

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

NO. _____

DIV. _____

St. John The Baptist
Filed Jan 25, 2023 12:46 PM
Deputy Clerk of Court
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C-79170 THE DESCENDANTS PROJECT

A

VERSUS

PORT OF SOUTH LOUISIANA, RYAN BURKS, and D. PAUL ROBICHAUX

FILED _____

DEPUTY CLERK

PETITION FOR DAMAGES

NOW INTO COURT comes Plaintiff, The Descendants Project, a Louisiana non-profit organization, who files this Petition for Damages against The Port of South Louisiana and members of its Board of Commissioners for violations of Louisiana's Open Meetings Law, La. R.S. 42:11, *et seq.*

I. INTRODUCTION

1. The Port of South Louisiana ("Port") is one of the largest tonnage ports in the country; its district spans three parishes along the Mississippi River. It was established as a political subdivision of the State of Louisiana to be run by a board of nine commissioners.¹

2. Greenfield Louisiana, LLC ("Greenfield") is a private corporation that has proposed to build a grain elevator project in St. John the Baptist Parish.

3. To avoid *ad valorem* taxes for the grain elevator project, Greenfield and the Port entered into a Cooperative Endeavor Agreement and Payment In Lieu of Taxes Agreement.

4. As far as was publicly known, the Port's Board of Commissioner's approved those two agreements with Greenfield at a public meeting in April 2022.

5. But Plaintiffs have recently learned that the Board of Commissioners actually met and secretly approved the agreements by email correspondence in advance in March 2022.

6. In that correspondence, a Vice President of the Board wrote that "I trust you have all matters in order and in place to proceed with successful passage of [the Agreement] at our April 6 meeting." (Emphasis added.)

7. A public board's secret, pre-approval of an agenda item like this violates Louisiana's Open Meetings Law.

¹ La. R.S. 34:2471.

8. Per La. R.S. 42:25(B), Plaintiff requested that the district attorney for St. John the Baptist Parish, Bridget A. Dinvaut, investigate the matter.

9. District Attorney Dinvaut's office has not reported any action that it has taken with regard to the Open Meetings Law violation.

10. Plaintiff requests a judgment rendering the vote void, civil penalties as provided in La. R.S. 42:28 and La. R.D. 42:26(A), and attorneys fees.

II. PARTIES

Plaintiff

11. Plaintiff The Descendants Project is a Louisiana non-profit corporation doing work in St. John the Baptist Parish.

Defendants

12. Defendant The Port of South Louisiana is a political subdivision of the State of Louisiana with jurisdictional authority encompassing the geographical boundaries of the parishes of St. Charles, St. John the Baptist, and St. James.² It is run by a Board of Commissioners.³

13. Ryan Burks is the Chairman and presiding officer of the Port of South Louisiana Board of Commissioners. He is of the full age of majority and domiciled in St. Charles Parish.

14. D. Paul Robichaux is a Vice President of the Port of Louisiana Board of Commissioners. He is of the full age of majority and domiciled in St. Charles Parish.

III. JURISDICTION, VENUE, and PRESCRIPTION

15. This Court maintains subject matter jurisdiction over this dispute based on the object of the demand and the provisions of La. 42:25(C).

16. Venue is proper in St. John the Baptist Parish because:

a. Pursuant to La. 42:25, "Enforcement proceedings shall be instituted in the district court for the parish in which the meeting took place or will take place."⁴

b. Pursuant to La. Code Civ. Proc. 73, 74, and 78, the acts and/or failures of Defendants occurred in St. John the Baptist Parish; and

c. Pursuant to La. Code Civ. Proc. 42, the Plaintiff and several of the Defendants are domiciled in St. John the Baptist Parish.

² La. R.S. 34:2471.

³ *Id.*

⁴ Although the Board of Commissioners met virtually, the Port of South Louisiana has jurisdictional authority encompassing the geographical boundaries of the parishes of St. Charles, St. John the Baptist, and St. James. La. R.S. 34:2471.

17. Although more than 60 days have passed since the meeting, prescription is satisfied because the illegal acts described herein were unknown to the public and Plaintiffs prior to the date the e-mails were produced to Plaintiffs and therefore timely under the doctrine of *contra non valentem*.⁵

IV. STATEMENT OF FACTS

18. “It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy.”⁶

19. The Port of South Louisiana (“The Port”) is a political subdivision of the State of Louisiana, established by statute.⁷

20. The Port encompasses the geographical boundaries of the parishes of St. Charles, St. John the Baptist, and St. James⁸ and operates as one of the country’s largest ports by tonnage.

21. The Port is governed by a board of nine members (“The Board”) which represent each of the parishes in which it operates, subject to various appointment parameters.⁹

22. Greenfield Louisiana, LLC (“Greenfield”) is a corporation that has owned a plot of land in St. John the Baptist Parish on which it plans to construct and operate a grain export elevator.

23. To that end, in April 2022 Greenfield and the Port entered into a Cooperative Endeavor and Payment in Lieu of Tax Agreement (“the Agreement”) in which Greenfield would sell its land to the Port who would, in turn, lease it back to Greenfield for a period of thirty years so that Greenfield could take advantage of the Port’s tax-exempt status.¹⁰

24. However, on November 30, 2022, Plaintiffs via counsel sent a Public Records Request pursuant to La. R.S. 44:1, *et seq.*, to the Assessor for St. John the Baptist Parish, Lucien J. Gauff, III, which requested among other items “All correspondence between your office and Greenfield Louisiana, LLC, the Port of South Louisiana, or any other person regarding the proposed grain elevator project.”

⁵ *Corsey v. State, Through Dept. of Corrections*, 375 So.2d 1319, 1322 (La. 1979) (“Where the cause of action is not known or reasonably knowable by the plaintiff, even though his ignorance is not induced by the defendant.”).

⁶ La. R.S. 42:12(A).

⁷ La. R.S. 34:2471.

⁸ *Id.*

⁹ *Id.*

¹⁰ Although ancillary to the claims at issue in this complaint, this Agreement constituted a “simulated sale” in violation of Louisiana law.

25. The response to that request, received December 8, 2022, included several copies of e-mail correspondence between the Board, the Port, and the Assessor.

26. Through those records, Plaintiffs first learned that the Board had met and discussed the Agreement via e-mail correspondence prior to its passage in April.

27. These e-mails were not made public prior to Plaintiff's request and there was no indication of their existence or contents at the public meeting they preceded.

28. Specifically, on March 17, 2022, the Port's Executive Director, Paul Matthews, e-mailed D. Paul Robichaux to say that the Port had reviewed the proposed Agreement and urged the Board to approve its passage.

29. That e-mail further recommended that the Board "set a date and time for a special meeting to vote on this agreement as early as March 23rd and no later than April 6th." (emphasis in original).

30. On March 21, 2022, P. Joey Murray III, a Vice President of the Board, responded to Executive Director Matthews' e-mail asking for additional information regarding the tax implications of the Agreement because "That makes a big difference in comparisons that the commission would need to see to make an informed decision."

31. On March 22, 2022, at 9:12 a.m. Executive Director Matthews responded and included Commissioners Ryan Burks, Judy Songy, Robbie LaBlanc, Stanley Bazile, Whitney Hickerson, Louis Joseph, and Katie Klibert which comprised the entirety of the Board. That e-mail also included Julia Fisher, the Port's Chief Commercial Officer.

32. Some of these Commissioners were included using their private, non-Port provided email addresses.

33. In 9:12 a.m. e-mail, Executive Director Matthews provided additional information regarding the economic impact numbers of the Agreement, as requested by Murray.

34. On March 22, 2022, at 10:33 a.m., Executive Director Matthews again e-mailed the group with additional tax and revenue information.

35. On March 22, 2022, at 12:08 p.m., D. Paul Robichaux, a Vice President of the Board, responded to the entire group.

36. In that e-mail, Robichaux first stated that they would call a special meeting, as requested, on April 6 to vote on the Agreement and that they would have set it earlier had scheduling conflicts allowed.

37. Robichaux then requests that Executive Director Matthews provide written confirmation of his discussions with parish leadership regarding the Agreement.

38. Robichaux then concludes the e-mail by stating “I trust you have all matters in order and in place to proceed with **successful passage of this pilot** [the Agreement] at our April 6 meeting” (emphasis in original).

39. The Agreement then passed at the April 6 meeting, as Robichaux described in the e-mail.

40. Greenfield’s representative David Rollo was present at that meeting, and spoke outside of public comment, as if he was a member of the board.

41. Prior to this filing, Plaintiff made a request pursuant to La. R.S. 42:25(B) to the district attorney for St. John the Baptist Parish, Bridget A. Dinvaut, investigate the matter.

42. District Attorney Dinvaut’s office has not reported any action that it has taken with regard to the Open Meetings Law violation.

IV. VIOLATIONS OF LA. R.S. 42:11, *et seq.*

43. “The intent of the open meetings law is to open all meetings of public bodies to the public, unless allowed by this law to be closed.”¹¹

44. Louisiana’s Revised Statutes explicitly lays out the policy reason for the open meetings law, stating that “[i]t is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy.”¹²

45. “Any person who has been denied any right conferred by the provisions of this Chapter or who has reason to believe that the provisions of this Chapter have been violated may institute enforcement proceedings.”¹³

46. The Port of South Louisiana is a public body subject to Louisiana’s open meetings law.¹⁴

47. These provisions apply whenever there is a “quorum” which is “a simple majority of the total membership of a public body.”¹⁵

¹¹ *Brown v. East Baton Rouge Parish School Bd.*, 405 So.2d 1148, 1154 (La. App. 1981).

¹² La. R.S. 42:12(A).

¹³ La. R.S. 42:25(C).

¹⁴ La. R.S. 42:13(A)(3) (“‘Public body’ means … port commissioners …”).

¹⁵ La. R.S. 42:13(A)(4).

48. A “meeting” includes both “the convening of a quorum of a public body to deliberate or act on a matter over which the public body has supervision, control, jurisdiction, or advisory power” as well as “the convening of a quorum of a public body by the public body or by another public official to receive information regarding a matter over which the public body has supervision, control, jurisdiction, or advisory power.”¹⁶

49. “Any member of a public body who knowingly and willfully participates in a meeting conducted in violation of” open meetings law is personally liable for damage.¹⁷

50. In addition to other restrictions, public bodies are “prohibited from utilizing any manner of proxy voting procedure, secret balloting, or any other means to circumvent the intent” of the open meetings law.¹⁸

51. The parameters of what constitutes a violation “shall be construed liberally.”¹⁹

52. Courts have relied on “the practical effect” of conduct to determine whether certain actions circumvent the intent of the open meetings law. This can include actions that are not final or binding when public bodies “meet in private, closed sessions and effectively make decisions, which are merely re-enacted pro forma, in a later open session.”²⁰

53. The “practical effect” can rule even in circumstances where there was not a quorum during the pre-meeting discussion.²¹

54. Here, each member of the Board convened via e-mail to exchange information about the Agreement, discuss the substance of the Agreement, and determine how to vote at the April meeting.

55. Several Board members engaged with the e-mail chain and exchanges occurred within a relatively brief timeframe.

56. At no point were members of the public informed of or invited to participate in this discussion, although Port officials were involved in the private decision.

57. That had real consequences, as the Board made its secret decision based on false information.

58. For example, Port CEO Paul Matthews wrote to the Board and advised them that he had “reviewed the agreements between the Port and Greenfield LLC.” He represented that under

¹⁶ La. R.S. 42:13(3).

¹⁷ La. R.S. 42:28.

¹⁸ La. R.S. 42:14(B).

¹⁹ La. R.S. 42:12(A).

²⁰ *Brown v. East Baton Rouge Parish School Board*, 405 So.2d 1148, 1152-53 (La. App. 1981).

²¹ *Id.*

the Port/Greenfield deal, the “Port will receive . . . ownership of the land and eventually constructed asset. **Value of more than \$500MM.**” (Emphasis added.)

59. But the Port did not actually receive ownership of something worth more than \$500 million. That is because Greenfield can ask for the property back at any time.²² And if the lease terminates early (which Greenfield can do as it wishes), the Port must “convey full ownership of the Leased Facility and Project back to Greenfield without any restrictions.”²³ Or alternatively, the Port must return the property to Greenfield for **one dollar** anytime Greenfield asks.²⁴

60. Plainly, the Port did not “receive” something with a value of more than \$500 million if (a) the Port has to give it back for one dollar and (b) the Port cannot sell it. Something that must be returned for one dollar is worth one dollar – not five hundred million dollars.

61. Mr. Matthews also advised the Board that “[t]here is no legal or financial risk to the Port.”

62. That is wrong. The deal documents require Greenfield to indemnify the Port. But they do not require Greenfield to carry insurance to cover such obligations. Nor do they require Greenfield to keep cash reserves to cover such obligations. The absence of any such guarantees generates serious legal and financial risk for the Port, given the fact that grain elevator explosions can cause hundreds of millions of dollars in damages.

63. Had there been a public meeting with opportunity for public comment prior to the Board’s secret decision, the public could have pointed these issues out to the Board.

64. Discussing and determining the outcome of a vote privately ahead of a public meeting amounted to “secret balloting” and circumvents the intent of Louisiana’s open meetings law.

65. The final vote at the April meeting was merely a *pro forma* reenactment of the decision made via e-mail.²⁵

66. The practical effect of the e-mail exchange was to decide the outcome of the vote behind closed doors.

²² Cooperative Endeavor Agreement (CEA) at 5 (“In the event Greenfield determines it is in the best interest of the Project for Greenfield to dispose, sell, mortgage, encumber, or otherwise transfer a portion of the Project for any reason, including such governmental or regulatory reasons, the Port shall at the written direction of Greenfield, execute transfer or conveyance documents . . . back to Greenfield.”).

²³ CEA at 3.

²⁴ Lease at POSL-0441, § 10.1(b) (requiring the Port to sell the property back to Greenfield for \$1 at any time Greenfield requests).

²⁵ See *Brown*, 405 So.2d at 1152-53.

67. That the meeting was via e-mail as opposed to in-person does not exempt the Board from engaging in the illegal acts.

68. In fact, the Attorney General has already issued an opinion on whether “relaying an opinion, without asking for an opinion in return, to council members via e-mail … about a topic, resolution, or ordinance which will later be considered by the Council violates or circumvents the intent of the Open Meeting Law” and determined that “it would not be appropriate for members of a public body to utilize electronic communication to engage in any secret balloting to find out how council members would vote or as a method of circumventing the purposes of the Open Meetings Law.”²⁶

69. This remained true even in situations where, as here, the e-mail was initiated by a non-Board member.

70. For these reasons, the Board circumvented the intent of open meetings law by meeting via e-mail, which had the practical effect of predetermining the result of the vote.

V. CONCLUSION

71. Wherefore Plaintiff requests judgment be entered against Defendants and that the Court grant the following:

- a. Declaratory relief;
- b. Judgment declaring Defendants’ vote void pursuant to La. R.S. 42:24.
- c. Award of damages pursuant to La. R.S. 42:28;
- d. Award costs and attorney’s fees; AND
- e. Order such other and further relief, at law or in equity, to which Plaintiffs may be justly entitled.

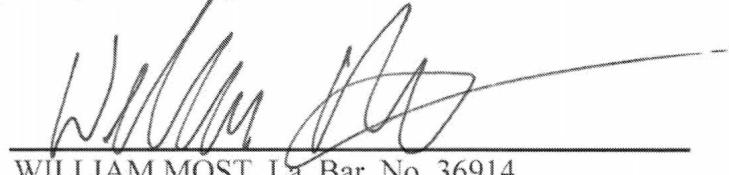
72. Plaintiffs state any and all other causes of action that may become known through a trial of this matter on its merits against any and all other parties which are herein named or which may be added later, and request any and all other damages or remedies which this Court may seem equitable.

73. Plaintiffs reserve the right to notice of defect to this pleading and reserve the right to amend or supplement this Petition after discovery of any additional fact, law, or claim, the amendment of which to be performed by the filing of any subsequent pleading.

²⁶ La. Attorney Gen. Op. 12-0177.

Respectfully submitted,

The Descendants Project, by and through their counsel,



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