IN THE SUPREME COURT OF FLORIDA

CASE NO. 71,826

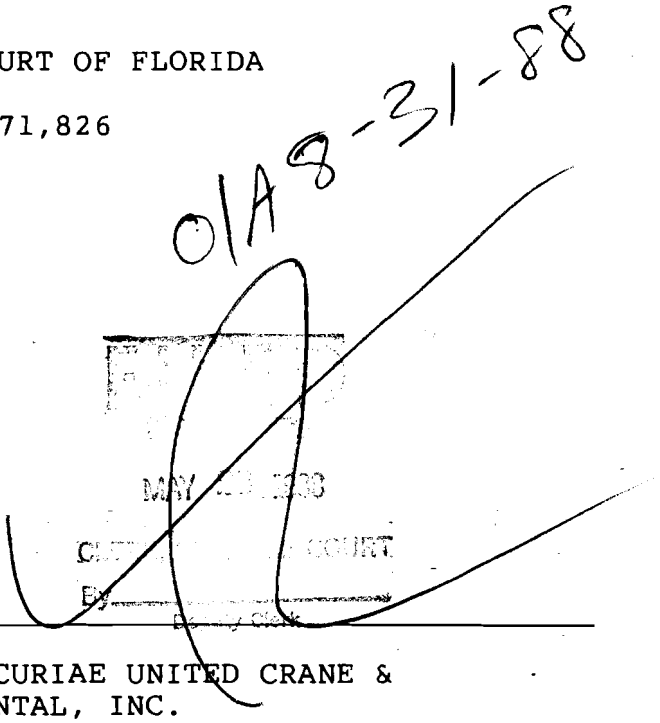
CRANE RENTAL OF ORLANDO, INC.,

Petitioner,

vs.

FORD S. HAUSMAN, as Orange County Property Appraiser,

Respondent.



INITIAL BRIEF OF AMICI CURIAE UNITED CRANE & EQUIPMENT RENTAL, INC.

AND

FLORIDA EQUIPMENT CONTRACTORS ASSOCIATION, INC.,

ON APPEAL FROM THE FIFTH DISTRICT COURT OF APPEAL

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STATEMENT OF THE CASE AND FACTS

This appeal arises from litigation involving the propriety of the Property Appraiser's assessment of an ad valorem tax on mobile self-propelled cranes. In 1985, the Property Appraiser attempted to assess cranes owned by Crane Rental as tangible personal property for ad valorem tax purposes. Crane Rental appealed to the Property Appraisal Adjustment Board asserting that the cranes were motor vehicles exempt from ad valorem taxation pursuant to Article VII, Section 1(b) of the Florida Constitution. The Board determined that the motor carrier portion of the cranes were exempt from ad valorem taxation. However, the Board allowed ad valorem taxation of the lifting portion of the cranes as tangible personal property and thus apportioned the appraised value of the cranes between the exempt and taxable categories. The Property Appraiser brought a Complaint pursuant to Fla. Stat. §194.036, seeking to overturn the Board's ruling that the motor carrier portion of the cranes was exempt from taxation as tangible personal property. Crane Rental counterclaimed, asserting that the entire machines were motor vehicles exempt from taxation pursuant to Art. VII §1(b) of the Florida Constitution.

The trial court held that the cranes were not motor vehicles and were therefore entirely taxable as tangible personal property. Crane Rental appealed to the Fifth District Court of Appeal, which affirmed the trial court's decision,

over the dissent of Judge Cowart. Crane Rental of Orlando v. Hausman, 518 So.2d 395 (Fla. 5th DCA 1987). Crane Rental appealed the decision of the Fifth District and this Court accepted jurisdiction.

SUMMARY OF ARGUMENT

Self propelled cranes are constitutionally exempt from ad valorem taxation because they are motor vehicles. This equipment fits every relevant definition under the statutes and case law for motor vehicles. The questions raised by this Court when the issue was last considered in 1954 are all answered in favor of status as motor vehicles. The crane or lifting portion and truck or carrier portion of the self propelled cranes are completely integrated, forming the same chassis and sharing the same power source. The use of the state's highways is essential to their function and utility. The vehicles are not subject to any special use permits.

The lower court incorrectly attempted to create a middle ground of equipment which may be taxed as personal property by the Property Appraiser, while at the same time subjected to a license fee by the Department of Motor Vehicles and Traffic Safety. This rationale results in double taxation, and is completely contrary to the express statutory language.

ARGUMENT

I. SELF-PROPELLED CRANES ARE MOTOR VEHICLES SUBJECT TO A LICENSE TAX AND EXEMPT FROM AD VALOREM TAXATION.

Motor vehicles are constitutionally exempt from ad valorem taxation. The Florida Constitution, Article VII, Section 1(b) provides in pertinent part; "Motor vehicles as defined by law, shall be subject to a license tax for their operation in the amounts and for the purposes prescribed by law, but shall not be subject to ad valorem taxes." Id. The Florida Legislature implemented this constitutional provision by enacting Chapter 320, Florida Statutes, relating to motor vehicle licenses. There, the term motor vehicle is defined as "an automobile, motorcycle, truck, trailer, semi-trailer, truck-tractor, and semi-trailer combination, or any other vehicle operated on the roads of this State, used to transport persons or property, and propelled by power other than muscular power, but the term does not include traction engines, road rollers, such vehicles as run only upon a track, bicycles or mopeds." Fla. Stat. §320.01(1)(a) (1987). Self-propelled cranes are motor vehicles within both the statutory and constitutional definitions, and accordingly are exempt from ad Valorem taxation.

In Sherman v. Reserve Insurance Company, 350 So.2d 349 (Fla. 4th DCA 1977), the Court held that a machine will be

considered a motor vehicle within the meaning of Chapter 320, Florida Statutes if it satisfied the following three elements: "First, the instrumentality must be operated over the public streets and highways of this state or maintained for that purpose .... Second, the instrumentality must be capable of being used for transporting persons or property over the public streets and highways. Finally, the instrumentality must be propelled by other than muscular power." Sherman, 350 So.2d 349, 352 (Fla. 4th DCA 1977). The cranes at issue satisfy all of the foregoing requirements. The cranes are operated over the public streets and highways; indeed, such mobility is essential to their utility and function. These cranes are capable of transporting and do transport persons and property over the public streets and highways and they are propelled by other than muscular power. Accordingly, they are subject only to license taxes, and are not subject to ad valorem taxes.

Florida Statute §320.17 (1987) provides that the Department of Highway Safety, not the Property Appraiser, shall determine the classification of any motor vehicle, and further provides that "a determination of the department, when certified in writing, is prima facie evidence of the validity, regularity, and propriety thereof and of the liability of the vehicle involved therein to the classification and tax so determined, fixed and assessed. No such determination when made by the

department may be disregarded or set aside in any court, except when clearly shown to be unwarranted in law or in fact." There is no doubt as to the classification made by the Department of Highway Safety. The Property Appraiser may not blithely ignore this determination. Instead, the Property Appraiser has a heavy burden to make a clear showing, and to show not just a mere disagreement, but that the determination is unwarranted in law or fact. The burden which the Property Appraiser faces is similar to the presumption he usually enjoys. Straughn v. Tuck, 354 So.2d 368 (Fla. 1977).

As the Plaintiff before the trial court, the Property Appraiser failed to make the Department of Highway Safety and Motor Vehicles a party to this case, and the validity of their determination is not at issue. Accordingly, pursuant to Florida Statute 320.17, such determination is binding on the Property Appraiser.

This Court considered the issue of classification of mobile cranes as motor vehicles in Forbes v. Bushnell Steel Construction Co., 76 So.2d 268 (Fla. 1954). There, an owner of cranes sued the Property Appraiser to cancel ad valorem assessments on cranes for which the owner had applied and received a license. The trial court found the cranes were motor vehicles subject to only one form of taxation in the form of a license tax. This Court remanded for the taking of further evidence as to the crane's design and use of the highways.

At the time Forbes was decided, truck chassis were fairly standard and could be fitted with various types of equipment and machinery which had independent utility. Such machinery was easily separable from the chassis, and thus was considered to be separate equipment, which could be classified as personal property. Some equipment of similar design is still in use today. Petitioner's Brief in the Merits, page 1. Accordingly, the machinery and equipment was not considered a part of the motor vehicle, because the machinery was not used for the primary purpose of transporting persons and property over the highways. See, e.g., Attorney General Opinion 050-144 (March 1950).

However, technological advances have resulted in a far different type of mobile construction equipment. As both opinions below reflect, mobile construction equipment is presently designed in a way that the carrier portion and the construction equipment are so integrated that the whole is effectively one unit. See, Crane Rental of Orlando v. Hausman, 518 So.2d 395, 396, 401 (Fla. 5th DCA 1987); (Cowart, J., dissenting.) There is but one chassis, and one engine, which enables the self-propelled crane to perform all of its functions. Separation of the crane function from the carrier function of the machine is impossible, or results in two useless and incomplete pieces of machinery.

The current design of such mobile construction equipment, which results in an integrated unit wherein each portion is essential and complementary to the function of the other, answers the questions raised by this Court in Forbes, 76 So.2d at 270. Their use on the highway is not merely incidental; it is essential to their function and the purpose of their design that they be mobile readily able to move easily from place to place. The cranes are more than permanently mounted on the chassis, they actually form a part of the chassis and share the same power source. Because they may be operated on the highways without special permits pursuant to §316.550, Florida Statutes, 14-26, F.A.C. or 14-34, F.A.C., it can be assumed that the self-propelled cranes do not exceed maximum for height, length, width or weight. On this state of facts, this Court in Forbes would have had justification to affirm the status of self-propelled cranes as motor vehicles. If this Court is dissatisfied with the development of this record, this matter should be remanded to the trial court, as in Forbes, with direction to invalidate the assessment if the answers are as set forth here.

In the decision below, the Fifth District borrowed various definitions of "motor vehicle" and other terms from other statutes to support it holding that the Legislature did not intend the subject cranes to be classified as motor vehicles under Article VII, §1(b). However, "when a statute contains a

definition of a word or phrase, that meaning must be ascribed to the word or phrase whenever repeated in [the] same statute unless [a] contrary intent clearly appears." Richard Bertram & Co. v. Green, 132 So.2d 24 (Fla. 3rd DCA 1961), cert. denied, 135 So.2d 743 (Fla. 1961), cert. dismissed, 136 So.2d 343 (Fla. 1961). Because the term "motor vehicle" is expressly defined in Chapter 320 for purposes of license taxation, it is unnecessary and improper to borrow definitions or to read other definitions of the term in pari materia. See, also, State Dept. of Health and Rehabilitative Services v. McTigue, 387 So.2d 454 (Fla. 1st DCA 1980).

The lower court was mistaken in its reliance upon Prinzo v. State Farm Mutual Auto Insurance Co. 465 So.2d 1364 (Fla. 4th DCA), rev. denied 475 So.2d (695 (Fla. 1985) to support its borrowing of definitions. Prinzo authorized such borrowing or reading of definitions in pari materia only when the Legislature has failed to provide an express definition in the pertinent statute. Prinzo does not authorize ignoring an applicable statutory or constitutional definition in preference of an inapplicable definition.

Moreover the lower court misapplied the definitions it borrowed. The term "Motor Vehicle" is defined in Florida Statute §316.003(21) (the State Uniform Traffic Control Law) as "Any self-propelled vehicle not operated upon rails or guideway, but not including any bicycle or moped." This

definition clearly includes the self-propelled cranes which are the subject of this appeal. Nevertheless, the Fifth District determined that the cranes did not constitute motor vehicles, finding support in the fact that the cranes are also classified as "special mobile equipment" in the same Chapter 316. Special mobile equipment is not expressly excluded from the definition of motor vehicle even within the meaning of Chapter 316 but instead simply provides an additional sub-category of vehicles under Chapter 316. In fact, the definition expressly states that pieces of special mobile equipment are "vehicles." Under the statutory definitions of Chapter 316, a motor vehicle is any vehicle which is not a bicycle or moped. Compare §316.003 (21) Fla. Stat. with §316.003 (75) Fla. Stat. Therefore, any piece of special mobile equipment is a motor vehicle.

That self-propelled cranes fall within the definition of special mobile equipment for purposes of traffic control is irrelevant their classification as motor vehicles for purposes of license taxation. The prefatory language to the definitional section of Chapter 316 states that "The following words and phrases, <u>when used in this Chapter</u>, shall have the meanings respectively ascribed to them in this Section, except where the context otherwise requires." Florida Statute §316.003 (1987) (emphasis supplied.) Chapter 316 is legislation relative to traffic control and has nothing to do with licensing or taxation of vehicles.

The lower court's borrowing of statutory definitions from other statutes is not only impermissible, it is not even helpful. The results vary widely, and provide no direction for Chapter 320 or Article VII. The Fifth District noted that the term motor vehicle is defined in numerous places in the Florida Statutes. A survey of the various definitions of motor vehicle throughout the Florida Statutes would support the conclusion that the subject cranes <u>are</u> motor vehicles. For instance, pursuant to Florida Statute Chapter 322, "motor vehicle" is defined as "any self-propelled vehicle not operated upon rails or guideway, excluding any bicycle as defined in S.316.003(2)." Florida Statute §322.01(2) (1987). Thus, pursuant to Chapter 322, no person may operate a self-propelled crane over the streets of Florida without a driver's license. Florida Statute Chapter 627 requires an owner to maintain either personal injury protection or liability insurance on any motor vehicle, defined as "any self-propelled vehicle with four or more wheels which is of a type of design and required to be licensed for use on the highways of this state and any trailer or semi-trailer designed for use with such vehicle ...." Florida Statute §627.732(1) (1987). Thus, owners of self-propelled cranes are required to maintain this insurance. Sellers of motor vehicles, defined in §520.02 (7), Florida Statutes, as "any device or vehicle, including automobiles, motorcycles, motor trucks, trailers, mobile homes, and all

other vehicles operated over the public highways and streets of this State and propelled by power other than muscular power, but excluding traction engines, roadrollers, implements of husbandry, and other agricultural equipment, and vehicles which run only upon a track," must comply with the provisions of Florida Statute Chapter 520 regarding retail installment sales. Thus, Sellers of self-propelled cranes must comply with this regulations.

On the other hand, the Fifth District notes different definition under other statutes. The Fifth District relied on M.J.S v. State, 453 So.2d 870 (Fla. 2d DCA 1984) in its determination that the subject cranes are not motor vehicles. In that case, a juvenile pled guilty to the charge of trespass to a conveyance after he allegedly tampered with the controls and levers on a construction backhoe. The court decided in that case that a backhoe was not a "conveyance" within the meaning of the applicable criminal statutes.

Similarly, reference to other jurisdictions also provides varying results and is unhelpful. Courts of other states have found cranes and similar construction type equipment to be motor vehicles in a variety of contexts. See, e.g., Haveman v. Board of County Road Commissioners, 96 N.W.2d 153 (Mich. 1959) (mobile construction equipment found to be motor vehicle within the meaning of statute providing for right of action against political subdivision for damages resulting from negligent

operation by municipal employee of a motor vehicle); Donahue Construction Co. v. Transport Indemnity Co., 86 Cal. Rptr. 632, 7 Cal.App.3rd 291 (Ct.App. Cal. 1970) (Self-propelled crane determined to be motor vehicle within the meaning of California Statutes.) In other contexts, different states have determined that cranes are not motor vehicles within the meaning of various state statutes. See, e.g., In re: Ramco Well Service, Inc., 32 BR 525 (W.D. Okla. 1983) (oilwell workover rigs found to be special mobilized equipment, not motor vehicles, for purposes of determining priority of liens pursuant to Oklahoma Uniform Commercial Code); In the Matter of Ferro Contracting Co., 380 F.2d 116 (3rd Cir. 1967) (certain mobile construction equipment determined to be outside traffic regulation definition of motor vehicles and therefore subject to New Jersey Uniform Commercial Code Requirements as to lien priority.)

No out of state cases involve the question of whether pursuant to the Florida Constitution and statutes, cranes are motor vehicles subject to license tax or personal property subject to ad valorem tax. On the contrary, these cases involve questions entirely unrelated to the issues presented by this case. The diversity of the statutory framework within which other decisions have been made demonstrates that reference to decisions from other jurisdictions is an exercise in futility.

II. SELF-PROPELLED CRANES MAY NOT BE SUBJECTED TO DOUBLE TAXATION.

Article VII, Section 1(b) of the Florida Constitution only authorizes one form of tax upon motor vehicles and that is a license tax. Accordingly, any attempt to levy an ad valorem tax against cranes found to be motor vehicles would constitute double taxation. In Nolan-Peeler Motors v. Wood, 175 So. 523 (Fla. 1937) the county Tax Assessor assessed an ad valorem tax against certain new and used automobiles held as inventory by an automobile dealer. The automobile dealer sought a temporary restraining order against the Tax Collector, and the trial court granted the Tax Collector's Motion to Dismiss. This Court reversed, finding that Article IX, Section 13 of the 1885 Constitution (the predecessor to Article VII, Section 1(b)), provided for only one form of taxation against motor vehicles in the form of a license tax. This court stated that, "Only one form of taxation of a motor vehicle is authorized. That is the form of a license tax. An ad valorem tax is not in the form of a license tax. Hence, it is beyond the authority of the Legislature to levy such a tax upon motor vehicles." Nolan-Peeler Motors, 175 So. at 524. Likewise, in the instant case, only one form of taxation against motor vehicles is authorized and that is a license tax. The cranes in the instant case fall within the definition of motor vehicles as defined by the Legislature in pursuance of its authority to

prescribe a tax for motor vehicles pursuant to Article VII, Section 1(b) of the Constitution. Accordingly, the cranes are subject only to a license tax, and are exempt from ad valorem taxation.

The Fifth District opinion appears to attempt to create an exception to Article VII, Section 1(b) by stating that "The Constitution prohibits ad valorem taxation on those vehicles which are classified as motor vehicles. However, this provision does not prohibit the department from assessing a license tax on personal properties. The fee paid by Crane is for the privilege of enabling it to use the public highways to transport its cranes to the construction site where work is performed. This does not mean, however, that these cranes are motor vehicles and therefore are exempt from taxation as personal property." This reasoning ignores the language of the Statute.

At no point in Chapter 320 is there any indication that license taxes are being charged on self-propelled cranes for any reason other than that they are motor vehicles. In fact, §320.08(5)(b), the provision under which the license tax is assessed on self-propelled cranes, describes the item taxed a motor vehicle. Because the tax is assessed on the equipment as a motor vehicle, Article VII §1(b) requires that there be no ad valorem taxation.

It is equally clear that the license tax charged by the Department of Motor Vehicles and Highway Safety is not a use

fee for non-motor vehicles. Such use fees are charged by the Department of Transportation under 14-26, F.A.C. and 14-34, F.A.C. The lower court's attempt to create a middle ground does violence to both the language and purpose of the statute and the constitution.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decision of the Fifth District Court of Appeal be reversed. This Court should determine that machinery subject to a license tax as a motor vehicle is exempt from ad valorem taxation.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. first class mail, postage prepaid, to: Charles Evans Davis, Esq., Fishback, Davis, Dominick & Bennett, 170 East Washington Street, Orlando, Florida 32801-2397, and to Steven R. Bechtel, Esq., P.O. Box 2854, Orlando, Florida 32802, and to Gaylord A. Wood, Jr., Esq., 304 S.W. 12th Street, Fort Lauderdale, Florida 33315, this 20th day of May, 1988.

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