

NO. 97,293-

GALVESTON EAST BEACH, INC.

VS.

THE STATE OF TEXAS

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IN THE DISTRICT COURT OF

GALVESTON COUNTY, TEXAS

10th JUDICIAL DISTRICT

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SUIT FOR
DECL. JUDGMENT

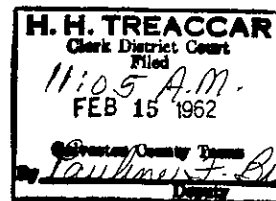
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PLAINTIFF'S ORIGINAL PETITION

BARKER, BARKER & COLTZER
202 Merimax Building
Galveston, Texas

Attorneys for Plaintiffs



\$20.00

NO. 97,893

GALVESTON EAST BEACH, INC.
VS.
THE STATE OF TEXAS

X
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IN THE DISTRICT COURT OF
GALVESTON COUNTY, TEXAS
10th JUDICIAL DISTRICT

ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, GALVESTON EAST BEACH, INC., complaining
of defendant, THE STATE OF TEXAS, respectfully represents:

I.

303 Plaintiff is incorporated under the laws of the
State of Texas, having its residence and place of business in
Galveston, Galveston County, Texas, and brings this action
against The State of Texas, of which Will Wilson is Attorney
General and agent for service, under the provisions and by
authority of Acts 1959, 56th Legislature, Second Called Session,
page 108, chapter 19, known as Article 5415-d, Vernon's
Annotated Revised Civil Statutes of Texas of 1925, as amended.
More specifically this action is authorized by Section 6 of
said Article 5415-d.

II.

Plaintiff is the owner in fee simple of the follow-
ing described tract and parcel of land situated in the City
and County of Galveston and described as follows:

Being part of a tract of land conveyed to the United
States Government by Maco Stewart by deed dated May
11, 1917, which deed is recorded in Book 303, pages
265-266, Deed Records of Galveston County, Texas, said
tract formerly being part of the Fort San Jacinto
Reservation, and further described by metes and bounds
and courses and distances as follows:

Start at a point in the South boundary of the Fort San
Jacinto Military Reservation marked by a drift bolt
in the center of the shore branch of the Galveston
South Jetty at Station 69 plus 02.6 whence the former
Fort Point Lighthouse bears North 35° 27' 35" East
2179.3 feet (1144.55 varas);

Thence, parallel with the numbered streets in the City
of Galveston, Texas, approximately South 16° 43' 09"
East to the Southeasterly boundary of the Galveston
seawall right of way, said Southeasterly boundary line

being parallel to and 225 feet perpendicular distance on the seaward side from the center line of the top of the seawall structure, which center line is 2 feet 6 inches landward of the seaward edge of said top of the seawall structure, for the place of beginning of this description;

Thence, continuing South 16° 43' 09" East to the high water line on the shore of the Gulf of Mexico;

Thence, Northerly and Easterly with the meanders of the said high water shore line of the Gulf of Mexico, to the intersection of this line with the present South boundary of a tract of land deeded to the United States of America by the Galveston City Company by Special Warranty Deed dated March 17, 1898, which deed is recorded in Vol. 245, page 187, Deed Records of Galveston County, Texas;

Thence, with the said South boundary of the said tract North 82° West to a point 1400 feet South 82° East of the Southeasterly right-of-way boundary of the Galveston seawall, said Southeasterly boundary line being parallel to and 225 feet perpendicular distance on the seaward side from the center line of the top of the seawall structure, which center line is 2 feet 6 inches landward of the seaward edge of said top of the seawall structure;

Thence, South 27° 09' West parallel to the Galveston seawall a distance of 4400 feet;

Thence, North 82° West a distance of 1400 feet, more or less, to the Southeasterly right-of-way boundary of the Galveston seawall, said Southeasterly boundary line being parallel to and 225 feet perpendicular distance on the seaward side from the center line of the top of the seawall structure, which center line is 2 feet 6 inches landward of the seaward edge of said top of the seawall structure;

Thence, South 27° 09' West with the Southeasterly boundary of said seawall right of way 1100 feet, more or less, to an angle point in said seawall right of way boundary;

Thence, continuing along the said seawall right of way boundary South 35° 21' West 1500 feet, more or less, to the point of beginning, together with the land between the said high water shore line and the low water shore line extending from the most Southerly boundary, extended, to the most Northerly boundary, extended, of the above described tract, including all future accretions and accumulations as a result of nature, or the construction of public works for the improvement and defense of the Harbor, and containing 384 acres, more or less.

This land is bounded on the easterly side by the shore line of the Gulf of Mexico; it includes a beach, no part of which is a State owned beach within the meaning of said Act or in law. This is the property conveyed to plaintiff by deed from the

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United States of America to Galveston East Beach, Inc. dated September 24, 1959, recorded in Vol. 1339, pages 44-47, inclusive, Galveston County Records; a true copy of this deed for convenience of the court is attached to this petition marked "Exhibit A" and made a part hereof.

III.

The property so conveyed to plaintiff was a part of the land acquired by purchase by the United States of America and conveyed to it by deed from Maco Stewart dated May 11, 1917, recorded in Book 303, pages 265-266, Galveston County Records, which deed for the court's convenience is also attached hereto as "Exhibit B" and made a part hereof.

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IV.

It was and remains the purpose and intention of Galveston East Beach, Inc. in acquiring the land described above to develop the same or cause the same to be developed with improvements and for uses which would be and become advantageous to and would contribute substantially to the economic growth and prosperity of the community of Galveston and to provide decent and adequate facilities for the recreational and other needs of the people of Galveston and of the State of Texas. To accomplish this and to afford a fair return on the substantial amount of capital invested for the purchase of the property, it is necessary that plaintiff as the owner maintain its rights as owner to regulate and control said property; such regulation and control to extend to the line of mean low tide on the seaward side of the property.

V.

Such rights of ownership were acquired and did exist prior to the enactment of the law referred to in paragraph I of this petition. The Act contains the following

language:

"Section 1. It is hereby declared and affirmed to be the public policy of this state that the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico, or such larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, in the event the public has acquired a right of use or easement to or over such area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

It shall be an offense against the public policy of this state for any person, firm, corporation, association or other legal entity to create, erect or construct any obstruction, barrier, or restraint of any nature whatsoever which would interfere with the free and unrestricted right of the public, individually and collectively, to enter or to leave any state-owned beach bordering on the seaward shore of the Gulf of Mexico, or such larger area, extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, in the event the public has acquired a right of use or easement to or over such area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

306 It shall be an offense against the public policy of this state for any person, firm, corporation, association, or other legal entity to create, erect, or construct any obstruction, barrier or restraint which would interfere with the free and unrestricted right of the public, individually and collectively, to the lawful and legal use of any property abutting upon or contiguous to the state-owned beach bordering on the seaward shore of the Gulf of Mexico upon which the public has acquired a prescriptive right.

Be it provided, however, that nothing in this Act shall prevent any agency, department, institution, subdivision or instrumentality of this state, or of the federal government from erecting or maintaining any groin, seawall, barrier, pass, channel, jetty or other structure as an aid to navigation, protection of the shore, fishing, safety or other lawful purpose authorized by the Constitution or laws of this state or of the United States.

The requirement of free and unrestricted rights of ingress and egress over areas landward of the line of vegetation shall be deemed to be fully satisfied by access roads or ways, now existing and available to the public, or which by or with the approval of any governmental authority having jurisdiction, may be provided in the future.

Be it provided further, that nothing in this Act shall be construed as in any way affecting the title of the owners of land adjacent to any state-owned beach bordering on the seaward shore of the Gulf of Mexico, or to the continuation of fences for the retention of livestock across sections of beach which are not accessible to motor vehicular traffic by public road or by beach.

Be it provided further, that none of the provisions of this Act shall apply to the beaches on those islands or peninsulas that are not accessible by a public road or ferry facility, so long as such condition shall exist.

"Section 2. In any action brought or defended under this Act or whose determination is affected by this Act a showing that the area in question is embraced within the area from mean low tide to the line of vegetation shall be prima facie evidence that:

(1) the title of the littoral owner does not include the right to prevent the public from using the area for ingress and egress to the sea;

(2) there has been imposed upon the area subject to proof of easement a prescriptive right or easement in favor of the public for ingress and egress to the sea.

Definitions

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"Section 3. a. The term 'line of vegetation' means the extreme seaward boundary of natural vegetation which spreads continuously inland. In any area where there is no clearly marked vegetation line (as, for instance, a line immediately behind well-defined dunes or mounds of sand and at a point where vegetation begins) recourse shall be had to the nearest clearly marked line of vegetation on each side of such unmarked area to determine the elevation reached by the highest waves of the Gulf. The 'line of vegetation' for the unmarked area shall be the line of constant elevation connecting the two clearly marked lines of vegetation on each side. In the event the elevation of the two points on each side of the area are not the same, then the extension defining the line reached by the highest waves of the Gulf shall be the average elevation as between the two points; provided, however, that where there is no clearly marked line of vegetation, such extended line shall in no event extend inland further than two hundred (200) feet from the seaward line of mean low tide. The 'line of vegetation' shall not be affected by the occasional sprigs of salt grass upon the mounds or dunes, or seaward from them, and shall not be affected by artificial fill, the addition or removal of turf, or by other artificial changes in the natural vegetation of the area. Where such changes have been made, and thus the vegetation line has been obliterated or has been created artificially, then the line of vegetation shall be determined in the same manner as in those areas where there is otherwise no clearly marked 'line of vegetation'; however where there is a vegetation line consistently following a line more than two hundred (200) feet from the seaward line of mean low tide, this two hundred (200) foot line shall constitute the landward boundary of the area subject to public easement until such time as a final court adjudication shall establish this line in another place.

b. The term 'highest waves' means the highest swell of the surf with such regularity that vegetation is prevented, and does not refer to the extraordinary waves which temporarily extend above the line of vegetation during storms and hurricanes.

c. The term 'beach' as used herein means that area subject to public use and easement as defined in Section 1.

d. 'Person' as used herein includes natural persons, corporations and associations.

e. 'Littoral owner' means the owner of land adjacent to the shore and includes anyone acting under the littoral owner's authority.

Construction of term 'Public Beaches'

Section 4. Nothing herein shall in any way reduce, limit, construct or vitiate the definition of public beaches as defined from time immemorial in law and custom."

Such language and the other provisions of said Act known to the Court have created a cloud on the title and the full right of plaintiff to the ownership and control of said land including the beach extending to mean low tide, and have rendered it impracticable, while such cloud remains, to secure investment capital for the development of decent and adequate facilities for the purposes outlined in paragraph IV. and have greatly affected the value of plaintiff's property, to the injury and damage of plaintiff and of the people of Galveston and of the State.

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VI.

Plaintiff alleges and is prepared to prove on a trial of this cause that neither the State of Texas nor any subdivision thereof nor the public or any members of the public has acquired any easement or title or right to the use of the beaches from the line of mean low tide to the vegetation line or to the line of mean high tide or to any other portion of said land under or by virtue of any claim of right recognized by the quoted statute or otherwise created by or existing in law. There has been no such use of said property at any time as would or could create any right by prescription or otherwise. No such right arose or came into existence prior to the purchase of said land by the United States of America on May 11, 1917; no such right arose or could have come into existence during the ownership of the land by the United States of America from May 11, 1917, to September 24,

1959; and no such right has come into existence or could have been created since the conveyance and delivery of the land to plaintiff as aforesaid.

VII.

Plaintiff further alleges and is prepared to prove on a trial of this cause that it and those under whom it holds title, and particularly the grantor in the deed from the United States of America to plaintiff, has and have had and held continuous, peaceable and adverse possession under title and color of title by transfer from and under the Republic of Texas of the land above described, claiming, using and enjoying the same for more than three (3) years next after any asserted claim of easement, right and/or title on the part of the public and members of the public, or of the State of Texas, or any political subdivision thereof, arose or accrued, if any such claim or cause of action against plaintiff ever did accrue, and before the commencement of this suit; and that plaintiff's exclusive ownership, possession and control of all of said property, including the beach area, free of any adverse claim of right, title, easement and/or title on the part of the public and everyone else, have and has become vested and established prior to the commencement of this suit and prior to the enactment of the statutes hereinabove referred to in paragraph I and that plaintiff is entitled to all of such rights of ownership under the constitution of the United States and of the State of Texas and the law of Texas.

VIII.

By reason of the foregoing plaintiff is entitled under the Uniform Declaratory Judgments Act of Texas to have judicially determined, adjudged and declared that plaintiff is the owner of said property and is entitled to the use and control of the same as owner thereof free of any right of

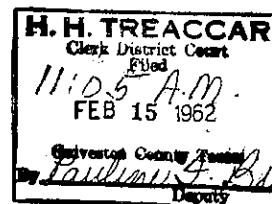
the State of Texas or of any political subdivision of the State or of the public or any member of the public under or by virtue of any provision of said statute or of any other provision or authority of law and adjudging and declaring that neither the State nor any political subdivision thereof nor the public nor any member of the public possesses or is entitled to any such right of possession or use; and adjudging and declaring that plaintiff is entitled to fence and protect said land by building and extending the fences on the northerly and southerly boundaries thereof to the line of mean low tide.

WHEREFORE, plaintiff prays that citation issue herein as authorized by law and that on final hearing hereof plaintiff have judgment against the defendant, adjudging and declaring the rights of plaintiff pursuant to the specifications of paragraph VIII and denying any adverse right or claim against said land on the part of defendant or any subdivision of the State of Texas, or of the public or any member of the public, and for such other and further relief to which it may show itself entitled.

BARKER, BARKER & COLTZER
202 Merimax Building
Galveston, Texas

By Avery D. Barker

Attorneys for Plaintiff



DEED WITHOUT WARRANTY

THE STATE OF TEXAS |

COUNTY OF GALVESTON |

KNOW ALL MEN BY THESE PRESENTS that the UNITED STATES OF AMERICA, acting by and through the Administrator of General Services, under and pursuant to the powers and authority contained in the provisions of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and rules, orders and regulations issued pursuant thereto, in consideration of THREE HUNDRED EIGHTY-SIX THOUSAND ONE HUNDRED TWELVE AND NO/100 (\$386,112.00) DOLLARS, paid and to be paid as hereinafter set forth by GALVESTON EAST BEACH, INC., a Texas corporation, Galveston, Texas (hereinafter sometimes called "Grantee") does by these presents bargain, sell, grant and convey, without warranty, express or implied, subject to the exceptions and reservations hereinafter set forth, unto the said GALVESTON EAST BEACH, INC., its successors and assigns, the following described tract or parcel of land in Galveston County, Texas:

Being part of a tract of land conveyed to the United States Government by Maco Stewart by deed dated May 11, 1917, which deed is recorded in Book 303, Pages 265-266, Deed Records of Galveston County, Texas, said tract formerly being part of the Fort San Jacinto Reservation, and further described by metes and bounds and courses and distances as follows:

Start at a point in the South boundary of the Fort San Jacinto Military Reservation marked by a drift bolt in the center of the shore branch of the Galveston South Jetty at Station 69 plus 02.6 whence the former Fort Point Lighthouse bears North 35° 27' 35" East 3179.3 feet (1144.55 varas);

311 Thence, parallel with the numbered streets in the City of Galveston, Texas, approximately South 16° 43' 09" East to the Southeasterly boundary of the Galveston seawall right of way, said Southeasterly boundary line being parallel to and 225 feet perpendicular distance on the seaward side from the center line of the top of the seawall structure, which center line is 2 feet 6 inches landward of the seaward edge of said top of the seawall structure, for the place of beginning of this description;

Thence, continuing South 16° 43' 09" East to the high water line on the shore of the Gulf of Mexico;

Thence, Northerly and Easterly with the meanders of the said high water shore line of the Gulf of Mexico, to the intersection of this line with the present South boundary of a tract of land deeded to the United States of America by the Galveston City Company by Special Warranty Deed dated March 17, 1898, which deed is recorded in Vol. 245, Page 187, Deed Records of Galveston County, Texas;

Thence, with the said South boundary of the said tract North 82° West to a point 1400 feet South 82° East of the Southeasterly right-of-way boundary of the Galveston seawall, said Southeasterly boundary line being parallel to and 225 feet perpendicular distance on the seaward side from the center line of the top of the seawall structure, which center line is 2 feet 6 inches landward of the seaward edge of said top of the seawall structure;

Thence, South 27° 09' West parallel to the Galveston seawall a distance of 4400 feet;

Thence, North 82° West a distance of 1400 feet, more or less, to the Southeasterly right-of-way boundary of the Galveston seawall, said Southeasterly boundary line being parallel to and 225 feet perpendicular distance on the seaward side from the center line of the top of the seawall structure, which center line is 2 feet 6 inches landward of the seaward edge of said top of the seawall structure;

Thence, South 27° 09' West with the Southeasterly boundary of said seawall right of way 1100 feet, more or less, to an angle point in said seawall right-of-way boundary;

312 Thence, continuing along the said seawall right-of-way boundary South 35° 21' West 1500 feet, more or less, to the point of beginning, together with the Government's interest in and to the land between the said high water shore line and the low water shore line extending from the most Southerly boundary, extended, to the most Northerly boundary, extended, of the above described tract, including all future accretions and accumulations as a result of nature, or the construction of public works for the improvement and defense of the Harbor, and containing 384 acres, more or less.

Said property transferred hereby was duly declared to be surplus and was assigned to the Administrator of General Services for disposal pursuant to the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and applicable rules, orders and regulations.

TO HAVE AND TO HOLD the foregoing described premises, together with all and singular the rights, privileges and appurtenances thereunto in anywise belonging unto the said Grantee, its successors and assigns forever.

The aforesaid sum of THREE HUNDRED EIGHTY-SIX THOUSAND ONE HUNDRED TWELVE AND NO/100 (\$386,112.00) DOLLARS, being the monetary consideration of this conveyance, is partly paid and partly payable as follows:

1. The sum of NINETY-SIX THOUSAND FIVE HUNDRED TWENTY-EIGHT AND NO/100 (\$96,528.00) DOLLARS cash in hand paid, the receipt of which is hereby acknowledged.

2. The sum of TWO HUNDRED EIGHTY-NINE THOUSAND FIVE HUNDRED EIGHTY-FOUR AND NO/100 (\$289,584.00) DOLLARS, with interest from date at the rate of five (5%) per cent per annum to be paid as provided in a certain Vendor's Lien Note, executed and delivered by Grantee to the Grantor; said Note is of even date herewith and is payable to the order of the United States of America at the Regional

Office of General Services Administration in the City of Dallas, Dallas County, Texas, or at payee's option, at any other place in the State of Texas designated by payee. The principal of this Note is payable in forty (40) successive quarterly annual installments, each in the amount of SEVEN THOUSAND TWO HUNDRED THIRTY-NINE AND 60/100 (\$7,239.60) DOLLARS, all exclusive of interest; the first of said installments shall be due and payable, and shall be paid on or before December 24, 1959, and the remaining installments shall be due and payable on the twenty-fourth day of each month of March, June, September and December thereafter until the whole of said principal sum of \$289,584.00 is paid in full.

Interest on said Note is due and payable as accrued upon the unpaid balance of principal on the respective and particularly specified maturity date and at the time of paying said installments of principal. Said Note contains an acceleration clause and provides for attorney's fees. Reference is made to said Note for further description.

The Vendor's Lien is expressly retained against the property herein conveyed for the benefit of the holder or holders of the aforesaid Vendor's Lien Note until the said Vendor's Lien Note is fully paid and discharged according to the tenor and reading of said Vendor's Lien Note, when this conveyance shall become absolute; and as further security for the payment of said Vendor's Lien Note, a Deed of Trust is this day given by the Grantee to DAVID S. PHILLIPS, Trustee, and to his successor or substitute, for the benefit of the holder or holders of said Vendor's Lien Note.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed on this _____ day of _____, 1959.

UNITED STATES OF AMERICA
Acting by and through the
Administrator of General Services

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By David S. Phillips
DAVID S. PHILLIPS
Regional Commissioner, Region 7
General Services Administration
Dallas, Texas

WITNESSES:

John M. Montgomery

1.

NOTES

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| Galveston County Texas |
| <i>Paul M. F. Burke</i> |
| Deputy |

NO. 97,893

GALVESTON EAST BEACH, INC.
VS.
THE STATE OF TEXAS

IN THE DISTRICT COURT OF
GALVESTON COUNTY, TEXAS
10TH JUDICIAL DISTRICT

O R D E R

The Court being of the opinion that the motion to extend time for preparing and filing Statement of Facts and Bills of Exception in the trial court from fifty (50) days to a total of sixty (60) days should be granted for good cause shown;

It is, therefore, ORDERED that the time for preparing and filing Statement of Facts and Bills of Exception in the trial court be, and the same is hereby extended to sixty (60) days; *that, is to and including August 4, 1964.*

The Court further being of the opinion that the motion to authorize the Court Reporter to forward, transport and/or deliver for filing in the Court of Civil Appeals for the First Supreme Judicial District of Texas all original exhibits received in evidence in the trial of this cause should be granted;

It is, accordingly, ORDERED that the Court Reporter of this Court, the honorable Ray O'Neill, be, and he is hereby authorized and directed at the time of filing Statement of Facts and Bills of Exception in the Court of Civil Appeals to forward, transport and/or deliver to said court, to accompany said Statement of Facts and Bills of Exception and to be considered as a part thereof, the original exhibits received in evidence in the trial of this cause. In this connection it is directed that said exhibits be alphabetically indexed by identifying endorsement and number entered, as well, on each such item.

This *9th* day of July, 1964.

Donna M. Marshall
Judge, District Court of
Galveston County, Texas,
10th Judicial District.

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Alice Campbell

NO. 97,893

| | | |
|----------------------------|---|--------------------------|
| GALVESTON EAST BEACH, INC. | X | IN THE DISTRICT COURT OF |
| VS. | X | GALVESTON COUNTY, TEXAS |
| THE STATE OF TEXAS | X | 10TH JUDICIAL DISTRICT |

STIPULATION AND AGREEMENT

For the convenience of the Court and the attorneys for the respective parties hereto, and in order that justice may be done, it is stipulated by the parties hereto that the time for the filing of the trial court's findings of fact and conclusions of law pursuant to the provisions of Rule 297 may be, and the same is hereby extended to September 8, 1964, and thereafter the parties shall have until and including September 18, 1964, within which to request their additional, further, other or amended findings and conclusions within the meaning of Rule 298.

Nothing herein shall be deemed a waiver by defendant, The State of Texas, of its objections heretofore urged against the filing of findings or conclusions of fact and of law by reason of the filing of request for same by plaintiff eleven days after the final judgment herein.

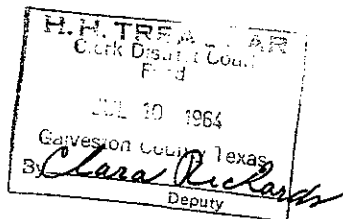
STIPULATED AND AGREED this 10 day of July, 1964.

ARMSTRONG, BEDFORD & LAMB DIN
And
BARKER, BARKER & COLTZER

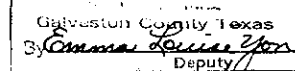
By Arvent Barker
Attorneys for Plaintiff

WAGGONER CARR

By J. Arthur Sandlin
Assistant Attorney General for
The State of Texas



NO. 97,893



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| GALVESTON EAST BEACH, INC. | | IN THE DISTRICT COURT OF |
| VS. | | GALVESTON COUNTY, TEXAS |
| THE STATE OF TEXAS | | TENTH JUDICIAL DISTRICT |

In response to the request of the Plaintiff in the above entitled and numbered cause, I hereby make and file the following as my Findings of Fact and Conclusions of Law therein:

FINDINGS OF FACT

1. Galveston East Beach, Inc., which will hereinafter be referred to as Plaintiff, filed this suit for declaratory judgment against the State of Texas, which will hereinafter be referred to as Defendant, on February 15, 1962. The purpose of the suit was to try the title and to adjudge the rights of the Plaintiff in a tract of 384 Acres, more or less, on the shore of the Gulf of Mexico, which Plaintiff had purchased from the United States of America on September 24, 1959.

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On June 15, 1962, Defendant filed an application for a restraining order without notice and for temporary injunction to restrain and enjoin Plaintiff from in any way interfering with the right of the public to the free and unrestricted use of the beach area bordering the Gulf of Mexico on the said 384 Acre tract. On February 18, 1963, a hearing was commenced on the Defendant's application for a temporary injunction, which hearing lasted for four days. Briefs were filed on March 22nd and on April 5th, and on May 1, 1963, a temporary injunction was granted by this Court (entered June 21, 1963). On March 24, 1964, a trial on the merits of the entire case was commenced and was completed on March 30th, at which time judgment was pronounced by the Court (entered on June 5 1964), and this appeal is taken from said judgment.

The trial on the merits was greatly shortened by:

(a) The agreement by both Parties that the record made in the hearing on the application for temporary

injunction could be used in the final trial; and

(b) The stipulation entered into by and between the Parties and filed among the papers in this cause on November 15, 1963.

2. In said stipulation, among other things, Plaintiff and Defendant have agreed:

(a) That the Plaintiff is entitled to judgment quieting its title to the 384 Acre tract above the vegetation line; and

(b) That the vegetation line at the time of trial shall be considered throughout the length of the said 384 Acre tract along the Gulf shore as being 350 feet landward of the line of mean low tide, U. S. Coast and Geodetic Survey, 1929 datum, as shown by the survey of the Galveston County Engineer, dated May, 1963.

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All of the facts agreed upon by the Parties in said stipulation are hereby adopted as the findings of this Court where not inconsistent with specific findings made herein by this Court.

As a result of said stipulation, the only part of the said 384 Acre tract remaining in controversy is that part of the land lying along the shore of the Gulf of Mexico, for a distance of approximately two miles, from the aforementioned line of mean low tide to a line 350 feet landward; this strip of land will hereinafter (in the Findings of Fact and in the Conclusions of Law) be referred to as the Beach. The Beach is a part of what is commonly known as East Beach, which is located on the extreme Easterly end of Galveston Island and is approximately three miles in length, lying between Stewart Beach on the West and the South Jetty on the East.

As a further result of said stipulation, there are only two main issues left to be decided, namely:

(a) Who has title to the Beach? and

(b) Does the public have an easement over the Beach (if the State does not have title)?

3. The Beach has accreted to land which was granted to Michael B. Menard by the Republic of Texas on January 25, 1838.

The title to the land to which the Beach has accreted passed to the Galveston City Company in 1840 or 1842, and from the Galveston City Company to Maco Stewart in 1909.

On May 11, 1917, Maco Stewart conveyed the land to which the Beach has accreted to the United States Government, and it became a part of the then existing Fort San Jacinto Military Reservation and remained such until September 24, 1959.

4. As stipulated, prior to May 11, 1917, the public had acquired, by long use, an easement over a strip of land from the vegetation line to the line of mean low tide as a public way and for recreational purposes at the place on the land involved where such beach then existed. Such beach, at that location, however, has not been used by the public for many years; and the place where such easement existed in and before 1917 is now far landward of the present line of vegetation. The Defendant does not claim that the public now has any easement at the place on the land where the easement existed in and before 1917.

5. On September 24, 1959, the United States of America conveyed the said 384 Acre tract to Plaintiff. The Beach was either included in or subsequently accreted to the said 384 Acres.

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6. A breakwater, popularly known as the South Jetty, was constructed by the United States Government between the years 1887 and 1897 to protect the channel to the port of Galveston. It ran along the Eastern end of Galveston Island and extended approximately 2 1/2 miles into the Gulf of Mexico. At the time the South Jetty was constructed by the United States Government, title to the upland in the area in controversy was in the Galveston City Company. The South Jetty was not built on or adjacent to the land in controversy, but at the time of this trial, it was located approximately 8/10ths of a mile Easterly from the Easterly end of the Beach. After the said South

Jetty was constructed, accretion began on the Gulf shore on the Easterly end of Galveston Island and has continued, with minor interruptions due to storms and abnormally high tides, to the time of trial. From 1916 to 1959, the shoreline advanced seaward 2,208 feet at the Easterly end of the 384 Acre tract, 1,391 feet at the Westerly end, and 1,832 feet in the middle.

7. The said build-up of the shore between 1916 and 1959 was gradual and imperceptible. As the shore line moved seaward, the public continued to use the strip of beach between the waters of the Gulf and the slowly advancing (seaward) line of vegetation as a public way and for recreational purposes.

8. The existence of the said South Jetty was the major cause of the accretion of the Easterly end of Galveston Island, including the Beach. The South Jetty was constructed from the Easterly end of Galveston Island out into the Gulf of Mexico for a distance of approximately 2 1/2 miles. It created a dead pocket of low wave energy, which prevented sediment in suspension in the waters of the Gulf from being carried into the channel and bay and caused the sediment to be deposited along the shore Westerly of the South Jetty. Minor causes of the accretion to this area were: (1) the natural wave action, the waves usually coming upon the shore from a South-Easterly direction and into the pocket formed by the shore and the South Jetty; (2) the prevailing wind from the South-East; (3) the existence of the accreted shore offered an additional obstruction to the wave action; and (4) the deposit of spoil dredged from the channel into the waters of the Gulf of Mexico offshore from the Beach. Neither the erection of the Seawall nor the placing of groins in the Gulf of Mexico Westerly of the Beach was a cause of the accretion of the Beach.

284
The building of the South Jetty, Seawall and groins, and the dredging of the channel and disposal of the spoil therefrom, were all works done by the United States Government.

9. As found in Paragraph 3, supra, the title to the land to which the

Jetty was constructed, accretion began on the Gulf shore on the Easterly end of Galveston Island and has continued, with minor interruptions due to storms and abnormally high tides, to the time of trial. From 1916 to 1959, the shoreline advanced seaward 2,208 feet at the Easterly end of the 384 Acre tract, 1,391 feet at the Westerly end, and 1,832 feet in the middle.

7. The said build-up of the shore between 1916 and 1959 was gradual and imperceptible. As the shore line moved seaward, the public continued to use the strip of beach between the waters of the Gulf and the slowly advancing (seaward) line of vegetation as a public way and for recreational purposes.

8. The existence of the said South Jetty was the major cause of the accretion of the Easterly end of Galveston Island, including the Beach. The South Jetty was constructed from the Easterly end of Galveston Island out into the Gulf of Mexico for a distance of approximately 2 1/2 miles. It created a dead pocket of low wave energy, which prevented sediment in suspension in the waters of the Gulf from being carried into the channel and bay and caused the sediment to be deposited along the shore Westerly of the South Jetty. Minor causes of the accretion to this area were: (1) the natural wave action, the waves usually coming upon the shore from a South-Easterly direction and into the pocket formed by the shore and the South Jetty; (2) the prevailing wind from the South-East; (3) the existence of the accreted shore offered an additional obstruction to the wave action; and (4) the deposit of spoil dredged from the channel into the waters of the Gulf of Mexico offshore from the Beach. Neither the erection of the Seawall nor the placing of groins in the Gulf of Mexico Westerly of the Beach was a cause of the accretion of the Beach.

284/ The building of the South Jetty, Seawall and groins, and the dredging of the channel and disposal of the spoil therefrom, were all works done by the United States Government.

9. As found in Paragraph 3, supra, the title to the land to which the

Beach has accreted was in the United States Government and was a part of the San Jacinto Military Reservation from May 11, 1917 to September 24, 1959.

During World War II, from December of 1941 or January of 1942 until the spring or summer of 1946, which was the first beach season following the termination of the War, the public was excluded from the land to which the Beach has accreted. Due to the continuing accretion, the actual geographic location of the land barricaded by said Government during such period did not include the Beach, but the area so barricaded was situated, at the time of trial, more than 350 feet inland from the line of mean low tide. The Beach was submerged land during and prior to 1946.

The exclusion of the public during the said period by the said Government was a temporary emergency measure for national security purposes, and the said Government had no intention of permanently destroying the public easement.

10. Until June of 1962, except for the said period when the public was excluded during World War II, both the City and County of Galveston, acting separately or together, have expended public funds to clean and maintain the land along the shore, wherever it may have existed at the particular time.

CONCLUSIONS OF LAW

(The decision of the trial court, as set out in the judgment entered herein on June 5, 1964, will not be set out again here.)

A. Title

1. Plaintiff holds title to the portion of the 384 Acre tract which is above the vegetation line (as defined in the Findings of Fact herein) by stipulation and by proof of the record title in the trial of this cause.

2. Plaintiff holds title to the Beach (as defined in the Findings of Fact herein) as the owner of the shore to which belongs imperceptible and gradual additions to the land by alluvial deposit or accretion resulting from both natural and artificial causes, the artificial means not being brought about by the littoral owner. This title is subject to the easement of the public.

B. Easement

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1. The public easement stipulated by the Parties to have been in existence in and before 1917 at a place where the beach then existed follows the shore line as the line of mean low water changes from time to time by the natural forces of accretion and/or erosion; it always follows the sea, and with reference to the land in controversy herein covers the area from mean low water to 350 feet inland.

This concept of a rolling or shifting easement is not a new one. In 1905, it was applied in the English case of *Mercer v. Denne*, 2 Chancery Division 538, where the court held that a right to dry nets on a beach attached to a new beach area added to the old beach by accretion--that the drying area in such a case follows the sea.

2. The Beach has accreted to land which was patented by the Republic of Texas to M. B. Menard. There was an implied reservation in

the Menard Grant retaining an easement for the public in the free use of the beaches.

As stated in Galveston City Surf Bathing Co. v. Heidenheimer, 63 Tex. 559, at 562: "From the most ancient times, in all civilized countries, the free use of the waters and the shores of the sea by the public has been recognized as an indisputable right."

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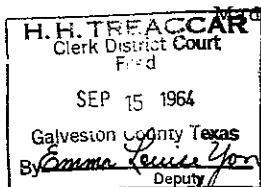
3. The Beach is a public road. In Brown v. State, 289 SW (2d) 942, West Beach was judicially declared to be a public road. The public road easement was not lost by adverse possession to the United States Government during the war time barricading because the statute of limitations does not run against public roads. Art. 5517, R. C. S. of Texas.

4. The barricading of the Beach by the United States Government from 1941 or 1942 to 1946 was a temporary war time emergency measure within the war powers of the United States Government and did not result in the destruction of the public easement.

5. An easement by estoppel was not created as a result of the expenditure of public funds by the City and County of Galveston in cleaning and maintaining the Beach.

6. Adverse possession, limitations, prescription, estoppel and laches do not apply against the United States Government. However, the United States Government took title to the Beach subject to the said rolling or shifting easement, and it conveyed it subject to the same easement.

7. Since May 24, 1959, Plaintiff has not granted, either by implication or estoppel, any easement to or for the benefit of the public. However, Plaintiff took title to the Beach subject to the said rolling or shifting easement and holds the Beach burdened with such easement.



and filed this 15th day of September, 1964.

Donald M. Markee
Judge Presiding

GALVESTON EAST BEACH, INC.
V.
THE STATE OF TEXAS

No. 97,893

Galveston County Texas
By Alice Campbell Deputy
IN THE DISTRICT COURT OF

GALVESTON COUNTY, TEXAS
10th JUDICIAL DISTRICT

REQUEST OF DEFENDANT FOR ADDITIONAL FINDINGS OF FACT

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant, The State of Texas, within the five (5) day period specified in Rule 298, T.R.C.P., respectfully requests the Court to make the following findings of fact, same to be in addition to the original findings of fact heretofore filed herein by the Court on September 15, 1964:

(1) Prior to construction of the south jetty, and going as far back as the days of the Republic of Texas, the eastern tip of Galveston Island was shaped something like a fish hook, curving to the north. After the construction of said jetty, by a process of gradual and imperceptible accretion, the shore line has advanced steadily and continuously seaward in a southerly and easterly direction in the area of such curve, the property in controversy being in the general area of said curve, with the result that there has been a gradual straightening out of the line of such curve, and the south shore line of the island is now substantially a straight line all the way to the jetty.

288 (2) Due to hurricane Carla, causing temporary erosion, there has been no substantial change in the location of the beach since 1959.

(3) Had the south jetty not been constructed in 1897, and had the same not been in existence since that time, thus permitting the prevailing southeast wind and other natural forces to operate without the interference of such man made obstruction, the geographical area of the present beach would still be submerged land, and the actual beach would be above the present vegetation line.

(4) The grant of land to M. B. Menard from the State of Texas covered the eastern end of Galveston Island, including the area

to which the beach in controversy has accreted. The beach in question is located within the city of Galveston.

(5) When the federal government ceased its war emergency blockade of the beach, the public flooded onto East Beach and continued to use same as a public way for vehicular and pedestrian traffic and for recreation until Plaintiff barricaded the same. Traffic on East Beach by the public since World War II has been very heavy. The crowds have been very large during the peak summer months, during school vacation periods, and thousands of automobiles were on the beach, some parked near the water and others parked higher on the beach as far as the vegetation line.

(6) The public had no intention of abandoning its easement over the beach during the war time blockade by the federal government.

Respectfully submitted,

WAGGONER CARR
Attorney General of Texas

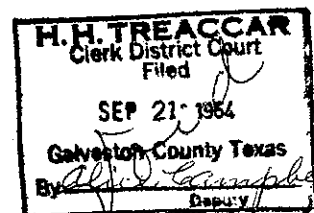
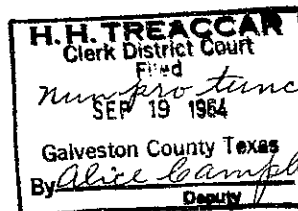
Ben M. Harrison
Ben M. Harrison
Assistant Attorney General

289

J. Arthur Sandlin
J. Arthur Sandlin
Assistant Attorney General

Attorneys for Defendant,
The State of Texas

Capitol Station
Austin, Texas



NO. 97,893

Galveston County Texas
By Alice Campbell
Deputy

GALVESTON EAST BEACH, INC.

VS.

THE STATE OF TEXAS

IN THE DISTRICT COURT OF
GALVESTON COUNTY, TEXAS
TENTH JUDICIAL DISTRICT

- - -

The Defendant having, by written request filed herein on September ^{19th} ~~15~~, 1964, requested the Court to make additional findings of fact in addition to the original findings of fact heretofore filed herein by the Court on September 15, 1964, I hereby make and file the following additional findings of fact to be considered along with the original findings of fact filed herein on September 15, 1964:

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ADDITIONAL FINDINGS OF FACT

7a. Prior to construction of the South Jetty, and going as far back as the days of the Republic of Texas, the Eastern tip of Galveston Island was shaped something like a fish hook, curving to the North. After the construction of said Jetty, by a process of gradual and imperceptible accretion, the shore line has advanced steadily and continuously seaward in a Southerly and Easterly direction in the area of such curve, the property in controversy being in the general area of said curve, with the result that there has been a gradual straightening out of the line of such curve, and the South shore line of the island is now substantially a straight line all the way to the Jetty.

7b. Due to Hurricane Carla, causing temporary erosion, there has been no substantial change in the location of the Beach since 1959.

7d. The grant of land to M. B. Menard from the State of Texas covered the Eastern end of Galveston Island and included the area to which the Beach has accreted. The Beach is located within the city limits of the City of Galveston.

9a. When the United States Government ceased its war emergency blockade of the beach, the public flooded onto East Beach and continued to use same as a public way for vehicular and pedestrian traffic and for recreation until Plaintiff barricaded the same. Traffic on East Beach by the public since World War II has been very heavy. The crowds have been very large during the peak summer months, during school vacation periods, and thousands of automobiles were on East Beach, some parked near the water and others parked higher on the beach as far as the vegetation line.

9b. The public had no intention of abandoning its easement over the beach during the war time blockade by the United States Government.

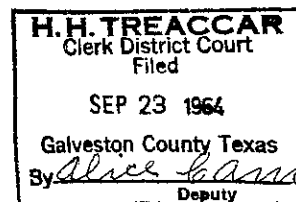
Defendant's requested additional finding of fact number (3) is refused, and exception noted, but the following finding of fact is made and filed:

7c. Had the South Jetty or some other artificial barrier not been constructed, the Beach would still be submerged land, and the actual beach would be above the present vegetation line.

Made and filed this 23rd day of September, 1964.

Ronald M. Markle
Judge Presiding

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IN THE COURT OF CIVIL APPEALS
FIRST SUPREME JUDICIAL DISTRICT OF TEXAS

THE STATE OF TEXAS,

To the District Court of Galveston County, Greeting:

Before our Court of Civil Appeals, on the 3rd day of December, A. D. 1964,
the cause upon appeal to revise or

reverse your Judgment between

GALVESTON EAST BEACH, INC., APPELLANT,

No. 14485

vs.

From Galveston County

Tr. Ct. No. 97,893

Opinion by - - - - -

THE STATE OF TEXAS, APPELLEE.

was determined; and therein our said Court of Civil Appeals made its order in these words:

"On this day came on to be considered appellant's agreed motion to dismiss appellant's appeal herein, said motion reciting, 'Galveston East Beach, Inc., Appellant in the above named and numbered cause, elects not to prosecute further its appeal in this case,' and '* * * prays that the appeal be dismissed * * *,' and the same having been duly considered and found meritorious, it is therefore considered, adjudged and ordered that the motion be granted and that appellant's appeal herein be in all things dismissed. It is further ordered that the appellant, Galveston East Beach, Inc. and its sureties, George C. Boller and Edmond A. Henderson, jointly and severally, pay all costs incurred by reason of this appeal. It is further ordered that this decision be certified below for observance."

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WHEREFORE, we command you to observe the Order of our Court of Civil Appeals, in this behalf; and in all things to have it duly recognized, obeyed and executed.



V. J. BENINATI, JR.
CLERK DISTRICT COURT
FILED

JAN 6 1965

GALVESTON COUNTY, TEXAS

Alice Campbell

Deputy

WITNESS, The Hon. SPURGEON E. BELL, Chief
Justice of our Said Court of Civil Appeals, with the
Seal thereof annexed, at HOUSTON, this the

5th day of January A. D. 1965

ROLA HAMM, Clerk.

By Marshall Reich Deputy.

Trial Court No. 97,893

No. 14485

MANDATE

Court of Civil Appeals

HOUSTON

GALVESTON EAST BEACH, INC.,
APPELLANT,

VS.

THE STATE OF TEXAS, APPELLEE.

Issued January 5, 1965

ROLA HAMM,

CLERK

By

Marshall Decker
DEPUTY

Galveston

To District Court, County

ROLA HAMM, Clerk

COURT DOCKET 10th DISTRICT COURT, Galveston County CAUSE No. 97893

| DATE OF FILING | DATE OF FILING | | KIND OF ACTION | ATTORNEYS | STYLE OF CASE | Date of Orders | REMARKS |
|----------------|----------------|------|--------------------------------|----------------------------------|----------------------------|----------------|---|
| | Month | Day | | | | | |
| Feb. 15th 1962 | Feb. | 15th | | Barker, Barker & Coltzer Plt. | Galveston East Beach, Inc. | 3-16-62 | Defendant demands a jury. D. M. M. |
| | | | Suit For Declaratory Judgment. | | vs. | 5-24-62 | Set for Pretrial Hearing on September 12, 1962, at 9:30 o'clock A.M. |
| | | | | | The State Of Texas | 6-15-62 | Defendants' application for restraining order without notice denied, and hearing on Defendants' application for temporary injunction set for July 11, 1962, at 10:00 o'clock A.M. |
| | | | | | | 7-11-62 | It appearing to this Court that this cause of action is founded on Art. 5415d of the R.C.S. of Texas, that the constitutionality of said Article is raised in this case, that the same question of the constitutionality of said Art. 5415d was raised and passed on in Cause No. 93,782, The Attorney General of Texas, et al. v. Seaway Company, Inc., in the 122nd District Court of this County, the latter case now being on appeal and a final decision having been made at this time by the appellate court as to the constitutionality of said Art. 5415d, and this Court being of the opinion that it is necessary to know whether or not said Art. 5415d is constitutional before this Court can properly rule in this cause (No. 97,893), it is ordered that no further proceedings will be held by this Court in this cause (No. 97,893), unless ordered to do so by a court of |
| | | | | | | | MINUTE BOOK Vol. 88 Page 15 Jury Fee Pd. 3/15/62 Plt. Requested setting for Oct. 16, 1962. |

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ORDERS OF COURT--CONTINUED

| Date of Orders | | MINUTE BOOK Vol. Page | REMARKS |
|----------------|---|----------------------------|---------|
| | competent jurisdiction, until a final decision is made by the appellate court, or courts as to the constitutionality, vel non, of said Art. 5415d, to which action of the Court the Defendant in open court duly excepts, as per order to be filed. <i>B. M. M.</i> | 88 274 | |
| 1-17-63 | Hearing on Temporary Injunction set for February 18, 1963, at 9:30 o'clock, A.M., Defendant's application granted to which action of the Court the Defendant excepts, One, in open court duly excepts, as per temporary injunction filed. | — | |
| 5-1-63 | The application of the State of Texas to re-open the hearing on the temporary injunction granted herein on May 1, 1963, is hereby overruled, to which action of the Court the State of Texas in open court excepts. | 91 67 | |
| 6-21-63 | With the agreement and consent of both parties in open court this cause is withdrawn from the jury docket and will be heard before the Court. | 91 69 | |
| 3-24-64 | The Court's judgment of probation for Bond, One, and Defendant's judgment of the State of Texas, Exception noted and sustained, as per because filed. | 91 316 | |
| 3-30-64 | Hearing on Temporary Injunction set for March 30, 1964, at 9:30 o'clock, A.M., Defendant's application granted to which action of the Court the Defendant in open court duly excepts, as per temporary injunction filed. | 91 384 | |
| 7-9-64 | The Court's judgment of probation for Bond, One, and Defendant's judgment of the State of Texas, Exception noted and sustained, as per because filed. | 91 1118 | |
| 1-6-65 | Hearing on Temporary Injunction set for January 6, 1965, at 9:30 o'clock, A.M., Defendant's application granted to which action of the Court the Defendant in open court duly excepts, as per temporary injunction filed. | | |

CAUSE No. 97893
SHEET No. 2

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NO. 97,893

GALVESTON EAST BEACH, INC.
V.
THE STATE OF TEXAS

IN THE DISTRICT COURT OF
GALVESTON COUNTY, TEXAS
10TH JUDICIAL DISTRICT

J U D G M E N T

272 On the 24th day of March, 1964, came on to be heard the above styled and numbered cause, and came the Plaintiff, Galveston East Beach, Inc., by its attorneys, Owen D. Barker and Robert G. Coltzer, of the firm of Barker, Barker and Coltzer, and Griffith D. Lambdin, of the firm of Armstrong, Bedford and Lambdin, and came the Defendant, The State of Texas, and the Attorney General of Texas, by Ben M. Harrison and J. Arthur Sandlin, Assistant Attorneys General of Texas, and Jules Damiani, Jr., Criminal District Attorney of Galveston County, Texas, representing the State of Texas and the public, pursuant to authority granted by Article 5415d, Vernon's Texas Civil Statutes, and such other authority as may be afforded by law, and a jury having been waived, the parties, plaintiff and defendant, announced ready for trial, and the court, after reading the pleadings and hearing the evidence and argument of counsel, is of the opinion and finds that plaintiff is the owner in fee simple of a good and indefeasible title, subject to the easement hereinafter mentioned, to all the land known and referred to as the 384 acre tract described in the deed from the United States of America to Plaintiff dated September 24, 1959, recorded in Book 1339, pages 44 to 47, inclusive, Deed Records of Galveston County, Texas, and accretions thereto, which land is more fully described ^{as follows:} ~~in Exhibit A~~

Deleted
6-4-64
B.M.M.
Judge.

~~(attached hereto and hereby expressly made a part hereof,
and the court further finds that the plaintiff's land alone
sits fronts upon the Gulf of Mexico for a distance of two)~~

NO. 97,893

GALVESTON EAST BEACH, INC.

V.

THE STATE OF TEXAS

IN THE DISTRICT COURT OF

GALVESTON COUNTY, TEXAS

10TH JUDICIAL DISTRICT

J U D G M E N T

212
On the 24th day of March, 1964, came on to be heard the above styled and numbered cause, and came the Plaintiff, Galveston East Beach, Inc., by its attorneys, Owen D. Barker and Robert G. Coltzer, of the firm of Barker, Barker and Coltzer, and Griffith D. Lambdin, of the firm of Armstrong, Bedford and Lambdin, and came the Defendant, The State of Texas, and the Attorney General of Texas, by Ben M. Harrison and J. Arthur Sandlin, Assistant Attorneys General of Texas, and Jules Damiani, Jr., Criminal District Attorney of Galveston County, Texas, representing the State of Texas and the public, pursuant to authority granted by Article 5415d, Vernon's Texas Civil Statutes, and such other authority as may be afforded by law, and a jury having been waived, the parties, plaintiff and defendant, announced ready for trial, and the court, after reading the pleadings and hearing the evidence and argument of counsel, is of the opinion and finds that plaintiff is the owner in fee simple of a good and indefeasible title, subject to the easement hereinafter mentioned, to all the land known and referred to as the 384 acre tract described in the deed from the United States of America to Plaintiff dated September 24, 1959, recorded in Book 1339, pages 44 to 47, inclusive, Deed Records of Galveston County, Texas, and accretions thereto, which land is more fully described ^{as follows:}

Deleted
6-4-64
E.M.M.
Judge.

~~(attached hereto and hereby expressly made a part hereof)~~
~~and the court further finds that the plaintiff's land afore-~~
~~said fronts upon the Gulf of Mexico for a distance of two)~~

The following described tract or parcel of land in Galveston County, Texas, being part of a tract of land conveyed to the United States Government by Maco Stewart by deed dated May 11, 1917, which deed is recorded in Book 303, pages 265-266, Deed Records of Galveston County, Texas, said tract formerly being part of the Fort San Jacinto Reservation, and further described by metes and bounds and courses and distances as follows:

Start at a point in the South boundary of the Fort San Jacinto Military Reservation marked by a drift bolt in the center of the shore branch of the Galveston South Jetty at Station 69 plus 02.6 whence the former Fort Point Lighthouse bears North $35^{\circ} 27' 35''$ East 3179.3 feet (1144.55 varas);

Thence, parallel with the numbered streets in the City of Galveston, Texas, approximately South $16^{\circ} 43' 09''$ East to the Southeasterly boundary of the Galveston seawall right of way, said Southeasterly boundary line being parallel to and 225 feet perpendicular distance on the seaward side from the center line of the top of the seawall structure, which center line is 2 feet 6 inches landward of the seaward edge of said top of the seawall structure, for the place of beginning of this description;

Thence, continuing South $16^{\circ} 43' 09''$ East to the high water line on the shore of the Gulf of Mexico;

273 Thence, Northerly and Easterly with the meanders of the said high water shore line of the Gulf of Mexico, to the intersection of this line with the present South boundary of a tract of land deeded to the United States of America by the Galveston City Company by Special Warranty Deed dated March 17, 1898, which deed is recorded in Vol. 245, page 137, Deed Records of Galveston County, Texas;

Thence, with the said South boundary of the said tract North 82° West to a point 1400 feet South 82° East of the Southeasterly right-of-way boundary of the Galveston seawall, said Southeasterly boundary line being parallel to and 225 feet perpendicular distance on the seaward side from the center line of the top of the seawall structure, which center line is 2 feet 6 inches landward of the seaward edge of said top of the seawall structure;

Thence, South $27^{\circ} 09'$ West parallel to the Galveston seawall a distance of 4400 feet;

Thence, North 82° West a distance of 1400 feet, more or less, to the Southeasterly right-of-way boundary of the Galveston seawall, said Southeasterly boundary line being parallel to and 225 feet perpendicular distance on the seaward side from the center line of the top of the seawall structure, which center line is 2 feet 6 inches landward of the seaward edge of said top of the seawall structure;

Thence, South $27^{\circ} 09'$ West with the Southeasterly boundary of said seawall right of way 1100 feet, more

The following described tract or parcel of land in Galveston County, Texas, being part of a tract of land conveyed to the United States Government by Maco Stewart by deed dated May 11, 1917, which deed is recorded in Book 303, pages 265-266, Deed Records of Galveston County, Texas, said tract formerly being part of the Fort San Jacinto Reservation, and further described by metes and bounds and courses and distances as follows:

Start at a point in the South boundary of the Fort San Jacinto Military Reservation marked by a drift bolt in the center of the shore branch of the Galveston South Jetty at Station 69 plus 02.6 whence the former Fort Point Lighthouse bears North $35^{\circ} 27'$ $35''$ East 3179.3 feet (1144.55 varas);

Thence, parallel with the numbered streets in the City of Galveston, Texas, approximately South $16^{\circ} 43' 09''$ East to the Southeasterly boundary of the Galveston seawall right of way, said Southeasterly boundary line being parallel to and 225 feet perpendicular distance on the seaward side from the center line of the top of the seawall structure, which center line is 2 feet 6 inches landward of the seaward edge of said top of the seawall structure, for the place of beginning of this description;

Thence, continuing South $16^{\circ} 43' 09''$ East to the high water line on the shore of the Gulf of Mexico;

273 Thence, Northerly and Easterly with the meanders of the said high water shore line of the Gulf of Mexico, to the intersection of this line with the present South boundary of a tract of land deeded to the United States of America by the Galveston City Company by Special Warranty Deed dated March 17, 1893, which deed is recorded in Vol. 245, page 187, Deed Records of Galveston County, Texas;

Thence, with the said South boundary of the said tract North 82° West to a point 1400 feet South 82° East of the Southeasterly right-of-way boundary of the Galveston seawall, said Southeasterly boundary line being parallel to and 225 feet perpendicular distance on the seaward side from the center line of the top of the seawall structure, which center line is 2 feet 6 inches landward of the seaward edge of said top of the seawall structure;

Thence, South $27^{\circ} 09'$ West parallel to the Galveston seawall a distance of 4400 feet;

Thence, North 82° West a distance of 1400 feet, more or less, to the Southeasterly right-of-way boundary of the Galveston seawall, said Southeasterly boundary line being parallel to and 225 feet perpendicular distance on the seaward side from the center line of the top of the seawall structure, which center line is 2 feet 6 inches landward of the seaward edge of said top of the seawall structure;

Thence, South $27^{\circ} 09'$ West with the Southeasterly boundary of said seawall right of way 1100 feet, more

or less, to an angle point in said seawall right-of-way boundary;

Thence, continuing along the said seawall right-of-way boundary South 35° 21' West 1500 feet, more or less, to the point of beginning together with the Government's interest in and to the land between the said high water shore line and the low water shore line extending from the most Southerly boundary, extended, to the most Northerly boundary, extended, of the above described tract, including all future accretions and accumulations as a result of nature, or the construction of public works for the improvement and defense of the Harbor, and containing 384 acres, more or less.

and the court further finds that the plaintiff's land aforesaid fronts upon the Gulf of Mexico for a distance of two

275 miles more or less, and that the public owns an easement upon and over the beach area on the said seaward border of said land, running from the line of mean low tide to the line of vegetation, which beach area shall now and hereafter be taken to be a strip along the seaward side of the said land at all times adhering to the shore, extending from the line of mean low water (as it may exist from time to time taking into account changes therein caused by the natural processes of accretion and erosion) inland a distance of three hundred fifty (350) feet at all points along the Gulf of Mexico boundary line of plaintiff's said land; and the court further finds that defendant is entitled to a permanent injunction against plaintiff prohibiting the barricading of the beach area aforesaid and ordering the removal at plaintiff's expense of any existing barricades on said property.

It is, accordingly, ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. That plaintiff is the owner in fee simple of a good and indefeasible title in and to the land above described by metes and bounds, together with any accretions which may have extended or which may hereafter extend said land seaward, and including the beach area aforesaid seaward to the line of mean high water, subject to the public easement hereinafter mentioned.

2. For purposes of this judgment, the area of the beach shall be all of the area along the entire seaward side of said land along the Gulf of Mexico, lying within a strip 350 feet wide at all points on the two-mile shoreline aforesaid, measured from mean low water inland, in accordance with the applicable datum of the United States Coast and Geodetic Survey. It is intended and decreed

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miles, more or less, and that the public owns an easement upon and over the beach area on the said seaward border of said land, running from the line of mean low tide to the line of vegetation, which beach area shall now and hereafter be taken to be a strip along the seaward side of the said land at all times adhering to the shore, extending from the line of mean low water (as it may exist from time to time taking into account changes therein caused by the natural processes of accretion and erosion) inland a distance of three hundred fifty (350) feet at all points along the Gulf of Mexico boundary line of plaintiff's said land; and the court further finds that defendant is entitled to a permanent injunction against plaintiff prohibiting the barricading of the beach area aforesaid and ordering the removal at plaintiff's expense of any existing barricades on said property.

It is, accordingly, ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. That plaintiff is the owner in fee simple of a good and indefeasible title in and to the land above described by metes and bounds, together with any accretions which may have extended or which may hereafter extend said land seaward, and including the beach area aforesaid seaward to the line of mean high water, subject to the public easement hereinafter mentioned.

2. For purposes of this judgment, the area of the beach shall be all of the area along the entire seaward side of said land along the Gulf of Mexico, lying within a strip 350 feet wide at all points on the two-mile shoreline aforesaid, measured from mean low water inland, in accordance with the applicable datum of the United States Coast and Geodetic Survey. It is intended and decreed

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It is, accordingly, ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. That plaintiff is the owner in fee simple of a good and indefeasible title in and to the land above described by metes and bounds, together with any accretions which may have extended or which may hereafter extend said land seaward, and including the beach area aforesaid seaward to the line of mean high water, subject to the public easement hereinafter mentioned.

2. For purposes of this judgment, the area of the beach shall be all of the area along the entire seaward side of said land along the Gulf of Mexico, lying within a strip 350 feet wide at all points on the two-mile shoreline aforesaid, measured from mean low water inland, in accordance with the applicable datum of the United States Coast and Geodetic Survey. It is intended and decreed

that as and when the line of mean low water changes from time to time by the natural processes of accretion and/or erosion, the public easement decreed herein along the seashore aforesaid shall always follow the sea, and cover the area from mean low water to 350 feet inland.

3. The public owns and shall have an easement to, upon, across and over the entire beach area above described as a public way for pedestrian and vehicular travel, and for swimming, fishing, boating, camping and other like uses and recreational purposes, and for ingress and egress to the waters of the Gulf of Mexico.

4. The Court finds and holds that the parties hereto have by written stipulation on file herein agreed that immediately prior to the execution of the deed conveying the 384 acre tract here involved from Maco Stewart to the United States of America in 1917, the public had acquired by long use, an easement over the said beach where same then existed, which agreement is adopted by the court, and the court finds and holds that such easement followed the beach as it moved seaward to its present location. The court further holds that such easement also exists by virtue of an implied reservation of a public easement for use as aforesaid of the beach area in the original grant of said land from the Republic of Texas to M. B. Menard.

5. The plaintiff shall not have the right to erect barriers or in any way to interfere with or impair the rights of the public to the free use of such beach area for vehicular and pedestrian travel and recreation as aforesaid, and plaintiff is hereby ordered at its expense forthwith to remove any and all obstructions and barriers upon such premises which interfere with the free use of such beach area by the public as aforesaid and plaintiff is

permanently enjoined from erecting other barriers or obstructions upon such beach area and from in any way interfering with the use of said beach area by the public for pedestrian and vehicular travel and recreation. Nothing in this judgment shall be deemed to require the removal of any improvements erected above the vegetation line as herein defined and landward of the public easement on the beach herein provided for in event an avulsive erosion results in such improvements being located within the three hundred fifty (350) foot area of the public easement herein provided, and the rights of the parties in relation to such improvements is left for future adjudication by the court.

6. It is further declared, ordered, adjudged and decreed that the area of such easement as it may now or may hereafter exist shall be subject to such lawful regulation for health, sanitation and safety that may be within the lawful power and discretion of government agencies having jurisdiction thereof.

7. Costs of suit incurred herein are adjudged one-half against plaintiff and one-half against defendant, for which execution may issue in favor of the proper officers of the court.

8. To the action, judgment and decree of the court, finding that the public owns an easement upon and over the beach area on the said seaward border of said land, and the finding that defendant is entitled to a permanent injunction prohibiting the barricading of the beach area, and in adjudging and decreeing the ownership in fee simple of plaintiff in and to the land in controversy to be subject to such public easement and in adjudging and decreeing the existence of the easement as set forth in paragraphs 2, 3 and 4 of the foregoing judgment, plaintiff Galveston East Beach, Inc. duly excepts.

9. To the action, judgment and decree of the court in finding that plaintiff is the owner in fee simple of the said beach area, and in adjudging that such ownership is in plaintiff and in overruling the claim of the State of Texas that it is the full fee simple owner of such beach area because same was added to the upland through the process of artificial accretion, defendant, The State of Texas, duly excepts.

SIGNED, RENDERED AND ENTERED on this the 5th day of June, 1964.

Donald M. Marble
Judge, District Court of
Galveston County, Texas,
10th Judicial District.

APPROVED AS TO FORM:

BARKER, BARKER & COLTZER
and ARMSTRONG, BEDFORD & LAMBDIN

By Owen D. Barker
Attorneys for Plaintiff

WAGGONER CARR, Attorney General
for the State of Texas

By Q. Arthur Sandlin
Assistant Attorney General
Bew W. Harrison
Assistant Attorney General

Attorneys for Defendant

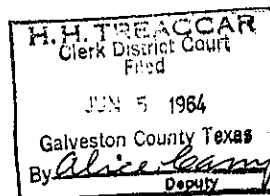
STATE OF TEXAS
COUNTY OF GALVESTON

I, V. J. Beninati, Jr., District Clerk of Galveston County, Texas, do hereby certify that the foregoing is a true and correct copy of the original record, now in my lawful custody and possession, as appears of record in Vol. 91, Page 384-387 Minutes of said court on file in my office.

Witness my official hand and seal of office, this 25th day of June, 1964

V. J. BENINATI, JR. DISTRICT CLERK
Galveston County, Texas

By Jay H. Hargreaves Deputy



9. To the action, judgment and decree of the court in finding that plaintiff is the owner in fee simple of the said beach area, and in adjudging that such ownership is in plaintiff and in overruling the claim of the State of Texas that it is the full fee simple owner of such beach area because same was added to the upland through the process of artificial accretion, defendant, The State of Texas, duly excepts.

SIGNED, RENDERED AND ENTERED on this the 5th day of June, 1964.

Donald M. Marble
Judge, District Court of
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10th Judicial District.

APPROVED AS TO FORM:

BARKER, BARKER & COLTZER
and ARMSTRONG, BEDFORD & LAMBDIN

By Owen D. Barker
Attorneys for Plaintiff

WAGGONER CARR, Attorney General
for the State of Texas

By J. Arthur Sandlin
Assistant Attorney General
Bruce M. Harrison
Assistant Attorney General

Attorneys for Defendant

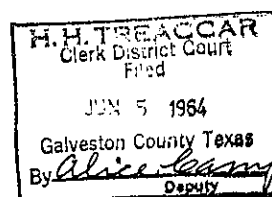
STATE OF TEXAS
COUNTY OF GALVESTON

I, V. J. Beninati, Jr., District Clerk of Galveston County, Texas, do hereby certify that the foregoing is a true and correct copy of the original record, now in my lawful custody and possession, as appears of record in Vol. 91, Page 384-387, Minutes of said court on file in my office.

Witness my official hand and seal of office, this

25th day of June 1964
V. J. BENINATI, JR., DISTRICT CLERK
Galveston County, Texas

By Jay H. Hargreaves Deputy



NO. 97,893

GALVESTON EAST BEACH, INC.
V.
THE STATE OF TEXAS

IN THE DISTRICT COURT OF
GALVESTON COUNTY, TEXAS
10TH JUDICIAL DISTRICT

J U D G M E N T

272 / On the 24th day of March, 1964, came on to be heard the above styled and numbered cause, and came the Plaintiff, Galveston East Beach, Inc., by its attorneys, Owen D. Barker and Robert G. Coltzer, of the firm of Barker, Barker and Coltzer, and Griffith D. Lambdin, of the firm of Armstrong, Bedford and Lambdin, and came the Defendant, The State of Texas, and the Attorney General of Texas, by Ben M. Harrison and J. Arthur Sandlin, Assistant Attorneys General of Texas, and Jules Damiani, Jr., Criminal District Attorney of Galveston County, Texas, representing the State of Texas and the public, pursuant to authority granted by Article 5415d, Vernon's Texas Civil Statutes, and such other authority as may be afforded by law, and a jury having been waived, the parties, plaintiff and defendant, announced ready for trial, and the court, after reading the pleadings and hearing the evidence and argument of counsel, is of the opinion and finds that plaintiff is the owner in fee simple of a good and indefeasible title, subject to the easement hereinafter mentioned, to all the land known and referred to as the 384 acre tract described in the deed from the United States of America to Plaintiff dated September 24, 1959, recorded in Book 1339, pages 44 to 47, inclusive, Deed Records of Galveston County, Texas, and accretions thereto, which land is more fully described ^{as follows:} ~~in Exhibit A~~

Deleted
6-4-64
D.M.M.
Judge.

~~(attached hereto and hereby expressly made a part hereof.)~~
~~and the court further finds that the plaintiff's land as so~~
~~said fronts upon the Gulf of Mexico for a distance of two)~~

The following described tract or parcel of land in Galveston County, Texas, being part of a tract of land conveyed to the United States Government by Maco Stewart by deed dated May 11, 1917, which deed is recorded in Book 303, pages 265-266, Deed Records of Galveston County, Texas, said tract formerly being part of the Fort San Jacinto Reservation, and further described by metes and bounds and courses and distances as follows:

Start at a point in the South boundary of the Fort San Jacinto Military Reservation marked by a drift bolt in the center of the shore branch of the Galveston South Jetty at Station 69 plus 02.6 whence the former Fort Point Lighthouse bears North $35^{\circ} 27'$ $35''$ East 3179.3 feet (1144.55 varas);

Thence, parallel with the numbered streets in the City of Galveston, Texas, approximately South $16^{\circ} 43' 09''$ East to the Southeasterly boundary of the Galveston seawall right of way, said Southeasterly boundary line being parallel to and 225 feet perpendicular distance on the seaward side from the center line of the top of the seawall structure, which center line is 2 feet 6 inches landward of the seaward edge of said top of the seawall structure, for the place of beginning of this description;

Thence, continuing South $16^{\circ} 43' 09''$ East to the high water line on the shore of the Gulf of Mexico;

273 Thence, Northerly and Easterly with the meanders of the said high water shore line of the Gulf of Mexico, to the intersection of this line with the present South boundary of a tract of land deeded to the United States of America by the Galveston City Company by Special Warranty Deed dated March 17, 1898, which deed is recorded in Vol. 245, page 187, Deed Records of Galveston County, Texas;

Thence, with the said South boundary of the said tract North 82° West to a point 1400 feet South 82° East of the Southeasterly right-of-way boundary of the Galveston seawall, said Southeasterly boundary line being parallel to and 225 feet perpendicular distance on the seaward side from the center line of the top of the seawall structure, which center line is 2 feet 6 inches landward of the seaward edge of said top of the seawall structure;

Thence, South $27^{\circ} 09'$ West parallel to the Galveston seawall a distance of 4400 feet;

Thence, North 82° West a distance of 1400 feet, more or less, to the Southeasterly right-of-way boundary of the Galveston seawall, said Southeasterly boundary line being parallel to and 225 feet perpendicular distance on the seaward side from the center line of the top of the seawall structure, which center line is 2 feet 6 inches landward of the seaward edge of said top of the seawall structure;

Thence, South $27^{\circ} 09'$ West with the Southeasterly boundary of said seawall right of way 1100 feet, more

or less, to an angle point in said seawall right-of-way boundary;

Thence, continuing along the said seawall right-of-way boundary South 35° 21' West 1500 feet, more or less, to the point of beginning together with the Government's interest in and to the land between the said high water shore line and the low water shore line extending from the most Southerly boundary, extended, to the most Northerly boundary, extended, of the above described tract, including all future accretions and accumulations as a result of nature, or the construction of public works for the improvement and defense of the Harbor, and containing 384 acres, more or less.

and the court further finds that the plaintiff's land aforesaid fronts upon the Gulf of Mexico for a distance of two

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miles, more or less, and that the public owns an easement upon and over the beach area on the said seaward border of said land, running from the line of mean low tide to the line of vegetation, which beach area shall now and hereafter be taken to be a strip along the seaward side of the said land at all times adhering to the shore, extending from the line of mean low water (as it may exist from time to time taking into account changes therein caused by the natural processes of accretion and erosion) inland a distance of three hundred fifty (350) feet at all points along the Gulf of Mexico boundary line of plaintiff's said land; and the court further finds that defendant is entitled to a permanent injunction against plaintiff prohibiting the barricading of the beach area aforesaid and ordering the removal at plaintiff's expense of any existing barricades on said property.

It is, accordingly, ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. That plaintiff is the owner in fee simple of a good and indefeasible title in and to the land above described by metes and bounds, together with any accretions which may have extended or which may hereafter extend said land seaward, and including the beach area aforesaid seaward to the line of mean high water, subject to the public easement hereinafter mentioned.

2. For purposes of this judgment, the area of the beach shall be all of the area along the entire seaward side of said land along the Gulf of Mexico, lying within a strip 350 feet wide at all points on the two-mile shoreline aforesaid, measured from mean low water inland, in accordance with the applicable datum of the United States Coast and Geodetic Survey. It is intended and decreed

that as and when the line of mean low water changes from time to time by the natural processes of accretion and/or erosion, the public easement decreed herein along the seashore aforesaid shall always follow the sea, and cover the area from mean low water to 350 feet inland.

3. The public owns and shall have an easement to, upon, across and over the entire beach area above described as a public way for pedestrian and vehicular travel, and for swimming, fishing, boating, camping and other like uses and recreational purposes, and for ingress and egress to the waters of the Gulf of Mexico.

276
4. The Court finds and holds that the parties hereto have by written stipulation on file herein agreed that immediately prior to the execution of the deed conveying the 384 acre tract here involved from Maco Stewart to the United States of America in 1917, the public had acquired by long use, an easement over the said beach where same then existed, which agreement is adopted by the court, and the court finds and holds that such easement followed the beach as it moved seaward to its present location. The court further holds that such easement also exists by virtue of an implied reservation of a public easement for use as aforesaid of the beach area in the original grant of said land from the Republic of Texas to M. B. Menard.

5. The plaintiff shall not have the right to erect barriers or in any way to interfere with or impair the rights of the public to the free use of such beach area for vehicular and pedestrian travel and recreation as aforesaid, and plaintiff is hereby ordered at its expense forthwith to remove any and all obstructions and barriers upon such premises which interfere with the free use of such beach area by the public as aforesaid and plaintiff is

permanently enjoined from erecting other barriers or obstructions upon such beach area and from in any way interfering with the use of said beach area by the public for pedestrian and vehicular travel and recreation. Nothing in this judgment shall be deemed to require the removal of any improvements erected above the vegetation line as herein defined and landward of the public easement on the beach herein provided for in event an avulsive erosion results in such improvements being located within the three hundred fifty (350) foot area of the public easement herein provided, and the rights of the parties in relation to such improvements is left for future adjudication by the court.

277 6. It is further declared, ordered, adjudged and decreed that the area of such easement as it may now or may hereafter exist shall be subject to such lawful regulation for health, sanitation and safety that may be within the lawful power and discretion of government agencies having jurisdiction thereof.

7. Costs of suit incurred herein are adjudged one-half against plaintiff and one-half against defendant, for which execution may issue in favor of the proper officers of the court.

8. To the action, judgment and decree of the court, finding that the public owns an easement upon and over the beach area on the said seaward border of said land, and the finding that defendant is entitled to a permanent injunction prohibiting the barricading of the beach area, and in adjudging and decreeing the ownership in fee simple of plaintiff in and to the land in controversy to be subject to such public easement and in adjudging and decreeing the existence of the easement as set forth in paragraphs 2, 3 and 4 of the foregoing judgment, plaintiff Galveston East Beach, Inc. duly excepts.

9. To the action, judgment and decree of the court in finding that plaintiff is the owner in fee simple of the said beach area, and in adjudging that such ownership is in plaintiff and in overruling the claim of the State of Texas that it is the full fee simple owner of such beach area because same was added to the upland through the process of artificial accretion, defendant, The State of Texas, duly excepts.

SIGNED, RENDERED AND ENTERED on this the 5th day of June, 1964.

278

Donald M. Marble.
Judge, District Court of
Galveston County, Texas,
10th Judicial District.

APPROVED AS TO FORM:

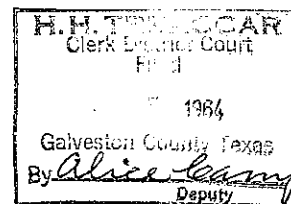
BARKER, BARKER & COLTZER
and ARMSTRONG, BEDFORD & LAMBDIN

By Owen D. Barker
Attorneys for Plaintiff

WAGGONER CARR, Attorney General
for the State of Texas

By J. Arthur Sandlin
Assistant Attorney General
Bew M. Harrison
Assistant Attorney General

Attorneys for Defendant



IN THE COURT OF CIVIL APPEALS
FIRST SUPREME JUDICIAL DISTRICT OF TEXAS

THE STATE OF TEXAS,

To the District Court of Galveston County, Greeting:

Before our Court of Civil Appeals, on the 3rd day of December, A. D. 1964,
the cause upon appeal to revise or

reverse your Judgment between

GALVESTON EAST BEACH, INC., APPELLANT,

No. 14485

vs.

From Galveston County

Tr. Ct. No. 97,803

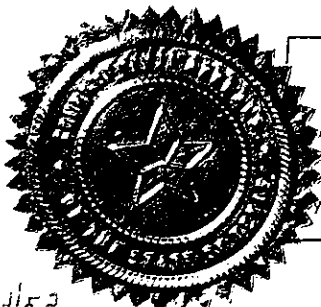
Opinion by - - - - -

THE STATE OF TEXAS, APPELLEE.

was determined; and therein our said Court of Civil Appeals made its order in these words:

"On this day came on to be considered appellant's agreed motion to dismiss appellant's appeal herein, said motion reciting, 'Galveston East Beach, Inc., Appellant in the above named and numbered cause, elects not to prosecute further its appeal in this case,' and '* * * prays that the appeal be dismissed * * *,' and the same having been duly considered and found meritorious, it is therefore considered, adjudged and ordered that the motion be granted and that appellant's appeal herein be in all things dismissed. It is further ordered that the appellant, Galveston East Beach, Inc. and its sureties, George C. Boller and Edmond A. Henderson, jointly and severally, pay all costs incurred by reason of this appeal. It is further ordered that this decision be certified below for observance."

WHEREFORE, we command you to observe the Order of our Court of Civil Appeals, in this behalf; and in all things to have it duly recognized, obeyed and executed.



V. J. BENINATI, JR.
CLERK DISTRICT COURT
FILED

JAN 6 1965

GALVESTON COUNTY, TEXAS

W. J. Campbell

Deputy

WITNESS, The Hon. SPURGEON E. BELL, Chief
Justice of our Said Court of Civil Appeals, with the
Seal thereof annexed, at HOUSTON, this the

5th day of January, A. D. 1965

ROLA HAMM,

Clerk.

By

Marshall R. Ruch Deputy.