

CIVIL SUIT NO. C-2022 1498
DIVISION "B"

LAFAYETTE CITY-PARISH
CONSOLIDATED GOVERNMENT

15TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF LAFAYETTE

ST. MARTIN PARISH GOVERNMENT
AND UNITED STATES ARMY CORPS
OF ENGINEERS

STATE OF LOUISIANA

**DECLINATORY, PEREMPTORY AND DILATORY EXCEPTIONS
SUBMITTED BY ST. MARTIN PARISH GOVERNMENT**

NOW INTO COURT, through undersigned counsel, comes defendant, ST. MARTIN PARISH GOVERNMENT, which for response to the Petition of plaintiff, Lafayette City-Parish Consolidated Government ("LCG"), submits the below stated Exceptions. In accordance with District Court Rule 9.8(a), defendant states (1) this case is not set for trial; and (2) defendant does not plan to present testimony at the hearing, although rebuttal testimony will be offered if LCG calls witnesses to testify.

DECLINATORY EXCEPTION OF IMPROPER VENUE

1.

Defendant, St. Martin Parish Government, oversees all governmental operations of St. Martin Parish, a duly constituted political subdivision of the State of Louisiana, which is located in the 16th Judicial District of the State of Louisiana. St. Martin Parish Government is a political subdivision of the State of Louisiana

2.

As provided by La. R.S. 13:5104(B), "[a]ll suits against a political subdivision of the state ... shall be instituted before the district court of the judicial district in which the political subdivision is located or in the district court having jurisdiction in the parish in which the cause of action arises."

(Emphasis added).

3.

Plaintiff's Petition alleges LCG's purchase of "an interest" in immovable property situated in St. Martin Parish, for a "spoil bank project" to be conducted in St. Martin Parish (*Id.*, ¶ 13); it claims LCG "advised St. Martin Parish" regarding "proposed work" in St. Martin Parish (*Id.*, ¶ 14); it references St. Martin Parish's objection to a U.S. Army Corps of Engineers Permit for

proposed work in St. Martin Parish without acknowledging the bases for the objections (*Id.*, ¶ 19); it attacks the validity of a St. Martin Parish Ordinance enacted in and for St. Martin Parish, and relating solely to property in St. Martin Parish (*Id.*, ¶ 23); it alleges LCG's claimed right of "removing dirt from its own property" in St. Martin Parish (*Id.*, ¶ 23); it alleges LCG, in February 2022, "executed on this spoil bank project" in St. Martin Parish; it seeks a Declaratory Judgment regarding the legality of LCG's "spoil bank project" in St. Martin Parish (*Id.*, ¶ 29; Prayer).

4.

LCG seeks an after-the-fact Declaratory Judgment regarding the legality of LCG's physical acts of spoil bank destruction and related land clearing activities in St. Martin Parish.

Any purported "cause of action" relating to the legality of LCG's physical acts in St. Martin Parish would have arisen only upon LCG's actual physical acts of spoil bank destruction and related land clearing activities in St. Martin Parish. LCG's decision – *in Lafayette Parish* – to engage in spoil bank destruction does not give rise to LCG's purported "cause of action" to determine the legality of LCG's physical acts in St. Martin Parish.

5.

Disregarding the abusive, insulting, unwarranted and demeaning personal attacks permeating its Petition, plaintiff's claims against the St. Martin Parish Government relate only and specifically to (1) a St. Martin Parish Ordinance; and (2) LCG's execution of its "spoil bank project" in St. Martin Parish. As per La. R.S.13:5104(B), St. Martin Parish is the only proper venue for LCG's claims against the St. Martin Parish Government.

PEREMPTORY EXCEPTIONS OF NO CAUSE OF ACTION

[No Allegations Showing Consent of Co-owner(s)]

6.

LCG seeks a Declaratory Judgment stating, *inter alia*, that LCG "complied with all lawful regulations, ordinances, rules, procedures and laws with the spoil bank project" (Petition, ¶ 29).

7.

LCG alleges it owns "an interest in the land upon which the spoil bank sat" (Petition, ¶ 13), and upon which property "Lafayette Parish finally executed on this spoil bank project" in "February of 2022." (*Id.*, ¶ 24, emphasis added). Notably, LCG does not allege it is the sole owner of the

property on which the spoil bank removal occurred.

8.

In relation to the property on which the spoil banks were removed, LCG's Petition references "a spoil bank that partially impeded the natural flow of water from the Vermilion Bayou into and out of the Cypress Island Swamp" (Petition, ¶ 4). LCG also references alleged studies by the U.S. Army Corps of Engineers and University of Louisiana at Lafayette which purportedly relate to removal of the referenced spoil bank. (*Id.*, ¶¶ 6, 9, 10, 11, 16). LCG alleges "coordinating with St. Martin Parish about implementing" the spoil bank removal activities. (*Id.*, ¶12). LCG alleges it "commissioned a model for the spoil bank project" (*Id.*, ¶ 13). LCG alleges applying for a Corps Permit, and defendant's objections thereto. (*Id.*, ¶¶18-19). LCG further alleges "this spoil bank project ... had been in the works for over twenty-five years" (*Id.*, ¶ 24).

9.

Significantly, LCG also alleges its removal of the co-owned spoil bank could affect "thousands" of residents, and affect "the entire region." (Petition, ¶ 25). LCG's Petition, *in its entirety*, reflects the spoil bank removal on LCG's co-owned property was a substantial alteration of the co-owned property

10.

As per La. C.C. art. 804, in pertinent part:

"Substantial alterations ... to the thing held in indivision may be undertaken only with the consent of all the co-owners." (Emphasis added).

11.

La. C.C. art. 804 is one of the laws relating to LCG's "spoil bank project." As noted above, LCG seeks a Declaratory Judgment "that it complied with all ... laws."

12.

LCG does not allege it had the consent of any co-owner. In order for LCG to obtain a Declaratory Judgment "that it complied with ... all laws," LCG must allege facts showing it complied with La. C.C. art. 804. The face of LCG's Petition shows LCG has not alleged facts sufficient to show it is entitled to the Declaratory Judgment sought. Thus, LCG has stated no cause of action for the specific Declaratory Judgment it seeks.

[Failure to Allege Any Legal Requirements or Any Compliance Actions]

13.

LCG alleges “Lafayette Parish has no liability as it complied with all lawful regulations, ordinances, rules procedures and laws with the spoil bank project.” (Petition, ¶ 13, emphasis added). LCG’s proposed Declaratory Judgment would proclaim plaintiff “complied with all lawful regulations, ordinances, rules procedures and laws with the spoil bank project.” (Petition, ¶ 29).

14.

LCG’s Petition fails to allege *any* legal requirements it references and about which it seeks a Declaratory Judgment; LCG’s Petition fails to allege *any* facts showing *any* compliance with *any* laws, and which compliance actions are also the subject of LCG’s proposed Declaratory Judgment.

15.

As per Louisiana jurisprudence, “[t]o withstand an exception of no cause of action, the petition must set forth the ultimate material facts on which the cause of action is based.” *Kahn v. Jones*, 95-259 (La. App. 3 Cir. 11/2/95), 664 So.2d 700, 704) (Emphasis added). Because LCG’s Petition states no material facts regarding: (1) the “regulations, ordinances, rules, procedures and laws” it places at issue, or (2) LCG’s purported acts in compliance therewith, LCG has stated no cause of action for a Declaratory Judgment directed to the unalleged “regulations, ordinances, rules, procedures and laws,” and LCG’s purported compliance.

[Violation of a Valid Ordinance Precludes Declaratory Judgment]

16.

As stated by the Louisiana Third Circuit Court of Appeal:

“A city ordinance, like a state statute, is presumed to be constitutional and the party who attacks it has the burden of establishing by clear and cogent evidence that the ordinance is unconstitutional. ... The ordinance remains valid until such time as it is judicially overturned.”

Priola v. Calcasieu Parish Police Jury, 97-161 (La. App. 3 Cir. 6/4/97), 696 So.2d 183, 186 writ denied, 97-1693 (La. 10/13/97), 703 So.2d 613, quoting and adopting as its own opinion (*Id.*, p. 186) La. Atty. Gen. Op. 95-14, pp. 1208-1210, Jan. 27, 1995 (Emphasis added).

17.

LCG specifically alleges the existence of a St. Martin Parish Ordinance (“Ordinance”) directly relating to spoil bank removal activities in St. Martin Parish. It is clear from LCG’s Petition that LCG believes the Ordinance would have prevented LCG’s removal of spoil banks in St. Martin

Parish. LCG alleges, in pertinent part:

“Approximately a year ago ... to find a way to prevent this beneficial flood prevention project from proceeding, St. Martin Parish enacted Ordinance Sec. 14-71 (No.21-07-1327-OR). The Ordinance specifically targeted Lafayette Parish. It attempted to prevent Lafayette Parish from removing dirt from its own property without first obtaining the approval of St. Martin Parish. This ordinance was clearly unconstitutional and not enforceable.”

(Petition, ¶ 23, emphasis added).

18.

Despite LCG’s erroneous legal conclusions – which aver the Ordinance “specifically targeted Lafayette Parish,” and “was clearly unconstitutional and not enforceable” (*Id.*) – LCG does not allege it challenged the Ordinance in any Court prior to February of 2022 when “Lafayette Parish finally executed on this spoil bank project” in a **wilful, complete, utter, arrogant and intentional disregard of the St. Martin Parish Ordinance.**

19.

Inasmuch as the Ordinance had not been stricken down by any Court – or otherwise declared “unconstitutional and not enforceable” – the St. Martin Parish Ordinance was legal and enforceable at the time LCG destroyed the spoil bank in St. Martin Parish.

20.

Because the face of LCG’s Petition shows LCG acted with utter disregard of a valid and enforceable Ordinance at the time LCG intentionally violated the law of St. Martin Parish, LCG cannot be granted a Declaratory Judgment stating LCG “complied with all lawful regulations, ordinances, rules, procedures and laws with the spoil bank project” (Petition, ¶ 29). LCG thus has no cause of action for the Declaratory Judgment it seeks.

21.

Further, and although the Exception of No Cause of Action is tried on the face of the Petition, St. Martin Parish Government states, for the record, that St. Martin Parish Ordinance No. 21-07-1327-OR was adopted more than six (6) months before LCG even acquired its undivided ownership interest in the St. Martin Parish property on which spoil bank removal activities occurred. LCG – through its counsel – was fully aware of the Ordinance before February of 2022 when LCG acquired its property interest and commenced spoil bank removal activities in St. Martin Parish. Despite this knowledge, LCG sought no relief from any Court, and completely disregarded both the Ordinance itself and the legitimate concerns of St. Martin Parish – of which LCG was also fully cognizant.

DILATORY EXCEPTION OF VAGUENESS

[Unknown, Unalleged Legal Requirements]

22.

With regard to an action for Declaratory Judgment, La. C.C.P. art. 1872 provides:

“A person ... whose rights, status, or other legal relations **are affected by a statute,** municipal ordinance, contract or franchise, may have determined any question of construction or validity **arising under the ... statute,** ordinance, contract or franchise and obtain a declaration of rights, status, or other legal relations **thereunder.**” (Emphasis added)

23.

Plaintiff seeks a Declaratory Judgment **presumably addressing multiple statutes and other legal requirements,** as those **statutes and legal requirement** relate to LCG’s “spoil bank project.” Specifically, LCG asks for a Declaratory Judgment stating that, *inter alia*, LCG:

“complied with all lawful [1] regulations, [2] ordinances, [3] rules, [4] procedures and [5] laws with the spoil bank project ...”

(Petition, ¶ 29; *see also*, Prayer; emphasis and bracketed numbers added).

24.

However, plaintiff’s Petition does not state, reference, describe, list – or elucidate in any manner whatsoever – *any* of the “lawful” [1] regulations, [2] ordinances, [3] rules, [4] procedures and [5] laws that are supposedly applicable to the “spoil bank project,” and with which LCG supposedly complied.

25.

LCG’s Petition also fails to state whether any State permits were required for its “spoil bank project,” or whether any specific State permits were obtained by LCG.

26.

LCG’s allegations are completely open-ended, and provide no guidance whatsoever as to the specific [1] regulations, [2] ordinances [3] rules [4] procedures and [5] laws LCG seeks to place at issue, and about which LCG seeks a Declaratory Judgment. Defendant herein cannot prepare an Answer containing specific defenses and affirmative defenses relating to the unknown, unalleged legal requirements LCG claims to have followed.

27.

[Unknown, Unalleged Compliance Actions]

LCG’s Petition is also devoid of allegations stating what LCG supposedly did to comply with

all “lawful” requirements, such that defendant can prepare an Answer containing specific defenses and affirmative defenses challenging whether LCG’s (unknown and unalleged) actions constituted compliance with each of the [1] regulations, [2] ordinances, [3] rules, [4] procedures and [5] laws LCG claims to have followed. LCG’s Petition is completely vague and open-ended as to its purported compliance actions.

28.

[Amorphous, Unexplained “Spoil Bank Project” Allegations]

Plaintiff seeks a Declaratory Judgment regarding its “spoil bank project,” and specifically declaring, *inter alia*, “that a permit from the United States Army Corps of Engineers was not required.” (See Petition, ¶ 29; and Prayer, emphasis added).

29.

Plaintiff references its original “spoil bank project” – for which LCG sought a Permit from the U.S. Army Corps of Engineers (“Corps Permit”) (Petition, ¶ 18); plaintiff also references its revised “spoil bank project” which allegedly “did not disturb any nearby wetlands and did not fall within the jurisdiction of the Corps.” (*Id.*, ¶ 21, emphasis added).

30.

In relation to its original “spoil bank project,” LCG specifically references “removing dirt from its own property” in St. Martin Parish (*Id.*, ¶ 23). Plaintiff does not specify *what* – other than “removing dirt” – was included as part of its original “spoil bank project” or its revised “spoil bank project.”

31.

LCG’s Petition does not allege how “nearby wetlands” would have been disturbed by the original “spoil bank project” – such that a Corps Permit was admittedly required – or how the “spoil bank project” was revised so that, allegedly the revised “spoil bank project “did not disturb any nearby wetlands and did not fall within the jurisdiction of the Corps.”

32.

LCG’s Petition also fails to allege how LCG determined nearby wetlands were [allegedly] not disturbed by the (unexplained) revised “spoil bank project” in St. Martin Parish.

Defendant cannot prepare an Answer with specific defenses and affirmative defenses as to activities for which a Corps Permit was allegedly not required without: (1) knowledge of the specific revised “spoil bank project” activities actually undertaken; (2) knowledge of how these activities differed from the original activities that LCG alleges did require a Corps Permit; and (3) knowledge of how LCG determined that nearby wetlands were allegedly not disturbed by LCG’s activities in St. Martin Parish.

In summary, LCG’s Petition is completely vague as to the specific matters for which it seeks a Declaratory Judgment: LCG fails to allege each and every one of the “regulations, ordinances, rules, procedures and laws” with which it allegedly complied, and about which LCG seeks a compliance ruling via Declaratory Judgment; LCG fails to state what it supposedly did in compliance with all legal requirements; LCG alleges conclusions, but fails to allege facts from which it can be determined that no Corps Permit was required for the destruction of spoil banks in St. Martin Parish.

WHEREFORE, defendant herein, ST. MARTIN PARISH GOVERNMENT, prays that:

- (1) Its Declinatory Exception of Improper Venue be granted, and accordingly, LCG’s lawsuit be dismissed as having been brought in an improper venue (as provided by La. C.C.P. art. 932(B));
- (2) Its Peremptory Exceptions of No Cause of Action be granted, and that:
 - A. LCG’s lawsuit be dismissed for failing to allege compliance with La. C.C. art. 804; or alternatively, that LCG be ordered to amend its Petition within the delay allowed by the Court to allege LCG obtained consent of all co-owners prior to its spoil bank removal activities in St. Martin Parish, and upon LCG’s failure to amend its Petition, that LCG’s lawsuit be dismissed with prejudice (as provided by La. C.C.P. art. 934);
 - B. LCG’s lawsuit be dismissed for failing to state a cause of action through the absence of factual allegations regarding purported legal requirements and LCG’s purported compliance therewith;
 - C. LCG’s lawsuit be dismissed with prejudice (as provided by La. C.C.P. art. 934) for failing to state a cause of action as to LCG’s intentional violation of a valid Ordinance that is not alleged to have been invalidated by any court prior to LCG’s violation of the Ordinance;
- (3) In the event LCG’s lawsuit is not dismissed, defendant further prays that its Dilatory Exception of Vagueness be granted, and that:

LCG be ordered to amend its Petition within the delay allowed by the Court to cure the pleading deficiencies complained of in defendant’s Exception of Vagueness, and upon plaintiff’s failure to amend its Petition, that plaintiff’s lawsuit be dismissed with prejudice for noncompliance (as provided by La. C.C.P. art. 933(B)); and

- (4) St. Martin Parish Government further prays that all costs of this proceeding be assessed against plaintiff.

Respectfully submitted,

GOLD, WEEMS, BRUSER, SUES & RUNDELL

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**ATTORNEYS FOR ST. MARTIN PARISH
GOVERNMENT**

PLEASE SERVE:

Lafayette City-Parish Consolidated Government

through its counsel of record

James H. Gibson or Michael O. Adley

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Lafayette, LA 70503

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was this date served on all counsel of record, and the U.S. Army Corps of Engineers, via U.S. Mail, postage prepaid and properly addressed.

Alexandria, Louisiana, this 7th day of April, 2022.


OF COUNSEL

CIVIL SUIT NO. C-2022 1498
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CONSOLIDATED GOVERNMENT

15TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF LAFAYETTE

ST. MARTIN PARISH GOVERNMENT
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OF ENGINEERS

STATE OF LOUISIANA

ORDER

On consideration of the foregoing Exceptions by defendant, St. Martin Parish Government,

IT IS ORDERED that the Exceptions of Improper Venue, Vagueness and No Cause of Action by defendant, St. Martin Parish Government be, and they hereby are set for hearing on the ___ day of _____, 2022, at _____ a.m., at the Lafayette Parish Courthouse, 800 South Buchanan Street, Lafayette, Louisiana;

IT IS FURTHER ORDERED that plaintiff, Lafayette City-Parish Consolidated Government, appear on the _____ day of _____, 2022, at _____ a.m., at the Lafayette Parish Courthouse, 800 South Buchanan Street and show cause why the Exceptions of Improper Venue, Vagueness and No Cause of Action should not be granted, at plaintiff's cost.

Lafayette, Louisiana, this _____ day of April, 2022.

HONORABLE VALERIE GOTCH GARRETT
District Judge, 15th Judicial District Court

Please serve:

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