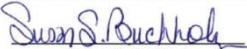


THE DESCENDANTS PROJECT, JOCYNTIA
BANNER, AND JOYCEIA BANNER
VERSUS
ST. JOHN THE BAPTIST PARISH, THROUGH
ITS CHIEF EXECUTIVE OFFICER, PARISH
PRESIDENT JACLYN HOTARD, ET AL.

NO. 22-C-264
FIFTH CIRCUIT
COURT OF APPEAL
STATE OF LOUISIANA

FIFTH CIRCUIT COURT OF APPEAL
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS


Susan S. Buchholz
First Deputy, Clerk of Court

June 29, 2022

Susan Buchholz
First Deputy Clerk

IN RE GREENFIELD LOUISIANA, LLC

APPLYING FOR SUPERVISORY WRIT FROM THE FORTIETH JUDICIAL DISTRICT COURT,
PARISH OF ST JOHN THE BAPTIST, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE
J. STERLING SNOWDY, DIVISION "C", NUMBER 77,305

Panel composed of Judges Susan M. Chehardy,
Stephen J. Windhorst, and Hans J. Liljeberg

WRIT DENIED

Relator, Greenfield Louisiana, LLC (“Greenfield”), intervenor, seeks review of the trial court’s May 10, 2022 judgment denying Greenfield’s peremptory exceptions of no cause of action and prescription. Finding no error in the trial court’s judgment, we deny the writ application.

Factual Background and Procedural History

On November 21, 2021, plaintiffs, the Descendants Project, Jocyntia Banner, and Joyceia Banner,¹ filed a writ of mandamus challenging the validity of St. John the Baptist Parish Ordinance 90-27 (“Ordinance”), which was adopted by the St. John the Baptist Parish Council by unanimous vote in 1990. Specifically, plaintiffs requested that the trial court declare the Ordinance to be an absolute nullity and order the zoning designation enacted thereunder to be removed from Parish zoning maps and documents. Plaintiffs’ petition named as defendants, St. John the Baptist Parish (“Parish”), the St. John the Baptist Parish Council (“Parish Council”), the St. John the Baptist Parish Planning Commission (“Planning Commission”), and the Parish Department of Planning and Zoning (“Planning and

¹ The plaintiffs include residents of land neighboring the land owned by Greenfield.

Zoning”). The Ordinance rezoned a tract of land from R-1, single family residential, to I-3, an industrial zoning district permitting various industrial uses. Ordinance 90-27 reflects that the proposed zoning map submitted with the Ordinance would be amended to reflect that “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.” Plaintiffs have alleged that the Ordinance is absolutely null and void *ab initio* because it conflicts with Section 113-410(1)(b) of the St. John the Baptist Land Use Regulations, which provides: “Sites to be designated Industrial District Three (I-3) shall be so located a minimum of 2,000 feet away from a concentration of one dwelling unit per acre (du/ac) gross area.”

Relator, Greenfield, the current owner of the Ordinance I-3 rezoned land, is undergoing construction of a grain elevator on the property. After plaintiffs filed suit seeking to invalidate the 1990 Ordinance on the basis that it is an absolute nullity and, therefore, void *ab initio*, Greenfield intervened into the action on December 2, 2021. On December 10, 2021, Greenfield filed a peremptory exception of no cause of action alleging plaintiffs have failed to satisfy the requirements under La. C.C. arts. 7 and 2030 to establish that the Ordinance is an absolute nullity; 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 also filed a peremptory exception of prescription alleging that even if plaintiffs could establish the Ordinance was a relative nullity, their cause of action has long prescribed.²

On January 17, 2022, plaintiffs filed their first amended petition for declaratory and injunctive relief, which was followed by the filing of a second amended petition on February 14, 2022. Greenfield answered plaintiffs’ amended petition and asserted peremptory exceptions of no cause of action, no right of action, and prescription, reasserting and incorporating the arguments made in its previously filed exceptions to plaintiffs’ petition seeking mandamus relief.

Greenfield’s exceptions came for hearing on April 28, 2022, and following argument, the trial judge orally denied the exceptions. On May 10, 2022, the trial judge issued a written judgment and assigned written reasons. In denying Greenfield’s exceptions, the trial judge found that plaintiffs’ allegations of conflict between Ordinance 90-27 and the St. John the Baptist Land Use Regulations states a cause of action, and that the Parish’s failure to authenticate Ordinance 90-27 also states a cause of action.³ The court further found, however, that despite plaintiffs’ argument to the contrary, there is no precedent for applying La. C.C. articles 7 and 2030 to the nullity of an Ordinance.

² The Parish filed an exception of unauthorized use of a summary proceeding, which the trial judge granted on December 21, 2021. The trial court allowed plaintiffs to file an amended petition on January 17, 2022. Based on the ruling to allow plaintiffs to amend, the trial court stayed Greenfield’s exceptions of no cause of action and prescription.

³ The trial court noted in its written reasons for judgment that “many of the arguments presented by the Plaintiffs have no bearing on the validity *vel non* of Ordinance 90-27. That residents of Wallace, neighboring historic and cultural sites, and Lac des Alleman allegedly face ‘potential threat’ from a new heavy industrial facility seeking to locate on the Wallace tract is of no moment to the validity of an ordinance created through the legislative process. Plaintiffs do not claim that these historic and cultural sites are protected by law therefore making the Wallace tract immune from being zoned in the manner it was. Likewise, because the Parish Planning and Zoning Commission has allegedly presented conflicting zoning maps does not invalidate Ordinance 90-27. Confusion of this nature within government cannot act to invalidate laws where they are presumably validly created through the legislative process.”

Greenfield now seeks review of the trial court’s ruling denying its exceptions. Specifically, Greenfield avers the trial court erred in denying the exception of no cause of action because plaintiffs’ allegations regarding the nullity of Ordinance 90-27 are deficient: (1) pursuant to La. C.C. arts. 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. Greenfield further argues the trial court erred in denying its exception of prescription because any cause of action pled by plaintiffs has long prescribed.

No Cause of Action

In reviewing a trial court’s ruling on a peremptory exception of no cause of action, an appellate court considers this question of law *de novo*. *Am. Rebel Arms, L.L.C. v. New Orleans Hamburger & Seafood Co.*, 15-599 (La. App. 5 Cir. 2/24/16), 186 So.3d 1220, 1222. The function of the exception of no cause of action is to question whether the law extends a remedy against the defendant to anyone under the factual allegations of the petition. In other words, the exception tests the legal sufficiency of the petition by determining whether the plaintiff is afforded a remedy in law based on the facts alleged in the pleading. The exception is triable only on the face of the petition, accepting as true the well-pleaded facts therein. Thus, the standard for granting an exception of no cause of action is not the likelihood that the plaintiff will prevail at trial; rather, it is whether, on the face of the petition, accepting all allegations as true, the petition states a valid cause of action for relief. *Id.* If the petition states a cause of action as to any ground or portion of the demand, the exception of no cause of action generally should be overruled. *Id.* See also *Everything on Wheels Subaru, Inv. v. Subaru S., Inc.*, 616 So.2d 1234, 1236 (La. 1993). On review, the appellate court asks whether, in the light most favorable to the plaintiff and every doubt resolved in the plaintiff’s favor, the petition states any valid cause of action. *Am. Rebel, supra*.

At the outset, to the extent Greenfield argues in its writ application that the trial court erred in overruling his exception of no cause of action on the basis that plaintiffs’ allegations that the Ordinance is an absolute nullity under La. C.C. arts. 7 and 2030 states a cause of action, we find that the trial court’s written reasons for judgment clearly indicate that it found that these Articles *had no bearing* on his decision to overrule Greenfield’s exception.⁴ Specifically, the trial court stated that “none of the Court’s research regarding nullity of an ordinance has produced arguments on either article.” Consequently, as the trial judge’s reasons for judgment indicate that it agrees with Greenfield on this issue, we do not address whether the trial court’s finding in this regard was in error.

Greenfield next argues the trial court erred in finding that plaintiffs’ petition states a cause of action for absolute nullity merely because they allege that the Ordinance violates the Parish’s own Land Use Regulations. Specifically, Greenfield contends that because plaintiffs failed to allege an actual violation of the Parish’s Land Use Regulations at the time of the adoption of the Ordinance—*i.e.*, that there was a concentration of one dwelling unit per acre (du/ac) gross area within 2,000 feet of the site to be designated I-3—their claim fails to set forth

⁴ La. C.C. art. 7 states that “[p]ersons 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.” Article 2030 provides that “[a] contract is absolutely null when it violates a rule of public order, as when the contract is illicit or immoral. A contract that is absolutely null may not be confirmed. Absolute nullity may be invoked by any person or may be declared by the court on its own initiative.”

sufficient facts to support a claim for absolute nullity of the Ordinance. Additionally, Greenfield argues that the 300-foot buffer required by the Ordinance is not a violation of the Parish's Land Use Regulations, but rather an "additional regulation supplementing" the 2,000-foot requirement in Section 113-410(1)(b).

In its reasons for judgment, the trial court, relying on *McMahon v. City of New Orleans*, 18-842 (La. App. 4 Cir. 9/4/19), 280 So.3d 796, 800, writ denied, 19-01562 (La. 11/25/19), 283 So.3d 498, concluded that plaintiffs' petition stated a cause of action because they allege the Ordinance violated the Parish's own Land Use Regulations. In *McMahon*, the court concluded that an ordinance that violated a parish's Home Rule Charter was null and void *ab initio* because 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. Greenfield argues the trial court erred in relying on *McMahon* because here, plaintiffs are not alleging that the Ordinance violates the Parish's Home Rule Charter, but rather, violates its Land Use Regulations, which are zoning ordinances adopted by the Parish Council and, thus, should be distinguished. Greenfield contends that while the Parish Council can not violate its own Home Rule Charter, it can amend, repeal, modify or make exceptions to ordinances that it has the authority to adopt. Greenfield argues that even if the Ordinance conflicts with a Parish Land Use Regulation, this is not a basis for invalidating the Ordinance as null and void *ab initio*.

We find that Greenfield's arguments address the merits of the allegations set forth in plaintiffs' petition, which are not appropriate for consideration on an exception of no cause of action. Accepting all of the allegations in plaintiffs' petition as true—that the Ordinance violated the Parish's Land Use Regulations at the time the Ordinance was adopted because the Ordinance reduced the buffer separating the I-3 zoned property and the R-1 zoned property from 2,000 feet to 300 feet—we find that plaintiffs' petition states a cause of action for absolute nullity of the Ordinance.

Greenfield also argues the trial court erred in finding that plaintiffs' have alleged facts sufficient to support nullification of the Ordinance for failure to follow enactment procedures. While plaintiffs' petition alleges that the Parish Council's secretary failed to authenticate the Ordinance, Greenfield contends plaintiffs have alleged no facts of a failure to comply with any "enactment procedures" set forth in Art. VI, Sec. B of the Parish's Home Rule Charter. According to Greenfield, "authentication" of an ordinance is found in Article VI, Sec. F of the Home Rule Charter and is "clearly not a 'statutory procedure' regulating the enactment of zoning laws."

Louisiana courts have found that, while the validity of an ordinance adopted by a legislative body is presumed, zoning laws are in derogation of the rights of private ownership. *Faubourg Marigny Imp. Ass'n, Inc. v. City of New Orleans*, 15-1308 (La. App. 4 Cir. 5/25/16), 195 So.3d 606, 620. As a result, courts consistently require strict compliance with the statutory procedures regulating enactment of zoning laws. *Id.* Failure to comply with such procedural restrictions, accordingly, is fatal to the validity of the zoning ordinance. *Id.* Here, plaintiffs have alleged that the Parish Council failed to follow its own statutory procedure for enactment of the Ordinance when the secretary allegedly failed to properly authenticate it in accordance with the Parish's Home Rule Charter. Accepting this allegation as true, the trial court ruled that plaintiffs had stated a cause of action.

We agree. Reviewing plaintiffs' petition in the light most favorable to the plaintiff and resolving every doubt in plaintiffs' favor, we find the petition states a valid cause of action for nullity of the Ordinance.

Exception of Prescription

In its written reasons for judgment, the district court concluded that if the Ordinance is, in effect, "no law," then prescription cannot run against plaintiffs' cause of action. See *McMahon, supra* (citing *Vieux Carre Property Owners Association, Inc. v. City of New Orleans*, 167 So.2d 367 (1964)), where the court held that "an unlawful ordinance is in reality no law and in legal contemplation is as inoperative as if it had never been passed." In the event plaintiffs should prevail on their claim that the Ordinance is an absolute nullity and void *ab initio*, it is imprescriptible. In this, the trial court did not err.

Upon *de novo* review, accepting as true the well-pleaded facts asserted in plaintiffs' second amended petition for declaratory and injunctive relief, we find that the allegations contained therein assert a valid cause of action for nullity of the Ordinance. Further, because the Ordinance challenged could potentially be, in effect, no law, prescription cannot run against plaintiffs' cause of action. Accordingly, we find no error in the trial court's May 10, 2022 judgment overruling Greenfield's peremptory exceptions of no cause of action and prescription. This writ application is denied.

Gretna, Louisiana, this 29th day of June, 2022.

**SMC
SJW
HJL**

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
HANS J. LILJEBERG
JOHN J. MOLAISSON, JR.

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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **06/29/2022** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

22-C-264

E-NOTIFIED

40th District Court (Clerk)
Honorable J. Sterling Snowdy (DISTRICT JUDGE)
Samuel J. Accardo, Jr. (Respondent)

Pamela C. Spees (Respondent)
William P. Quigley (Respondent)
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