

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

2011 CA 1785-R

THE ASCENSION PARISH SALES AND USE TAX AUTHORITY

VS.

LOUISIANA MACHINERY COMPANY, L.L.C.

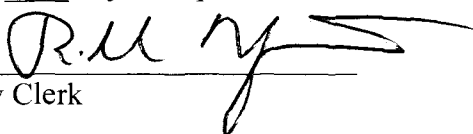
23RD JUDICIAL DISTRICT COURT
PARISH OF ASCENSION CASE NO. 98122

ORDER

This Court, ex proprio motu, **GRANTS A REHEARING** in this matter to correct its August 18, 2014 opinion issued in this matter. The August 18, 2014 opinion contained typographical errors whereby Louisiana Machinery Company, L.L.C. is mistakenly referred to as Louisiana Machinery Rentals, L.L.C. The attached opinion corrects those typographical errors.

JMM
TMH
EGD

Baton Rouge, Louisiana
on this 2nd day of September 2014.



Deputy Clerk

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 1785R

THE ASCENSION PARISH SALES AND USE TAX AUTHORITY

VERSUS

LOUISIANA MACHINERY COMPANY, L.L.C.

Judgment Rendered: SEP 02 2014

ON REMAND FROM THE SUPREME COURT OF LOUISIANA
APPEALED FROM THE TWENTY-THIRD JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF ASCENSION
STATE OF LOUISIANA
DOCKET NUMBER 98122
DIVISION "A"



HONORABLE RALPH TUREAU, JUDGE

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BEFORE: McDONALD, HIGGINBOTHAM, DRAKE, JJ.

McDONALD, J.

Pursuant to a writ of certiorari granted on January 17, 2014 by the Louisiana Supreme Court, this case was remanded to this court with instructions to consider the matter in light of the recent opinions of **Washington Parish Sheriff's Office v. Louisiana Machinery Co., LLC**, 13-0583 (La. 10/15/13), 126 So.3d 1273, and **Catahoula Parish School Bd. v. Louisiana Machinery Co., LLC**, 12-2504 (La. 10/15/13), 124 So.3d 1065.

In **Catahoula Parish School Bd.**, the supreme court affirmed the third circuit's reversal of the trial court's grant of a partial summary judgment in favor of the Catahoula Parish School Board and the Catahoula Parish Police Jury, specifically ruling that the mandatory notice requirements of La. R.S. 47:337.51 were deficient and, therefore, not final; that the validity of the notices of assessments constituted an essential element of the tax collectors' claims rather than strictly a defense asserted by the companies; and that the defenses of the companies were timely filed. 124 So.3d at 1076. In **Washington Parish Sheriff's Office**, the supreme court reversed this court's decision for the reasons it had assigned in **Catahoula Parish School Bd.**, 126 So.3d at 1279.

Subsequent to the supreme court's remand, the Ascension Parish Sales and Use Tax Authority (the Tax Collector) and Louisiana Machinery Company, L.L.C. (the Company) filed a joint motion requesting specified relief. Based on our review of the Louisiana Supreme Court's holdings in **Catahoula Parish School Bd.** and **Washington Parish Sheriff's Office**, we grant relief. Thus, our earlier judgment, **Ascension Parish Sales and Use Tax Authority v. Louisiana Machinery Co., L.L.C.**, 11-1785 (La. App. 1st Cir. 3/30/12), 92 So.3d 410, is vacated in its entirety.

We affirm that portion of the trial court's judgment that vacated its March 2, 2011 judgment. We reverse that portion of the trial court's judgment that granted

partial summary judgment in favor of the Tax Collector, since the Tax Collector's notice of assessment under La. R.S. 47:337.51 was deficient and, therefore, not final; and because that deficiency was an essential element of its claim, the Tax Collector failed its burden of proving entitlement to the taxes it averred were due. We reverse that portion of the trial court judgment that granted the Tax Collector's peremptory exception of lack of jurisdiction over the subject matter and the exception is denied. We vacate the dismissal of the Company's exceptions, affirmative defenses and denials. We affirm that portion of the trial court judgment that denied the Tax Collector's motion to strike the Company's supplemental and amended exceptions and incorporated memorandum, affirmative defenses, and answer. We vacate that portion of the trial court judgment that assessed costs against the company, with costs to be determined by the trial court in future proceedings. The matter is remanded for further proceedings. Appeal costs in the amount of \$2,415.75 are assessed against one-half against Ascension Parish Sales and Use Tax Authority and one-half against Louisiana Machinery Company, L.L.C.

**JOINT MOTION GRANTED IN PART; MARCH 30, 2012
JUDGMENT VACATED; TRIAL COURT JUDGMENT AFFIRMED IN
PART, REVERSED IN PART, AND VACATED IN PART; MATTER
REMANDED.**