

0/a 8-31-88

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.

ON APPEAL FROM THE
FIFTH DISTRICT COURT
OF APPEAL OF FLORIDA

FILED

SUPREME COURT

MAY 18 1988

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PETITIONER'S BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND OF THE FACTS

The Defendant below, Petitioner here, owns and operates several mobile cranes used in the construction business in lifting and placing construction materials and components. The Plaintiff, Orange County Property Appraiser, in 1985, attempted to assess, for ad valorem tax purposes, the said cranes as tangible personal property. The Defendant appealed to the Property Appraisal Adjustment Board pursuant to Fla. Stat. §194.011, asserting that the said cranes were motor vehicles and prohibited from being taxed as tangible personal property by the provisions of Article VII, Section 1(b) of the Florida Constitution. The Board ruled that the motor carriers, which constitute a portion of the mobile cranes, were exempt from ad valorem taxation as licensed motor vehicles but allowed the taxation of the crane or lifting portion of the machines as tangible personal property for such taxation purposes and apportioned the appraised value between the exempt and taxable categories.

The cranes involved here are composed of separable units, that is, a carrier which is licensed as a motor vehicle, and the crane or lifting portion of the machine with separate engines, functions and operating controls.

The Plaintiff brought this action below under Fla. Stat. §194.036, seeking to overturn that portion of the Board's ruling which exempted the motor carrier portion of the machines from taxation as tangible personal property. The trial court, in the Final Judgment entered herein, held that no portion

of the machines was exempt and that these motor cranes were not motor vehicles and were, therefore, entirely taxable as tangible personal property.

The Petitioner, as Defendant below, had counterclaimed in the action, asserting that the entire machines were exempt as motor vehicles, and the trial court ruled against the Defendant on that issue.

The Final Judgment was appealed to the Florida Fifth District Court of Appeal, which sustained the trial court's judgment in a two to one decision. Judge Cowart, in a well-reasoned dissent, believed that the cranes were motor vehicles within Article VII, §1(b) of the Florida Constitution, and therefore exempt from ad valorem taxation.

POINT ON APPEAL

MOTOR CRANES ARE EXEMPT FROM AD VALOREM TAXATION AS MOTOR VEHICLES PURSUANT TO ARTICLE VII, SECTION 1(b) OF THE CONSTITUTION OF THE STATE OF FLORIDA, AND FLA. STAT., §§320.01 AND 320.08.

SUMMARY OF ARGUMENT

The mobile cranes involved in this case are, in fact, motor vehicles and are classified, taxed, and licensed as motor vehicles under the provisions of Florida Statutes and are, therefore, exempt from ad valorem taxation as tangible personal property by the State Constitution.

ARGUMENT

POINT ON APPEAL

MOTOR CRANES ARE EXEMPT FROM AD VALOREM TAXATION AS MOTOR VEHICLES PURSUANT TO ARTICLE VII, SECTION 1(b) OF THE CONSTITUTION OF THE STATE OF FLORIDA, AND FLA. STAT., §§320.01 AND 320.08.

Article VII, Section 1(b) of the Florida Constitution provides:

Motor vehicles, boats, airplanes, trailers, trailer coaches and mobile homes, 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.

(Emphasis supplied)

It is apparent from the foregoing provision that if a vehicle is considered a motor vehicle and it is further subjected to a license tax, then an ad valorem tax on the vehicle is strictly prohibited. The Legislature is empowered to define those motor vehicles subject to a license tax.

Although the Florida Statutes contain many definitions of motor vehicles for various purposes, e.g., §§316.003(21), 316.003(76), 627.732(1) and 322.01, Florida Statutes (1985), the implementation of the constitutional plan for taxing motor vehicles is clearly set forth in Fla. Stat., §320.01(1) wherein motor vehicles are defined as:

(a) An automobile, motorcycle, truck, trailer, semitrailer, truck tractor, and semitrailer 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 as defined in s. 316.003(2).

(Emphasis supplied)

A reading of the underscored sections of the foregoing definition of a motor vehicle demonstrates three principles. First, the intent of the definition to be all-inclusive by adding to the many types covered "or any other vehicle." There is nothing contained within this definition of a motor vehicle which restricts or quantifies its transporting of persons or property before it can be recognized as such. Secondly, the fact that "muscular power" is the only exception to the type of power by which a motor vehicle may be propelled demonstrates the intent of the Legislature of keeping the definition as broad and all-encompassing as possible. Finally, cranes such as the one in issue are not enumerated as vehicles which the statute excludes from its definition.

The Appellate Court chose to ignore Fla. Stat., §320.01(a), and instead relied on the definition provided in Ch. 316, Fla. Stat. This chapter is concerned only with state uniform traffic control and in no way relates to the issue of taxation.

Further, the statute relied on by the Appellate Court, Fla. Stat., §316.03(49), itself lends confusion to the issue. Said section states:

(49) SPECIAL MOBILE EQUIPMENT. -- Any vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including, but not limited to, ditchdigging apparatus, well-boring apparatus, and road construction and maintenance machinery, such as asphalt spreaders,

bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earth-moving carryalls and scrapers, power shovels and draglines, and self-propelled cranes and earth-moving equipment. The term does not include house trailers, dump trucks, truck-mounted transit mixers, cranes or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(Emphasis supplied)

Petitioner's cranes are designed to carry persons and property and have machinery which is attached in the nature of a crane mechanism. Therefore, it is unclear whether such cranes are included or excluded from the definition of special mobile equipment contained in the foregoing section.

Consistent with Article VII, Section 1(b) of the Florida Constitution, cranes are subject to a motor vehicle license tax under Fla. Stat. §320.08, which provides:

License taxes. -- Except as otherwise provided herein, there are hereby levied and imposed annual license taxes for the operation of motor vehicles ... which shall be paid to and collected by the department or its agent upon the registration or renewal of registration of the following:

....

(5) ... SPECIAL PURPOSE VEHICLES. --

....

(b) A motor vehicle equipped with machinery and designed for the exclusive purpose of well drilling, excavation, construction, spraying, or similar activity: \$32.50 flat.

(Emphasis supplied)

Petitioner's cranes are, in fact, motor vehicles which

have been equipped with machinery used for the exclusive purpose of performing various functions at construction sites. Since the Petitioner's cranes, as motor vehicles, are subjected to a license tax, Article VII, Section 1(b) clearly prohibits the imposition of any ad valorem tax. The Appellate Court failed to even address Fla. Stat., §320.08(5)(b).

The Appellate Court below relied on Forbes v. Bushnell Steel Construction Company, 76 So.2d 268 (Fla. 1954), for its holding. This case is inapposite for two reasons. First, the Supreme Court did not determine that cranes were subject to ad valorem taxation. While the Supreme Court in Forbes did reverse the trial court's determination that cranes were not subject to ad valorem taxation, it did so for evidentiary reasons, and the final disposition of the legal question is not reported. Secondly, the court in Forbes failed to even address Fla. Stat., §§320.01(1)(a) and 320.08(5)(b). These statutes, as shown above, are dispositive of this action since they demonstrate that cranes are included within the definition of motor vehicles and subject them to a motor vehicle license tax.

The Supreme Court of Florida has previously addressed an attempt to invade the constitutional protection of levying an ad valorem tax on boats, which, like "motor vehicles," are also protected under the constitutional exemption found in Article VII, Section 1(b). In Department of Revenue v. Florida Boaters Association, 409 So.2d 17 (Fla. 1981), the Supreme Court stated that although the Legislature had some flexibility

with respect to defining "boats" and other species of property excluded from ad valorem taxation, it could not depart from the normal and ordinary meaning of the words chosen by the framers and adopters of the Constitution. Specifically, a legislative attempt at defining a "live aboard vessel" so as to eliminate the exclusion from an ad valorem taxation accorded to a "boat" in the Florida Constitution was found to be unconstitutional. The reasoning of the court was that an exclusion from ad valorem taxation, as applied to a "boat," may not be denied to floating structures that are used, or capable of being used, for transportation or navigational purposes on water, and the statutory definition of a "live aboard vessel" failed to address this.

In the instant case, the Appellate Court, in relying on Forbes, concluded that the cranes were not motor vehicles because their primary purpose was not transporting persons or property. However, the Legislature did not establish within the definition of a motor vehicle in Fla. Stat., §320.01(1), a definition which excluded motor vehicles which only incidentally, and not primarily, transported persons or property. Thus, as in Florida Boaters Association, where the Legislature was precluded from enacting a statute which was contrary to the constitutional definition of a "boat," the Appellate Court included factors which are not contained within the definition of a motor vehicle. Until the Legislature amends that definition, the taxing authorities do not have the authority to assess an ad valorem tax on any motor vehicle that conforms to §320.01(1)

as written, except those that are expressly excluded. A tax imposed without legislative authority is a nullity. See, Department of Revenue v. Young American Builders, 358 So.2d 1096 (Fla. 1st DCA 1978).

The Supreme Court's decision in Florida Boaters Association is also relevant for its definition of a "boat" within Article VII, Section 1(b). The court held that only when a floating structure is rendered incapable of being used for transportation may the Legislature then declare that the structure is not a boat for the purpose of the exclusion from ad valorem taxation. Florida Boaters Association, supra, at 20. In response to this holding, the Florida Legislature enacted the following statute which differentiates "floating structures" from "boats" so as to subject "floating structures" to ad valorem taxation:

"Floating structure" means a floating barge-like entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term "floating structure" includes, but is not limited to, each entity used as a residence, place of business, office, hotel or motel, restaurant or lounge, clubhouse, meeting facility, storage or parking facility, mining platform, dredge, dragline, or similar facility or entity represented as such. Floating structures are expressly excluded from the definition of the term "vessel" provided in s. 327.02(27). Incidental movement upon water shall not, in and of itself, preclude an entity from classification as a floating structure. A floating structure is expressly included as a type of tangible personal property.

Fla. Stat., §192.001(17).

The Third DCA, in Land v. Department of Revenue, 510 So.2d 606 (Fla. 3d DCA 1987), rev. denied, 518 So.2d 1276 (Fla. 1987), held Fla. Stat., §192.001(17) to be constitutional. In Land, the taxpayers challenged the decision of the Department of Revenue to impose ad valorem taxes for house boats. The court held that house boats were "floating structures" that were subject to ad valorem tax, and were not "boats" that were constitutionally exempt from ad valorem tax. The court reviewed the trial court's findings in reaching its decision. According to the trial court record, the house boats did not have any means of self-locomotion, nor were they equipped with the necessary equipment for boating, such as lights, horns, directional aids or radios. The court concluded that "incidental movement," as used in Fla. Stat., §192.001(17), meant only that movement which was done across the water by means of a towing device; and, since the house boats in issue could traverse through the water only by the use of a tug boat, their movement was incidental. On the basis of this evidence, the court held that the house boats were incapable of transportation and therefore not "boats" entitled to exemption from ad valorem taxation.

Thus, only entities which are incapable of propelling themselves and have none of the indicia of a "boat" may be excluded from the definition of "boat." This concept should apply equally to "motor vehicles," since both are within Article VII, Section 1(b). Applying this definition to "motor vehicles" excludes only those entities incapable of self-propulsion,

