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Walton County v. Save Our Beaches, Inc.

SC06-1447 | SC06-1449

IN THE CASE LAW CITED THERE
WAS FEDERAL CASE LAW WHICH HAS
BEEN OVERRULED BY THE UNITED
STATES SUPREME COURT.

OVERRULED THE CASE, THIS COURT
RELIED ON IN FLORIDA NATIONAL.

>> SO YOU DON'T -- THAT IS

TRUE MAYBE ON THE FEDERAL LAW,
BUT NOT UNDER THE STATE LAW.

THE STATE LAW THE UPLAND OWNER
WHO LOSES PROPERTY BY THE

EVENT CAN RESTORE THE PROPERTY
UP TO WHERE IT WAS BEFORE AND

LIKEWISE THE SOVEREIGN

LANDOWNER CAN RESTORE THE
PROPERTY TO PROTECT ITS

INTEREST, TOO.

THERE IS A DIFFERENCE UNDER
THE COMMON LAW.

HOW DO YOU DEAL WITH THAT IN
THIS CASE?

>> IN THE CASE, WE DON'T DEAL
WITH IT BECAUSE THOSE ISSUES
HAVE NOT BEEN DETERMINED.

THE EVULSION ISSUE WAS RAISED

FOR THE FIRST TIME BY THE

APPELLANTS ON APPEAL.

THERE IS NOTHING IN THE RECORD

TO DETERMINE STRAIGHT WHAT THE

PROPERTY OWNERSHIP WAS IN

ADVANCE OF THE SETTING OF THE

EROSION CONTROL LINE WHILE THE

EROSION CONTROL LINE IS

DIRECTED TO BE GENERALLY OR

ALONG THE HIGH WATER LINE IN

THIS CASE THERE WERE EVENTS

THAT DON'T CHANGE THE PROPERTY

OWNERSHIP THAT TOOK PLACE

BEFORE THAT.

ONE WOULD ASSUME THAT SOMEONE

MAY WISH TO LITIGATE THOSE IN

THE ONLY APPROPRIATE FORM

WHICH IS NOT THIS.

I THOUGHT IT WAS AGREED THAT

EROSION CONTROL LINE ESTABLISH

WAS AT THE HIGH WATER LINE.

>> THAT MAY WELL BE.

>> IF THAT SO, THAT IS NOT THE

QUESTION, IS IT?

>> BUT ALSO IN THE RECORD,

YOUR HONOR, THE PROJECT IS
PROJECTED TO ADD 80 TO 120

FEET OF NEW BEACH SEAWARD OF
THE EROSION CONTROL LINE.

>> UNDER THE COMMON LAW, THE
SOVEREIGN CAN DO THAT, THEN BY
DEFINITION THE LAND IS NO
LONGER RIPARIAN.

>> THAT DETERMINATION HAS NOT
BEEN MADE IN THE CASE.

>> I WANT TO UNDERSTAND THE
POSITION ON THAT.

[LOW AUDIO]

I DON'T KNOW.

IT IS A BEACH RENOURISHMENT.

NO ONE HAS EVER TESTED THE
FACT AS TO WHETHER IT IS
EVULSION.

IT IS GOING TO CHANGE.

THAT IS CORRECT.

>>> HE IS SAYING IN EVERY
SITUATION, THE STATE HAS
CONTROL OF THE LAND.

>> THAT IS NOT THE CASE.

>> WE'RE NOT TALKING ABOUT
EVULSION.

>> OKAY.

>> I DON'T KNOW WHAT THAT IS.

I DON'T KNOW IF IT IS

ACCRETION.

>> I GUESS YOU WERE SAYING YOU
WOULD HAVE THE RIGHT TO THAT
BEACH BECAUSE THAT IS GOING TO
CHANGE.

>> YES.

BUT WHAT WE ARE SAYING IS BY
THE ESTABLISHMENT OF THE
EROSION CONTROL LINE AND BY
NOT APPLYING THE EXCEPTION AS
IN THIS FIRST DISTRICT COURT
OF APPEALS CERTIFIED QUESTION
BY NOT APPLYING THE EXCEPTION,
THAT IS WHY THIS IS AN AS
APPLIED CHALLENGE.

YOU KNOW?

THE NATIONAL PROPERTIES CASE
DIDN'T HAVE A SAVINGS CLAUSE.

THE FLORIDA SUPREME COURT
SAID, IT IS A
CONSTITUTIONAL-VESTED RIGHT,
YOU, YOU CAN'T FIX, YOU CAN'T
FIX A LINE.

IN THE CASE, THE LINE IS FIXED

BY THE STATUTE, BUT THERE IS A

SAVING CLAUSE IF THERE IS A

TAKING.

AND THERE -- AS YOU RECOGNIZED

EARLIER, THE APPELANTS CAN

REALLY ONLY WIN IF THIS IS A

REGULATORY CASE.

IN THE 97 YEARS FROM BROWARD

CASE, NONE OF THOSE CASES STAN

FOR THE PROPOSITION THAT

RIPARIAN RIGHTS CAN BE SERVED

FROM RIPARIAN LANDS WITHOUT

THE PAYMENT OF COMPENSATION.

>> LET ME ASK YOU THIS, DO YOU

AGREE THAT THE RIPARIAN RIGHTS

ARE ACCOMPANIED BY A RIPARIAN

RISK, WHICH IS THE RISK OF

EROSION?

>> YES, SIR.

>> THE STATUTE SEEMS TO, IN

TAKES AWAY THE RIPARIAN RIGHT,

IS ALSO TAKING AWAY THE

RIPARIAN RISK, SO YOU ARE

GETTING A BENEFIT YOU DIDN'T

HAVE UNDER THE COMMON LAW.

>> WELL NOT NECESSARILY.

ONE DOESN'T KNOW WHAT THE

FUTURE WILL HOLD WITH RESPECT
TO THESE BEACHES.

THIS IS AN ATTEMPT TO
RENOURISH A BEACH, BUT THAT IS
PRECISELY WHY, YOUR HONOR,
THEY HAVE SAID, THAT YOU CAN'T
SEVER THE COURTS HAVE SAID SO
CLEARLY, YOU CAN'T SEVER
RIPARIAN RIGHTS FROM THE
RIPARIAN LAND.

[LOW AUDIO]

THE EROSION OCCURRED AFTER
THAT EROSION CONTROL LINE,
THEN THERE IS A MECHANISM TO
AVOID THAT AN YOU GO BACK TO
-- THAT IS FALSE?

IS THAT FALSE?

>> IT MAY BE SPECULATIVE.

RIPARIAN RIGHTS ARE TAKEN FROM
THE APPLICATION OF THIS PERMIT
APPLICATION TO THE CITY OF
DESTINE AND WALT COUNTY.

THERE WAS WAY THAT THIS COULD
HAVE BEEN AVOIDED BY THE
DEPARTMENT REQUIRING A SHOWING
OR THE TRUSTEES REQUIRING A

SHOWING THAT, THAT THERE WAS
SUBMISSION OF INTEREST TO
ENTITLE THE PERMITEE TO THE
PERMIT.

THERE WAS NOT IN THE CASE.
THEY SIMPLY SAY THERE WAS NO
INFRINGEMENT OF A PROPERTY
RIGHT AND THE RULES
SPECIFICALLY OF THE TRUSTEE
SAYS UNLESS THE RIPARIAN RIGHT
IS INFRINGED.

>> UNREASONABLY?

>> UNREASONABLY INFRINGED.

THEY WERE TAKEN BY THE STATE
WITHOUT COMPENSATION.

LET ME GO BACK TO FLORIDA
NATIONAL.

LEFT OFF AN IMPORTANT PLACE
THAT I WANT TO ADDRESS IT.

JUSTICE HAS BEEN ADDRESSING.

I

>> DEMARCATION LAB WOULD NOT
COMPLY WITH THE LETTER OF OUR
FEDERAL OR STATE CONSTITUTIONS
AN YOU LEFT OFF THE LAST
PHRASE.

NOR PRESENT REQUIREMENT SINCE
SOCIETY.

HOW DOES NOT WHAT THE STATE IS
DOING WITH ALL OF THE
ANNOUNCEMENTS THAT YOUR
OPPONENTS PRESENT MEET THE
PRESENT REQUIREMENTS OF
SOCIETY TO PROTECT THEM
INVALUABLE PUBLIC RESOURCE,
THE PUBLIC BEACHES?

BECAUSE THEY HAVE TAKEN
PROPERTY WITHOUT COMPENSATION
THAT THE STATUTE ALLOWS.

THE PROTECTION OF THESE
BEACHES COULD TAKE PLACE
WITHOUT TAKING, WITHOUT
APPROPRIATION THE PROPERTY
RIGHTS OF THE -- HUE WOULD IT
HAPPEN, IF THE STATE CAME IN
AND PUT IN 80 TO 100-FEET OF
BEACH, THEN, HOW WOULD THE
FEATURE LINE WORK?

IS IT YOUR POSITION THAT THE
LAND WOULD BECOME YOUR
CLIENTS?

HOW DOES IT WORK?

>> THIS IS NOT A CLASS OF
CLAIM -- THE RIGHT OF
ACCRETION, WHAT IS TAKEN THE
MOMENT THAT THE APPLICANT DID
NOT HAVE TO DEMONSTRATE
SUFFICIENT UPLAND INTERESTS.
THE RIGHT TO ACCRETION --

>> ANSWER MY QUESTION.
IF YOU HAVE THE STATE -- YOU
AGREE THE STATE HAS A RIGHT TO
PRESERVE ITS OWN PROPERTY,
CORRECT?

>> YES, SIR.

>> SO IT CAN'T COME IN, IF IT
HAS BEACH EROSION, CORRECT THE
EROSION?
CORRECT?

>> ON ITS PROPERTY?

>> IF IT DID THAT ON ITS
PROPERTY, THE HIGH WATER LINE

WHAT IS THE IMPACT?

IF THE STATE DOES THAT?

>> IF THE STATE DOES THAT
WITHOUT THE STATUTE, THE
BEACHES IS PROTECTED.

THEY GET, THE EROSION CONTROL
LINE ACCORDING TO THE STATUTE
IS ONLY FOR THE PURPOSE OF
DECIDING, WHETHER THE STATE
COST SHARE, BY THE COST SHARE
ON THE BEACH WITH THE
APPLICANT.

IN THE BEACH RENOURISHMENT.

THAT IS WHAT THE EROSION
CONTROL LINE IS.

>> IF THE STATE DOES THAT,
YOUR LAND IS NO LONGER
RIPARIAN BY DEFINITION?

>> THAT IS CORRECT.

THAT IS CORRECT.

AND AS THE COURTS INDICATED,
THE MOMENT YOU SEVER THOSE
RIPARIAN RIGHT INTERESTS THE
UPLAND PROPERTY, IT REQUIRES
COMPENSATION TO THE
UPLANDOWNER.

THE STATE COMPLETELY IGNORES
THAT AND THE STATUTE AND THE
RULE OF THE TRUSTEES
CONTEMPLATE THAT.

THE STATE FOR WHATEVER REASON

HAD ELECTED NOT DO THAT AND
THUS HAS NOT REQUIRED THE
APPLICANT TO DEMONSTRATE
SUFFICIENT UPLAND INTERESTS AN
IN ALL OF THE LINE OF CASE,
AND THERE IS NOT ONE CASE IN
FLORIDA LAW DEALING WITH
RIPARIAN RIGHTS THAT DEALS
WITH IT AS A REGULATORY
TAKING.

>> WELL, LET ME ASK YOU THIS:
I AM REALLY TRYING TO GET HERE
TO WHAT IS THE BOTTOM LINE OF
WHAT IT IS YOU REALLY WANT.
IF THE COUNTY DID NOT COME IN
AND RESTORE THIS BEACH, WHAT
WOULD HAPPEN THEN?

>> IF THE COUNTY DID NOT COME
IN AN RESTORE THE BEACH, THE
BEACH MAY BE ERODED, THE BEACH
MAY ACCRETE, WE DON'T --

>> THE BEACH MAY, IN FACT, THE
WATER MAY IN FACT INTRUDE ON
YOUR CLIENT'S PROPERTY.

>> IT MAY IN FACT TO DO THAT,
YES, YOUR HONOR.

>> SO WHAT IS IT THAT THESE

PROPERTY OWNERS ARE REALLY
LOOKING FOR IN THE CASE?

I MEAN, IF THE COUNTY COMES
IN, RESTORES THE BEACH, THERE
IS MORE BEACH.

YOUR CLIENT HAS BETTER ACCESS,
ALL OF THESE THINGS.

SO WHAT IS IT THAT THEY ARE
REALLY AFTER?

>> THE PROPERTY OWNERS WOULD
-- KNOW, THE PACIFIC RELIEF
REQUESTED IS TO INVALIDATE THE
PERMIT BECAUSE THE PERMIT,
THEY HAVE NOT MET THE PERMIT
CONDITIONS.

THEY HAVE APPROPRIATED RIGHTS
AND NOT REQUIRED TO
DEMONSTRATE IT HAS TO
INSTITUTE EMINENT DOMAIN
PROCEEDINGS AGAINST THE
PROPERTY OWNERS DOWN THAT
6.9-MILE OF BEACH.

>> NO, SIR.

IT IS PASSED DUE SOMEHOW ALLOW
THE APPLICANT TO -- THE

APPLICANT HAS TO DEMONSTRATE

SUFFICIENT INTEREST.

IT HAS TO GET ACQUIESCENCE.

>> ACCORDING TO YOU -- UNDER

161.14 1, IT SAYS IF

AUTHORIZED BEACH RESTORATION,

BEACH NOURISHMENT, CONTROL

PROJECT CANNOT BE ACCOMPLISHED

WITHOUT THE TAKING OF

PROPERTY, THE TAKE MUST BE

MADE BY THE REQUESTING

AUTHORITY BY EMINENT DOMAIN

PROCEED, THE ARGUMENT IS THAT

IT CONSTITUTE AS TAKING, SO

THE CONCLUSION OF THAT

ARGUMENT IS THAT BEFORE THEY

CAN CONDUCT THE BEACH

RESTORATION PROJECT, THEY

HAVE TO CONDUCT EMINENT DOMAIN

PROCEEDINGS AGAINST ALL OF

THE PROPERTY OWNERS DOWN THE

66.9 MILE BEACH.

>> IF IT CAN'T BE ACCOMPLISHED

WITHOUT A TAKING.

A TAKE OF PRIVATE PROPERTY

RIGHTS, BUT THEY DON'T, YOU

KNOW, WHAT I AM TELLING YOU,

YOUR HONOR, IF THEY DON'T

ALWAYS HAVE TO INSTITUTE
EMINENT DOMAIN PROCEEDINGS IF
THEY CAN SHOW SUFFICIENT
INTEREST.

IN OTHER WORD, IN REGARD TO
THE PROPERTY OWNERS AND GOTTEN
THEIR ACQUIESCENCE OR REQUIRED
THE RIGHT SOMEHOW THROUGH A
NEGOTIATIONS, THROUGH PAYMENT
OF COMPENSATION, THROUGH SOME
OTHER MECHANISM, THIS IS ONLY
INVOKE FIRE DEPARTMENT THE
BEACH RENOURISHMENT CAN'T BE
REACCOMPLISHED WITHOUT A
TAKING OF PRIVATE PROPERTY,
AND IF YOU TURN TO --

>> WELL, THE WHOLE POINT ON
THE LAST 25 MINUTES HAS BEEN
THAT THEY ARE TAKING YOUR
RIPARIAN RIGHTS.
BECAUSE THEY HAVE NOT INVOKED
THE SAVINGS CLOSE.
THEY HAVE NOT DONE ANYTHING
ELSE.

>> THEY ARE TAKING THEM
BECAUSE THEY ARE FIXING THE --

WHETHER THAN ALLOWING THE
HIGH-WATER MARK TO MEANDER BY
FIXING IT, THEY ARE, THEY ARE
UNDERSTOOD AT THE NATIONAL
PROPERTIES CASE IS THAT IT IS
UNCONSTITUTIONAL TO DO THAT
UNLESS THEY PAY YOU
COMPENSATION.

>> RIGHT.

THERE WAS NOT A SAVINGS CLAUSE
IN THE NATIONAL PROPERTIES
CASE.

THERE IS A SAVINGS CLAUSE
HERE.

>> THE SAVINGS CLAUSE --

>> JUST TO PAY YOU
COMPENSATION.

BUND ARE THE RULE, YOUR HONOR,
THEY HAVE TO DEMONSTRATE
SUFFICIENT UPLAND IN REST.

>>.

[LOW AUDIO]

HOW DO THEY ESTABLISH?

>> WHAT YOU MEAN?

>> THE RULES FOR THE TRUSTEES
PROVIDE FOR THAT, A WAR RAN
TEE DEED, A QUIT CLAIM DEED,

SOMETHING TO SHOW THAT
INAPPROPRIATING THESE UPLAND
RIPARIAN RIGHTS WHICH MAY BE,
WHICH MAY HAVE BEEN THE
RIPARIAN RIGHTS MAY BE THE
DIFFERENCE IN VALUE BETWEEN AN
EMPTY LOT AND A RIPARIAN LOT
THAT MAY HAVE BEEN THE BASIS
FOR THE REASON OR PAID THE
PURCHASE PRICE AND THE SELLER
SET THE PRICE BUT YOU ARE
SAYING IT DOESN'T MATTER
WHETHER THEY TAKE ONE OF THE
BUNDLES AND NEVER ACTUALLY
THEORETICALLY HURT THESE VIEW
AND I DON'T KNOW HOW YOU PUT
TWO TOGETHER.

>> YOUR HONOR, THE COURTS HAVE
MADE NO DISTINCTIONS BETWEEN
THOSE FOUR RIGHTS IN THE
CASES, IF THAT IS THE CASE, IF
THE RIGHT IS OF LESS VALUE AS
THE RIGHT TO VIEW WHERE THE

BRIDGE DIDN'T TOUCH THE
PROPERTY BUT THE DISTRICT
COURT OF APPEALS SAY YOU TOOK

AWAY THE RIPARIAN RIGHT, IT IS
NOT LEAGUE TORY TAKING, IT IS
MORE IN A PHYSICAL INTRUSION,
IF, YOUR HONOR, THE COURTS HAD
MADE DISTINCTION BETWEEN
THOSE, THAT WOULD BE FINE, BUT
THE --

>> HE MAY HAVE SAID THINGS IN
OTHER CASES AND THE PROBLEM IS
YOU ARE TRYING TO LOOK FOR --
WHICH WAS IT?

I DON'T SEE HOW AGAIN THIS IS
A PHYSICAL TAKING CASE.

>> RIPARIAN RIGHTS, IT IS A
TAKING CASE BECAUSE THE LONG
LINE OF HISTORY OF THIS COURT
HAS SAID THOSE RIPARIAN RIGHTS
CANNOT BE TAKEN --

>> I THOUGHT YOUR POINT WAS
THAT ONCE ACCRETES, YOU GOT
ALL OF THESE RIGHTS F. YOU GOT
EVERY RIPARIAN RIGHT.

>> RIGHT.

>> THAT IS THE REASON YOU ARE
MAINTAINING EROSION CONTROL
LINE IS UNCONSTITUTIONAL IS
BECAUSE IT PREVENTS YOU FROM

GETTING THE ACCRETED LAND.

>> SENTENCE THE DEPARTMENT DID
NOT INVOKE THE SAVINGS CLAUSE
AN ACQUIRE THEE RIGHTS THROUGH
EMINENT DOMAIN PROCEEDINGS.

>> IT BOILS DOWN TO WHETHER
THE RIGHTS CAN NOT BE
SEPARATED FROM THE RIPARIAN
LAND TO WHICH THEY ATTACH.

>> THANK YOU.

>> WE HAVE EXHAUSTED YOUR
TIME.

MR. PELHAM, REBUTTAL.

>> OKAY, MR. MAKAR.

OKAY.

>> IT IS SO DISTINGUISHABLE.
THE CASE IN WHICH IT HAS
BOUNDARIES SET BY STATUTE