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Dealers, the Revenue vs Regulatory Test, and Recovery, Kale Yeah!: Uncovering the Scope of Licensing Requirements Under Georgia's Dealers in Agricultural Products Act

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Dealers, the Revenue vs Regulatory Test, and Recovery, Kale Yeah!: Uncovering the Scope of Licensing Requirements Under Georgia's Dealers in Agricultural Products Act *

I. INTRODUCTION

A deal between a shipper from California, unlicensed in Georgia to deal in agricultural products, and a grower of agricultural products based in Georgia, specifically for produce like kale and collard greens, turned sour and ended in a lawsuit.[1] Relying on the previously uninterpreted provisions of Georgia's Dealers in Agricultural Products Act (the Act),[2] potential for abuse by unlicensed dealers in agricultural products was ripe and ready to harvest.[3] In response to three certified questions from the federal judiciary, the Georgia Supreme Court narrowly interpreted an exception to the license requirement for agricultural products dealers, holding that license registration under the Act is required for the purpose of regulating in the interest of the public and unlicensed dealers may not sue to enforce contracts to carry out business regulated under the act.[4] The shipper, an agricultural products dealer based in California, tried to enforce a contract for the sale of goods in Georgia.[5] This dealer allegedly

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[1] *San Miguel Produce, Inc. v. L.G. Herndon Jr. Farms, Inc.*, 308 Ga. 812, 843 S.E.2d 403 (2020).

[2] O.C.G.A. §§ 2-9-1 to 2-9-16 (2020).

[3] *See generally San Miguel*, 308 Ga. 812, 843 S.E.2d 403.

[4] *Id.* at 812–14, 843 S.E.2d at 405.

[5] *Id.* at 813, 843 S.E.2d at 405.

violated the Act because the dealer did not hold a dealer in agricultural products license in Georgia.[6] To resolve the claims brought forth by the parties, the United States District Court for the Southern District of Georgia needed to interpret several provisions of the Act which had not been previously interpreted by Georgia's appellate courts.[7]

Deep-rooted concepts regarding licensure in Georgia under a statute enacted to regulate in the public interest were the focus of the three certified questions to the Georgia Supreme Court.[8] These questions prompted the court to apply well-established precedent dating back to the late-1800s to a modern scenario by putting a new spin on well-recognized concepts.[9] The first question focused on the scope of an exception to the Act and led the court to examine the purposes of the Perishable Agricultural Commodities Act (PACA),[10] the Act's federal counterpart.[11] The second question addressed whether the Act was a revenue raising statute or a regulatory statute in the public interest.[12] The third question examined whether a dealer who fails to obtain a license can recover on a contract to carry out business regulated by the Act.[13]

II. FACTUAL BACKGROUND

San Miguel Produce Inc. (San Miguel) and L. G. Herndon Jr. Farms (Herndon Farms) entered into multiple agreements regarding agriculture in September 2014. One specific agreement was the "Grower-Shipper Agreement" (GSA). Herndon Farms, a Georgia corporation, was responsible for growing and supplying the produce ordered by San Miguel under the GSA. Herndon Farms agreed to complement orders with crops from other growers if it could not meet the demand for produce by San Miguel under the GSA. San Miguel agreed to purchase Herndon Farms' produce. The GSA required Herndon Farms to deliver the produce to a packing and processing facility located in South Georgia, ROBO Produce, LLC (ROBO), owned jointly by San Miguel and Herndon Farms.[14]

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[6] *Id.* at 814, 843 S.E.2d at 406.

[7] *Id.* at 813, 843 S.E.2d at 405.

[8] *See generally San Miguel*, 308 Ga. 812, 843 S.E.2d 403.

[9] *Id.* at 818–21, 843 S.E.2d at 408–10.

[10] 7 U.S.C. §§ 499a–499s.

[11] *San Miguel*, 308 Ga. at 813–15, 843 S.E.2d at 405–06.

[12] *Id.* at 813, 843 S.E.2d at 405.

[13] *Id.*

[14] *Id.* at 814, 843 S.E.2d at 405–06.

The GSA stipulated that the agreement "shall be construed pursuant to and in accordance with the laws of the State of Georgia."[15] At no time during the agreement did San Miguel obtain a Georgia agricultural products dealer license. When Herndon Farms was not able to deliver sufficient produce to meet San Miguel's demands, San Miguel started sending its own produce to the ROBO facility from California.[16]

Herndon Farms and San Miguel terminated their business relationship in February 2016.[17] San Miguel filed a complaint in the U.S. District Court for the Southern District of Georgia against Herndon Farms for breach of the GSA and Herndon Farms filed, in the Superior Court of Toombs County, a separate action against San Miguel for breach of the GSA.[18] This latter action was removed to federal court, and the actions were consolidated.[19] Both parties filed cross-motions for partial summary judgment.[20] The district court noted that the case turned upon the application of Georgia law to the GSA.[21] The district court certified three questions to the Georgia Supreme Court regarding the scope of the Act.[22] The supreme court unanimously answered the three certified questions.[23]

The first question focused on whether an entity that purchases produce, processes it, then markets, sells, and ships the produce qualifies as a dealer in agricultural products or meets an exception under the Act because the entity occasionally grows the produce that it sells.[24] The supreme court held that under O.C.G.A. § 2-9-15(a)(1),[25] this type of entity *does* qualify under the Act as a dealer in agricultural products and *does not* fit the exemption.[26] The Act exempts specific transactions, not the dealer as a whole, if the dealer supplies the produce it has grown.[27] The second question addressed whether the Act was enacted to raise revenue or regulate in the public interest.[28] As to the second question, the supreme court held that the licensing requirements of the Act are

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[15] *Id.* at 814, 843 S.E.2d at 406.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.* at 815, 843 S.E.2d at 406.

[22] *Id.* at 813, 843 S.E.2d at 405.

[23] *Id.* at 813–14, 843 S.E.2d at 405.

[24] *Id.* at 813, 843 S.E.2d at 405.

[25] O.C.G.A. § 2-9-15(a)(1) (2020).

[26] *San Miguel*, 308 Ga. at 813–14, 843 S.E.2d at 405.

[27] *Id.* at 814, 843 S.E.2d at 405.

[28] *Id.* at 813, 843 S.E.2d at 405.

regulatory in the public interest and not a mere revenue raising measure.[29] Lastly, the third question discussed whether a dealer can recover on a contract to carry out business regulated under the Act if that dealer fails to obtain a license.[30] The court held that if a dealer fails to acquire a license under the Act, the dealer may not recover under a contract that relates to the Act.[31]

III. LEGAL BACKGROUND

A. *Certified Question One: Farmers in the Sale of Agricultural Products Grown by Themselves*

Since the passage of the Georgia Dealers in Agricultural Products Act in 1956, only one other case has interpreted the provisions of the Act.[32] However, modeled on a prior federal law, the Perishable Agricultural Commodities Act of 1930 (PACA), Georgia's Act is occasionally called the "Mini-PACA."[33]

1. Georgia's Mini-PACA[34]

The Act manages transactions between dealers and producers of agricultural products in Georgia.[35] The provisions of the Act implement a mechanism for the licensing of dealers in agricultural products and regulate the formulation of contracts by those dealers in Georgia.[36] A "dealer in agricultural products," as defined by O.C.G.A. § 2-9-1(2),[37] is required to hold a valid license from the Commissioner of Agriculture[38] before transacting in Georgia as an agricultural dealer.[39] The Act has an exception, O.C.G.A. § 2-9-15(a)(1), which states that the Act does not

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[29] *Id.* at 814, 843 S.E.2d at 405.

[30] *Id.* at 813, 843 S.E.2d at 405.

[31] *Id.* at 814, 843 S.E.2d at 405.

[32] *Classic Harvest LLC v. Freshworks LLC*, 2017 U.S. Dist. LEXIS 82470, 2017 WL 2350212 (2017) (holding that not having a valid license under the Act does not prevent recovery under PACA).

[33] D. Richard Jones III & Greg B. Walling, *A Produce Debtor's Nightmare; A Produce Creditor's Dream: Perishable Agricultural Commodities Act*, 4 Ga. Bar Journal 20 (Feb. 1999).

[34] *Id.* (informal name for the Act).

[35] O.C.G.A. §§ 2-9-1 to 2-9-16.

[36] *Id.*

[37] O.C.G.A. § 2-9-1(2) (2020).

[38] O.C.G.A. § 2-9-3 (2020).

[39] O.C.G.A. § 2-9-2 (2020).

apply to farmers selling agricultural products grown by themselves.[40] Once approved, the applicant must pay the license fee in the amount determined by the Department of Agriculture and the applicant must submit a surety bond.[41] The maximum amount of the licensing fee is $400,[42] and the bond amount ranges from $10,000 to $230,000.[43] The Commissioner will then grant the license after the dealer meets these requirements.[44]

Under the Act, dealers must keep records of shipments, and if disputes arise the statute creates mechanisms for dispute resolution through inspections by the Department of Agriculture.[45] The final provisions of the Act make violation of a provision of the Act a misdemeanor.[46]

2. PACA

Codified in 1930, PACA provides a licensing system used for the interstate shipping of perishable agricultural commodities.[47] Predating Georgia's Act, PACA provides penalties for violations of its provisions.[48] The United States Secretary of Agriculture is responsible for authorizing, monitoring, revoking, or suspending licenses for brokers and dealers that meet (or fail to meet) the requirements for licensure.[49] The United States Court of Appeals for the Second Circuit, in *In re Kornblum & Co.*,[50] addressed the purpose of PACA. Congress enacted PACA to promote financial responsibility as well as to prevent unfair business practices in

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[40] O.C.G.A. § 2-9-15(a)(1). The Department of Agriculture has the discretion to approve or deny applications for licenses if the applicant has committed a disqualifying act. O.C.G.A. § 2-9-7 (2020). The Commissioner may suspend, revoke, or decline to grant a license if the applicant has (1) suffered a money judgment against his where an unsatisfied execution has been returned, (2) made false charges for services, (3) failed to properly account or make settlements with a producer, (4) made false statements about the condition, quality, or quantity of goods when he could have known the true condition, quality, or quantity upon reasonable inspection, (5) made a false or misleading statement relating to service or market conditions, (6) been guilty of fraud in attempting obtain a license, or (7) directly or indirectly sold agricultural products for his own account without authority from the consigning producer. *Id.*

[41] O.C.G.A. § 2-9-4 (2020) (license fee); O.C.G.A. § 2-9-5 (2020) (surety bond).

[42] O.C.G.A. § 2-9-4.

[43] O.C.G.A. § 2-9-5.

[44] O.C.G.A. § 2-9-4. However, the option for revocation by the Commissioner still remains for the duration of the license. *Id.*

[45] O.C.G.A. § 2-9-11 (2020).

[46] O.C.G.A. § 2-9-16 (2020).

[47] 7 U.S.C. §§ 499a–499s.

[48] 7 U.S.C. §§ 499b(5).

[49] 7 U.S.C. §§ 499b–499d.

[50] 81 F.3d 280 (2d Cir. 1996).

the interstate business of shipping perishable agricultural commodities.[51] Congress has amended PACA and provided for more protection to produce suppliers.[52]

3. Similarities Between Georgia's Act and PACA

Enacted around the same time period, both Georgia's Act and PACA attack the problem of dealers seizing unfair opportunities to take advantage of growers of agricultural products.[53] Though differences exist between the two acts, the similarities in their structure, purpose, and definitional sections led the Georgia Supreme Court to examine the federal law to interpret the state law in this case.[54]

B. Certified Question Two: Regulatory versus Revenue

To answer the second certified question, the court applied the rule outlined in *Paulsen St. Investors v. Ebco Gen. Agencies*[55] to the Act.[56] For over one hundred years, Georgia's appellate courts have articulated and built upon previous rules pertaining to the purpose of licenses to set forth the rule in *Paulsen St. Investors*.[57] The rule states:

> [W]here a statute provides that persons proposing to engage in a certain business shall procure a license before being authorized to do so, and where it appears from the terms of the statute that it was enacted not merely as a revenue measure but was intended as a regulation of such business in the interest of the public, contracts made in violation of such statute are void and unenforceable.[58]

This rule applies to statutes across different industries that share the common purpose of regulating in the interest of the public.[59]

1. Earliest Definitions of the Test for License Purpose

The Georgia Supreme Court has issued multiple decisions since the late 1800s exploring licensing statutes to determine if they are merely revenue-based or are regulatory in nature. Decided in 1875, *Taliaferro v.*

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[51] *Id.* at 283.

[52] *Id.*

[53] 7 U.S.C. §§ 499a–499s; O.C.G.A. §§ 2-9-1 to 2-9-16 (2020).

[54] *San Miguel*, 308 Ga. at 815, 843 S.E.2d at 406.

[55] 237 Ga. App. 116, 514 S.E.2d 904 (1999).

[56] *San Miguel*, 308 Ga. at 818, 843 S.E.2d at 408.

[57] *Paulsen St. Investors*, 237 Ga. App. at 118, 514 S.E.2d at 906.

[58] *Id.*

[59] *Id.*

Moffett[60] was the first case in a line of decisions to address this subject.[61] Pertaining to the licensure for pharmacists and apothecaries, the supreme court provided a general rule in *Taliaferro* that separated statutes created for the purpose of protecting the public from statutes enacted for purely revenue purposes.[62] Because Georgia law provided that a violation of a statute requiring licensure to protect the public renders contracts created under and through that statute void, the court clarified the distinction between revenue-based and regulatory statutes.[63] In the law at issue in *Taliaferro*, to determine whether the license at issue was for a revenue or regulatory purpose, the court focused on the requirements for obtaining pharmacist and apothecary licenses.[64] These requirements included recordkeeping and passing an exam administered by the respective certifying school.[65] The court also focused on the fact that the statute included provisions outlining penalties for non-compliance.[66] By considering these requirements and provisions, the court decided that the purpose of this licensing statute was to protect the public.[67]

Interpreting the revenue or regulatory-based question, the Georgia Supreme Court, in *Toole v. Wiregrass Development Co.*,[68] held that a real estate licensing statute was enacted for the purpose of increasing revenue.[69] While noting the location of the statute[70] in the Georgia Political Code, under the title "Public Revenue," the court also noted that the penalty for failure to obtain a license was a misdemeanor, or merely a way to enforce the payment of the penalty, but did not extend to rendering the contract void.[71] The statute did not expressly or impliedly

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[60] 54 Ga. 150 (1875).

[61] Murray v. Williams, 121 Ga. 63, 48 S.E. 686 (1904); Planters Fertilizer Co. v. Wheeler, 142 Ga. 153, 82 S.E. 564 (1914); Toole v. Wiregrass Dev. Co., 142 Ga. 57, 82 S.E. 514 (1914); Mgmt. Search, Inc. v. Kinard, 231 Ga. 26, 199 S.E.2d 899 (1973); *Paulsen St.*, 237 Ga. App. 116, 514 S.E.2d 904.

[62] *Taliaferro*, 54 Ga. at 153 ("[W]here the license required by the statute is for the protection of the public, and to prevent improper persons from acting in a particular capacity, and is not for revenue purposes only, the imposition of the penalty amounts to a positive prohibition of a contract made in violation of the statute.").

[63] *Id.* at 153.

[64] *Id.* at 152.

[65] *Id.*

[66] *Id.* at 153.

[67] *Id.*

[68] 142 Ga. 57, 82 S.E. 514 (1914).

[69] *Id.* at 65.

[70] Ga. Pol. Code §§ 971, 978 (1914).

[71] *Toole*, 142 Ga. at 65.

mention that a violation of the statute makes the contract void.[72] These reasons led the court to hold that the statute was created for the purpose of revenue creation and, therefore, was enforceable by the party not complying with the licensing requirements.[73]

2. The Search for Purpose

In continuing the discussion of the distinction between a revenue-based and a regulatory purpose, the Georgia Court of Appeals in *McLamb v. Phillips*,[74] applied the general rule laid out in *Taliaferro* and further defined in *Toole* when it examined a licensing statute requiring licenses for any business that makes loans on wages or salaries.[75] The court focused on the purpose of the statute in question, Georgia Civil Code §§ 3446–3465,[76] when it held that because the statute's licensing fee was not purely nominal, the statute was enacted to regulate in the public interest.[77] The statute did not include an express penalty for not obtaining the license, but the purpose of the statute, to protect persons who borrow money from irresponsible money dealers, greatly contributed to the holding that this statute was not enacted for revenue purposes.[78] Holding that the business of wage brokers or money lenders was "a business public in its nature," and the people involved in the business were susceptible to extortion and unfair dealings if the money lenders remained unchecked, the court identified the nature of the industry to which the licensing statute applied as being a relevant factor for consideration.[79] The court held that the express language coupled with the apparent purpose and related industry of the statute rendered a contract made without the license void and unenforceable.[80]

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[72] *Id.* at 65. "Statutes seldom express any intention regarding the enforceability of contracts in so many words." 15 CORBIN ON CONTRACTS § 88.2. The intention of the legislature is gleaned from inferences resting on the purpose, harms and evils, and fines for noncompliance. Many courts will use a balancing test between these factors if doubt remains. *Id.*

[73] *Id.* at 64. This holding is consistent with the Restatement (Second) of Contracts, which states that a contract is not enforceable if the purpose of the licensing is for regulating in the public interest and not just for revenue purposes. RESTATEMENT (SECOND) OF CONTRACTS § 181 (1981).

[74] 34 Ga. App. 210, 129 S.E. 570 (1925).

[75] *Id.* at 214, 129 S.E. at 572; *Taliaferro*, 54 Ga. at 153; *Toole*, 142 Ga. at 60–63, 82 S.E. at 514.

[76] Ga. Civ. Code §§ 3446–3465 (1910).

[77] *McLamb*, 34 Ga. App. at 214, 129 S.E. at 572.

[78] *Id.* at 214–15, 129 S.E. at 572.

[79] *Id.*

[80] *Id.* at 216, 129 S.E. at 573.

To more effectively find the intentions of the legislature as to the purpose behind a licensing statute, the Georgia Court of Appeals, in *Bernstein v. Peters*,[81] noted the name of the implicated act.[82] The title, the "Revenue Tax Act to Legalize and Control Alcoholic Beverages and Liquors,"[83] concerned regulation and control of the liquor industry, further leading the court to hold that the statute was regulatory in the public interest.[84] The court analyzed the individual statutory code provisions and examined the role of the State Revenue Commissioner throughout the statute to uncover the amount of control the commissioner had over the enforcement, issuing, and revocation of licenses.[85] The industry involved in *Bernstein* was the liquor business, and the court recognized that the liquor industry was "freighted with a peril to the public welfare."[86] Thus, the court concluded that the requirement of licensing in the liquor industry was not merely for the purpose of revenue, but for regulating the public interest.[87] The appellate court focused on the type of industry regulated as an indication of whether the legislature intended the statute to be enacted for a revenue raising or regulatory purpose.[88]

Georgia's appellate courts have identified licenses created for the purpose of regulating the public interest in industries other than healthcare, employment, and liquor; for example, the Georgia Supreme Court in *Conley v. Sims & Blalock*[89] noted protection of Georgia's farmers as imperative to prevent fraud in the fertilizer industry.[90] The Georgia Supreme Court analyzed the requirements for the sale of fertilizer and noted that the Commissioner of Agriculture must inspect the product as well as check that the seller fully complied with the law before the fertilizer is sold.[91] Furthermore, in *Johnston Bros. & Co. v. McConnell*,[92] Georgia's farmers were considered "one of [Georgia's] greatest interests,"

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[81] 68 Ga. App. 218, 22 S.E.2d 614 (1942).

[82] *Id.* at 221, 22 S.E.2d at 616.

[83] Revenue Tax Act to Legalize and Control Alcoholic Beverages (Ga. L. Ex. Sess., 1937-1938. P. 103).

[84] *Bernstein*, 68 Ga. App. at 221, 22 S.E.2d at 616.

[85] *Id.* at 221–23, 22 S.E.2d at 616–17.

[86] *Id.* at 221, 22 S.E.2d at 616.

[87] *Id.* at 223, 22 S.E.2d at 617.

[88] *Id.*

[89] 71 Ga. 161 (1883).

[90] *Id.* at 162–63.

[91] *Id.* at 162.

[92] 65 Ga. 129 (1880).

and protecting this subset of the public was, therefore, considered the intention of the legislature behind the statute.[93]

By applying the plain meaning of the text in the Act, the Georgia Supreme Court held in *Management Search, Inc. v. Kinard*[94] that the intentions of the legislature were clear.[95] Through the consistently textualist approach taken by the Georgia Supreme Court, the court held that the statute in question, former O.C.G.A. §§ 84-4101 et seq., the Private Employment Agencies Act[96] was unambiguously enacted to regulate and protect the public.[97] Because the Act required "more than the mere obtaining of a business license," and the plain meaning of the statute clearly showed the purpose of the statute was to protect the public, using the uncovered purpose of the statute, the court found the statute to regulate in the public interest.[98]

3. Paulsen St. Investors v. Ebco Gen. Agencies

The court of appeals continued applying the general rule that originated in *Taliaferro* for over one hundred years before coming to the decision in *Paulsen Street Investors*.[99] The court noted the role of the Insurance Commissioner in granting the licenses under the statute at issue, the Insurance Premium Finance Company Act,[100] as well as the qualifications required for the licensees to obtain the licenses and for license revocation.[101] The rule expressed in *Paulsen Street Investors* is a culmination of centuries of adjudication by the courts of appellate review in Georgia to reach a concise and applicable rule pertaining to the outcome of holding a licensing statute as not revenue-raising but regulatory in the public interest.[102]

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[93] *Id.* at 131.

[94] 231 Ga. 26, 199 S.E.2d 899 (1973).

[95] *Id.* at 28, 199 S.E.2d at 901.

[96] Ga. H. R. Bill 19, Reg. Sess. (1959).

[97] *Mgmt. Systems, Inc.*, 231 Ga. at 28, 199 S.E.2d at 901.

[98] *Id.*

[99] *Paulsen Street Investors*, 237 Ga. App. at 118, 514 S.E.2d at 906 (citing *Bowers v. Howell*, 203 Ga. App. 636, 636–37, 417 S.E.2d 392, 393 (1992)).

[100] O.C.G.A. §§ 33-22-1 through 33-22-16 (2020).

[101] *Paulsen Street Investors*, 237 Ga. App. at 118–19, 514 S.E.2d at 906.

[102] *Id.* at 118, 514 S.E.2d at 906 ("under well-established Georgia law").

C. Question Three: Recovery

A party seeking to recover from a contract created under a statute requiring a party to hold a license for regulatory, not revenue, purposes must prove it held the license to recover.[103]

1. The Civil Practice Act of 1966[104]

Prior to the Civil Practice Act of 1966, the supreme court recognized in *Murray v. Williams*[105] that even without express language in the statute voiding recovery for services rendered without a license, if the legislature passed the statute with the intention to protect the public interest, the statute bars recovery for claims relating to the unlicensed action.[106] The court of appeals, in *Hale v. Chatham*,[107] held that failure to allege that a party was licensed, when this fact was necessary under the statute involved, resulted in a dismissal of the claim.[108] Since the broker did not allege that he was legally licensed, the case was subject to general demurrer.[109] The court of appeals consistently applied this rule to the real estate broker trying to recover on a listings contract by dismissing the claim.[110]

The passage of the Civil Practice Act of 1966 altered how license allegations were treated and applied for the purposes of recovery.[111] Under the Civil Practice Act of 1966, for a party to recover on a claim or a contract under a statute mandating the holding of a license, the license would have to be shown and obtained to acquire recovery.[112] The Georgia Court of Appeals in *Maxwell v. Tucker* noted the differences between before and after the Civil Practice Act of 1966.[113] Failure to allege the existence of the license would not affect the validity of the claim but would prevent recovery on the claim.[114] Because of the Civil Practice Act of 1966, the supreme court held, in *Management Search, Inc. v. Kinard,* to recover under the contract, a party must show he holds a license even

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[103] *Id.*

[104] O.C.G.A. §§ 9-11-81(a) to 11-109 (2020); Ga. H. R. Bill 6, Reg. Sess. (1966).

[105] 121 Ga. 63, 48 S.E. 686 (1904).

[106] *Id.* at 64, 48 S.E. at 686.

[107] 91 Ga. App. 519, 86 S.E.2d 536 (1955).

[108] *Id.* at 519–20, 86 S.E.2d at 537.

[109] *Id.* at 520, 86 S.E.2d at 537.

[110] *Id.*

[111] Maxwell v. Tucker, 118 Ga. App. 695, 698, 165 S.E.2d 459, 461–62 (1968).

[112] *Id.* at 698, 165 S.E.2d at 461–62.

[113] *Id.*

[114] *Id.*

if this requirement is not expressly stated in the statute.[115] Under the new obligations of the Civil Practice Act of 1966, proving the holding of a license is a requirement for recovery under a statute mandating the existence of a license.[116]

The rule in *Paulsen Street Investors* instructs that when a statute requires a party to obtain a license and the statute is created to regulate the public interest, not create revenue, a party seeking to recover from a contract created under the statute must prove it held the license to enforce the claim.[117] The rule in *Paulsen Street Investors* is a culmination of holdings influenced by the passage of the Civil Practice Act of 1966.[118]

IV. COURT'S RATIONALE

A. *Certified Question One: Farmers in the Sale of Agricultural Products Grown by Themselves*

Justice Boggs answered the first certified question in *San Miguel* by initially considering the language contained in the statute at issue.[119] The supreme court examined the text of both O.C.G.A. § 2-9-1(2) for the definition of "dealer in agricultural products"[120] and O.C.G.A. § 2-9-15(a)(1) for the rule that "farmers or groups of farmers in the sale of agricultural products grown by themselves,"[121] to determine the scope of the application of the exemption.[122] Applying the plain language of the Act, the court held that the exemption only applied "'in the sale'" of the products.[123] The court noted that the Georgia General Assembly distinguished between the business of dealers in agricultural products and specific sales of the dealer's own product.[124] Relying on authorities such as *Deal v. Coleman*[125] to strengthen the finding of the plain meaning definition of the language at issue, the court noted that it must "read the statutory text in its most natural and reasonable way."[126]

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[115] *Mgmt. Search*, *Inc.*, 231 Ga. at 28–29, 199 S.E.2d at 901–02.

[116] *Id.*

[117] *Paulsen Street Investors*, 237 Ga. App. at 118, 514 S.E.2d at 906.

[118] *Id.*

[119] *San Miguel*, 308 Ga. 816–17, 843 S.E.2d at 407.

[120] O.C.G.A § 2-9-1(2).

[121] O.C.G.A. § 2-9-15(a)(1).

[122] *San Miguel*, 308 Ga. at 816, 843 S.E.2d at 407.

[123] *Id.* at 818, 843 S.E.2d at 408 (quoting O.C.G.A. § 2-9-15(a)(1)).

[124] *San Miguel*, 308 Ga. at 817, 843 S.E.2d at 407.

[125] 294 Ga. 170, 751 S.E.2d 337 (2013).

[126] *San Miguel*, 308 Ga. at 816, 843 S.E.2d at 407 (quoting *Deal*, 294 Ga. at 172, 752 S.E.2d at 341).

Relying on the amicus brief submitted by the Georgia Department of Agriculture,[127] the court further pointed out that its interpretation of the Act in this question was consistent with the definition of "dealer" in PACA.[128] The court noted similarities and differences between PACA and Georgia's Act, while also clarifying the goals of both PACA and the Act: to prevent a dealer from taking advantage of the system.[129] The court noted that if the exception that San Miguel was seeking was valid, any dealer could evade the requirements of the Act simply by growing and then selling a small amount of their agricultural product.[130] This interpretation could lead to exploitation and eventually could erode the safeguards put in place by the Act.[131] Limiting the exception in O.C.G.A. § 2-9-15(a)(1) to only exempting the specific transaction, not the dealer, prevents the noted harm, and adheres to the plain meaning of the statute as enacted by the General Assembly.[132]

B. Certified Question Two: Regulatory versus Revenue

To answer the district court's second certified question regarding whether the Act was enacted for regulatory or revenue purposes, the supreme court turned to the text of the statute.[133] The court concluded from the text of the statute, the inclusion of a comprehensive plan, the oversight by the Department of Agriculture, the potential for criminal penalties, the bond requirements, and authorization for injunctive relief in the statutory text, that the statute was a regulatory statute.[134]

To support its holding, the court focused on the long history behind the rule articulated in *Paulsen Street Investors*, the rule referenced in the certified question by the district court.[135] The analysis of this line of decisions, including the decisions of *Taliaferro*, *Toole*, *Mgmt. Search, Inc.*, and *Planters Fertilizer*, highlighted the changes, additions, and applications from 1875 to the present day when the court analyzed these

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[127] Brief of the Georgia Department of Agriculture as Amicus Curiae in Support of Neither Party, 2020 GA S. Ct. Briefs LEXIS 1091, *San Miguel v. Herndon Farms*, 308 Ga. 812, 843 S.E.2d 403 (2020).

[128] *San Miguel*, 308 Ga. at 817, 843 S.E.2d at 407–08.

[129] *Id.* at 817, 843 S.E.2d at 408.

[130] *Id.*

[131] *Id.*

[132] *Id.* at 818, 843 S.E.2d at 408.

[133] *Id.*

[134] *Id.*

[135] *Id.*

past rules in making its decision under these facts.[136] The court applied the long history of caselaw to show the consistency of the rule over time and to show that the application in the present case fit with a heavily established precedent.[137]

Challenging San Miguel's contention that farmers are not the "public," the court held that the revenue-versus-regulatory test had previously been applied by the supreme court to farmers.[138] The court applied the rule from *Johnston* to show how the rule in *Paulsen Street Investors* previously affected agricultural subjects, like protecting the public from unregulated fertilizers.[139] The court noted that farmers are an important part of Georgia's public, and agriculture makes up a significant portion of Georgia's economy.[140] The court compared PACA's protection of the nation's farmers and agricultural dealers noted in the purpose of PACA to the protection of Georgia's farmers found in the Act.[141] Noting the Act's purpose to regulate in the public interest, the court held that the Act was not enacted for raising revenue.[142]

C. Certified Question Three: Recovery

To answer the third certified question, the court first applied the general rule summarized in *Paulsen Street Investors*.[143] For a party to enforce and recover under a contract, when a statute requires a party to hold a license prior to forming a contract to engage in a specific type of business, if the statute is enacted to regulate that business in the public interest and not only as a revenue measure, the party must show they obtained and held the license before forming the contract.[144] The court noted the application of this rule over the years in multiple cases to show how it had changed, as well as to illustrate the aspects that continuously stayed the same.[145]

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[136] *Id*. at 818–20, 843 S.E.2d at 408–09; *Taliaferro*, 54 Ga. at 153; *Toole*, 142 Ga. at 61; *Mgmt. Search, Inc.*, 231 Ga. at 28, 199 S.E.2d at 901.; *Planters Fertilizer Co.*, 142 Ga. at 155, 82 S.E. at 564.

[137] *San Miguel*, 308 Ga. at 820, 843 S.E.2d at 409.

[138] *Id.*

[139] *Id.*

[140] *Id.*

[141] *Id.* at 820–21, 843 S.E.2d at 409–10.

[142] *Id.* at 821, 843 S.E.2d at 410.

[143] *Id.*

[144] *Id.* (citing *Paulsen Street Investors*, 237 Ga. App. at 118, 514 S.E.2d at 906.).

[145] *San Miguel*, 308 Ga. at 821, 843 S.E.2d at 410 (noting how the "long-standing rule has been applied to numerous statutes governing professions and trades") (citing *Padgett v. Silver Lake Park Corp.*, 168 Ga. 759, 762–63, 149 S.E. 180 (1929)).

The court ended its analysis by noting that the legislature may change the statute to include an express voiding provision or an alteration of another nature, but amending the statute is up to the discretion of the legislature.[146] San Miguel's argument that the rule from *Paulsen Street Investors* was outdated and irrelevant was rejected by the court.[147] The court noted that the body of law used for answering the certified question was consistent and valid precedent for the court to follow.[148] Even in the absence of an express provision in the statute prohibiting recovery for lack of holding a license, the court held that a contract could be void by implication.[149]

V. IMPLICATIONS

The perishable agricultural products industry is volatile and ripe with a sense of urgency to sell products before expiration unique to the industry. Perishable goods have risen in prominence for trade by the U.S. thanks to technology increases.[150] The rushed timetable that these farmers are placed on underscores every transaction made. Technology increases from the 1950s to present day have expanded markets to include a global reach, but with this expanded market comes more problems of control.

By narrowing the scope of the exception to the Act, the supreme court tightened Georgia's control over dealers both in state and out of state by restricting the circumstances that would fall under the exception to being licensed. Only specific transactions of goods grown by the dealer may be unlicensed instead of dealers as a whole who also grow their own products. Georgia's agriculture industry has changed over the decades since the original enactment of the Act in 1950. During this time, agriculture has remained an industry of prominence in the state;[151] however, changes in technology and increased technological dependence have altered how farming and agriculture look.[152] Business structures and contracts may have become more complex and extensive, but the

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[146] *San Miguel*, 308 Ga. at 822, 843 S.E.2d at 410.

[147] *Id.*

[148] *Id.*

[149] *Id.*

[150] Anita Regmi, *Changing Structure of Global Food Consumption and Trade*, U.S. DEPARTMENT OF AGRICULTURE, AGRICULTURE AND TRADE REPORT, 1 (2001).

[151] GEORGIA FARM BUREAU: ABOUT GEORGIA AGRICULTURE, http://www.gfb.org/education-and-outreach/about-ga-agriculture.cms (last visited Mar. 23, 2021).

[152] *See* Erik j. O'Donoghue et al., *The Changing Organization of U.S. Farming*, USDA, ECONOMIC RESEARCH SERVICE, ECONOMIC INFORMATION BULLETIN NO. 88 (Dec. 2011).

application, the tests, and the protections for farmers remain unwavering.[153]

Answering certified questions of first impression by applying a line of relevant cases spanning back over one hundred years shows regularity in the court system. The Georgia Supreme Court's reliance on the analysis produced in the brief of the Georgia Department of Agriculture as amicus curiae in support of neither party shows the deference the court gives to the Department of Agriculture in questions regarding agricultural licensing.[154] By explicitly stating how the agency has interpreted the language at issue in the Act when applying it to applicants or offenders, the Department of Agriculture gave the court clear guidelines showing how the agency has not only applied the statutes in the past but on what grounds the agency will analyze circumstances for licensing purposes in the future.[155] The court did not have to adhere to the interpretations and findings of the Department of Agriculture, but because the relevant caselaw aligned consistently with the findings in the Department of Agriculture's brief, the judiciary achieved consistency between the legislature's statute and a department of the executive's interpretation of enforcement requirements.[156]

Because the Department of Agriculture did not weigh in on the specific facts of the case, per its silence in answering Question Three, and the court's comparison of the Act to PACA, the application and the reasoning promoted by both the court and the Department of Agriculture show that the answers to these questions are not based just on the facts of the case but with the protection of farmers as well as consumers in mind. [157] Protecting against abuse from unlicensed dealers by narrowing the licensing exception under the Act exercises the control and regulatory power of the Department of Agriculture regarding licensing statute interpretation.

E. Tate Crymes

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[153] O'Donoghue et al., *supra* note 148, at 69–70.

[154] *See* Brief from the Georgia Department of Agriculture as Amicus Curiae in Support of Neither Party, 2020 GA S. Ct. Briefs LEXIS 1091, *San Miguel v. Herndon Farms*, 308 Ga. 812, 843 S.E.2d 403.

[155] *Id.* at *3–7.

[156] *Id.* at *2–3.

[157] *Id.*