

Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the 28th day of January, 2022 are as follows:

BY Weimer, C.J.:

2020-C-01446 c/w	WINMILL TIRE, LLC, ET AL. VS. COLT, INC., ET AL. (Parish of St. Landry)
2020-C-01447 c/w	REVERSED AND REMANDED. SEE OPINION.
2020-C-01458 c/w	Crichton, J., dissents for the reasons assigned by Justice Genovese.
2020-C-01460	Genovese, J., dissents and assigns reasons.

SUPREME COURT OF LOUISIANA

**No. 2020-C-01446 C/W No. 2020-C-01447
C/W No. 2020-C-01458 C/W No. 2020-C-01460**

WINMILL TIRE, LLC, ET AL.

VS.

COLT, INC., ET AL.

*ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, THIRD CIRCUIT,
PARISH OF ST. LANDRY*

WEIMER, Chief Justice.

We granted certiorari to consider whether waste tire processors are prohibited from charging waste tire generators a transportation fee above the fees statutorily provided by Louisiana’s waste tire laws. Finding there are no provisions prohibiting such a transportation fee, we conclude that Defendants, waste tire processors, are not prohibited from charging Plaintiffs, waste tire generators, a fee for the transportation of waste tires from the waste tire generators’ location to the processing facilities. Therefore, for the reasons that follow, the lower courts’ judgments are reversed.

FACTS AND PROCEDURAL HISTORY

The parties in the instant matter are all involved in the tire industry and the process of disposing of waste tires. “Waste tires” are “whole tire[s] that [are] no longer suitable for [their] original purpose because of wear, damage, or defect and/or [have] been discarded by the consumer.” La. Admin. Code tit. 33, § 10505. The disposal of waste tires is governed by the Solid Waste Recycling and Reduction Law (SWRRL), La. R.S. 30:2411, et seq. The Louisiana Waste Tire Program, La. Admin.

Code tit. 33, §§ 10501-10543, was established pursuant to the SWRRL and contains additional regulations for the disposal and recycling of waste tires. The Waste Tire Program is administered by the Louisiana Department of Environmental Quality (LDEQ). La. Admin. Code tit. 33, § 10503. The program was implemented for the stated purpose of removing waste tires from the solid waste stream going into landfills in order to protect the environment and for the public's safety and welfare. La. Admin. Code tit. 33, § 10501. The regulations recognize *generators*, *transporters*, and *processors* for their involvement in the waste tire removal process. As defined by the regulations, a waste tire generator is "a person whose activities ... result in the production of waste tires." La. Admin. Code tit. 33, § 10505. A waste tire *transporter* transports the waste tires, while a *processor* processes waste tires by using a method that "alters whole waste tires so that they are no longer whole; such as cutting, slicing, chipping, shredding, distilling, freezing, or other processes as determined by the administrative authority." *Id.*

Plaintiffs¹ in these consolidated matters are all waste tire generators (herein "Generators"), such as tire dealers, who replace unserviceable tires with serviceable tires. The Defendants² are permitted waste tire processors (herein "Processors") who also retain separate permits required to transport tires. During the fall of 2015, Processors began charging Generators a transportation fee to transport waste tires from Generators' facilities to Processors' facilities. Thereafter, Generators filed suit against Processors, seeking to have the fee declared unlawful, seeking damages based

¹ Plaintiffs are Winmill Tire, LLC; Winmill Specialties, Inc.; Dayroo Sales, LLC d/b/a Automotive Gear; A.J. Price, Inc.; Waiting for the Sun, LLC; Quality Tire & Car Care; Albritton's Service Center, LLC; and West Carrol Hardware.

² Defendants are Colt, Inc.; Benson Environmental Services of Louisiana, Inc.; Environmental Industries Recycling, Inc.; and, Franklin Rubber Resources, LLC.

on several theories of recovery, and for class certification.³ The Generators argued that any fee charged by Processors, exceeding the DEQ waste tire fee set forth in La. Admin. Code tit. 33, § 10535(B),⁴ is prohibited.

Subsequently, Generators filed a motion for partial summary judgment, seeking a declaration from the trial court that the transportation fee is prohibited by Louisiana law. The Generators asserted that: (1) the LDEQ fee and subsidy for which processors may apply covers both transportation and processing costs and that La. R.S. 30:2418(I)⁵ and La. Admin. Code tit. 33, § 10519(G)⁶ prohibit Processors from charging the fee at issue herein; (2) the 2016 revisions to the regulations did not shift

³ The class was never certified.

⁴ Louisiana Administrative Code, Title 33 §10535(B) currently provides:

B. A waste tire fee is hereby imposed on each tire sold in Louisiana, to be collected from the purchaser by the tire dealer or motor vehicle dealer at the time of retail sale. The fee shall be \$2.25 for each passenger/light truck tire, \$5 for each medium truck tire, and \$10 for each off-road tire. For recapped or retreaded tires, a waste tire fee of \$1.25 shall be collected upon the sale of each recapped or retreaded tire. This fee shall be collected whether or not the purchaser retains the waste tires. The department does not require the collection of fees on the sale of tires weighing 500 pounds or more, solid tires, or tires de minimis in nature, including but not limited to lawn mower tires, bicycle tires, and golf cart tires.

⁵ At the time of filing of this suit, La. R.S. 30:2418(I) limited the fee to \$2.00 per passenger tire, \$5.00 for each medium truck tire and \$10.00 for each off-road tire sold. However, La. R.S. 30:2418(I) currently provides, in pertinent part:

I. (1)(a) The fee on tires authorized to be levied pursuant to R.S. 30:2413(A)(8) [granting the LDEQ Secretary the power to adopt necessary fees] shall not exceed the following:

- (i) Beginning October 1, 2018, through July 31, 2022, two dollars and twenty-five cents per passenger/light truck/small farm service tire. Beginning on August 1, 2022, two dollars per passenger/light truck/small farm service tire.
- (ii) Five dollars per medium truck tire.
- (iii) Ten dollars per off-road tire.

⁶ Louisiana Administrative Code, Title 33 § 10519(G) provides the following:

G. The waste tire fee established by R.S. 30:2418 shall be listed on a separate line of the retail sales invoice and identified as the “LDEQ waste tire fee.” The LDEQ waste tire fee shall not include any additional fees. No tax of any kind shall be applied to this fee.

the responsibility of who pays transporters and have no bearing on the lawfulness of the fee; and (3) allowing Processors to charge Generators a fee would thwart the purpose of paying transporters after delivery (this method was established to encourage transporters to deliver the waste tires to processors instead of dumping those tires elsewhere). In support of their motion for partial summary judgment, Generators presented copies of the past and present statutes, regulations, and legislative acts, as well as the LDEQ 1996 status report⁷ and the La. C.C.P. art. 1442 depositions of LDEQ representatives Dr. Chuck Brown and Ms. Phyllis Luke. The deposition testimony indicated that the LDEQ reads the statutes and regulations as being neutral, meaning they neither prohibit nor permit Processors to charge Generators a fee.

Processors opposed the Generators' motion for partial summary judgment and filed cross motions for summary judgment, arguing that the fee should be declared lawful.⁸ Processors argued that following the 2016 revisions to the Waste Tire Program regulations, none of the relevant statutes or regulations: (1) prohibit the charging of a fee such as the one involved in this matter; (2) establish that the subsidy the Processors may apply for is the sole compensation the Processors are entitled to; or, (3) require that the subsidy be used by the Processors to pay for transportation costs. Processors maintained that the purpose of the subsidy is only to assist them with waste tire *processing* and *marketing* costs, which does not include transporting waste tires from the Generators to their facilities.⁹

⁷ The trial court ruled that the 1996 status report was inadmissible on summary judgment.

⁸ While additional issues had been raised by the parties, at the summary judgment hearing the trial court only considered the issues surrounding the Generators' partial motion for summary judgment and the Processors' cross motions for summary judgment on the legality of the fee.

⁹ The Processors relied on the 2016 amendments that deleted the processors' responsibility to pay transporters and the depositions of Dr. Brown and Luke, who both testified that there is nothing

The trial court granted Generators’ motion for partial summary judgment and denied Processors’ cross motions for summary judgment, finding that because the LDEQ Secretary has the sole authority to set fees for administration of the Waste Tire Program, the Processors did not have the power to impose the transportation fee on the Generators. Processors appealed, and the court of appeal affirmed the trial court’s judgment and also denied rehearing.¹⁰ The court of appeal found that the Secretary of the LDEQ has the sole authority to set the fees necessary to administer the Waste Tire Program, and the fee at issue was prohibited by the provisions that set the maximum waste tire fee. Specifically the court of appeal explained:

We find Defendants’ argument lacks merit based upon statutes and regulations whereby the legislature has set a maximum fee to run the Waste Tire Program, and the DEQ has prohibited any fee that exceeds the authorized fee. This is evident in La. R.S. 30:2418(I)(1)(a), which states:

The fee on tires authorized to be levied pursuant to R.S. 30:2413(A)(8) [granting the Secretary power to set fees] shall not exceed

Winmill Tire, LLC, 19-766 at 14, 303 So.3d at 1058. The court of appeal also emphasized the limitation on the waste tire fee expressed in La. Admin. Code tit. 33, § 10519(G), which states that “[t]he LDEQ waste tire fee shall not include any additional fees.” *Id.* Furthermore, the court of appeal found that the 2016 repeal of La. Admin. Code tit. 33, § 10515(B) (which contained a requirement that processors pay transporters) did not support the Processors’ ability to charge the disputed fee. *Id.*, 19-766 at 14-16, 303 So.3d at 1058-1059.

either prohibiting or permitting the processors from charging the disputed fee. Colt, Inc. also attached a comment table for the proposed revisions to La. Admin. Code tit. 33, § 10519, where Benson Environmental Services of Louisiana, Inc. requested the language regarding the LDEQ fee be clarified. LDEQ refused the request, responding that “it does not prohibit any fee that the generator may charge such as an environmental or disposal fee.”

¹⁰ **Winmill Tire, LLC v. Colt, Inc.**, 19-766 (La.App. 3 Cir. 5/6/20), 303 So.3d 1049, reh’g denied 11/18/20).

This court granted and consolidated the Processors' writ applications to consider whether the lower courts erred in finding the transportation fee to be impermissible.¹¹

LAW AND ANALYSIS

Because these consolidated matters are before this court via a motion for partial summary judgment, a de novo review is proper, using the same criteria as a trial court in determining whether summary judgment is appropriate, i.e., whether there is any genuine issue of material fact, and whether the movant is entitled to judgment as a matter of law. **Johnson v. Purpera**, 20-01175, p. 11 (La. 5/13/21), 320 So.3d 374, 386; **Samaha v. Rau**, 07-1726, p. 4 (La. 2/26/08), 977 So.2d 880, 882-83.

The court of appeal provided a thorough review of the relevant statutes and regulations, along with the historical background underlying the Waste Tire Program.¹² Upon the program's establishment, the Secretary of the LDEQ was given the power and duty to set necessary fees and promulgate the rules and regulations needed for administering the Waste Tire Program. La. R.S. 30:2418(H). Upon the promulgation of La. Admin. Code tit. 33, ch. 105, a two-dollar waste tire fee was imposed on new tires sold in the state. La. Admin. Code tit. 33, § 10515 (1992). While this fee has changed over the years and differs depending on the type of tire sold, what has remained consistent is that the fee is collected from the *purchaser* of new tires by the *tire dealer*.¹³ In 1994, a scheme was established for distribution of the two-dollar waste tire fee, whereby the full fee was remitted to the Waste Tire Management fund and \$1 from the fee would be utilized "to pay waste tire processors

¹¹ **Winmill Tire, LLC v. Colt, Inc.**, 20-1446 (La. 3/9/21), 312 So.3d 268, 20-1447 (La. 3/9/21), 312 So.3d 272, 20-1458 (La. 3/9/21), 312 So.3d 270, 20-1460 (La. 3/9/21), 312 So.3d 270.

¹² See **Winmill Tire, LLC**, 19-766 at 7-10, 303 So.3d at 1054-55.

¹³ La. Admin. Code tit. 33, § 10535(B).

that are working under agreement with the administrative authority for the processing of ... waste tires[.]” La. Admin. Code tit. 33, § 10535 (1994). In the same year (1994), Title 33, § 10515 was also amended to provide that tire processors could apply for a subsidy to “assist them with waste tire processing and disposal costs.” Section 10515(B) was further amended to provide for transportation costs: “It shall be the responsibility of processors to make payments to authorized waste tire transporters who provide them with waste tires.”

In 2016, § 10515 was amended and replaced by § 10516, and the language addressing payments made to transporters was no longer included. However, the language authorizing processors to obtain a subsidy remained in the provisions. Regarding the available subsidy, La. Admin. Code tit. 33, § 10535(E) currently provides, in pertinent part:

Payments made by the state of Louisiana are meant to temporarily supplement the business activities of processors and **are not meant to cover all business expenses and costs** associated with processing and marketing. [Emphasis added.]

In rendering its decision, the court of appeal emphasized the legislative intent purportedly illustrated by the statutory and regulatory history of the Waste Tire Program:

Looking at the history of the statutes and regulations, it has been the responsibility of the processors to pay for transporters from 1992-2016. The law changed when the processor agreements were essentially codified into the regulations, which deleted the section requiring processors to pay transporters. As pointed out by the trial court, it is the Secretary of the DEQ who has been given the power to enact regulations to govern the waste tire program, including all fees. *See* La. R.S. 30:2413(8). The DEQ fee is for the administration of the program, thus arguably the costs for the waste tire process were considered, and it is the Secretary who sets the only fee in relation to the program.

Winmill Tire, LLC, 19-766 at 13, 303 So.3d at 1057.

After reviewing the relevant statutes and regulations, we respectfully reach a conclusion different from the rulings of the lower courts. While our learned colleagues of the lower courts correctly noted that the LDEQ is the proper authority for setting fees and administering the Waste Tire Program, the statutes and regulations have been silent as to how waste tire *transporters* receive any compensation since the 2016 revisions. Because the plain language of the relevant statutory and regulatory provisions do not prohibit a processor from charging a transportation fee, we find such fees permissible.

When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written, with no further interpretation made in search of the intent of the legislature. La. C.C. art. 9; La. R.S. 1:4. **SWAT 24 Shreveport Bossier, Inc. v. Bond**, 00-1695, p. 11 (La. 6/29/01), 808 So. 2d 294, 302. “The statutory and jurisprudential rules for statutory construction and interpretation apply equally well to ordinances, rules, and regulations.” **Samuels v. Goodwin**, 05-2131, p. 5 (La.App. 1 Cir. 11/3/06), 950 So.2d 736, 739. None of the statutes or regulations grant the Secretary of the LDEQ the sole authority to set any and all fees related to waste tires, nor do they prohibit fees from the private sector.

Imposing the LDEQ waste tire fee, La. Admin. Code tit. 33, § 10535 provides, in pertinent part:

B. A waste tire fee is hereby imposed on each tire **sold** in Louisiana, to be collected **from the purchaser by the tire dealer or motor vehicle dealer** at the time of retail sale. [Emphasis added.]

Applying the statutory language as written, the provision clearly indicates that the LDEQ waste tire fee is directed at the consumer, who is purchasing new tires from

a dealer. In no way does the language preclude tire processors (also operating as transporters) from charging generators a transportation fee.

Louisiana R.S. 30:2418(I)(1)(a) provides only that “[t]he fee on tires authorized to be levied pursuant to R.S. 30:2413(A)(8)¹⁴ shall not exceed” the maximum amounts provided. While this statutory limitation refers to the LDEQ waste tire fee, it only limits the power of the Secretary in setting that fee. Louisiana R.S. 30:2418(I)(1)(a) does not reference any limitations on the fees imposed by other parties other than LDEQ.

Additionally, La. Admin. Code tit. 33, § 10519(G) provides, in pertinent part:

The waste tire fee . . . shall be listed on a separate line of the retail sales invoice and identified as the “LDEQ waste tire fee.” **The LDEQ waste tire fee shall not include any additional fees.** No tax of any kind shall be applied to this fee. [Emphasis added.]

The court of appeal read this provision as expressly prohibiting the transportation fee at issue herein. However, read in conjunction with Section 10535, the prohibition on “additional fees” applies only to the LDEQ waste tire fee being charged by tire dealers to the consumer. The “LDEQ waste tire fee” is a fee that is used to further the purpose of the program established by the Louisiana waste tire statute and regulations. In light of the relevant statutes and regulations, the “LDEQ waste tire fee” is separate and apart from the transportation fee charged by Processors to transport waste tires from the Generators’ facilities.

Furthermore, while waste tire processors may be eligible to receive a subsidy from the LDEQ to assist with “*processing* and *marketing* costs,” nothing in the regulations provides that the subsidy is an exclusive means of providing for

¹⁴ La. R.S. 30:2413(A)(8) authorizes the LDEQ Secretary to “adopt, by rules, such fees as may be necessary” to administer the Solid Waste Recycling and Reduction Laws (“SWRRL”).

transportation costs. La. Admin. Code tit. 33, § 10516. In fact, § 10535(E), which pertains to the LDEQ subsidy, provides, in pertinent part:

Payments made by the state of Louisiana are meant to temporarily supplement the business activities of processors and **are not meant to cover all business expenses and costs** associated with processing and marketing. [Emphasis added.]

La. Admin. Code tit. 33, § 10535(E). Although the handling of waste tires is regulated to a certain extent, the LDEQ has not so broadly regulated the area such that the fee at issue herein would be prohibited. The stated purpose for the Waste Tire Program is to prevent pollution caused by waste tires and to further public health and welfare. La. Admin. Code tit. 33, § 10501. This goal would arguably be thwarted if waste tire processors were not allowed to charge necessary transportation fees. Furthermore, the deposition testimony from representatives of the LDEQ established that the LDEQ interprets the regulations as neither prohibiting nor expressly permitting the fee at issue herein. Certainly deference is owed to an administrative agency's construction and interpretation of its own rules and regulations. **Forbes v. Cockerham**, 08-0762, p. 33 (La. 1/21/09), 5 So.3d 839, 859.

We are bound to apply the language of the relevant statutes and regulations as written, and it is clear that nothing in the law prohibits the transportation fees at issue in this matter. While the LDEQ is the proper authority for administering the Waste Tire Program, any other activities and fees falling outside the ambit of the program and the relevant regulations are allowable in a free market economy. The transportation fees charged by Processors cannot be said to be prohibited where a prohibition has not been provided for by statute or regulation. La. C.C. art. 9; see also **City of Minden v. McDaniel**, 41,370, p. 7 (La.App. 2 Cir. 12/20/06), 945 So.2d 955, 959, writ denied, 07-0369 (La. 4/5/07), 954 So. 2d 141 (“**Had the legislature**

intended that a municipality be prohibited from expropriating property within the same parish, **it follows that the legislature could have included such a limitation in the statute.** It did not do so. It is not within our province to make the law, but rather to interpret and apply the law as written.”) (Emphasis added.).

DECREE

For the foregoing reasons, the lower courts’ judgments are reversed, and this matter is remanded to the trial court for further proceedings consistent with this opinion.

REVERSED; REMANDED.

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C/W

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COLT, INC., ET AL.

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, THIRD
CIRCUIT, PARISH OF ST. LANDRY**

CRICHTON, J., dissents for the reasons assigned by Genovese, J.

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GENOVESE, J., dissents for the following reasons:

I respectfully dissent from the majority opinion reversing the lower courts' judgments. In my view, the lower courts correctly found that Louisiana law does not permit Defendants, waste tire processors, to charge Plaintiffs, waste tire generators, a fee over and above the statutory fee for the transportation of waste tires.

The Solid Waste Recycling and Reduction Law governs the disposal of waste tires. La.R.S. 30:2411-2423. Louisiana Revised Statutes 30:2413(A)(8) vests the Secretary of the Louisiana Department of Environmental Quality ("LDEQ") with power and duty "[t]o adopt, by rules, such fees as may be necessary to administer this Chapter." Louisiana Revised Statutes La.R.S. 30:2418(I)(1)(a) provides that "[t]he fee on tires authorized to be levied pursuant to R.S. 30:2413(A)(8) shall not exceed" the amounts provided therein.

The Louisiana Administrative Code contains additional regulations on the disposal and recycling of waste tires in Louisiana. La.Admin.Code tit. 33, §§ 10501-10543. Louisiana Administrative Code Title 33, § 10503 provides that the waste tire program "shall be administered by the Department of Environmental Quality." Additionally, La.Admin.Code tit. 33, § 10519(G), provides that "[t]he LDEQ waste

tire fee shall not include any additional fees. No tax of any kind shall be applied to this fee.”

Thus, the legislature has granted the Secretary of the LDEQ the authority to set the fees that may be necessary to administer the program and has provided that the fees may not exceed the authorized amounts. Additionally, the LDEQ has prohibited any additional fee that exceeds the authorized fee. For the foregoing reasons, the processors are not permitted to impose their own fee on the generators over and above the fee (or “cap”) authorized by the LDEQ.

The majority opinion, holding to the contrary, disrupts the waste tire program, dilutes the authority and control of the LDEQ over that program, and allows the processors to contract in contravention of the statutes and regulations, thereby negating their mandates. In other words, the processors can disregard the cap via contract and charge the generators any amount they wish for the transportation of waste tires from the generator’s facility to the disposal site. For example, they can add an additional \$10.00 or more per tire in addition to the fixed charge of \$2.50 per tire, which would negate the regulation and put many generators out of business, because they would have to add that extra cost on to the cost of the tire. It is for this reason that the fee which may be charged is within the sole power and authority of the LDEQ, and not at the whim of the waste tire processors or transporters.

For the reasons set forth herein, I respectfully disagree with the majority opinion in this case and would affirm the trial court’s grant of the generators’ motion for partial summary judgment and the court of appeal’s affirmation thereof.