Submerged Lands: Florida Appellate Court Addresses Whether Adjacent Riparian Landowner Rights Are Restricted

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03/16/2021

The Florida Second District Court of Appeal ("Court"), in an Opinion published on February 26, 2021, addressed an issue involving the right of a riparian to build a structure over adjacent submerged lands under different ownership. See *5F, LLC v. Hawthorne,* No. 2D19s-2574, 2021 WL 745361 (Fla. Dist. Ct. App. Feb. 26, 2021).,

The question was whether 5F, LLC ("Appellant") as the owner of submerged land around Boca Grande, Florida, had a right to restrict the riparian rights of the adjacent property owners by prohibiting them from building docks over its land and out to the navigable water line.

Florida's jurisprudence provides that common law riparian rights include:

1. the right to make general use of the water adjacent to the property;
2. the right to wharf out to navigability;
3. the right to have access to navigable waters, and;
4. the right to accretions.

Appellant acquired a large section of submerged land owned by the State of Florida. This included a portion of land adjacent to the waterfront property of the Hawthorne Family, ("Appellees").

Appellant began to distribute notices to the other nearby property owners in Boca Grande, that threatened to file actions for trespass and injunctive relief if docks were constructed over its submerged property. However, Appellant offered to "waive" its alleged right to bring such actions if the property owners agreed to a monetary payment.

Many of the property owners made such payments in order to "settle."

Appellees refused to do so. The Florida Department of Environmental Protection (FDEP) and Lee County issued permits that authorized Appellees to construct a dock beyond the mean low water mark over Appellant's submerged land. Appellees then began construction of a dock.

Appellant filed suit claiming Appellees had committed a trespass. It also sought permanent injunctive relief in an attempt to bar Appellees from constructing a dock that would encroach on its land. Appellees filed a counterclaim against Appellant for slander of title.

The lower court found in favor of Appellees. It held that their common law riparian rights allowed them to construct a dock across submerged lands that were privately owned without Appellant's consent.

On appeal, both parties focused their arguments on alternative interpretations of the holding in *5F, LLC v. Dresing,* 142 So. 3d 936 (Fla. Dist. Ct. App. 2014) ("*Dresing*"), which states:

We conclude there is a common law qualified riparian right or privilege to construct piers or wharves from the riparian owner's land onto submerged land to the point of navigability but not beyond the low water line, subject to the superior and concurrent rights of the public and to applicable regulations. This is true regardless of whether the submerged lands are held in trust by the State or privately held.

Despite the conflicting interpretations proffered by the parties, the Court held that *Dresing* had no bearing on this particular situation. It stated that the court in that case did not reach the question of whether riparian owners could rightfully construct a dock beyond the low water line to the point of navigability. Specifically, *Dresing* dealt with a private landowner merely seeking to construct a pier for the purposes of appreciating the view of his waterfront property rather than a dock that would extend to navigable waters. The low water line was not an issue litigated by the parties in *Dresing,* given that the pier at issue did not extend beyond those bounds.

The Court upheld the decision of the lower court. It stated that a private entity may rightfully acquire submerged lands from the State. However, the land is taken subject to the duty not to interfere with the use of such land by members of the public and upland property owners that have riparian rights.

The Court notes that the State of Florida has traditionally held title to submerged lands in trust for the enjoyment of the public for various outdoor recreational activities. Therefore, the trust obligation to the public transcends any private ownership rights to those lands.

The Court explained that private ownership of submerged land does not encompass the authority to prevent adjacent property owners from exercising their riparian rights. These rights include the right to construct a dock from one's property across privately-owned submerged land in order to reach navigable waters.

A copy of the Opinion can be downloaded here.