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After Coastal Construction: Staking Out a Claim for Private Ownership

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AFTER *COASTAL CONSTRUCTION*: STAKING OUT A CLAIM FOR PRIVATE OWNERSHIP*

Board of Trustees of the Internal Improvement Trust Fund v. Sand Key Assoc. Ltd., 512 So. 2d 934 (Fla. 1987)

Respondent, an owners' association,[1] filed suit to quiet title to five acres[2] of land that accumulated over a ten-year period on its oceanfront property.[3] A state erected jetty[4] created the land and respondent neither contributed to nor participated in the project.[5] Respondent claimed a common-law rule gave riparian owners a right to land caused by accretion.[6] Petitioner[7] challenged respondent's claim and asserted the state owned the land.[8] Petitioner relied on a section of Florida's Beach and Shore Preservation Act[9] and an early Florida case[10] contending that land created by state activity belongs to the state.[11] Finding

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1. Sand Key Assocs. Ltd. v. Board of Trustees of the Internal Improvement Trust Fund, 458 So. 2d 369, 370 (2d D.C.A. 1984), *aff'd*, 512 So. 2d 934 (Fla. 1987). Respondent, Sand Key Associates, Ltd., owned upland of the disputed property. *Id.*

2. *Sand Key*, 458 So. 2d at 370.

3. 512 So. 2d at 935.

4. *Sand Key*, 458 So. 2d at 370. The jetty was built approximately one-half mile north of respondent's property. *Id.*

5. *Id.*

6. *Id.*

7. 512 So. 2d at 935. Petitioner represented the Internal Improvement Trust Fund of the State of Florida. *Id. See* FLA. STAT. §§ 161.141-.211 (1987) (fund established to approve the use of state lands, locate erosion control lines, approve beach projects, and administer other matters relating to overflow lands and internal improvement).

8. *Sand Key*, 458 So. 2d at 370.

9. FLA. STAT. § 161.051 (1987) provides in pertinent part:

> Where any person, firm, corporation, county, municipality, township, special district, or any public agency shall construct and install projects when permits have been properly issued, such works and improvements shall be the property of said person, firm, corporation, county, municipality, township, special district, or other public agency . . . . No grant under this section shall affect title of the state to any lands below the mean high-water mark and any additions or accretions to the upland caused by erection of such works or improvements shall remain the property of the state if not previously conveyed.

Id.

10. Martin v. Busch, 93 Fla. 535, 112 So. 274 (1927).

11. Board of Trustees of the Internal Improvement Trust Fund v. Sand Key Assocs. Ltd., 512 So. 2d 934, 938-39 (Fla. 1987).

the statute constitutional,[12] the trial court granted the state title to the accreted land.[13] The Second District Court of Appeal approved the trial court's ruling on the statute's constitutionality but reversed the remainder of the order, rewarding the five acres, all future accretions and incidental rights to respondents.[14] Finding no legislative intent to change the common law, the Second District held that the statute vests land in the state only when the benefited property owner creates the accretion.[15] The Second District reasoned that a different result would deprive respondent of its littoral rights without just compensation.[16] On certification[17] the Florida Supreme Court approved the district court decision and HELD, coastal construction section of the Beach, Shore and Preservation Act does not divest riparian owners of their common law rights to accreted lands when the accretions are state-caused.[18]

Early American courts adopted the English rule[19] that lands gradually gained from the sea, a process known as accretion, belong to the owner of the waterfront property.[20] Since nature could take back what she gave through erosion, the rule worked natural justice[21] and kept the benefits and risks of waterfront ownership relatively equal. Courts[22] also tended to apply the same principle to land exposed on

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12. *Sand Key*, 458 So. 2d at 371.
13. *Id.*
14. *Id.* at 370.
15. *Id.* at 371.
16. *Id. See* U.S. CONST. amends. V & XIV (private property shall not be taken for public use without just compensation and no person shall be deprived of life, liberty, or property without due process). *See also* J. NOWAK, R. ROTUNDA, & J. YOUNG, CONSTITUTIONAL LAW 318 (1986) [hereinafter J. NOWAK] (due process clause of the fourteenth amendment prohibits state governments from taking property without due process of law).
17. *See* FLA. CONST. art. V, § 3(b)(4) (granting the Florida Supreme Court authority to review questions of great public importance certified by the district courts).
18. Board of Trustees of the Internal Improvement Trust Fund v. Sand Key Associates. Ltd., 512 So. 2d 934, 938 (Fla. 1987).
19. *See* F. MALONEY, S. PLAGER, & F. BALDWIN, WATER LAW AND ADMINISTRATION, THE FLORIDA EXPERIENCE §§ 126-126.1, at 385-86 (1968) [hereinafter F. MALONEY] (accretions consist of additions of sand, sediment, or other material to the land above the water line resulting from the gradual action of the water; the common law rule vests title to accreted soil in the owners of abutting lands as long as changes are slow and "imperceptible").
20. Banks v. Ogden, 69 U.S. (2 Wall.) 57, 67 (1864).
21. *Id.*
22. Mexico Beach Corp. v. St. Joe Paper Co., 97 So. 2d 708, 710 (Fla. 1st D.C.A. 1957) (owner of land bounded by a river, lake, or sea is entitled to gradual land additions); Brundage v. Knox, 279 Ill. 450, 465, 117 N.E. 123, 128-29 (1917) (accretions vest to owners on large, inland lakes).

lake shores through natural reliction.[23] As long as the owner did not bring the land to his shore, gradual additions would not separate the owner from his water rights.[24] Land below the high water mark[25] and land beneath the beds of navigable waters[26] remained state property.[27]

When man erected dykes, dams and other structures causing accreted or relicted land, courts[28] tended to apply the same rule that title to exposed land vested in the riparian owner,[29] if the owner did not cause the additions himself.[30] The United States Supreme Court recognized this policy in *County of Saint Clair v. Lovingstone.*[31] In *St. Clair*, the county brought an ejectment action against the defendant for property which formed between his parcel and the Mississippi River.[32] The river changed course when the city and the United States placed rocks on a bank, a project in which the defendant did not participate.[33] The Court held that whether man or nature causes the land additions, the right to future alluvion is a vested right and an inherent attribute of the original property.[34]

When the Court decided *St. Clair*, courts had not yet applied the fifth amendment's prohibition of taking private property for public use

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23. *See* F. MALONEY, *supra* note 19, § 126, at 386 (when land formerly covered by water becomes exposed by the imperceptible rescission of the shore, the process is known as reliction and title to the exposed land vests in the adjoining owner; but when changes are not gradual and imperceptible, the process is know as avulsion and the boundary remains unchanged).

24. *Brundage*, 279 Ill. at 463, 117 N.E. at 128; *see also* F. MALONEY *supra* note 19, § 126.2(a), at 389 (if an owner were allowed title to self-caused accretions, an owner could "extend his land at will, thus taking property which belongs to the state").

25. *See* F. MALONEY, *supra* note 19, § 21.6, at 35 (describing high-water mark as legal boundary between upland and water).

26. *See id.* § 22.1(a), at 35 (explaining that where waterbody is nonnavigable, the waters themselves are subject to private ownership, in which case the state and public have no rights to it).

27. Boyer & Cooper, *Real Property*, 28 U. MIAMI L. REV. 1, 25 (1973).

28. United States v. Claridge, 416 F.2d 933 (9th Cir. 1969) (resulting accretion passed to riparian owner and not to state when Hoover Dam affected the course of the Colorado River), *cert. denied*, 397 U.S. 961 (1970); Solomon v. Sioux City, 243 Iowa 634, 639, 51 N.W.2d 472, 476 (1952) (accretion not caused by landowner belongs to the riparian owner whether artificially or naturally caused).

29. Lundquist, *Artificial Additions to Riparian Land: Extending the Doctrine of Accretion*, 14 ARIZ. L. REV. 315, 326; *see also* Boyer & Cooper, *supra* note 27, at 26.

30. R. CUNNINGHAM, W. STOEBUCK, & D. WHITMAN, THE LAW OF PROPERTY 730 (1984).

31. 90 U.S. (23 Wall.) 46 (1874).

32. *Id.* at 46.

33. *Id.* at 50.

34. *Id.* at 68.

without compensation to the states.[35] However, the Court recognized waterfront landowners' fundamental rights. The Court reasoned that a different result would cause too great a hardship on the unconsenting owner who, having purchased waterfront property, would lose access because a neighbor's or government project deposited land between the old and new bank.[36]

While *St. Clair* appears to hold that additions caused by third parties belong to the waterfront landowner, later Supreme Court decisions suggested that each state develop its own substantive law in this area.[37] Florida originally favored state ownership in *Martin v. Busch*.[38] After government drainage operations lowered the level of a lake and exposed land between the plaintiffs' property and the original high water mark, the plaintiffs sued the Trustees of the State Improvement Fund to remove a cloud on their title.[39] The Florida Supreme Court refused to recognize the plaintiffs' right to the property, holding that land reclaimed by state operations vests in the state.[40] The court reasoned that because the reliction was artificially rather than naturally caused, the original high water mark continued to be the dividing line between public and private ownership.[41] The concurring opinion in *Martin* expands this reasoning, suggesting that artificially-caused changes never cause true accretion or reliction because boundary lines remain unchanged and vested property rights are not affected.[42]

In *Board of Trustees of the Internal Improvement Trust Fund v. Medeira Beach Nominee*[43] the Florida Second District Court of Appeal

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35. *See* G. GUNTHER, CASES AND MATERIALS ON CONSTITUTIONAL LAW 505 (9th ed. 1975) (explaining that the *Slaughterhouse Cases*, 83 U.S. (16 Wall.) 36 (1873), implicity rejected the idea that the fourteenth amendment applied the Bill of Rights' guarantees to the states).

36. 90 U.S. (23 Wall.) at 61.

37. *See* Oregon State Land Bd. v. Corvallis Sand & Gravel Co., 429 U.S. 363 (1977) (disputed ownership of riverbed lands was governed solely by state law). *See also* Hughes v. State, 389 U.S. 290, 295 (1967) (Stewart, J., concurring); Shively v. Bowlby, 152 U.S. 1 (1894) (each state must deal with the land within its own borders according to its own views or justice and policy).

38. 93 Fla. 535, 112 So. 274 (1927).

39. *Id.* at 565, 112 So. at 284.

40. *Id.*

41. *Id.* at 574, 112 So. at 287; *accord*, Padgett v. Central & S. Fla. Flood Control Dist., 178 So. 2d 900 (Fla. 2d D.C.A. 1965) (reclaimed land created when the state constructed a levy altered the character of defendant's property so that it no longer bordeered the waterfront).

42. 93 Fla. at 578, 112 So. at 288.

43. 272 So. 2d 209 (Fla. 2d D.C.A. 1973).

questioned whether courts could constitutionally[44] deprive upland owners of their waterfront status, the apparent result of *Martin*.[45] In *Medeira*, additional property accumulated in front of appellee's Sand Key property because of a city-sponsored erosion control program.[46] When appellee began improving the accreted land, appellant[47] sued to enjoin the activity.[48] The District Court affirmed a lower court's summary judgment in favor of appellee.[49]

Distinguishing *Martin* as a lakefront reliction rather than oceanfront accretion case,[50] the *Medeira* court held that the state had no interest in property which accumulated on appellee's oceanfront due to the city-sponsored project.[51] Although a lawful exercise of government police powers caused the accretions, the court found the state's interest in the land far less than that of the riparian landowner who had an interest in maintaining the property's waterfront character.[52]

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44. *See* J. NOWAK, *supra* note 16, at 402 (under modern interpretations of fifth and fourteenth amendments, damage caused to property as an incidental result of government activity may be a "taking" for which compensation must be paid, although no general rule exists to describe what constitutes a compensable taking).

45. 272 So. 2d at 212.

46. *Id.* at 211. Since *Medeira*, the legislature revised portions of the Beach, Shore, and Preservation Act to give the state title to accreted lands forming on the seaward side of control lines used in erosion control projects. *See* FLA. STAT. § 161.141 (1987) which provides in pertinent part:

> Any additions to the upland property landward of the established line of mean high water which result from the restoration project shall become the property of the upland owner . . . . Such resulting additions to upland property shall also be subject to a public easement for traditional uses of the sandy beach consistent with uses which would have been allowed prior to the need for such restoration project. It is further declared that there is no intention on the part of the state to extend its claims to lands not already held by it or to deprive any upland or submerged land owner of the legitimate and constitutional use and enjoyment of his property.

Id. At the time of *Medeira*, § 161.141 did not contain this language. *See* FLA. STAT. § 161.141 (1973).

47. *See supra* text accompanying note 7.

48. 272 So. 2d at 211.

49. *Id.* at 215.

50. *Id.* at 212. The court stated that it would not apply *Martin* to *Medeira* because the former dealt with an intentional project to change the water level of the lake while the Medeira Beach project was not intended to produce the resulting accretion. *Id.* The court added that even if this similarity were shown, the court would not apply this holding in a reliction case to an accretion case. *Id.*

51. *Id.* at 211.

52. *Id.* at 214. Riparian owners have interests in maintaining several rights, including the rights to access to the water, an unobstructed view, a qualified common law right to wharf out to navigable waters, and reasonable use and consumption of water. *Id.*

The court reasoned that owners sustaining the burden of losses and repairs through erosion should receive the benefits of accretion and continued right of access to the water.[53]

The court decided *Medeira* after the enactment of Florida Statutes § 161.051 which appears to grant title for property additions caused by coastal construction to the state.[54] The court did not apply the statute because the erosion control projects began before its enactment.[55] The court interpreted the section as "purport(ing) to vest title to accretions caused by public works in the state."[56] The court suggested that even if it applied the statute retroactively as the state urged, its impact on riparian rights would raise constitutional problems.[57] Thus, an important fifth amendment question survived *Medeira*: how extensive would state rights be under the statute in light of owners' interests in water access and the constitutional prohibition on taking without just compensation?[58]

Although the instant case provided the Florida Supreme Court with an opportunity to resolve this broad issue, the question the lower court certified[59] was narrowly framed around the statute's language.[60]

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53. *Id.* at 212-13.

54. *See supra* note 9 and accompanying text.

55. 272 So. 2d at 214.

56. *Id. See* Boyer & Cooper, *supra* note 27, at 26 (statute's "use would appear open to constitutional challenge").

57. 272 So. 2d at 214. The court did not address a related statute which provides in pertinent part:

> Riparian rights are those incident to land bordering upon navigable waters. They are rights of ingress, egress, boating, bathing and fishing and such others as may be or have been defined by law. Such rights are not of a proprietary nature. They are rights inuring to the owner of the riparian land but are not owned by him.

FLA. STAT. § 253.141 (1987) (formerly §§ 192.61(1) (4), 271.09, 197.315(3), 197.228).

58. *See* Hughes v. State, 389 U.S. 290, 295 (1967) (Stewart, J., concurring) (Justice Stewart cautioned against takings without compensation in violation of the Constution); *see also* Boyer & Cooper, *supra* note 27, at 26 (By passage of the statute, the state cannot be permitted to defeat the constitutional prohibition against taking of property without due process of law and just compensation.").

59. Florida's Second District Court of Appeal certified the following question

> PURSUANT TO SECTION 161.051, FLORIDA STATUTES (1981), IS THE STATE ENTITLED TO ACCRETED LAND OF ONLY THE UPLAND OWNER OF THE IMPROVED PROPERTY OR TO THE ACCRETED LAND OF ALL UPLAND AND LITTORAL OWNERS, WHETHER OR NOT THEY PARTICIPATED IN OR CONTRIBUTED TO THE IMPROVEMENT?

Sand Key Assoc. Ltd. v. Board of Trustees of the Internal Improvement Trust Fund, 458 So. 2d 369, 371 (2d D.C.A. 1984), *aff'd*, 512 So. 2d 934 (Fla. 1987).

60. *See supra* note 9.

The majority envisioned two statutory interpretations and settled on the view favoring landowners and the common law.[61] Under the instant court's approach, the state could obtain title to the upland owner's accretions only if the owner contributed to the improvements.[62] The instant court specifically rejected a broader interpretation giving the state title to all artificially-caused additions.[63] The majority explained that the section was intended to codify the common law and not to deprive unsuspecting waterfront owners of rights to land caused by others' activities.[64] The instant court also approved the lower court's ruling on the statute's constitutionality.[65] Like the district court in *Medeira*, the instant court feared that vesting such property in the state required just compensation.[66]

While the instant court addressed *Martin*, it narrowly read the case finding no precedent for a state claim to title.[67] Focusing on *Martin's* concurring opinion, the instant court agreed that the issue in *Martin* was not one of true reliction.[68] The instant majority apparently reasoned that when the state lowers water levels for a public purpose, no true reliction occurs because the change is not imperceptible.[69] The state still owns land up to the original high-water mark and abutting property still retains its waterfront characteristics.[70] Finding *Martin* unhelpful and insufficient authority for changing the common law in cases of true accretion and reliction,[71] the majority refused to deprive respondent of rights so well-grounded in history and precedent.[72]

In a lengthy dissent, Justice Ehrlich accused the majority of misconstruing the statute's plain language,[73] grossly misinterpreting *Mar-*

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61. 512 So. 2d at 939. The Court was construing FLA. STAT. § 161.051 (1981).
62. *Id.*
63. *Id.*
64. *Id.*
65. *Id.*
66. *Id.* Like the *Medeira* court, the instant court did not address § 253.141 which suggests that riparian rights are not proprietary in nature. *Id. See supra* note 57.
67. 512 So. 2d at 941.
68. *Id.*
69. *Id. See also supra* note 23 and accompanying text.
70. 512 So. 2d at 941.
71. *Id.* The court reasoned that decisions subsequent to *Martin* showed no intent to change common law principles on owners' rights to accretions and relictions. *Id.* at 939.
72. *Id.* at 936.
73. *Id.* at 947 (Ehrlich, J., dissenting).

tin,[74] and circumventing a clear policy to preserve state beaches.[75] Ehrlich reasoned that the statute and *Martin* were directed toward the same, worthwhile goal of protecting previously submerged lands from private development.[76] In Ehrlich's view, the majority subverted this aim through misinterpretation.[77] The dissenting justice first stated that the majority's reliance on *St. Clair* was misplaced since that case concerned Illinois substantive property law and had no precedential value for Florida.[78] Further, while *Martin* had strong precedential value, the court crippled its holding by distinguishing between true reliction which assures common law rights and other types of shoreline exposure which apparently do not.[79] In Ehrlich's view, *Martin* simply held that title to exposed land remains with the state when the state causes the exposure.[80] Finally, the dissent stated that owners' fears of private land losing its waterfront characteristics under a broader statutory interpretation were exaggerated.[81] In *Martin*, the owners "lost" nothing since their property line remained at the ordinary high-water mark as it previously existed.[82]

Florida has authority to set its own substantive law regarding title to exposed sovereign lands provided it refrains from constitutional prohibitions on uncompensated takings.[83] As the differing opinions in *Medeira* and *Martin* point out, however, the state's rightful assertion of ownership depends on whether the state or the abutting owner lays the better claim to "vested rights." The majority follows the traditional view expressed in *St. Clair* and *Medeira* that rights to accretion or reliction automatically vest in the landowner even if caused by the state.[84] Under this view, the landowner is granted property rights which under the fifth amendment cannot be taken without just compen-

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74. *Id.* (Ehrlich, J., dissenting).

75. *Id.* (Ehrlich, J., dissenting) (Ehrlich saw this policy in the title of the legislation: "The Beach and Shore Preservation Act."). *See* FLA. STAT. § 161.051 (1981).

76. 512 So. 2d at 947 (Ehrlich, J., dissenting).

77. *Id.* at 945 (Ehrlich, J., dissenting).

78. *Id.* at 941 (Ehrlich, J., dissenting).

79. *Id.* at 945 (Ehrlich, J. dissenting). Ehrlich added, "It would fly in the face of known physical laws and plain common sense to presume that a deliberate drainage operation in an enormous fresh water lake such as Lake Okeechobee was anything other than slow and imperceptible." *Id.*

80. *Id.* at 945.

81. *Id.*

82. *Id.*

83. *See supra* note 37 and accompanying text.

84. 512 So. 2d at 936.

sation.[85] The dissent, however, adopted an equally sound approach to this issue. Given the state's undisputed title in the beds of navigable waters,[86] worthwhile public projects should not divest the state of property held in trust for all the people.[87] The "loss" of property in *Martin* is not an actual deprivation if one considers that the property line remained unchanged and that the state gained no more than it originally owned.[88] The dissent's rationale apparently depends on the state's use of the newly-exposed property.[89] If, for example, the state blocked the owner's access[90] or obstructed the water view[91] the landowner would seem to have greater cause to complain of an unconstitutional taking.[92]

The instant case is valuable for what it did not decide. First, the court decided not to alter the common law or landowners' expectations.[93] Instead, the traditional rule that vests title to accreted lands in upland owners who do not bring the land to their property remains intact even with the enactment of section 161.051.[94] This result is contrary to *Medeira*'s prediction that the statute wrests title from the landowner.[95] Second, the court did not distinguish between lakefront

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85. *See supra* note 58.

86. Brickell v. Trammel, 77 Fla. 544, 558-59, 82 So. 221, 226 (1919).

87. 512 So. 2d at 949 (Ehrlich, J., dissenting).

88. *Id.* at 945 (Ehrlich, J., dissenting).

89. *See* Nollan v. California Coastal Comm'n, 107 S. Ct. 3141 (1987) (for land use to be a regulation rather than a taking for which compensation is necessary, state must show a close relation between the regulation selected and the government objective); First English Evangelical Lutheran Church v. Los Angeles County, 107 S. Ct. 2378 (1987) (regulations denying owner all economically viable use of land is a compensable taking rather than an uncompensable regulation); *cf.* Maloney & O'Donnell, *Drawing the Line at the Oceanfront: The Role of Coastal Construction Setback Lines in Regulating Development of the Coastal Zone*, 30 U. FLA. L. REV. 383, 400 (1978) (Florida courts tend to view coastal regulations as non compensatory takings when owner retains beneficial use of property).

90. *See* Ferry Pass Inspectors' & Shippers' Ass'n v. White's River Inspectors' & Shippers' Ass'n, 57 Fla. 399, 402, 48 So. 643, 645 (1909) (riparian owners have a right of access to the water).

91. Thiesen v. Gulf, F. & A. Ry., 75 Fla. 28, 58, 78 So. 491, 501 (1918) (riparian landowner enjoys a common law right of an unobstructed view over the water).

92. *See supra* note 89.

93. Board of Trustees of the Internal Improvement Trust Fund v. Medeira Beach Nominee, 272 So. 2d 209, 214 (Fla. 2d D.C.A. 1973).

94. Board of Trustees of the Internal Improvement Trust Fund v. Sand Key Assocs. Ltd., 512 So. 2d 934, 939 (Fla. 1987). Accretions caused by beach renourishment apparently constitute an exception. *See supra* note 46.

95. *Medeira*, 272 So. 2d at 214. *See also* Boyer & Cooper, *supra* note 27, at 26 (the statute "purports to vest title to accretions caused by public works in the state").

and oceanfront additions, and moved toward a more uniform recognition of riparian rights. Florida courts, perhaps unintentionally, pursued different policies depending on whether the property abutted an ocean[96] or a lake.[97] Aside from the instant majority's confused attempt to distinguish *Martin* as a less-than-true reliction case, the instant case appears to grant equal rights to oceanfront and lakefront owners.[98] Whether the addition is naturally or artificially caused by accretion or reliction,[99] title vests in the abutting landowner.[100]

Finally, the court refused to allow new policy considerations outweigh old common law values, a point which the dissent strongly criticized.[101] In the dissent's view, the majority's narrow statutory reading turned preservation legislation into a gift-giving mechanism favoring private landowners.[102] In the majority's view, the narrow reading prevented unbridled state access.[103] Given the number of public works projects along state shorelines, the majority feared automatic deprivation of owners' valuable waterfront ownership.[104] Neither side, however, explored a third alternative which appears more palatable to both state and private interests. This alternative grants title to the state only when improvements causing the accretions "regulate and improve navigation"[105] or "have an essential relation to the public enjoyment."[106] Such an approach prevents unbridled usurpation of riparian rights while giving the state leeway to act in the public interest.[107]

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96. *Id.* at 212. *See also* Sidener v. City of Pensacola, 13 Fla. Supp. 120, 128 (Escambia County Cir. Ct. 1958) (oceanfront owner is entitled to artificial accretions).

97. *See* Martin v. Busch, 93 Fla. 535, 575-76, 112 So. 274, 287 (1927) (riparian owner did not gain rights to land exposed on the shores of Lake Okeechobee); R.E. Padgett v. Central & S. Fla. Flood Control Dist., 178 So. 2d 900, 905 (Fla. 2d D.C.A. 1965) (lakefront owners' riparian rights were subject to the state interests when government projects reclaimed previously covered shorelands).

98. 512 So. 2d at 936. In its concluding paragraphs, the majority did not distinguish between lakefront and oceanfront rights. *Id.* at 941.

99. *See supra* note 23.

100. 512 So. 2d at 938.

101. *Id.* at 947 (Ehrlich, J., dissenting).

102. *Id.*

103. *Id.* at 939.

104. *Id.*

105. *See* Michaelson v. Silver Beach Improvement Ass'n, 342 Mass. 251, 257, 173 N.E.2d 273, 277 (1961) (because state's creation of a beach was unnecessary for navigation, title to the beach vested in the upland owner rather than the state).

106. *Id.* at 258, 173 N.E.2d at 278.

107. Florida apparently has taken this legislative approach on erosion control. *See supra* note 46.

The majority opinion is far from unassailable. The opinion sets forth a federal, common law right to artificial accretions[108] without noting the independent rights of states to develop their own laws in this area.[109] Moreover, as Ehrlich suggested, the majority's analysis of *Martin* and its attempt to justify state ownership by distinguishing between "imperceptible" artificial reliction, and "perceptible" artificial exposure of a shoreline,[110] complicates understanding owners' riparian rights.[111]

The case's value lies in the court's assurances to waterfront owners, by no means a small group in Florida, that their waterfront property will remain on the waterfront despite additions caused by government projects not relating to erosion control.[112] In the instant case, had the state acquired title to the five acres and used it for a public purpose, the character of respondent's property would have been significantly altered. Conversely, the potential boon to property owners resulting from this decision is enormous.[113] In the instant case, respondent was awarded five acres of accreted property on valuable land on the Gulf of Mexico.[114]

When the public discovers that costly government improvements actually grant away state property, the court may reconsider its holding.[115] However, a policy vesting accreted land in the state each time the government builds a dyke or dam seems unjust to property owners who have paid valuable consideration for their waterfront status.[116] A more reasonable approach vests title in the state only when an essential public purpose causes the artificial addition. This policy is followed in at least one other jurisdiction,[117] and apparently in Florida's revised legislation on erosion control.[118] Even in these circumstances, however, the state should have only limited use of the exposed property to preserve the waterfront character of the owner's land.

Elizabeth Belsom

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108. 512 So. 2d at 938.

109. *See supra* note 37.

110. 512 So. 2d at 945 (Ehrlich, J., dissenting).

111. *See supra* note 79.

112. 512 So. 2d at 939. The court did not mention accretions caused by erosion control, which may be an exception. *See supra* note 46.

113. *Id.* at 935. The majority noted, "The issue in this cause is narrow, but has broad ramifications for Florida's waterfront owners." *Id.*

114. *See supra* note 1.

115. 512 So. 2d at 947 (Ehrlich, J., dissenting).

116. *Id.* at 939.

117. *See supra* note 105.

118. *See supra* note 46.