

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 CA 1858

SIMMESPORT STATE BANK

VERSUS

JOSHUA GLENN SCOTT AND  
TRINA G. SCOTT

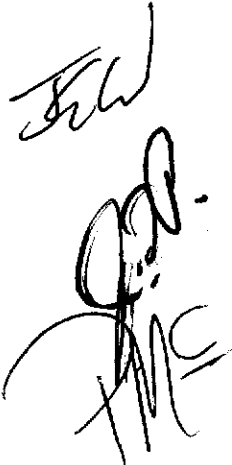
Judgment Rendered: JUN 14 2012

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Appealed from the  
18<sup>th</sup> Judicial District Court  
In and for the Parish of Pointe Coupee, Louisiana  
Trial Court Number 43,086

Honorable James J. Best, Judge

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Plaintiff – Appellant  
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Defendants – Appellees  
Daniel Ewing and PC  
Towing, Inc.

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BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

**WELCH, J.**

Simmesport State Bank (Bank) appeals a judgment dismissing its motion to set reasonable storage and towing fees for a farm tractor and a farming implement. We reverse and remand.

**BACKGROUND**

On April 21, 2010, the Bank filed a petition for executory process in the 18<sup>th</sup> Judicial District Court against Joshua Scott and Trina Scott, seeking to enforce a promissory note in the amount of \$66,053.16. The note was secured by immovable and movable property, including a Ford TW 35 Tractor and an International 23' 485 Disk, a farming implement. On May 20, 2010, PC Towing, Inc. was hired by the Pointe Coupee Parish Sheriff's office to pick up the tractor and disk and store the property pending the sale thereof. PC Towing towed the tractor and disk to its storage yard in New Roads, Louisiana.

On December 8, 2010, a sheriff's sale was held. The Bank purchased the tractor for \$1,400.00 and the disk for \$700.00 at the sale. That day, the Sheriff's Office sent the Bank a list of costs that had been assessed in connection with the sale, including towing and storage costs for the two pieces of equipment in the amount of \$17,215.32. PC Towing charged storage fees for the two pieces of equipment in the amount of \$15,192.00 and wrecker service fees in the amount of \$953.44 for the disk and \$1,069.88 for the tractor.

On March 4, 2011, the Bank filed a motion to fix reasonable storage and towing costs. The Bank asserted that the storage and wrecker fees charged by PC Towing were unconscionable and unreasonable and requested the court to fix storage and towing costs in a reasonable amount. Daniel Ewing, the owner of PC Towing, was ordered to show cause why the motion should not be granted.

In opposition to the motion, PC Towing argued that towing and storage charges are set by order of the Louisiana Public Service Commission (PSC)

pursuant to La. R.S. 45:180.1. Louisiana Revised Statutes 45:180.1 gave the PSC the authority to regulate wreckers or towing services. Pursuant to that authority, in 2010, the PSC issued a "Schedule of Prescribed Rates and Requirements for Towing and Recovery." PC Towing argued that all of its charges were in accordance with the PSC's schedule of prescribed rates. It submitted that its charge of \$36.00 per day per item for storage is authorized under that section of the regulations setting forth that rate for "oversized vehicle storage." It also claimed that its towing charges were authorized under that portion of the regulations setting forth maximum charges for "medium duty towing and recovery." PC Towing attached pictures of comparable equipment to show the weight of the pieces of equipment in support of its argument that the medium duty towing charges applied. It also urged that the real reason the storage fees were so high is that the equipment had been stored for seven months at the time of the sheriff's sale, but insisted that it had no control over when the equipment was to be sold and did not cause the extended delay.

In rebuttal, the Bank asserted that the schedule of prescribed rates relied on by PC Towing did not apply to the storage of the tractor and disk because they do not fall under the definition of "motor vehicle" set forth in the schedule. It pointed out that the schedule's terms refer specifically to "motor vehicles," and that the term "motor vehicle" is defined as every self-propelled vehicle except for certain vehicles, including farm tractors. The Bank asserted that because tractors are specifically excluded from the definition of "motor vehicle" and because the disk is an implement that is not self-propelled and thus not a "motor vehicle," the schedule of prescribed rates set forth by the PSC did not apply to the towing and storage of the tractor and disk.

Following a hearing, the trial court issued a ruling on June 10, 2011, dismissing the Bank's request to have the court regulate the storage fees charged

by PC Towing. In written reasons, the court noted that while at first blush it appeared that the fees charged by PC Towing were unconscionable and unreasonable, PC Towing did not charge any more than the law allowed. The court observed that it was most unfortunate that the sheriff's sale took so long to take place, but for whatever reason, such was not the fault of PC Towing. The court adopted the reasons stated by PC Towing in opposition to the motion to set fees.

The Bank appealed. This court issued a show cause order on December 20, 2011, observing that the June 10, 2011 judgment signed by the trial court lacked the appropriate decretal language. The trial court issued an amended judgment on January 6, 2012, dismissing the motion to fix reasonable storage and towing costs filed by the Bank and dismissing the Bank's claims for reduction in storage and/or towing fees against PC Towing. The trial court designated the amended judgment as a final judgment under La. C.C.P. art. 1915.<sup>1</sup> Thereafter, this court maintained the appeal. **Simmesport State Bank v. Scott**, 2011-1858 (La. App. 1<sup>st</sup> Cir. 2/29/12)(unpublished order).

## DISCUSSION

In La. R.S. 45:180.1, the Louisiana legislature vested the PSC with authority to regulate wreckers and towing services. In so doing, the legislature provided:

- A. Any arrangement, agreement or understanding covering or contemplating the operation or use of wreckers or towing services for hire, charge or compensation or for any benefit amounting to a consideration is a business affected with the public interest. As used in this section, "wreckers or towing services" means any motor vehicle capable of pulling or towing any wrecked, damaged or disabled motor vehicle or any motor vehicle otherwise incapable of self-propulsion. ...
- B. The legislature, in the exercise of its police power, hereby finds and declares that the use and operation of wreckers and towing services

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<sup>1</sup> No certification was necessary. The amended judgment clearly provides for the dismissal of the Bank's motion to fix reasonable storage and towing costs filed by the Bank, and the result of that dismissal is that there is no claim remaining by the Bank against PC Towing. Therefore, the judgment is a final judgment appealable under La. C.C.P. art. 2083.

should be the subject of regulation by the Louisiana Public Service Commission, that there has been within this state a marked increase in the number of such vehicles and the use thereof, that excessive charges have been levied at times by the persons engaging in this business, that the public is not adequately protected from the levy of such charges, that the irresponsible operation of this business is detrimental to the general welfare and that the health, safety and welfare of the public make it imperative that effective, uniform, reasonable and just supervision, regulation and control be exercised over the operation of the business of operating and using such vehicles to insure their responsibility in order that the paramount interest of the public be protected and conserved.

- C. (1) The commission has the power and authority necessary to supervise, govern, regulate, and control the business of the operation and use of wreckers and towing services, to designate classes and categories of said vehicles, to fix reasonable and just rates, fares, tolls, charges for storage services, or charges for the commodities furnished or services rendered by persons engaging in the operation and use of said vehicles.

Pursuant to the authority vested in it to regulate wrecker and towing services, on March 26, 2010, the PSC established a schedule of prescribed rates and requirements for towing and recovery. The schedule was amended in November of 2011. The schedule contains the following definitions:

- A. Light Duty- is defined as the towing, transport, and recovery of motor vehicles with a gross vehicle weight rating of 10,000 pounds or less.
- B. Medium Duty- is defined as the towing, transport, and recovery of motor vehicles with a gross vehicle weight rating of 10,001 to 26,000 pounds.
- C. Heavy Duty- is defined as the towing, transport and recovery of motor vehicles with a gross vehicle weight rating of 26,001 pounds and greater.
- D. Motor Vehicle- is defined as every self-propelled vehicle (except traction engines; road rollers, farm tractors, tractor cranes, power shovels and well drillers) and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails as per La. R.S. 32:851(4).

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- M. Oversized Vehicle Storage- is defined as the storage of a vehicle which is larger than one having a  $\frac{3}{4}$  ton load capacity[.]

The Bank contends that the trial court committed legal error in concluding that the PSC's schedule of prescribed rates applies to the towing and storage of the tractor and disk. We agree.

The statutory and jurisprudential rules for statutory construction and interpretation apply to interpretation of regulations. **Varner v. Day**, 2000-2104 (La. App. 1<sup>st</sup> Cir. 12/28/01), 806 So.2d 121, 125. Those well-established rules provide that the starting point for the interpretation of any statute is the language of the statute itself. **LaMartina v. Louisiana Patient's Compensation Fund**, 2007-2281 (La. App. 1<sup>st</sup> Cir. 7/21/08), 993 So.2d 249, 253. When a law is clear and unambiguous and does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in the search of the intent of the legislature. La. Civ. Code art 9. Furthermore, the works of a law must be given their generally prevailing meaning. La. Civ. Code art. 11; **Glasgow v. PAR Minerals Corporation**, 2010-2011 (La. 5/10/11), 70 So.3d 765, 768

The source of the PSC's authority to regulate wrecker services and towing services is La. R.S. 45:180.1, which defines the term "wrecker or towing services" to mean any motor vehicle capable of pulling or towing any "wrecked, damaged or disabled **motor vehicle** or any **motor vehicle** otherwise incapable of self-propulsion." (emphasis added). It is clear that the legislature intended for the PSC to have authority over wreckers or towing services that pulled or towed **motor vehicles**. In accordance with that authority, the PSC's schedule of prescribed rates consistently uses the term "motor vehicle" and further defines that term to specifically exclude farm tractors.

Although the trial court accepted PC Towing's argument that the towing rates for "medium duty towing" applied to both the tractor and disk, it is apparent from the definitions of "medium duty" and "motor vehicle" set forth in the regulations that the towing rates are not applicable to either pieces of farming equipment. "Medium Duty" is defined as the towing of "motor vehicles." Because farm tractors are specifically excluded from the definition of "motor vehicle," the medium duty towing rates do not apply to the tractor. Nor do those

rates apply to the disk, which clearly is an implement and not a “self-propelled vehicle” and thus not a motor vehicle to which the medium duty towing rates apply.

As to the schedule’s prescribed rates for “oversized vehicle storage,” it is readily apparent that the storage rates are not applicable to the disk as it cannot be categorized as a “vehicle.” And while a farm tractor may in some other instances qualify as a “vehicle” because it is self-propelled, we find that the PSC evidenced its clear intent to exclude farm tractors from the schedule of prescribed rates when it defined the term “motor vehicle” to exclude farm tractors. Thus, we conclude that the prescribed storage rates set forth in the schedule are inapplicable to PC Towing’s storage of the tractor and disk.

Accordingly, we hold that the trial court committed legal error in concluding that the amounts charged by PC Towing for the towing and storage of the farm tractor and disk were authorized by the PSC’s schedule of prescribed rates. Because this legal error led to the trial court’s refusal to consider the reasonableness of the rates, even though the trial court acknowledged that the charges were unconscionable, we must remand this matter to the trial court to address the reasonableness of the charges levied by PC Towing for the towing and storage of the tractor and disk.

### **CONCLUSION**

For the foregoing reasons, the judgment dismissing Simmesport State Bank’s motion to fix reasonable towing and storage fees is hereby reversed. The case is remanded to the trial court for proceedings consistent with this opinion. All costs of this appeal are assessed to appellee, PC Towing, Inc.

**REVERSED AND REMANDED.**