

**40<sup>th</sup> JUDICIAL DISTRICT COURT**

**PARISH OF ST. JOHN THE BAPTIST**

**STATE OF LOUISIANA**

**NO. 77305**

**DIVISION “C”**

**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.**

**FILED:** \_\_\_\_\_

\_\_\_\_\_  
**DEPUTY CLERK**

**MEMORANDUM IN SUPPORT OF GREENFIELD’S PEREMPTORY EXCEPTIONS  
OF NO CAUSE OF ACTION, NO RIGHT OF ACTION, AND PRESCRIPTION**

NOW INTO COURT, through undersigned counsel, comes intervenor, Greenfield Louisiana, LLC, a Delaware corporation (“Greenfield”), who asserts 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 (“Petition”).

**I. Background and Procedural History**

Ordinance 90-27 was adopted by the St. John the Baptist Parish Council (the “Parish Council”) on April 19, 1990, by a unanimous vote of eight (8) yeas to zero (0) nays with one recusal. Ordinance 90-27 zoned land now owned by Greenfield as I-3, which is an industrial zoning district permitting various industrial uses including grain elevators. The Plaintiffs, who include residents neighboring the land owned by Greenfield and rezoned pursuant to Ordinance 90-27, sought to nullify the ordinance pursuant to a writ of mandamus naming St. John the Baptist Parish (the “Parish”), the Parish Council, the Parish Planning Commission, and the Parish Department of Planning and Zoning as defendants. The Parish filed an Exception of Unauthorized Use of Summary Proceeding, which the Court granted on December 16, 2021. The Court allowed Plaintiffs to file an amended petition by January 17, 2022.

Greenfield intervened as owners of land zoned I-3 pursuant to Ordinance 90-27, and the Court granted Greenfield’s motion to intervene on December 16, 2021, as well. Based on the

Court's ruling to allow Plaintiffs to file an amended petition, the Court did not consider the exceptions of No Cause of Action and No Right of Action that had been filed by Greenfield.

On January 17, 2022, Plaintiffs filed their First Amended Petition for Declaratory and Injunctive Relief. On February 14, 2022, Plaintiffs filed their Second Amended Petition for Declaratory and Injunctive Relief. Greenfield now asserts 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. Greenfield additionally reasserts and incorporates the arguments contained in its Memorandum in Opposition of Mandamus and in support of Intervenor's Exceptions, filed on December 10, 2021.

## **II. Exception of No Cause of Action**

For purposes of the peremptory exception, a cause of action is defined as the operative facts that give rise to a plaintiff's right to judicially assert an action against the defendant. *Ramey v. DeCaire*, 03-1299 (La. 3/19/04), 869 So. 2d 114, 118. 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.* In ruling on an exception of no cause of action, the court reviews the petition and accepts well-pleaded allegations of fact as true. *Id.* Peremptory exceptions "may be pleaded at any stage of the proceeding in the trial court prior to a submission of the case for a decision." La. Code Civ. Proc. art. 928(B).

Plaintiffs' Second Amended Petition ("Petition") fails to set forth allegations entitling Plaintiffs to the relief sought. Plaintiffs seek 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 fail to allege facts that satisfy the legal standards of an absolute nullity under either Civil Code article. If contract law were to apply to Ordinance 90-27 – which it does not – Plaintiffs, at best, allege a relative nullity. But even that cause of action would fail because it would be long prescribed, and Plaintiffs would have no right of action.

### **A. The Petition does not allege absolute nullity under Civil Code art. 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 allege do not show that Ordinance 90-27 derogates from any enacted law.

**1. Ordinance 90-27 is not a “juridical act.”**

“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 was a “juridical act,” citing La. Civil Code art. 3471, cmt. c); *Succession of Crute*, 2016-0836 (La. App. 1 Cir. 8/30/2017); 226 So. 3d 1161, 1173 (agreement between spouses is a “juridical act,” citing similar definition from Black's Law Dictionary (10th ed. 2014)); *see also Quaternary Res. Investigations, LLC v. Phillips*, 2018-1543 (La. App. 1 Cir. 11/19/20); 316 So.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 absolute nullity to an ordinance enacted according to legislative procedure. In this litigation, Plaintiffs have previously cited to *Davis v. Town of St. Gabriel*, 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. However, in *Davis*, the petition alleged that a town’s compromise **contract** (i.e., a settlement agreement to which the city was a party) was an absolute nullity. *Id.* at 543. Although the town had adopted the compromise contract by resolution, it was the contract itself, and not any associated resolution or ordinance, that the petitioner sought to be declared null. Similarly, the court in *Gurley v. City of New Orleans*, 5 So. 659 (La. 1889) invalidated a city **contract**, which had been passed by ordinance, because the contract was in violation of prohibitory law. Specifically, the court found that the city contract for the collection of taxes by one of the city’s officers violated a law providing for the collection of taxes by the corporate treasurer.

Given the foregoing, an ordinance enacted according to legislative procedure is not a juridical act governed by La. Civ. Code art. 7. Further, if the court were to address whether absolute nullity could be extended to an ordinance, it would be a case of first impression.<sup>1</sup>

**2. The Petition does not allege any enacted law from which Ordinance 90-27 derogates.**

The Petition does not allege 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), *writ denied*, 2021-01808 (La. 1/26/22) (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). The Petition has pointed to no enacted law from which Ordinance 90-27 derogates.

The Petition alleges that Millet was convicted of violations of 18 U.S.C. §§ 2, 1951 (extortion), 1952 (the Travel Act), and 1956 (money laundering), but these laws were applied to Millet's actions, and not to Ordinance 90-27. To the extent Plaintiffs assert that *Millet's actions* of "corrupt influencing" derogated from state laws or local ordinances prohibiting such acts of corruption, Plaintiffs have still failed to satisfy the legal requirements of La. Civ. Code art. 7. *See* Second Amended Petition, ¶¶ 205-6 ("Millet's actions [of corrupt influencing] derogated from parallel state laws"). Article 7 requires an analysis as to whether the "juridical act" derogated from an enacted law, and 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." A person's corrupt action cannot be "lawful."

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<sup>1</sup> Even if absolute nullity extends to ordinances – which it does not – La. Civ. Code art. 7 must be read in *pari materia* with the Civil Code articles on the subject of Nullity of Contracts, La. Civ. Code arts. 2030-35, particularly because Plaintiffs cite La. Civ. Code arts. 2030 and 2032 to support their argument that a cause of action for absolute nullity never prescribes and may be brought by anyone. *Detillier v. Kenner Reg'l Med. Ctr.*, 2003-3259 (La. 7/6/04); 877 So.2d 100, 103 ("[L]aws on the same subject matter must be interpreted in reference to each other."); *cf. Taylor v. Taylor*, 181 So. 543, 546 (La. 1938) (The legal usufructs provided for by various articles of the civil code, "being in *pari materia* must be governed by and conform to the rules established in the Code on the subject of 'Usufruct.'"). Accordingly, as discussed in Section II.C, Plaintiffs have at best alleged a relative nullity and La. Civ. Code art. 7 does not apply.

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 adopt the ordinance.<sup>2</sup> With respect to the Parish Council, the Petition does not allege that the council members acted arbitrarily or capriciously in enacting Ordinance 90-27, so as to invalidate the ordinance.<sup>3</sup>

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. As will be discussed in Section III, allegations that a juridical act was obtained by fraudulent means may be a cause of action for *relative* nullity, but allegations of fraud cannot support a cause of action for *absolute* nullity.

To the extent the Petition alleges that Ordinance 90-27 was not authenticated by the council secretary after receiving the Parish President's signature, any alleged omission by the council secretary is merely a formality and cannot create an absolute nullity. Where an ordinance is in substantial compliance with legislative direction, the ordinance is not null. *Shautin v. Bd. of Comm'rs of St. Landry & St. Martin Gravity Drainage Dist. No. 1*, 107 So. 897, 900 (La. 1926).<sup>4</sup> Ordinance 90-27 was enacted in substantial compliance with the Home Rule Charter. The Parish Council is vested with the authority to exercise all legislative power, including the adoption of zoning ordinances.<sup>5</sup> The Parish Council had the authority to adopt Ordinance 90-27, which it enacted through proper procedure. Section F of the Home Rule Charter addresses the formal

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<sup>2</sup> See Greenfield's Memorandum in Opposition of Mandamus and in support of Intervenor's Exceptions, filed on December 10, 2021, at Sec. II.C.2.

<sup>3</sup> As discussed in Greenfield's Memorandum in Opposition of Mandamus and in support of Intervenor's Exceptions, filed on December 10, 2021, at Sec. II.C.3 and C.4, zoning via an enacted ordinance is a discretionary action of a local legislative body. Such an ordinance will not be disturbed by the courts unless the result of the legislation is found to be arbitrary and capricious, thus resulting in an unconstitutional taking of property without due process of law. The Petition does not allege that the Parish Council acted arbitrarily and capriciously, and the Petition's allegations concerning public opposition to the ordinance, while relevant to the Parish Council's legislative decision, are irrelevant to this judicial proceeding. Likewise, the Petition's allegations relating to the property's current use and Greenfield's proposed use have no bearing on whether the Parish Council acted arbitrarily and capriciously in enacting Ordinance 90-27. See Greenfield's Memorandum in Opposition of Mandamus and in support of Intervenor's Exceptions, filed on December 10, 2021, at Sec. II.C.5 and C.8.

<sup>4</sup> The Louisiana Supreme Court did not apply La. Civ. Code art. 7 or La. Civ. Code art. 2030 to an ordinance in this case. The Court considered plaintiffs' demand for nullity of the ordinance and dismissed the demand based on the substantial compliance of the ordinance with legislative direction.

<sup>5</sup> See Greenfield's Memorandum in Opposition of Mandamus and in support of Intervenor's Exceptions, filed on December 10, 2021, at Sec. II.C.1.

recording and reproduction of an ordinance that has already been adopted and become effective under Sections B and C of the Home Rule Charter.

Further, the Petition’s allegations pertaining to conflicting survey maps do not demonstrate that Ordinance 90-27 was in derogation of any enacted law. Survey maps referenced in and annexed to a *private act of sale* of land have no relationship to any *enacted public law* from which Ordinance 90-27 might derogate. *See* Second Amended Petition, ¶¶ 83-97. Likewise, any alleged conflicting designation involved in a subsequent administrative subdivision of land by the Parish Planning Commission and Parish President cannot nullify a zoning ordinance previously enacted through the legislative procedure of the Parish Council. *Id.* The Petition also alleges that current conflicting zoning maps raise questions about the zoning process and status and that the “maps . . . violate the Parish’s own zoning ordinances.” *See* Second Amended Petition, ¶¶ 103-04. These allegations do not create a cause of action for the absolute nullity of Ordinance 90-27. They allege that the “maps” – not Ordinance 90-27 – do not comply with the Parish Code and that the zoning designation of a particular tract of land is in question. Conflicting maps regarding a particular tract of land regulated by Ordinance 90-27 cannot provide any basis to invalidate the entirety of Ordinance 90-27. To the extent that there are any conflicts between maps and an ordinance, the ordinance would control.<sup>6</sup>

**B. The Petition does not allege absolute nullity under La. Civ. Code art. 2030.**

Plaintiffs also allege that Ordinance 90-27 is an absolute nullity based on La. Civ. Code art. 2030, which 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 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.

**1. Ordinance 90-27 is not a contract.**

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

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<sup>6</sup> *See also* Greenfield’s Memorandum in Opposition of Mandamus and in support of Intervenor’s Exceptions, filed on December 10, 2021, at Sec. II.C.6.

apply to the legislative process.<sup>7</sup> See *Davis v. Town of St. Gabriel*, 809 So.2d at 547-48 (distinguishing between the town council’s procedure for enacting a zoning ordinance, which requires a public hearing, and the town council’s procedure for approving a contract, which does not require a public hearing). A zoning ordinance is a “law” and is the “expression of the [governmental body’s] legislative will.” *Id.* at 546-47; La. Civ. Code art. 2.

**2. The object of Ordinance 90-27 is not illegal or contrary to public order.**

If treated as a contract – which it should not be – 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 (restriction upon use of property not contrary to public policy).

An example of the object of a contract being illegal is found in *Mobley v. Harrel*, 571 So.2d 662, 665 (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.

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.<sup>8</sup>

Because the Parish Council is authorized to zone property pursuant to its Charter and state law, the object of Ordinance 90-27 cannot be illegal. The Petition alleges that an individual’s actions of corruption (Millet’s), rather than the object of Ordinance 90-27 (zoning for industrial use), is illegal.

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<sup>7</sup> La. Civ. Code art. 2030 “codifies the jurisprudential rule that a contract which contravenes the public order is absolutely null.” Louisiana Civil Code art. 2030, Revision Comment (1984). “A contract is an agreement by two or more parties whereby obligations are created, modified, or extinguished.” Louisiana Civil Code art. 1906.

<sup>8</sup> The appellate court affirmed the trial court’s judgment. *Id.* at 228.

**C. Allegations of fraud or duress, at best, allege a relative nullity, which cause of action would fail in this litigation.**

If contract law were to apply to Ordinance 90-27 – which it does not – Plaintiffs, at best, allege a relative nullity. But even that cause of action would fail because it would be long prescribed and Plaintiffs would have no right of action.

**1. Allegations of fraud or duress, at best, allege a relative nullity.**

A contract that is contrary to a statute is an absolute nullity, whereas a contract that violates a rule intended for the protection of the parties to the contract (e.g., capacity or consent) is a relative nullity. La. Civ. Code art. 2031 provides, “A contract is relatively null when it violates a rule intended for the protection of private parties, as when a party lacked capacity or did not give free consent at the time the contract was made.” 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); *In re Brennan's House of Printing, Inc.*, 2010-428 (La. App. 5 Cir. 5/31/11); 65 So.3d 165, 169 (allegations of fraud allege a sale transaction as 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.”). Similarly, in a non-contract context, specifically with respect to nullity of judgments under Civil Code articles 2001-2006, judgments obtained by fraud or ill practices are relative, not absolute, nullities. *See Ledford v. Pipes*, 18,690 (La. App. 2 Cir. 5/6/87); 507 So.2d 9, 11; *Smith v. LeBlanc*, 2006-0041 (La. App. 1 Cir. 8/15/07); 966 So.2d 66, 71-72 (judgment based on vice of form, such as being contrary to statute, is an absolute nullity, while a judgment obtained by fraud or ill practices is a relative nullity); *see also Tucker v. New Orleans Laundries, Inc.*, 286 (La. App. 4 Cir. 10/15/62); 145 So.2d 365, 372 (fraudulent conspiracy would at best render judicial sale a relative nullity, not an absolute nullity).

If the rules of Nullity of Contracts were applied to ordinances as Plaintiffs argue – which they should not be – the parties to the ordinance would logically be the members of the Parish Council. 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, the allegations may only relate to a relative, rather than an absolute, nullity. For the reasons stated in the Exceptions for No Right of Action (Section III) and for Prescription (Section IV), below, a cause of action for relative nullity in this litigation would fail.



### **III. Exception of No Right of Action**

The function of the exception of no right of action is to determine whether the plaintiff belongs to the class of persons to whom the law grants the cause of action asserted in the suit. *Louisiana Paddlewheels v. Louisiana Riverboat Gaming Com'n*, 94–2015 (La. 11/30/94), 646 So. 2d 885, 888.

Plaintiffs have no right of action because: (1) as there is no cause of action for absolute nullity, La. Civ. Code art. 2030 does not apply; and (2) to the extent there is a cause of action for relative nullity – which there is not – Plaintiffs are not in the class of persons to which the law grants the cause of action. Alternatively, Plaintiffs do not have a right of action, because Greenfield as owner of the land is the party in interest affected by the zoning.<sup>9</sup>

#### **A. La. Civ. Code art. 2030 does not apply.**

La. Civ. Code art. 2030 provides that, “Absolute nullity may be invoked by any person.” As discussed above, there is no cause of action for absolute nullity under the allegations of the Petition, and thus this provision does not apply. Further, La. Civ. Code art. 2030, which is entitled “Absolute Nullity of Contracts,” provides a right of action for persons seeking to have a *contract*, not an ordinance, declared absolutely null. Plaintiffs are not in the class of persons to which the law grants the cause of action for relative nullity.

#### **B. Plaintiffs have no right of action for a relative nullity.**

To the extent there is a cause of action for relative nullity – which there is not – Plaintiffs are not in the class of persons to which the law grants the cause of action. A relative nullity “may be invoked only by those persons for whose interest the ground for nullity was established.” La. Civ. Code art. 2031. With respect to nullity of contracts, only parties to the contract can challenge the contract on the basis of relative nullity. *See Radcliffe 10, L.L.C. v. Burger*, 2016-0768 (La. 1/25/17); 219 So.3d 296, 302 (creditor could not invoke relative nullity as grounds to revoke agreement between judgment debtor and spouse); *Rowan v. Town of Arnaudville*, 2002-0882 (La. App. 3 Cir. 12/11/02); 832 So.2d 1185 (current landowner could not challenge validity of lease on the basis of relative nullity where previous landowner was party to the lease with the city).

Here, the Petition, with respect to fraud or duress imposed during the actual passage of Ordinance 90-27, only alleges that Millet “abus[ed] his authority . . . to push[] through the needed

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<sup>9</sup> *See* Greenfield's Memorandum in Opposition of Mandamus and in support of Intervenor's Exceptions, filed on December 10, 2021, at Sec. II.C.6

rezoning.” Second Amended Petition, ¶ 16. Such alleged fraud or duress related to Ordinance 90-27 could only have been imposed upon Council Members needed to enact the ordinance. Plaintiffs, individuals, or the general public could not have been the recipient of fraud or duress in relation to passage of the ordinance, as they did not vote on the ordinance. Thus, Plaintiffs are not in the class of persons that may assert relative nullity of the ordinance. Further, additional allegations involving alleged threats of expropriation made to adjacent property owners, withholding of funds from the port, and other abuses of Millet’s official position do not relate to the passage of Ordinance 90-27, which is the law Plaintiffs seek to nullify.

#### **IV. Exception of Prescription**

Any potential claim by Plaintiffs has prescribed. First, as there is no cause of action for absolute nullity, La. Civ. Code art. 2032 does not apply. Second, to the extent there is a cause of action for relative nullity – which there is not – the prescriptive period is five years from when fraud or duress was discovered, and the cause of action has long been prescribed.

##### **A. La. Civ. Code art. 2032 does not apply.**

La. Civ. Code art. 2032 provides that, “Action for annulment of an absolutely null *contract* does not prescribe.” (emphasis added). As discussed above, there is no cause of action for absolute nullity under the allegations of the Petition, and thus this provision does not apply. Further, La. Civ. Code art. 2032 on its face applies to an action for the absolute nullity of a contract, not an ordinance.

##### **B. The prescriptive period for a cause of action for relative nullity has expired.**

To the extent there is a cause of action for relative nullity – which there is not – the prescriptive period is five years from when fraud or duress was discovered, and the cause of action has long been prescribed. An “[a]ction of annulment of a relatively null contract must be brought within five years from the time the ground for nullity either ceased, as in the case of incapacity or duress, or was discovered, as in the case of error or fraud.” La. Civ. Code art. 2032; *Hawkins v. Willow Inc.*, 181 So.3d at 217.

As alleged in the Petition, the actions of fraud by Millet were discovered at least 25 years ago, upon his conviction. *See* Second Amended Petition, ¶ 12. Accordingly, an action for relative annulment of Ordinance 90-27 based upon those actions has long since prescribed. Further, to the extent Millet’s actions would be deemed to have exerted duress on Council members in connection with their vote on Ordinance 90-27, prescription for such an action would have commenced upon

the vote by the Council in adopting the ordinance, which, as alleged in the Petition, occurred over thirty 30 years ago. *See* Second Amended Petition, ¶ 42.

**V. Conclusion**

For the foregoing reasons, Intervenor respectfully requests that this Court dismiss Plaintiff's claims against Defendants, with prejudice, at Plaintiffs' cost, for failure to state a cause of action, failure to establish a right of action and/or because such claims have prescribed.

Respectfully submitted,



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**Attorneys for Greenfield Louisiana, LLC**

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the above and foregoing has this day been served upon all known counsel of record by electronic mail.

New Orleans, Louisiana, on this 28<sup>th</sup> day of February, 2022.



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