

40th JUDICIAL DISTRICT COURT
PARISH OF ST. JOHN THE BAPTIST
STATE OF LOUISIANA

The Descendants Project, Jocyntia Banner,
and Joyceia Banner,

Civil Action: 77305

Plaintiffs,

v.

Division C

St. John the Baptist Parish, through its Chief
Executive Officer, *et al*

Defendants.

**PLAINTIFFS' OPPOSITION TO DEFENDANTS'
MOTION TO CONSOLIDATE**

This Court should deny Defendants' motions to consolidate this matter with a recently-filed case pending before Judge Nghana Lewis, bearing Docket No. 80394. The instant matter dealt with events that took place over three decades ago and should not be consolidated and confused with a new suit brought to address concerns about current zoning irregularities on the part of current Parish Council members and officials. The two cases do not, and in fact, could not, arise out of the same set of facts and circumstances, as Defendants suggest. In addition, the two cases are in very different postures and consolidation would only serve to delay this proceeding, in which the Court has already rendered a judgment, and bog it down in matters that are not relevant. In fact, Judge Lewis has already stated that transfer and consolidation of the two matters is not appropriate.¹

BRIEF FACTUAL AND PROCEDURAL SUMMARY

The Parish Defendants filed a Motion to Consolidate on October 18, 2023, and a hearing date was set for December 14, 2023. On the evening of December 4, 2023, less than 10 days before the hearing, Defendant Greenfield Louisiana, LLC ("Greenfield") filed a Motion to Consolidate, with a legal argument that is virtually identical to the Parish's. Greenfield's brief differs from the Parish's only in that it introduces additional distorted characterizations of the claims and proceedings in the other matter, which Plaintiffs dispute, in an apparent attempt to

¹ See Order of Nov. 13, 2023, in *The Descendants Project v. St. John the Baptist Parish, et al*, Docket No. 80394, annexed hereto as Exhibit A at n. 1.

confuse and conflate that case with this one – which helps demonstrate why the two should be kept separate.

What is true and very clear in Greenfield’s brief is that Judge Lewis has adjudged it necessary and appropriate to issue one “temporary restraining order and two preliminary injunctions” against the Parish’s conduct in light of the allegations and evidence adduced so far in that case. Greenfield Br. at p. 3.

In this case, this Court ruled on August 4, 2023, that a zoning ordinance passed by the St. John the Baptist Parish Council in 1990 was an absolute nullity. The Court based this finding on the fact that the Parish Council had not followed parish law when it passed the ordinance more than thirty years ago.

The thrust of the new lawsuit is that the Parish Government is *currently* failing to follow state and parish law governing amendments to zoning ordinances in their renewed efforts to rezone the property at issue. Plaintiffs made clear in their recently-filed complaint that their concern is with the questionable actions and lack of proper procedure on the part of the Parish Council in its current efforts: “The nullification of the 1990 rezoning ordinance means the land is zoned R-1. ***Any attempt to rezone it must be done pursuant to state and parish law governing amendments to zoning ordinances.***”²

Most recently, on November 13, 2023, Judge Lewis issued a second Preliminary Injunction further enjoining the Parish Council from “rezoning *residential* property that is the subject of this legal proceeding in a manner that contradicts state and/or parish law governing amendments to official zoning maps and zoning ordinances.” See Exhibit A (bold and italic emphasis in original, underlined emphasis added). While Greenfield discusses Judge Lewis’ order in its brief, Greenfield Br. at 3, it fails to mention that she also stated that in that order her view that consolidation is not appropriate. *Id.* at n. 1.

Defendants also suggest but do not bother to explain how failure to consolidate would result in duplicative discovery and motions as this matter is post-judgment,³ nor how discovery relating to events that took place thirty years ago involving actions by different people could be relevant to or duplicative of discovery relating to recent actions by the current generation of

² Emergency Petition for Injunctive Relief with Request for Expedited Consideration for Issuance of a Temporary Restraining Order, Exhibit 1 annexed to the Parish’s Motion to Consolidate, at p. 1.

³ Parish Motion to Consolidate at ¶ 3; Greenfield Motion to Consolidate at ¶ 3 (“Absent consolidation of these cases, the litigants will engage in duplicative discovery, motion practice and class proceedings.”).

council members and parish leadership. In addition, the case pending before Judge Lewis is awaiting a hearing on Plaintiffs' motion for contempt of court regarding the Parish Council's violation of that court's order, providing further reason to maintain separation between these cases. Finally, as noted above, Judge Lewis has already stated her view that consolidation was not appropriate.

Contrary to Defendants' assertions, consolidation would only risk confusion, and cause undue delay, judicial inefficiency and procedural inconvenience in *this* matter, all of which would prejudice the Plaintiffs.

LAW AND ARGUMENT

Pursuant to La. C. Civ. Proc. Art. 1561(B)(4), a court "shall not" order consolidation of actions if it would prejudice the rights of any party. While the language of La. C. Civ. Proc. Art. 1561(A) providing that a court "may" order consolidation is discretionary in nature, *see Alleman v. Joffrion*, 411 So.2d 1142, 1144 (La.App. 1st Cir.), *writ denied*, 415 So.2d 945 (La. 1982), the language in Art. 1561(B) is clearly not.

The authorities offered by Defendants in support of their motions merely stand for the proposition that cases arising from the same set of facts and circumstances may be consolidated at the discretion of the court. But, as noted above, these two cases do not arise out of the same set of facts and circumstances – nor could they, as they occurred over thirty years apart and involve actions by different people.

Defendants seek to consolidate into this matter an action that was filed *after* this Court rendered its judgment in the instant matter to address current procedural irregularities on the part of the current Parish Council and leadership in their apparent efforts to rezone the property at issue. As noted above, Plaintiffs' concern that new rezoning efforts be in accordance with applicable state and parish law is clearly stated in the Emergency Petition for Injunctive Relief, annexed as Exhibit 1 to the Parish's Motion to Consolidate, and in Judge Lewis' Order of Nov 13, 2023, annexed hereto.

These allegations and claims are separate and distinct from the procedural irregularities that nullified the Ordinance at issue in *this* proceeding more than thirty years ago. The two cases do not and could not arise from the same set of facts and circumstances. Moreover, the cases are in very different postures, with the instant matter being post-judgment; and the newly filed case

in the early stages of discovery, and awaiting a hearing on Plaintiffs' Motion for Contempt of Court on allegations of the Parish's violation of Judge Lewis' order.

CONCLUSION

WHEREFORE, because consolidation would result in procedural inconvenience and confusion, as well as delay and prejudice to Plaintiffs, Plaintiffs request that this Court deny Defendants' Motion to Consolidate.

Dated: December 6, 2023

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon all known counsel of record by electronic mail.

Lake Charles, Louisiana, this 6th day of December, 2023



Pamela C. Spees

40TH JUDICIAL DISTRICT COURT
ST. JOHN THE BAPTIST PARISH
STATE OF LOUISIANA

DOCKET NO. 80394

FILED: _____

THE DESCENDANTS PROJECT

V.

ST. JOHN THE BAPTIST PARISH, ET. AL.

DIVISION: B

DEPUTY CLERK: _____

ORDER

This matter came for hearing Friday, November 10, 2023, on an *Emergency Motion to Enforce Preliminary Injunction and for Modification to Include Additional Relief in Favor of Petitioner, with Request for Expedited Consideration*, filed by Petitioner The Descendants' Project; a *Motion to Strike Reply Brief*, filed by Intervenor Greenfield, Louisiana, LLC; and a *Motion to Quash Notice and Subpoena and for Protective Order*, filed by Parish President Jaclyn Hotard.

Considering the evidence submitted by the parties and the entire record of this proceeding, and, further, considering the applicable provisions of state law, the Home Rule Charter of St. John the Baptist Parish, the August 21, 2023 Temporary Restraining Order entered by this Court; and the August 4, 2023 judgment in the *Descendants' Project, et. al. v. St. John the Baptist Parish, et. al.* 77305;ⁱ

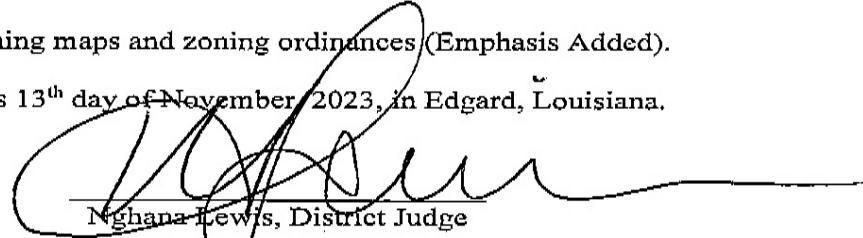
IT IS ORDERED, ADJUDGED, and DECREED that Intervenor Greenfield, Louisiana, LLC's *Motion to Strike* is **DENIED** as **MOOT**;ⁱⁱ and

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that the *Motion to Quash Notice and Subpoena and Protective Order* filed by Parish President Jaclyn Hotard is **DENIED**;ⁱⁱⁱ and

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that a Preliminary Injunction is hereby **GRANTED, RENDERED, ISSUED, AND ORDERED**, prohibiting consideration of, processing of, or any legal action taken, whatsoever, on the September 21, 2023, Change of Zoning District Application submitted to the St. John Planning & Zoning Commission, by Parish President Jaclyn Hotard, allegedly on behalf of the St. John the Baptist Parish Council, in accordance with language set forth in Resolution R23-161, *until this Court Orders otherwise or modifies or vacates this Order* (Emphasis Added);^{iv} and

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that St. John the Baptist Parish Council is prohibited and enjoined from rezoning *residential* property^v that is the subject of this legal proceeding in a manner that contradicts state and/or parish law governing amendments to official zoning maps and zoning ordinances (Emphasis Added).

So **ORDERED** this 13th day of November, 2023, in Edgard, Louisiana.



Nghana Lewis, District Judge

Please Immediately Notify All Parties by Facsimile, Email, and Certified Mail

ⁱ An appeal is currently pending in 77305. Transfer and consolidation of this matter with 77305 is, thus, not appropriate. *Williams v Jefferson Parish Credit Union*, 145 So.3d 491 (5th Cir.) June 24, 2014.

ⁱⁱ With leave of the Court and in accordance with time delays set by the Court during the November 10, 2023 hearing, Plaintiff sought leave to amend its original petition for injunctive relief on November 10, 2023. This filing cures the procedural challenge raised by Intervener.

ⁱⁱⁱ Parish President Hotard was represented by two (2) attorneys during the November 10, 2023 hearing. The Court ordered delimiting parameters for Petitioner's questioning of Parish President Hotard, which excluded any reference to alleged ethics violations. Further, the Court found that Parish President Hotard, as the executive branch of parish government, cannot cloak herself with legislative privilege, to avoid testifying in these proceedings. Council for Parish President conceded that the parish president represents the executive branch of government and that for the balance of power (checks and balances) and protection of its citizens, the United States, at federal, state, and local levels, has three branches of government.

^{iv} Because the Court was presented with no testimony or documentary evidence to the contrary, during the November 10, 2023 hearing, it concludes that Parish President submitted the September 21, 2023 Change of Zoning District Application pursuant to the resolution passed by the Parish Council on August 22, 2023.

^v The Change of Zoning District Application, P2R-1463, characterizes the current property use and structures thereon as "agriculture"; this characterization is, at best, incomplete, and, at worse, dissembling, because the property that is the subject of the application is not exclusively "agriculture" in theory or in fact. The property at issue in the application includes residential property. Further, the fact that the parish has yet to reclassify the use and zoning of the properties at issue in these proceedings on the Parish's official zoning maps, in light of the August 4, 2023 judgment points to a lack of transparency and forthrightness by parish government, with respect to the residential property at issue in this proceeding.