NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2024 CA 0840

CAMELOT OF NORTH OAKS, LLC, KENTWOOD MANOR NURSING HOME, LLC AND SUMMERFIELD OF HAMMOND, LLC

VERSUS

TANGIPAHOA PARISH SCHOOL SYSTEM, SALES AND USE TAX DIVISION

Judgment Rendered: MAY 22 2025

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In and for the Louisiana Board of Tax Appeals, Local Tax Division
State of Louisiana
BTA Docket No. L01474

Cade R. Cole, Local Tax Judge Presiding

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BEFORE: McCLENDON, C.J., LANIER, AND BALFOUR, JJ.

McClendon, C.J. concurs and assigns reasons

LANIER, J.

This appeal arises out of a cross-motion for summary judgment, partially granted in favor of the plaintiffs/appellees, Camelot of North Oaks, LLC, Kentwood Manor Nursing Home, LLC, and Summerfield of Hammond, LLC (collectively the Taxpayers), and against the defendant/appellant, Tangipahoa Parish School System, Sales and Use Tax Division (the Collector). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

Camelot of North Oaks, LLC (Camelot), located in Ponchatoula, Louisiana, and Kentwood Manor Nursing Home, LLC (Kentwood), located in Kentwood, Louisiana, are licensed as nursing homes for the elderly by the Louisiana Department of Health and Hospitals (DHH).[1] Summerfield of Hammond, LLC (Summerfield), located in Hammond, Louisiana, is licensed as a "Level 3 Adult Residential Care Provider" by DHH.[2] Pursuant to LAC 48: I.9831-9841 and LAC 48: I.6801(D), the Taxpayers must provide their residents with a "nourishing, palatable, well-balanced diet that meets the daily nutritional and dietary needs of each resident." LAC 48: I.9831. The Taxpayers contract with their residents to provide three meals a day, along with other services, for a lump-sum fee. Camelot and Kentwood, as nursing homes, have the per diem rate paid by many of their residents through Medicaid. Summerfield similarly contracts with its residents to provide meals and services at a set monthly price. During each of the Taxpayers' respective tax periods at issue in the instant appeal,[3] the Taxpayers purchased the ingredients they used to prepare meals for the residents. The Taxpayers would

[1] See La. R.S. 40:2009.22.

[2] See La. R.S. 40:2166.1-2166.7.

[3] The pertinent tax period at issue for Camelot is October 1, 2018, through April 30, 2021. For Kentwood, the pertinent tax period is January 1, 2017, through December 31, 2019. For Summerfield, the pertinent tax period is January 1, 2017, through December 31, 2020.

occasionally sell meals to their staff or guests of the residents. The Taxpayers paid both state and local taxes in the purchases of the ingredients.

On July 6, 2022, the Taxpayers filed a petition for appeal and refund with the Louisiana Board of Tax Appeals (the Board), after discovering from internal audits of their records that they each overpaid sales tax to the Collector on their purchases of ingredients used to prepare meals for the residents. The Taxpayers claimed the purchases were exempt from being taxed pursuant to La. R.S. 47:305(D)(2).[4] Attached to the petition were their claims for tax refunds they had filed prior to filing the petition. The Collector denied Camelot's claim for a refund on May 4, 2022. The Collector issued a refund to Kentwood on April 1, 2022, but then made a redetermination to recover the refund on May 10, 2022. The Collector denied Summerfield's claim for a refund on May 10, 2022. The Collector gave as the basis for its actions that the food purchased to prepare meals was not sold to the Taxpayers' residents, and therefore did not meet the "sale for resale" definition found in La. R.S. 47:301(10)(a)(ii), which the Collector alleged would have made the Taxpayers exempt from sales tax.[5] The Taxpayers prayed for their tax refunds as requested, along with costs, and prevailing party fees pursuant to La. R.S. 47:337.13.1.[6]

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[4] Specifically, pursuant to La. R.S. 47:305(D)(2)(a)(ii), sales of meals furnished to the staff, patients, and residents of nursing homes and adult residential care providers shall be exempt from sales tax.

[5] To support its argument, the Collector cited *J & B Pub. Co. of Louisiana, Inc. v. Secretary, Dept. of Revenue & Taxation, State of La.*, 34,105 (La. App. 2 Cir. 12/15/00), 775 So.2d 1148, 1153, which states:

> We find that where a business purchases goods to be used in furnishing a traditional service to its customers, the purchases are not for resale and sales taxes are imposed upon the business-purchaser. However, when there is a showing that the goods initially purchased by the business are not ordinarily furnished in the traditional course of providing a service and there is a showing that the goods are resold to the ultimate consumer, the business is not required to pay sales tax.

[6] Specifically, La. R.S. 47:337.13.1(B)(1) states:

> [T]he prevailing party in a dispute, contest, or other controversy involving the determination of sales and use tax due shall be entitled to reimbursement of

On August 28, 2023, the Collector filed a motion for partial summary judgment, claiming therein that there was no dispute in the material fact that the refunds claimed by the Taxpayers were taxable, and that the Collector did not owe any refunds to them. The Collector reserved the issue of attorney fees for a trial on the merits. On October 5, 2023, the Taxpayers filed a cross-motion for summary judgment, claiming therein that based on the uncontested facts of the instant case, the ingredients that were purchased to prepare meals for their residents do not fit the definition of "retail sales," which would have made them subject to sales tax.[7] Rather, the Taxpayers claimed that the purchased ingredients were used to prepare the meals for the residents, which were exempt from state and local sales tax.

At the hearing on the motions, the parties only submitted legal arguments. Following the hearing, the Board signed a judgment on March 14, 2024, denying the Collector's motion for partial summary judgment and granting the Taxpayers' cross-motion for summary judgment in part. The Board found that "the Taxpayers' furnishing of meals and food to employees and residents were sales and thus the Taxpayers' purchases of items used to provide said meals were non-taxable sales for resale." The Board further ordered that the Collector issue tax refunds to the Taxpayers as they had requested, and denied the Taxpayers' entitlement to fees

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> attorney fees and costs, not to exceed ten percent of the taxes, penalties, and interest at issue, unless the position of the non-prevailing party is substantially justified. The prevailing party is defined as the party which has substantially prevailed with respect to the amount in controversy or substantially prevailed with respect to the most significant issue or set of issues presented. A position is substantially justified if it has a reasonable basis in law and fact. The reimbursement amount for attorney fees and costs shall be subject to the discretion of the court or Board of Tax Appeals as to reasonableness.

[7] For support, the Taxpayers cited La. R.S. 47:302(A), which states, in pertinent part: "There is hereby levied a tax upon the sale at retail, the use, the consumption, the distribution, and the storage for use or consumption in this state, of each item or article of tangible personal property."

Pursuant to La. R.S. 47:301(10)(a)(ii), "retail sale" or "sale at retail" means:

> a sale to a consumer or to any other person for any purpose other than for resale in the form of tangible personal property... and shall mean and include all such transactions as the collector, upon investigation, finds to be in lieu of sales; provided that sales for resale be made in strict compliance with the rules and regulations.

under La. R.S. 47:337.13.1. On March 28, 2024, the Collector filed a suspensive appeal of that judgment.[8]

ASSIGNMENTS OF ERROR

The Collector alleges the following errors:

1. The Board erred by finding that the Taxpayers sold meals to residents.

2. The Board erred by finding that the Taxpayers' purchases of ingredients and food used to furnish meals to residents were purchases for resale that are not subject to sales tax.

3. The Board erred by failing to apply the long-standing, two-part jurisprudential standard from *S & R Hotels, L.L.C. v. Calcasieu Parish School Bd. Sales & Use Tax Dept.*, 2006-0918 (La. App. 3 Cir. 12/13/06), 945 So.2d 875 to the facts of this case.

4. The Board misinterpreted and misapplied distinguishable sales tax jurisprudence from this court.

STANDARD OF REVIEW

Summary judgment procedure is favored and "is designed to secure the just, speedy, and inexpensive determination of every action ... and shall be construed to accomplish these ends." La. C.C.P. art. 966(A)(2). In reviewing the trial court's decision on a motion for summary judgment, this court applies a *de novo* standard of review using the same criteria applied by the trial courts to determine whether summary judgment is appropriate. *Ray v. Lynx Production Services, Inc.*, 2023-0839 (La. App. 1 Cir. 2/23/24), 384 So.3d 1018, 1024, writ denied, 2024-00460 (La. 6/19/24), 386 So.3d 315. After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3).

DISCUSSION

[8] Although the denial of a motion for summary judgment is an interlocutory judgment and is appealable only when expressly provided by law, where there are cross motions for summary judgment raising the same issues, this court can review the denial of a summary judgment in addressing the appeal of the granting of the cross motion for summary judgment. *Creel v. Dolphin Services, L.L.C.*, 2017-1355 (La. App. 1 Cir. 8/22/18), 256 So.3d 1011, 1013 n.1, writs denied, 2018-1570 (La. 2/18/19), 264 So.3d 449, and 2018-1557 (La. 2/18/19), 266 So.3d 286.

Initially we note that the judgment is captioned "Judgment with Reasons on Cross-Motions for Summary Judgment," but the reasons are not included in the judgment. Despite the judgment's caption, the reasons are set out separately from the judgment.[9] The Collector's third and fourth assignments of error refer to statements made in the district court's written reasons that do not appear in the judgment. Although the reasons may provide guidance in how the district court arrived to its conclusion, the district court's oral and written reasons form no part of the judgment, and appellate courts review judgments, not reasons for judgment. *Wooley v. Lucksinger*, 2009-0571 (La. 4/1/11), 61 So.3d 507, 572. We therefore need only to review assignments of error one and two.

We must begin our review with what statute provides a sales tax exemption for the meals provided by the Taxpayers to their residents. The relevant law is La. R.S. 47:305(D)(2)(a)(ii), which states, in pertinent part:

> Sales of meals furnished as follows shall be exempt:
>
> . . . .
>
> To the staff and patients of hospitals and to the staff and residents of nursing homes, adult residential care providers, and continuing retirement communities.

Since Camelot and Kentwood are licensed by DHH as nursing homes, and since Summerfield is licensed by DHH as a "Level 3 Adult Residential Care Provider," the aforementioned statute would ostensibly apply to the meals they provide to their residents. The next question, as contemplated by the first assignment of error, is whether those meals are "sold" by the Taxpayers to their residents. A sale is a contract whereby a person transfers ownership of a thing to another for a price in money. The thing, the price, and the consent of the parties are requirements for the perfection of the sale. La. C.C. art. 2439. The definition of "retail sale" pertinent to the instant case is as follows:

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[9] We find the judgment satisfied the requirements of La. C.C.P. art. 1918.

> Solely for purposes of the imposition of the sales and use tax levied by a political subdivision or school board, "retail sale" or "sale at retail" shall mean a sale to a consumer or to any other person for any purpose other than for resale in the form of tangible personal property ... and shall mean and include all such transactions as the collector, upon investigation, finds to be in lieu of sales; provided that sales for resale be made in strict compliance with the rules and regulations.
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> La. R.S. 47:301(10)(a)(ii).

The parties do not dispute that the Taxpayers purchased raw food and other ingredients in the preparation of meals for the residents, nor do they dispute that the costs of those ingredients are factored in the monthly fees that the residents pay. The residents pay a set lump-sum fee—room and board, meals, and other services are included into the fee. None of those items can be excluded so that the residents may choose which goods and services they receive and which they do not. In other words, the Taxpayers prepare meals for the residents and make them available. If the residents choose not to eat the meals provided to them, their monthly fee does not change, and neither does the monthly fee change based on what kind of meal is served from one day to the next.

Although we find that the Collector's third assignment of error is not reviewable, we will nevertheless consider the Collector's argument as it concerns the *S & R Hotels* case, which is central to their argument that the food ingredients purchased by the Taxpayers were purchased for resale as meals.[10] In that case, the plaintiff was a luxury hotel that purchased food and beverages that it then provided to the hotel guests on a complimentary basis. The food and beverages were not complimentary to non-guests, but were available for purchase. *S & R Hotels*, 634 So.2d at 923.

The parish taxing authority completed an audit of the hotel and concluded that the food and beverages were not purchases for resale to the guests, making the

[10] We note that *S & R Hotels* is a Second Circuit case and is not controlling on this court.

hotel the ultimate consumer of the items and responsible for payment of the sales tax. The hotel claimed it was not responsible for sales tax on the food and beverages because they were complimentary items sold for resale to the guests. The hotel described the food and beverages as amenities that were offered upon the guests' booking a night at the hotel, but that the cost of the items was included in the price for the room. The hotel argued it was not the ultimate consumer of the items, and under the tax statutes applicable to them, would not be responsible for the sales tax. *S & R Hotels*, 634 So.2d at 923-24.

The Second Circuit recognized that a sales tax would be levied upon the sale of the food and beverages according to the applicable tax law for retail items. The court defined "retail" as "the selling of commodities or goods in small quantities to the ultimate consumer," and defined "retail sale" as "any sale by one regularly engaged in the business of selling to customers who buy for their use or consumption and not for resale to others." The court further found:

> [W]here a hotel ... or other business purchases goods to be used in furnishing a traditional service to customers, the purchase of the goods is not for resale and sales tax is imposed upon the business-purchaser. However, when there is a showing that the goods initially purchased by the business are not ordinarily furnished in the traditional course of providing a service and there is a showing that the goods are resold to the ultimate consumer, the business is not required to pay sales tax.
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> *S & R Hotels*, 634 So.2d at 925.

The Second Circuit concluded that the initial sale of food and beverages from their suppliers to the hotel was not a retail sale, where the hotel would be the ultimate consumer, but was a sale for resale, where the food and beverages purchased by the hotel were resold to the guests. Thus, the hotel guests were charged for the food and beverages, and tax was to be collected on that sale. *S & R Hotels*, 634 So.2d at 927.

The Collector argues that the rationale behind *S & R Hotels* applies to the instant case, and the Taxpayer should pay sales tax on the purchase of the raw food and ingredients. With regard to the first assignment of error, we find the facts of the instant case indicate that the ingredients purchased by the Taxpayers were resold to their residents, similar to what was done in *S & R Hotels*. Regardless of whether the Taxpayers' residents decided to eat the meals that were prepared, those meals would not be made available to them unless they contracted to pay the lump-sum fee. Therefore, by the definition of a sale found in La. C.C. art. 2439, ownership of the food ingredients initially purchased by the Taxpayers (along with the service of preparing the raw food into meals) was transferred to the residents for a price in money. The residents were then free to eat the meals if they desired to do so.

With regard to the second assignment of error, although we agree with the Second Circuit's rationale in *S & R Hotels*, we do not agree that it is applicable to the instant case because the tax exemption in La. R.S. 47:305(D)(2)(a)(ii) applies directly to the sales of meals to residents of nursing homes and adult residential care providers. There was no statutory tax exemption applicable to the hotel in *S & R Hotels* for the resale of the food and beverages it purchased. Furthermore, the Taxpayers are required by LAC 48: I.9831-9841 to provide three meals a day to its residents, where the hotel in *S & R Hotels* chose to offer complimentary food and beverages to its guests as a marketing strategy. See *S & R Hotels*, 634 So.2d at 923.

We find *City of Baton Rouge v. Mississippi Valley Food Service Corp.*, 396 So.2d 353 (La. App. 1 Cir. 1981) to be persuasive in determining whether the Taxpayers are responsible for paying sales tax. In that case, a food vendor, which had contracted with a hospital to manage the hospital's food service facilities, claimed the statutory tax exemption for meals it sold to the hospital's patients and

staff. The vendor charged the hospital for its preparation of the meals that were then sold by the hospital to the patients and staff. This court found the sale was exempt from tax due to the language of the pertinent statute.[11] *City of Baton Rouge*, 396 So.2d at 354-57.

As in *City of Baton Rouge*, there is a tax exemption statute directly applicable to the Taxpayers' sale of meals to its residents, and that statute is controlling. The exemptions from paying taxes are strictly construed against the taxpayer. Therefore, the taxpayer must specifically and unequivocally prove that the transaction is exempt. *City of Baton Rouge*, 396 So.2d at 355. We find there is no question, based on the undisputed facts, that the Taxpayers were licensed by DHH as nursing homes, in the cases of Camelot and Kentwood, or as an adult residential care provider, as in the case of Summerfield. There is no dispute that the Taxpayers sold meals to its residents, as they were required to do by LAC 48: I.9831. Therefore, we find there is no genuine issue of material fact that the Taxpayers are entitled as a matter of law to the exemption of La. R.S. 47:305(D)(2)(a)(ii). A finding to the contrary would ignore the clear language of that statute and mean that the Taxpayers would be required to pay sales tax on the sale of the meals, the cost of which would be passed on to the residents.

DECREE

The judgment of the Louisiana Board of Tax Appeals, granting in part the cross-motion for summary judgment filed by the plaintiffs/appellees, Camelot of North Oaks, LLC, Kentwood Manor Nursing Home, LLC, and Summerfield of Hammond, LLC, is affirmed. Appeal costs in the amount of $2,465.00 are

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[11] The relevant tax exemption statute at the time of the case's writing was La. R.S. 47:305(4), which stated, in pertinent part:

> The sale at retail, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following tangible personal property is hereby specifically exempted from the tax imposed by this Chapter[:] ... [s]ales of meals furnished to ... the staff and patients of hospitals.

assessed to the defendant/appellant, Tangipahoa Parish School System, Sales and Use Tax Division.

AFFIRMED.

STATE OF LOUISIANA

COURT OF APPEAL

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VERSUS

TANGIPAHOA PARISH SCHOOL SYSTEM, SALES AND USE TAX DIVISION

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McClendon, C.J., concurring.

I agree with the result reached by the majority. Two transactions occurred here—the first involved the sale of ingredients from the vendors to the Taxpayers to prepare residents' meals and the second involved meals prepared by the Taxpayers and provided to their residents. The Tax Collector seeks payment of taxes for the first transaction. However, the controlling factor in determining whether taxes are due for the first transaction is dependent on the nature of the second transaction between the Taxpayers and their residents.

As detailed below, if the transaction between the Taxpayers and their residents is deemed a "retail sale" of meals, then no taxes would be owed for the purchase of the ingredients. This is because the purchase would not be a taxable event due to it being a "sale for resale." If, however, the transaction between the Taxpayers and their residents is not deemed a "retail sale," then taxes would be due on the initial transaction.

Specifically, Louisiana Revised Statutes 47:302(A) levies "a tax upon the sale at retail, the use, the consumption, the distribution, and the storage for use or consumption in this state, of each item or article of tangible personal property, as defined in the [sales tax] chapter." Generally, the law anticipates the collection of the sales tax when the item is ultimately sold to the end consumer. See **J&B Pub. Co. of Louisiana, Inc. v.**

Secretary, Dept. of Revenue & Taxation, State of La., 34,105 (La.App. 2 Cir. 12/15/00), 775 So.2d 1148, 1152.

There is no definition of "sale for resale" in the sales and use tax statute. **J&B Pub. Co. of Louisiana, Inc.**, 775 So.2d at 1152. However, Louisiana Revised Statutes 47:301(10)(a)(1) defines "retail sale" as follows:

> Solely for the purposes of the imposition of the state sales and use tax, "retail sale" or "sale at retail" means a sale to a consumer or to any other person for any purpose other than for resale as tangible personal property....

""Tangible personal property' means and includes personal property which may be seen, weighed, measured, felt or touched, or is in any other manner perceptible to the senses." LSA-R.S. 47:301(16)(a). Thus, purchases made in this state are not subject to an advance sales tax when the buyer sells the tangible personal property to another party rather than using or consuming the property himself as an end user. **Id.**

The Tax Collector asserts that because the meals served by the Taxpayers are not part of the services normally provided to residents, they do not constitute a "sale for resale" under the rationale in **S&R Hotels v. Fitch**, 25,690, 25,691 (La.App. 2 Cir. 3/30/94), 634 So.2d 922. However, the legislature specifically chose to define "sale" in LSA-R.S. 47:301(12)(a) as follows:

> "Sale" means any transfer of title or possession, or both, exchange, barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property or digital products, for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication work, **and the furnishing, preparing or serving, for a consideration, of any tangible personal property, consumed on the premises of the person furnishing, preparing or serving the tangible personal property.** A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale. [Emphasis added.]

It is undisputed that the Taxpayers purchased all ingredients for the purpose of preparing the residents' meals, maintained the kitchen equipment necessary to store and cook the residents' meals, and employed the staff necessary to prepare and serve the residents' meals. Further, the evidence reflects that the cost of the meals is factored into the price charged to the residents. The mere fact that the meals are not separately itemized from the total monthly charges does not otherwise change the nature of the transaction. We

further note that the Taxpayers are mandated to provide the meals to their residents. This court has recognized that "a sale can occur without a set price so long as the transaction is supported by some type of consideration." **Columbia Gulf Transmission Co. v. Bridges**, 2008-1006 (La. App. 1 Cir. 6/25/09), 28 So.3d 1032, 1043, writ denied, 2010-0249 (La. 4/5/10), 31 So.3d 369, and writ denied 2010-0116 (La. 4/5/10), 31 So.3d 371. As such, given that the meals are provided "for a consideration," under LSA-R.S. 47:301(12)(a) the transaction between the Taxpayers and the residents would be deemed a sale. Moreover, while the residents normally would bear the burden of the tax where the end transaction is deemed a retail sale, the residents are exempt from the tax by virtue of LSA-R.S. 47:305(D)(2)(a)(ii)[1].

Further, any ambiguity in the taxing statute must be construed in favor of the Taxpayer. See **Boyd Louisiana Racing, Inc. v. Bridges**, 18-1309, p. 7 (La.App. 1 Cir. 1/8/20), 294 So.3d 503, 510 ("Moreover, taxing statutes are to be interpreted liberally in favor of the taxpayer and against the taxing authority. If the statute can reasonably be interpreted more than one way, the interpretation less onerous to the taxpayer is to be adopted.")

Because the transaction between the Taxpayers and the residents is a retail sale of meals, no taxes are due for the initial purchase of the ingredients to prepare the meals. Accordingly, I respectfully concur with the result reached by the majority.

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[1] This interpretation of the applicable statutes furthers the public policy of minimizing the cost of meals to the residents. See **City of Baton Rouge v. Mississippi Valley Food Serv. Corp.**, 396 So.2d 353, 357 (La.App. 1 Cir. 1981).