

Journal of Civil Law Studies

Volume 5
Number 1 *200 Years of Statehood, 300 Years of
Civil Law: New Perspectives on Louisiana's
Multilingual Legal Experience*

Article 11

10-1-2012

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Repository Citation

Brian Flanagan, *Columbia Gulf Transmissions Co. v. Bridges*, 5 J. Civ. L. Stud. (2012)

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COLUMBIA GULF TRANSMISSION CO. v. BRIDGES: AN EXAMPLE OF DIFFERING DEFINITIONS OF SALES UNDER LOUISIANA LAW

Brian Flanagan^{*}

This case compares the definition of a sale for sales tax purposes with sale as defined by the Louisiana Civil Code.

I. BACKGROUND

Columbia Gulf Transmission Co. (Columbia) is a natural gas transmission company seeking to recoup sales tax and use tax paid under protest to the Louisiana Department of Revenue.¹ Columbia transports natural gas through a series of pressurized underground pipelines. During transportation, the natural gas loses pressure and must be recompressed at compression stations along the way.² Some of the gas Columbia transfers is diverted to these compression stations and used to power the compressors in order to maintain the gas pressure in the pipeline. Pursuant to the gas tariff (effective rate schedule) that Columbia was operating under, Columbia was not charged for the use of this gas.³

The Louisiana Department of Revenue asserted that the gas belonged to Columbia's customers, and Columbia's use of the gas to power the compressors constituted a sale in the form of a barter.⁴ Therefore, the Department of Revenue asserted the sale was subject to Louisiana state sales tax and use tax.

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1. Columbia Gulf Transmission Co. v. Bridges, 08-1006 (La.App Ct. 1st Cir. 6/25/09) 28 So. 3d 1032.

2. *Id.*

3. The gas tariff is regulated by the Federal Energy Regulatory Commission (FERC).

4. Columbia, 28 So. 3d at 1035.

Columbia paid the taxes under protest while asserting there had been no sale. Further, Columbia argued that the Louisiana Department of Revenue calculated the use tax based on “spot [market] prices,” in violation of the definition of “cost price” set forth in Louisiana Revised Statute 47:301.⁵ Columbia argued that it did not pay any price for the fuel, in that it was “tendered to Columbia Gulf by its shippers without cost,” thus its taxable “cost price” should be zero.⁶ Therefore, Columbia argued it did not owe any sales or use tax on the gas.

II. JUDGMENT OF THE COURT

The Court of Appeal reversed the summary judgment that had been granted in favor of Columbia by the trial court. In doing so, the court of appeal distinguished a sale as defined by Louisiana Civil Code Article 2439 from a sale defined in the LA. REV. STAT. 47:301 for sales tax purposes.⁷ Using the definition in LA. REV. STAT. 47:301, the court held when Columbia diverted some of the natural gas from the pipeline to power the compressors, such action constituted “transfer of title of possession of the gas for a consideration.”⁸ Even though no price in money was paid for the gas, LA. REV. STAT. 47:301 allows the price to be paid in money *or otherwise*. Therefore the fact that Columbia did not pay any money

5. LA. REV. STAT. 47:301 defines cost price: “‘Cost price’ means the actual cost of the articles of tangible personal property without any deductions therefrom on account of the cost of materials used, labor, or service cost, except those service costs for installing the articles of tangible personal property if such cost is separately billed to the customer at the time of installation, transportation charges, or any other expenses whatsoever, or the reasonable market value of the tangible personal property at the time it becomes susceptible to the use tax, whichever is less.”

6. Columbia, 28 So. 3d at 1034.

7. *Id.* at 1043. While Article 2439 states that Sale is a contract whereby a person transfers ownership of a thing to another for a price in money, LA. REV. STAT. 47:301(13)(a) defines “Sales price” as the total amount for which tangible personal property is sold, less the market value of any article traded in including any services, except services for financing, that are a part of the sale valued in money, whether paid in money *or otherwise*. (emphasis added)

8. Although the Civil Code articles do not use the term “consideration,” LA. REV. STAT. 47:301 uses the term for sales tax purposes.

for the gas did not preclude it being categorized as a sale for sales tax purposes. Finally, the court added that consideration could be inferred because “nothing in the record supports a finding that this transfer of gas was gratuitous,” and moreover, “businesses do not generally give away their assets.”⁹ The court of appeal then remanded to the trial court to determine the correct amount of sales tax owed by Columbia.¹⁰

III. COMMENTARY

This case illustrates the principle in Louisiana law that courts will give contracts their proper legal characterization, focusing on its component parts rather than form or wording. Thus, when the name or title fails to properly identify the nature of the contract, courts will apply the proper characterization according to the component parts of the contract.¹¹ In this case, Columbia had an agreement with its customers that allowed it to use the gas free of charge to power the necessary compression stations, but despite the wording of the contract, the court of appeal categorized this as a taxable sale under LA. REV. STAT. 47:301.¹²

Next, it is important to note that the court recognized that “laws regulating the collection of taxes are *sui generis*, and constitute a system to which the general provisions of the Louisiana Civil Code have little, if any, application.”¹³ Therefore the statute on sales tax should be considered separately from the Civil Code. Finally, this statute is *lex specialis* in that it deals specifically with sales tax, and should not impact the definition of a sale in the *lex generalis*.¹⁴ One may not infer from this case that under Article 2439, a price

9. *Id.* at 1042.

10. *Id.* at 1044.

11. LA. CIV. CODE art. 2053.

12. Additionally, Judge Parro states, “the fact the terms of Columbia’s contracts with its customers were mandated by the FERC regulations does not render the sales tax law of this state inapplicable once the taxing jurisdiction of Louisiana was invoked.”

13. Columbia, 28 So. 3d at 1041.

14. The *lex generalis* in this case is LA. CIV. CODE art. 2439.

may be money *or otherwise*. If paid in kind, the contract is not a sale but an exchange.¹⁵

Interestingly, the definition of sale in LA. REV. STAT. 47:301 is consistent with the common law definition of sale found in Uniform Commercial Code 2-304,¹⁶ in that both statutes allow that the price may be in money *or otherwise*. Likewise, in the law of lease, LA. CIV. CODE art. 2675 now allows the payment of rent to be in money or “otherwise,” specifically commodities, fruits, services or other performances specific to support an onerous contract. While this may suggest a pattern in the legislation,¹⁷ there does not appear to be any need to broaden the definition of a sale under Civil Code article 2439. The category of exchange already exists for these situations. Moreover, there is also a possibility of categorizing the contract as an innominate contract to categorize transactions where the price is not in money, but *otherwise*.¹⁸

15. ALAIN LEVASSEUR & DAVID GRUNNING, LOUISIANA LAW OF SALE AND LEASE 29 (2nd ed., 2011).

16. U.C.C. §2-304(1) states, “The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.”

17. In the international realm, the United Nations Convention on Contracts for the International Sale of Goods (CISG) makes no reference to price being paid in money *or otherwise*. (emphasis added)

18. LA. CIV. CODE art. 2664 provides that, with several exceptions, the contract of exchange is governed by the rules of the contract of sale. Innominate Contracts are defined in art. 1914, in the general obligations portion of the Civil Code.