

2001 WL 35969579 (La. Dist. Ct.) (Trial Pleading)  
District Court of Louisiana,  
22nd Judicial District Court.

Malcolm L. HURSTELL, Sr.,  
v.  
Romero MARCELLO, Stephen F. Hurstell and M and M Gaming Inc.

No. 200111694.  
2001.

**Petition**

Respectfully Submitted: Crawford & Lewis, 1600 Premier Centre-North Tower, 450 Laurel Street, Baton Rouge, Louisiana 70801, Telephone: (225) 343-5290, [James R. Lewis](#) (#8844), Aura Poche (#19980), Catherine St. Pierre (#18419), [John G. Allelo](#) (#18093).

NOW INTO COURT, through undersigned counsel, comes Malcolm L. Hurstell, Sr., a resident of full age of majority of the Parish of Orleans, State of Louisiana, ("Petitioner") who respectfully represents as follows:

**1.**

Made defendants herein are:

- a. Romero J. Marcello, a person above the age of majority, domiciled in the Parish of St. Tammany, State of Louisiana;
- b. Stephen F. Hurstell, a person above the age of majority, domiciled in the Parish of St. Tammany, State of Louisiana;
- c. M and M Gaming, Inc., a Louisiana business, having its registered office in the Parish of St. Bernard, State of Louisiana (the "Defendants").

**2.**

On or about May 29, 1998, Romero J. Marcello, a shareholder of M and M Gaming, Inc. sold to Malcolm L. Hurstell, Sr. certain shares of stock in M and M Gaming, Inc. (the "Stock").

**3.**

Malcolm L. Hurstell, Sr. **financed** the purchase of the Stock with a loan from Parish National Bank for approximately \$510,000 through Ben-Mac Real Estate Investment, LLC, of which Malcolm L. Hurstell, Sr. was a member and a manager.

**4.**

The proceeds of the loan from Parish National Bank were deposited into the Ben-Mac Real Estate Investment, LLC account on or about May 28, 1998.

**5.**

On or about May 29, 1998, Ben-Mac Real Estate Investment, LLC issued a check in the amount of \$509,000 to Romero J. Marcello for the purchase of the Stock.

**6.**

Until February 2001, Malcolm L Hurstell, Sr. as a shareholder of M and M Gaming Inc. received regular monthly distributions from M and M Gaming, Inc., which were deposited directly into an account of Petitioner at Bank One on or about the 25th day of each month.

**7.**

In February 2001, the January distribution was not made to Malcolm L. Hurstell, Sr. by direct deposit in his account at Bank One. Rather, on February 21, 2001 M and M Gaming, Inc. issued a check payable to the order of "Malcolm Hurstell" in the amount \$8,367,00 (the "Check"), The Check was not given to Malcolm L. Hurstell, Sr. As of the date of filing this petition, Petitioner has not received the proceeds of the Check nor has he received any January distribution from M and M Gaming, Inc.

**8.**

Upon information and belief, M and M Gaming, Inc. wrongfully gave the Check to Stephen F. Hurstell, a son of Malcolm L. Hurstell, Sr., or an agent or an employee thereof, without the consent of Malcolm L. Hurstell, Sr. Upon information and belief, Stephen F. Hurstell deposited the check in his own personal account.

**9.**

Stephen F. Hurstell has made numerous harassing telephone calls to his **elderly** father, the Petitioner, threatening him with among other things, **financial** demise. With the filing of this lawsuit, Petitioner believes that these harassing and threatening phone calls will increase. Petitioner respectfully requests that this Court issue a temporary restraining order restraining Stephen F. Hurstell from calling or visiting Petitioner. These telephone calls by Stephen F. Hurstell are inflicting extreme emotional and physical strain on the Petitioner, such that if Stephen F. Hurstell is not immediately prevented from taking such actions, Petitioner believes that immediate, irreparable injury will occur and that notice should not be required.

**10.**

As of the date of filing this petition, M and M Gaming, Inc. has wrongfully, without explanation, withheld payment to Malcolm L. Hurstell, Sr. of his February distribution due to him in March 2001 as a shareholder of M and M Gaming, Inc.

**11.**

Upon information and belief, M and M Gaming, Inc. paid Romero J. Marcello the February distribution due and owing to Malcolm L. Hurstell, Sr.

**12.**

Upon information and belief, Romero J. Marcello has in his possession a stock certificate(s) representing the Stock purchased in May 1998 by Malcolm L. Hurstell, Sr.

**13.**

Malcolm L. Hurstell, Sr. paid Romero J. Marcello in full for the Stock and is thus the lawful owner of the Stock. Romero J. Marcello wrongfully refuses to deliver the Stock to Malcolm L. Hurstell, Sr.

**14.**

In light of the fact that M and M Gaming, Inc. is wrongfully making shareholder distributions that lawfully belong to Petitioner to other individuals, Petitioner respectfully requests that this court order M and M Gaming, Inc. to deposit all such monthly distributions, including the January and February 2001 distributions and any future monthly distributions in the registry of this court until this matter is resolved. As a delay in granting this relief may cause injustice, Petitioner respectfully requests that this court conduct an expedited hearing on this matter.

**15.**

Petitioner is entitled to and requests a jury trial on all issues.

WHEREFORE, Petitioner, Malcolm L. Hurstell, Sr. prays that judgment be entered in favor of Malcolm L. Hurstell, Sr. and against Romero J. Marcello, Stephen F. Hurstell and M and M Gaming, Inc. requiring that 1.) Romero J. Marcello turn over the stock certificate(s) evidencing the Stock to Malcolm L. Hurstell Sr.; 2.) Stephen F. Hurstell or M and M Gaming pay Malcolm L. Hurstell, Sr. the amount owed him for the January 2001 distribution; 3.) M and M Gaming, Inc. or Romero J. Marcello pay Malcolm L. Hurstell, Sr. the amount owed to him for the February 2001 distribution and any other monthly distributions owed to Petitioner as a shareholder of M and M Gaming, Inc. and not made to him as of the date of the judgment; 4.) Defendants pay any and all damages suffered by Petitioner as a result of the Defendants actions enumerated above, all of which to be more specifically proven at trial of the matter; 5.) Defendants pay costs associated with the bringing of this action. Petitioner further prays for any and all other equitable relief.

Respectfully Submitted:

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<<signature>>

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*PLEASE SERVE:*

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