O/a 5-6-85 55

IN THE SUPREME COURT OF FLORIDA

THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND and COASTAL PETROLEUM COMPANY, a Florida corporation,

Petitioners,

vs.

AGRICO CHEMICAL COMPANY, a Delaware corporation,

Respondent.

CASE NO. 66,565

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ON DISCRETIONARY REVIEW FROM THE DISTRICT COURT OF APPEAL, SECOND DISTRICT

ANSWER BRIEF OF RESPONDENT AGRICO CHEMICAL COMPANY

FRED S. NELSON, ESQUIRE
CLAIRE EAGAN, ESQUIRE
HALL, ESTILL, HARDWICK, GABLE, COLLINGSWORTH AND NELSON, P.C.
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172

and

DAVID G. HANLON, ESQUIRE
JOHN W. PUFFER, III, ESQUIRE
SHACKLEFORD, FARRIOR, STALLINGS & EVANS, Professional Association
Post Office Box 3324
Tampa, Florida 33601
ATTORNEYS FOR RESPONDENT

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Preliminary Statement

Respondent, Agrico Chemical Company ("Agrico"), was the plaintiff in the circuit court. Petitioners, the Board of Trustees of the Internal Improvement Trust Fund ("Trustees") and Coastal ("Coastal"), were the original defendants below, and shall sometimes together be referred to herein as "Defendants."

The following symbols will be used in this Brief:

"R-_____" for record on appeal;

"TA-_____" for references to the Trustees' Appendix;

"CA-_____" for references to Coastal's Appendix;

"TB-_____" for references to Trustees' brief;

"CB-_____" for references to Coastal's brief;

"AA-_____" for references to Agrico's Appendix.

Introduction

This case, and the related cases now before this Court 1/, constitute the latest chapter in the indefatigable efforts of the Defendants to extract millions of dollars from Agrico and other phosphate companies operating in central Florida for alleged conversion of phosphate ore underlying what the Defendants have asserted to be navigable waters. The litigation has gone on almost nine years in state and federal trial and appellate courts.

The same issues involved in this case have now been reviewed by five different panels of the Second District Court of Appeals, each unanimously holding against the claims of the Defendants. Board of Trustees of Internal Improvement Trust Fund of State of Florida v. American Cyanamid Co., 421 So.2d 73 (Fla. 2d DCA 1982); Coastal Petroleum Co. v. U. S. Steel Corp. and Coastal Petroleum Co. v. W. R. Grace & Co., 443 So.2d 985 (Fla. 2d DCA 1983); Board of Trustees of the Internal Improvement Trust Fund v. Mobil Oil Corporation, 455 So.2d 412 (Fla. 2d DCA 1984); Coastal Petroleum Company v. American Cyanamid Company, 454 So.2d 6 (Fla. 2d DCA 1984); and this case, Board of Trustees of the Internal Improvement Fund v. Agrico Chemical Company, ____ So. ____ (Fla. 2d DCA 1984). (TA-11.) In four other cases, final judgments have

1/ The Board of Trustees of the Internal Improvement Fund, and Coastal Petroleum Company v. American Cyanamid Company and Estech, Inc., Case Nos. 65,755 and 65,696; The Board of Trustees of the Internal Improvement Trust Fund v. Mobil Oil Corporation, Case No. 65,913.

resolved the same issues against one or both of the Defendants which have not been appealed. Coastal Petroleum Co. v. Mobil Oil Corp., Case No. GCG-81-2198 (Fla. 10th Cir. Ct. May 26, 1982), app. dismissed (on Coastal's notice of voluntary dismissal), 419 So.2d 1206 (Fla. 2d DCA 1982); Mobil Oil Corp. v. Coastal Petroleum Co. and the State of Florida, Case No. GCG-82-3250 (Fla. 10th Cir. Ct. May 24, 1983); International Minerals & Chemical Corp. v. Coastal Petroleum Co., Case No. GCG-81-2480 (Fla. 10th Cir. Ct. April 7, 1983); International Minerals & Chemical Corp. v. Coastal Petroleum Co., Case No. GCG-83-1002 (Fla. 10th Cir. Ct. June 30, 1983).

This Court is itself no stranger to the issues here presented. In Odom v. Deltona Corporation 2/, this Court brought together a multi-faceted approach for analyzing the sovereignty lands question. Using this approach, and the reasoning and authority of the decisions upon which Odom relied, the lower courts in these quiet title actions have, without exception, resolved the issues in favor of private ownership. Contrary to the position of the Defendants, an affirmance of the judgment in this case would not represent a radical departure from existing law, but would indeed be entirely consistent with this Court's holdings in Odom and other cases.

2/ 341 So.2d 977 (Fla. 1976).

The Defendants continue to argue, as they have in the courts below, that a decision in Agrico's favor will result in a "wholesale abolition" of the public trust in navigable waters (TB-47), and they attempt to portray Agrico as a plunderer of the public domain. (CB-48-49). Nothing could be further from the truth. The record ownership of the lands at issue has stood unchallenged in Agrico and its predecessors for generations. During this time, taxes have been paid on the lands and millions of dollars have been expended in improving the lands and developing their resources. Moreover, as in the related cases now before this Court, this case has centered not upon governmental or public rights under the public trust doctrine, but upon proprietary rights to minerals. The judgment below expressly limits its holding to preserve the State's authority over the waters involved to insure that any applicable public rights would be protected.

The arguments asserted here by the present day Trustees are especially interesting in that they are diametrically opposed to positions earlier Trustees have taken in previous cases. In Burns v. Coastal Petroleum Company, 194 So.2d 71 (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), which was a case involving the same lease through which Coastal asserts its claim herein, the Trustees contended that the portion of the Peace River in the vicinity of Agrico's lands was subject to private ownership, not

retained by the State as sovereignty lands. 3/ The Second District Court of Appeals adopted the Trustees' position on this point and expressly held:

> The southern portion of Peace River, from its mouth northward to the line between Townships 38/39, is meandered and within the jurisdiction of the Trustees. However, Peace River north of Township 38/39 is not meandered and does not belong to the State. That is, Peace River for a distance of 40 miles south of Lake Hancock is in private ownership.

194 So.2d at 74. (emphasis supplied). If the Peace River itself is not subject to ownership by the State as sovereignty lands, it follows as a matter of course that the State (and therefore Coastal) have no claim to Agrico's lands which, as shown below, are far removed from that river. Under these circumstances, for the Defendants to claim at this late date that the lands involved were in fact retained

3/ In their brief filed with the circuit court in Burns (attached as an appendix to this brief (AA-102-118)), the Trustees stated:

> Defendants respectfully direct the Court's attention to the fact that although the Peace River is named as one of the rivers to be included within the general authority of Exploration Contract No. 224, the contract itself limits the grant to such waters and water bottoms as the state at that time owned. Testimony in this cause shows, and the records substantiate, that the Peace River was not meandered north of a line more than seventy (70) miles south of Lake Hancock. Thus, none of the bottom of the Peace River within Drilling Block 5 was subject to these contracts, because the state did not own any of the Peace River bottom at that point. (emphasis supplied.)

by the State, and that Agrico has therefore purloined the public domain, is not only disingenuous, it is unconscionable.

The Defendants' argument that, because of the doctrine of the "inalienable public trust," the Trustees can now renounce their deeds which have stood unchallenged for generations, is contrary to Florida law and the decisions of this Court. The lower courts rejected the arguments of the Defendants and held, for various reasons, that title was properly vested in Agrico. Each of the three points certified by the District Court constitutes a separate and independent basis for affirming the judgment of the circuit court. Thus, should this Court agree with the District Court's holding as to any of the questions certified, the judgment in Agrico's favor should be affirmed.

STATEMENT OF THE CASE AND OF THE FACTS

The following facts are established without dispute by the record:

Agrico holds record title to large tracts of land west of Fort Meade in Polk County, Florida. Agrico's title is derived from continuous chains of recorded conveyances which originated in the late 1800's and early 1900's with deeds from the Trustees of "swamp and overflow" or "internal improvement lands," deeds from the Board of Education of Florida of "school lands proper," or patents from the United States. 4/ The patents and deeds which form the root of Agrico's title were absolute by their terms and did not reserve any interests in the respective sovereigns. (AA-2-3.)

Official United States surveys of all of Agrico's lands were made between 1850 and 1855 which formed a basis for the conveyances into private ownership. These official surveys showed no navigable waterbodies and did not meander any of the streams, creeks or swampy areas on the lands. (AA-53-56.)

In December, 1977, Coastal and the Trustees filed an action against Agrico in federal court for the Northern District of Florida, Case No. 77-0973, seeking damages for

4/ The overwhelming majority of Agrico's lands were conveyed into private ownership as swamp and overflow lands. The instruments of conveyance were filed of record between 1876 and 1912, but the majority were executed and recorded in the early 1880's. (AA-1-52.)

conversion of phosphoric minerals underlying some of the lands at issue herein. 5/ Until this litigation was filed, neither the official government surveys nor Agrico's title to the lands had ever been questioned. The lands had been used without challenge by Agrico and its predecessors in title for phosphate mining, agricultural and other purposes since the times of the original deeds or patents from the State of Florida or the United States. (AA-52-59.)

In September, 1982, Agrico filed suit in the Polk County Circuit Court to quiet title to its Polk County lands against the adverse claims of Coastal and the Trustees. (R-1-322.) Defendants claimed that portions of the lands in issue were "sovereignty" lands underlying navigable waters which could not have lawfully been conveyed into private ownership. Coastal's claim was derived through the Trustees by virtue of an oil and gas exploration lease (Lease 224-B) between Coastal and the Trustess dated March 27, 1946, as modified on or about February 27, 1947, which purportedly granted Coastal mineral rights in lands underlying certain waterbodies in the state. (CA-161-180.)

On August 3, 1983, the circuit court entered summary judgment quieting title in Agrico's favor against the claims of Coastal and the Trustees. (TA-1-10.) The final summary judgment was appealed by the Defendants to the Second District

5/ The conversion suit against Agrico was one of six similar suits brought by Coastal and the Trustees against phosphate companies owning land and operating in Polk County.

Court of Appeals, which on September 14, 1984, per curiam affirmed the judgment of the circuit court on the basis of the District Court's decisions in Board of Trustees of the Internal Improvement Fund of the State of Florida v. Mobil Oil Corporation, 455 So.2d 412 (Fla. 2d DCA 1984) ("Mobil") and Coastal Petroleum Company v. American Cyanamid Company and Estech, Inc., 454 So.2d 6 (Fla. 2d DCA 1984) ("Cyanamid-Estech"). (TA-13-25.)

On January 23, 1985, the District Court granted rehearing to the extent that it certified to the Supreme Court of Florida as issues of great public importance the same questions earlier certified in the Mobil and Cyanamid-Estech cases. (TA-13-14.)

In its statement of the facts and argument, the Trustees, as in their briefs in the related cases before this Court, make repeated references to the beds of Peace and Alafia Rivers. (TB-1-3.) This case is similar in many ways to Mobil and Cyanamid-Estech, but, in the following respect, it is different. The uncontroverted facts show that, at their closest points, Agrico's lands are four and one-half miles from the Peace River and one-half mile from the south prong of the Alafia. (AA-53-56.) The Peace and Alafia Rivers do not flow through Agrico's lands. These lands include only various creeks, streams, swamps, ponds, and other small waterbodies, none of which were meandered by the official 19th century government surveys. Id.

SUMMARY OF THE ARGUMENT

The District Court correctly applied controlling precedents in adjudicating that Agrico's title was superior to the claims of the Trustees to alleged sovereignty lands and of Coastal under its lease.

The lands at issue were conveyed long ago to Agrico's remote predecessors in title, pursuant to determinations by duly authorized public officials, based on approved governmental surveys, that the lands were of a class and character which could be lawfully transferred into private ownership. At this late date generations later, these determinations cannot be questioned. Agrico's lands are, as a matter of law, not sovereignty in nature, and the claims of the Trustees and Coastal must therefore fail.

The doctrine of legal estoppel, or estoppel by deed, provides additional support for quieting title in Agrico. This principle precludes a party to a deed, and his privies, from asserting as against others, and their privies, any right or title in derogation of a deed, or from denying the truth of any material fact asserted therein. The deeds to Agrico's predecessors from the State were absolute by their terms and did not reserve any interests in watercourses or mineral rights in or on the lands. Since Coastal's claims are based on a lease to it from the State, it can have no better claim to the lands than the State. Both Defendants

are therefore barred from presenting facts in derogation of the solemn recitations in these conveyances.

The Marketable Record Title Act, which was the third ground relied upon by the District Court, was also properly applied. It is undisputed that Agrico and its predecessors have had record title to the lands by virtue of continuous chains of title extending for well over thirty years. It is also clear that prior to the 1978 amendment, the Act was fully applicable to claimed sovereignty lands. The 1978 amendment exempting sovereignty lands cannot be retroactively applied to divest Agrico of vested rights previously acquired. Further, the Defendants' claims do not fall within any of the statutory exceptions to the Act, and, accordingly, the Act was properly applied to quiet title to the lands in Agrico even if they were sovereignty in nature.

ARGUMENT

I. DO THE 1883 SWAMP AND OVERFLOW LANDS DEEDS ISSUED BY THE TRUSTEES INCLUDE SOVEREIGNTY LANDS BELOW THE ORDINARY HIGH-WATER MARK OF NAVIGABLE RIVERS?

Contemporaneous findings made by public officials when Agrico's lands were unconditionally conveyed into private ownership that no sovereignty lands were involved are not now open to question.

The characterization of the lands in the question certified does not fairly reflect the issue before the Court in this case for two reasons. The first is that the District Court held in the prior case of Cyanamid-Estech that "this state's unconditional conveyance of land to private individuals without reservation of public right is a contemporaneous finding that the land is not sovereignty land," which cannot be questioned at this late date. Coastal Petroleum Co. v. American Cyanamid Company, supra, 454 So.2d at 8 (A-23). Thus, under the District Court's holding no sovereignty lands are involved in this case. 6/ Secondly, the certified question incorrectly assumes that the beds of navigable rivers are at issue here. As pointed out in the statement of facts, this case differs from the other related cases now before this Court in that the beds of the Peace and Alafia Rivers are not involved. The undisputed facts show

6/ The District Court later stated: "As previously noted, we agree with the trial court's determination that these lands were not sovereign in nature." 454 So.2d at 9 (TA-26).

that Agrico's lands are far removed from these rivers. The waterbodies involved in this case consist of small non-meandered creeks, streams, swamps and ponds, not rivers.

The State of Florida and the United States determined years ago pursuant to classifications by duly authorized officials, based on approved governmental surveys, that Agrico's lands were not sovereignty lands, but were of a class and character which could lawfully be conveyed into private ownership. An administrative process was created pursuant to which land was classified as being swamp and overflow lands by both federal and state officials. 7/ Promptly after passage of the Swamp Lands Act, 9 U.S. Stat. 519 (1850), 43 USC §§981-84, the Florida General Assembly enacted Chapter 332, January 24, 1851, which authorized and directed the governor of the state to establish an administrative process by which swamp and overflow lands were to be identified, secured and classified. These lands were then to be listed with the State Register of Public

7/ The history of the constitutional and legislative acts which established the policies and procedures governing acquisition and disposition of all of Florida's public lands (including swamp and overflow, internal improvement and school lands) are detailed in the affidavit of Dean Joseph R. Julin, filed with the circuit court. (AA-61-80.) The purpose of the administration classification process was to provide a reasonable and reliable means by which state lands could be transferred into private ownership to bring about the settlement and improvement of the state. The result was to fund the construction of a system of public education, highways, and vast internal improvements which would otherwise have been economically infeasible. (AA-79-80.)

Lands and were subject to sale in accordance with previously enacted legislation. The Swamp Act itself directed the Secretary of the Interior to make a list and plats of swamp and overflow land, and, at the request of the governor, to cause a federal patent containing a legal description of the lands to be issued to the state. (AA-76-77.)

In 1855, the General Assembly enacted Chapter 610 of the Florida Statutes which gave the Trustees the power of sale over swamp and overflow lands. (AA-78-79.) At this time, the identification and classification process of swamp and overflow lands was largely incomplete. State and federal legislation had, however, established a concurrent administrative process through which these lands would be identified and classified to establish a reliable root of title, which was essential to the state's ability to sell the lands. (AA-79.)

Corresponding state and federal decisions establish that these factual determinations of long ago by presumptively authorized public officials of the physical character of lands as "swamp and overflow" are final and cannot be subject to challenge. Odom v. Deltona Corporation, 341 So.2d 977 (Fla. 1976); Pembroke v. Peninsular Terminal Co., 108 Fla. 46, 146 So. 249 (1983); Morgan v. Canaveral Port Authority, 202 So. 2d 884 (Fla. 4th DCA 1962); French v. Fyan, 93 U.S. 169 (1876); McCormick v. Hayes, 159 U.S. 332 (1895); Heath v. Wallace, 138 U.S. 573 (1891).

French v. Fyan, supra, involved the question whether as against a patent issued by the United States to Missouri under the Swamp Act, it was competent to show by parol testimony that the lands patented were not, in fact, swamp and overflow lands within the meaning of the Act. The Court held:

> It would be a departure from sound principle, and contrary to well considered judgments in this court and in others of high authority, to permit the validity of the patent to the State to be subjected to the test of the verdict of a jury on such oral testimony as might be brought before it. It would be substituting the jury, or the court sitting as a jury, for the tribunal which Congress had provided to determine the question, and would be making a patent of the United States a cheap and unstable reliance as a title for lands which it purported to convey.

93 U.S. at 169-173 (emphasis supplied).

In McCormick v. Hayes, supra, the United States Supreme Court reversed a state court judgment which had held that certain lands that had not been determined by the Secretary of the Interior to be "swamp and overflow" were nonetheless within the scope of the Swamp Act. Following a survey, the Secretary had classified only a portion of a section as "swamp and overflow" at the request of the state governor, omitting the disputed land from such classification. McCormick established that once the Secretary of the Interior, concurrently with the governor of the state, has

determined the character of the land, this finding is final and binding on all courts, including state courts:

> Upon the authority of former adjudications, as well as upon principle, it must be held that parol evidence is inadmissible to show, in opposition to the concurrent action of Federal and state officers, having authority in the premises, that these lands were in fact on the date of the Act of 1850, swamp and overflowed grounds . . .

159 U.S. at 348. See also Heath v. Wallace, 138 U.S. 573, 585 (1891) ("the decision of the land department on the question of the actual physical character of certain lands is not subject to review by the courts"); Mays v. Kirk, 414 F.2d 131, 135 (5th Cir. 1969) ("a decision of the Secretary of the Interior as to whether certain lands are within the terms of the general swamp land grant is controlling.")

This Court applied the same reasoning in Pembroke v. Peninsular Terminal Co., supra, to preclude a challenge to a landowners' title to submerged lands on the ground that the lands were in fact sovereignty lands which the Trustees had no power to convey. The claim was that the deed from the Trustees "erroneously or falsely recited that the lands conveyed were lands 'upon which the water is not more than three feet deep at high tide,'" and thus fell outside the scope of the 1917 Act, Fla. Laws 1917, ch. 7304, §1, authorizing the sale of submerged tidal lands of that character. In rejecting the challenge, this Court held that the Trustees, being public officials, were presumed to have

complied with their duty to correctly ascertain the character of the lands. The Court agreed with the trial court that "the title and ownership of the land in question should rest on a grant, and not upon an evidentiary fact." 146 So. at 257. See also Sawyer v. Modrall, 286 So.2d 610, 612 (Fla. 4th DCA 1973), cert. denied, 297 So.2d 562 (Fla. 1974); Morgan v. Canaveral Port Authority, 202 So.2d 884 (Fla. 4th DCA 1962).

Odom v. Deltona, supra, construed Section 197.228(2), Florida Statutes, as a legislative recognition of this policy precluding relitigation of the determinations of public officials as to the nature and character of state lands transferred into private ownership. The statute provides:

> 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. (Emphasis supplied.)

In Odom, the trial court judgment, republished by this Court in its opinion, held that Section 197.228(2) established "certain conclusive presumptions and limitations of claims:"

> There is a recognition in Section 197.228(2) that an unconditional conveyance by the state or national government of a described area to private ownership without a specific reservation is in itself a contemporaneous finding

> that such area is not sovereignty property and that such finding should not be questioned. The actions of duly constituted authority are recognized as entitled to be regarded as based on a proper exercise of powers conferred and not a usurpation or other illegal conduct.

341 So.2d at 984 (emphasis supplied).

The trial court in Odom further noted that this statute "is at pains to recognize conveyances by government authority purporting to transfer to private ownership a described area as effective to include lakes, ponds, and overflow lands unless the instrument makes a reservations of them." Id. at 982 (emphasis supplied). This Court specifically recognized the correctness of this portion of the trial court's opinion in admonishing the Trustees that "[i]f a standard other than that which has been expressed by statute and by the Constitution is proper, then it is the duty of the people and The Legislature, not the courts of Florida, to make this determination." Id. at 988.

The Trustees argue that since they did not obtain title to freshwater sovereignty lands until 1969, the earlier Trustees who executed the deeds to Agrico's predecessors were without authority to convey sovereignty lands of this character. (TB-10-11). They reason that even though the deeds made no reservation for such lands, contemporaneous evidence should be examined to determine whether sovereignty lands were in fact involved. The same argument concerning lack of authority raised by the Trustees in this case

obviously would apply just as well to the freshwater lakes and ponds before the Court in Odom. 8/ The simple answer is that Odom forecloses this type of inquiry since, as a matter of law, no sovereignty lands are involved.

Moreover, Odom and this case are distinguishable from the authorities cited by the Trustees because in none of those cases did the State seek to impeach the showing made by an official government survey as to the character of the lands at issue. As this Court in Odom observed, "at this late date, we are not in a position 'to evaluate the work of those surveyors of many decades past' and can merely accept their work as correct, particularly since the state itself has relied on it constantly since it was completed." 341 So.2d at 988. 9/

8/ The Trustees also asserted their lack of statutory authority in the brief they filed in Odom. Brief of Trustees, at 32, 35-36.

9/ Odom thus recognized the practical difficulties inherent in any contemporaneous factual determination of navigability of a particular waterbody as of 1845. The trial court opinion stated:

> . . . Fresh water lakes and ponds do change rather significantly because of both natural and artificial alterations in the areas involved. It is to be observed that governmental conveyances were made in reliance on them and the grantees of such conveyances had the right to assume the U.S. government and the Trustees were acting lawfully.

341 So.2d at 984.

The related concept of "notice of navigability" argued by the Trustees has no applicability to the instant case for the same reasons that this Court rejected its applicability in Odom. "Notice of navigability" has been applied only in cases involving grants of unsurveyed land along concededly navigable waterbodies. Martin v. Busch, 93 Fla. 535, 112 So. 274 (1927) (Lake Okeechobee); Pierce v. Warren, 47 So.2d 857 (Fla. 1950) (Biscayne Bay). The Trustees' suggestion that State, ex rel. Ellis v. Gerbing, 56 Fla. 603, 47 So. 353 (1908) involved surveyed lands is simply incorrect. 10/

In addressing the question of "notice of navigability" as applied to this case, the circuit court held:

> . . . The concept of implied "notice of navigability" set forth in Martin v. Busch, 112 So. 274 (Fla. 1927) is not applicable to the instant case. That decision established that a grantee of unsurveyed land bordering on an obviously navigable waterbody takes the land with notice that the conveyance does not include the sovereignty land underlying the waterbody. In this instance, not only were the LANDS surveyed by official government surveyors before they were conveyed into private ownership, but the small creeks, streams and low lying areas on these LANDS clearly do not classify as "obviously navigable" waterbodies. The Supreme Court in Odom held that it would be "absurd" to apply the concept of "notice of navigability" to the non-meandered lakes and ponds in that case. 341 So.2d at 988. It would be no less absurd to apply the doctrine here. (TA-6.)

10/ See Case No. 65,913, Answer Brief of Mobil Oil Corporation, Appendix, p. 25.

It must be emphasized again that, contrary to the statements of the Trustees (TB-29), this case does not involve the beds of the Peace and Alafia Rivers. Agrico's lands are far removed from these rivers, and in the case of the Peace River are about four and one-half miles away at the closest point. (AA-56.) The small non-meandered creeks, streams, ponds and swampy areas in this case provide no greater "notice of navigability" than did the waterbodies in Odom. 11/

The Trustees' sweeping contention that Odom does not deal with navigable waters and is therefore inapplicable to this case is belied by a cursory analysis of the Odom decision itself. The majority opinion noted at the beginning:

> The complex nature of the whole problem of navigable waters has created much doubt and controversy in attempting to determine what is or is not navigable water and sovereign land.

341 So.2d at 987. Later, in analyzing the effect of the Marketable Record Title Act, this Court stated:

> the claims of the Trustees to beds underlying navigable waters previously conveyed are extinguished by the [Marketable Record Title] Act.
>
> * * *
>
> It should be reiterated that, as stated in Sawyer, supra, ancient conveyances of

11/ The largest of the fourteen lakes involved in Odom was 367 acres. Two of the lakes had streams following out of them. Brief of Deltona, at 9-11.

> sovereign lands in existence for more than thirty years, when the State has made no effort of record to reclaim same, clearly vests marketable title in the grantees, their successors or assigns and the land may be recovered only by direct purchase or through eminent domain proceedings.

Id. at 989-990. There could hardly be a more clearly stated intention that this Court's holding addressed the problem of title to the bottoms of navigable waters.

Moreover, had this Court simply concluded that the waterbodies in Odom were non-navigable, it would have been wholly unnecessary to address the issues of legal and equitable estoppel and the applicability of the Marketable Record Title Act to sovereignty lands. The effect of application of these principles was that a consideration of the factual question of navigability became legally irrelevant, and, on that basis, summary judgment was granted to Deltona.

Finally, any public rights in or to waterways are not affected by the circuit court's judgment in this case. This case, as the other related cases, has not involved a dispute over the rights of the public in navigable waters of the state, but, rather, a longstanding legal battle between the phosphate companies and Coastal and the Trustees over proprietary rights to minerals. It was claims to phosphate ore asserted by Coastal and the Trustees in the Northern District of Florida that prompted Agrico to file its quiet title action. Indeed, the judgment of the circuit court is

expressly limited to insure that public rights of navigation and fishing, as well as the police powers of the state to regulate the use of the lands for environmental and other purposes, are not affected. (TA-10.)

The public trust doctrine as it has evolved in Florida does not prohibit the state from alienating lands underlying navigable waters. The State has in numerous instances divested itself of proprietary interests in sovereignty lands, both by legislation and by operation of law. Eg. State, ex rel. Peruvian Phosphate Company v. Board of Phosphate Commissioners, 31 Fla. 558, 12 So. 913 (1893) (statute granting right to mine phosphate); Trustees of Internal Improvement Fund v. Claughton, 86 So.2d 775 (Fla. 1956) (general acts granting riparian owners the right to bulkhead and fill channels); State ex rel Buford v. City of Tampa, 88 Fla. 196, 102 So. 336 (1924) (special act granting title to sovereignty lands under Hillsborough Bay and Hillsborough River to City of Tampa); Sawyer v. Modrall, 286 So.2d 610 (Fla. 4th DCA 1973), cert. denied, 297 So.2d 562 (Fla. 1974) (MRTA intended to operate against the State as to sovereignty lands); Trustees of Internal Improvement Fund v. Lobean, 127 So.2d 98 (Fla. 1961) (legal and equitable estoppel); Trustees of the Internal Improvement Fund v. Wetstone, 222 So.2d 10 (Fla. 1969) (failure of Trustees to establish mean high water mark operated to quiet title to meander line, notwithstanding inclusion of submerged land).

These decisions illustrate that even where the State has parted with its proprietary interest in lands under navigable waters, it retains the governmental authority to protect the public trust by insuring the lands are not used in a manner contrary to the public interest. 12/

The real question in this case is not whether, as the Defendants suggest, the public trust is being abandoned, but rather, whether the State will be allowed to repudiate the solemn agreements contained in the deeds between the State and its people, which have stood unchallenged for generations as a basis of title for countless sales and dealings in land. As to the lands at issue in this case, Agrico and its predecessors have held record title throughout this time, have paid taxes on both the lands and the minerals extracted therefrom, and have spent millions of dollars in improving

12/ The fact that private ownership of the bed of a navigable waterbody is not inconsistent with public use of the overlying waters has been recognized by the commentators. See Maloney, Plager & Baldwin, Water Law and Administration, Ch. 12, at 42 (1968):

> [P]ublic rights to use of the water can be protected without necessarily invalidating those privately held deeds which may have already been granted to the bottomland. This result can be explained on the theory that the trust doctrine applies separately to the waters of a navigable waterbody, as well as to the beds when they are state owned. The waters and the rights to them are thus held in trust for the public, regardless of bed ownership.

Citing Gies v. Fischer, 146 So.2d 361 (Fla. 1962); see also Rosen, Public and Private Ownership Rights in Lands Under Navigable Waters: The Governmental/Proprietary Distinction, 34 U. Fla. L. Rev. 561 (1982).

the lands and developing their resources. The State and its subdivisions and agencies have reaped incalculable benefits from Agrico's ownership, possession, and improvement of the lands, through increased governmental revenues, creation of jobs, and enhancement of the overall economy.

In Askew v. Taylor, the Florida First District Court of Appeals stated:

> Public officers are presumed to do their duty. The Court will, therefore, assume that the then trustees, before executing the deed to plaintiff's predecessor in title, made the findings necessary to make their acts legal.
>
> The Supreme Court, almost a century ago, held that "common honesty is quite as respectable on the part of the State as in an individual, and hence the state will be honest and not repudiate." Cheney v. Jones, 14 Fla. 587 (610-611).
>
> Applying this principle, the Court holds that the State must be honest with the plaintiff and not repudiate its solemn deed.
>
> If, perchance, the trustees have executed conveyances they should not have executed and divested the State of assets which the public interest now requires the State to own, the State has an adequate remedy. It may exercise the power of eminent domain and re-acquire the assets improvidently sold, thus protecting the integrity of the State and making whole the citizens who would otherwise be defrauded.

Askew v. Taylor, 299 So.2d 72, 74 (Fla. 1st DCA 1974). This fundamental principle was an essential aspect of this Court's decision in Odom. It is no less applicable here.

The basic issue involved in the first certified question is whether the findings of 19th century public officials officially charged with classification of public lands are to

be second guessed by a court or jury, sitting one hundred years later, which may or may not find a contrary set of facts to have existed. These classifications were based upon official government surveys, were conducted pursuant to express directives of the legislature, and have stood unchallenged for generations. Agrico submits that these public officials must at this late date be assumed to have carried out their duties honestly, fairly, and correctly, and that the deeds to Agrico's predecessors must be held, as a matter of law, not to have conveyed sovereignty lands.

II. DOES THE DOCTRINE OF LEGAL ESTOPPEL BY DEED APPLY TO THE 1883 SWAMP AND OVERFLOW DEEDS BARRING THE ASSERTION OF TITLE TO SOVEREIGNTY LANDS?

> ...Stability of titles expressly requires that, when lawfully executed land conveyances are made by public officials to private citizens without reservation of public rights in and to the waters located thereon, a change of personnel among elected state officials should not authorize the government to take from the grantee the rights which have been conveyed previously without appropriate justification and compensation. If the state has conveyed property rights which it now needs, these can be reacquired through eminent domain; otherwise, legal estoppel is applicable and bars the Trustees' claim of ownership....

Odom v. Deltona, supra, 341 So.2d at 989, citing Trustees of Internal Improvements Fund v. Lobean, 127 So.2d 98 (Fla. 1961).

The Trustees and Coastal attempt to avoid the clear applicability of Odom and Lobean to this case by arguing that the Trustees could not have conveyed legal title to Agrico's predecessors because, at the time of the conveyances, the Trustees were without authority to convey title to fresh-water sovereignty lands. 13/ This position is clearly inconsistent with this Court's holdings in Lobean and Odom.

In Lobean, the state had erroneously conveyed submerged tidal lands underlying Gasparilla Sound to Lobean by a 1946 Murphy Act Deed, which was void because sovereignty lands therein involved were not subject to taxation. In 1956, the State, over Lobean's objections, attempted to sell the same land to another party under the Bulkhead Act, Section 253.12, Florida Statutes (1955). Lobean thereafter filed suit to enjoin the sale on the ground that the State was estopped by virtue of its prior conveyance.

On appeal, the First District Court of Appeal reversed the circuit court's judgment for the State, holding that the Trustees were legally estopped to deny Lobean's title even though the Murphy Act deed was void. This Court affirmed the holding of the District Court.

13/ Ch. 69-308, Laws of Fla. §1 (1969) amended Fla. Stat. §253.12, to include the title to navigable fresh water lakes, rivers, and streams. Prior to the 1969 amendment, §253.12 provided that title to state sovereignty lands "[e]xcept submerged lands heretofore conveyed by deed or statute, and submerged lands in navigable freshwater lakes, rivers and streams" was vested in the Trustees.

A close analysis of the facts of the case, as reported in the District Court's opinion, clearly reveals that, contrary to the assertions of Coastal and the present day Trustees, the Trustees of 1946 were not statutorily authorized to convey the submerged lands that had been erroneously deeded to Lobean. The District Court described the physical characteristics of "Government Lot 1, Section 11, Township 43 South, Range 20 East," the land in question, as follows:

> . . . The land is separated from the nearest dry land by an established channel at least six feet deep from the date of the tax deed to the present time.

118 So.2d at 227. (Emphasis supplied).

Prior to 1951 when the Trustees were given title by virtue of Chapter 26776, Florida Laws (1951) to all sovereignty tidal bottoms irrespective of water depths (except those in Dade and Palm Beach Counties), the only authority for the Trustees to convey tidal waterbottoms was bestowed by Chapter 7304, Laws of Florida (1917). The 1917 act extended to "islands, sand bars and banks upon which the water is not more than three feet deep at high tide and which are separated from the shore by a channel or channels not more than five feet deep at high tide." The lands which had been conveyed to Lobean plainly did not fit this classification.

In Odom, this Court applied legal estoppel to bar the Trustees' claims to purported sovereignty lands underlying freshwater lakes. Manifestly, the Trustees' protestations

that they were without authority prior to 1969 to convey freshwater sovereignty lands would apply equally as well to Deltona's lands in Odom which had all been conveyed into private ownership long before that time. 341 So.2d at 980. 14/ The simple truth is that in both Odom and in the present case the conveyances were based on the undisputed authority of the Trustees to convey swamp and overflow lands 15/, which authority the later day Trustees are now estopped to deny.

Legal estoppel or estoppel by deed has been applied against the State, its agencies, or local governments in other contexts where the conveyances have been claimed to be void for lack of authority. Eg. City of Tarpon Springs v. Koch, 142 So.2d 763, 763, 765-766 (Fla. 2d DCA 1962) (city estopped to repudiate former deed by denying its authority to sell by virtue of noncompliance with city charter); Florida Board of Forestry v. Lindsay, 205 So.2d 358, 359-61 (Fla. 2d DCA 1967). Lobean and Odom establish that the same

14/ Most of the government patents and deeds in Odom were executed before the turn of the century, but the most recent were issued in 1952. Id. In addressing the applicability of legal estoppel to these conveyances, the Trustees in Odom also asserted their lack of statutory authority to convey sovereignty lands. They stated:

> Most of the conveyances in the property herein involved were made by the Trustees at a time in which the Trustees had the authority to and intended to convey only swamp and overflow lands.

Brief of Trustees, at 35.

15/ Ch. 610, Laws of Fla. (1855).

principles apply to State conveyances of assertedly sovereignty lands.

A corollary to the doctrine of legal estoppel is the concept of after-acquired title, which was defined in Tucker v. Cole, 148 Fla. 214, 3 So.2d 875, 877 (1941) as follows:

> As a general rule, when a person conveys land in which he has no interest at the time, but afterwards acquires title to the same land, he will not be permitted to claim in opposition to this deed, from the grantee, or any person claiming title from the grantee.

See also Daniell v. Sherrill, 48 So.2d 736, 740 (Fla. 1950) ("Normally a title acquired by a grantor subsequent to conveyance will inure to the benefit of his grantee.... This rule applies to states as well as individuals.")

Since the Trustees had acquired statutory authority to convey the Lobean tract in 1951, the result in Lobean is consistent with and supported by the concept of after-acquired title. This Court in fact recognized in Lobean that after-acquired title was applicable to its holding:

> ... In other words, legal estoppel contemplates that if I execute a deed purporting to convey an estate or land which I do not own or one that is larger than I own and I later acquire such estate or land, then the subsequently acquired land or estate will by estoppel pass to my grantee.

127 So.2d at 102 (emphasis supplied).

In addressing the Trustee's contention concerning lack of statutory authority, the District Court in Cyanamid-Estech also relied on after-acquired title. The court held:

> Again, in addressing this issue, the Trustees urge that the lands were sovereignty in character, but they did not obtain title to them until the legislature enacted chapter 69-308, Laws of Florida. See §253.12, Fla. Stat. (1971) (vesting title to submerged lands under navigable waters in the Trustees). Thus, they argue that they were without authority to ever convey title until more than eighty years after issuance of the deeds relied on by plaintiffs. Even assuming, arguendo, that the lands were sovereignty as opposed to swamp and overflowed lands, titles acquired by defendants to these lands after their conveyance to the plaintiffs inured to the benefit of the plaintiffs as grantees.

Coastal Petroleum Company v. American Cyanamid Company, supra, 454 So.2d at 9 (TA-24). (Emphasis supplied). This holding is fully supported by this Court's decisions in Odom, Lobean, and other cases.

After-acquired title is consistent as well with the application of legal estoppel in the Odom decision since the Trustees had obtained title to the freshwater sovereignty lands in 1969 prior to their dispute with Deltona. The same principle is available, if needed, to quiet Agrico's title. Thus, even if the lands were sovereignty lands when Agrico's predecessors acquired their deeds, and title did not then pass, fee simple ownership vested immediately in 1969 when the Trustees acquired title to "freshwater sovereignty lands." In fact, the Trustees had long before, in 1923 and again in 1929, acquired the statutory authority to sell or lease the mineral interests which are the crux of the dispute between Agrico and the Defendants in this case. Ch. 9289,

Laws of Fla. (1923); Ch. 13670, Laws of Fla. (1929). As to these mineral interests, the Trustees after-acquired title was sufficient, under any circumstances, to vest title in Agrico over sixty years ago. 16/

When the presumptive effects of non-meandering as stated in Odom are considered together with the settled principles of estoppel established by this Court, the result is unmistakable. After the government's official survey has stood unimpeached for so many years, the Trustees are estopped to rebut the presumption of non-navigability, and are further estopped to challenge the authority of the earlier Trustees to convey in accordance with the recitations of their deeds. That was the result in Odom. The same result is required here. 17/

16/ The doctrine of after-acquired title applies to lesser property interests than fee simple. Spencer v. Wiegert, 117 So.2d 221, 226 (Fla. 2d DCA 1959).

17/ In this case, as in Odom, 341 So.2d at 979, some of the conveyances to Agrico's predecessors were by patent from the United States, not by deed. Contrary to the assertion of Coastal, however, these patents do not constitute nearly one-half of the total lands involved in this suit. In fact, as can easily be seen in the abstractor's affidavit establishing the origins of Agrico's title, only a very small proportion of the total lands were patented by the United Stated directly into private ownership. (AA-1-52). As to these lands, obviously estoppel by deed would technically not be applicable. Title to these lands should however be quieted in Agrico for the reasons stated under Points I and III, as well as all other legal and equitable points decided by the circuit court.

III. THE FLORIDA MARKETABLE TITLE ACT PERFECTED AGRICO'S TITLE AGAINST ANY CLAIMS OF THE TRUSTEES AND COASTAL.

The circuit court and the District Court also relied upon the Marketable Record Title Act (MRTA), Chapter 712, Florida Statutes, in holding that title was properly quieted in Agrico since Agrico had record title to the lands based on continuous chains of title transactions for more than 30 years prior to 1963, the effective date of the Act. The holdings of the lower courts on this issue are supported by what has now become a legion of precedent under Florida law. The applicability of MRTA to lands claimed to be "sovereignty" can no longer be subject to any doubt.

Excluding the District Court's decisions in Cyanamid-Estech and in this case, MRTA has been applied in at least six other reported cases to alleged sovereignty lands. Sawyer v. Modrall, 286 So.2d 610 (Fla. 4th DCA 1973), cert. denied, 297 So.2d 562 (Fla. 1974); Odom v. Deltona Corp., supra; Starnes v. Marcon Investment Group, 571 F.2d 1369 (5th Cir. 1978); State Board of Trustees of the Internal Improvement Trust Fund v. Laney, 399 So.2d 408 (Fla. 3d DCA 1981); State Department of Natural Resources v. Contemporary Land Sales, Inc., 400 So.2d 488 (Fla. 5th DCA 1981); and Board of Trustees of the Internal Improvement Trust Fund v. Paradise Fruit Co., Inc., 414 So.2d 10 (Fla. 5th DCA 1982), rev. denied, 432 So.2d 37 (Fla. 1983). In each case, title has been confirmed in the private party claiming under MRTA

against allegations that a sovereignty interest was preserved from extinguishment, and four of these cases were adjudicated by summary judgment. No decision, state or federal, has ever held that sovereignty lands are exempted from operation of MRTA.

The first appellate court decision to consider the applicability of MRTA to sovereignty lands, Sawyer v. Modrall, supra, held that MRTA was effective to clear the title of a remote grantee of the Trustees to submerged lands in the intercoastal waterway in Palm Beach County against the claim of another private landowner. The Fourth District Court of Appeals in that case stated that MRTA extinguished all claims, whether private or governmental, which were not specifically exempted by the Act, and that no state government reservation of title to sovereignty lands could be implied. 286 So.2d 610. Despite a vigorous dissent by Justice Erwin (which raised many of the same issues asserted by the Defendants herein), this Court denied certiorari. Modrall v. Sawyer, 297 So.2d 562 (Fla. 1974).

In Odom, this Court expressly adopted the holding of the District Court in Sawyer as to the applicability of MRTA to sovereignty lands, and expanded upon its reasoning:

> It seems logical to this Court that, when the Legislature enacts a Marketable Title Act, as found at Chapter 712, Florida Statutes, clearing any title having been in existence thirty years or more, the state should conform to the same standard as it requires of its citizens; the

> claims of the Trustees to beds underlying navigable waters previously conveyed are extinguished by the Act.
>
> * * *
>
> It should be reiterated that, as stated in Sawyer, supra, ancient conveyances of sovereign lands in existence for more than thirty years, when the State has made no effort of record to reclaim same, clearly vests marketable title in the grantees, their successors or assigns and the land may be recovered only by direct purchase or through eminent domain proceedings.

341 So.2d 989-990 (emphasis supplied).

The Trustees' attempt to distinguish the holding in Sawyer is ill-founded. The root of Sawyer's title was, as is set forth several times in the District Court's opinion, a 1890 deed from the Trustees. 286 So.2d at 611-612. Contrary to the assertion of the Trustees, the early Trustees would not have obtained statutory authority to sell the lands involved in Sawyer until at least 1913, 23 years after the time of the conveyance, and even this is doubtful. 18/ The

18/ Ch. 6451, Laws of Fla. (1913). This Act gave the Trustees title to submerged lands in Dade and Palm Beach Counties "upon which the water is not more than three feet deep at high tide and which are separated from the shore by a channel or channels, not less than five feet deep at high tide." It was the predecessor to the 1917 Act referred to supra, which granted title to Trustees for similar lands throughout the state. The District Court described Sawyer's lands as "primarily under water of varying depths," 286 So.2d at 611; thus, it is uncertain whether the lands in that case would have met the criteria even under the 1913 Act.

The statutes cited by the District Court in Sawyer as authority for the 1890 deeds, Ch. 3461, Laws of Florida (1885) and Ch. 3995, Laws of Florida (1886), were not "early bulkhead laws" as described by the Trustees.

circuit court's judgment in Sawyer expressly recognized that at the time of the 1890 deed the Trustees did not have statutory authority to convey the disputed land. It concluded:

> (a) At the time of the purported conveyance from the Trustees of the Internal Improvement Fund to Florida Coast Line and Transportation Company, Plaintiff's predecessor in title, that part of the land consisting of submerged coastal marshland was sovereignty land and was not legally alienable by the Trustees.

286 So.2d at 611 (emphasis supplied). In reversing the trial court's judgment, the District Court thus necessarily concluded that for purposes of application of MRTA, the question of the statutory authority of the Trustees was irrelevant.

Neither City of Miami v. St. Joe Paper Co., 364 So.2d 439 (Fla. 1978), nor Askew v. Sonson, 409 So.2d 7 (Fla. 1981), cited by the Trustees, represents any retreat from Odom. Each case merely declined to rule upon the effect of the 1978 MRTA Amendment exempting state title to lands under navigable waters upon sovereignty claims otherwise barred prior to the effective date of the amendment, since such a ruling was not required by the facts of either case. Askew v. Sonson in fact cited Odom with approval.

With respect to the 1978 amendment, the District Court in Cyanamid-Estech agreed with the holding of the Fifth District Court of Appeals in Paradise Fruit, supra, that the new

exemption for sovereignty lands may not be applied retroactively:

> . . . (W)e align ourselves with the view recently expressed by the Fifth District Court of Appeal. There our sister court held that section 712.03(7) does not apply retroactively even where the Trustees themselves wrongfully issued a deed at the "root of title" prior to the initial passage of MRTA in 1963. Board of Trustees of the Internal Improvement Trust Fund. v. Paradise Fruit Co., 414 So.2d 10 (Fla. 5th DCA 1982), petition for review denied, 432 So.2d 37 (Fla. 1983). Here, as in Paradise Fruit Co., the Trustees executed the deeds, which are the plaintiffs' "root of title." §712.01(2), Fla. Stat. (1981). Plaintiffs' 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. Paradise Fruit Co., 414 So.2d at 11.

Coastal Petroleum Company v. American Cyanamid, supra, 454 So.2d at 9 (TA-26).

This interpretation is fully in accordance with the legislative history of the amendment as well as fundamental principles of statutory construction. The legislative history plainly reflects a conscious refusal to provide for retroactive application. 19/ Under these circumstances, it is clear that the statute must be construed as prospective only.

19/ Ch. 78-288, §1, Laws of Florida, effective June 15, 1978. The legislative history was aptly summarized in the respondents' brief in Cyanamid-Estech, Case Nos. 65,755 and 65,796. That portion of the respondents' brief is attached as an appendix to this brief. (AA-81-86).

There is no principle of statutory construction stronger and more deeply rooted than the presumption against retroactivity. This Court clearly and emphatically expressed this "vitally important" policy in Trustees of Tufts College v. Triple R. Ranch, 275 So.2d 521, 524 (Fla. 1973):

> Historically, courts have indulged in the presumption that the Legislature intended a statute to have prospective effect only. The bias against retroactive legislation is deeply rooted in the Anglo-American law. Coke established the maxim, 'Nova constitutio furturis forman imponere debet non praeteritas.' (A new state of law ought to affect the future, not the past). Blackstone wrote that it was a matter of justice that statutes should operate in futuro. A statute will be construed as prospective only unless the intention of the Legislature to give it a retroactive effect is expressed in language to [sic] clear and explicit to admit of reasonable doubt. (Footnotes omitted.)

In Tufts, this Court quoted its earlier opinion in In Re Seven Barrels of Wine, 79 Fla. 1, 83 So. 627, 631, 632 (1920) to emphasize that retroactive legislation which impairs vested rights is invalid:

> The provisions of the federal and state Constitutions securing defined property rights against invasion by state authority are limitations upon the lawmaking power of the Legislature, as well as upon the powers of the other departments of the state government; and property not harmful in itself, that is legally acquired as such by persons for lawful purposes, and not used, or designed to be used, for, or in connection with, or in furtherance of, an unlawful act or purpose, cannot legally be destroyed by the authority of a statute that is enacted subsequent to the lawful acquisition of the property, when such destruction is not expedient to conserve the rights of others or of the public welfare. The police power of the state is not absolute. It is subject to

> controlling provisions of the federal Constitution . . .
>
> * * *
>
> We emphasize the language in In Re Seven Barrels, supra, that a statute should not be given retrospective effect when it jeopardizes the validity of the statute.

275 So.2d at 525. See also Fleeman v. Case, 342 So.2d 815, 817 (Fla. 1976); Board of Trustees of the Internal Improvement Trust Fund v. Medeira Beach Nominee, Inc., 272 So.2d 209, 214 (Fla. 2d DCA 1973).

The Trustees' attack on the constitutionality of MRTA is disposed of by this Court's decision in City of Miami v. St. Joe Paper Company, supra, 364 So.2d 439, and requires no extended response.

Defendants' remaining argument that the recording of the lease between the Trustees and Coastal preserves their claims as an exception to MRTA under Section 712.03(4), Fla. Stat., also misses the mark. The most obvious reason is that the Trustees' sovereignty claim does not arise out of the lease as required by Section 712.03(4). 20/

Secondly, the general reference in Lease 224-B to "the bottoms of and water bottoms adjacent to" the Peace and Alafia Rivers, "together with all connecting sloughs, arms

20/ Although Coastal's claim does arise from the lease, it is ultimately derivitive of the Trustees' claim. As the circuit court held, if the Trustee's claim to the lands at issue fails, so does Coastal's.

and overflow lands located in such waters" is too vague and indefinite to identify the location and boundaries of the lands claimed, and, thus, cannot constitute a "title transaction" under MRTA even if the lease were otherwise sufficient. The intractable compexities of applying such a nebulous standard are especially apparent with reference to the lands in this case. It is uncontested that the beds of the Peace and Alafia Rivers themselves are not at issue here, and that Agrico's lands are far removed from these rivers.

A description of land submerged or high and dry must be sufficiently definite and certain to enable the land to be identified and located by a competent surveyor; otherwise; the instrument is void for uncertainty. Deering v. Martin, 95 Fla. 224, 116 So. 54 (1928). In Paradise Fruit Co., supra, the Fifth District Court of Appeals considered an almost identical argument by the Trustees that the recording of a consent decree regarding Coastal's Lease 248 which made similar reference to "all the water bottom lying within the following lakes: St. John's River" constituted a "title transaction." The Court rejected the Trustees' claim holding that the description was too vague to describe lands sufficiently to identify its location and boundaries. 414 So.2d at 11, n.2.

Coastal's argument that the 1981 amendment to the definition of "title transaction" under section 712.01(3) came "too late" to be considered in this case (CB-43) cannot

be sustained. The quiet title actions brought by Agrico and the other phosphate companies were all filed after the effective date of the 1981 amendment, and, in any event, Section 718.01(3) enacted in conjunction with the amendment, unlike the sovereignty lands exemption, contains an express "savings clause" which not only signifies a legislative intent that the amendment be given retroactive effect, but eliminates any constitutional impediment. Triple R. Ranch, supra, 275 So.2d at 526-27; City of Miami, supra, 364 So.2d at 443-44. Moreover, a specific identification of the property is inherently essential to put others on notice of the interest purportedly conveyed by a recorded instrument, and was held to be required by MRTA even before the 1981 amendment. See Whaley v. Wotring, 225 So.2d 177, 180 (Fla. 1st DCA 1969). 21/

Coastal's claim that Agrico had "actual knowledge" in 1961 of its claim to the lands is wholly unsubstantiated by the record. In fact, the record is clear that Agrico did not even acquire any of the lands until 1972. As noted, Agrico's lands are at the very closest point four and one-half miles

21/ Coastal's contention that the recording of the judgment in Collins v. Coastal Petroleum Company, 118 So. 2d 796 (Fla. 1st DCA 1960) is a sufficient "title transaction" was not presented to the District Court and thus has not been preserved for review here. (See AA-87-101, containing Coastal's entire argument on the question of title.) In any event, the Collins opinion suffers from the same fatal infirmity as the lease itself. In fact, the decision contains no description whatsoever of the lands involved, but refers only to the type of mineral interests encompassed within the lease.

from the Peace River. Thus, even if it can be inferred or implied that Agrico had actual knowledge of Coastal's claims to the Peace River, there is nothing to suggest that Agrico knew those claims included at the time, or would later include, the lands involved in this action. In addition, Coastal does not cite a single decision under MRTA holding that implied actual notice within the thirty year period is sufficient to preserve an adverse claim from extinguishment. There are no decisions under Florida law applying the doctrine of implied actual notice to preserve a purported interest or claim from extinguishment under MRTA, nor is actual notice specified as an exception in the Act. This Court held in Marshall v. Hollywood, Inc., 236 So.2d 114, 117 (Fla. 1970), that with regard to MRTA, construction and application of precedents relating to simple recording acts and other less comprehensive statutes "[do] not make good law."

Lastly, in addition to the lack of adequate land description, the lease recorded in Polk County in 1954 does not qualify as a "title transaction" because it did not have a proper acknowledgement, but was merely an unsigned printed copy attached to a royalty deed from Coastal to a third party. To qualify as a "title transaction" under MRTA, an instrument must "affect title," at least to the extent that it casts a cloud thereon. Marshall v. Hollywood, Inc. 224 So.2d 743, 749 (Fla. 4th DCA 1969), cert. discharged 236 So.2d 114 (Fla. 1970). Under Florida law, an

unacknowledged instrument is legally insufficient and does not affect, or even create a cloud on, the title to the property involved. Lassiter v. Curtiss-Bright Co., 129 Fla. 728, 177 So. 201, 203 (1937); Leatherman v. Schwab, 98 Fla. 885, 124 So. 459, 460 (1929).

The lower court's holding that MRTA barred the claims of the Defendants is supported by the undisputed facts of record and the law as consistently interpreted by a series of decisions of Florida appellate courts, including this Court's opinions in Sawyer and in Odom. This Court has held on numerous occasions that stare decisis applies with particular force and exactitude to judicial decisions which have determined questions regarding real property and vested rights. Askew v. Sonson, supra, 409 So. 2d at 15; State ex rel Motter v. Johnson, 107 Fla. 47, 144 So. 299 (1932). The reasons for this policy were set forth in In Re Seaton's Estate, 154 Fla. 446, 18 So. 2d 20, 22 (1944):

> In general, when a point has once been settled by judicial decision it should, in the main, be adhered to, for it forms a precedent to guide the courts in future similar cases. Especially is this so where a decision construing a statute affects the validity of a certain mode of transacting business or passing title to property, and a change of decision will necessarily confuse or invalidate transactions entered into and acted upon the reliance upon the law as judicially construed. Under such circumstances it has been held that when a point of law has been settled by judicial decision it forms a precedent which may not be departed from no matter what may be the personal predilections of the individual justices. (emphasis supplied).

If this Court's holdings regarding the effect of MRTA, and the doctrines of legal estoppel and after-acquired title, are overturned with respect to lands that the State now claims are sovereignty, the effect on landowners throughout Florida would be disastrous. Every homeowner, developer, or motel operator near a brook, creek, or pond would need to examine in detail whether the land, to which he nevertheless has clear record title, was at the time of statehood, March 3, 1845, covered by a navigable waterbody. Even then, the private owner's findings, no matter how carefully derived, will never be conclusive because they may always be later challenged by the State or its agencies. A determination of the contemporaneous navigability of inland waterbodies is at best a difficult undertaking. To ascertain today with precision the natural condition of these non-meandered waters at a point in time one hundred forty years ago is not only a nearly impossible task, but to require such a re-determination would upset countless land transactions and thrust the titles of large areas of this state into turmoil.

The Defendants have shown no reason why this long line of authority should be overturned. The judgment in favor of Agrico should be affirmed.

CONCLUSION

The decisions of the courts below adjudicating Agrico's title to be superior to the claims of Coastal and Trustees,

far from constituting a "radical departure" from existing law, precisely followed the reasoning and logic of controlling precedent.

The classification of the subject lands generations ago by state and federal officials, based on approved governmental surveys, is a contemporaneous finding that the lands involved are not sovereignty in nature which cannot now be questioned.

The doctrine of legal estoppel similarly bars the Defendants' claims in derogation of the State's solemn deeds to Agrico's remote predecessors in title, which were absolute by their terms and did not reserve any interest in the State. The fundamental policy commanding that the government deal with honesty and integrity with its citizens demands no less.

The Defendants' claims are also barred by operation of the Marketable Record Title Act. At stake here is the stability of land titles and reasonable expectations of property owners throughout the state.

These questions are not new, but have been examined by this Court in Odom, Lobean, Pembroke v. Peninsular Terminal Co., Sawyer v. Modrall, and other cases. The Court's resolution of the issues in these cases fully supports the

decisions of the Courts below, and compels an affirmance of the judgment in favor of Agrico.

Respectfully submitted,

James B. Murphy Jr. for

DAVID G. HANLON and
JOHN W. PUFFER, III of
SHACKLEFORD, FARRIOR, STALLINGS &
EVANS, Professional Association
Post Office Box 3324
Tampa, Florida 33601
(813) 273-5000

and

FRED S. NELSON and
CLAIRE EAGAN of
HALL, ESTILL, HARDWICK, GABLE,
COLLINGSWORTH AND NELSON, P.C.
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
Attorneys for Respondent,
Agrico Chemical Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this 3rd day of April, 1985, by U.S. Mail to: ROBERT J. ANGERER, ESQUIRE, Post Office Box 10468, Tallahassee, Florida 32301; JOSEPH C. JACOBS, ESQUIRE, Post Office Box 1170, Tallahassee, Florida 32301; C. DEAN REASONER, ESQUIRE, 800-17th Street, N.W., Washington, D.C. 20006 and BRUCE BARKETT, ESQUIRE,

Department of Legal Affairs, Suite 1501, The Capitol, Tallahassee, Florida 32301.

James B. Murphy Jr. for
DAVID G. HANLON, ESQUIRE

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