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## Tewksburyv. City of Deerfield Beach, No. 98-2673, 1999 WL 741109 (Fla. App. 4 Dist. Sept. 17, 1999)

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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submerged bottomlands in the vicinity of the marina's piers had permanently improved the land under the language of the repealed Act thus vesting title to the dredged submerged lands in the City.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.

In a riparian jurisdiction, the term littoral rights refers to the right to use land abutting navigable ocean, sea, or lake waters. These rights included uses for ingress, egress, boating, bathing, fishing, and other uses as defined by law. Here, the Restaurant's dining dock was supported by the Kesters' submerged lands. The district court of appeals affirmed the trial court's finding that such use fell outside of the Restaurant's littoral rights.

The court narrowly defined Florida's riparian and littoral rights, holding that these rights include: (1) the general use of the water adjacent to the property; (2) wharfing out to navigability; (3) accessing navigable waters; and (4) the right to accretions. As a result, the court found the Restaurant's operation of an outdoor dining area on a dock simply does not fall within the permissible use of submerged lands adjacent to its property.

*Susan P. Klopman*

## HAWAII

### **Young v. Planning Comm'n of Kaua'i, 974 P.2d 40 (Haw. 1999)**

(holding that commercial boat tour operator's increase in activity and use of more and bigger boats constituted a "development" within the meaning of Hawai'i's Coastal Zone Management Act thus requiring operator to obtain a permit).

Ralph Young, the plaintiff-appellant, ran both an independent tour boat operation and boat services for Club Med, operating much of the time in the Hanalei River, an area designated a Special Management Area ("SMA"). From 1974 to 1988, Young increased the number and size of boats in his fleet and operated his business without obtaining a permit. In 1988, the Planning Department of the County of Kaua'i informed Young and other tour boat operators that tour boat operations for hire would be considered a "development" under the terms and conditions of the Hawai'i Coastal Zone Management Act ("CZMA") requiring operators to obtain a permit for boat operation in SMA. Young suspended operation from 1988 until 1992 when he petitioned the Kaua'i Planning Commission for a declaratory order maintaining that his business operations did not fall under the purview of the CZMA. The commission dismissed Young's petition and he appealed, but the parties dismissed the appeal. Subsequently, Young applied for a permit which the Commission approved and then extended until March 31, 2000. Still unsatisfied, Young initiated this suit in order to determine whether his commercial tour boat activities constituted a "development" under the CZMA and thus required a permit. The trial court held that Young's tour boat operation constituted a "development" because it satisfied three of five criteria used to determine whether an activity constituted a "development"