

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.

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

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**SUPPLEMENTAL  
BRIEF OF *AMICUS CURIAE*, ATTORNEY GENERAL  
ROBERT A. BUTTERWORTH, IN SUPPORT OF RESPONDENT**

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## CERTIFICATE OF TYPE SIZE

This brief was typed using Times New Roman font, 14 point.

## SUMMARY OF ARGUMENT

The issue raised by the Attorney General in this case is properly before this court because it is properly subsumed within the question presented. The question of what “improvements” are sufficient to vest title under the Riparian Acts is one of law not requiring this court to engage in any initial factual determinations. This court should strictly construe the Riparian Acts and find that only those “improvements” specifically delineated in the Acts would vest title, including only bulkheaded and filled land and wharves.

## ARGUMENT

### THE ISSUE RAISED BY THE ATTORNEY GENERAL IS PROPERLY BEFORE THIS COURT

*Amici, Ward et al*, assert that the issue raised by the Attorney General is not properly before this court. Their arguments are based on faulty knowledge of the proceedings below and misinterpretation of the cited cases. First, it must be pointed out that the *Amici's* several references to a trial in this matter show an unfamiliarity with the record below. This case was decided on cross motions for summary judgment; there was no trial. There were no genuine issues of material fact and the court below decided the case based on those undisputed facts. The issue raised by the Attorney General does not require this court to do anything other than apply the proper interpretation of the Riparian Acts of 1856 and 1921 to the undisputed facts.

In *Montecello Drug Co. v. Porter*, 149 So. 25 (Fla. 1933) cited by *amici*, the appellate court found it inappropriate to make an initial determination of the facts. Here, this court is presented with a pure question of law, *i.e.* what is the proper interpretation of the Riparian Acts given the facts of this case. Given what was built and when it was built in this case, the Attorney General argues that the improvements, in this case, are not sufficient to vest title under the Acts.

*Amici* also rely on *Trushin v. State*, 425 So. 2d 1126, 1130 (Fla. 1983).

Again, their reliance is misplaced. In that case this court held that, *in a criminal case*, failure to raise a constitutional issue at the trial level acted as a waiver. This court also stated, however, that “once an appellate court has jurisdiction, it may, if it finds it necessary to do so, consider any item that may affect the case.” *Id.* at 1130. This is precisely what the Attorney General asks of this court in this case.

Jurisdiction exists because of a conflict with the third DCA’s decision in *BOT v. Key West Conch Harbor*, 683 So. 2d 144 (Fla. 3rd DCA 1996) and the issue of whether a dock built for municipal purposes is sufficient to vest title under the Acts is clearly an issue that will affect the case.

This court also has the authority to look behind the stipulation of the parties with respect to the title to the land under the footprints of the docks. If the Riparian Acts were not intended to vest title to this class of improvements, then DEP’s stipulation cannot *convey* title. *Amici’s* argument is based on the assumption that the AG’s interpretation is wrong and that title vested upon the construction of the docks. The AG’s argument is that the statute did *not* vest title and therefore the stipulation could not *convey* title that had not previously vested. *Amici’s* argument is circular and should be rejected. No argument is presented that would prove that the Riparian Acts were indeed intended to convey title in exchange for the construction of docks for noncommercial purposes. The parties’ stipulation was not

a settlement, but an *ultra vires* act which could not serve to convey title if the title had not already been conveyed by the Acts.

The issue raised by the Attorney General does not lead this court into an inquiry of issues which must be litigated before the circuit court in the first instance. The issue requires an interpretation of the Riparian Act - on its face. The act should be strictly construed in favor of the state to determine what actions should be considered sufficient to vest title. Factual questions (like the ones raised concerning the *amici's*' disclaimer applications) should be determined in the first instance by the Board of Trustees of the Internal Improvement Trust Fund based on the clear guidance an interpretation by this court would give. If an applicant is then unsatisfied with the Trustees' determination, suit may be filed.

Arguments concerning § 253.129, Fla. Stat., are inapposite. This section is a savings clause and cannot be read to expand the original grant in the 1856 Act. If the "improvement" is insufficient under the 1856 Act, then no title can vest. The phrase "heretofore developed" must be construed to relate back to the development envisioned under the 1856 Act, not some new modern concept of what those words mean in isolation. *Amici* suggest that disclaimers are appropriate for all development - clearly a vast expansion of the original intent of the legislature.

*Amici* also claim that improvements that are the "functional equivalent" of wharves should be considered sufficient to vest title under the Riparian Acts. These

Acts convey sovereignty submerged lands, subject to the public trust doctrine. Therefore, such conveyances must be strictly construed in favor of the sovereign and no title will vest without strict compliance with the requirements of those Acts. *Trustees of Internal Improvement Fund v. Claughton*, 86 So.2d 775, 786 (Fla.1956). The Acts say wharves and filled lands - no other “improvement” is sufficient, period!

## CONCLUSION

The purpose of the Riparian Act was to benefit commerce - hence its name “An Act to Benefit Commerce.” This was to be accomplished by encouraging riparian landowners to bulkhead and fill out to the channel and build warehouses on the filled land or by encouraging the construction of wharves. If those “improvements” were constructed, then full title would vest to the improved property. The type of improvements contemplated by the original 1856 Act would therefore *not* include residential docks (see *DNR v. Industrial Plastics Technology, Inc.*, 603 So. 2d 1303 (Fla. 5th DCA 1992)) or docks constructed for pleasure boats (like the docks in this case and in *Key West Conch Harbor*). Title does not vest for any “improvement” constructed for any purpose. This court can and should address this important question, *strictly* construe the Act, and find that the Riparian Act grants were not intended to include any of the improvements at issue in this case, in

Key West Conch Harbor, or in Industrial Plastics. This case should be affirmed in part (as to the dredged area) and reversed in part (as to the footprints of the docks) and remanded with instructions that an order be issued in conformance with this court's opinion.

Respectfully submitted this \_\_\_ day of \_\_\_\_\_, 1999.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served by U.S. Mail, this \_\_\_\_\_ day of \_\_\_\_\_, 1999, on the following:

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