

**NOT DESIGNATED FOR PUBLICATION**

**RICHARD JEANSONNE, AND  
L.L.C. CAUSEWAY SHUTTLE**

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**NO. 2000-CA-0764**

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**COURT OF APPEAL**

**VERSUS**

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**FOURTH CIRCUIT**

**THE CITY OF NEW ORLEANS  
AND LILLIAM ZAYAS, IN  
HER OFFICIAL CAPACITY AS  
THE DIRECTOR OF THE  
DEPARTMENT OF UTILITIES**

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**STATE OF LOUISIANA**

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**APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 2000-1427, DIVISION "L-15"  
Honorable Max N. Tobias, Judge**

**\* \* \* \* \***

**Judge Dennis R. Bagneris, Sr.**

**\* \* \* \* \***

**(Court composed of Chief Judge William H. Byrnes, III, Judge Charles R.  
Jones, and Judge Dennis R. Bagneris, Sr.)**

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**AFFIRMED**

This appeal arises from a judgment rendered in favor of Richard Jeansonne and Causeway Shuttle, L.L.C. On February 7, 2000, the trial court issued an order enjoining the City of New Orleans from regulating Richard Jeansonne and the Causeway Shuttle, L.L.C. The City of New Orleans appeals. For the reasons enumerated below, we affirm the trial court's judgment.

**STATEMENT OF FACTS**

Plaintiff/respondent Richard Jeansonne ("Jeansonne") is the owner of the vans operated by co-plaintiff/respondent Causeway Shuttle, L.L.C. Causeway Shuttle, L.L.C. owns fifteen vans, seven of which are driven from St. Tammany Parish into the City of New Orleans on a daily basis. The company operates a vanpool, wherein approximately 100 riders alternate as drivers of the vans.

On July 23, 1999, Jeansonne was notified by Lilliam Zayas, the

Director of the Department of Utilities of the City of New Orleans, that Causeway Shuttle, L.L.C. was operating without a Certificate of Public Necessity and Conveyance (“CPNC”), in direct contravention of the New Orleans City Code. On December 28, 1999, a summons was issued to Christopher L. Morris for transporting passengers into New Orleans without a CPNC. Although the citation listed Jeansonne as Morris’s employer, no citation was issued to Jeansonne.

On January 13, 2000, Jeansonne and the other riders of the Causeway Shuttle, L.L.C. were informed by Officer Rodriguez of the New Orleans Taxicab Bureau that any attempt to operate the vanpools into the city without a CPNC would result in the immediate arrest of the driver. As a result of this threat, seven of the vanpools ceased to make trips into the City of New Orleans.

On January 31, 2000, Jeansonne and Causeway Shuttle, L.L.C. filed a petition for a Temporary Restraining Order and Injunctive Relief. On that same date, Judge Max Tobias entered a temporary restraining order against the City of New Orleans.

After a hearing, the trial court granted the Petition for a Temporary Restraining Order and Injunctive Relief in favor of Jeansonne and Causeway Shuttle, L.L.C. The City of New Orleans appeals.

## DISCUSSION

A preliminary injunction is an interlocutory device designed to preserve the existing status of the parties pending a trial on the merits of the case. *See Kenner v. New Orleans Aviation Bd.*, 603 So.2d 220, 223 (La. App. 5 Cir., 1992). LSA-C.C.P. Article 3601 provides that a preliminary injunction may be issued during the pendency of an action where irreparable injury, loss or damage will otherwise occur. *See Kruger v. Garden District Ass'n*, 00-1135, 2001 La. App. LEXIS 149 (La. App. 4 Cir. 2/11/01).

A trial court may issue an injunction where irreparable injury, loss or damage may occur, and where the moving party has shown that he is entitled to the relief sought and has made a prima facie showing that he will prevail in a trial on the merits. *Alliance for Affordable Energy v. Council of New Orleans*, 677 So. 2d 424, 434 (La. 1996). The decision of whether or not to issue an injunction is within the discretion of the trial court and this decision is only reviewable upon a showing of the trial court's manifestly erroneous exercise of this power. *City of Kenner, supra*, at 223. Absent manifest error, this Court will not alter the decision of the trial court.

When proving irreparable injury, it is sufficient for the party requesting the injunction to demonstrate that there is a threat of destruction or of a substantial reduction of its business. *City of Kenner, supra*. at 227.

By way of its police power, the City of New Orleans may enact regulations designed to ensure the safety, health or welfare of its citizens. Chapter 162 of the New Orleans City Code regulates all for-hire vehicles within the city limits. Section 162-2 provides that the provisions of Chapter 162 apply to all for hire vehicles which 1) are operated entirely within the geographical limits of the city; or, 2) are taken on trips to any location not more than ten miles from the city limits; or 3) are operated between the City of New Orleans and any airport operated by the City, even if the airport is located outside of Orleans Parish. Chapter 162 regulates, among other things, the issuance of Certificates of Public Necessity and Convenience. Specifically, Section 162-151 provides that

**No person shall own and operate or permit any other person to operate an animal-drawn vehicle, a for hire vehicle, tour bus or tour vehicle, airport limousine, taxicab or any other for hire passenger motor vehicle operated for hire on the streets of the city not operated on fixed rails, upon specified routes or between fixed terminals without first having applied for and received an appropriate certificate of public necessity and convenience in the manner provided in this article.**

This section, provides that only the owner and operator of the for hire

vehicle will be subject to sanctions if the vehicle is operated within the city limits without a CPNC.

In order to obtain a preliminary injunction, the party requesting the injunction must also make out a prima facie case that it will prevail in a full trial on the merits of the case. The prima facie case requires less proof than is required for an ordinary hearing for a permanent injunction. *City of Kenner, supra, at 223 (citing Federal Nat'l Mortg. Ass'n v. O'Donnell, 446 So.2d 395 (La. App. 5 Cir. 1984))*. Although the hearing for the preliminary injunction may touch upon or tentatively decide merit issues, the principal demand is determined only upon a full trial on the merits. *See id. (citing Matter of the Liquidation of Kenilworth Insurance Co., 428 So.2d 1187 (La. 1983))*. In short, if the party requesting the preliminary injunction has given some evidence promoting the idea that it will prevail in a full hearing for a permanent injunction, has shown the possibility of irreparable harm, and has shown that it is entitled to the relief sought, then the trial court has not committed manifest error by issuing a preliminary injunction.

In the instant case, plaintiffs/respondents, Richard Jeansonne and Causeway Shuttle, L.L.C. have shown that they were entitled to a preliminary injunction. The record clearly demonstrates that the trial court's ruling was not clearly erroneous, and is therefore entitled to deference by

this Court.

Jeansonne and Causeway Shuttle have demonstrated that their business will suffer irreparable injury if the injunction is not issued. Drivers of the vanpool (who are not necessarily the owners of the vehicles) have been threatened with arrest if the vanpools continue to operate in the City of New Orleans without a CPNC. Due to this threat, seven of the vanpools have ceased to operate. This evidence of reduction in business is sufficient to show irreparable injury to the party requesting the injunction. The plaintiffs have also demonstrated that they are entitled to the injunction.

The City of New Orleans argues that under Chapter 162 of the City Code, the vans operating for this shuttle company are each required to have a CNPC. Each party sets forth legitimate arguments concerning the applicability of this Chapter. The plaintiffs have argued that the rules in this Chapter are inapplicable in their particular case, specifically because their vanpools operate from more than ten miles outside of the city limits. The City argues that the Chapter only applies after a CPNC has been issued. The arguments set forth by the plaintiffs are sufficient to establish a prima facie case in their favor, as they have offered evidence that they will prevail on a trial on the merits of the case.

The plaintiffs argue that the City's arguments are in direct

contravention of the City Code, and its appeal is therefore frivolous. While the plaintiffs have set forth a prima facie case sufficient to entitle them to a preliminary injunction, the City has also put forth satisfactory legal arguments for its own case. This is not a frivolous appeal, and damages therefore are not warranted.

**DECREE**

After a careful review of the record, this Court finds that the trial court did not commit manifest error by issuing a Temporary Restraining Order and allowing injunctive relief for Jeansonne and the Causeway Shuttle. Accordingly, the judgment of the trial court is affirmed.

**AFFIRMED**