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**Keltner v. Open Lake Sporting Club, No. W2002-00449-COA-R3-CV,
2003 Tenn. App. LEXIS 128 (Tenn. Ct. App. Feb. 12, 2003)**

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The commonwealth court held that the DOT's conduct in improving the Route and depositing sediment in the Creek did not artificially or unnecessarily alter the Creek's natural channel, nor had it increased the Creek's flow. Therefore, under the common enemy doctrine, the DOT was not liable for damages caused by the Creek's flooding.

Steven J. Rypma

TENNESSEE

Keltner v. Open Lake Sporting Club, No. W2002-00449-COA-R3-CV, 2003 Tenn. App. LEXIS 128 (Tenn. Ct. App. Feb. 12, 2003) (holding that genuine issues of material fact over ownership of a watercourse exist where a landowner establishes ownership of property abutting the watercourse; the opposing party has an ambiguous deed; and parol evidence does not prove ownership through recognition).

The controversy in this case arose over ownership of a portion of Right Hand Arm, a water body flowing from Open Lake. Open Lake Sporting Club ("OLSC") owned the majority of Open Lake. A portion of Right Hand Arm flowed through property owned by Mrs. Keltner. OLSC and Mrs. Keltner both assumed they owned Right Hand Arm. Mrs. Keltner believed that she owned Right Hand Arm and had merely leased use of it to OLSC. Likewise, OLSC believed it owned Right Hand Arm and had leased hunting rights on Mrs. Keltner's property. In 1995, Mrs. Keltner leased use of Right Hand Arm to a third party. Shortly thereafter, a dispute arose between Mrs. Keltner and OLSC over Right Hand Arm ownership. Mrs. Keltner commenced a suit requesting a declaratory judgment to quiet title and to determine Mrs. Keltner's right to the portion of Right Hand Arm located on Mrs. Keltner's property. The Chancery Court for Lauderdale County granted summary judgment to OLSC. Mrs. Keltner appealed to the Court of Appeals of Tennessee.

First, the appellate court concluded that under the doctrine of riparian rights, even though Mrs. Keltner owned property adjacent to Right Hand Arm, that fact alone did not establish she owned the portion of Right Hand Arm that flowed through her property. The doctrine of riparian rights provides that landowners have the right to use water abutting their property, unless the right-to-use the watercourse is specifically reserved in the deed. However, the doctrine only presumes a right of use and does not presume ownership of the water. Hence, Mrs. Keltner's ownership of property abutting Right Hand Arm only established a right of use.

Secondly, the court concluded trial court erred in granting summary judgment to OLSC because genuine issues of material fact existed regarding OLSC's ownership of the portion of Right Hand

Arm located on Mrs. Keltner's property. The doctrine of riparian rights presumes the interest of the riparian owner passes to the grantee when the grantor conveys the upland. OLSA argued that A Booth Company ("ABC") conveyed the disputed portion of Right Hand Arm to them. However, the court concluded, based on testimony of a land surveyor, there was no way to determine what land ABC actually conveyed to OLSA. Furthermore, in order to determine ownership, the court concluded it was necessary to determine whether ABC owned the disputed portion of Right Hand Arm and whether ABC conveyed the disputed portion of Right Hand Arm to OLSA.

Finally, the court concluded parol evidence was admissible to determine whether Mrs. Keltner acquired ownership by agreement with OLSA because the deeds were ambiguous. Mrs. Keltner argued that minutes from an OLSA meeting proved OLSA recognized Mrs. Keltner owned the disputed portion of Right Hand Arm. However, the court concluded this evidence showed that OLSA recognized Mrs. Keltner owned the land surrounding the disputed portion of Right Hand Arm but that genuine issues of material fact still existed as to whether OLSA recognized Mrs. Keltner owned that portion of Right Hand Arm.

For the foregoing reasons, the court concluded the trial court erred because genuine issues of material fact existed regarding the ownership of Right Hand Arm.

Heather Chamberlain

TEXAS

Sabine River Auth. of Texas v. Hughes, 92 S.W.3d 640 (Tex. App. 2002) (holding a claim for inverse condemnation requires the claiming party to allege that the government intended its action to result in a taking).

Paul Hughes ("Hughes") brought an inverse condemnation suit against the Sabine River Authority of Texas ("Authority"). The First District Court of Newton City granted Hughes' motion for summary judgment, holding that the Authority's intentional release of reservoir water resulted in a taking of Hughes' land for public use. The Texas Court of Appeals reversed the trial court's ruling, and affirmed the Authority's motion for summary judgment.

Hughes alleged that the Authority's intentional release of reservoir water into the Sabine River caused Hughes' land to be flooded and resulted in a taking. The Texas Court of Appeals ruled that Hughes' complaint was insufficient to support a claim of inverse condemnation. A claim for inverse condemnation required Hughes to allege the Authority intended its release of water to result in a taking. The court found as a matter of law that the facts of the case did not warrant a