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MAR 20 1995

IN THE SUPREME COURT
STATE OF FLORIDA

CLERK SUPREME COURT
By
Chief Deputy Clerk

CANAVERAL PORT AUTHORITY

SUPREME COURT NO.: 84,743

Appellant,

v.

FLORIDA DEPARTMENT OF REVENUE,
JIM FORD, as Brevard County
Property Appraiser, and ROD
NORTHCUTT, as Brevard County
Tax Collector,

FIFTH DISTRICT COURT
OF APPEALS

CASE NO.: 932422

Appellees.

AMICUS CURIAE BRIEF OF BROWARD COUNTY, AS SUCCESSOR
IN INTEREST TO PORT EVERGLADES AUTHORITY

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STATEMENT OF THE CASE AND FACTS

The Amicus Curiae, Broward County, a political subdivision of the State of Florida and Successor in Interest to Port Everglades Authority (hereinafter Port Everglades), concurs in the Statement of the Case and the Statement of the Facts set forth in the Brief of the Appellant, Canaveral Port Authority.

Port Everglades is interested in this appeal for the reason that, like the Canaveral Port Authority, it was an independent special district created by special act of the Florida Legislature for the purpose of owning and operating an international deep-water seaport. In 1990, the Property Appraiser of Broward County assessed the Port Everglades Authority for ad **valorem** taxes on the fee interest in what it, the Property Appraiser, claimed to **be** Port Everglades' real property which was being leased to private entities. Port Everglades filed suit to have the court declare it immune from taxation. The trial court entered a Final Judgment for the Property Appraiser holding Port Everglades was not a political subdivision of the State of Florida, that it was only exempt from taxation, and that sec. 196.199, Fla. Stat. preempted that exemption for the years 1990 through 1994. This Final Judgment is currently on appeal before the Fourth District Court of Appeal.

As of November 22, 1994, Broward County became the Successor in Interest to the Port Everglades Authority pursuant to Ch. 91-

346, Laws of Florida and Ch. 94-429, Laws of Florida.' However, Port Everglades remains liable for the payment of the assessed taxes for the tax years 1990 through 1994, pursuant to the Final Judgment. Thus, being similarly situated to the Canaveral Port Authority with regard to the tax assessment, this Court's decision regarding the taxable status of the property may affect the taxable status of Port Everglades Authority for the years 1990 through 1994.

This brief is limited to a discussion of statutory interpretation due to the in-depth analysis anticipated to be argued by Appellant and Amicus Curiae on case law.

¹ Pursuant to this legislation, effective November 22, 1994, the Port Everglades Authority was dissolved and became a Department of Broward County. Thus Broward County is the Successor in Interest to Port Everglades Authority. In addition, since the County is a political subdivision of the state, this status now is afforded to the Port Everglades Department and the property previously assessed by the Property Appraiser.

SUMMARY OF THE ARGUMENT

By virtue of its status as one of Florida's twelve (12) deep-water seaports, Canaveral Port Authority is a political subdivision of the state and immune from taxation. In addition, even if it were not immune, it is exempt from taxation on its fee interest in property leased to private entities pursuant to sec. 315.11, Fla. Stat.

I. THE CANAVERAL PORT AUTHORITY IS
A POLITICAL SUBDIVISION OF THE STATE

Port Everglades adopts in total, the arguments of the Appellant, Canaveral Port Authority, and amicus curiae: Hillsborough County Aviation Authority, Sarasota-Manatee County Aviation Authority and Greater Orlando Aviation Authority with regard to this issue.

However, Port Everglades would like to emphasize that in addition to other amicus arguments, Canaveral Port Authority is part of a centralized statewide system of port management, operation, and development structured by the Legislature pursuant to sec. 311.07, Fla. Stat. (1993). It is one of Florida's twelve (12) deep-water international seaports and makes up part of the Florida Seaport Transportation and Economic Development Council.

Pursuant to this legislation, a Five Year Mission Plan, updated yearly, is promulgated and approved by the President of the Senate, Speaker of the House, the Department of Commerce, Department of Transportation and Department of Community Affairs.

The status afforded by this legislation clearly indicates that the Canaveral Port Authority is acting as a political subdivision of the state and should be immune from taxation.

II. IF NOT IMMUNE, CANAVERAL PORT
AUTHORITY IS EXEMPT FROM AD **VALOREM**
TAXATION UPON THE FEE INTEREST IN
PROPERTY LEASED TO PRIVATE ENTITIES.

Even if this Court was to find that the Canaveral port Authority was not immune from taxation, it is exempt from ad **valorem** taxation on its fee interest in property leased to private entities. The Canaveral Port Authority property was assessed ad **valorem** taxes on the basis of sec. **196.199(4)**, Fla. Stat. (1991) which provides:

(4) Property owned by any municipality, agency, authority, or other public body corporate of the state which becomes subject to a leasehold interest or other possessory interest of a nongovernmental lessee other than that described in paragraph **(2)(a)**, after April 14, 1976, shall be subject to ad **valorem** taxation unless the lessee is an organization which uses the property exclusively for literary, scientific, religious, or charitable purposes.

It is the position of Everglades that this section is inapplicable to the Canaveral Port Authority and all similarly situated Ports as any assessment is covered by sec. **196.199(2)(a)**, Fla. Stat. (1991), which provides:

(2) Property owned by the following governmental units but used by nongovernmental lessees shall only be exempt from taxation under the following conditions:

(a) Leaseholds interests in property of the United States, of the state or any of its several political subdivisions, or of municipalities, agencies, authorities, and other public bodies corporate of the state shall be exempt from ad **valorem** taxation only when the lessee serves or performs a governmental, municipal, or public purpose or function, as defined in s. **196.012(6)**. In all such cases, all other interests in the leased property shall also be exempt from ad **valorem** taxation. However, a leasehold interest in

property of the state may not be exempted from ad **valorem** taxation when a nongovernmental lessee uses such property for the operation of a multipurpose hazardous waste treatment facility.

Thus, the Canaveral Port Authority property will be considered exempt if the lessee's use is defined in sec. **196.012(6)**, Fla. Stat. (1993). This statute provides the definition for governmental, municipal, and public purposes, and states in pertinent part:

(6) Governmental, municipal, or public purpose or function shall be deemed to be served or performed when the lessee under any leasehold interest created in property of the United States, the state or any of its political subdivisions, or any municipality, agency, authority, or other public body corporate of the state is demonstrated to perform a function or serve a purpose which would otherwise be a valid subject for the allocation of public funds . . .

The function or purpose served by the lessee's of Port property was specifically addressed by the legislature in Ch. 315, Fla. Stat. **(1973)**, commonly called the 1959 Port Facilities Financing Law. This Chapter addresses the powers and duties of the various deep-water international seaports of the state. It makes provision for their financing and creates certain protections, particularly, sec. 315.11, Fla. Stat. **(1973)**, which provides for the exemption from taxation of all port facilities as follows:

As adequate port facilities are essential for the welfare of the inhabitants and the industrial and commercial development of the area within or served by the unit, and as the exercise of the powers conferred by this law to effect such purposes constitutes the performance of proper public and governmental functions, and as such port facilities constitute public property and are used for public purposes, the unit shall not be required to pay any state, county, municipal or other taxes or

assessments thereon, whether located within or without the territorial boundaries of the unit, or upon the income therefrom, and any bonds issued under the provisions of this law, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation within the state. The exemption granted by this section shall not be applicable to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations.

This section was specifically promulgated to prevent the taxation of any facility owned by a Port. Port Facilities are defined by sec. 315.02(6), Fla. Stat. (1967), which provides:

(6) The term "port facilities: shall mean and shall include harbor, shipping, and port facilities, and improvements of every kind, nature, and description, including, but without limitation, channels, turning basins, jetties, breakwaters, public landings, wharves, docks, markets, parks, recreational facilities, structures, buildings, piers, storage facilities, public buildings and plazas, anchorages, utilities, bridges, tunnels, roads, causeways, and any and all property and facilities necessary or useful in connection with the foregoing, and any one or more or any combination thereof and any extension, addition, betterment or improvement of any thereof.

By using the words "buildings" and "public buildings" it is apparent that the legislature wished to differentiate between the **two**. The obvious difference, between the words building and public building, is that the former is usually used by private entities while the latter is used exclusively by governmental entities for public purposes. The only reasonable inference this difference could indicate is that the legislature wished to exempt from taxation buildings owned by a Port but used by private entities.

Thus it indicated that the use of the "buildings" as opposed to the "public buildings" by any individuals is a valid subject for allocation of public funds, placing this use squarely within the

definition in sec. **196.012(6)**, Fla. Stat. which in turn requires this type of property to be immune from taxation pursuant to sec. **196.199(2)(a)**, Fla. Stat. The fee interest assessed by the Property Appraiser on the Canaveral Port Authority was exempt from taxation.

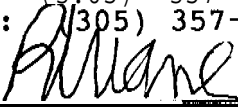
CONCLUSION

The Canaveral Port Authority is a political subdivision of the State of Florida and is immune from taxation as one of the twelve (12) deep-water international seaports in the state and for the reasons set forth by the Appellant. In addition, even if it is not a political subdivision, sec. 315.11, **Fla.** Stat. requires that all of the Property owned by the Port is exempt from all forms of taxation. The decision of the Fifth District Court of Appeal should be reversed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Amicus Curiae Brief Of BROWARD COUNTY, a political subdivision of the State of Florida, as Successor in Interest to Port Everglades Authority has been furnished by U.S. Mail, to: JOSEPH C. MELLICHAMP III, Senior Assistant Attorney General, Department of Legal Affairs, Tax Section, 2020 Capitol Circle S.E., Tallahassee, FL 32399-1050, Fax (904) 488-5865; JOE TEAGUE CARUSO, ESQUIRE, 800 E. Merritt Island Causeway, Ste 200, P.O. Box 541271, Merritt Island, FL 32954-1271, Fax (407) 453-0112; FRANK J. GRIFFITH, JR., ESQUIRE, 815 S. Washington Ave, Ste 201, Drawer 6310-G, Titusville, FL 32782-6515, Fax (904) 383-9970; HAROLD T. BISTLINE, ESQUIRE and PATRICIA K. OLNEY, ESQUIRE, 1970 Michigan Avenue, Bldg. E, P.O. Box 8248, Cocoa, Florida 32924-8248, Fax (407) 636-1170; ROBERT K. ROBINSON, ESQUIRE and JOHN C. DENT, JR., ESQUIRE, 330 S. Orange Avenue, P.O. Box 3269, Sarasota, FL 34230, Fax (813) 952-1094; RICHARD A. HARRISON, ESQUIRE and STEWART C. EGGERT, ESQUIRE, Allen, Dell, Frank & Trinkle, Attorney for Hillsborough County Aviation Authority, 101 E. Kennedy Blvd, Ste 1240, P.O. Box 2111, Tampa, FL, 33602, Fax (813) 229-6682; CHARLES D. BAILEY, JR., ESQUIRE, Co-Counsel for Sarasota-Manatee Airport Authority, 1550 Ringling Boulevard, Sarasota, FL 34236, Fax (813) 366-5109; BENJAMIN K. PHIPPS, ESQUIRE, Adorno & Zeder, Co-Counsel for Sarasota-Manatee Airport Authority, 215 S. Monroe Street, Tallahassee, FL 32301, Fax (904) 681-6651; JOHN M. WILSON, ESQUIRE, and MARK C. EXTEIN, ESQUIRE, Counsel for Greater Orlando Aviation Authority, 111 N. Orange Avenue, P.O. Box 2193, Orlando, FL 32802, Fax (407) 648-1743.

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