

BEFORE THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO: 2007-CA-01790

WILLIAM E. MARQUEZ, III

APPELLANT

VERSUS

JOSEPH B. FLEURIET, ET AL.

APPELLEES

Appeal from the Chancery Court of Hancock County, Mississippi

BRIEF OF APPELLANT

WOODROW W. PRINGLE, III

[REDACTED]

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representatives are made in order that the Court may evaluate possible disqualification or recusal:

1. *Appellants:*

William E. Marquez, III
c/o Woodrow W. Pringle, III

2. *Appellees:*

Joseph B. Fleuriet and Mary T. Fleuriet
1301 Jay Street
New Orleans, LA 70122

Charles J. and Judith L. Imbornone
c/o Virgil G. Gillespie, Esq.

3. *Attorneys for Appellants:*

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4. *Attorney for Appellees:*

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5. *Lower Court Judge:*

Hon. Carter O. Bise
Hancock County Chancery Court Judge
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228-865-4008

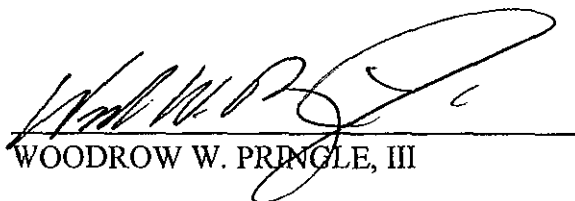

WOODROW W. PRINGLE, III

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ORAL ARGUMENT

The Appellant, William E. Marquez, III, does not feel oral argument would benefit the Court and therefore does not request oral argument.

STATEMENT OF ISSUES

In its September 7, 2007, Judgment the Court erred in severing the littoral (riparian) rights of Appellant from his dominate estate immediately north of the tidelands property in question.

STATEMENT OF THE CASE

December 16, 1985, Mr. Marquez obtained real property located in Hancock County, Mississippi. The property was adjacent to the Bay of St. Louis. As the upward land owner, Mr. Marquez claims the littoral/riparian rights of an upland land owner. Mr. Marquez's predecessors in title, Mr. and Mrs. Fleuriet, attempted to convey a "water lot" to Mr. and Mrs. Imbornone by document dated December 6, 2000. Mr. Marquez contends the littoral/riparian rights may not be severed from the upward land owner's fee simple title.

SUMMARY OF THE ARGUMENT

The property in question is Public Trust Tidelands. The State of Mississippi is the owner of Public Trust Tidelands as Trustee for all Mississippians. The beach and water bottoms on which the piers are located are Public Trust Tidelands. The beach area in front of Mr. Marquez's property was created by public entity using public funds to pump in sand to cover the water bottoms to protect the seawall and road.

Once the State possesses Public Trust Lands it is deemed to have possession of such property forever. *Mississippi State Highway Commission v. Gillich*, 609 So.2d 367 (Miss. 1992). Neither the Imbornones nor the Fleuriets may acquire this land by adverse possession, laches or any other way to defeat the title of the State of Mississippi. The rights riparian owners are set forth in Miss. Code Ann. § 45-15-9. Marquez owns the land bordering the Mississippi Sound and the area in question. Littoral rights are those rights concerning properties abutting an ocean, sea or lake. Littoral rights are usually concerned with the use and enjoyment of the shore. The right of the riparian or littoral proprietor access from his land to navigable channels is a property right. The littoral/riparian rights belong to the upland land owner and by their real nature cannot be severed from the upland property.

ARGUMENT

FACTS

On December 16, 1985, Mr. Marquez obtained real property located in Hancock County, Mississippi, as described in Deed Book DB 17, page 806. Included in the conveyance is the littoral/riparian rights pursuant to Miss. Code Ann. § 49-15-9. Mr. Marquez is the upland owner to the Bay of St. Louis at Beach Boulevard in Bay St. Louis, Mississippi. Joseph B. Fleuriet and Mary T. Fleuriet previously owned the property. On December 23, 1975, they conveyed their interest to Bruce McMahon by Deed recorded in Deed Book AA6, page 495. Subsequent to the conveyance to Mr. McMahon, Mr. and Mrs. Fleuriet attempted to convey a "water lot" to Charles J. Imbornone and Judith L. Imbornone by document dated December 6, 2000, and recorded in Deed Book DB 214, page 652. The "water lot" is the subject of this litigation.

The land from the toe of the seawall toward the waters of the Mississippi Sound trust tidelands. Submerged lands which are below the line of mean high tide are public trust tidelands. Mr. Marquez contends littoral rights may not be severed from the fee. Since Mr. Marquez owns the fee simple title to the upland property, Mr. Marquez alleges he is entitled to the littoral rights. (RE 22-24).

Joseph E. Fleuriet and Mary T. Fleuriet obtained title to the property in question pursuant to a Deed dated May 16, 1964. (RE 47). Included in the description was the following:

Whatever may remain of the land lying immediately in front of said described track between Front Street and the Gulf of Mexico, or Mississippi Sound, the sidelines of which said lots are continuations of the sidelines of the lot first above described. Being part of Lots 7 and 9, Third Ward, Town of Waveland, Hancock County, Mississippi, together with all littoral and riparian rights.

Mr. and Mrs. Fleuriet conveyed the property to Charles J. Imbornone and Judith L. Imbornone by document dated September 6, 2000. (RE 50-54). This conveyance included the following language:

It is the intention of the grantors to convey only the water lots being part of Lots 7 and 9, Third Ward, Town of Waveland.

Exhibit 29 (RE 55) plats the property belonging to Mr. Marquez and the alleged “water lot”. The survey, Exhibit 30 (RE 56) clearly reflects that the land in issue is adjacent to the upward land owned by Marquez.

LAW AND ARGUMENT

There can be no dispute that the property in question is public trust tidelands. Despite this fact, the Imbornones claim that they and their predecessors in title have occupied, maintained and used the property south of Beach Boulevard for more than ten years. Further, the Fleuriets claim parcels of real property commonly referred to as “water lots”.

Due to the constant erosion in the subject area, a sea wall was constructed in the 1920s to protect the road and the upland owners. The shoreline in the area in question is, and was each time a map was prepared, renourished public beach or the waters of the Mississippi Sound. No challenges to this depiction of the tideland’s boundary and the area in question were made and the final map of Pubic Trust Tidelands was adopted and certified and subsequently filed by the Chancery Clerks of each of the Coast counties, including Hancock County, in December 1994. The final map indicates that the boundary of the Public Trust Tidelands and the area in question is the toe of the sea wall.

The State of Mississippi is the owner of the Public Trust Tidelands as trustee for all Mississippians. The beach and water bottoms are Public Trust Tidelands. The beach area in front of Marquez’s property was created by public entity using a public funds to pump in sand to

cover the water bottoms to protect the seawall and road and is a beach renourishment as referred to on the Public trust tidelands map. Pursuant to the Public Trust Tidelands Act, Miss. Code Ann. § 29-1-15, *et seq.*, the toe of the seawall is the landward boundary of the Public Trust Tidelands in the area in question.

Fee simple title to all lands naturally subject to tidal influence, inland to today's mean high water mark, is held by the State of Mississippi in trust. *Cinque Bambini Partnership v. State*, 491 So.2d (Miss. 1986). In *The United States v. Harrison County, Mississippi*, 399 Fed.2d 45 (5th Cir. 1968), it was determined that after the seawall in Harrison County was completed the incessant action of the waves washed away the sand to the south of these artificial barriers. Such beaches as existed south of the seawall disappeared. The land thus formerly occupied went under the water bottoms of the Mississippi Sound and became the property of the State, in trust for the people.

§ 95 of the Mississippi Constitution of 1890 provides:

Lands belonging to, or under the control of the State, shall never be donated directly or indirectly to private corporations or individuals.

Once the State possesses public trust lands it is deemed to have possession of such property forever. *Miss. State Highway Commission v. Gillich*, 609 So.2d 367 (Miss. 1992). Placing sand to create a beach on these submerged lands did not change the character as Public Trust Tidelands. This property, once water bottoms, now at least in part beach, remains Public Trust Tidelands.

Neither Imbornone nor Fleuriet may acquire this land by adverse possession, laches or in any other way to defeat the title of the State of Mississippi. *Cinque Bambini Partnership*, *supra*; Miss. Const. Article IV, § 104 (1890); *Gibson v. Land Commissioner*, 374 So.2d 212 (Miss. 1979). Under no circumstances may title held by the State for public use or benefit be so lost.

City of Bay St. Louis v. Board of Supervisors of Hancock County, 80 Miss. 364, 32 So.54 (1902); Miss. Const. Article IV, § 95 (1890).

Rights of riparian owners along the Gulf Coast are set forth in Miss. Code Ann.

§ 49-15-9 (1972), as amended:

The sole right of erecting bath houses and other structures in front of any land boarding on the Gulf of Mexico and Mississippi Sound or waters tributary hereto belongs to riparian owner. . . . All bathhouses, piers, wharfs, and pavilions, or other structures owned by riparian owner are likewise the private property of such owner, who shall be entitled to the exclusive use, occupancy and possession thereof, and may obey any private or public nuisance committed by any person or persons in the area of this riparian ownership and may, for such purposes, resort to any remedial action authorized by law.

Marquez owns the land bordering the Mississippi Sound and the area in question.

Littoral rights are those rights concerning properties abutting an ocean, sea or lake rather than a river or stream (riparian). Littoral rights are usually concerned with the use and enjoyment of the shore. *Stewart v. Hoover*, 815 So.2d 1157 (Miss. 2002).

Riparian owners right to build bathhouses and other structures, to have an unobstructed view of the sea, bathe in the waters touching his property, gather marine life found in the waters, have an unobstructed approach to the water and have access to the navigable portion of the bay constitute a valuable property right. *Crary, etux v. State Highway Commission*, 219 Miss. 284; 68 So.2d 468 (Miss. 1953).

Owners of the uplands bordering on submerged lands are riparian or littoral owners. Such owners of the shoreline have a peculiar property right correctly referred to as littoral rights. *Giles v. City of Biloxi*, 237 Miss. 65, 112 So.2d 815; *Ross v. Saucier*, 166 Miss. 704, 146 So. 291. Littoral and riparian rights are of the primary value of property adjacent to the Mississippi Sound. *Harrison County v. Guice*, 244 Miss. 95, 147 2d 848 (1962).

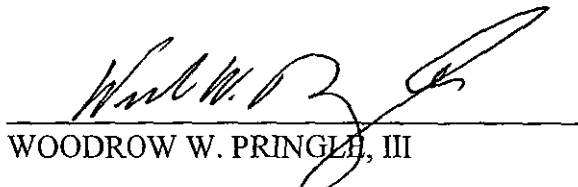
CONCLUSION

Littora/riparian rights are vested in the upland land owner. It is only pursuant to the upland ownership that littoral/riparian rights exist. These are not separate rights tat may be severed from the upland owner's property. The rights are dependent upon having the upland ownership. No rights to riparian or littoral rights exist unless an individual owns the property that is upland of these rights and adjacent to the property in question. The only party that qualifies to exercise these rights is William Marquez. Therefore, it is respectfully suggested that the lower court erred in determining that these rights may be severed from the upland ownership. Therefore, the Judgment of the Chancellor should be reversed.

RESPECTFULLY SUBMITTED, this the 19 day of February, 2008.

WILLIAM E. MARQUEZ, III

BY:


WOODROW W. PRINGLE, III

CERTIFICATE OF SERVICE


I, WOODROW W. PRINGLE, III, certify that I have this date forwarded by United States Mail, postage prepaid, a true and correct copy of the above and foregoing APPELLANT'S BRIEF to the following at his usual mailing address:

Virgil G. Gillespie, Esq.
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Hon. Carter O. Bise
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SO CERTIFIED THIS the 19 day of February, 2008.



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