282 So. 3d 1098	3
<i>Bossier Ctr., Inc. v. B & B Sys., Inc.</i> , 14,234 (La. App. 2 Cir. 8/18/80); 388 So. 2d 826	10
<i>Davis v. Town of St. Gabriel</i> , 2001-0031 (La. App. 1 Cir. 2/15/02); 809 So. 2d 537, writ denied, 2002-0771 (La. 10/14/02); 827 So. 2d 420, and writ denied, 2002-0803 (La. 10/14/02); 827 So. 2d 420	8, 10
<i>De Latour v. Morrison</i> , 34 So. 2d 783 (La. 1948)	14, 15
<i>Francis v. Morial</i> , 455 So. 2d 1168 (La. 1984)	13
<i>Hall v. James</i> , 43,263 (La. App. 2 Cir. 6/4/08), 986 So.2d 817	2
<i>Hall v. Zen-Noh Grain Corp.</i> , 2001-0324 (La. 4/27/01); 787 So.2d 280	6
<i>Hawkins v. Willow Inc.</i> , 2015-71 (La. App. 5 Cir. 11/19/15); 181 So. 3d 210, writ denied, 2015-2326 (La. 2/19/16); 187 So. 3d 463	11
<i>Herlitz Construction Co. v. Hotel Investors of New Iberia, Inc.</i> , 396 So. 2d 878 (La. 1981)	2
<i>Kirk v. Town of Westlake</i> , 421 So. 2d 473 (La. App. 3 Cir. 1982)	14, 15
<i>Mobley v. Harrel</i> , 571 So. 2d 662 (La. App. 2 Cir. 12/5/90)	10
<i>Nature Conservancy v. Upland Properties</i> , 2010-0516 (La. App. 1 Cir. 10/29/10); 48 So. 3d 1257	7
<i>Noble v. Estate of Melius</i> , 10-549 (La. App. 5 Cir. 3/9/11); 62 So. 3d 222	10, 11
<i>Quaternary Res. Investigations, LLC v. Phillips</i> , 2018-1543 (La. App. 1 Cir. 11/19/20); 316 So. 3d 448, writ denied, 2020-01450 (La. 3/2/21); 311 So. 3d 1059	8
<i>Schmitt v. City of New Orleans</i> , 461 So. 2d 574 (La. App. 4 Cir. 1984)	14, 15
<i>Shautin v. Bd. of Comm'rs of St. Landry & St. Martin Gravity Drainage Dist. No. 1</i> , 107 So. 897 (La. 1926)	15

<i>St. John the Baptist Parish, et al. v. Louisiana Dept. of Wildlife & Fisheries</i> , 2005-1002 (La. App. 5 Cir. 10/17/06); 943 So. 2d 1209	7
<i>State ex rel Holcombe v. City of Lake Charles</i> , 144 So. 502 (1932)	14, 15
<i>State ex rel. Gullett Gin Mfg. Co. v. Thompson</i> , 34 La. Ann. 758 (1882)	11
<i>Trahan v. Bertrand</i> , 2006-1271 (La. App. 3 Cir. 2/21/07); 952 So. 2d 809, <i>writ denied</i> , 2007-0631 (La. 5/4/07); 956 So. 2d 612	8
<i>Tucker v. New Orleans Laundries, Inc.</i> , 145 So. 2d 365 (La. Ct. App. 1962)	11
<i>Vieux Carre Property Owners Association, Inc. v. City of New Orleans</i> , 167 So. 2d 367 (1964)	16
<i>Woods v. Preis PLC</i> , 2021-221 (La. App. 3 Cir. 11/3/21); 330 So.3d 1128, <i>writ denied</i> , 2021-01808 (La. 1/26/22); 332 So.3d 83	8
Statutes	
18 U.S.C. §§ 2, (1951, 1952, 1956)	8
La. Civ. Code art. 2	10
La. Civ. Code art. 2030	10, 11
La. Civ. Code art. 2031	11
La. Civ. Code art. 2032	11, 16
La. Code Civ. P. art. 2201	1
Louisiana Civil Code art. 3471, cmt. c (1982).....	7
Louisiana Civil Code art. 395, cmt. b (2001).....	7
Louisiana Civil Code article 1498.....	8
Louisiana Civil Code article 2030.....	2, 5, 6, 7, 9
Louisiana Civil Code article 7.....	2, 5, 6, 7, 8, 9
Other Authorities	
Article 5, § 10(A) of the Louisiana Constitution of 1974	1
Code of Ordinances of St. John the Baptist Parish, Section 113-410.....	11, 12
Home Rule Charter of St. John the Baptist Parish, Art. III.....	9, 13
Home Rule Charter of St. John the Baptist Parish, Art. VI, Sec. B	14
Home Rule Charter of St. John the Baptist Parish, Art. VI, Sec. F	15

I. STATUS OF THE CASE

This case is in the pretrial stage, and exceptions have been filed. This case has not been scheduled for trial, and there are currently no pending hearing dates.

II. STATEMENT OF THE GROUNDS UPON WHICH JURISDICTION IS INVOKED

In this writ application, Greenfield¹ seeks review of the district court's denial of Greenfield's exceptions of no cause of action and prescription. This Court has jurisdiction to review and grant this supervisory writ pursuant to Article 5, § 10(A) of the Louisiana Constitution of 1974 and La. Code Civ. P. art. 2201. The district court signed a written judgment denying Greenfield exceptions on May 10, 2022. The clerk of court mailed notice of the judgment on May 13, 2022. Then, on June 1, 2022, Greenfield timely filed notice of its intention to seek a supervisory writ. The district court set June 10, 2022, as the return date for this writ application. Greenfield's writ application is timely under this order and under Rule 4-3 of the Uniform Rules of the Courts of Appeal.

This is a case challenging the validity of St. John the Baptist Parish Ordinance 90-27 ("Ordinance"), which was adopted by the Parish back in 1990. The Ordinance zoned land now owned by Intervenor Greenfield as I-3, which is an industrial zoning district permitting various industrial uses, including grain elevators such as that proposed to be built by Greenfield. Despite the fact that the property has been in an industrial zoning district for over thirty years, Plaintiffs² recently filed this lawsuit against St. John the Baptist Parish (the "Parish") seeking to invalidate the Ordinance. As an owner of the property in question, Greenfield intervened in the action and filed exceptions of no cause of action and prescription. Greenfield showed that while Plaintiffs challenge Ordinance 90-27 as an absolute nullity, their Petition alleges no

¹ Applicant is Greenfield Louisiana, LLC.

² Plaintiffs are The Descendants Project, Jocyntia Banner and Joyceia Banner.

facts that could establish that the Ordinance is an absolute nullity under requirements of Louisiana Civil Code articles 7 and 2030; that the Ordinance was null and void *ab initio* under the Louisiana or United States Constitution, constitutional laws, or the Parish's Home Rule Charter; or that the Ordinance was invalid for failure to follow statutory procedures for its enactment. Greenfield further showed that, even if Plaintiffs' Petition could establish that the Ordinance was subject to the Civil Code's rules on nullity, Plaintiffs' factual allegations at most purport to establish a relative nullity. That cause of action likewise would fail because it is long prescribed.

The district court erroneously denied Greenfield's exceptions, finding that an alleged conflict between Ordinance 90-27 and St. John the Baptist Land Use Regulations states a cause of action and that the Parish secretary's alleged failure to authenticate Ordinance 90-27 states a cause of action. The district court found no precedent applying Louisiana Civil Code articles 7 and 2030 to the nullity of an ordinance. It appears this case would be the first to do so.

Supervisory review of these rulings is appropriate. In *Herlitz Construction Co. v. Hotel Investors of New Iberia, Inc.*, 396 So. 2d 878 (La. 1981), the Louisiana Supreme Court instructed appellate courts to exercise their supervisory jurisdiction when a trial court judgment is arguably incorrect, a reversal would terminate the litigation, and there is no disputed fact to be resolved. Under these circumstances, the Court held that "judicial efficiency and fundamental fairness to the litigants dictates that the merits of the application for supervisory writs should be decided in an attempt to avoid the waste of time and expense." *Id.* at 878. Following *Herlitz*, writs have been granted in circumstances like those presented here, where reversal of the denial of an exception of no cause of action or exception of prescription would terminate the litigation. *See, e.g., Hall v. James*, 43,263 (La. App. 2 Cir. 6/4/08), 986 So.2d 817 (granting writ application and

docketing matter for consideration where trial court denied exception of no cause of action, reversing decision, and granting exception); *Bank of New York Mellon v. Oldemeyer*, 2019-348 (La. App. 3 Cir. 10/9/19), 282 So. 3d 1098 (granting writ application to review denial of exception of prescription, reversing decision, and granting exception). This Court should likewise grant Greenfield's writ application and consider the merits of the issues presented herein.

III. STATEMENT OF THE CASE

This lawsuit was originally filed as a Petition for Writ of Mandamus on November 9, 2021, by the Descendants Project, Jocyntia Banner, and Joyceia Banner, requesting that the court declare St. John the Baptist Parish Ordinance 90-27 to be an absolute nullity and order the zoning designation enacted thereunder to be removed from Parish zoning maps and documents.³ The Petition named St. John the Baptist Parish, the Parish Council, the Parish Planning Commission, and the Parish Department of Planning and Zoning as defendants. Ordinance 90-27 was adopted by St. John the Baptist Parish Council (the "Parish Council") on April 19, 1990, by unanimous vote and zoned land now owned by Greenfield as I-3, which is an industrial zoning district. The Plaintiffs include residents of land neighboring that owned by Greenfield. Greenfield moved to intervene as an owner of land zoned I-3 pursuant to Ordinance 90-27 and filed exceptions of No Cause of Action and No Right of Action on December 2, 2021.⁴ Judge Snowdy granted Greenfield's motion to intervene on December 16, 2021.⁵

³ See Petition for Writ of Mandamus, First Amended Petition for Declaratory and Injunctive Relief, and Second Amended Petition for Declaratory and Injunctive Relief, attached as Exhibit F *in globo*, at pp. 33-194.

⁴ See Petition to Intervene, attached as Exhibit G, and Memorandum in Opposition of Mandamus and In Support of Intervenor's Exceptions, attached as Exhibit H. Petitioners' Reply to Exceptions is attached as Exhibit I.

⁵ See Exhibit J, December 16, 2021 Order Granting Motion to Intervene.

The Parish filed an Exception of Unauthorized Use of Summary Proceeding, which Judge Snowdy granted on December 16, 2021.⁶ Judge Snowdy allowed Plaintiffs to file an amended petition by January 17, 2022.⁷ Based on the ruling to allow Plaintiffs to file an amended petition, Judge Snowdy stayed the exceptions of No Cause of Action and No Right of Action that had been filed by Greenfield.⁸

On January 17, 2022, Plaintiffs filed their First Amended Petition for Declaratory and Injunctive Relief.⁹ On February 14, 2022, Plaintiffs filed their Second Amended Petition for Declaratory and Injunctive Relief.¹⁰ Greenfield thereafter answered and asserted the Peremptory Exceptions of No Cause of Action, No Right of Action, and Prescription in response to Plaintiffs' Second Amended Petition for Declaratory and Injunctive Relief on February 28, 2022.¹¹ In doing so, Greenfield reasserted and incorporated the arguments contained in its Memorandum in Opposition of Mandamus and in support of Intervenor's Exceptions, which had been filed on December 10, 2021.¹²

On April 28, 2022, Judge Snowdy heard argument on the exceptions of No Cause of Action, No Right of Action, and Prescription.¹³ At the hearing, Judge Snowdy indicated that he would deny all exceptions and would issue written reasons. On May 10, 2022, Judge Snowdy signed a Judgment denying all the exceptions and

⁶ See December 20, 2021 Notice of Judgment and Judgment, attached as Exhibit K.

⁷ *Id.*

⁸ *Id.*

⁹ See First Amended Petition for Declaratory and Injunctive Relief, attached as Exhibit F *in globo*, at pp. 195-408.

¹⁰ See Second Amended Petition for Declaratory and Injunctive Relief, attached as Exhibit F *in globo*, at pp. 409-602.

¹¹ See Answer to Second Amended Petition for Declaratory and Injunctive Relief, attached as Exhibit L, and Memorandum In Support of Greenfield's Peremptory Exceptions of No Cause of Action, No Right of Action, and Prescription, attached as Exhibit M. Petitioners' Opposition to Exceptions is attached as Exhibit N.

¹² Exhibit M, Memorandum In Support of Greenfield's Peremptory Exceptions of No Cause of Action, No Right of Action, and Prescription, at p. 658.

¹³ Exhibit O, Minutes of April 28, 2022 Hearing.

issued written reasons.¹⁴ The Notice of Signing of Judgment was mailed on May 13, 2022.¹⁵ On June 1, 2022, Intervenor filed its notice of intention to seek supervisory writ and subsequently complied with the order setting the return date.¹⁶

IV. THE ISSUES AND QUESTIONS OF LAW PRESENTED FOR DETERMINATION

A. Whether Plaintiffs adequately pled a cause of action for the absolute nullity of Ordinance 90-27 when they fail to allege any facts that could establish that the Ordinance is an absolute nullity under requirements of Civil Code articles 7 and 2030; that the Ordinance was null and void *ab initio* under the Louisiana or United States Constitution, constitutional laws, or the Parish's Home Rule Charter; or that the Ordinance was invalid for failure to follow statutory procedures for its enactment.

B. Whether the district court erred in denying Intervenor's exception of prescription, because any cause of action pled in Plaintiffs' Petitions has long prescribed.

V. ASSIGNMENTS OF ERROR

A. The district court erred in denying the Exception of No Cause of Action with respect to Plaintiffs' deficient allegations regarding the nullity of Ordinance 90-27: (1) pursuant to Louisiana Civil Code articles 7 and 2030; (2) as null and void *ab initio* based on conflict with the Louisiana or United States Constitution, constitutional laws, or the Parish's Home Rule Charter; and (3) for failure to follow statutory procedures for the Ordinance's enactment.

B. The district court erred in denying the Exception of Prescription, because any cause of action pled in Plaintiffs' Petitions has long prescribed.

¹⁴ Exhibit C, May 10, 2022 Judgment; Exhibit D, May 10, 2022 Written Reasons for Judgment.

¹⁵ Exhibit E, May 13, 2022 Notice of Signing of Judgment.

¹⁶ Exhibit A, Notice of Intention to Apply for Supervisory Writ; Exhibit B, Order Setting Return Date.

VI. ARGUMENT

A. Exception of No Cause of Action

To state a cause of action, a plaintiff must allege facts that, if proven, would entitle the plaintiff to the relief sought. *Hall v. Zen-Noh Grain Corp.*, 2001-0324 (La. 4/27/01); 787 So.2d 280, 281. The function of the peremptory exception of no cause of action tests the legal sufficiency of the petition by determining whether Louisiana law affords a remedy on the alleged facts. *Id.* As set forth below, Plaintiffs' Petition fails to set forth factual allegations entitling Plaintiffs to the relief sought. Plaintiffs' Second Amended Petition seeks a declaratory judgment that Ordinance 90-27 is an absolute nullity pursuant to La. Civ. Code art. 7 and La. Civ. Code art. 2030. However, Plaintiffs allege no facts that satisfy the legal standards of an absolute nullity under either Civil Code article. While Plaintiffs also claim that Ordinance 90-27 violated the Parish's own Land Use Regulations, the Petition alleges no facts that would constitute a violation of the Parish's own Land Use Regulations. Moreover, even if there was a conflict between Ordinance 90-27 and the Parish's Land Use Regulations, any such conflict would not render the Ordinance null. This is because the Parish, as a Home Rule government, acted within its jurisdiction because the Ordinance does not conflict with the Louisiana or United States Constitution, laws permitted by the Louisiana or United States Constitution, or its own Home Rule Charter. Plaintiffs also attack Ordinance 90-27 by alleging that the Parish Council's secretary allegedly failed to authenticate it. However, Louisiana law does not support nullification of an ordinance enacted in compliance with statutory procedures on the basis of a mere formality set to occur after its proper enactment.

1. Plaintiffs Fail to State a Cause of Action for Absolute Nullity under Louisiana Civil Code Articles 7 and 2030.

Plaintiffs claim that Ordinance 90-27 can be declared an absolute nullity pursuant to La. Civ. Code art. 7 and La. Civ. Code art. 2030.¹⁷ However, these articles are inapplicable to the facts pled by Plaintiffs.

a. Plaintiffs Fail to State a Cause of Action for Absolute Nullity under Louisiana Civil Code Article 7.

La. Civ. Code art. 7 provides, “Persons may not by their juridical acts derogate from laws enacted for the protection of the public interest. Any act in derogation of such laws is an absolute nullity.” (emphasis added). The allegations in the Petition do not support declaring Ordinance 90-27 an absolute nullity pursuant to La. Civ. Code art. 7, because: (1) Ordinance 90-27 is not a “juridical act”; and (2) even if Ordinance 90-27 were a juridical act – which it is not – the facts alleged do not show that Ordinance 90-27 derogates from any enacted law.

“Juridical act” is defined in the revision comments of the Louisiana Civil Code, which state, “A juridical act is a lawful volitional act intended to have legal consequences. It may be a unilateral act, such as an affidavit, or a bilateral act, such as a contract. It may be onerous or gratuitous.” Louisiana Civil Code art. 395, cmt. b (2001); Louisiana Civil Code art. 3471, cmt. c (1982). Citing this definition, case law has applied the term “juridical act” to contracts and agreements between parties. *See, e.g., Nature Conservancy v. Upland Properties*, 2010-0516 (La. App. 1 Cir. 10/29/10); 48 So. 3d 1257, 1261 n.2 (wetlands mitigation agreement was a juridical act); *St. John the Baptist Parish, et al. v. Louisiana Dept. of Wildlife & Fisheries*, 2005-1002 (La. App. 5 Cir. 10/17/06); 943 So. 2d 1209, 1213 (right of use servitude may be a juridical act, citing La. Civil Code art. 3471, cmt. c); *see also Quaternary Res. Investigations, LLC v. Phillips*, 2018-1543 (La. App. 1 Cir. 11/19/20); 316 So.

¹⁷ Exhibit F at p. 410, Second Amended Petition for Declaratory and Injunctive Relief at Paragraph 1.

3d 448, 459, *writ denied*, 2020-01450 (La. 3/2/21); 311 So. 3d 1059 (applying La. Civ. Code art. 7 to contract). The term does not apply to a law or ordinance enacted according to a legislative procedure. Louisiana courts have not extended La. Civ. Code art. 7 or art. 2030 to an ordinance enacted according to legislative procedure. *Cf. Davis v. Town of St. Gabriel*, 2001-0031 (La. App. 1 Cir. 2/15/02); 809 So. 2d 537, 547, *writ denied*, 2002-0771 (La. 10/14/02); 827 So. 2d 420, *and writ denied*, 2002-0803 (La. 10/14/02); 827 So. 2d 420 (nullifying a town's compromise *contract*).

Further, the Petition does not point to any enacted law from which Ordinance 90-27 derogates. La. Civ. Code art. 7 requires that for a juridical act to be an absolute nullity, the act must be contrary to an enacted law. *See e.g., Trahan v. Bertrand*, 2006-1271 (La. App. 3 Cir. 2/21/07); 952 So. 2d 809, 812, *writ denied*, 2007-0631 (La. 5/4/07); 956 So. 2d 612 (a donation in violation of La. Civ. Code art. 1498 is absolutely null); *Woods v. Preis PLC*, 2021-221 (La. App. 3 Cir. 11/3/21); 330 So.3d 1128, 1136, *writ denied*, 2021-01808 (La. 1/26/22); 332 So.3d 83 (compensation plan that prevented employee from receiving payment for work performed during employment if fees were collected after resignation was in derogation of enacted statute prohibiting contractual forfeiture of earned wages).

Instead, the only facts in the Petition that purport to establish why the Ordinance is absolutely null are the allegations that Lester Millet Jr., the President of the Parish at the time Ordinance 90-27 was enacted, was convicted of violations of 18 U.S.C. §§ 2, 1951 (extortion), 1952 (the Travel Act), and 1956 (money laundering).¹⁸ As a matter of law, those allegations, even if true, do not nullify Ordinance 90-27, as *Millet's actions*, and not Ordinance 90-27, violated these laws. To the extent Plaintiffs assert that *Millet's actions* of "corrupt influencing"

¹⁸ Exhibit F at p. 411, Second Amended Petition for Declaratory and Injunctive Relief at Paragraphs 12-14.

derogated from state laws or local ordinances prohibiting such acts of corruption,¹⁹ Plaintiffs have failed to satisfy the legal requirements of La. Civ. Code art. 7, which requires that a “juridical act” derogate from an enacted law. Millet’s actions of corruption clearly do not meet the definition of “juridical act,” which requires “a lawful volitional act intended to have legal consequences.”

Further, the actions of the Parish President have no bearing on an ordinance adopted by the Parish Council, because the Parish Council, and not the Parish President, had the authority to enact the ordinance. *Compare* St. John the Baptist Home Rule Charter, Art. III(A)(7) (vesting Parish Council with all legislative power in the Parish and the authority to enact ordinances), *with* Art. III(B)(3) (vesting Parish President with executive powers and the duty to carry out policies adopted by the Parish Council).

To the extent Plaintiffs allege fraud and/or corruption in the legislative proceeding used to enact Ordinance 90-27, Plaintiffs still have not alleged that Ordinance 90-27 derogates from an enacted law. Even if the Ordinance was a juridical act, which it is not, allegations that a juridical act was obtained by fraudulent means may at best be a cause of action for *relative* nullity, but allegations of fraud cannot support a cause of action for *absolute* nullity. *See* Sec. IV.A.1.b, *infra*. And, a cause of action for relative nullity would have long prescribed. *See* Sec. IV.B, *infra*.

b. Plaintiffs Fail to State a Cause of Action for Absolute Nullity under Louisiana Civil Code Article 2030.

La. Civ. Code art. 2030 provides, “A contract is absolutely null when it violates a rule of public order, as when the object of the contract is illicit or immoral.” (emphasis added). The allegations in the Petition do not support

¹⁹ Exhibit F at p. 444-445, Second Amended Petition for Declaratory and Injunctive Relief at Paragraphs 205-06.

judicially declaring Ordinance 90-27 an absolute nullity pursuant to La. Civ. Code art. 2030 because: (1) Ordinance 90-27 is not a contract; and (2) the object of the zoning ordinance is not illegal or contrary to public order.

A zoning ordinance is not a contract. It is a law resulting from a legislative procedure in which the general public is invited to participate. La. Civ. Code art. 2030 is found within the Civil Code articles on the subject of Nullity of Contracts, which on its face is not intended to apply to the legislative process. A zoning ordinance is a “law” and is the “expression of the [governmental body’s] legislative will.” *See Davis v. Town of St. Gabriel*, 809 So. 2d at 546-47; La. Civ. Code art. 2.

Further, Ordinance 90-27 does not have an object that is illegal. Zoning ordinances restricting land use are common and are not contrary to public policy or public order. *See Bossier Ctr., Inc. v. B & B Sys., Inc.*, 14,234 (La. App. 2 Cir. 8/18/80); 388 So. 2d 826, 831. An example of the object of a contract being illegal is found in *Mobley v. Harrel*, 571 So. 2d 662, 664 (La. App. 2 Cir. 12/5/90). There, a promissory note concerning debt arising out of an unlawful gambling operation was an absolute nullity. The object (debt resulting from illegal gambling) of the contract (promissory note) was illicit or immoral. Here, the object of the ordinance (zoning for industrial use) was not illicit or immoral. The Petition alleges that an individual’s actions of corruption (Millet’s), rather than the object of Ordinance 90-27 (zoning for industrial use), were illegal.

On the other hand, where the object of a contract is legal, the contract cannot be an absolute nullity even where the contract was fraudulently obtained. In *Noble v. Estate of Melius*, 10-549 (La. App. 5 Cir. 3/9/11); 62 So. 3d 222, the plaintiff alleged that a land sale was an absolute nullity because the property sold did not exist. The trial court explained: “The sale of a plot of land is not illegal. Even the sale of no land does not make the contract illegal. If the petition is arguing that the

sale was of an object that is non-existent, the buyer was defrauded. An action for a fraudulent sale is a relative nullity.” *Id.* at 225.²⁰

Plaintiffs’ allegations are at best a question of whether Millet committed fraud or imposed duress on the Parish Council to influence their consent. As such, if the Civil Code articles on the subject of Nullity of Contracts apply, Plaintiffs’ allegations may only relate to a relative, rather than an absolute, nullity. La. Civ. Code art. 2030 provides that where a contract is contrary to statute, it is an absolute nullity; whereas La. Civ. Code art. 2031 provides that where a contract violates a rule intended for the protection of the parties to the contract (e.g., capacity or consent), the contract is a relative nullity. Grounds for relative nullity based on consent include duress and fraud. *See* La. Civ. Code art. 2032; *Hawkins v. Willow Inc.*, 2015-71 (La. App. 5 Cir. 11/19/15); 181 So. 3d 210, 217, *writ denied*, 2015-2326 (La. 2/19/16); 187 So. 3d 463 (error, fraud, or duress renders a contract a relative nullity); *State ex rel. Gullett Gin Mfg. Co. v. Thompson*, 34 La. Ann. 758, 759 (1882) (“Fraud vitiates contracts and all acts, but does not operate as absolute nullity. Fraud may form the basis of relative nullity.”); *see also Tucker v. New Orleans Laundries, Inc.*, 145 So. 2d 365, 372 (La. Ct. App. 1962) (with respect to nullity of judgments under Civil Code articles 2001-2006, fraudulent conspiracy would at best render judicial sale a relative nullity). If a cause of action for relative nullity exists in this litigation, it would have long prescribed. *See* Sec. IV.B, *infra*.

2. Plaintiffs Fail to Allege Facts to Nullify Ordinance 90-27 *Ab Initio*.

Plaintiffs allege that Ordinance 90-27 violated the Parish's Land Use Regulation Section 113-410 when it called for a 300-foot buffer where an area zoned as I-3 abuts an area zoned as R-1.²¹ However, the pled facts do not allege a violation

²⁰ The appellate court affirmed the trial court’s judgment. *Id.* at 228.

²¹ Exhibit F at p. 415, Second Amended Petition for Declaratory and Injunctive Relief at Paragraphs 31-33.

of the Parish's Land Use Regulations, and, even if Ordinance 90-27 conflicted with a Parish Land Use Regulation, this is not a basis to invalidate the ordinance as null and void *ab initio*.

Ordinance 90-27 provides,

where ever [*sic*] an I-3 zone abuts a R-1 zone there shall be an I-1 buffer 300 feet within the I-3 zone separating the I-3 from R-1.²²

Section 113-410(1)(b) of the St. John the Baptist Parish Land Use Regulations provides,

Sites to be designated Industrial District Three (I-3) shall be so located a minimum 2,000 feet away from a concentration of one dwelling unit per acre (du/ac) gross area.²³

First, Ordinance 90-27 is not inconsistent with or a violation of the express provisions of Section 113-410(1)(b). Section 113-410(1)(b) does not say that the I-3 zone has to be 2000 feet from the residential R-1 zone in general, but rather that sites designated I-3 shall be 2000 feet from an area where there is a concentration of one dwelling unit per acre (du/ac) gross area. Plaintiffs' Petition does not allege that there was a concentration of one dwelling unit per acre (du/ac) gross area within 2000 feet of the site to be designated I-3 at the time of the adoption of Ordinance 90-27.

Regardless, the provision providing for an additional I-1 buffer within the I-3 zone itself is actually an 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. While the Parish Council cannot violate its own Home Rule Charter, it can amend, repeal, modify or make exceptions to ordinances that it has authority to adopt. The Home Rule Charter provides that the

²² Exhibit F at p. 415, Second Amended Petition for Declaratory and Injunctive Relief at Paragraph 31, and Exhibit F at p. 257, Exhibit C to First Amended Petition.

²³ See also Exhibit F at p. 415, Second Amended Petition for Declaratory and Injunctive Relief at Paragraph 33.

Parish Council shall be vested with and shall exercise all legislative power in the Parish. *See* St. John the Baptist Parish Home Rule Charter, Article III(A)(7)(a). Accordingly, the Parish Council had the authority pursuant to its Home Rule Charter to adopt zoning ordinance provisions providing for a 2000-foot buffer between industrial and certain residential property. Similarly, it had authority to amend, repeal, or modify and adopt a supplement to that rule by providing for a 300 foot I-1 buffer in an I-3 zone abutting an R-1 zone. The 300-foot buffer provided for in Ordinance 90-27 is not a violation of the 2000-foot buffer provision, because the 300-foot buffer supplements and is not inconsistent with the 2000-foot provision.

In its Written Reasons for Judgment, the district court concluded that the Plaintiffs stated a cause of action because they allege that Ordinance 90-27 violated St. John the Baptist Parish's own Land Use Regulations.²⁴ As support for its findings, the district court cited the holding in *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), that an ordinance that violated a parish's Home Rule Charter was null and void *ab initio*. However, here the Plaintiffs are not alleging that Ordinance 90-27 violates the St. John the Baptist Home Rule Charter but rather its Land Use Regulations, which are zoning ordinances adopted by the Council and should be distinguished. In *McMahon*, the court states that the power of home rule government within its jurisdiction is as broad as that of the state, except when limited by the constitution, laws permitted by the constitution, or its home rule charter. *Id.* (citing *Francis v. Morial*, 455 So. 2d 1168, 1171 (La. 1984)). So, while the Parish Council could not violate its own Home Rule Charter, it can amend, repeal, modify or make exceptions to ordinances that it has authority to adopt.

²⁴ Exhibit D at p. 28, Written Reasons for Judgment at p. 6.

3. Plaintiffs Fail to Allege Facts to Support Nullification of Ordinance 90-27 for Failure to Follow Enactment Procedures.

Plaintiffs allege that Ordinance 90-27 was not authenticated as required by Art. VI, Sec. F(1) of the Parish's Home Rule Charter.²⁵ However, this alleged fact, if proven, is insufficient to nullify the Ordinance. While Louisiana courts have found that failure to comply with "statutory procedures regulating *enactment* of zoning laws" will invalidate a zoning ordinance, the authentication of an ordinance is not part of the Parish's ordinance enactment procedures. *See Schmitt v. City of New Orleans*, 461 So. 2d 574, 577 (La. App. 4 Cir. 1984) (citing *De Latour v. Morrison*, 34 So. 2d 783 (La. 1948); *State ex rel Holcombe v. City of Lake Charles*, 144 So. 502 (1932); *Kirk v. Town of Westlake*, 421 So. 2d 473 (La. App. 3 Cir. 1982)). The Parish's procedures for enacting an ordinance are found in Art. VI, Sec. B of the Parish's Home Rule Charter, which is entitled "Enactment of an ordinance." These procedures include procedures for introducing the ordinance, publication in the official parish journal, public hearings, and adoption of an ordinance. Art. VI, Sec. B(3)(h) specifically states that after these procedures are followed, "An ordinance shall be *enacted* at a public meeting, when voted upon favorably by at least a majority of the members of the parish council." Plaintiffs' Petition does not allege a failure to comply with any of the enactment procedures in Art. VI, Sec. B of the Home Rule Charter. Accordingly, applying Plaintiffs' allegations to Home Rule Charter Art. VI, Sec. B(3)(h), Ordinance 90-27 was "enacted" when the Parish Council held a unanimous vote of eight (8) yeas to zero (0) nays with one recusal at its public meeting on April 19, 1990.²⁶

On the other hand, Plaintiffs' allegation that Ordinance 90-27 was not authenticated arises out of an entirely different section of the Home Rule Charter:

²⁵ Exhibit F at p. 445, Second Amended Petition for Declaratory and Injunctive Relief at Paragraph 208.

²⁶ Exhibit F at p. 413, Second Amended Petition for Declaratory and Injunctive Relief at Paragraph 18, and Exhibit F at p. 257, Exhibit C to First Amended Petition.

Art. VI, Sec. F, which is entitled “Authentication & recording, printing and distribution of ordinances and resolutions” and provides that the Council secretary “shall authenticate by his signature . . . all approved ordinances.” Authentication is clearly not a “statutory procedure regulating the enactment of zoning laws.” In its Written Reasons for Judgment, the district court relies on the above-cited cases. But, in each of these cases, the procedural defects held to be fatal all involved non-compliance with procedures for publishing the proposed ordinance or conducting a public hearing – the same kind of procedures the Parish classifies as procedures for enacting an ordinance under its Home Rule Charter. *See Schmitt v. City of New Orleans*, 461 So. 2d at 577 (failure to comply with procedures for publication); *State ex rel Holcombe v. City of Lake Charles*, 144 So. at 503-04 (same); *De Latour v. Morrison*, 34 So. 2d at 784-85 (failure to comply with notice and hearing procedures); *Kirk v. Town of Westlake*, 421 So. 2d at 475 (same). In addition, the Louisiana Supreme Court has held that when an ordinance is enacted in substantial compliance with legislative direction, the ordinance is not null. In *Shautin v. Bd. of Comm'rs of St. Landry & St. Martin Gravity Drainage Dist. No. 1*, 107 So. 897, 900 (La. 1926), the Court found that where two parishes adopted valid ordinances to create a drainage district, irregularities resulting from noncompliance with directory provisions of the law could not nullify the ordinance. Here, Plaintiffs have not alleged that there were procedural deficiencies in the enactment of Ordinance 90-27. The only deficiency alleged is a directive that the council secretary authenticate the “approved ordinance” by his signature *after* the ordinance was enacted.

B. Exception of Prescription

In its Written Reasons for Judgment, the district court concluded that prescription cannot run against the Plaintiffs’ cause of action because the ordinance challenged could potentially be, in effect, no law. As support, the district court relies upon *McMahon v. City of New Orleans*, 2018-0842, p.6 (La. App. 4 Cir. 9/4/19);

280 So. 3d 796 (citing *Vieux Carre Property Owners Association, Inc. v. City of New Orleans*, 167 So. 2d 367 (1964)) where the court states that “an **unlawful** ordinance is in reality no law and in legal contemplation is an inoperative as if it had never been passed.” (emphasis added). However, Ordinance 90-27 is distinguished from the ordinance in *McMahon*, because it is not unlawful and cannot result in an absolute nullity that does not prescribe. As demonstrated, the 300-foot buffer provision within Ordinance 90-27 and the alleged failure to authenticate the Ordinance do not render it unlawful.

Plaintiffs’ allegations of fraud and duress, even if the Civil Code articles on the subject of Nullity of Contracts are found to apply, are at best allegations of a relative nullity that would have prescribed pursuant to Louisiana Civ. Code art. 2032. Article 2032 provides a prescriptive period of five years from when fraud was discovered or from when duress ceased. As alleged, any purported duress would have ceased once Ordinance 90-27 was passed by the Parish Council on April 19, 1990.²⁷ As alleged, any purported fraud would have been discovered once Millet was convicted on April 25, 1996.²⁸ In either case, an action for relative annulment of Ordinance 90-27 based upon those actions has long since prescribed.

VII. CONCLUSION AND PRAYER FOR RELIEF

Intervenor respectfully requests that its writ application be granted, and the district court’s judgment reversed. The district court erroneously denied Intervenor’s exceptions of No Cause of Action and Prescription for the reasons stated above.

²⁷ Exhibit F at p. 413 and 416, Second Amended Petition for Declaratory and Injunctive Relief at Paragraphs 18 and 42.

²⁸ Exhibit F at p. 411, Second Amended Petition for Declaratory and Injunctive Relief at Paragraph 12.

Respectfully submitted,



Louis Buatt (Bar No. 19503)

lbuatt@liskow.com

LISKOW & LEWIS, APLC

822 Harding Street

Lafayette, LA 70503

Telephone: (337) 232-7424

Facsimile: (337) 267-2399

Paul M. Adkins (Bar No. 14043)

padkins@liskow.com

LISKOW & LEWIS, APLC

450 Laurel Street, North Tower

Baton Rouge, LA 70801

Telephone: (225) 341-4660

Facsimile: (225) 341-5653

James L. Breaux (Bar No. 26817)

jlbreaux@liskow.com

Clare M. Bienvenu (Bar No. 29092)

cbienvenu@liskow.com

LISKOW & LEWIS, APLC

701 Poydras Street, Suite 5000

New Orleans, LA 70139-5099

Telephone: (504) 581-7979

Facsimile: (504) 556-4108

***Attorneys for Intervenor/Applicant
Greenfield Louisiana, LLC***

AFFIDAVIT OF VERIFICATION AND SERVICE

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally came and appeared:

Clare M. Bienvenu

who being duly sworn deposed and say:

1. She is counsel for Intervenor/Applicant, Greenfield Louisiana, LLC, and that she prepared, read and reviewed the foregoing Writ Application and hereby verifies that all of the allegations of fact contained therein are true and correct to the best of her knowledge, information and belief at the time of this verification;

2. In compliance with Rule 4-4 and 4-5 of the Uniform Rules Courts of Appeal copies of this Original Application for Writ have 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 Highway 18, Suite 107, Edgard, LA 70049, telephone number (985) 497-5580, fax number (985) 497-5572; and upon all parties and their counsel of record as listed below, via e-mail, and/or Federal Express, and/or United States mail, on this 10th day of June, 2022:

Pamela C. Spees
pspees@ccrjustice.org
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012
Tel. (212) 614-6431
Fax (212) 614-6469
Counsel for Plaintiffs/Respondents

William P. Quigley
Quigley77@gmail.com
Professor of Law
Loyola University College of Law
7214 St. Charles Avenue
New Orleans, LA 70118
Tel. (504) 710-3074
Fax (504) 861-5440
Counsel for Plaintiffs/Respondents

Samuel J. Accardo, Jr.
accardo@rtconline.com
Accardo Law Firm, LLC
325 Belle Terre Blvd., Suite A
LaPlace, LA 70068
Tel. (985) 359-4300
Fax (985) 359-4303

Counsel for Defendants



SWORN TO AND SUBSCRIBED BEFORE

ME THIS 10th DAY OF JUNE, 2022



NOTARY PUBLIC

Alexander J. Baynham
Notary Public
BAR #36369
State of Louisiana
My Commission is issued for life.