

**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 Jaelyn Hotard, et al.**

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

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

**MEMORANDUM IN SUPPORT OF MOTION TO CONSOLIDATE  
FILED ON BEHALF OF GREENFIELD LOUISIANA, LLC**

MAY IT PLEASE THE COURT:

This matter comes before the Court on the Motion to Consolidate filed by Greenfield, Louisiana, LLC (“Greenfield”) and a similar motion filed by St. John the Baptist Parish (“St. John”) seeking to consolidate two suits currently pending before different divisions of this Court. Greenfield joins the motion and memorandum filed by the Parish, but submits this memorandum which sets forth additional legal and factual grounds in support of consolidation.

**BACKGROUND**

As the Court will recall, the instant suit arises out of the Petition of Plaintiffs, the Descendants Project, Joycynthia Banner and Joyceia Banner, seeking a declaratory judgment that Ordinance 90-27 is null and void. In addition, Plaintiffs sought the following forms of relief upon which the Court made no ruling:

- Order the St. John the Baptist Parish President, Parish Council, Planning Commission, and/or Director of Planning and Zoning, to remove the zoning designations originating with ordinance from all maps and zoning documents, and replace it with the original R-1/residential designation that existed before;
- Order St. John the Baptist Parish to notify in writing all residents and property owners in Wallace, including of the Wallace tract, federal and state agencies involved in recent permit review processes of this zoning correction, including: the State Historic Preservation Office in the Louisiana Department of Culture, Recreation, & Tourism; U.S. Army Corps of Engineers; the Louisiana

Department of Environmental Quality; and the Louisiana Department of Natural Resources, of the Court's order.

- Order St. John the Baptist Parish to notify in writing all previous owners of property adjacent to or nearby the Wallace tract who conveyed their property to Formosa or its subsidiary Format, of the Court's order invalidating the ordinance, and providing those former property owners with a copy thereof Order.
- St. John the Baptist Parish to undertake a comprehensive and thorough review by an independent third party, selected in consultation with Petitioners and residents of Wallace, of all of its zoning practices, procedures, and policies, to make recommendations about how to better comply with zoning laws, due process, as well as federal and state civil rights laws.
- Any and all further relief as provided by law.

On August 4, 2023, this Court granted the Motion for Summary Judgment filed by Plaintiffs and declared Ordinance 90-27 to be null and void *ab initio*. Greenfield and the Parish timely filed motions for new trial, which are set for argument on December 14, 2023.

Following this Court's ruling granting summary judgment, Plaintiffs have aggressively pursued litigation which seeks to prevent the Parish from re-zoning the property by passage of a new Ordinance, all under the guise of "protecting" this Court's non-final ruling. Rather than filing its motions in the division which granted the summary judgment, however, Plaintiffs filed these actions, with no case or division assignment. The first of those was allocated to Division B, under suit # 80394.<sup>1</sup> Plaintiffs' efforts include the following:

1. On August 21, 2023, the Descendants Project filed an "Emergency Petition for Injunctive Relief with Request for Expedited Consideration for Issuance of a Temporary Restraining Order," (hereafter, the "TRO suit") in which the Descendants Project sought to enjoin the Parish Council from taking up Resolution 93-261, a resolution that according to Plaintiffs, attempted to somehow revive Ordinance 90-27, or possibly rezone the property without following the process set forth in the Home Rule Charter and Code of Ordinances of St. John the Baptist Parish.<sup>2</sup> The gist of Plaintiff's argument was that such action by the council would be directly contrary to this Court's August 4 judgment. That petition was assigned suit # 80394 in Division B. The Division B judge issued an ex-parte TRO.

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<sup>1</sup> Although it was not originally a party to Suit #80394, Greenfield sought and was granted leave to intervene pursuant to an Order signed on October 19, 2023.

<sup>2</sup> Contrary to what Plaintiff contends, and as explained at the subsequent public meeting of the Council, the Resolution does not attempt to revive Ordinance 90-27 nor does it attempt to re-zone the property that was set forth in Ordinance 90-27. Rather, it simply begins the process of re-zoning in accordance with the Parish's Home Rule Charter and Ordinances.

2. On August 24, 2023, Plaintiffs filed a motion for contempt of the TRO against the Parish, and individual council members Becnel, Madere, Wright, Houston, Arcui, and Faucheux because the Council proceeded forward and acted on Resolution 93-261. The contempt hearing was postponed pending writ applications to the Fifth Circuit Court of Appeal, and has not been set for hearing.<sup>3</sup>
3. On October 6, 2023, Plaintiffs filed an Emergency Motion to Enforce Preliminary Injunction and for Modification Seeking Additional Relief. This motion sought to expand the scope of the earlier requested injunction, this time seeking to preclude the Parish Planning Commission from performing its legislative duties to consider Resolution 23-161 and render a report and recommendation regarding the propriety of a new zoning ordinance re-zoning the property formerly owned by Greenfield, but now owned by the Port of South Louisiana.
4. Argument was held on the injunction request on August 25, and on October 12, the Division B Judge issued a preliminary injunction enjoining the Parish from:
  - a. Affirming or acting under the nullified ordinance described in the Petition for Injunctive Relief and Request for Temporary Restraining Order, and
  - b. Rezoning the property identified in the nullified ordinance in a manner contrary to the state and parish law governing amendments to zoning ordinances.
5. On or about October 16, 2023, the Descendants Project filed a second Emergency Motion for Injunctive Relief, this time seeking to prevent the Parish Planning Commission from taking up an agenda item relating to the rezoning of the property which was the subject of the original action before this Court.
6. On November 13, 2023, the Division B Judge signed its third order in #80394, this time granting a preliminary injunction which:
  - a. Prohibit[ed] 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);" and
  - b. Prohibit[ing] and enjoin[ing] 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.<sup>4</sup>

Thus, in less than four months since this Court entered its judgment, the Division B judge has granted in favor of Plaintiffs a temporary restraining order, and two preliminary injunctions, all under the guise of protecting this Court's judgment.

### ARGUMENT

Louisiana Code of Civil Procedure article 1561 provides that when two pending cases contain common issues of fact and law, a party may file a Motion to Consolidate in the section or

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<sup>3</sup> The Division B Court ruled that Plaintiffs could depose Council Members Becnel and Madere in connection with the Contempt Motion, but the Fifth Circuit reversed that decision. (No 23-C-478, Fifth Circuit Court of Appeal, issued November 21, 2023).

<sup>4</sup> Both Greenfield and the Parish have filed a notice of appeal from this Judgment.

division in which the first action is pending.<sup>5</sup> The Court is required to hold a contradictory hearing before consolidating the actions. *Roby v. CRS, Ltd.*, 1999-1442 (La. App. 4 Cir. 6/23/99), 738 So. 2d 158, 159. The Court may consolidate the cases upon a finding that common issues of fact and law predominate and that none of the factors in Section B of article 1561 apply.

Local Rule 9.3 for the Fortieth Judicial District goes a step further and provides as follows:

C. When two or more suits are pending in the court which involve a cause or causes of action of sufficient similarity to justify consolidation for trial, the following procedure shall govern:

1. If the suits are allotted to the same division, the judge of that division may order consolidation;
2. ***If the suits are allotted to different divisions, the division having the suit with the lowest number shall handle the matters***, and all of the remaining suits shall be transferred to that division by written motion signed by the judge from whom the case is transferred and the judge to whom the case is transferred.

Thus, under this Local Rule, this Court need only determine if the two suits “involve a cause or causes of action of sufficient similarity to justify consolidation for trial.” If the answer to that inquiry is yes, then Division C, as the division having the suit with the lowest number, **SHALL** handle the matters.

It is difficult to conceive of a case more appropriate for consolidation than these two cases. In the first filed suit, this Court undertook a detailed analysis of the Home Rule Charter and Code of Ordinances in an effort to determine whether the ordinance passed in 1990, and which re-zoned property later acquired by Greenfield, was valid. This Court ultimately found the 1990 council failed to follow the proper procedure and held that Ordinance 90-27 was void *ab initio*.

Suit #80934 is premised entirely on the very judgment this Court rendered, and does not even exist but for the Court’s ruling in the instant suit. In fact, the initial TRO suit was nothing more than a request for a TRO and preliminary and permanent injunctions, and which was purportedly based upon the plaintiff’s concern that the Parish Council was pursuing a course of action to “affirm and authorize” Ordinance 90-27, which this Court declared void *ab initio*. The Second Injunction suit seeks to prevent the Parish Planning Commission from taking up the issue of rezoning much of the property which was the subject of Ordinance 90-27, contending that rezoning violates the Preliminary Injunction issued by Division B in the first injunction suit.

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<sup>5</sup> No trial date has been set in # 80934.

The ultimate resolution of these suits will require a detailed review of the Home Rule Charter, Code or Ordinances, and the cases interpreting similar provisions- a review this Court has already undertaken.<sup>6</sup> In addition, those cases will no doubt require an analysis of the scope of this Court's ruling.

The Descendants Project, St. John, and Greenfield are parties to all the suits. In a recent memorandum filed by Plaintiff in Suit # 80934, Plaintiff prayed for an additional injunction "for the duration of the litigation involving the tracts of land identified in the nullified 1990 ordinance."<sup>7</sup> While Greenfield does not believe this request in a memorandum constitutes a pleading for purposes of relief, it certainly suggests Plaintiff seeks to preclude the parish from following its own charter and ordinances to re-zone the property and to deny Greenfield any avenue of relief to have the property now owned by the Port but leased by Greenfield properly re-zoned. This Court is already familiar with that process, as this suit involved those same provisions of the Home Rule Charter and Ordinances.

In *Bridwell v Louisiana Patients' Compensation Fund*, 2003-0683 (La. App. 4 Cir. 5/7/03) 847 So.2d 686, the Fourth Circuit approved the consolidation of cases which were much more attenuated than the cases at issue here. The plaintiff fell and broke his hip while a patient at Tulane University Hospital and sued Tulane. After Tulane settled, Plaintiff filed suit against the Patients' Compensation Fund ("PCF"). During the surgery on the broken hip, also performed at Tulane, the surgeon used the wrong size screw, resulting in a new suit stemming from the surgery against Tulane and the surgeons. Once again, Tulane settled and Plaintiff filed a separate suit against the PCF, this time from the surgery after the fall which led to the first suit. In approving the District Court's decision to consolidate the two suits, the Fourth Circuit found as follows:

We find that the two causes of action are closely connected by the facts and theories of recovery. As a matter of fact, the basis for the second cause of action allegedly was the direct result of the first cause of action. Both causes of action fall within the purview of negligence and medical malpractice.<sup>8</sup>

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<sup>6</sup> By way of example, during the November 9 argument before Division B, counsel for Plaintiffs raised the issue of whether La. R.S. 33:4724 applies to zoning in St. John the Baptist Parish. This Court is already aware based upon its previous arguments and rulings in the original suit that sate zoning laws generally do not apply to a home rule charter jurisdiction like St. John the Baptist.

<sup>7</sup> A copy of Plaintiff's memorandum in support of its motion for contempt is attached as Exhibit 1.

<sup>8</sup> *Id.* at 688.

These two suits arise out of the same operative facts and involve common issues of law. Indeed, but for the judgment of this Court in the instant suit, Suit # 80934 would not exist.

In *Louisiana Dept. of Agriculture and Forestry v. Harper*, 42,598 (La. App. 2 Cir. 12/19/07) 973 So.2d 922 (2007), the first filed action was a petition for preliminary and permanent injunction filed by the Department of Agriculture seeking to prohibit the defendant from engaging in the commercial growing, distribution or sale of sweet potatoes until he obtained a valid Sweet Potato Dealer's Permit. The Defendant responded with a petition against the Department alleging that the taxes and fees imposed by the state were unconstitutional and seeking injunctive relief prohibiting the collection of those assessments and damages. In affirming the District Court's decision to consolidate the two suits, the Second Circuit found that both lawsuits arose from the Defendant's activities as a commercial sweet potato farmer and the Department's implementation of the fee assessment program, involved predominately common issues of fact and law and the Defendant failed to show that consolidation prevented a fair trial or prejudiced his rights.

In *Hemmans v. State Farm Ins. Co.*, 94-0496 (La. App. 4 Cir. 3/21/95) 653 So.2d 69, 79 (1995), the Court of Appeal found consolidation to be appropriate in two cases in which two different African-American State Farm agents sued the company over allegedly racially discriminatory policies, even though the allegations in one suit were broader than the other, finding "both lawsuits rested on the same set of facts and circumstances."

In *Rapp v. City of New Orleans*, 95-1638 (La. App. 4 Cir. 9/18/96) 681 So.2d 433 (1996), the Fourth Circuit affirmed the consolidation of some twenty workers compensation claims involving injuries that occurred in various different ways and led to a variety of different damages. The Court focused upon the fact that the cases involved a common issue of controlling law (although not common facts) and involved one common defendant and common representation on both sides, just as the instant case does. In affirming the consolidation, the Fourth Circuit held as follows:

We find no instance in the jurisprudence allowing consolidation where the facts of each case were as separate and distinct as they are here. However, there are no cases holding that such a consolidation would be error. As there are some common questions of fact and law as called for in the broad language of LSA–C.C.P. art. 1561, we cannot say that the hearing officer abused his broad discretion in consolidating these cases.<sup>9</sup>

The two suits in the instant case are much less attenuated than the illustrative cases above. They arise out of the very same judgment and legal issues that were presented to the Court in the instant suit. Moreover, there are no parties in the injunction suit who are not parties in the present suit. Accordingly, the suit filed as “*The Descendants Project*” v. *St. John the Baptist Parish, et al.*,” Suit # 80394, Division B; 40th JDC should be consolidated with the instant suit in Division C.

Respectfully submitted,



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<sup>9</sup> *Id.* at. 455.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was served on all counsel of record by electronic mail, this 4th of December, 2023.



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