

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 1235 R

C/W

2011 CA 1236 R

LIVINGSTON PARISH SCHOOL BOARD, THROUGH ITS SALES
AND USE TAX DIVISION

VERSUS

LOUISIANA MACHINERY COMPANY, L.L.C.

DATE OF JUDGMENT: JUL 03 2014

ON APPEAL FROM TWENTY-FIRST JUDICIAL DISTRICT
NUMBER 130,691, DIV. E, PARISH OF LIVINGSTON
STATE OF LOUISIANA

HONORABLE ELIZABETH P. WOLFE, JUDGE

* * * * *

Drew M. Talbot
Robert R. Ranier
Frederick Mulhearn
Baton Rouge, Louisiana

Counsel for Plaintiff-Appellee
Livingston Parish School Board,
through its Sales and Use Tax
Division

Jesse R. Adams, III
Andre B. Burvant
Kathryn S. Friel
Matthew A. Mantle
New Orleans, Louisiana

Counsel for Defendant-Appellant
Louisiana Machinery Company, L.L.C.

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BEFORE: WHIPPLE, KUHN, AND GUIDRY, JJ.

Disposition: JOINT MOTION GRANTED; JUNE 8, 2012 DECISION VACATED; TRIAL COURT'S JUDGMENT REVERSED IN PART AND AFFIRMED IN PART; MATTER REMANDED.

KUHN, 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 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. v. Washington Parish Sheriff's Office*, 126 So.3d at 1279.

Subsequent to the supreme court's remand, Livingston Parish School Board (the Tax Collector) and Louisiana Machinery Company, LLC (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.*, 124 So.3d 1065 and *Washington Parish Sheriff's Office*, we grant that relief. Thus our earlier decision is vacated in its entirety. We reverse that portion of the trial court's grant of 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 sufficiency of notice was an essential element of its claim, the Tax Collector failed its burden of proving entitlement to the taxes it averred were due. That portion

of the trial court's judgment that sustained a peremptory exception of the Company based on the objection of prescription as to the taxes due for calendar year 2006 is affirmed, since this defense by the Company was timely asserted.¹ The matter is remanded for further proceedings. Appeal costs in the total amount of \$1,856.50 are assessed one-half against the Livingston Parish School Board and one-half against Louisiana Machinery Company, LLC.

**JOINT MOTION GRANTED; JUNE 8, 2012 DECISION VACATED;
TRIAL COURT'S JUDGMENT REVERSED IN PART AND AFFIRMED IN
PART; MATTER REMANDED.**

¹ At the February 14, 2011 hearing before the trial court on, among other things, the Tax Collector's entitlement to partial summary judgment and the Company's exception of prescription, the Tax Collector conceded that the "2006 taxes were prescribed when the assessments were issued." On review, this court incorrectly concluded that the prescription defense relative to the 2006 taxes had been untimely asserted. *Livingston Parish School Bd. v. Louisiana Machinery Co., L.L.C.*, 2011-1235 (La. App. 1st Cir. 6/8/12), 98 So.3d 407, 413-14. In light of the supreme court's holding that the deficient notice, which constituted an essential element of the Tax Collector's claim, precluded a finding of finality to the assessment issued by the Tax Collector, the prescription defense was timely asserted. See *Catahoula Parish School Bd.*, 124 So.3d at 1076. Thus, given the Tax Collector's concession before the trial court, and again in the joint motion filed in this court, the trial court's ruling sustaining the exception insofar as the 2006 taxes is properly affirmed.