Judgment rendered June 26, 2019.
Application for rehearing may be filed
within the delay allowed by Art. 2166,
La. C.C.P.

No. 52,777-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

JOHN S. TURNER, JR. — Plaintiff-Appellee

versus

JOHN L. HOFFOSS, GAIL KINNAIRD HOFFOSS, WILLIAM K. HOFFOSS, DONNA SUMAN HOFFOSS, SELF SERVICE GAS, INC. AND D. I. FOODS, INC. — Defendants-Appellants

* * * * *

Appealed from the
Twenty-Sixth Judicial District Court for the
Parish of Webster, Louisiana
Trial Court No. 62872

Honorable Jefferson Rowe Thompson, Judge

* * * * *

HOFFOSS DEVALL, L.L.C.
By: Donald Wayne McKnight
J. Lee Hoffoss, Jr.
Claude P. Devall, Jr.

DEGRAVELLES & PALMINTIER
By: Michael Carter Palmintier

Counsel for Appellants

RONALD J. MICIOTTO — Counsel for Third Party Appellee, Southwest Gaming of Louisiana, LP

DAVIDSON SUMMERS, APLC By: Randall Stephen Davidson Julia Elizabeth Blewer Grant Ernest Summers Andrew D. Martin	Counsel for Appellee, John S. Turner, Jr. and Counsel for Third Party Appellee, Dixie Inn Junction, L.L.C.

* * * * *

Before MOORE, STONE, and McCALLUM, JJ.

McCALLUM, J.

This case involves the construction and operation of a video poker casino and truck stop. Entrepreneurship, as gambling, is inherently fraught with risks. Those who have suffered severe losses in pursuit of either endeavor may be worthy of sympathy, but other important considerations are involved here. At the core of this case is the finality and effectiveness of judgments previously rendered. "Any justice system must have adjudicators; to be effective, their judgments must mean something with bindingness; and the minimal bindingness is that, except in specified circumstances, the disgruntled cannot undo a judgment in an effort to change the outcome."[1]

John L. Hoffoss, Gail Kinnard Hoffoss, William K. Hoffoss, Donna Suman Hoffoss, Self Service Gas, Inc. and D.I. Foods, Inc. ("Hoffoss Family") appeal the trial court's grant of summary judgment in favor of John S. Turner ("Turner") and Dixie Inn Junction, L.L.C. ("Dixie"). Originally, Turner filed a petition for executory process against the Hoffoss Family. Within their answer, the Hoffoss Family included a reconventional demand against Turner and Dixie. Thereafter, the trial court ruled in favor of Turner, allowing the seizure and sheriff's sale of the Hoffoss Family property at issue. The Hoffoss Family did not appeal that decision and subsequently Turner filed a motion for summary judgment to obtain a dismissal of any remaining causes pled by the Hoffoss Family. The trial court granted Turner's summary judgment and now the Hoffoss Family appeals that decision.

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[1] Kevin M. Clermont, "Res Judicata as Requisite for Justice," 68 Rutgers Univ. L. Rev. (2016).

The Hoffoss Family argues that the trial court erred in granting summary judgment because disputed material facts existed, precluding the trial court from dismissing their case without a full trial on the merits. They allege that material facts were in dispute with regard to both their detrimental reliance cause and their allegation that the relationship between them and Turner was one of joint venture and not creditor-debtor. To that point, the Hoffoss Family argues that the trial court further erred in not considering the arguments with respect to their joint venture claim and their detrimental reliance cause.

Turner, as expected, agrees with the trial court's judgment. Particular to the Hoffoss Family's joint venture allegation, Turner argues that *res judicata* attached to the previous determination by the trial court. The trial court determined, in its prior judgment on the executory process petition, that the relationship was one of creditor-debtor. The Hoffoss Family failed to appeal that decision, making it final. Furthermore, Turner contends that the trial court could not have ordered the seizure and sale of the Hoffoss Family property without such a finding. Therefore, because the Hoffoss Family failed to appeal that decision, the judgment became finale and *res judicata* attached. Ergo, Turner asserts that the trial court was correct to grant summary judgment because the Hoffoss Family's claims rely solely on the argument that something other than a creditor-debtor relationship existed between the parties.

For the following reasons, we affirm the trial court.

FACTS

For many years, the Hoffoss Family owned and operated a restaurant in Dixie Inn, Louisiana. The land, on which the restaurant was built, was

valuable due to its location adjacent to Interstate 20, with ease of access at Exit 44. In 1998, the Hoffoss Family entered into an agreement with Nitro Gaming and its principal, Harold Rosbottom ("Rosbottom"), to build and operate a casino and truck stop on the property. In that agreement ("Rosbottom Agreement"), the Hoffoss Family would provide their land and Nitro would provide $1.25 million to construct the casino and truck stop. The profits from the operation would be divided equally.

With little to no progress on the casino and truck stop, the Hoffoss Family then entered into a "Lease and Video Poker Participation Agreement" ("VPPA") with Southwest Gaming of Louisiana ("Southwest"). Under the terms of the VPPA, the Hoffoss Family would again provide their land and Southwest would fund the construction of the casino and truck stop. Southwest, in turn, obtained funding for the construction from Turner. It is important to note that prior to this VPPA, the Hoffoss Family and Rosbottom had yet to abandon, cancel or renounce the prior Rosbottom Agreement.

Thereafter, Rosbottom sued the Hoffoss Family for breach of the Rosbottom Agreement. They subsequently settled the matter. From that settlement, two provisions of note were agreed upon by the parties: (1) Rosbottom would receive 13.75% of the video poker revenues for ten years and such would be deemed a covenant or servitude running with the land; and (2) if certain time deadlines for the construction of the casino and truck stop, and the installation of poker machines were not met, Rosbottom could seek specific performance of the Rosbottom Agreement, allowing him to take control and ownership of the project.

After agreeing to the above compromise with Rosbottom, the Hoffoss Family moved forward with the VPPA. In addition to acknowledging the Rosbottom Agreement, the VPPA included provisions that Southwest would provide funds or obtain financing for the construction of the casino and truck stop.

Southwest contacted Turner, without objection from the Hoffoss Family. Turner agreed to provide a portion of the funds, $400,000, for the construction of the casino and truck stop while Southwest and the Hoffoss Family reached an agreement for a loan from Regions Bank. Turner further funded a $125,000 payment to Rosbottom that was a requirement of the prior Rosbottom Agreement and settlement. Thereafter, construction of the casino and truck stop began.

Eventually, it became clear to Turner and the Hoffoss Family that construction of the casino and truck stop, along with the installation of the poker machines, would not be completed prior to the Rosbottom Agreement deadlines. Part of the problem was that Regions Bank declined to provide any loan because the land in question was hampered by the 13.75% covenant and servitude per the Rosbottom Agreement and settlement.

The Hoffoss Family and Turner then entered into a mortgage agreement titled "Mortgage to Secure Future Advances" ("Mortgage Agreement") in order to provide Turner with collateral to protect him as he became the sole funding source of the project. However, after spending $1.2 million on the project, and after construction had slowed or halted, Turner filed a petition for executory process in order to proceed with a sheriff's sale of the Hoffoss Family property.

Thereafter, the Hoffoss Family answered Turner's petition for executory process and included a reconventional demand. Within their answer and demand, they filed a motion to enjoin Turner's seizure and sale of the property in question. They also sought damages against Turner and asked the trial court for a declaratory judgment, seeking a judicial determination of the rights of the parties under the agreements at issue.

At the trial on the injunction in 2003, the trial court accepted and considered copious amounts of testimony and evidence, including the contracts and agreements in question. The trial court found in favor of Turner, ordered the seizure of the property and allowed the sheriff's sale to proceed. The Hoffoss Family did not appeal the trial court's decision with regard to the injunction or the seizure and sale. Turner subsequently bought the Hoffoss Family property at the sheriff's sale.

Eight years later, in 2011, the Hoffoss Family sought, through discovery, any evidence with regard to the profits or revenue from the casino and truck stop. When Turner did not comply, the Hoffoss Family filed a motion to compel. The trial court denied that motion. This Court denied a writ application on the trial court's denial of the motion to compel. In an attempt to finally bring this 15-year old case to a conclusion, Turner filed a motion for summary judgment to end all remaining litigation between the parties. The trial court granted the summary judgment, resulting in the appeal before us.

DISCUSSION

A motion for summary judgment is a procedural device used when there is no genuine issue of material fact for all or part of the relief prayed for by a litigant. A summary judgment is reviewed on appeal *de novo*.

Samaha v. Rau, 2007-1726 (La. 2/26/08), 977 So. 2d 880; *Wright v. Louisiana Power & Light*, 2006-1181 (La. 3/9/07), 951 So.2d 1058; *King v. Parish National Bank*, 2004-0337 (La. 10/19/04), 885 So. 2d 540, 545; *Jones v. Estate of Santiago*, 2003-1424 (La. 4/14/04), 870 So. 2d 1002, 1006.

We first identify two issues that are no longer before us for consideration. First, the Hoffoss Family has stated in its brief to this Court that "[they] have no objection to Dixie Inn Junction being dismissed as a defendant." Second, the Hoffoss Family previously argued that either Turner or Dixie Inn Junction, or both, were assignees of the contractual rights of Southwest. The Hoffoss family, however, has abandoned that allegation. Therefore, we will not discuss those two issues.

Previous Proceedings and Determinations

It is important to note from the outset that the Hoffoss Family did not appeal the trial court's decision denying their request for an injunction. Furthermore, they did not appeal the judgment of the trial court allowing the seizure and sale of their property. Those decisions were made final by judgment in 2003, without any appeal to this Court.

Louisiana Revised Statute 13:4231 states the following:

> Except as otherwise provided by law, a valid final judgment is conclusive between the same parties, except on appeal or other direct review, to the following extent:
>
> (1) If the judgment is in favor of the plaintiff, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and merged in the judgment.
>
> (2) If the judgment is in favor of the defendant, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject of the litigation are

> extinguished and the judgment bars a subsequent action based on those causes of action.
>
> (3) A judgment in favor of either the plaintiff or the defendant is conclusive, in any subsequent action between them, with respect to any issue actually litigated and determined if its determination was essential to that judgment.

In response to Turner's petition for executory process, the Hoffoss Family filed for an injunction against the seizure and sheriff's sale of the property. They not only sought to enjoin the executory proceeding, but they further included a reconventional demand. In their reconventional demand, their briefs in support of such and their answer to the Turner petition, the Hoffoss Family clearly pled facts advancing the argument, allegation and defense of detrimental reliance. In their pleadings, including their motion to enjoin, they cite their alleged reliance on promises made by Turner that he would fund the entirety of the project. Although the written agreements involved do not support such, the Hoffoss Family argued their belief that Turner would fund the project to completion.

Beyond their pleadings, at trial, the Hoffoss Family continued to advance their argument and defense of detrimental reliance. In fact, it is clear from the record that the court heard arguments, testimony, and evidence with regard to the Hoffoss Family's alleged reliance on Turner's promises and actions. The Court then denied the injunction and ordered the seizure and sale of the property, effectively dismissing the arguments and allegations made by the Hoffoss Family.

The trial court reasoned that the relationship between the parties was one of creditor-debtor. The trial court noted that prior to the Mortgage Agreement between the parties, Turner had advanced monies as a temporary loan while Southwest and the Hoffoss Family sought funding from a bank.

The bank, however, refused to advance any loan because title to the property in question was clouded by the covenant and servitude of the 13.75% revenue interest held by Nitro and Rosbottom. Thereafter, Turner and the Hoffoss Family entered into the Mortgage Agreement which the trial court found to be one that replaced the anticipated creditor-debtor relationship sought with the bank.

Effectively, in its previous decision, which the Hoffoss Family did not appeal, the trial court noted that Turner stepped into the role which the parties anticipated that the bank would hold, that of a mortgage holder, acting as the creditor of the project. In that agreement, Turner received a secured interest on the Hoffoss Family property. With no appeal of that decision by the Hoffoss Family, not only do we find that no further consideration is warranted with regard to the relationship of the parties, but we also agree, considering the evidence and testimony in this case, that the trial court correctly found the relationship of the parties to be that of creditor-debtor.

That judgment effectively resolved the relationship between the Hoffoss Family and Turner as one of creditor-debtor. Without such a determination, Turner could not legally have had the Hoffoss Family property seized and then sold at a sheriff's sale. The Hoffoss Family's failure to appeal the decision of the trial court at that junction made such judgment final. As stated at the opening of this opinion, we believe that the finality of judgments, except for in extreme and extraordinary circumstances, must be upheld and not degraded.

Essentially, the Hoffoss Family wishes to relitigate issues that have previously been decided and finalized. The trial court decided the

relationship between the Hoffoss Family and Turner to be that of creditor-debtor. Furthermore, the trial court considered ample evidence and testimony on the issue of detrimental reliance and then denied the allegations. The Hoffoss Family neither appealed the trial court's decision to deny their injunction nor the trial court's judgment in favor of Turner's petition for executory process. Now, some 16 years later, they wish to relitigate that which has been decided and became final for over a decade. We instead affirm the trial court's decision in dismissing such arguments by summary judgment.

Declaratory Judgment

We further find that the Hoffoss Family's argument that the trial court erred in not considering their request for declaratory judgment is misguided. The executory proceeding clearly defined the relationship between the parties. Again, the Hoffoss Family did not appeal that decision. Therefore, their alleged need to have the status of the parties determined via declaration by the trial court is unnecessary. The trial court did not err in denying such a request.

Assumption of Obligations

The Hoffoss Family also previously advanced the argument that Turner stepped into the shoes of Southwest, assuming the latter's obligations under the VPPA. For such to legally occur and be enforceable, however, the parties would need to agree in writing. Louisiana Civil Code article 1821 states the following:

> An obligor and a third person may agree to an assumption by the latter of an obligation of the former. To be enforceable against the third person, the agreement must be made in writing.

In granting the motion for summary judgment, the trial court essentially found no evidence of Turner assuming the obligations of Southwest. We agree with that determination. The record contains no evidence or any instrument that the trial court could have construed as an assumption by Turner of Southwest's obligations. The only written instrument between Turner and the Hoffoss Family was the Mortgage Agreement. After 16 years of litigation, no contract or written agreement was produced into the record showing that Turner ever assumed any obligation that Southwest had with the Hoffoss Family.[2] The evidence and agreements before the trial court were clear and unambiguous. Therefore, the trial court did not err, and we agree, that summary judgment is proper with regard to this issue.

Louisiana Revised Statute 6:1122

The Hoffoss Family also argues that the trial court erred in its application of La. R.S. 6:1122. Turner argues that this statute bars any and all defenses and actions by the Hoffoss Family in this matter. La. R.S. 6:1122 mandates that a debtor may not assert an action against a creditor unless the action is based on a written agreement. Turner argues that the statute precludes a party from seeking any relief based on oral promises to extend credit or make other financial accommodations outside of the original creditor agreement. Turner therefore contends that the Hoffoss Family is precluded from their actions because those actions arise out of alleged oral promises or reliance on such that fall outside of any written agreement between the parties.

[2] In its brief, even Southwest contends that Turner did not assume any of its obligations to the Hoffoss Family.

La. R.S. 6:1122 states the following:

> A debtor shall not maintain an action on a credit agreement unless the agreement is in writing, expresses consideration, sets forth the relevant terms and conditions, and is signed by the creditor and the debtor.

La. R.S. 6:1121 provides the following definitions:

> (1) "Credit agreement" means an agreement to lend or forebear repayment of money or goods or to otherwise extend credit, or make any other financial accommodation.
>
> (2) "Creditor" means a financial institution or any type of creditor that extends credit or extends a financial accommodation under a credit agreement with a debtor.
>
> (3) "Debtor" means a person or entity that obtains credit or seeks a credit agreement with a creditor or owes money to a creditor.

The relevant portion of La. R.S. 6:1122.1 states the following:

> A. (1) In an action by a creditor, the debtor shall not assert a defense based on terms and conditions of a credit agreement, unless the agreement is in writing, expresses conditions, sets forth the relevant terms and conditions, and is signed by the creditor and the debtor.

In *Whitney National Bank v. Rockwell*, the Supreme Court of Louisiana considered a similar issue. The relevant portions of that opinion are as follows:

> The only matter before this court at this stage of the proceedings is the denial by the lower courts of the Bank's motion for summary judgment on defendant's reconventional demand. The principal issue is whether defendant has a cause of action for damages under the facts asserted by him in the reconventional demand and the affidavit in opposition to summary judgment regarding oral promises and representations by the Bank as to terms for repayment of the loan when the loan contract contained specific payment terms and stipulated that the provisions of the contract "may not be waived or modified except in writing, signed by the Bank."
>
> …
>
> [T]he Bank's alleged breach of oral agreement by demanding payment in full, in accordance with the terms of the note, is

> exactly the situation that the Legislature contemplated in enacting the credit agreement statute. The very purpose of the statute was to prohibit a debtor's action for damages based on the breach of an alleged oral agreement to forbear repayment or to make financial accommodations. … Under La.Rev.Stat. 6:1123 B, a credit agreement cannot be implied merely from the relationship between the creditor and debtor, and a waiver of the written contract cannot be implied from forbearance or failure to exercise rights under the contract.
>
> We therefore conclude that the Bank is entitled to a summary judgment as a matter of law on defendant's reconventional demand.
>
> For these reasons, the judgment of the court of appeal is set aside, the motion for summary judgment is granted, and the reconventional demand is dismissed.

Whitney Nat. Bank v. Rockwell, 94-3049 (La. 10/16/95), 661 So. 2d 1325, 1327 & 1332-33.

The principal issue under La. R.S. 6:1122 is whether the Hoffoss Family has a cause of action for damages under the facts asserted in their reconventional demand regarding alleged oral promises and representations by Turner even though the Mortgage Agreement between the parties specifically stated that in the event that construction ceased, Turner could seize the property and have it sold by executory process.

In furthering their detrimental reliance claim, The Hoffoss Family additionally alleges that they relied on Turner's promises because Turner owed them a fiduciary duty. In order to reach the conclusion that Turner owed this alleged fiduciary duty, they reframe the relationship between them and Turner as one of joint venture, discussed *infra*. However, La. R.S. 6:1123(B) specifically precludes that argument as well: "A credit agreement shall not be implied from the relationship, fiduciary, or otherwise, of the creditor and the debtor."

In light of the clear mandate of the legislature in La. R.S. 6:1121-23 and in consideration of the Supreme Court's opinion in *Whitney National Bank*, we find that Turner is entitled to summary judgment as a matter of law on the Hoffoss Family's reconventional demand.

Joint Venture

The latest arrow in the Hoffoss Family quiver is the argument that the relationship between them and Turner was one of joint venture. The Hoffoss Family asserts that the trial court erred in not considering any other relationship between the parties other than creditor-debtor. They allege that the facts prove, or at least put into dispute, the relationship between the parties. They contend that Turner's action of taking over complete control of the construction, including choosing the contractor, deciding on the plans, and entering into contracts with third parties for the construction of the facilities, proves that Turner was a partner in a joint venture, not a creditor.

Within this latest iteration of a cause against Turner, the Hoffoss Family reurged that they relied to their detriment on promises made by Turner. They allege that Turner promised to renegotiate with Rosbottom if they signed the Mortgage Agreement with Turner. Citing alleged letters between Rosbottom and Turner, they believe that Rosbottom and Turner instead schemed to deprive the Hoffoss Family of their property and take full ownership of the future casino and truck stop. They also highlight the fact that soon after entering into the Mortgage Agreement, Turner allegedly stopped all construction and instead filed his petition for executory process. Therefore, they allege that Turner breached his fiduciary duty owed to them under the joint venture relationship.

Turner counters that the Hoffoss Family failed to live up to any of the promises or agreements they made with any parties involved. Turner alleges that the VPPA included provisions in which the Hoffoss Family agreed to seek out financing for the construction of the casino and truck stop, fully contemplating a mortgage on the property. Thereafter, Turner provided a "bridge loan" while the Hoffoss Family sought unsuccessfully a loan with a local bank. Turner and the Hoffoss Family then entered into the Mortgage Agreement wherein Turner obtained a mortgage interest on the property for the $1.2 million that he had already agreed to provide. Turner asserts that the Mortgage Agreement included provisions allowing a demand for repayment at any time that construction ceased. When such an event occurred, Turner then properly, legally filed to foreclose the property, in accordance with the only written agreement between the parties, the Mortgage Agreement.

Turner further argues that this court need not consider the above factual allegations with regard to summary judgment. He contends that *res judicata* and the trial court's previous decisions also resolve this issue. Turner contends that no factual dispute concerning the relationship between the parties exists because the trial court previously found that the relationship was that of creditor-debtor. Since the trial court made such a determination, ordered the seizure and the sale of the property by the sheriff, and the Hoffoss Family failed to appeal the judgment, then Turner argues that *res judicata* attached. Turner also argues that the creditor-debtor relationship between the parties is an adjudicated fact that may not be overturned by new proceedings. Therefore, because the Hoffoss Family's causes of action all hinge on the allegation of a joint venture relationship,

and because such an allegation has been previously, judicially found not to exist, then the trial court was correct in granting the summary judgment and dismissing these latest claims by the Hoffoss Family.

We find, however, that even on the merits of the joint venture argument, the Hoffoss Family fails. The alleged joint venture between the Hoffoss Family and Turner is an agreement wherein the sole, overarching outcome or result is the construction of a casino and truck stop. This alleged joint venture required that the parties construct multiple, permanent buildings, attached to the Hoffoss Family property. It is unequivocally clear that the joint venture which the Hoffoss Family alleges to exist with Turner would involve and be predicated on the use of the Hoffoss Family immovable property along with the construction of additional immovables. In Louisiana, where immovable property is involved, such an agreement must be in writing.

"Since the essential elements of a joint venture and a partnership are the same, joint ventures are generally governed by partnership law." *Riddle v. Simmons*, 40,000 (La. App. 2 Cir. 2/16/06), 922 So. 2d 1267, 1281, *writ denied*, 2006-0793 (La. 6/3/06), 929 So. 2d 1259. A joint venture is a "juridical person, distinct from its partners, created by a contract between two or more persons to combine their efforts or resources in determined proportions and to collaborate at mutual risk for their common profit or commercial benefit. Joint ventures arise only where the parties intended the relationship to exist, and they are ultimately predicated upon contract either express or implied." *Riddle*, 922 So. 2d at 1281; *Broadmoor, L.L.C. v. Ernest N. Morial New Orleans Exhibition Hall Authority*, 2004-0211 (La. 03/18/04), 867 So. 2d 651; *Coleman v. Querbes Co. No. 1*, 51,159 (La. App.

2 Cir. 2/15/17), 218 So. 3d 665; *Smith v. Lonzo*, 2002-1053 (La. App. 3d Cir. 02/05/03), 838 So.2d 918; *Pillsbury Mills, Inc. v. Chehardy*, 231 La. 111, 124, 90 So. 2d 797, 801 (1956), citing *Daspit v. Sinclair Refining Co.*, 199 La. 441, 6 So. 2d 341 (1942); *see also*, La. C.C. art. 2801.

First, it is clear from the record that the parties did not intend, nor did they effectuate, a joint venture. Undeniably, the Mortgage Agreement alone proves that the parties did not intend a relationship of mutual risk and profit. That agreement highlights that Turner was given more protection in the form of a mortgage interest. Collateral, such as a mortgage, is exactly what any prudent creditor would have undoubtedly required before funding the project, as opposed to becoming a partner in a joint venture. Furthermore, the record contains no evidence of any intent or agreement of a joint venture between Turner and the Hoffoss Family.

Second, aside from the lack of evidence of intent to form a joint venture, the Hoffoss Family failed to produce any evidence of a written agreement. In *Ogden v. Ogden*, the Third Circuit highlighted the importance and requirement of a written contract with regards to immovable property:

> Few concepts are as firmly rooted in our statutory law and jurisprudence as the principle that agreements as to immovable property must be in writing. To allow litigants to avoid this principle merely by framing their cause of action in terms of a tort would be jurisprudentially eradicating a concept as old as the Civil Code itself.
>
> We are aware that this policy may sometimes result in harsh consequences. However, these consequences were as apparent to the redactors of the Civil Code as they are to modern legislators. Nevertheless, the Louisiana legislature has consistently chosen to have interest in immovable property protected by a steadfast rule of law rather than the vagaries of an equitable case by case approach.

Ogden v. Ogden, 93-1413 (La. App. 3 Cir. 9/21/94), 643 So. 2d 245, 248, *writ denied*, 94-2539 (La. 1/13/95), 648 So. 2d 1339.

Furthermore, in *Norris v. Causey*, the U. S. District Court, Eastern District of La. considered *Ogden v. Ogden*, in deciding that a joint venture that concerns immovable property must be in writing

> Louisiana courts have unequivocally held that an agreement pertaining to immovable property must be in writing, even if it does not involve the direct transfer of property.
>
> …
>
> The alleged joint venture agreement involved the purchase and development of immovable property. The agreement clearly "concerned" immovable property. Thus, the law requires the contract to be confected in writing.

Norris v. Causey, 2016 WL 311746 at *4 (E.D. La. 01/26/16).

We find no evidence of any written agreement entered into between the Hoffoss Family and Turner, effectuating or detailing the joint relationship that the Hoffoss Family alleges to have existed. Since the alleged joint venture concerned immovable property in multiple capacities, and no written instrument exists, then we find that no joint venture can exist.

Additionally, on a procedural note, we agree, as argued by Turner, that no specific factual allegations of a joint venture were pled by the Hoffoss Family. Their reconventional demand is silent as to any facts that would offer up the joint venture allegation for consideration. Furthermore, the Hoffoss Family did not amend their demand at any point to include such factual allegations. This joint venture argument only surfaced after many years of failed attempts with other causes, claims and arguments by the Hoffoss Family.

> [A]lthough Article 862 abolished the theory-of-the-case pleading requirement, Article 891 provides that a petition "shall

> contain a short, clear, and concise statement of all causes of action arising out of, and of the material facts of, the transaction or occurrence that is the subject mater of the litigation." In order to plead "material facts" within Louisiana's fact-pleading system, the pleader must state what act or omissions he will establish at trial.

Miller v. Thibeaux, 2014-1107 (La. 1/28/15), 159 So. 3d 426, 432; *Udomeh v. Joseph*, 2011-2839 (La. 10/26/12), 103 So. 3d 343.

Therefore, although we find that the Hoffoss Family's joint venture argument fails on the merits, we also note that it would fail procedurally. The Hoffoss Family has neglected, over a period of more than a decade, to file any pleading or to amend their receonventional demand to include the allegation of a joint venture.

CONCLUSION

The judgment of the trial court is AFFIRMED. All costs of this appeal are assigned to the appellants.