

**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, *et al,*

Defendants.

**PLAINTIFFS' REPLY
IN SUPPORT OF PRELIMINARY INJUNCTION**

SUMMARY

In this ongoing action, Plaintiffs moved for preliminary injunctive relief against Intervenor-Defendant Greenfield to prevent irreparable harm: the potential destruction of burial grounds of people enslaved on the plantations that once operated on the property at issue in this litigation. The relief sought would do what preliminary injunctions routinely do: preserve the status quo and prevent irreparable harm to Plaintiffs while this Court considers the broader and as-yet-unresolved merits of the underlying claim in this action which seeks (i) a declaratory judgment that St. John the Baptist Parish Ordinance 90-27 is absolutely null and (ii) associated injunctive relief requiring the Parish to remove the unlawful zoning designation from all maps and documents to reflect the original R-1 designation.

Because such a ruling on the illegality of Ordinance 90-27 – yet to be rendered – would preclude zoning for heavy industrial use, including the grain elevator Greenfield seeks to build, a preliminary injunction against Greenfield is necessary to prevent any desecration of the graves and harm to Plaintiffs' rights until the merits of the underlying action are fully adjudicated. Because the likely prejudice to Plaintiffs in permitting Greenfield's construction, pending resolution of the underlying merits, is total and irreparable, while the prejudice to Greenfield from a preliminary injunction is merely delay, equity compels the requested, temporary relief against Greenfield.

In addition, revealing the callousness by which they view Plaintiffs' rights and interests, Greenfield makes the unconscionable and stunningly insensitive assertion that, "Plaintiffs have not submitted evidence of family graves located on the area in question." Greenfield

Memorandum in Opposition to Motion for Preliminary Injunction (“Greenfield Opp.”) at 5. It should not need to be stated that Plaintiffs are unable to submit evidence of “family graves” of their own ancestors because of how *slavery* operated. It is just one of the many painful badges of that system that endures through to today. Those enslaved on the Horn, Mialaret, and Whitney Plantations, which once operated on the site where Greenfield now seeks to build, did not have any choices in where or how they were forced to labor and live, and where they would be buried or whether their deaths and burials or those of family members were recorded for future generations. That Plaintiffs have been denied the very ability to know where their families are buried is what makes the need to find, protect, and preserve their graves all the more important and urgent, and the loss felt from any damage to them by the proposed grain elevator construction all the more traumatic, alienating, and profound.

Greenfield’s attempt to blame Plaintiffs for their inability to affirmatively substantiate locations of “family graves” is particularly insidious in light of evidence that the company’s archaeological consultants felt pressure to remove any reference to such graves from a report it submitted to the Louisiana Division of Archaeology. Plaintiffs’ Motion for Leave to Supplement Motion for Temporary Restraining Order, filed May 20, 2022.

Finally, contrary to Greenfield’s suggestions, Plaintiffs have offered evidence that burial grounds of enslaved people exist on this site, including the State’s chief archaeologist who has stated “with almost 100% certainty” that “there is going to be a slave cemetery” “with every plantation that existed” and who will testify to the same.

REBUTTAL LAW AND ARGUMENT

I. Plaintiffs’ Motion for a Preliminary Injunction Against Greenfield is Procedurally Proper.

A. A Preliminary Injunction Against Greenfield Is Necessary to Preserve the Status Quo and Prevent Irreparable Harm to Plaintiffs Pending this Court’s Review of the Underlying Claims in this Action

Greenfield intervened, without objection from Plaintiffs, in order to become a defendant in this action. It now argues that a preliminary injunction cannot issue against it, absent the filing of a direct action seeking permanent injunctive relief against Greenfield. This confused argument misunderstands elementary injunctive practice and the nature of this court’s equitable power.

First, Plaintiffs brought the underlying case against St. John the Baptist Parish, and related parish defendants, to obtain a declaration as well as injunctive relief: namely, an order

from this Court declaring Ordinance 90-27 an absolute nullity and requiring the Parish defendants to remove the heavy industrial zoning designation from all parish maps and documents, and to restore the original R-1 designation to this land. Plaintiffs have consistently emphasized their concern for the burial grounds of people enslaved on the plantations that once operated on the property. *See* Petition for Writ of Mandamus, ¶¶ 130-143; Amended Petition, ¶¶ 148-161; Second Amendment Petition, ¶¶ 170-183. While, as this Court has observed, the existence of the graves is not necessary or even relevant to a finding that the 1990 ordinance is null, it demonstrates one of the reasons Plaintiffs were moved to go through the effort of bringing litigation against multiple parish defendants, and eventually a multimillion-dollar company, to correct something that should have been corrected long ago; and also supports their standing to bring the challenge. Greenfield subsequently intervened as a defendant to prevent Plaintiffs from obtaining the requested relief, as nullifying the contested zoning authorization would ultimately foreclose the possibility of building grain elevator[s] of the kind Greenfield seeks to place on a site that is home to enslaved peoples' burial grounds.

Second, during the pendency of the merits of this underlying dispute regarding the legality of the relevant zoning ordinance, Plaintiffs sought a preliminary injunction against Defendant Greenfield to prevent it from starting ground-penetrating construction on the contested property. Contrary to Greenfield's unusual suggestion, Plaintiffs did not need to file a *separate* action against Greenfield in order to preserve their rights in *this* action. A preliminary injunction from this Court would preserve the status quo and prevent an irreparable breach of Plaintiffs' asserted rights to preserving ancestral burial grounds, *see infra* Section C.¹

In such circumstances, and especially to protect this Court's jurisdiction over pending claims, a preliminary injunction is appropriate. This is particularly so given the balance of equities. The prejudice Plaintiffs' face in absence of an injunction is the irreparable loss of their right to preserve cultural origins and ancestral burial grounds, while the prejudice Greenfield faces from an injunction – even if Greenfield and the Parish later prevail on the merits – is delay. Indeed, permitting Greenfield to proceed with pre-construction activities and later finding the zoning that would have authorized such activities unlawful, would render Greenfield's work unnecessary and wasteful – further justifying Plaintiffs' requested preliminary injunction.

¹ Defendant suggests the status quo is that the land is currently zoned for heavy industrial use and thus it should be allowed to proceed accordingly. Greenfield Br. at 4. However, as shown in exhibits attached to the Second Amended Petition, Greenfield's own conveyance documents on file with the parish clerk indicate the land is designated R-1. *See* Amended Petition at ¶¶ 83-94, 99-102.

Greenfield's attempt to confuse this ordinary legal process fails under the weight of the very cases they cite, which only support Plaintiffs' motion. A preliminary injunction is thus both appropriate and necessary.

B. Greenfield's Cases Do Not Support Its Argument that a Preliminary Injunction is 'Procedurally Impermissible.'

Defendant's primary argument that Plaintiffs' request for a preliminary injunction is procedurally impermissible is based on an erroneous interpretation and application of the cases it cites. Defendant states, without explanation, that "an underlying action for a permanent injunction is a prerequisite for a court's consideration of a temporary restraining order or a preliminary injunction." Greenfield Br. at 2-3. For this proposition, Greenfield cites to *Pipe Liners, Inc. v. Edenwald Contracting Co., Inc.*, 610 So.2d 1109, 1113 (La. Ct App. 1992). *Id.* However, there was no "underlying action for a permanent injunction" in *Pipe Liners*. Rather, Pipe Liners sued corporate and individual defendants for a "declaratory judgment that the licensing agreement was binding and enforceable." *Id.* at 1110. During that litigation, Pipe Liners notified one of the defendants that it intended to cancel its exclusive rights in certain areas "pending the declaratory judgment ruling." The defendant filed for a temporary restraining order, preliminary and permanent injunctions "maintaining the status quo pending the outcome of the declaratory judgment suit." *Id.* The court granted the defendant's a preliminary and permanent injunction pending the outcome of the "declaratory judgment suit" and the Louisiana Fifth Circuit Court of Appeal affirmed.

That is akin to the posture in this matter. Plaintiffs filed for declaratory and injunctive relief, which, if granted, would mean the land is not zoned for the heavy industrial facility Greenfield has proposed. Greenfield intervened as a defendant and, while the litigation for declaratory and other injunctive relief was pending, notified residents of its intent to undertake heavy, ground-penetrating activity on the site in furtherance of its planned heavy-industrial construction. Plaintiffs are deeply concerned about the potential for harm to gravesites on the property, which would result in an irreparable injury that "cannot be measured by pecuniary standards." *Franz v. Cormier*, 579 So. 2d 1201, 1203 (La. App. 5th Cir. 1991). They have sought a preliminary and permanent injunction pending the outcome of their suit for declaratory and injunctive relief.

For the same reasons, Defendant's argument that the requested preliminary injunction is procedurally impermissible because the underlying action "does not seek injunctive relief against

Greenfield,” Greenfield Opp. at 3, is unavailing. Pipe Liners was the plaintiff in the declaratory judgment suit; a defendant sought injunctive relief against Pipe Liners to maintain the status quo pending a ruling on the declaratory relief Pipe Liners sought. Defendant’s own case illustrates that Greenfield need not have been the initial target of injunctive relief in the underlying petition.

Defendant also misapplies the holding in *Louisiana Livestock Sanitary Bd. v. Johnson*, 372 So.2d 585 (La. Ct. App. 1979). There, the plaintiff board attempted to pursue a mandatory injunction through a rule to show cause. The defendant excepted to the unauthorized use of a summary proceeding. The court noted that a suit for mandatory injunction is “in the nature of an ordinary proceeding” and gave the plaintiff leave to amend its pleadings to proceed *via ordinaria* for a mandatory injunction. *Id.* at 591. Here, the litigation is already in the nature of an ordinary proceeding and any “summary holding” by the court as to a preliminary injunction will be checked by the later trial of the declaratory and injunctive relief sought, which would also determine whether Greenfield could proceed with construction of its heavy industrial facility.

Likewise, Defendant cites to and misapplies *dicta* in *Russell v. Cantrelle* to this case. There, the court of appeal noted in a footnote that the petition for preliminary injunction “failed to state a cause of action because it was not coupled with a request for a permanent injunction.” *Russell v. Cantrelle*, 2019-0284 at n. 10 (La. App. 1 Cir. 2/21/20) (La. App. 1st Cir. Feb. 21, 2020). Here, Plaintiffs have “coupled” their request for a preliminary injunction with a request for a permanent injunction. *See*, Plaintiff’s Verified Motion, Relief Sought, at p. 8.

C. Plaintiffs Have Shown Irreparable Harm if This Court Does Not Issue an Order Enjoining Defendant from Ground-Penetrating Pre-Construction Activity Pending a Ruling on Underlying Relief Sought.

Defendants erroneously suggest that Plaintiffs must have alleged a “cause of action in their underlying petition pertaining to a constitutional claim for the protection of cultural resources.” First, as discussed above, that is not required for an injunction to prevent irreparable harm and maintain the status quo pending outcome of a declaratory judgment suit. *See Pipe Liners, supra*. Second, Plaintiffs have in fact consistently asserted La. Const. Art. XII, Sec. 4, as well as Louisiana’s laws governing unmarked burials as a basis for this court’s jurisdiction. *See, e.g.*, Second Amended Complaint, at ¶ 10. Plaintiffs have affirmed and will testify to the irreparable harm they will suffer if Greenfield’s pre-construction activity is not enjoined. Plaintiffs have a “right” under the Louisiana Constitution of 1974 to “preserve, foster, and promote” their cultural origins, which is what Plaintiffs seek to do here.

In their supporting memorandum, Plaintiffs cite to a string of cases demonstrating the deference for the sacredness and sanctity of burial grounds underlying cemetery dedication law and implicated in the First Amendment's protection for the free exercise of religion. They were not meant to be analogous to the situation Plaintiffs face in this case; nor could they be. Plaintiffs and other descendants of enslaved people have been denied the existence of records of family graves, of knowing exactly where their relatives and ancestors are buried. Yet, Defendant takes the opportunity of those cases to assail Plaintiffs for "not submit[ing] evidence of family graves located on the area in question," emphasizing that their cited cases were "brought by plaintiffs who had relatives known to be buried in that cemetery." Greenfield Opp. at 5.

As Defendant has noted, *id.* at 3, irreparable injury is harm for which the movant "cannot be compensated in money damages, or for which damages cannot be measured by a pecuniary standard." *Sorrento Companies, Inc. v. Honeywell Int'l, Inc.*, 2004-1884, p. 9 (La.App. 1 Cir. 9/23/05); 916 So.2d 1156, 1163, *writ denied*, 2005-2326 (La. 3/17/06); 925 So.2d 541.). As Plaintiffs' have noted, Plaintiffs Br. at 4, the U.S. Supreme Court has expressly recognized, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). *See also, Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 295 (5th Cir. 2012) (irreparable harm would result to church's right to free exercise of religion from failure to enjoin enforcement of zoning ordinance) and 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2948.1 (2d ed. 1995) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.").

Plaintiffs will suffer irreparable harm to their constitutional and legal rights if gravesites of enslaved ancestors are harmed – a crucial aspect of cultural origins they have a right under the Louisiana Constitution to preserve. No amount of monetary compensation could remedy that harm to Plaintiffs, other descendants, and the historical record.

II. The Court Should Require Minimal Bond.

The amount of bond to be given in connection with an injunction is subject to the discretion of the trial court. *See Robinson v. Morris*, 272 So.2d 444 (La.App. 2nd Cir. 1973) (upholding \$1,500 bond in connection with injunction prohibiting developer from continuing with construction of housing complex). Defendant claims it will incur nearly \$300,000 in costs

if delayed from implementing its pre-construction activities and an additional \$300,000 for each additional month due to “schedule slippage.” Williams Affidavit at ¶¶16-17.

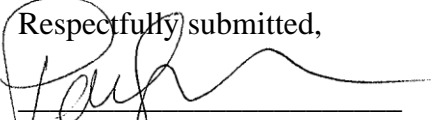
Greenfield is assuming it will prevail over claims that the ordinance it relies on is an absolute nullity. However, this Court has already ruled that if all Plaintiffs’ allegations are taken as true, they have stated a claim that the ordinance is an absolute nullity. If this Court rules the same on the merits and concludes that Ordinance 90-27 is an absolute nullity, it will be clear that the property is not zoned for the heavy industrial use intended by Greenfield, that it cannot proceed with its construction, and it would have needlessly incurred the expenses it has identified.

Given the important legal and constitutional rights at stake, the Court should exercise its discretion and give a minimal bond.

CONCLUSION

Wherefore, in light of the foregoing, Plaintiffs respectfully request an order from this Court restraining Defendant-Intervenor Greenfield Louisiana, LLC, from conducting ground-disturbing activity on the Wallace tract during the pendency of this litigation.

June 1, 2022

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.

Woodside, New York, this 1st day of June 2022.



PAMELA C. SPEES