

IN THE SUPREME COURT
STATE OF FLORIDA

CASE NO. 93,821

CITY OF WEST PALM BEACH,

Petitioner,
vs.

BOARD OF TRUSTEES OF THE
INTERNAL IMPROVEMENT TRUST
FUND OF THE STATE OF FLORIDA,

Respondent.

On Appeal from a Decision of the
Fourth District Court of Appeals

BRIEF OF **AMICUS CURIAE**, OLAN B. WARD, SR., MARTHA PEARL WARD,
ANTHONY TARANTO, ANTOINETTE TARANTO, J.V. GANDER
DISTRIBUTORS, INC., A FLORIDA CORPORATION, J.V.
GANDER, JR., AND THREE RIVERS PROPERTIES, INC.,
A FLORIDA CORPORATION, IN SUPPORT OF THE PETITIONER

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CERTIFICATE OF TYPE SIZE

This brief was typed using Courier 10cpi

INTRODUCTION AND INTEREST OF **AMICUS CURIAE**

~~On B. Wad, Sr., Mita Pad Wad, Attorney, Appellate Bar, J.M. Galt Districts, Inc., a Florida Corporation, J.M. Galt, Jr. and The River Properties, Inc., a Florida Corporation,~~

are all citizens and taxpayers of the state of Florida residing in Franklin County, Florida.

The wharves were built for commercial purposes in Franklin County, Florida. Each wharf has been used for a long period of time. No wharf is used in conjunction with dredging. Each wharf was completed during the effective term of the Butler Act.

Each wharf has been in continuous operation since prior to the final repeal of the Butler Act, which was the Florida Statute (1977) which repealed the Butler Act. The Butler Act was the Florida Statute (1977) which repealed the Butler Act.

The wharves are used for commercial purposes. The wharves are used for commercial purposes. The wharves are used for commercial purposes. The wharves are used for commercial purposes.

STATEMENT OF THE CASE AND FACTS

This case is filed in the Court on the 1st day of July, 1996, in the County of Franklin, Florida, in the case of City of West Palm Beach v. City of West Palm Beach, No. 96-144 (Fla. 3d DCA 1996) pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(vi).

Prior to filing this case, the City of West Palm Beach constructed certain wharves consisting of piers and dredges for municipal marina. All of these wharves were built during the effective term of the Butler Act.

Under the Butler Act, the City of West Palm Beach owned the dredges and the piers and the dredges which were built during the term of the Butler Act.

At trial, the City of West Palm Beach claimed that the dredges and the piers were built during the term of the Butler Act. At trial, the City of West Palm Beach claimed that the dredges and the piers were built during the term of the Butler Act. At trial, the City of West Palm Beach claimed that the dredges and the piers were built during the term of the Butler Act. At trial, the City of West Palm Beach claimed that the dredges and the piers were built during the term of the Butler Act.

SUMMARY OF ARGUMENT

It is well established that this Court is without jurisdiction to determine the issue of original ownership of the submerged lands beneath Appellants' piers, and for the first time before this Court by the Attorney General in his **Amicus Curiae** brief.

The parties' trial stipulation that Appellant owned the bottomlands beneath its piers is not binding on this Court. The parties' trial stipulation that Appellant owned the bottomlands beneath its piers is not binding on this Court. The Butler Act does not limit its divestiture of title to bottomlands beneath wharves. §253.129, the savings statute of the Butler Act, confirmed the title to all lands heretofore owned by the State to the bottomlands beneath structures or wharves which involve or depend upon the water for, including, and in connection with, their functional equivalent.

The Butler Act does not limit its divestiture of bottomlands to commercial enterprises. This Court believes that the Butler Act applies to the piers in question. This Court should not consider the stipulation that Appellant owned the bottomlands beneath its piers as a determination of the issue of original ownership of the submerged lands beneath Appellants' piers, or as a determination of the scope of divestiture accomplished by the Butler Act regarding structures or wharves, or as a determination of whether such structures are labeled wharves or are their functional equivalent.

ARGUMENT

I. THE TRIAL COURT'S JURISDICTION TO MAKE A FINAL DETERMINATION WHETHER DREDGING ACTIVITIES QUALIFY AS A PERMANENT IMPROVEMENT IS A FINAL DETERMINATION OF THAT ISSUE, AND THE TRIAL COURT MADE NO FINAL SUBSTANTIVE DETERMINATION OF THAT ISSUE.

The sole issue on appeal is whether Appellant's dredging activities qualify as a permanent improvement within the meaning of the Butler Act. The trial court's final determination on this issue is a final determination of that issue. Trushin v. State, 425 So.2d 1126, 1128 (Fla. 1983). To deny that issue at this stage of the proceedings would deprive Appellant of a fair opportunity to fully litigate this issue before a court of first instance. Article 1, Section 9, Florida Constitution, provides that the trial court's jurisdiction extends to all cases, and the trial court's final determination on this issue is a final determination of that issue. The Butler Act's divestiture of title as it relates to canal or navigational improvements is not applicable to the issue on appeal of whether dredging constitutes a permanent improvement. It is an important issue, not irrelevantly, long raised for the first time on appeal to this court. The determination of whether dredging constitutes a permanent improvement within the meaning of the Butler Act. Trushin v. State, 425 So.2d 1126, 1128 (Fla. 1983). Appellant's ownership of the dredged lands is also not applicable to the issue of whether dredging is a permanent improvement within the meaning of the Butler Act. (Attorney General's Brief at p. 7). Whether dredging is a permanent improvement is not irrelevant. This Court should take jurisdiction of an issue related to whether dredging constitutes a permanent improvement within the meaning of the Butler Act. Clearly, this Court, in recognition of the function of the trial court, will decline to exercise appellate jurisdiction, particularly when the appellate issue does not affect the outcome of the issue appealed. Trushin.

So the need for judicial review of dredging activities is not addressed by the administration of justice and panel litigation. (Attorney General's Brief at p. 8) or affect the issue appealed. On the contrary, when a body of judicial power in this state would be administered in a fair and equitable manner and opportunity to fully litigate to a trial court the scope of the Butler Act's divestiture of title. The sole issue on appeal to this Court is whether the Appellant's dredging activities, undertaken during the effective term of the Butler Act, constitute the State of its title to an estate in land. Appellant to a \$253,129 confirmation and disclaimer.

Respondent correctly states that the issue appealed to this Court is whether the Butler Act conveyed title to an estate in land. (Respondent's Answer Brief at p. 9). Respondent contends that

Appellant owns the submerged lands beneath its piers (Respondents brief at pp. 5 & 20).

A trial court ruled that Appellant owned the submerged lands beneath its piers (Respondents' Answer Brief at pp. 5 & 20). The trial court merely incorporated this agreement into its ruling. The trial court made no determination as to whether the submerged lands beneath Appellant's piers, in fact, the trial court did not even reach a determination as to whether the parties orally or in writing could hold that Appellant's structures were piers.

The parties stipulated that Appellant owned the submerged lands beneath its piers and is not beyond their authority. In enacting the Butler Act, the legislature, not the parties' agreement, gave the State title to the submerged lands beneath Appellant's piers. The legislature's authority to give away such lands is not in question. Therefore, the parties' trial agreement does not exceed their authority. Indeed, their agreement is entirely proper and comports with the legislature's divestiture of title to

Due to the parties' stipulation, the trial court made no final substantive determination regarding the Butler Act's application to submerged lands beneath the Appellant's piers. Michels. The Fourth District Court of Appeal recognized this and specifically stated that this case does not even touch upon the Appellant's entitlement to a decision as to the lands beneath the footprint of the piers. The Board considered that point in the trial court. West Palm Beach v. Bd. of Trustees, 714 So.2d 1060, 1061 (Fla. App. 4th Dist

The parties' agreement at trial that the Appellant owned the submerged lands beneath its piers was effectively a stipulation of settlement upon which a court judgment was entered and cannot be appealed. Baya v. Revitz, 281 So.2d 521, 522 (Fla. App. Dist. 3rd 1973).

Due to the parties' trial agreement, the issue of divestiture of the submerged lands beneath the piers was not litigated. Therefore, no appealable final determination thereof was made by the trial court. Indeed, the trial court made no factual or legal determinations regarding the submerged lands beneath Appellant's piers. Michels (1993), this Court held that it is wholly inappropriate, if not totally beyond its jurisdiction, for it to undertake to make an original determination of the facts in an equity case where it affirmatively agrees that the factual issues involved have never been considered or determined by the circuit court as a court of first instance. City of Miami v. State, 190 So. 774, 780 (Fla. 1939), this Court ruled that it should not assume original equity jurisdiction of substantive issues not considered by the trial court.

Therefore, should this Court submit, for the first time on appeal, make an original determination of the issues regarding the Butler Act's application to submerged lands structures over water, such as Appellant's piers.

If this Court should look beyond the ruling issued by the trial court, it will necessarily require an inquiry into many issues not previously litigated or determined, such as the legislature's intent as to the scope of divestiture relating to structures over water and whether the legislature intended that divestiture to apply solely to waves or to other structures which have the functional equivalent of waves and serve the Butler Act's purpose of improving and developing water front property to benefit

Furthermore, the trial court made no determination of and did not consider any arguments regarding the legislature's intent in enacting § 2512, the Butler Act's saving legislation. § 2512, utilizes broad language conferring title to single lots and does not explicitly require the BT to issue decisions upon application. The scope of that conferral has not been litigated. Accordingly, when enacting § 2512, the legislature may have sought to curtail future restrictions on its prior Butler Act grants by confining its reach over title to all other parcels and requiring the BT to issue decisions thereon. The issue is whether the legislature would have intended § 2512 to include all structures over water constructed prior to the repeal of the Butler Act without regard to its character as a wave, dock or pier. When enacting the Butler Act in 1921, the legislature, at the end of paragraph 1, specifically reserves the application of the Butler Act to dredged bottomlands used in conjunction with Appellant's pier

II. A DETERMINATION OF THE BESPETORE THE BUTLER REQUIRESIANATNTERSPRETAENDONS. THE

Adetermination whether Appellant's pier is the functional equivalent of a levee is not before this Court. This Court should not make an original determination on the scope of divestiture accomplished by the Butler Act or decipher the Legislature's intent

It is said that the primary purpose of statutory interpretation is to determine the purpose of the legislature. Tenn. v. Lane, 15 So.2d 833 (Fla. 1956). And courts cannot use aids of statutory interpretation to add or modify valid statutes for particular social or economic advantage in such a manner as to. And, the statute must be construed in its entirety and as whole. Fla. El. Alai, Inc. v. Lake Howell Water & Reclamation Dist., 274 So.2d 522 (Fla. 1973).

The statutory phrase "fisheries," meaning a limitation of general words by specific words, and "possessions and edifices," meaning that the enumeration of things in a statute excludes all other things not mentioned, are utilized to argue that any structure over water not a wharf

However, Johnson does not require that the general phrase "permanent improvement" be limited in its scope to the limited things specifically named, to wit: levees. Johnson v. State, 107 So. 35 (Fla. 1936). Such strict application of this rule would render the statute general phrase "permanent improvement" entirely inoperative, thereby violating the rule that every part of a statute should be given effect. Bayou Home Club, Inc. v. State, 111 So. 81 (Fla. 1927). If the legislature had intended to strictly limit the divestiture for permanent improvements to levees only, it could easily have stated that the divestiture was applicable only to a natural obstruction of the water. It did not do so. It is apparent that the legislature intended something more than levees when it stated that the divestiture was applicable to the actual raising of the "permanent improvement." It may well have meant structures which have the functional equivalent of levees with respect to the Act's purpose of developing and improving water front property to benefit Florida. However, that intent has not been ascertained by the trial court. Accordingly, it is an issue with respect to the address of appeal. This appeal should be heard in light of the issue of whether Appellant's dredging activities constitute a permanent improvement within the meaning of the B

Seeing to imply that pier and other permanent improvements, the District Court ruled that application of a strict rule of statutory interpretation to the phrase "permanent improvement" dates, at the very least, significant structures which have the functional equivalent of the levees referred to in the first paragraph of section one of the Butler Act. Florida v. Bl. of Trustees, 74 So.2d 106 (Fla. App. 4 Dist. 1998).

When the will of the Butler Act, including revisions and subsequent legislation, may be best if favored so that a levee is established on its strict meaning to the exclusion of other piers, then the primary rule of giving effect to the legislative intent will be followed. Scenic Hill

The overriding purpose of the Butler Act was to improve and develop the water front property. The purpose is stated at the first paragraph of Section One of the Butler Act, which states:

Section 1. Whereas, It is for the benefit of the State of Florida that water from

a1.