

SUPREME COURT OF LOUISIANA

NO. 96-C-1716 c/w 96-C-1727

LOUISIANA SMOKED PRODUCTS, INC.

Versus

SAVOIE’S SAUSAGE AND FOOD PRODUCTS, INC.

ON WRIT OF CERTIORARI FROM THE COURT OF APPEAL
THIRD CIRCUIT, PARISH OF ST. LANDRY, STATE OF LOUISIANA

Victory, J., dissenting.

The majority’s opinion holds that despite the clear language of La. R.S. 23:921(A), which provides that “Every contract or agreement . . . except as provided in this Section, shall be null and void,” the statute only prohibits contracts not to compete between employers and employees or similar types of relationships. Specifically, the majority states:

Generally, Title 23 of the Revised Statutes governs employment situations and relationships. The fact that this statute falls under Title 23 could reasonably give rise to the presumption that, unless otherwise indicated, the prohibition of *every contract* which contains a non-competition agreement means every *employment* contract or every contract that is, to some extent, essentially of an employment nature.

Slip Opinion at pg 10. However, the majority’s opinion fails to reconcile the existence of the exceptions to La. R.S. 23:921(A) in sections (B), (D), (E) and (F).¹ Had the legislature intended to prohibit only contracts in the employment context, as the majority states, there would be no reason

¹For example, if La. R.S. 23:921(A) was only meant to prevent non-competition agreements between employers and employees, there would have been no need to provide an exception for “Any person, *including a corporation* . . . who sells the goodwill of a business may agree with the buyer that the seller will refrain from carrying on or engaging in a business similar to the business being sold or from soliciting customers of the business being sold” La. R.S. 23:921(B). This exception would not be necessary if this type of contract was not prohibited by the legislature in La. R.S. 23:921(A). Similarly, there would be no need to “allow” the parties to a franchise to agree that “the franchisor shall refrain from selling, distributing, or granting additional franchises. . .” and “the franchisee shall . . . refrain from competing with the franchisor or other franchisees of the franchisor” La. R.S. 23:921(F).

for the legislature to specifically carve out exceptions to the general rule in La. R.S. 23:921(A). The inclusion of these exceptions strongly indicates that the legislature intended La. R.S. 23:921(A) to apply to *every contract*, as it clearly and unambiguously states, and not simply *every employment contract*. Therefore, I respectfully dissent.