

# **Bond Case Briefs**

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## **INVERSE CONDEMNATION - GEORGIA**

### **DeKalb County v. Heath**

**Court of Appeals of Georgia - March 16, 2015 - S.E.2d - 2015 WL 1134044**

Property owner brought inverse condemnation claim against county. Following a bench trial, the trial court found in favor of property owner, awarding him \$28,830 in damages. County appealed.

The Court of Appeals held that:

- Res judicata did not bar property owner's present inverse condemnation claim against county for failing to maintain repairs to its storm water drainage system, and
- The trial court did not err by allowing property owner a double recovery.

Property owner's present inverse condemnation action involved a fresh nuisance for which a fresh action would lie, and thus, res judicata did not bar his claim against county for failing to maintain repairs to its storm water drainage system, even though he had prevailed in a prior inverse condemnation case with regard to county's failure to maintain the same drainage system. The two lawsuits were not identical, although based on some of the same facts, the first lawsuit concerned the diminished value of property owner's property due to flooding and erosion, while the second lawsuit dealt with ongoing and increasing damage, including a deteriorating retaining wall which had not failed at the time the first lawsuit was filed.

With regard to property owner's current inverse condemnation action against county for failing to maintain repairs to its storm water drainage system, the trial court did not err by allowing property owner a double recovery, even though he had been awarded damages in a prior action against the county for the depreciation in the value of his property. In the current action, property owner was awarded the costs of repairing a failing retaining wall that the county had constructed, and which constituted a fresh nuisance.