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.

REPLY BRIEF OF AMICI CURIAE

UNITED CRANE RENTAL, INC. and
FLORIDA EQUIPMENT CONTRACTORS ASSOCIATION, INC.

On Appeal From The Fifth District Court Of Appeal

John H. Pelzer, Esq.
Suzanne H. Youmans, Esq.
RUDEN, BARNETT, McCLOSKY, SMITH,
SCHUSTER & RUSSELL, P.A.
NCNB Plaza, Penthouse D
110 East Broward Boulevard
Post Office Box 1900
Fort Lauderdale, Florida 33302
(305) 764-6660, Miami: 944-3283

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Other Authorities

ARGUMENT

I. Self-Propelled Cranes Are Motor Vehicles Subject To A License Tax And Exempt From Ad Valorem Taxation.

Self-propelled cranes have been classified by the Legislature as motor vehicles for tax purposes under Fla.Stat. §320.01(1)(a) and §320.08(5)(b). As motor vehicles, self-propelled cranes are constitutionally exempt from ad valorem taxation. Fla. Const., art. VII, §1(b).

In going outside Chapter 320 to find advantageous definitions of "motor vehicles," the Property Appraiser improperly ignores the self-sufficient definitions placed in Chapter 320 by the Legislature for this purpose. Richard Bertram & Co. v. Green, 132 So.2d 24 (Fla. 3d DCA), cert. denied, 135 So.2d 743 (Fla. 1961), cert. dismissed, 136 So.2d 343 (Fla. 1961). Significantly, the Property Appraiser does not attempt to defend the lower court's citation of Prinzo v. State Farm Mutual Auto Insurance Co., 475 So.2d 1164 (Fla. 4th DCA), rev. denied, 465 So.2d 695 (Fla. 1985). Because Chapter 320 is self-sufficient in its definitions, Prinzo does not authorize ignoring those definitions in preference of other, inapplicable definitions.

The definitions which the Property Appraiser and the District Court borrowed have been expressly limited by the Legislature to application only within Chapter 316. Fla.Stat. §316.003 clearly provides that the definitions provided therein

are applicable only "when used in this Chapter (Chapter 316)." The Property Appraiser has failed to provide any rationale for ignoring this express limitation by the Legislature to extend the definitions to Chapter 320.

Moreover, the definition of "Special Mobile Equipment" which the Property Appraiser seeks to apply to self-propelled cranes presupposes that the "Special Mobile Equipment" is a "motor vehicle." From the face of Chapter 316, "Special Mobile Equipment" is merely a sub-category of "Motor Vehicles." Therefore, the fact that self-propelled cranes meet this definition serves only to reinforce their status as motor vehicles.

The Property Appraiser falsely states that these self-propelled cranes have not been assessed the $32.50 tax specified under Fla.Stat. §320.08(5)(b) as motor vehicles. Answer Brief at 16. A total charge of $34.75 was paid. Id. The additional $2.25 charged by the Revenue Collector is itemized on the face of the Rate Sheet as consisting of $1.25 service fee, $0.50 reflectorization fee, and $0.50 FRVIS fee. Defendant's Exhibit No. 1, Amici Curiae Appendix page 1. It is apparent that the appropriate tax of $32.50 has been charged by the Tax Collector and paid by the taxpayer under Fla.Stat. §320.08(5)(b) for a motor vehicle, and therefore no further tax is due.

The fact the taxes have been assessed and paid under §320.08(5)(b) is further evidence that the self-propelled

cranes are treated by the Legislature as motor vehicles. The introductory paragraph in §320.08 indicates that the purpose of the section is to set forth the license taxes for "motor vehicles, mopeds, motorized bicycles ... and mobile homes ...." Certainly a self-propelled crane is neither a moped, motorized bicycle nor a mobile home. By process of elimination, the Legislature must have been assessing these taxes against self-propelled cranes as motor vehicles.

The Property Appraiser hinges his entire argument upon two main fallacies. First, the Property Appraiser bases legal argument on the definitions contained in rate sheets provided to the Tax Collector. There is no doubt that the rate sheets properly indicate the $32.50 tax against self-propelled cranes authorized and required by Section 320.08(5)(b). However, the definitions and categories contained and expressed on the rate sheet are not the language of the Legislature, and have not even been adopted as rules pursuant to Fla.Stat. §120.54. The Tax Collector's rate sheet is not the law in the State of Florida, and certainly is not binding upon this Court.

The second fallacy upon which the Property Appraiser hinges his argument is the unsupported assertion that self-propelled cranes may not legally transport people or property. The Property Appraiser's sole support for this assertion is the legal opinion of one Captain J. T. Cooper, an employee of the Department of Transportation. Answer Brief at 5.

The Property Appraiser is unable to muster even an informal document in support of this assertion, far less a statute or administrative rule. Because it is not illegal for self-propelled cranes to carry people or equipment, notwithstanding the legal opinion of Captain Cooper, the Property Appraiser is incorrect in asserting that it is legally impossible for self-propelled cranes to be motor vehicles.

The analysis of the Property Appraiser leaves one important question unanswered. If the license tags are not issued to self-propelled cranes as motor vehicles under §320.08(5)(b), then under what statute are the license tags issued? Clearly not §316.003(48), defining special mobile equipment; no license tags are authorized by the Legislature anywhere in that chapter. Certainly not a Tax Collector's rate sheet; that document does not even have the force of a rule, far less a statute. The license tags can only have been assessed and paid pursuant to Fla.Stat. §320.08(5)(b), and only if self-propelled cranes are deemed to constitute motor vehicles. Having been classified as motor vehicles for tax purposes under Chapter §320, the Property Appraiser must respect that classification. Fla.Stat. §320.17.

This Court in Forbes v. Bushnell Steel Construction Co., 76 So.2d 268 (Fla. 1954) set forth the factors to be considered in determining whether self-propelled cranes constitute motor vehicles. All of these factors now militate in favor of motor vehicle status. The self-propelled cranes

are designed for mobility, to be readily able to take to the state's highways, as a necessary element of their function and utility. The truck and crane portions are completely integrated into a single unit. While some outdated equipment is still in use, self-propelled cranes today generally do not exceed maximum size limitations. If they did, they would no longer be readily mobile. Based upon this Court's earlier decision, today's self-propelled cranes should be treated as motor vehicles.

II. Self-Propelled Cranes May Not Be Subjected To Double Taxation.

The Property Appraiser does not attempt to defend the District Court's statutorily unauthorized creation of a hybrid class of property which is subject to both a license tax and an ad valorem tax. This is because the District Court's action is indefensible. The conclusion is inescapable that self-propelled cranes are assessed license taxes as motor vehicles. This being the case, the Florida Constitution prohibits the assessment of a second tax against the same property. Fla.Const., art. VII §1(b). The Property Appraiser appears to argue that the double taxation is de minimis, and accordingly that the unconstitutional double-taxation should be overlooked. Answer Brief at 6. However, the amount of the license tax which the Legislature chooses to assess against self-propelled cranes is within the prerogative of the Legislature. The Property Appraiser may not ignore the constitutional exemption from ad valorem taxation merely because he disagrees with the Legislature.

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.

Respectfully submitted,

RUDEN, BARNETT, McCLOSKY, SMITH,
SCHUSTER & RUSSELL, P.A.
NCNB Plaza, Penthouse D
110 East Broward Boulevard
Post Office Box 1900
Fort Lauderdale, Florida 33302
(305) 764-6660, Miami: 944-3283

By: _____
John H. Pelzer
Florida Bar No. 376647

By: _____
Suzanne H. Youmans
Florida Bar No. 661104

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the Reply Brief of Amici Curiae 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 32801, and to **Gaylord A. Wood, Jr., Esq.,** 304 S.W. 12th Street, Fort Lauderdale, Florida 33315, this 27th day of June, 1988.