

Fifth Circuit Court of Appeal State of Louisiana

No. 26-C-281

**POB GRETNAL BEER LLC AND
POB RESTAURANT GRETNAL LLC**

VERSUS

JEFFERSON FACILITIES, INC. AND PARISH OF JEFFERSON

**IN RE POB GRETNAL BEER LLC AND POB RESTAURANT GRETNAL LLC
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT
COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE
DONALD L. FORET, DIVISION "H", NUMBER 874-457**

TRUE COPY

August 21, 2026



**SUSAN BUCHHOLZ
DEPUTY CLERK**

Panel composed of Judges Stephen J. Windhorst,
Timothy S. Marcel, and Michael P. Mentz, Pro Tempore

WRIT DENIED

This application involves the trial court’s sustaining of the dilatory exceptions of unauthorized use of summary proceeding and improper cumulation of actions regarding plaintiffs’ request for injunctive relief in this matter. For the following reasons, we deny the plaintiffs’ writ contesting the trial court’s ruling.

Procedural Background

The case presents the suit of POB Gretna Beer, LLC and POB Restaurant Gretna, LLC (collectively, “Port Orleans” or “plaintiffs”) against defendants Jefferson Facilities, Inc. (“JFI”) and Jefferson Parish. Specifically, Port Orleans’s suit is for specific performance, declaration of rights, and injunctive relief. Defendants have reconvened seeking declaratory relief, as well.

Procedurally, the case is that it is still in the pleadings stages and the parties' competing declaratory judgment actions are pending, along with Port Orleans' demands for specific performance, permanent injunctions, and damages.

Facts:

In October 2024, the Jefferson Parish Council (the "Council") selected the Port Orleans entities to operate a brewery and restaurant in a building being constructed with public funds on parish-owned property in Gretna, Louisiana. Respondent, JFI, is a non-profit and economic development corporation created by the Jefferson Parish Council in 2001 pursuant to La.R.S. 33:9023. The Council tasked JFI, through an existing cooperative endeavor agreement, with managing the construction of the subject building and leasing its associated commercial spaces to the Port Orleans entities.

At the center of this dispute is a \$10 million building constructed by JFI on parish-owned land and two amended commercial leases, both executed on July 9, 2025, by and between JFI (as lessor) and POB Gretna Beer, LLC (as lessee) and JFI (as lessor) and POB Restaurant Gretna, LLC (as lessee) (together, the "Amended Leases"). The Amended Leases for Port Orleans to occupy and operate in the newly constructed building must comply with Louisiana law and Article VII, Section 14 of the Louisiana Constitution, which prohibits political subdivisions and their economic development corporations such as JFI from the gratuitous alienation of public property.

In their Petition and Amended Petition (collectively, the "Petitions"), plaintiffs seek damages for alleged breaches of the Amended Leases and declaratory judgment declaring that the Amended Leases are constitutional, valid, and enforceable. Port Orleans's Petitions also seek both prohibitory and mandatory injunctive relief to compel performance by JFI of obligations arising under the Amended Leases. JFI reconvened that the Amended Leases violate Louisiana law,

including Article VII, Section 14 of the Louisiana Constitution. JFI therefore seeks a declaratory judgment that the Amended Leases are absolute nullities and void *ab initio*. JFI also asserts, inter alia, that contractual conditions in the Amended Leases allow for their unilateral termination by JFI. JFI's Reconventional Demand invokes its right to a jury trial.

In addition to JFI's reconventional demand, JFI and the Parish also filed dilatory exceptions of unauthorized use of summary proceeding and improper cumulation (collectively, the "Exceptions") in response to plaintiffs' Petitions. **These are the subject of plaintiffs' application to this court.**

Port Orleans' claim for mandatory injunction seeks to compel JFI to do the following: (1) immediately execute purchase orders for brewery equipment, walk in coolers, and kitchen hood systems; (2) execute lease-related notices for filing in the public records; and (3) complete alleged construction obligations.

Defendants argued that mandatory injunctive relief must be adjudicated through ordinary process following a trial on the merits. They further contended that it cannot be obtained through the expedited summary procedure set forth in La. C.C.P. arts. 3601, et seq. governing preliminary injunctions. This is because a mandatory injunction has the same effect as a permanent injunction and, therefore, is treated as such by Louisiana law.

JFI's position in the underlying lawsuit is that the Amended Leases, in their current form, do not satisfy requirements set out by the Louisiana Supreme Court in *City of New Orleans v. Bd. of Directors of Louisiana State Museum*, 98-1170 (La. 3/2/99), 739 So.2d 748 (hereinafter *Cabela's*), and, as such, violate Article VII, Section 14 of the Louisiana Constitution, rendering the Amended Leases absolute nullities, unenforceable, and void *ab initio*. Thus, the principal issue that must be decided by the fact-finder is whether the Amended Leases are contrary to the Louisiana Constitution and law and absolutely null.

In their application to this court regarding the exceptions of improper use of a summary proceeding and improper cumulation of actions, plaintiffs argue (1) A mandatory injunction may be granted preliminarily on a preponderance showing at an evidentiary hearing and the trial judge erred by treating it as available only at a merits trial by ordinary proceeding; (2) The mandatory preliminary injunction evidentiary hearing does not require the consent of all parties; (3) The ruling is inexcusably overbroad: it declared moot and eliminated Port Orleans' prohibitory preliminary-injunction demands; (4) Cumulation was proper, and in all events, Articles 464 and 933(B) foreclose the disposition the court ordered; (5) The trial judge decided contested, evidence-dependent merits questions on a dilatory exception and on a record with no evidence; and, (6) The trial judge wrongly converted a scheduling concern into a categorical bar, and the decree itself is legally defective. Port Orleans also asserts that the District Court's ruling on JFI's and the Parish's Exceptions means that "Port Orleans isn't entitled to *any* [emphasis in original] pretrial hearing where they'd even *attempt* [emphasis in original] to show entitlement to preliminary injunctive relief (mandatory or otherwise)."

Analysis

Louisiana Code of Civil Procedure article 3601 authorizes the issuance of injunctions where irreparable injury, loss, or damage may otherwise result to the applicant, and explicitly permits a court to issue a preliminary injunction during the pendency of the main action. Louisiana Code of Civil Procedure article 3602 requires that a preliminary injunction shall not issue unless notice is given to the adverse party and an opportunity for a hearing is provided. Louisiana Code of Civil Procedure article 3609 addresses proof at injunction hearings, authorizing the court to receive evidence either on verified pleadings and affidavits or "as in ordinary cases."

Louisiana courts have long recognized a fundamental procedural and evidentiary divide between these two categories of injunctive relief. A prohibitory injunction seeks to preserve the status quo pending a full trial on the merits and may be granted upon a prima facie showing that the applicant will prevail. *Richland Par. Police Jury v. Debnam*, 47,159 (La. App. 2 Cir. 4/18/12), 92 So.3d 487; *Bollinger Mach. Shop & Shipyard, Inc. v. U.S. Marine, Inc.*, 595 So.2d 756 (La. Ct. App. 1992). A mandatory injunction, by contrast, commands a party to perform a specific, affirmative action. Because it orders “the doing of something,” it has substantially the same effect as a permanent injunction, and Louisiana courts therefore require a correspondingly higher quantum of proof before it may issue. *City of New Orleans v. Bd. of Directors of Louisiana State Museum*, 98-1170 (La. 3/2/99), 739 So.2d 748; *Denta-Max v. Maxicare Louisiana, Inc.*, 95-2128 (La. App. 4 Cir. 3/14/96), 671 So.2d 995.

The Louisiana Supreme Court settled the controlling standard in *Cabela’s*, holding that “a mandatory injunction may not be issued on a merely prima facie showing that the party seeking the injunction can prove the necessary elements; instead, the party must show by a preponderance of the evidence at an evidentiary hearing that he is entitled to the preliminary injunction.”

The elements the moving party must establish by preponderance include: (1) that the mover will suffer irreparable injury, loss, or damage if relief is not granted; (2) that the mover is entitled to the relief sought; and (3) that the mover will likely prevail on the merits. *Mercadel v. New Orleans Jazz & Heritage Festival & Found., Inc.*, 22-0242 (La. App. 4 Cir. 4/20/22), 338 So.3d 589; La. C.C.P. art. 3601.

As to the injunctive relief requested by plaintiffs, some decisions hold that a mandatory injunction categorically cannot issue at any preliminary injunction stage and must await a formal trial on the merits by ordinary proceeding. *Fryar v. Westside Habilitation Ctr., Inc.*, 425 So. 2d 804 (La. Ct. App. 1982); *Maestri v. Destrehan*

Veterinary Hospital and Werner Enterprises v. Westend Development Co., cited in *Denta-Max v. Maxicare Louisiana, Inc.*, 95-2128 (La. App. 4 Cir. 3/14/96), 671 So.2d 995. This view was echoed in Judge Tobias's partial dissent in *Chalmette Amusement Co. v. Alphonso*, 07-1512 (La. App. 4 Cir. 4/16/08), 983 So.2d 239, which characterized the "mandatory preliminary injunction" as a legal oxymoron because mandatory relief and preliminary relief employ different procedural rules and evidentiary burdens. The Third Circuit's recent decision in *Mayo v. Lagniappe Willow Lake, LLC*, 23-326 (La. App. 3 Cir. 4/24/24), 387 So.3d 773, supports this interpretation, reversing a trial court that had impermissibly combined the procedural components of a preliminary and a mandatory injunction into one proceeding without the parties' consent.

Port Orleans' Amended Petition expressly requested that the District Court "schedule an Article 3602 hearing on the preliminary/mandatory injunction requests," and thereafter issue a mandatory injunction. Thus, plaintiffs' Petitions combined the distinct forms of injunctive relief into a summary hearing and, in doing so, attempted to obtain what amounts to permanent injunctive relief through an expedited summary hearing designed only to preserve the status quo. Louisiana law does not permit that result, particularly given JFI's express objections to plaintiffs' procedural maneuver.

Specifically, with regard to the improper cumulation of actions, Port Orleans' Petitions improperly cumulated claims requiring fundamentally different forms of procedure within a single expedited proceeding: prohibitory injunctive relief triable by summary process and mandatory injunctive relief requiring a full evidentiary hearing. Because those claims are not subject to the same form of procedure, their cumulation into a single hearing was improper under La. C.C.P. arts. 462 and 463, including Comment (a) to Article 463.

Regarding the exception of improper use of a summary proceeding, plaintiffs' requested prohibitory injunction seeks to enjoin JFI from reallocating, diverting, or freezing funds maintained by JFI in an account for the construction of the building. The District Court determined that injunction request, although labeled as prohibitory by Port Orleans, is mandatory in substance because it would affirmatively control how JFI must administer public funds allocated to the project. That claim likewise requires adjudication through ordinary process, not the summary procedure invoked by Port Orleans.

We agree with the trial court's ruling and deny plaintiffs' writ.

Gretna, Louisiana, this 21st day of August, 2026.

MPM
SJW
TSM

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **08/21/2026** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

26-C-281

E-NOTIFIED

- | | |
|--|--------------------------------|
| 24th Judicial District Court (Clerk) | |
| Honorable Donald L. Foret (DISTRICT JUDGE) | |
| Guice A. Giambrone, III (Respondent) | Andrew T. Lilly (Relator) |
| Thomas M. Discon (Relator) | Jacob K. Best (Respondent) |
| Timothy S. Madden (Respondent) | Ivana Dillas (Respondent) |
| Michael J. Cerniglia (Respondent) | Patrick T. Isacks (Respondent) |