

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

Y & S CORPORATION D/B/A
LAGNIAPPE DELI

NO. 2013 CW 1088

VERSUS

STATE OF LOUISIANA,
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONS, OFFICE OF
STATE POLICE, VIDEO GAMING
DIVISION AND LOUISIANA
GAMING CONTROL BOARD

JULY 11, 2013

In Re: State of Louisiana through the Louisiana Gaming Control Board and the Department of Public Safety and Corrections, Gaming Division, applying for supervisory writs, 19th Judicial District Court, Parish of East Baton Rouge, No. 621854.

BEFORE: McDONALD, WELCH AND CRAIN, JJ.

WRIT GRANTED. STAY DENIED. The district court erred in issuing an order staying the revocation of plaintiff's video gaming license. A stay is granted to maintain the status quo. Based on plaintiff's allegations in its petition for judicial review, its license had already been revoked at the time the order was issued. Thus, this portion of the district court's order has no effect. Moreover, we conclude that the district court's order that defendant enable the video poker devices in plaintiff's establishment commanded defendant to act, was not an order that would maintain the status quo, and, in effect, was a mandatory injunction. A mandatory injunction cannot be issued without a showing by a preponderance of the evidence at a hearing that the seeking party is entitled to the injunction. See **City of Baton Rouge/Parish of East Baton Rouge v. 200 Government Street, LLC**, 2008-0510 (La. App. 1st Cir. 9/23/08), 995 So.2d 32, 36, writ denied, 2008-2554 (La. 1/9/09), 998 So.2d 726. Moreover, to prevail at a hearing for an injunction, a party must prove three elements: 1) the injury, loss or damage the mover will suffer if the injunction is not issued is irreparable, 2) it is entitled to the relief sought, and 3) it will likely prevail on the merits of the case. **Id.** Accordingly, the stay order issued on June 11, 2013, is vacated and this matter is remanded for further proceedings.

WJC
JMM
JEW

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FOR THE COURT