

# **Bond Case Briefs**

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## **EMINENT DOMAIN - MISSISSIPPI**

### **Harris v. State**

**Supreme Court of Mississippi - November 8, 2018 - So.3d - 2018 WL 5839607**

Abutting landowners brought action against State, city, and county to confirm title to waterfront properties.

The Chancery Court granted partial summary judgment in favor of landowners on the issue of tideland boundaries, confirmed landowners' title, and ruled that government parties failed to prove adverse possession or public prescriptive easement. State, city, and county appealed. On appeal, the Supreme Court reversed and remanded. After a trial, the Chancery Court found that State held title to the sand beach in front of landowners' properties as public-trust tidelands and granted easements to county and city. Landowners appealed.

The Supreme Court of Mississippi held that:

- Beach was a public-trust tidelands;
- Trial court acted within its discretion in relying on lay witness testimony that beach was man-made;
- Expert report did not establish that beach was natural rather than man-made; and
- Pumping of sand along shoreline did not constitute an uncompensated taking.

Beach was a public-trust tidelands, and thus landowners could not prevent city and county from obtaining easements across it, where map finalized by the Secretary of State placed boundary of public-trust tidelands seaward of the beach and trial court found that the beach had been artificially created along a shoreline which, previously, had lacked any natural beach.

Trial court acted within its discretion in relying on lay witness' testimony as to whether a beach, in which abutting landowners sought to confirm title, was natural or man-made, and thus subject to State ownership as public-trust tidelands; although witness did not know the locations of landowners' properties, her testimony that the beach did not exist before the late 1940s, and that sand was pumped along the shoreline to create it, was corroborated by testimony of local resident, expert testimony, newspaper clippings that referenced construction of a seawall, and correspondence between county board and United States Army Corps of Engineers about beach construction.

Trial court acted within its discretion in finding that abutting landowners did not offer eyewitness testimony as to whether beach, in which they sought to confirm title, was man-made, and thus subject to State ownership as public-trust tidelands; landowners offered lay testimony that the beach area had undergone no substantial change since 1946/47 but two of three of witness' answers on direct examination were not definite and he admitted that he was away at college during the beginning of beach construction in the early 1950s.

Expert report that a sand beach had existed along a shoreline by 1950 did not establish that the beach was natural rather than man-made, in action brought by abutting landowners challenging

State's title to the beach as public-trust tidelands; the report stated that some sand was placed on the beach prior to seawall construction in 1949 and that the current version of the beach was completed in 1954, indicating that it was not natural.

County did not effect an uncompensated taking in having the United States Army Corps of Engineers pump sand along the shoreline abutting landowner's property to create a beach, where letter from the Corps of Engineers to county board established that the pumping, as part of beach construction, occurred in State-owned tidelands.