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City of West Palm Beach v. Board of Trustees of the Internal Improvement Trust Fund, Nos. 93,821, 1999 WL 731654 (Fla. Sept. 9, 1999)

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To resolve this issue, the court applied basic rules of statutory construction. After finding that the Special Act's plain language was vague, the court analyzed the legislative history. Noting that the Special Act was not intended as a 'blanket law,' the court found the Special Act was "specially tailored to meet the needs of Bristol, as opposed to any other municipality in the state." Thus, the court found that it was plain "from the legislative history that the legislature contemplated that Bristol would have such statutory authority" to condemn property easements necessary to satisfy the Consent Order's testing and monitoring requirements. Disallowing Bristol's condemnation proceedings against Reynolds would be directly contrary to the Special Act's legislative purpose.

The court concluded Bristol acted within the scope of the Special Act. The court also found that Bristol followed the proper proceedings necessary to condemn Reynolds' property. Therefore, the court refused to enjoin Bristol's condemnation proceedings against Reynolds.

Michael Fischer

FLORIDA

City of West Palm Beach v. Board of Trustees of the Internal Improvement Trust Fund, Nos. 93,821, 1999 WL 731654 (Fla. Sept. 9, 1999) (holding that dredging of submerged lands did not constitute a "permanent improvement" under the Butler Act and divestiture of title in State submerged lands did not occur).

In 1947, the City of West Palm Beach ("City") obtained a building permit under the Butler Act ("Act") and its predecessor the Riparian Rights Act. The Act divested the state's title to submerged lands if upland owners constructed improvements. The Act's purpose was to encourage the state's waterfront development. The City constructed a municipal marina on the submerged land of Florida's sovereign land. The City also dredged a boat basin in the area surrounding the piers. Ten years later the legislature repealed the Act, however, it confirmed title for all upland riparian owners who bulk-headed or filled in or permanently improved the submerged land before the Act's repeal.

In 1994, the City sued to quiet title to the twenty-six acres of submerged lands around the marina including the dredged bottomlands. The Board of Trustees conceded that the City was entitled to title for the land under the docks, but contested the action regarding title for the dredged bottomlands. The trial court entered summary judgment for the Board of Trustees and concluded that the dredging of the bottomlands did not constitute a permanent improvement under the Act. The appellate court reversed and granted a rehearing on which they affirmed the trial court order for

summary judgment.

The issue the Supreme Court of Florida faced on appeal was whether the City's dredging of submerged bottomlands in the vicinity of the marina's piers had permanently improved the land under the language of the repealed Act thus vesting title to the dredged submerged lands in the City. The court held that the legislature in enacting the Act did not intend for dredging of submerged bottomlands to constitute a permanent improvement subject to divestiture of title in state submerged lands.

The court construed the Act in favor of the sovereign state and examined the Act's plain language. The court noted specific language in the statute regarding an owner's exclusive right only over parcels of submerged land on which wharves were built or the land filled in by construction of warehouses, dwellings or other buildings. It found this specific language to limit later language in the statute dealing with land actually bulk-headed, filled in, or permanently improved. Thus, permanent improvement occurred by building significant structures like wharves, warehouses, dwelling, buildings, and other permanent structures.

In reaching its conclusion, the court disapproved of the suggestion made in the two cases the City presented arguing that dredging of bottomlands constituted a permanent improvement. The court applied the strictly construed language of the Act to the City's facts and found that dredging did not permanently improve the land. The court affirmed the decision of the appellate court and held that title to the submerged lands remained with the Board.

Karen McTavish

Tewksbury v. City of Deerfield Beach, No. 98-2673, 1999 WL 741109 (Fla. App. 4 Dist. Sept. 17, 1999) (holding that an outdoor dining dock stretching over privately owned submerged lands is not a proper exercise of dock owner's littoral rights).

Seeking compensation for the use of private land, the owners of submerged lands ("Kesters") sued the Cove Restaurant and Marina ("Restaurant") which had built an outdoor dining area on a dock. The dock supporting the Restaurant was located above the Kesters' submerged land. Because the sovereign usually owns submerged lands, this case was unique. In this case, the sovereign's only interest in the submerged lands was an easement the Kesters previously granted to the United States government to widen the Intracoastal Waterway. The Restaurant sought a declaration that the use of this dock was within their littoral rights. The district court of appeal held that the Kesters owned a fee simple interest in the submerged lands, and that the only issue on remand should be the scope of the Restaurant's littoral rights.