IN THE SUPREME COURT OF FLORIDA

FILED
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OCT 17 1984
CLERK, SUPREME COURT
By _____ Chief Deputy Clerk

BOARD OF TRUSTEES OF INTERNAL IMPROVEMENT FUND,

Petitioner,

vs.

MOBIL OIL CORPORATION,

Respondent.

CASE NO. 65,913

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

AMICUS CURIAE COASTAL PETROLEUM COMPANY'S 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
Amicus Curiae

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PRELIMINARY STATEMENT

Again, these certified questions are important not only to these parties, and Amicus Curiae in related litigation, but to the People of Florida who have the beneficial interest in sovereignty lands of rivers. Although these questions may affect claims for billions of dollars of damages between these and other parties, the questions also address the continued existence of Florida's rivers as the heritage of the People of Florida as they have existed from time immemorial. Florida rivers are characteristically not meandered very far upstream from their mouth. The analysis and decision of these questions will determine the continued existence of these rivers and any vested rights to them. It is extremely important that not only the decision, but also the analysis, be recorded.

Let there be no mistake. There are lands in issue that are the main channel of the river. While the claim to these sovereign bottoms by the mining companies is by swamp and overflowed lands' deeds or private deeds that do not mention the rivers, the waters have been assumed navigable for purposes of the summary judgments. The sovereignty lands issue is very much a part of this case.

Odom v. Deltona Corp., 341 So.2d 977 (Fla. 1977), was not like this case. Odom related to small nonmeandered lakes, not rivers. Whether MRTA applies to sovereignty lands or not, reversal is required here. The established precedent determining each certified question requires a "no" response. Good reasons will be shown to continue the precedent, as well as the defense of equitable estoppel to protect an "innocent party" if there is inequity by agents of the People. The equities here reveal overreaching by Mobil which had actual and record notice of the Trustees' and Coastal's

ownership since before 1961. Mobil even refused to pay for such river lands when buying adjacent lands from private parties because it said the land was owned by the State. It is because Mobil cannot show clean hands that its strategy is to change the law of Florida. These equities should have been considered by factfinding and not by summary judgment.

Coastal Petroleum Company (Coastal) appears as Amicus Curiae by leave of Court. Coastal was a party defendant below, but did not appeal the adverse decision. This case relates to lands already mined, otherwise incapable of being mined, and to lands to which neither Coastal nor the Trustees have ever claimed any interest. Since the conversion claims to past mining in related cases were not affected by a prospective determination of who owned title on the date of the quiet title judgment, Coastal chose not to appeal the summary judgment. When the District Court below wrote an opinion, after four per curiam affirmances in related cases, the opinion and review of that decision became important to other related cases. Coastal sought permission to appear as Amicus Curiae on those questions before the Court.

In related proceedings here to review another decision of the District Court certifying the same three questions and relied upon here by the District Court, Coastal is a party. See Cases 65,696 and 65,755. The briefing schedule is slightly earlier there. The Trustees have indicated that an oral argument at the same time would be reasonable and helpful.

References to the Record on Appeal in Board of Trustees of the Internal Improvement Trust Fund of the State of Florida v. Mobil Oil Corporation, District Court of Appeal, Second District, Case 82-2050, will be (R-____).

STATEMENT OF THE CASE

(a) Nature of the Case. This case is a discretionary proceeding to review a decision of the District Court of Appeal, Second District of Florida, affirming a quiet title summary judgment rendered in Polk County, Florida, and is brought pursuant to Rule 9.120, Florida Rules of Appellate Procedure. This Court has jurisdiction pursuant to Rule 9.030(a)(2)(A)(v), Florida Rules of Appellate Procedure, and Article V, Section 3(b)(4), Florida Constitution (1980), to review decisions of district courts of appeal that pass upon a question certified to be of great public importance. The District Court on motion for clarification certified three questions:

> "1. DO THE 1883 SWAMP AND OVERFLOWED LANDS DEEDS ISSUED BY THE TRUSTEES INCLUDE SOVEREIGNTY LANDS BELOW THE ORDINARY HIGH-WATER MARK OF NAVIGABLE RIVERS?
> 2. DOES THE DOCTRINE OF LEGAL ESTOPPEL OR ESTOPPEL BY DEED APPLY TO 1883 SWAMP AND OVERFLOWED DEEDS BARRING THE TRUSTEES' ASSERTION OF TITLE TO SOVEREIGNTY LANDS?
> 3. DOES THE MARKETABLE RECORD TITLE ACT, CHAPTER 712, FLORIDA STATUTES, OPERATE TO DIVEST THE TRUSTEES OF TITLE TO SOVEREIGNTY LANDS BELOW THE ORDINARY HIGH-WATER MARK OF NAVIGABLE RIVERS?"

These are the same certified questions already before this court in Cases 65,755 and 65,696.

(b) The course of proceedings. It is difficult to understand the course of proceedings in the lower court here without considering the context of related litigation. The District Court in the related and relied upon decision stated:

> "In 1977 Coastal Petroleum filed several suits in the United States District Court in Leon County, Florida, against plaintiffs. Coastal sought to recover damages for the alleged conversion of phosphate from these lands. Coastal Petroleum claimed the lands were state owned sovereignty lands subject to a lease between it and its lessor, the Trustees, entered

into in 1946. We are advised that these federal cases are now pending.

After Coastal initiated the litigation in the federal court, plaintiffs, in 1982 and 1983, filed quiet title suits in the Polk County Circuit Court seeking to confirm their ownership of the lands at issue. They also sought to remove the cloud created by Coastal's claim that the lands were state owned sovereignty lands subject to Coastal's lease." Coastal Petroleum Company, et al. v. American Cyanamid Company, Case Nos. 83-1378 and 83-1413, and Coastal Petroleum Company, et al. v. Estech, Inc., Case Nos. 83-1425 and 83-1478, opinion dated July 13, 1984, pg. 3.

This entire litigation arose from a controversy started when Mobil Oil Corporation (Mobil) sued Coastal Petroleum Company in 1976 (R 105-213, 214-240). That case has been referred to as "Mobil I." In discovery in Mobil I, evidence of the deceitful conversion by Mobil and others (R 430-433) was found and this whole series of phosphate litigation commenced. The federal cases referred to in the District Court opinion were filed in 1977 against the six parties involved there. In all, five (5) Mobil cases exist: Mobil I, the earliest case commenced by Mobil in Leon County; and Mobil II, III, IV and V, later cases commenced by Mobil in Polk County, Florida. The only pending cases are Mobil I and the present case, "Mobil IV"). Because of the limitation of space, the procedural complexities of appeals and original proceedings cannot be described. Coastal will describe the course of proceedings here.

In this 1982 Mobil IV quiet title case, the Trustees and Coastal filed motions to dismiss premised upon Mabie v. Garden Street Management Corp., 397 So.2d 920 (Fla. 1981), and the earlier case in Leon County, Florida, Mobil I (R 105-213, 214-240). The motions to dismiss were denied (R 559, 670). As was pointed out in the motion to dismiss:

" C. A comparison of Mobil's Answer to Coastal's counterclaims in the Leon County Circuit Court case

reveals the identity of parties, issues and subject matter. A copy of Mobil's answer and defenses to Coastal's counterclaims for conversion is Attachment C.

2. Despite the vesting of the Circuit Court of Leon County's earlier jurisdiction and despite more than five years of litigation, including denial of a similar motion for summary judgment (See docket sheet, Attachment D, hereto) Mobil proceeded to file this new action.

3. Service of process was first perfected in the case in Leon County, Florida (See copies of returns, Attachment E, hereto.)

4. When two actions between the same parties are pending in different circuits, jurisdiction lies in the circuit where service of process is first perfected. Mabie v. Garden Street Management Corporation, 397 So.2d 920 (Fla. 1981), Hogan v. Millican, 209 So.2d 716 (Fla. 1st DCA 1968); and Martinez v. Martinez, 15 So.2d 840 (Fla. 1943).

5. Furthermore, even if the substance of Mobil's claim is ignored and the form is considered, since a suit for 'quiet title' is an equitable claim, and equity may not grant relief where the party has an adequate remedy at law, the Court is without jurisdiction. Here in the prior action in Leon County, Mobil seeks a declaration by its reply counterclaims of the very same relief.

6. This Court is without subject matter jurisdiction to proceed. The Circuit Court of Leon County has jurisdiction by virtue of the prior filed identical action." (R 107)

Mobil filed a motion for summary judgment essentially arguing that the existence of sovereignty lands, although disputed, could be assumed for argument (R 49-104). Coastal (R 434-531) and the Trustees (R 565-649) opposed the motion including affidavits on navigability (R 380-420, 421-429, with Exhibits) and defenses (R 430-433, with Exhibits).

(c) Disposition in the lower tribunal. The trial court granted summary final judgment against the Trustees and Coastal (R 792-806). The Trustees appealed the cases to the District Court of Appeal, Second District (R 858). On July 13, 1984, the District Court affirmed the trial court's summary final judgment. The District Court certified questions of great public importance. The Trustees have filed a petition for review here.

STATEMENT OF THE FACTS

A. The Peace River.

The river involved here is the Peace River (R 421-429). The Peace River rises north of Bartow, Florida, and flows southwestward to Charlotte Harbor, a distance of approximately 100 miles. Portions of the main channel of the river are claimed by Mobil (R 1-46). The public use and characteristics of this navigable river, however, have been addressed by Coastal's affidavit in opposition to summary judgment (R 421-429, with Exhibits). This is one of Florida's major river systems and enjoys a long involvement in Florida history (R 421-429, with Exhibits). A statement of facts which ignored its historical background would be incomplete.

Rivers have existed from time immemorial dating back to the river which flowed out of Eden. Rivers have never been subject to man. Even as people began to assert control over rivers, the ownership was in the Crown or sovereign, as this Court has stated in tracing the history of such waters:

> "Under the common law of England, the crown in its sovereign capacity held the title to the beds of navigable or tide waters, including the shore, or the space between high and low water marks, in trust for the people of the realm, who had rights of navigation, commerce, fishing, bathing, and other easements allowed by law in the waters. This rule of the common law was applicable in the English colonies of America. After the Revolution resulting in the independence of the American States, title to the beds of all waters, navigable in fact, whether tide or fresh, was held by the states in which they were located, in trust for all the people of the states respectively. When the Constitution of the United States became operative, the several states continued to hold the title to the beds of all waters within their respective borders that were navigable in fact without reference to the tides of the sea, not for purposes of disposition to individual ownerships, but such title was held in trust for all the people of the states respectively, for the uses afforded by the waters as allowed by the express or implied provisions of law, subject to the rights surrendered by the states under the federal Constitution.

> New states, including Florida, admitted 'into the Union on equal footing with the original states, in all respects whatsoever,' have the same rights, prerogatives, and duties with respect to the navigable waters and the lands thereunder within their borders as have the original thirteen states of the American Union." Broward v. Mabry, 58 Fla. 398, 50 So. 826, 829 (1909).

This ownership included the beds and minerals beneath the beds of the rivers, as this Court has stated in considering the nature of ownership of such waters:

> "Before the act any citizen of the state had the right to go upon these waters, including the shore when the tide is down below high-water mark, and to take fish from such waters and shore, and neither these nor any other of the uses to which they were subject then have been taken away by the statute so long as the riparian owner has omitted to make any of the improvements contemplated by the statute; but he could not go there and dig up the soil independent of the control and regulation of the state, and convert it to his own use or gain, nor can he do so now, nor has the statute given the riparian owner the right to do so. Gould, Waters, §24." State v. Black River Phosphate Co., 32 Fla. 82, 13 So. 640, 644, 650 (1893).

By the "Act" referred to in the last quotation, the State authorized the sale of phosphates from the soil beneath the navigable rivers of Florida, but not the sale of such lands. Chapter 4043, Laws of Florida (1891). The People then hold not only the use of the water and shores of such rivers, but also the river bottoms. In this earlier attempt to claim the river bottom phosphates, this Court upheld the People's rights to the river bottoms. In another case at this time involving the Alafia River, this Court also described the history of Florida rivers. State ex rel. Peruvian Phosphate Co. v. Board of Phosphate Commissioners, 31 Fla. 558, 12 So. 913, 915 (1893). The early phosphate companies' attempts to exercise ownership or control over navigable rivers was rejected.

The record here shows ample evidence of navigation of the portion of the Peace River in this case. The Affidavit of Lynn Ware described numerous instances of navigation of the Peace River (R 421-429). Although the Peace River was not meandered in this area, it had not been meandered north of where it was approximately 1 mile wide! In fact, the affidavit of John DuBose demonstrated that special instructions in this area did not require the meandering of all navigable waterbodies (R 380-420). Despite the nonmeandering, the Peace River was navigated (R 421-429).

B. Mobil's Recognition of the Navigability of the Peace River.

In discovery in the related Mobil I case, internal documents were found reflecting Mobil's own recognition of the navigability of the Peace River. Perhaps the clearest of these is contained in the letter of Mobil's manager in Florida to its main office vice president dated October 18, 1960:

"

Nichols, Florida
October 18, 1960

GEORGE W. MANN 235 ACRES
Clear Springs Area.

Mr. A.A. Farrell, Vice President
Mining Division - Richmond

Dear Andy:

When he was in to see Mr. Pascoe recently, G.W. (Floppy) Mann made the statement to Mr. Pasco that he did not think he could purchase comparable land in Polk County for less than $1,000. per acre.

This statement is slightly fantastic on the face of it. Mr. Mann's land is largely river swamp, and this kind of land is available at much lower prices than $1,000. per acre. From my own experience in looking at cleared farm land in Polk and Hillsborough counties for personal reasons, I would say that land like this can be bought for $200. per acre or less. I checked with Mr. Menear, and he thinks that some can be bought down around $100. per acre near the south end of Polk County.

In order to make sure that we all know what we are talking about from a land standpoint, I asked Mr. Menear to make a rough survey of the land. Of the 235 acres, three acres is river which is not owned by Mr. Mann, but by the State of Florida; 34 acres are cypress swamp bordering the river; 53 acres are hardwood swamp bordering the cypress swamps; 30 acres are a muck pond located near the center west part of Mr. Mann's property; 105 acres is flat palmetto land, which might be considered unimproved and low yield pasture land; and 10 acres is hammock land that could be classified as marginal citrus land. I think that this will give a general idea as to what kind of property it is we are talking about.

Very truly yours,

/s/ C.V.O. Hughes
Manager.

CVOH/dj
cc. Mr. H.L. Pascoe.
Mr. W.J. Menear." (Emphasis supplied.) (Exhibit J at R 430-433)

The Clear Springs area is at the northern portion of the area of the Peace River under discussion. Thus, in purchasing lands along the Peace River, Mobil would not pay Mr. Mann for the Peace River because it recognized that the Peace River was ". . . not owned by Mr. Mann, but by the State of Florida . . .." Yet Mobil in expressed "honesty," now claims to own this very part of the Peace River.

C. Other knowledge of Mobil that the Peace River is Navigable.

In addition to its own recognition that the Peace River is navigable by virtue of its refusal to pay for such river bottom lands, Mobil was told by the United States Government Corps of Engineers:

"Dear Mr. Hughes:

Receipt is acknowledged of your letter of 2 March 1961.

In designing for a bridge opening where the soil is essentially sand we have found that if the velocity

through the opening exceeds 2-1/2 feet per second the structure and bank slopes are subject to erosion. While we do not have sufficient detailed information to furnish a definite recommendation for the design opening of your bridge we do suggest that you give consideration to providing an opening of from 80 to 90 percent of the river bed. The opening presently provided appears to be some 50 to 60 percent.

The question as to whether a particular body of water is a navigable water of the United States is a question of fact, and one which can be authoritatively settled only by a court of competent jurisdiction. It may be stated, however, that it is a well settled jurisdictional opinion that a navigable water of the United States is one which, by itself or in combination with other bodies of water, forms a continuous highway for waterborne commerce between the states of the union; and that Congress has by statute declared that recreational boating is commerce. By reason of the fact that Peace River flows into Charlotte Bay which in turn is accessible to the Gulf through Boca Grande Pass, and that such a route can be navigated by recreational boating, Peace River is considered to be a navigable water of the United States. The Spessard Holland Bridge and the Seaboard Air Line Railroad Bridge which are shown on your drawing application upstream from your bridge, are both under permit.

While it is true that there are several bridges downstream from your structure with clearances equal to or less than that provided by your bridge we will require higher clearances at such time as these bridges are replaced.

As previously stated we have no desire to be unreasonable or to place an undue burden on you; however, we feel that it is essential that we protect to a reasonable degree the public rights of navigation on Peace River.

Sincerely yours,

/s/ A.L. McKNIGHT
Chief, Operations Division"

(Emphasis supplied.) (R 430-433, Exhibit I)

This letter relates to virtually all of the Peace River area involved here.

D. Coastal's Lease 224-B from the Trustees and its Recordings in Polk County.

In 1941, by act of the legislature, the State authorized the leasing of such sovereignty lands for oil, gas and mineral production. Chapter 20680, Laws of Florida (1941). Pursuant to that Act, Coastal Petroleum Company was granted an exploration agreement resulting in three leases, one of which, Lease 224-B, specifically named the rivers involved here:

> "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." (R 430-433, Exhibit A)

In Watson v. Holland, 155 Fla. 342, 20 So.2d 388 (1945), this Court rejected a challenge to the validity of these leases. In 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), on rehearing, the First District Court held:

> "However, the Exploration contract did not give the lessee an option on all water bottoms owned by the State within the territories described but only those specified therein. These included 'bottoms of and water bottoms adjacent to only such Rivers and Lakes as are specifically named' which included Peace River. It further provided, 'the areas covered by this contract shall be *** all rivers and lakes named herein, together with all connecting sloughs, arms and overflow lands located in such waters.' The verbage chosen by the parties shows a clear intent that rivers and lakes are two separate entities, and that the adjacent water bottoms included in the contract are all connecting sloughs, arms and overflow land of Peace River.
>
> . . . . . .
>
> The lease describes the western, northern, and southern boundaries as lines (the last 2 projecting westward from the shore), but it describes the eastern boundary thusly: 'the eastern boundary shall include the areas as described in Exploration Contract.' That contract provides, 'the areas covered by this contract shall be . . . Inland waters, [which] shall consist of all rivers

and lakes named herein, together with all connecting sloughs, arms . . .' We conclude Drilling Block 7 has within its eastern boundary Peace River from its mouth to Township 29/30." (Emphasis added.)

Subsequently Lease 224-B was duly and properly recorded in the public records of Polk County, Florida, on April 9, 1954 at Deed Book 980, Page 396 (R 430-433, Exhibit A). Subsequent litigation involving the scope of the lease was determined in Coastal's favor. Collins v. Coastal Petroleum Co., 118 So.2d 796 (Fla. 1st DCA 1960), cert. discharged, 125 So.2d 300 (Fla. 1960), and a copy of the final judgment in that litigation was also recorded in the public records of Polk County, Florida on January 30, 1961 (R 430-433, Exhibit P). The complete recording is discussed in the affidavit in opposition to Mobil's motion for summary judgment (R 430-433, Exhibit J).

E. Mobil's Knowledge of Coastal's and the Trustees' Ownership.

After the recording of the lease in 1954 and judgment in 1961, in June of 1961, Coastal wrote to Mobil seeking assistance in mining Coastal's leased lands (R 430-433, Exhibit B.) Mobil responded stating:

"

RICHMOND, VIRGINIA
August 4, 1961

Mr. Benjamin W. Heath, President
Coastal Petroleum Company
103 East 37th Street
New York, 16, New York

Dear Mr. Heath:

This will acknowledge your letter of July 26 advising that you are the lessee to all mineral rights covered by the bottom of the Peace River and water bottoms adjacent thereto, running southerly a distance of approximately 15 miles from the township line between T29S and T30S.

You are correctly informed that this Corporation owns most of the property on both sides of the Peace River in the area indicated above. We note that it is your intent to exploit any commercial deposits that might

be located in your leased area as soon as possible, and in this connection you desire to meet with representatives of this Corporation.

Mr. A.A. Farrell, our mining division vice president, and I will be pleased to meet with you here in Richmond at some mutually convenient time; however, since both of us travel quite a bit, I would suggest that you call me here in Richmond at Milton 8-0113 and we will try to arrange an appropriate date for the meeting.

Meanwhile, we would greatly appreciate being furnished with a copy of your lease instrument so that we can take the necessary steps to determine whether or not any conflict exists between the rights you claim under this instrument and the rights that we derive from our property ownership. We feel that this matter should be clarified prior to our meeting.

Yours very truly,

/s/ R. Daniel Smith, Jr.
General Counsel

Mr. A.A. Farrell" (Emphasis supplied.) (R 430-433, Exhibit C)

In discovery in related litigation in 1977 Coastal found evidence which chronologically should be considered now (R 430-433). In a letter of the same date, August 4, 1961 (R 430-433, Exhibit D) between Mobil and International Minerals & Chemical Corporation, further relevant material facts appear. In the letter, Mr. Hughes tells Mr. Feigin of a visit by a Coastal consultant, Mr. Mayberry:

" August 4, 1961

Mr. Harry Feigin
International Minerals & Chemical Corporation
P.O. Box 867
Bartow, Florida

Dear Harry:

I had a visit from Dick Mayberry, in connection with the mineral values in the Peace River Valley. He said he was representing Coastal Petroleum Company, which had purchased a great amount of mineral rights from the State of Florida in various lakes and river flood plains. Dick was interested in

discovering what kind of mineral content there was in the bed of Peace River, and in adjacent flood plains.

This reminded me that Lamar Johnson had once told me that Coastal Petroleum Company had some sort of vague generalized lease from the State of Florida on hundreds of thousands of acres of mineral rights. They had exercised these rights on some property that Lamar Johnson himself had under lease, near Lake Okeechobee. He told me that Coastal Petroleum had won an initial court judgment sustaining their right to go on to the surface premises of these lands to exercise their rights under the agreement they held from the State of Florida.

I told Dick Mayberry that the phosphate mineral right in the bed of Peace River, or immediately adjacent, was in thin beds, low grade, and not at present commercially mineable. However, I want to make it clear that this statement does not cover that area of land that is beyond the immediate river bed, and does not in anyway change our own evaluation of the damages we might suffer should the river level be permanently held at an elevated value. In other words, there is no conflict between the very general statement that Coastal Petroleum might come up with, and our own evaluation of losses should the river levels be changed by dams built by the Peace River Valley water conservation and drainage district.

You may also be contacted by Dick Mayberry, or by Coastal Petroleum. We do not in any case recognize that Coastal Petroleum has mineral rights near Peace River that supersede ours. I made this clear to Dick Mayberry. The legal bed of the river, or the legal flood plain, has never been determined. Measurements along the river of high stage and low stage water are not detailed enough to describe accurately and legally a flood plain that might belong to the State of Florida, along with the bed of the river. I am assuming that your own position will be essentially the same.

Very truly yours,

/s/ C.V.O. Hughes
Manager

cc: Mr. Raymond W. Stuck." (Emphasis added.) (R 430-433, Exhibit D)

Now Mobil in expressed "honesty," claims the river bed (R 1-46)! Thus, before August, 1961, Mobil was aware of the navigable status of the river, that the high water mark defined the limits of its own ownership; and that if the level of the Peace River were determined, it would be responsible for

damages (R 430-433, Exhibit D).1 What is also clear is that Mr. Hughes did not tell Coastal's consultant the truth, and asked Mr. Feigin to take the same position (R 430-433, Exhibit D).

F. Coastal's and the Trustees Learn of the Deceitful Conversion by Mobil.

Being met by a similar response from each of the phosphate mining companies in Polk County, Coastal moved on to other exploration work. When this deceit and conversion was found in 1977 in the Mobil I case in Leon County, Florida, Coastal and the Trustees filed claims for the damages which damages had been evaluated by the phosphate mining companies back in 1961. See the affidavit of Coastal's then and now President Benjamin W. Heath, R 430-433, Exhibit J).

In 1977, Mobil, when called upon to defend the claims for mining into the river bottoms for long periods continuing after 1961, presented quite a different response than the foregoing facts would lead one to expect. In Mobil I, for the first time, Mobil, in expressed "honesty," claimed these rivers were conveyed by swamp and overflowed lands' deeds from the Trustees (R 105-213). These conveyances were by section or subsection and not by metes and bounds descriptions. The swamp and overflowed land conveyances did not indicate transfer of any navigable river or even a reference to the Peace River, but merely the conveyances of a section or subsection of land. None of these conveyances indicated the Trustees were acting in any capacity as Trustee of sovereignty lands.

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1. Of course, some will disagree with the interpretations and inferences by these letters, but it must be remembered that the final judgment was a summary judgment and all reasonable interpretations and inferences must be made against Mobil here. Mobil will probably ignore these facts hoping they will simply go away.

Mobil also relied upon legal estoppel, asserting in part that by an act in 1969 vesting title in the Trustees, the Trustees and Coastal were legally estopped to challenge swamp and overflowed lands conveyances. Mobil also relied upon the 1963 Marketable Record Title Act enacted less than two years after the record notice, the actual notice, and the deceit related above. They also claimed the recorded Lease description was vague and uncertain. The only record evidence as to this last issue was the affidavit of Coastal's surveyor who found the description clear and definable (R 380-420). A motion for summary judgment was filed by Mobil in December, 1978 in Mobil I and was denied (R 430-433, Exhibit M).

G. The Polk County Litigation Commences.

After this and other adverse rulings and after the first conversion claims were scheduled for trial, the Polk County quiet title suits were filed and pursued by Mobil. Coastal and the Trustees filed motions to dismiss these new Polk County suits based upon the pendency of the earlier proceeding, Mobil I, in Leon County (R 105-213, 214-240). The trial court denied these motions to dismiss.

On the phosphate companies' motions for summary judgment, the Circuit Court in Polk County, Florida, rendered a summary final judgment in favor of Mobil (R 843-857) and the District Court of Appeal, Second District, affirmed and eventually certified three questions to this Court.

ARGUMENT

POINT I

THE DISTRICT COURT ERRED IN FINDING THE CASE HERE LIKE ODOM v. DELTONA CORP. 341 So.2d 977 (Fla. 1977).

Central to the District Court decision is a reliance upon Odom v. Deltona Corp., 341 So.2d 977 (Fla. 1977). Odom did not relate to long rivers, but related to small nonmeandered lakes and ponds wholly contained within the perimeters of the conveyances in that case. Nowhere in Odom is there an express or implied application of that decision to rivers. The statutes and reasons related to lakes not rivers. The District Court erred.

The decision in this case did not even discuss the certified questions here:

> "The Trustees' three remaining arguments on appeal relate to the substantive question of whether the Polk County Circuit Court erred in granting Mobil's motion for summary judgment as to the title issue. These issues, however, have been decided adversely to the Trustees in Coastal Petroleum Company v. American Cyanamid Co., et al., Nos. 83-1378, 83-1413, 83-1425 and 83-1478 (Fla. 2d DCA July 13, 1984) (questions certified). Therefore, we do not address those questions here." (Decision below, page 9.)

The District Court on rehearing and clarification certified the same three questions:

> 1. DO THE 1883 SWAMP AND OVERFLOWED LAND DEEDS ISSUED BY THE TRUSTEES INCLUDE SOVEREIGNTY LANDS BELOW THE ORDINARY HIGH-WATER MARK OF NAVIGABLE RIVERS?
>
> 2. DOES THE DOCTRINE OF LEGAL ESTOPPEL OR ESTOPPEL BY DEED APPLY TO 1883 SWAMP AND OVERFLOWED DEEDS BARRING THE TRUSTEES' ASSERTION OF TITLE TO SOVEREIGNTY LANDS?
>
> 3. DOES THE MARKETABLE RECORD TITLE ACT, CHAPTER 712, FLORIDA STATUTES, OPERATE TO DIVEST THE

TRUSTEES OF TITLE TO SOVEREIGNTY LANDS BELOW THE ORDINARY HIGH-WATER MARK OF NAVIGABLE RIVERS?

Central to the District Court's decision was a reliance upon Odom.

The case of Odom v. Deltona Corp., supra, certainly is relevant, but it cannot be used as the courts below used it. Odom dealt with small nonmeandered lakes wholly within the confines of the conveyances involved there. In Odom, the Brief of Deltona, the successful party in Deltona, makes this unmistakably clear. In the Statement of the Case, Deltona stated:

> "The core question in this appeal, around which all other issues revolve, is navigability at law and the appropriateness of utilizing that varying standard to define criminal prohibitions and determine ownership of and title to real property. 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.
>
> In essence, this case involves attempts by administrative staffs to extend their jurisdictional reach beyond clearly defined legislative and constitutional limitations by expanding the concept of navigability at law into a meaningless legal fiction. This administrative overreach utilized criminal arrests to chill any disagreements with the administrative 'rules of thumb' employed to determine navigability." (Brief of Deltona, page 6.)

In its Statement of the Case, Deltona further stated:

> "The lower court's analysis provides a first path through the heretofore untrodden thicket of conflicting policies surrounding the meaning of 'navigable waters' and its relationship to criminal prohibitions and real property title questions. For the first time, navigability at law was related to the realities of determining navigability. 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.

> The court did not hold the lakes at issue nonnavigable on a factual basis or simply because they were not meandered. Rather, the opinion analyzed the interrelationship of navigability with title questions under the Marketable Record Title Act and other constitutional and legislative attempts 'to shed some light on navigable waters and what is included therein.' (App. 6-12). Legislative references to the significance of meandering, constitutional and statutory exemptions of submerged lands alienated by the state, and other recognitions of privately owned lakes; the court stated, cannot be considered 'mere surplusage.' (App. 9).
>
> As viewed by the court, these legislative and constitutional provisions are not derogations of the public trust; but are legislative recognitions of certain presumptions, limitations, and attempts to settle title uncertainties in freshwater lake areas." (Emphasis supplied.) (Brief of Deltona, pages 16,17.)

In its argument Deltona argued:

> "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.13/
>
> 13/ Only 8 Florida lakes have been judicially determined navigable. With one exception all were meandered and exceeded 970 acres. Most were several thousand acres in size. The smallest and only nonmeandered lake held navigable was the 451-acre Lake Maitland in the Adams v. Crews decision since overruled by this Court in its Lobean decision." (Emphasis supplied.) Brief of Deltona, page 23.)2

2. Florida's rivers, on the contrary, were largely nonmeandered except for their bays. The Peace River, for example,was not meandered after it became less than one mile wide. In Bucki v. Cone, 25 Fla. 1, 6 So. 160 (1889), this Court held the Suwannee River navigable at White Sulphur Springs even though its meandering ceased before it leaves Levy County, Florida! Most Florida rivers were meandered only near their mouths. 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).

Further, Deltona argued:

> "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." (Emphasis supplied.) (Brief of Deltona, page 35)

and finally, in its last such argument, Deltona stated:

> "The Trustees rely on three cases for the principle that a grantee of swamp and overflowed lands under a Trustee deed takes with 'notice' that the conveyance does not include sovereignty lands. Appellee concurs with this 'notice of navigability' concept under the circumstances set forth in the cited cases, involving Lake Okeechobee, a 500,000 acre lake, Martin v. Busch, 93 Fla. 535, 112 So. 274 (Fla. 1927); a conveyance of coastal property in the Florida Keys, Stein v. Brown Properties, 104 So.2d 495, 500 (Fla. 1958); and lands bordering on and in Apalachicola Bay. Apalachicola Land and Development Co. v. McRae, 86 Fla. 393, 98 So. 505, 518 (Fla. 1923.)" (Emphasis supplied.) (Brief of Deltona, page 48)

Quite clearly the Odom case involved small nonmeandered lakes and ponds wholly within the perimeter of the conveyances. Odom did not involve rivers! Deltona recognized and argued for a distinction in the law as to rivers!

The entire trial court's decision in Odom was quoted by this Court's own decision. That decision recognized that the matter in issue and authorities related to small nonmeandered lakes, not rivers. Judge Willis never said, nor implied, he was talking about Florida rivers:

> "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.

The trial court recognized the unquestioned law of Florida as is argued by the Trustees:

"7. It is clearly established as the law in this jurisdiction that by virtue of its statehood, Florida holds the title to the waters, shores and beds of all navigable waters in trust for the people for the purposes of navigation, commerce, fishing, bathing and other easements allowed by law in the water. Such trust is governmental and cannot be wholly alienated, but by appropriate means there may be granted to individuals titles to limited portions or there may be given limited privileges so long as it does [not] divert them from their proper use for public welfare or relieve the state of its control and regulation. Broward v. Mabry, 58 Fla. 398, 50 So. 826; State v. Black River Phosphate Co., 32 Fla. 82, 13 So. 640. It is also recognized that properties acquired by the state under the Swamp and Overflow Grant Act of 1850 do not cover or include lands under navigable waters as such were already held by the state in trust by virtue of sovereignty, State v. Gerbing, 56 Fla. 603, 47 So. 353 (1908) and a deed from the Trustees of I. I. Fund purporting to convey lands acquired under the 1850 Act of Congress would not convey sovereignty lands. Martin v. Busch, 93 Fla. 535, 112 So. 274. These principles have been consistently recognized and applied and are not to be doubted. However, whether or not a particular area is that of a navigable body of water and thus sovereignty property held in trust is a question of fact and dependent upon whether or not the body of water is permanent in character and, in its ordinary and natural state, is navigable for useful purposes and is of sufficient size and so situated and conditioned that it may be used for purposes common to the public in the locality where it is located. Broward v. Mabry, supra. See also Bucki v. Cone, 25 Fla. 1 [6 So. 160] and Clement v. Watson, 63 Fla. 109, 58 So. 25." (Emphasis supplied.) Odom, p. 980, 981.

At one point the trial court in Odom stated:

"8. It is to be noticed that navigable waters and their shores and bottoms are in a number of dissimilar forms such as seas, bays, tidewater inlets, rivers, and lakes. Particular difficulty arises in reference to fresh water lakes whose size, depth and relationship to other water bodies vary from a body like Lake Okeechobee of a vast area to bodies variously referred to as ponds, sloughs, and lakes which contain relatively few acres and which may vary considerably from time to time depending upon rainfall and other natural influences. The legal tests of navigability are at best broad guidelines and it is not surprizing that so many disputes have arisen on this issue." (Emphasis supplied.) Odom, p. 981.

The trial court then relied upon Section 197.228, Florida Statutes, which it quoted:

> "In subsection 2 it is provided:
> '(2) Navigable waters in this state shall not extend to any permanent or transient waters in the form of so-called lakes, ponds, swamps or overflowed lands, lying over and upon areas which have heretofore been conveyed to private individuals by the United States or by the state without reservation of public rights in and to said waters.'
> In subsection (3) it is further provided:
> '(3) The submerged lands or any non-meandered lake shall be deemed subject to private ownership where the trustees of the internal improvement trust fund of Florida conveyed the same more than fifty years ago without any deductions for water and without any reservation for public use and when taxes have been levied and collected on said submerged lands since conveyance by the state.'
> This statute is at pains to recognize conveyances by governmental authority purporting to transfer to private ownership a described area as effective to include lakes, ponds, swamp and overflow land unless the instrument makes a reservation of them. It also makes a special treatment of non-meandered lakes when the trustees make conveyance of lands vested in it." (Emphasis supplied.) Odom, p. 982.

Clearly the authority principally cited and relied upon by the trial court singled out lakes, ponds, swamps or overflowed lands, and did not even mention rivers. This is made abundantly clear later in the quoted trial court opinion:

> "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)." (Emphasis supplied.) Odom, p. 983.3

Finally, the quoted trial court opinion stated:

> "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.
>
> . . . . . .
>
> The criteria provided in the statutes to establish the nonnavigability is reasonable and practical and the Courts are bound to apply them." Odom, p. 984.

and

> "As already mentioned the Court is of the view that nonmeandered lakes are to be regarded as nonnavigable." Odom, p. 987.

Clearly the trial court considered and determined the law regarding a special class of waterbodies called small nonmeandered lakes.

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 within the perimeters of conveyances were the subject and issue in Odom, not long rivers of Florida. This last quotation

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3. The absence of meandering here is not of significance, since there were special instructions to the federal surveyor here which fact does not allow the operation of any presumption. (See affidavit of John DuBose, Land Surveyor, R 380-420.) It is clear that the meandering of the Peace River stopped close to its mouth. The affidavits here already demonstrated the actual navigation of the Peace River rebutting any presumption, even if one could exist. Also see fn. 2. above.

demonstrates that the longstanding law of Florida was not overturned by Odom as Mobil and the other phosphate companies contend.

There are other differences between Odom and this case. As will be seen in Point C, there was no recorded conveyance in Odom:

> "It is apparent that the defendants' claim does not come within the scope of the exception specified." Odom, p. 985.

Here there are recorded documents within the exceptions. Further there is actual notice of the Trustees' and Coastal's interests.

Another difference is that while in Odom, this Court held:

> "We feel that equitable estoppel is properly invoked in this particular set of circumstances." Odom, p. 989.

Here, the equities favor the Trustees and Coastal. As the statement of the facts makes clear, Mobil knew that it did not own the Peace River, refused to pay or buy from others the Peace River because it believed the Peace River was owned by the State, mined it anyway, and recognized that if caught, despite its deceit, it would be called to pay damages. This was not the equitable circumstances in Odom. Proof that Mobil and the other phosphate companies do not have clean hands is their avoidance of and failure to address these equitable facts. To do so though would underscore the error in determining this case by summary judgment.

Thus, the District Court's reliance upon Odom in these cirumstances was erroneous. Small nonmeandered lakes were involved in Odom, not the long Peace River. Deltona stood with clean hands, Mobil does not. An analysis of each of the certified questions reveals the error.

A.

THE 1883 SWAMP AND OVERFLOWED LANDS DEEDS ISSUED BY THE TRUSTEES DO NOT INCLUDE SOVEREIGNTY LANDS BELOW THE ORDINARY HIGH WATER MARK OF NAVIGABLE RIVERS.4

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. 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. The decision below represents an attempt to change long-established law of Florida and to overrule the existing case law. There is no change in rationale or public policy to warrant abandonment of this sound established precedent in Florida.

The impetus for suggesting this change, as is shown above, was this Court's own decision in Odom v. Deltona Corp., 341 So.2d 977 (Fla. 1976). However, as has been seen, Odom dealt with small lakes and ponds less than 140 acres in size, and wholly included within the perimeters of the deeds, and did not deal with a 100 mile long major river system of Florida. Odom relied upon Section 197.228(2), Florida Statutes, but that statute expressly extends only to lakes, ponds, swamps or overflowed lands and does not deal with a river. Odom determined the nature of the lands to be swamp and overflowed lands, not sovereignty lands below the ordinary high water mark of

4. Many of the conveyances here are not even swamp and overflow deeds but are really simply deeds from private persons (R 1-46). How this certified question is relevant to such conveyances is unknown. Patent error exists as to these private conveyances since there can be no deed from the sovereign nor legal estoppel against the Trustees! The decision on these other conveyances can only be supported if the Court determined MRTA applies to the Peace River and further the recorded Lease and Judgment are ignored.

navigable a river. In Odom there was no record of any navigation, while in this case the record is full of references to the navigability of the river. Odom involved lands which the Trustees were authorized by law to sell, but title to the lands in the instant case was not acquired by the Trustees until 1969 and then sale could only be made under the Bulkhead Act and only if in the public interest, as reaffirmed by the People in the Florida Constitution, Article X, Section 11 (1968). Odom involved no recorded interest of the Trustees, while in this case the recorded interest preceded even the Marketable Record Title Act, Chapter 712, Florida Statutes, being recorded in 1954 and subsequently in 1961.

In Odom, equities favored the claimants, while in this case the equities reveal a grasping by the phosphate company claimants (see Statement of Facts). Despite these and other material distinctions, and despite the established case law of this Court, the court below held that the swamp and overflowed lands' deeds conveyed sovereignty lands below the ordinary high water mark of a navigable river, simply by virtue of the deeds.

It is crucial to remember that this river was presumed navigable by the courts below in entering the summary final judgment (R 848). We are not dealing with a record devoid of evidence of navigability as in Odom. Affidavits here created the genuine issue as to navigability in fact which can only be determined by the trier of fact (R 421-429, with Exhibits). Neither the courts below, nor this Court, could conclude that this river is other than navigable because navigability here is a factual matter. Odom, supra at p. 988. The sovereignty lands that are involved here have a special and distinct status in the law, unlike swamp and overflowed lands, school lands, Murphy Act lands, or other state lands.

It is not difficult to understand this Court's express and consistent holding that a swamp and overflowed lands' deed does not include sovereignty lands below the ordinary high water mark of navigable water simply by virtue of that deed. In State v. Gerbing, 56 Fla. 603, 47 So.2d 353, 357 (1908), the Court held:

> "The respondent's claim is grounded on an alleged title deraigned through the act of Congress of September 28, 1850, granting swamp and overflowed lands to the state. If the lands in controversy are not such swamp and overflowed lands as passed to the state under the stated act of Congress, and they are lands under the bed of navigable waters below the normal high water mark of the particular navigable waters, the state holds them in trust for all the people of the state, and the defendant has no exclusive rights as claimed. See Kinkead v. Turgeon, 74 Neb. 573, 104 N.W. 1061, 109 N.W. 744, 1 L.R.A. (N.S.) 762, 7 L.R.A. (N.S.) 316." (Emphasis added.)

The Court reaffirmed this law in rejecting claims to Lake Jackson in Leon County, Florida, in Broward v. Mabry, 58 Fla. 398, 50 So. 826, 831 (1909), citing State v. Gerbing, supra"

> "The trustees of the internal improvement fund, who have the disposal of the swamp and overflowed lands of the state, have no authority to convey the title to lands under navigable waters that properly belong to the sovereignty of the state. State v. Gerbing, supra.
> The complainant, appellee here, may have riparian rights in the land and waters opposite his riparian holdings that the law will protect; but he appears to have no title to the lands under the navigable waters. It is assumed that the meander line and the ordinary water line of the lake are the same." (Emphasis added.)

In Martin v. Busch, 93 Fla. 535, 112 So. 274, 285 (1927), this Court reaffirmed this law of Florida and both the Gerbing and Mabry cases were favorably cited:

> "If by mistake or otherwise sales or conveyances are made by the trustees of the internal improvement fund of sovereignty lands, such as lands under navigable waters in the state or tidelands, or if such trustees make sales and conveyances of state school lands, as and for swamp and overflowed lands, under the authority given such trustees to convey swamp and

> overflowed lands, such sales and conveyances are ineffectual for lack of authority from the state. See Illinois Steel Co. v. Bilot, supra; State ex rel. v. Jennings, 47 Fla. 307, 35 So. 986; Broward v. Mabry, 58 Fla. 3988, 50 So. 826; State ex rel. Ellis v. Gerbing, 56 Fla. 603, 47 So. 353, 22 L.R.A. (N.S.) 337.) (Emphasis added.)

Although there has been considerable argument over the fact that the lands in Martin v. Busch, supra, were unsurveyed, neither the cited cases, nor the general rule of law, have ever been qualified by such a requirement. Sovereignty land, whether surveyed or unsurveyed,5 is not conveyed by a swamp and overflowed lands' deed. In fact, in a subsequent case where surveyed lands were involved, such deeds were held not to convey sovereignty lands:

> "Since Lake Ariana is a navigable meandered lake, the chancellor correctly ruled that title to its bottom was in the State. Broward v. Mabry, supra; Martin v. Busch, 93 Fla. 535, 112 So. 274; White v. Hughes, 139 Fla. 54, 190 So. 446. In Hicks v. State ex rel. Landis, 116 Fla. 603, 156 So. 603, 604, we said, in an opinion by Mr. Chief Justice Davis:
>
> 'The State holds the title to lands under navigable waters in trust for the people of the state that they may enjoy the navigation of the waters, carry on commerce over them, and have the liberty of fishing therein free from the obstruction and interference of private parties. The trust devolving upon the state for the public, and which can only be discharged by the management and control of the property in which the state has an interest, cannot be relinquished by a transfer of the property, or by the transfer of any special interest therein, except as to such parcels as are used in promoting the interests of the public therein, or can be disposed of without any substantial impairment of the public interest in the waters and lands remaining. Pembroke v. Peninsular Terminal Co., 108 Fla. 46, 146 So. 249.'
>
> See also Bucki v. Cone, 25 Fla. 1, 6 So. 160; and State ex rel. Ellis v. Gerbing, 56 Fla. 603, 47 So. 353, 22 L.R.A., N.S., 337. See also Baker v. State ex rel. Jones, Fla., 87 So.2d 497." (Emphasis added.) McDowell v. Trustees of Internal Improvement Fund, 90 So.2d 715, 717 (Fla. 1956).

5. Here the affidavit of John DuBose shows that special instructions for this area relieved the federal surveyor of the duty to meander all navigable waterbodies (R 380-420) and removed any presumption.

As already seen in the latest expression of the law of this State, this Court, in quoting the trial court's opinion in Odom v. Deltona Corp., 341 So.2d 977, 981 (Fla. 1976), reaffirmed this long-standing law that a swamp and overflowed lands' deed in and of itself does not convey any sovereignty land. This was the position advanced by Deltona in its Brief and accepted and continued as the law of Florida.

> "It is also recognized that properties acquired by the state under the Swamp and Overflow Grant Act of 1850 do not cover or include lands under navigable waters as such were already held by the state in trust by virtue of sovereignty. State v. Gerbing, 56 Fla. 603, 47 So. 353 (1908) and a deed from the Trustees of I.I. Fund purporting to convey lands acquired under the 1850 Act of Congress would not convey sovereignty lands. Martin v. Busch, 93 Fla. 535, 112 So. 274. These principles have been consistently recognized and applied and are not to be doubted. However, whether or not a particular area is that of a navigable body of water and thus sovereignty property held in trust is a question of fact and dependent upon whether or not the body of water is permanent in character and, in its ordinary and natural state, is navigable for useful purposes and is of sufficient size and so situated and conditioned that it may be used for purposes common to the public in the locality where it is located. Broward v. Mabry, supra. See also Bucki v. Cone, 25 Fla. 1 [6 So. 160] and Clement v. Watson, 63 Fla. 109, 58 So. 25." (Emphasis added.)

The only question becomes whether the river is navigable or nonnavigable.6 This Court also cited Martin v. Busch, supra, and Broward v. Mabry, supra, in Odom, supra pgs. 988, 989.

Thus, this Court has consistently held that a swamp and overflowed lands' deed does not include sovereignty land below the ordinary high water mark of a navigable river. An examination of the deeds here shows no intention or authority to convey sovereignty land and does not even disclose a reference to the river. Left alone, the first certified question, based upon the cases in Florida, is an unequivocal "no". A swamp and overflowed

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6. The trial court here expressly did not reach this question (R 848).

lands' deed conveys uplands but does not include sovereignty lands below the ordinary high water mark of a navigable river. Whatever the Court's determination is regarding the second and third certified questions, the answer to this first question should plainly be stated as "no".

Indeed, if this Court were to rule to the contrary, and overrule the settled law of this State, it would mean that this historical long river would no longer exist as it has, but would be segmented parcels of private ownership. Furthermore, other rivers, lakes and bodies of water which are navigable would certainly be similarly affected and cease to exist as the Public's heritage as they have since the beginning of time.

Such a rule of law would further mean that no equity need be shown, for despite the knowledge or recording of the People's ownership, a single paper need be consulted. Supporting the precedent, however, does not preclude a legitimate defense by a grantee who has a legitimate example of equitable estoppel. Equitable estoppel satisfies the necessity for protection of the People's rights in the sovereignty lands, yet protects an innocent party from inequitable conduct or action by the agents of the People. Thus, the swamp and overflowed lands' deed conveys upland to a grantee, but not sovereignty land. If a grantee has been inequitably treated, equitable estoppel prevents the assertion of any sovereign right to the remaining land. To affirm the decision of the District Court as the phosphate companies suggest would mean that the People's rights would simply be ignored, without a showing of equity. It is because the phosphate companies cannot prove this defense in the related cases that they urged the change in the law here. In any event,

such disputed issues of fact should be made at trial, not on summary judgment.7

The swamp and overflowed lands' deeds conveyed uplands, which no one questions. The deeds did not convey sovereignty lands. Patently many of the conveyances involved are not even conveyances by the State or Federal government, but are from a third party, and represent clear error.

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7. Mobil may point to the payment of various taxes. In light of the other facts of actual knowledge and deceit, these acts become self-serving and not matters of equity. However, it is sufficient to note that this case was concluded by summary judgment, and inferences including those matters pointed out in the Statement of Facts must be drawn in favor of the Trustees and against Mobil. The harder the Mobil resists, the greater the demonstration of the need for factfinding below and reversal here. If Mobil ignores these equities, their truth stands unrefuted.

B.

THE DOCTRINE OF LEGAL ESTOPPEL OR ESTOPPEL BY DEED DOES NOT APPLY TO THE SWAMP AND OVERFLOWED LANDS' DEEDS BARRING THE TRUSTEES' ASSERTION OF TITLE TO SOVEREIGNTY LANDS BELOW THE ORDINARY HIGH WATER MARKS OF NAVIGABLE RIVERS.

As just seen, no Florida case has ever held that sovereignty lands, consisting of a long river, were conveyed by general descriptions contained in a swamp and overflowed lands' deed, simply by virtue of the deed. 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 to navigable river sovereignty lands. Legal estoppel does not convey title, it bars the assertion of title. 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. 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 added.) Martin v. Busch, 93 Fla. 535, 112 So. 274, 285 (1927).

Neither authority nor intention exist here, so the second certified question must also be answered "no."

Legal estoppel or estoppel by deed does not bar the ownership of the Trustees of these long rivers. This doctrine that estops one from contradicting recitals of deeds has never been applied to the land owned by

the People by right of their sovereignty, and held in trust by Trustees where they lacked the power to convey such lands. As this Court has said:

> "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 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).

1. Florida Law Has Been Clear; Legal Estoppel Does Not Preclude The Assertion Of Sovereign Ownership Here By The Trustees or Coastal

The law of Florida on legal estoppel as expressed by this Court is clear. Mobil was successful in urging the trial court and the District Court below to invent a new rule of law in Florida which conveyed title to it of thousands of acres of sovereignty lands of the Peace River. No reason nor excuse was advanced to change the organic law of Florida, however.

(a) Nearly Half of These "Deeds" Were Not Even Deeds by The Trustees, But Were Private Deeds, Making The Application of Legal Estoppel At Once Here Total Error.

Many of the conveyances were actually not even deeds by the Trustees, but were private deeds (R 1-46)! Yet Mobil and the courts below ignored the fact that the Trustees were not a grantor of these "private" deeds. The absence of this first indispensable legal estoppel element establishes error in the decisions below.

Legal estoppel stated succinctly is:

> ". . . defined as a bar which precludes a party to a deed and his privies from asserting as against others and their privies any right or title in derogation of the deed or from denying the truth of any material fact asserted therein." 22 Fla.Jur.2d, Estoppel and Waiver, §10, p. 424.

But neither the Trustees nor Coastal were a party or privy to the grantor of these private deeds. Yet the courts below accepted the phosphate companies' new rule of law and applied legal estoppel to convey the sovereignty lands beneath the Peace River. This is logically erroneous.

Clearly the courts below were in error in applying collateral estoppel against the Trustees and Coastal on the basis of these private deeds, which amount to nearly half of the lands involved.

(b) Since Neither Authority Nor Intention Exist to Convey The Sovereignty Lands of These Rivers, Legal Estoppel Cannot Be Applied to Vest Title by The Swamp and Overflowed Deeds.

With respect to the other half of the conveyances, that is, the Florida swamp and overflow deeds, the Trustees neither intended to convey sovereignty lands nor had the lawful authority to convey the Peace River away. As already seen, both intention and authority must exist before legal estoppel may be applied to the swamp and overflowed lands' deeds.

> "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 added.) Martin v. Busch, 93 Fla. 535, 112 So. 274, 285 (1927).

With respect to the element of "intention," none of these conveyances even mention the Peace River, nor traverse the edge of this river (R 1-46). On the other hand, Coastal's lease refers specifically to the Peace River to

Township 29/30 (R 430-433). The swamp and overflowed lands' deeds conveyed uplands and no one disputes this. The issue of intention is directed only to the remaining submerged lands that are the bottoms of the Peace River.

Intention to convey sovereignty lands must be present:

> "Legal estoppel or estoppel by deed is determined by the intention of the parties as expressed in the deed, whether or not legal estoppel may be applied in a given case is dependent entirely on the language used in the deed or which appears on the face of the instrument." (Emphasis added.) Trustees of the Internal Improvement Fund v. Lobean, 127 So.2d 98, 102 (Fla. 1961).8

The intention expressed in the swamp and overflowed lands' deeds was not to convey the sovereignty bottoms of the Peace River, but to convey swamp and overflowed lands. A general intention is not sufficient to convey sovereignty lands, however. As seen before:

> "'All grants of the Crown are to be strictly construed against the grantee, contrary to the usual policy of the law on the consideration of grants.'" Shively v. Bowlby, 152 U.S. 1, 10 (1894).

If any intention is to be presumed in the swamp and overflowed lands' deeds, other than to convey swamp and overflowed lands, then it must be against the grantee. The intention to convey sovereignty lands is not supplied by the deeds, so the second element of legal estoppel is also missing.

Authority to convey must also exist to establish legal estoppel. In other words, in order to pass an estate by estoppel, the party must have

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8. Unlike Lobean, these lands are not a "government lot" specifically described by metes and bounds which leaves no doubt as to intention of the area conveyed to intrude into the sovereignty lands. A doubt as to the nature of the lands conveyed may still exist. Unlike Lobean, where the lands were originally sovereignty lands that the Trustees had authority to sell, here there is no authority. Lobean, at p. 103. Any claim that such lands in Lobean were not within their authority is pure myth. Further, unlike Lobean these lands are not lands that are a part of the Murphy Act Trust, but are still sovereignty lands. Thus in Lobean, unlike the present case, both key elements of legal estoppel existed, authority and intention.

power to pass it by direct conveyance. (22 Fla.Jur.2d, Estoppel and Waiver, §12, p. 427.) No authority to convey these fresh water bottoms of the Peace River had ever been given to the Trustees until 1969, Chapter 69-308, §1, Laws of Florida. Pursuant to Article X, Section 11 of the Florida Constitution (1968), the People reaffirmed the limitation that only sales which were in the public interest are possible. At no time have the Trustees had title to simply sell the lands. The related theory of "after acquired title" cannot apply because there still has been no acquisition of title to sell. Later authority to lease did exist and the lands were leased to Coastal. Watson v. Holland, 155 Fla. 342, 20 So.2d 388 (1945). As the Court said in Holland, sale is quite a different matter from leasing. A trustee cannot be said to be estopped by a deed given with regard to one trust, say Trust A, simply because of the acquisition of the same property by another trust, say Trust B, of which he is also a trustee! This issue was long ago put to rest in Martin v. Busch, 93 Fla. 535, 112 So. 274, 286 (1927):

> "When the trustees of the internal improvement fund made the conveyance to the predecessors of complainants in 1904, such trustees had authority to convey the swamp and overflowed lands of the state; but they had no authority to convey sovereignty lands under navigable waters or the shores below ordinary high-water mark of navigable waters or tidelands.
>
> . . . . . .
>
> and any authority that may be conferred by the Acts of 1919 does not operate to convey or confirm title to lands not covered by the conveyance made in 1904." (Emphasis added.)

Thus, without any authority, the Trustees' assertion of sovereignty lands here cannot be barred by legal estoppel:

> "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." (Emphasis added.) Pierce v. Warren, 47 So.2d 857, 859 (Fla. 1950).

Again, the strict construction is against the grantee. The third element of legal estoppel, authority, is absent.

Again it is important to remember that we are dealing in this point with legal estoppel and not equitable estoppel. Neither of the lower courts dealt with equitable estoppel as pointed out above. Many have urged the flood gate argument, screaming that innocent landowners will have titles upset and disrupted. In fact, no innocent landowners are involved or contemplated; only Mobil with unclean hands which knew what it was plundering (see Statement of Facts). Landowners who have the equities have the defense of equitable estoppel available. The avenue for equity is still available. Equitable estoppel provides a complete defense. In this case, if on the facts Mobil defeats equitable defense to claim what is the People's, then it must be done at a trial on these facts. There is no reason to give up the trust of sovereignty lands without a showing of equity and no basis to do so by summary judgment.

If the change in Florida law on legal estoppel is accepted, and the lower courts' decisions approved, most of Florida's great rivers will be transformed into a fragmented line on a property ownership map.9 The sovereignty lands held in trust upon admission to statehood would be raided for no reason of public policy or welfare. One hundred forty years of stare decisis protecting sovereignty lands will be overruled against all reason. The decision of the District Court should be reversed.

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9. Most of these navigable rivers are meandered short distances from their mouths. See Bucki v. Cone, 25 Fla. 1, 6 So. 160 (1889), relating to the Suwannee River for example. Here meandering was not even required because of the special instructions given to the surveyors (R 380-420).

C.

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 WATERS

In this case, like the related cases, a simple chronology of six relevant events demonstrates the bases for reversal of the decision of the District Court:

A. 1954 Lease Recorded. In 1954, Coastal Petroleum Company's Lease 224-B issued by the Trustees, which specifically named the Peace River to Township 29/30, was recorded in the Public Records of Polk County (R430, Exhibits A, L and O).

B. 1961 Judgment Recorded. In 1961, a judgment affecting and confirming Coastal's and the Trustees' interest was recorded in the Public Records of Polk County (R 430, Exhibits L and P).

C. 1961 Actual Knowledge. Before 1961, Mobil had not only the foregoing constructive notice from public records, but actual notice of Coastal's and the Trustees' interests, despite which it continued to convert minerals from the Peace Rivers (R 430, Exhibits C, D, I and J).

D. 1963 MRTA. In 1963, the Marketable Record Title Act, Chapter 712, Florida Statutes (MRTA), was enacted with a savings clause expiring on July 1, 1965 (Section 712.09, Florida Statutes).

E. 1978 Amendment. In 1978, MRTA was amended to make clear that sovereignty lands were not within the scope of MRTA. Section 712.03(7), Florida Statutes (1979)

F. 1982 Quiet Title Suit. In 1982, Mobil filed these quiet title suits in Polk County, Florida, claiming title by "vested" rights under MRTA before the 1978 Amendment relying upon swamp and overflowed deeds and privade deeds, none of which named the Peace River (R 1-46).

In spite of this chronology of facts, the District Court held in the relied upon case:

> "Plaintiff's titles under the 1883 deeds were perfected under MRTA, as enacted in 1963; therefore, retroactive construction of the amendment would unconstitutionally deprive them of rights vested in 1963." (Emphasis added.) (District Court opinion in American Cyanamid and Estech, p. 9).

The chronology makes clear Mobil had constructive and actual notice by 1961 of the Trustees' and Coastal's interest long before the effective date of MRTA in 1963. No "vested rights"10 could have existed because the recorded interests of the Trustees and Coastal were exceptions under Section 712.03(4), of MRTA. Furthermore, the actual knowledge would preclude any claim of title as in other recording acts. Even more basic, however, MRTA itself never even contemplated sovereignty lands. When the question was first raised, the Amendment to MRTA in 1978 was made. Suit was not filed here unti 1982(R 1-46).

The District Court opinion simply ignored the recordings in Polk County, considered only the third certified question, held that sovereignty lands came within the scope of MRTA in 1963, and that vested rights were thereby created in Mobil before the 1978 Amendment.11 But, the recordings in Polk County were sufficient to preserve both the Trustees' and Coastal's interests in the Peace River, even if the lower courts were correct on the certified question. The courts below were, however, in error in holding MRTA operated upon sovereignty lands of Florida between 1963 and 1978.

10.Any right, if it were to exist, must be a "vested right" since the 1978 Amendment removed all doubt as to the inapplicability of MRTA to sovereignty lands. Askew v. Sonson, 409 So.2d 7,9 (Fla. 1981). Obviously before the enactment of MRTA in 1963, no such claim could be made.

11.In Odom v. Deltona Corp., supra, no such exceptions were present. It doesn't matter if Odom applies since the exemptions here would require a different result.

Although the certified question is one of first impression to this Court, the Court has consistently held that the State cannot abdicate general control of the sovereignty lands. State v. Black River Phosphate Co., 32 Fla. 82, 13 So. 640, 645 (1893), and State v. Gerbing, 56 Fla. 603, 47 So. 353, 355 (1908). The strictest construction is placed on claims to such lands. Again, all such grants are strictly construed against the grantee. Shively v. Bowlby, 152 U.S. 1, 10 (1894). State v. Black River Phosphate Co., supra, p. 648. Not only must intention be shown, but specific authority must be demonstrated. Brickell v. Trammell, 77 Fla. 544, 82 So. 221, 228 (1919), and Apalachicola Land and Development Co. v. McRae, 86 Fla. 393, 98 So. 505, 518 (1924). Thus, any such grant, whether legislative or executive, must be accompanied by specific intention and specific authority and will be strictly construed against the grantee.

No where in MRTA before the 1978 Amendment are sovereignty lands mentioned,12 let alone any authority or any intention to convey any such sovereignty lands by MRTA. It is only by a construction of MRTA in favor of the grantee that one can find any "vested right." To do so, however, is to reject the established law that requires a strict construction against the

12.In Askew v. Sonson, 409 So.2d 7 (Fla. 1981), this Court discussed the definition of "person" in Section 712.01, Florida Statutes (1977), and concluded that the Legislature intended to "affect State properties." Sovereignty lands are not specifically mentioned. Applying a rule of strict construction against the grantee would not allow such affected state properties to include sovereignty lands.

grantee!13 Strict construction of the grants against the grantee Mobil renders its claims here defeated.

As already seen, even if MRTA were held to have operated between 1963 and 1978 upon sovereignty lands beneath fresh water rivers in Florida, the two exceptions of record and actual notice pointed out above and ignored by the District Court require a reversal of its decision. While the District Court ignored both the recorded lease and recorded judgment, the trial court considered the recorded lease but ignored the recorded judgment.14

The trial court held that the recording was not completed, but the recording of Lease 224-B in 1954 was completed properly (R 430-433, Exhibits A, L, and O). As the judge in the related Mobil I case held on this issue while the case was removed:

> "Before the court is plaintiff's motion for summary judgment (Document 417) based on the Florida Marketable Record Title Act (MRTA), chapter 712 of Florida Statutes. The parties submitted memoranda (Documents 417, 509, 511, 514 and 519), and a hearing was held on November 23, 1981.
>
> The purpose of the MRTA is to simplify land title transactions by limiting searches to thirty years. This suit was filed on September 24, 1976; therefore, the title search in the instant case must encompass the

13.In effect, there are two competing constructions. The first is that contained in Section 712.10, Florida Statutes. The other is the strict construction against the grantee who claims sovereignty lands. Shively v. Bowlby, supra. The basis of this latter rule of construction is state and federal constitutions and goes back to English common law. The former rule is legislative in origin. Clearly the constitutional common law rule, favoring sovereignty lands, must prevail in a conflict of the two rules.

14.This judgment was recorded in the records of Polk County in 1961 (R 430, Exhibits L and P). It is decisive here. As a sufficient title transaction, it raises an exception under Section 712.03(4). See Kittrell v. Clark, 363 So.2d 373 (Fla. 1st DCA 1978), cert. denied, 383 So.2d 909 (Fla. 1980), where even a recorded will in an estate that didn't even mention the interest was a sufficient title transaction. This case is much stronger as a judgment in a proceeding that dealt with Lease 224-B and named rivers and other lands and was known to Mobil (R 430, Exhibits C, D, and J). Collins v. Coastal Petroleum Company, 118 So.2d 796 (Fla. 1st DCA 1960).

period from September 24, 1946 through September 24, 1976.

Plaintiff Mobil Oil Corporation claims a root of title prior to September 24, 1946. See Document 417, attachment 3. 'Root of title' is defined as 'any title transaction purporting to create or transfer the estate claimed by any person and which is the last title transaction to have been recorded at least 30 years prior to the time when marketability is being determined.' Fla.Stat. §712.01(2) (1979).

Once the root of title is identified, any interest that depends upon acts, events, or omissions occurring prior to the date on which the root of title was recorded are extinguished unless a specific exception provided in the MRTA applies. Fla.Stat. §712.04 (1979). Mobil maintains that the interests asserted by Coastal and the Trustees do not fit within any of the MRTA's exceptions, and thus were extinguished through the operation of section 714.04 of Florida Statutes.

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.

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.§28.17 (1979). Because this verification was done in 1949, the

> Polk County filing is given the same effect as if the original had been presented. 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 (1981), pgs. 1-3.

The recording was proper under the recording laws in Florida. Furthermore, Mobil knew about it (R 430-433, Exhibit D). The only other reason for not applying the exception was that the description was vague or uncertain.

The description in Lease 224-B included:

> "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 192).

Thus, this is the only other reason given for ignoring this second decisive recorded exception was the description was vague or uncertain. This description is not too vague or uncertain to enable land to be identified.[15] Here all the sovereignty water bottoms of the named rivers were described, not some vague or uncertain part of them. Compare Deering v. Martin, 95 Fla. 224, 116 So. 54 (1928), where only some vague and uncertain part was conveyed. If the lease description here was vague or uncertain, then no other recording description of sovereignty lands could ever be effective, because the boundary of such lands changes in imperceptible degrees as the ordinary high water level changes. To describe the boundary of a total river, one would simply name the river, not try to call out its ordinary high water lines, because those lines are by necessity ambulatory. But if one did

15.See affidavit of John DuBose (R 380-420).

fix the location of those lines by description, the recordation would be constitutionally void. As this Court held in 1976 in State of Florida v. Florida National Properties, Inc., 338 So.2d 13, 19 (Fla. 1976):16

> "An inflexible meander demarcation line would not comply with the spirit or letter of our Federal or State Constitutions nor meet present requirements of society."

This Court explained why a fixed demarcation line would be unconstitutional:

> "Upon careful consideration of both the record and arguments of counsel, we conclude that the trial court correctly held the efforts of the State to fix specific and permanent boundaries were improper, and we hold that Section 253.151, Florida Statutes, is unconstitutional.
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> . . . . . .
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> Additionally, the ancient common law relating to accretion and reliction prevails in Florida. However, we recognize that the doctrine of reliction is applicable in situations where water recedes by imperceptible degrees from natural causes and that it does not apply where land is reclaimed by deliberate drainage." (Emphasis added.) Supra, p. 18.

Thus, no metes and bounds description could describe the sovereignty lands since their boundary cannot constitutionally be fixed to a specific and permanent line. The legislature is without authority to permanently fix such boundaries, let alone the Trustees or Coastal. The description of Coastal's lease is not vague or uncertain, but is as it constitutionally must be. Furthermore, the description was not considered too vague or uncertain by this Court when it upheld the validity of the leases in Watson v. Holland, 155 Fla. 342, 20 So.2d 388 (1945).

In addition to these statutory exceptions MRTA is subject to the exception of actual notice. MRTA is a recording act/17 and recording acts

16.In that case, the Court held Section 253.151, Florida Statutes (1975), unconstitutional because it attempted to fix specific and permanent boundaries of navigable fresh water lakes.
17.City of Miami v. St. Joe Paper Company, 364 So.2d 439, 442 (Fla. 1978).

are subject to the exception of actual notice. Moyer v. Clark, 72 So.2d 905 (Fla. 1954); Licata v. DeCorte, 50 Fla. 563, 39 So. 58 (1905); Ullendorff v. Graham, 80 Fla. 845, 87 So. 50 (1920); Lassiter v. Curtiss-Bright Co., 129 Fla. 728, 177 So. 201 (1937); Escambia Properties, Inc. v. Largue, 260 So.2d 213 (Fla. 1st DCA 1972); Ruotal Corporation, N.W., Inc. v. Ottati, 391 So.2d 308 (Fla. 4th DCA 1980). The actual knowledge in 1961 of Coastal's Lease 224-B is unrefuted in the record (R 430, Exhibits C, D, I and J). Coastal's and the Trustees' interest would be an exception based upon actual knowledge. See also, Holland v. Hattaway, 438 So.2d 456 (Fla. 5th DCA 1983).

Coastal submits that the Marketable Record Title Act, Chapter 712, Florida Statutes, did not operate between 1963 and 1978 to divest the Trustees of title to sovereignty lands. Whether MRTA related to all sovereignty lands between 1963 and 1978 or not, and whether Odom so requires or not, here instruments have twice been filed in the public records of Polk County and in the Florida public records before the Act was even effective. Further, Mobil had actual knowledge of the Trustees' ownership and in fact did not even pay for such lands (R 430, Exhibit I). The third question posed here must be answered "no" regardless of the answer to the third certified question. The decision below should be reversed.

POINT II

MABIE v. GARDEN STREET MANAGEMENT CORP., 397 So.2d 920 (Fla. 1981), REQUIRES REVERSAL AND DISMISSAL.

On September 24, 1976, Mobil filed suit in the Circuit Court of Leon County, Florida, against Coastal and caused Coastal to be served (R 127). In the course of this lawsuit Coastal raised several counterclaims, including a counterclaim for conversion of phosphate and uranium from the Peace River which was leased to Coastal by the Trustees. The Trustees filed their own claim for relief seeking damages for conversion of phosphate by Mobil. Later, on November 20, 1979, Mobil filed and served a related counterclaim against the Trustees and Coastal seeking a declaration rejecting the ownership claims of Coastal and the Trustees of the Peace River included in their conversion claims (R 127 - 213). The case has an involved procedural history but basically the Leon County, Florida, case has proceeded toward trial from filing and service in September, 1976 (R 127-213).

In September, 1978, Mobil filed a similar motion for summary judgment in Leon County, Florida, as the one in the proceeding below (R 107). This motion was denied on December 18, 1978 (R 220). In related proceedings in Federal Court in Tallahassee, Florida, similar legal issues were presented by other phosphate companies and were determined against the companies (R 220). Although Mobil was not directly a party to those proceedings, the Federal court later adopted the order in Mobil. After these decisions, Coastal requested trial and on November 10, 1980, the Federal court, before which the Mobil case had been remanded, set a trial date (R 214-240).

Only after these unfavorable rulings to Mobil in the Leon County Circuit Court and the setting of a trial date did Mobil file new lawsuits raising the

same issues in an attempt to avert an unfavorable judgment. Mobil styled these new and later lawsuits as "quiet title" actions and filed them in the Circuit Court of Polk County, Florida. On April 27, 1982, Mobil filed one such suit in Polk County (R 1 - 46). Coastal was later served. This new lawsuit sought to raise the same issues addressed by the earlier Leon County lawsuit filed by Mobil which had been pending since September, 1976. Thus, more than five years after the claims and issues were first raised in Leon County, Florida, and after unfavorable rulings there, Mobil initiated a new lawsuit seeking to raise the same claims and issues in Polk County, Florida, to a new court.

Coastal and the Trustees moved to dismiss or to stay the duplicative case filed in Polk County based upon this Court's decision in Mabie v. Garden Street Management Corp. 397 So.2d 920 (Fla. 1981) (R 105-213, 214-240). The trial court considered and denied the motions to dismiss (R 559, 670). Coastal filed a Notice of Appeal of this non-final order concerning "venue" with the District Court of Appeal, Second District of Florida, and the District Court per curiam affirmed the decision.

Coastal submits that the action below should have been reversed and ordered dismissed by the trial court for improper venue pursuant to Rule 1.140(b)(3), Florida Rules of Civil Procedure, upon the authority of the Supreme Court of Florida's decision in Mabie v. Garden Street Management Corp., 397 So.2d 920 (Fla. 1981). This Court held that where two similar actions are pending between the same parties, addressing the same issues, exclusive venue to try those issues lies in the court in which service of process is first effectuated.

The District Court order affirming the trial court's order denying the motion to dismiss should be reversed and the trial court directed to dismiss the complaint.

Mobil initiated the entire series of so-called quiet title suits to race unfavorable determinations in earlier-filed proceedings in Leon County, Florida, to judgment (R 105-213). Although it claimed here that the purposes of the action are different, it has consistently represented to other courts, including the Leon County court, that the actions are the same for relitigation purposes. This different treatment seeks to take advantage of relitigation defenses without the Mabie venue requirement for dismissal of a later filed and served proceeding. Mobil cannot have both. Either the proceedings have the same or different purposes. If they are the same as Mobil represents to the court in Leon County, Florida, then the action in Polk County must be dismissed. If the proceedings are different, then the purpose of racing to an early judgment is defeated, because the Polk County cases can raise no defense. Mobil has placed itself on the horns of this dilemma requiring dismissal of the complaint below.

Because the issues could be raised in either a declaratory action or a quiet title action, Mobil chose its forum in 1979 when it first filed its claim in Leon County, Florida. Only later, after unfavorable decisions and notice of a trial date, did Mobil begin to file duplicative proceedings in Polk County, Florida. The rule of Mabie is designed to prevent just such abuse of the Courts of Florida and litigants. The decision should be reversed and the action dismissed.

CONCLUSION

Odom v. Deltona Corp., 341 So.2d 977 (Fla. 1977), involved small nonmeandered lakes, not one hundred mile long rivers like the Peace River. To use Odom as a basis to lay claim to rivers is to accept the reasoning that since raising your foot one step towards the moon will carry you closer, raising it many times will carry you there. The application of Odom has limitations contained within the Court's decision. The statutes and reasoning apply with force to small nonmeandered lakes wholly contained within the perimeters of the conveyance there, but not to rivers.

Further, while the equities there were with the private claimant, here Mobil knew it did not own the Peace River. It openly refused to buy Peace River bottom because it said the State owned it. Yet it mined the river and secretly recognized it might later be called to pay damages. This case is not like Odom at all. Any claim to "honesty" by Mobil would be a joke.

Coastal would urge the Court to uphold the longstanding law of Florida recognizing the public trust doctrine, recognizing that both intention and authority must exist to apply legal estoppel, and recognizing the exceptions to marketability under MRTA. Coastal also urges the Court to reaffirm the principal of equitable estoppel, as well. The Court should reverse the decision below and order remand for dismissal based upon Mabie v. Garden Street Management Corp., 397 So.2d 920 (Fla. 1981).

ROBERT J. ANGERER
Post Office Box 10468
Tallahassee, FL 32302

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

Attorneys for Amicus Curiae
COASTAL PETROLEUM COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by hand delivery to Julian Clarkson, Esquire, Holland & Knight, 6th Floor, Barnett Bank Building, Tallahassee, Florida, and by U.S. Mail to James R. Hubbard, Esquire, Suite 1250, 1 S.E. 3rd Ave., Miami, FL 33131, William Crenshaw, Esquire, Suite 1400, AmeriFirst Building, One S.E. 3rd Ave., Miami, FL 33131, and Louis F. Hubener, Department of Legal Affairs, The Capitol, Tallahassee, FL 32301, this 17th day of October, 1984.

Attorney