IN THE SUPREME COURT OF FLORIDA

BOARD OF TRUSTEES OF INTERNAL IMPROVEMENT FUND,

Petitioner,

vs.

AMERICAN CYANAMID COMPANY, et al.,

Respondents.

CASE NO. 65,755

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COASTAL PETROLEUM COMPANY, et al.,

Petitioners,

vs.

AMERICAN CYANAMID COMPANY, et al.,

Respondents.

CASE NO. 65,696

DISCRETIONARY PROCEEDING TO REVIEW THE DECISION OF THE DISTRICT COURT OF APPEAL, SECOND DISTRICT OF FLORIDA CERTIFYING QUESTIONS OF GREAT PUBLIC IMPORTANCE

PETITIONER COASTAL PETROLEUM COMPANY'S REPLY BRIEF ON THE MERITS

ROBERT J. ANGERER
Post Office Box 10468
Tallahassee, FL 32302
(904) 576-5982

C. DEAN REASONER
Reasoner, Davis & Fox
888 - 17th St. N.W.
Washington, DC 20006

JOSEPH C. JACOBS
Ervin, Varn, Jacobs, Odom & Kitchen
Post Office Box 1170
Tallahassee, FL 32302
(904) 224-9135

Attorneys for
COASTAL PETROLEUM COMPANY

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A=Appendix separate volume accompanying the Brief Petitioner Coastal Petroleum Company

SA=Supplemental Appendix at the back of this Reply Brief of Petitioner Coastal Petroleum Company

RA=Record on appeal in Coastal Petroleum Company and Board of Trustees of the Internal Improvement Trust Fund v. American Cyanamid Company, District Court of Appeal, 2nd District, Case No. 83-1378 and 83-1413

RE=Record on appeal in Coastal Petroleum Company and State of Florida v. Estech, Inc., District Court of Appeal, 2nd District, Case No. 83-1425 and 83-1478

INTRODUCTION TO RESPONSE AND REBUTTAL

The Answer Brief of American Cyanamid and Estech begins by asserting that the "State must be honest." This is a strange accusation coming from them because the unrefuted facts here show the only dishonesty to be their own "dishonesty" in claiming the Peace and Alafia Rivers.1

The phosphate companies were spawned in dishonesty in dealing with such lands, as the unrefuted record in these cases shows:

> "In January 1887 a syndicate known as the Peace River Phosphate Company was formed. . ..
> They bought supplies, chartered a boat, and started down Peace River on what they called a hunting trip. Pratt used the seclusion of his tent to make chemical tests of rock taken from the river beds. After phosphate which averaged 61 per cent BPL was found, the men agreed that 'their discovery must be kept a graveyard secret' to prevent land costs from skyrocketing. They discussed the matter and devised a scheme by which they could buy all the lands wanted at their own price. The country for miles around was covered with saw palmetto bushes, and the conspirators decided to tell landowners that these palmetto roots were rich in tannic acid. An expose of their plans three years later revealed:
>
> 'It was agreed to announce that they intended starting a plant to extract the tannic acid, provided the property owners would sell them the land cheap enough; that as soon as they had grubbed out all the roots they would have no further use for the lands, and would sell them back to the owners for a mere song. The plan worked beautifully and soon, at very reasonable prices, they had deeds for all the land they desired.'
>
> The company soon secured forty-three miles of the river front, including both banks, making a total distance down the river of twenty-one and one-half miles." (SA 3)

Honesty indeed! Note that no one in 1887 even considered owning the Peace River itself.

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1. The Answer Brief did not respond to these facts of dishonesty that show the error below: in failing to find the exception to MRTA because of their actual notice (see Coastal's Brief Pt. III, p. 41,42); in rejecting Coastal's equitable defenses by summary judgment (see Coastal's Brief Pt. IV, p. 43-48); and in ignoring the lack of clean hands for equitable relief.

In reviewing the unrefuted facts here one finds these companies knew of Coastal's Lease and the Trustees' ownership, but mined the rivers and deceitfully concealed the conversion. (Letters are in the Appendix, A 114-130, 137-138). American Cyanamid's officers recognized Coastal's Lease was an exception to their title (A 127). They knew their mesne conveyances eminating from swamp and overflowed lands' deeds and federal patents did not convey river bottoms (A 114-130). Yet now, under the banner of "honesty," they come forward to assert a claim to the Peace and Alafia Rivers.

Since it was American Cyanamid and Estech which sought equitable relief in these cases, they are required to have "clean hands." (SA 21)

> "[T]he rule in either case springs from decency, good faith, fairness, and justice. Equity not only contemplates, it requires fair dealing in all who seek relief at its hands. He that hath committed iniquity shall not have equity, is a well known maxim of equity." Peters v. Brown, 55 So.2d 334, 336 (Fla. 1951).

Equity will not permit one to profit by his own guile as against the one upon whom the stratagem was practiced. Schmitt v. Bethea, 78 Fla. 304, 82 So. 817, 819 (1919). American Cyanamid and Estech cannot succeed on their claims because of this dishonesty.2

2.American Cyanamid and Estech also cited the Judgments which state they do not extinguish boating, fishing, swimming or other public purposes. The judgments, although not holding such, by their effect, may extinguish such rights. For authority to support their underlying distinction between sovereignty land governmental vs. proprietary rights, Rosen, Public and Private Ownership Rights in Lands Under Navigable Waters: The Governmental, Proprietary Distinction, 34 U.Fla. L.Rev. 561 (1982) is cited. See Attachment J to American Cyanamid's motion for summary judgment where the same article is shown as authored by Holland & Knight in 1980 (RA 461, Exhibit J). This law firm represented these phosphate companies on these issues and did so before, during and after the article was written. Honesty here would show the article to be no more than the adoption of self-serving argument and not "persuasive authority." State v. Black River Phosphate Co., 32 Fla. 82, 13 So. 640 (1893), shows that the public trust doctrine and State ownership include phosphate minerals in the bed of these and other rivers regardless of how their rights are characterized.

Instead of responding to their own dishonesty, they turn to the Trustees' past arguments.3 They address Burns v. Coastal Petroleum Company, 194 So.2d 716 (Fla. 1st DCA 1966, cert.denied, 201 So.2d 549 (Fla. 1967), cert.denied sub nom Coastal Petroleum Company v. Kirk, 389 U.S. 913 (1967). It is significant that that Court actually held Coastal's Lease included all the lands involved here.4

> "We conclude Drilling Block 7 has within its eastern boundary Peace River from its mouth to Township 29/30." (Emphasis added.) Burns, supra at 76.

The Peace River to Township 29/30 is due east of Bartow (SA 15-19). Thus, Burns reaffirmed the ownership of the Trustees and Coastal and is not a basis to claim any estoppel.5

American Cyanamid and Estech have tried to turn attention away from their dishonesty. But their dishonesty destroys their equity claims here. They knew the State owned the phosphates in the rivers, but they mined anyway, and now come forward, again in dishonesty, and try to claim they are innocent purchasers of Florida's sovereign rivers. Even if the law were as argued, their dishonesty here would establish the equitable defenses raised by Coastal. The decision below is erroneous.

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3. Even they recognize Coastal is consistent in asserting its title.
4. The Trustees have never successfully maintained these matters, nor are the same parties involved, nor has the party claiming been misled. No judicial estoppel can be urged. 22 Fla. Jur. 2d Estoppel and Waiver, §50, p. 479.
5. State of Florida v. Charlotte Harbor Phosphate Co., 74 F. 578 (5th Cir. 1896), did not stop the navigability of the Peace River. As acknowledged, that case was dismissed and is of no force here. One need only review American Cyanamid's own correspondence to see that it did not believe it owned any of these rivers. It recognized that Coastal's Lease was an exception to its own title, but went ahead and mined. It did not rely upon this last case either (A 114-130)! (For a complete history of the phosphate industry of this period, see record reference at SA 1).

ARGUMENT

POINT I

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POINT II

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Are sovereignty lands involved here? Yes, there are sovereignty lands involved here.[6] Although the Respondents choose to argue here that no sovereignty lands are involved, Respondents alternatively argued below[7] and the trial court assumed navigability.[8] More important, the undisputed evidence demonstrated the presence of sovereignty lands (A 131,139).

Not only has the Peace River been held to be within Coastal's sovereignty lands' Lease,[9] but the evidence here shows a navigable river. As just seen, the discovery of river pebble phosphate was by boat (SA 1-3)! The production of river pebble phosphate continued by dredge unlawfully and without permission for a period of time until it was stopped (SA 1-15). When Coastal searched for relics of that era in the Peace River during one dry period, it discovered at the uppermost part of the Peace River a dredge as

6. American Cyanamid and Estech undercut the very decision they must sustain by challenging these certified questions. The phrasing of the certified questions shows the presence of sovereignty lands!
7. See Respondents' Motions for Summary Judgment (RA 461, RE 160).
8. The trial court assumed navigability for argument (A 158, 173). Furthermore, Coastal filed a disclaimer of any lands that were not sovereign (RA 1529-1534).
9. Burns v. Coastal Petroleum Company, 194 So.2d 71, 76 (Fla. 1st DCA 1966), cert.denied, 201 So.2d 549 (Fla. 1967), cert.denied sub nom Coastal Petroleum Company v. Kirk, 389 U.S. 913 (1967).

big as the Mayflower (SA 5). The phosphate companies' own use of the Peace River belies any claim of non-navigability (SA 6-15).[10]

Are American Cyanamid's and Estech's deeds and patents void? No. These deeds and patents convey that which they may legally convey, that is, all but sovereignty lands. Martin v. Busch, 93 Fla. 535, 112 So. 274 (1927) and Shively v. Bowlby, 152 U.S. 351 (1893). Neither Coastal nor the Trustees have claimed the deeds or patents are void. In fact Coastal filed a disclaimer of all but sovereignty lands (RA 1529). None of these deeds expressly cover the Peace or Alafia Rivers, but are simply large block descriptions through which the rivers pass (A 149-151). Coastal's lease expressly covers these navigable rivers (SA 29). American Cyanamid and Estech did not even believe that they owned the rivers (A 114-130). No one claims the deeds are void.

Does the "contemporaneous finding" argument preclude assertion of sovereignty title here? No. Although American Cyanamid and Estech cite cases[11] out of context, the clear law of Florida is as this Court later held:

> "If the Trustees of the Internal Improvement Fund actually conveyed 'sovereignty lands,' believing them to be 'swamp and overflowed lands,' their mistake, however innocent, would not supply the power they lacked. Assuming that the Secretary of the Interior purposely included the land in his patent, we cannot see how the state would have got any more by the process if the land was actually a part of the 'sovereignty lands,' for it already possessed these. So we attach small importance to these two acts, which amounted to little more than

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10.See the affidavits on navigability (A 131,139).

11.The only Florida case, cited other than Odom, is Pembroke v. Peninsular Terminal Co., 108 Fla. 46, 146 So. 249 (1933). Pembroke involved a buyer's defense against a suit to foreclose a purchase-money contract. The buyer attempted to challenge the seller's title and this Court properly denied that defense, holding that since the State was not involved, such a challenge was a "collateral attack" (p. 259). In the present cases, not only are the Trustees a party, but Coastal has a Lease from the Trustees. It is American Cyanamid and Estech who are attacking this Lease from the Trustees. If the law is as argued, this Court could never determine such title since each party would be "collaterally attacking" the other's title!

gestures if, in truth, the physical characteristics of the land itself placed it in the classification of 'sovereignty lands.'" Pierce v. Warren, 47 So.2d 857, 859 (Fla. 1950).

Here where American Cyanamid and Estech knew and believed they did not own the rivers, the result should be clear, and the decision below reversed.

Are the Peace and Alafia Rivers meandered here? No. But as this Court held in Odom v. Deltona Corp., 341 So.2d 977, 989 (Fla. 1977), nonmeandering may create only a rebuttable presumption, not a conclusive one. The evidence of navigation here more than rebuts any presumption, especially on summary judgment.[12] Florida's rivers were largely nonmeandered except for their mouths. The Peace River, for example, was not meandered after it became less than 6/10 of a mile wide. In Bucki v. Cone, 25 Fla. 1, 6 So. 160 (1889), this Court held the Suwannee River navigable above White Sulphur Springs even though its meandering ceased before it leaves Levy County, Florida! Although most Florida rivers were meandered only near their mouths,[13] these rivers were important means of navigation in Florida.[14] Despite nonmeandering, Florida's rivers were navigated and navigable.

Where did Odom apply its holdings to rivers? Nowhere. This Court in Odom was not dealing with rivers, but with small nonmeandered lakes and ponds wholly within the perimeter of conveyances. Deltona's Brief here argued:

12."The lower court's treatment of meandering is also in accord with the proposition that a water body should be regarded as being non-navigable absent evidence of navigability." Odom at 989. This "evidentiary fact" is determinative and not to be ignored. Here there is unrefuted evidence of navigability.

13.See other river cases. State ex rel. Peruvian Phosphate Co. v. Board of Phosphate Commissioners, 31 Fla. 558, 12 So. 913 (1893), State v. Black River Phosphate Co., 32 Fla. 82, 13 So. 640 (1893), State v. Gerbing, 56 Fla. 603, 47 So. 353 (1908), and Apalachicola Land & Development Co. v. McRae, 86 Fla. 393, 98 So. 505 (1924).

14.See Exhibit at Florida State Museum in the basement of the R.A. Gray Building: "Waterways: The History of Water Transportation in Florida."

"This case does not involve the navigability of tidal areas, coastal regions, rivers, or large freshwater lakes where there is 'notice' of potential navigability. Rather, this case concerns administrative applications of an undefined 'navigability' standard to relatively small, freshwater lakes and ponds, not meandered during government surveys and not of such physical size as to provide notice of navigability. (pg. 6)

. . . . . .

The court noted, for example, that the mere passage of time and normal development make proof or disproof of navigability at statehood difficult, and that determining the navigability of small, freshwater lakes in 1845 was particularly difficult, as contrasted with coastal areas, rivers, or large meandered lakes. (pg. 16)

. . . . . .

This case does not involve clearly navigable areas such as the Atlantic coast, the Gulfcoast, estuaries, rivers, or even large, freshwater lakes such as Lake Okeechobee, Lake Jackson, or even Lake Iamonia. Rather, it involves administrative attempts to stretch the concept of navigability at law to encompass small, nonmeandered lakes and ponds of less than 140 acres; and, in many cases, less than 50 acres in surface area. The administrative expansions of 'navigability' represented by this case are without precedent in Florida law." (pg. 23)

. . . . . .

Florida's present test of navigability poses no problems in regulating areas where waters are, in fact, navigable and the test will have practical application--i.e., coastal areas, rivers, and relatively large lakes where landowners are 'on notice,' either through the physical size of the water body or its meandering, that the body may be navigable and thereby subject to state ownership and jurisdiction." (pg. 35)(Emphasis added.)

The trial court judgment, quoted in Odom, stated:

"3. The real question involved is the status of such lakes as to whether they are the private property of Deltona or are vested in the state as sovereignty lands in trust for the people. Odom , p. 980.

. . . . . .

> 13. It is of considerable significance that Section 253.151 singled out 'meandered fresh water lakes' for special treatment, and specified with particularity that same are not to be construed to be of the same character as tidal lands, streams, watercourses or rivers or as lakes attached to tidal waters. Subsection (1) Odom p. 983.
>
> . . . . . .
>
> 16. Considering all of these statutory and constitutional expressions, all of which are consistent, it is made to appear that nonmeandered lakes and ponds are not to be classified as navigable bodies of water.
>
> . . . . . .
>
> As already mentioned the Court is of the view that nonmeandered lakes are to be regarded as nonnavible." Odom, p. 987. (Emphasis added.)

Clearly the parties argued and the trial court determined the law regarding small nonmeandered lakes and ponds. In considering the case, this Court said:

> "Appellants also argue for the application of the 'notice of navigability' concept, i.e., that the grantee of swamp and overflowed lands under a Trustee deed takes with 'notice' that the conveyance does not include sovereignty land. In the case of a large lake, such as Lake Okeechobee, a 500,000 acre lake, we agree;9 however, it seems absurd to apply this test to small, non-meandered lakes and ponds of less than 140 acres and, in many cases, less than 50 acres in surface.
> 9. Martin v. Busch, 93 Fla. 535, 112 So. 274, 286 (Fla. 1927)." Odom, p. 988.

Thus, small nonmeandered lakes and ponds within the perimeters of conveyances were the subject and issue in Odom, not long rivers of Florida. Odom's holding was not applied by this Court to rivers. This last quotation of this Court in Odom fortifies the law in Florida that protects sovereignty lands.15

15.This last holding cannot be ignored here since it has been the statement of the law in Florida. To argue as American Cyanamid and Estech do means the Court opened Pandora's Box with Odom. Clearly this last quotation shows that the box was not opened, but that a single class of small lakes and ponds were being dealt with. This Court did not overrule the settled law of Florida.

Where in Odom did this Court overrule the long line of cases that hold that swamp and overflowed lands deeds do not convey sovereignty lands?16 No where. As a matter of fact, both the trial court judgment quoted in Odom (at p. 980, 981) and this Court's own opinion (at p. 988) upholds the settled law of Florida. There has never been a case before this Court in which the Court has held that a swamp and overflowed lands' deed issued by the Trustees included sovereignty lands below the ordinary high water mark of navigable rivers simply by virtue of that deed. Not one, and American Cyanamid and Estech did not cite one! This is not a case of first impression, however, since the Court has expressly and consistently held to the contrary, that such deeds do not convey sovereignty lands.17 The decision below represents an attempt to upset this settled law. There is no change in rationale or public policy to warrant abandonment of this sound established precedent in Florida. Odom did not overrule this law of Florida.

Where in Odom did this Court overrule the long line of cases that hold that both authority and intention must exist to apply collateral estoppel? Nowhere. Legal estoppel has been applied, but the theory of legal estoppel or estoppel by deed has never been held to bar Florida's assertion of title

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16. American Cyanamid and Estech conceded that the federal patents to roughly half of these lands cannot provide a basis for affirmance under certified question 2 (and thereby 1). Answer Brief, p.25 . Thus, unless the Court finds MRTA applicable, without exception for the recorded Lease and Judgment or for actual knowledge, the Respondents have conceded the decisions below are erroneous and must be reversed! As to the so-called failure to argue, this question was defined as the basis for decision by the District Court and Coastal is responding. Coastal urged that the Final Judgment was erroneous and the District Court found that within Coastal's argument were the certified questions (A 5). Again Respondents argue with the decision they must sustain.

17. State v. Gerbing, 56 Fla. 603, 47 So. 353, 357 (1908); Broward v. Mabry, 58 Fla. 398, 50 So. 826, 831 (1909); Martin v. Busch, 93 Fla. 535, 112 So. 274, 285 (1927); McDowell v. Trustees of Internal Improvement Fund, 90 So.2d 715, 717 (Fla. 1956). Odom quoted most of these cases.

to navigable river sovereignty lands. No Florida case has ever allowed a person to defend his claim to parts of long rivers using the doctrine of legal estoppel where authority and intention to convey such sovereignty lands were not present. Neither American Cyanamid nor Estech cite a single such case![18] The law in Florida has always been and continues to be that both authority and intention must be present before the doctrine of legal estoppel may be applied to sovereignty lands:

> "Conveyances of uplands, including swamp and overflowed lands, do not include sovereignty lands below the ordinary high-water mark of lands under navigable waters, unless authority and intent to include such sovereignty lands clearly appear." (Emphasis supplied.) Martin v. Busch, 93 Fla. 535, 112 So. 274, 285 (1927).

Neither authority nor intention existed here.[19] Odom also did not upset this settled law of Florida. The decision below should be reversed.

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18. Trustees of Internal Improvement Fund v. Lobean, 127 So.2d 98 (Fla. 1961), was a case where the Trustees had authority to convey the lands. This Court's own opinion states the Trustees had authority to convey the lands. Supra at 103.

19. As to the "after acquired title argument," see Watson v. Holland, 155 Fla. 342, 20 So.2d 388 (1945). There is a vast difference between a sale of lands and a lease. The after acquired title argument is also limited here because there is actual knowledge by the claimant. Even if the after acquired title doctrine applied, American Cyanamid and Estech could only take so much title as the Trustees were vested with. What the Trustees were vested with in 1969 was title subject to Coastal's Lease. Thus, under the after acquired title doctrine, their title would still be subject to Coastal's Lease!

POINT III

IN THIS CASE, THE MARKETABLE RECORD TITLE ACT, CHAPTER 712, FLORIDA STATUTES, DOES NOT OPERATE TO DIVEST THE TRUSTEES OR COASTAL OF TITLE TO SOVEREIGNTY LANDS BELOW THE ORDINARY HIGH-WATER MARK OF NAVIGABLE RIVERS.

Why didn't American Cyanamid or Estech respond to the simple chronology? Because there is no response. MRTA could not vest title between 1963-1978 to the sovereignty lands here because three different MRTA exceptions precluded such vesting, even if MRTA applied to these lands. Respondents ignored the chronology and attempted to draw attention away from the simple facts demonstrating their failure to qualify for protection under MRTA.

Was Coastal's Lease recorded properly?[20] Yes. As one Court has already reasoned regarding the Polk County recording of Coastal's Lease in 1954:

> "Coastal contends that its and the Trustees' rights are preserved from extinction under the MRTA by virtue of section 712.03(4) of Florida Statutes which provides an exception for '[e] states, interests, claims or charges arising out of a title transaction which has been recorded subsequent to the effective date of the root of title.' The Trustees vigorously argue that sovereignty lands are immune from operation of the MRTA. Both the Trustees and Coastal maintain that the MRTA does not apply to them because such application would violate the Florida and United States Constitutions.
> This court is of the view that it does not have to reach the questions whether the MRTA affects sovereignty lands nor if the Act is unconstitutional. Assuming arguendo that the MRTA applies to sovereignty lands, this court finds that the exception set forth in section 712.03(4) of Florida Statutes precludes the extinguishment of Coastal's and the Trustees' rights.
> The facts regarding the history of recordation of Coastal's lease interests in Polk County, Florida are uncontroverted, and those facts as set forth in Document 509, Part II, pp. 4-7 are incorporated by reference into this memorandum opinion. The parties, however, disagree on the effectiveness of such recording.

20. Although American Cyanamid and Estech state that the Final Judgments held the recording not proper, the Judgments merely said the "attempted recording." The Final Judgments did not say anything else.

> Coastal's lease was properly recorded in Polk County on April 9, 1954. Although an unsigned printed copy of the lease was filed at that time, in 1949 a properly executed original had been recorded in Charlotte County. According to the customary practice in the pre-Xerox era, a non-original was inserted as the record entry supported by the verification of the Clerk that the original was lawfully entitled to be recorded. See Fla.Stat.§695.19 (1979). Thus, Mobil's marketable record title does not affect or extinguish Coastal's and the Trustees' rights because the 1954 Polk County filing of the royalty deeds with leases attached is an effective title transaction recorded subsequent to the date of Mobil's root of title." (Emphasis added.) Mobil Oil Corporation v. Coastal Petroleum Company, et al., Case No. 79-1082, United States District Court, Northern District of Florida, Memorandum Opinion and Order, pgs. 1-3 (1981).

See a copy of the recorded lease including the verification in the supplemental appendix hereto (verified at SA 45). The recording of Coastal Lease was proper. (Also see A 98-104).21

Is Coastal's Lease description sufficient? Yes.22 The description given is as it constitutionally must be. "An inflexible meander demarcation line would not comply with the spirit or letter of our Florida or United States Constitutions nor meet present requirements of society." State of Florida v. Florida National Properties, Inc., 338 So.2d 13, 19 (Fla. 1976). Although Coastal cited these authorities in its Brief, neither American Cyanamid nor Estech responded. Rather, they cited Deering v. Martin, 95 Fla. 224, 116 So. 54 (1928), which is totally inapplicable. In that case only

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21.There was no question about the proper recording of a judgment affecting the Lease. Although American Cyanamid and Estech argue that this point was not preserved, Coastal raised the point below (A 99). The recorded judgment is a decisive exception alone for reversal. Section 712.03(4), Florida Statutes.

22. Coastal Petroleum Company's Lease has been upheld by this and other courts. Watson v. Holland, supra, Burns v. Coastal Petroleum Company, supra, and Collins v. Coastal Petroleum Company, 118 So.2d 796 (Fla. 1st DCA 1960), cert.denied, 125 So.2d 300 (Fla. 1960). No court has said the description is vague or void. In Burns the description was confirmed to the Peace River.

some vague or uncertain part of sovereignty lands were conveyed. Here the Peace River to Township 29/30 is conveyed:

> "Also the bottoms of and water bottoms adjacent to the rivers hereinafter named which flow through natural channels in the Gulf of Mexico, to wit: Myakka, Manatee, Little Manatee, Alafia, Caloosahatchee (from its mouth to LaBelle Bridge), Peace River to Township 29/30, included within said Drilling Blocks 5, 6, 7 and 8 as shown on said map." (A 15)

To constrain the description further would run afoul of Florida National Properties, supra.23

Did American Cyanamid or Estech respond to the actual notice exception? No. The reason is obvious. There is no response except to concede that Coastal's and the Trustees' interests are valid. American Cyanamid and Estech knew in 1961 that the Trustees owned and Coastal leased the Peace River, despite which they deceitfully converted minerals recognizing their own defects of title. Actual notice is an exception of any recording statute, including MRTA. (See Coastal's Brief at p. 41, 42.)

Can Respondents take advantage of MRTA? No. They cannot because of the exceptions created by the recorded Lease and Judgment, Section 712.03(4), and their actual knowledge. Without MRTA, their claim fails upon the settled law of Florida which protects sovereignty lands and avoids any legal estoppel, unless a claimant can show equitable estoppel. Here they cannot show equitable estoppel so the decision should be reversed.

23.Section 712.01(3), Florida Statutes (1981), comes after any asserted vesting period of 1963-1978. In 1978 sovereignty lands were protected and no longer could any vested interest vest. Askew v. Sonson, 409 So.2d 7, 9 (Fla. 1981). There was no specificity requirement before 1981. See Kittrell v. Clark, 363 So.2d 373 (Fla. 1st DCA 1978), cert.denied, 383 So.2d 909 (Fla. 1980). Here the description is as it constitutionally must be, and as specific as need be. The later statute can have no effect upon sovereignty lands after the 1978 exception in Section 712.03(7), Florida Statutes.

POINT IV

THE DECISION OF THE SECOND DISTRICT IS NOT SUPPORTED BY ANY OTHER POINT OF LAW AND SHOULD BE REVERSED.

American Cyanamid and Estech did not respond to this point at all. Coastal detailed the "confessions" by them as to deceitful conversion of minerals from State-owned and leased land, and neither responded. By not refuting the confessions, their probative value has been strengthened here.

American Cyanamid and Estech knew the rivers were navigable; knew they did not own the water bottoms of these navigable rivers; conspired to take the phosphate; deceived Coastal; knew what lands were affected by the Lease and placed exceptions in their land files; and knew if they were caught they would suffer damages. Yet when caught, they now wave the banner of "honesty." These facts of dishonesty are in the record (A 114-130, 137-138).

These facts of dishonesty are relevant not only to the issue of actual knowledge under MRTA (see pg.13 herein) and to the doctrine of clean hands in equitable relief (see Introduction, p. 2 herein), but are also relevant to the lower courts' ruling that there was no evidence to support Coastal's equitable defenses (A 160, 175) discussed in this point. Clearly there is evidence of these equitable defenses and that evidence has not been opposed. Thus, even if the other points of law already argued were found to be as determined by the Second District Court, these equitable defenses bar American Cyanamid's and Estech's claims. It is undisputed and clear that there remained genuine issues of material fact as to Coastal's equitable defenses to American Cyanamid's and Estech's claims. Without regard to the three certified questions, summary judgments should not have been granted nor affirmed. The decision below should be reversed.

CONCLUSION

American Cyanamid and Estech have failed to face the facts of their dishonesty that: reveal actual notice to defeat MRTA; defeat equitable relief because of the lack of clean hands; and defeat their claims because of Coastal's equitable defenses. Rather than face their confessions, they raise a banner of "honesty." It was an outrage that the Judgments were entered or affirmed. If honesty is rewarded, the judgment will be reversed.

The settled law of Florida denying the first and second certified questions, continues throughout Florida, except in the Second District. This Court and all the other District Courts have continued this longstanding law.

Whether MRTA applies or not, several specific exceptions here preclude American Cyanamid and Estech from claiming title to these rivers. The recorded Lease and Judgment and actual notice are MRTA exceptions.

Coastal Petroleum Company respectfully urges the Court to reverse the decisions below and enter its opinion including its reasoning.

ROBERT J. ANGERER
Post Office Box 10468
Tallahassee, FL 32302
(904) 576-5982

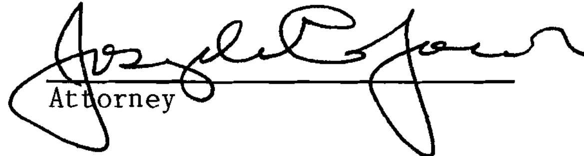
C. DEAN REASONER
Reasoner, Davis & Fox
888 - 17th St. N.W.
Washington, DC 20006

JOSEPH C. JACOBS
Ervin, Varn, Jacobs, Odom & Kitchen
Post Office Box 1170
Tallahassee, FL 32302
(904) 224-9135

Attorneys for
COASTAL PETROLEUM COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by U.S. Mail to Julian Clarkson, Esquire, Holland & Knight, P. O. Drawer 810, Tallahassee, Florida, 32302 and by U.S. Mail to James Hubbard, Esquire, Suite 1250, 1 S.E. 3rd Ave., Miami, FL 33131, this 5th day of November, 1984.



Attorney