

Water Law/Lending: Florida Appellate Court Addresses Whether Mortgage Encompasses Alluvium (Built Up Land)

Arkansas Environmental, Energy, and Water Law Blog



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The District Court of Appeals of Florida ("Court") in a September 21st decision reviewed a scenario in which oceanfront property subject to a mortgage expanded because of natural build up ("the alluvium"). See *Accardi v. Regions Bank*, 2016 WL 5118351 (Fla. Dist. Ct. App. 4th Dist. 2016).

The Court affirmed a trial court's holding that the land built up through the natural processes of accretion and reliction ("the alluvium") adjacent to the mortgaged property was encompassed by the mortgage.

In 1996, appellant Edmund Accardi ("Accardi"), obtained title to a piece of waterfront property in Broward County, Florida. He later transferred the property to himself and his wife.

Over time, the land area built up on the oceanfront side of the original property. Common law principles governing ownership of lands adjacent to waterways applied to this new land. The land was added to the fee simple title (i.e., original property) owned by the husband and wife. After the Accardi's divorced, Accardi's wife quitclaimed her portion of the property to her husband with the prior property description used in the original 1996 deed.

Accardi executed in 2008 a mortgage on the subject property for a line of credit \$2,250,000. He used the same description as the original deed in 1996. After Accardi defaulted on the loan, Regions Bank ("Bank") filed an action to recover on the note, foreclose on the mortgage, and reform the mortgage to include the alluvium (i.e., property that had built up). Accardi counterclaimed for a declaratory judgment, asking the court to determine whether the alluvium was part of the mortgaged property.

The common law reserves exclusive littoral rights for upland owners, which includes the right to accretion and reliction. These are rights that cannot be taken from upland owners without just compensation. The Court recognized that the United States Supreme Court has noted that in Florida, "the littoral owner automatically takes title to dry land added to his property by accretion." *Id.* at *2. With the emphasis on "automatically", similar to by operation of law, the riparian owners' property rights in the new land become a part of the owner's rights in the upland parcel of land. *Id.*

The Court held that because Accardi had not separated the alluvium from the original parcel of land, there was a presumption that the piece of land would pass with the original property. Further because Accardi had not "expressly carved out" the alluvium, it was in fact encumbered by the mortgage. Therefore the Bank correctly reformed the mortgage to include the alluvium.

[A copy of the decision can be downloaded here.](#)