

S20NMI08607266S

SUPERIOR COURT GA#20 Judicial District of
NORWALK

STATE OF CONNECTICUT

2009 SEP 21 P 4: 28 Stamford/Norwalk

vs.

NORWALK

Held at Norwalk

COMPLETE CONSTRUCTION

September 21, 2009

MEMORANDUM OF DECISION

RE: MOTION TO DISMISS and VERDICT

The defendant, Complete Construction Co., moves to dismiss the information charging two counts in violation of §14-267a (b). The defendant argues that it is exempt from prosecution under §14-267a (b) because §14-269 (c) is applicable to the present case.¹ The defendant points to Practice Book § 41-8 (5) and (9), which states: "The following defenses or objections, if capable of determination without a trial of the general issue, shall, if made prior to trial, be raised by a motion to dismiss the information . . . Insufficiency of evidence or cause to justify the bringing or continuing of such information or the placing of the defendant on trial . . . Any other grounds."

The following facts are relevant to the present motion. On October 14, 2008, a truck owned and operated by the defendant was transporting soil to a construction site in Weston, Connecticut. En route, Jose Pinto, an employee of the defendant, was stopped for a motor vehicle inspection while traveling through Westport. The inspector alleged that the defendant's truck exceeded the gross weight limit, set forth in § 14-267a, by twelve percent and exceeded the axle weight limit on axle two, set forth in the same statute, by 9.7 percent. In regard to the gross

¹This is the defendant's "renewed motion to dismiss." Its first motion to dismiss was filed March 3, 2009, and denied by the court on March 9, 2009. The defendant filed this renewed motion to dismiss and a memorandum in support on May 11, 2009. It filed a supplemental memorandum in support on June 9, 2009. The state filed its response on June 12, 2009.

weight limit violation, the inspector noted that the actual weight of the truck was 69,500 pounds and the manufacturer's gross vehicle rating was 62,000 pounds. As a result, he concluded that the truck was overweight by 7,500 pounds or twelve percent.

Section 14-267a (b) (5) and (6) states: "The axle weight on any axle and the gross weight of any vehicle or combination of vehicle and trailer or vehicle and semitrailer or any other object, including its load, may not exceed the manufacturer's axle weight rating, the gross vehicle weight rating or the following gross weight limits . . . a four-or-more-axle vehicle or combination of vehicle and trailer or vehicle and semitrailer equipped with pneumatic tires, the weight on any single axle not to exceed twenty-two thousand four hundred pounds or, in the case of axles spaced less than six feet apart, eighteen thousand pounds, a gross vehicle weight of sixty-seven thousand four hundred pounds; a four-or-more-axle vehicle or combination of vehicle and trailer or vehicle and semitrailer where the distance between the first and last axle is not less than twenty-eight feet, the weight on any single axle not to exceed twenty-two thousand four hundred pounds or, in the case of axles spaced less than six feet apart, eighteen thousand pounds, a gross vehicle weight of seventy-three thousand pounds, provided in no event shall the gross vehicle weight exceed seventy-three thousand pounds."

Section § 14-269 (c) states: "The gross vehicle weight and wheel base limitations of section 14-267a shall not apply to any four-axled motor vehicle equipped with pneumatic tires which is engaged in construction work or in supplying or transporting materials or equipment for public or private construction projects, provided the Commissioner of Transportation may restrict or prohibit by signs, legal notices or direct notice the highways or bridges which may be used by such vehicles." Section 14-269 (d) further states: "No such four-axled motor vehicle may be

operated upon any highway or bridge if its gross weight, including its load, exceeds seventy-three thousand pounds.”

It is undisputed that the defendant’s vehicle had four axles, was equipped with pneumatic tires and was engaged in the supply and transport of construction materials to a construction project. The defendant’s alleged violation was that its truck exceeded the manufacturer’s gross vehicle rating. Therefore, disposition of this motion turns on the court’s interpretation of the phrase: “The gross vehicle weight and wheel base *limitations* of section 14-267a shall not apply . . .” See General Statutes § 14-269 (c) (emphasis added.).

The defendant argues that “limitations,” as used in § 14-269 (c), refers to *all* limits found in § 14-267a: the manufacturer’s axle weight rating, the manufacturer’s gross vehicle weight rating, and the gross weight limits described in the statute, such as those contained in subsections (5) and (6). The state claims that “limitations” only refers to the gross vehicle weight limits described in § 14-267a and the wheel base limitations. Thus, the state claims that the use of “limitations” in § 14-269 (c) does not exempt the defendant from compliance with the manufacturer’s axle weight rating and gross weight rating. “[L]imitations” is not defined in the statute.

Whether § 14-269 (c)’s use of the term “limitations” was meant to exclude a four axle vehicle, equipped with pneumatic tires, and engaged in the supply and transport of construction materials to a construction project from all of the limits in § 14-267a is a question of statutory interpretation. “When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case,

including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter” (Internal quotation marks omitted.) *State v. Koczur*, 287 Conn. 145, 152-53, 947 A.2d 282 (2008), quoting *Kinsey v. Pacific Employers Ins. Co.*, 277 Conn. 398, 405, 891 A.2d 959 (2006).

The language of § 14-269 (c) exempts otherwise eligible vehicles from “[t]he gross vehicle weight and wheel base limitations of section 14-267a.” The plain language of the statute appears to exempt the defendant only from these two limits. The court agrees, however, that the statute’s use of the term “limitations” creates ambiguity, given that “limits” is used elsewhere in the statute. As a result, the court will look to the legislative history of the statute.

As a threshold issue, the court notes that there is a difference between a vehicle’s gross weight and its gross vehicle weight rating. The former is specifically set out in sub-sections (1) through (6) of § 14-267 (b) and created by the state to protect the highways, roads and bridges of the state of Connecticut. See General Statutes § 14-1 (36) (“‘Gross weight’ means the light weight of a vehicle plus the weight of any load on the vehicle, provided, in the case of a tractor-trailer unit, ‘gross weight’ means the light weight of the tractor plus the light weight of

the trailer or semitrailer plus the weight of the load on the vehicle”); see also General Statutes § 14-260n (same). The latter is a rating placed on the vehicle by its manufacturer to ensure that the truck carries its loads safely. See General Statutes § 14-1 (35) (“‘Gross vehicle weight rating’ or ‘GVWR’ means the value specified by the manufacturer as the maximum loaded weight of a single or a combination (articulated) vehicle. The GVWR of a combination (articulated) vehicle commonly referred to as the ‘gross combination weight rating’ or GCWR is the GVWR of the power unit plus the GVWR of the towed unit or units”).

The legislative history demonstrates that the legislature was concerned with the impact of increased truck weights on Connecticut’s highways, roads and bridges. See 23 H.R. Proc., Pt.6., 1980 Sess., p. 1750-56; p. 1764; p. 1769; p. 1865-69. The history of the statute also shows, however, that the legislature was duly concerned with the impact of these trucks on the public’s safety while traveling on Connecticut roadways. Senator Morano, voicing his opposition to increased truck weights, stated: “I rise to oppose the amendment and I rise to oppose the amendment for several reasons. Number one, in the twenty years that I have been up here, we have always had a truck weight bill increasing weights in trucks. And for nineteen years, we have defeated this measure. And the reasons that we have are many. One is the safety factor. Two, the damage that will be done to our roads. Three, the designs of our roads . . . all these factors taken into account.” 23 S. Proc., Pt. 3, 1980 Sess., p. 817.

Representative Serrani stated: “Talk about safety. The death toll in accidents involving tractor trailer rigs in the country is up 39%.” 23 H.R. Proc., supra, p. 1754-55. Representative Van Norstrand remarked: “I don’t know if there’s one area that I get more complaints for from my constituents. I don’t know about other people, it is tailgating, truck weights. I know of no

information that's come forth to dazzle us that the braking systems have improved or that the citizens of this state are going to feel anymore secure with 80,000 pound trucks on the road." *Id.*, p. 1768.

More significantly, Representative Wilber stated: "Those of us who live in Fairfield County and those of us who live near major highways in the state know very well that our constituents are afraid of trucks. And they have good reason to be afraid of the trucks. The accident rate involving large trucks is going up everyday. That's because primarily there are more of them on the road. There are more of them on the road because the governor, the governor has changed the rules about truck weights.² And that allows trucks who normally would have gone through New York State to come into Connecticut and use our highways as a route to Massachusetts and so forth. We've got a real problem. And our constituents have a right to be afraid. The increase is tremendous. Those of us who live particularly on I-91 or I-95 surely have noticed the increase." *Id.*, p. 1769-70.

Finally, Representative Shays, discussing a report from the Commissioner of Transportation on the condition of Connecticut roads, stated: "He [the Commissioner] goes on 'one of the most serious transportation issues faced in the state of Connecticut during the 1980's is the maintenance and restoration of the existing highway system. . . . the Department's concern for the deterioration of the highway system cannot be expressed too strongly . . . The potential for a major catastrophe from a bridge failure increases daily. The failure of New York City's West Side Highway stands the classic example of deferred maintenance and restoration programs.'"

²Governor Ella T. Grasso issued the Energy Emergency Executive Order on June 28, 1979, which increased the maximum gross weight limit of trucks to 80,000 pounds.

Id., p. 1866.

In addition to the financial burden to the state resulting from Connecticut roadways being damaged by trucks, the legislature repeatedly alludes to its concern for the public's safety in its discussion of whether to increase truck weights. Given this over-arching concern for public safety, the court agrees with the state's interpretation of § 14-269. It is simply unreasonable that the legislature would permit vehicles to carry loads heavier than what is recommended by the vehicle's manufacturer. Thus, the court finds that the legislative intent of § 14-269 was not to exempt trucks from complying with the manufacturer's axle weight and gross weight ratings.

For all of the foregoing reasons, the defendant's motion to dismiss is hereby denied.

At trial, the following evidence was presented:

Inspector Steven Licitra stopped the truck in question on October 14, 2008 and observed that the manufacturer's gross vehicle weight sticker listed 62,000 pounds and the vehicle registration listed 73,000 pounds, which would result in higher DMV fees. He observed the vehicle to have four axles. The manufacturer's sticker reflected only three axles. All VIN numbers matched. Inspector Licitra indicated that a discrepancy between the number of axles listed on the manufacturer's sticker and the number of axles physically observed on the truck would prompt him to ask more questions, but that his job that day was limited to one function-heavy diesel emissions inspection.

Inspector Paul Pelletier performed a motor carrier inspection on the truck and confirmed that some violations from an inspection six days prior had been repaired. He observed that the manufacturer's tag on the truck was for 62,000 pounds and that the truck was registered

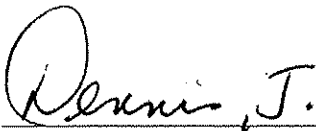
for 73,000 pounds. He also observed that the truck had four axles and pneumatic tires, but that the manufacturer's sticker listed only three axles. According to Inspector Pelletier, this was an indication that the vehicle was manufactured as a three axle vehicle, and at some point in time someone added a lift axle and never had the vehicle re-certified to carry the additional weight. Based upon the calculations later made by the Weigh Master, Inspector Scalzo, Inspector Pelletier issued the gross vehicle weight rating violation and the axle weight violation infractions in this matter.

Inspector Frank Scalzo weighed the four axle vehicle and found that it exceeded the manufacturer's rating per the sticker for a three axle vehicle. He explained that there are situations when a driver would be permitted to shift the weight to negate an axle violation. This driver was not permitted to shift the axle weight because he exceeded the manufacturer's weight rating on the tag on the door.

Antonio Teixeira, President of Complete Construction has been with the company for twenty-two years. His current position involves overseeing everyday duties, and as the general "superintendent". The truck in question was involved in completion of the Weston bridge project, specifically general clean-up, topsoil and landscaping on the edge of the road. This truck was carrying topsoil on October 14, 2008. The driver on that date was Joe Pinto. The truck had four axles and pneumatic tires. The truck was purchased new from Mack in 1998, and already had the dump body attached to it and had four axles. No changes were made to the vehicle except to add a canvas top which would not affect the manufacturer's rating. Subsequent to learning of this ticket of October 14th [and a prior similar ticket of October 8th] a representative of Complete Construction contacted Mack to find out why Mack never provided the four axle

sticker, with the appropriate weight. Mack provided the correct sticker and the truck was inspected and the correct sticker was placed on the truck, allowing a gross vehicle weight of 82,000 pounds.

Upon consideration of all the evidence under the applicable standard, judgement of not guilty is entered on both counts.


Dennis, J.

"DECISION ENTERED IN ACCORDANCE WITH THE FOREGOING"
9.21.09
Charles Kim, caseload Coordinator
Norwalk State's Attorney office
Brian Tims
"NOT Guilty"
9.21.09