
FAULK BARCHUS PLLC

Texas Supreme Court Case Update

Hurricanes Also Destroy Public Easements to Texas Beaches



In the recent Texas Supreme Court case of *Severance v. Patterson*, 2012

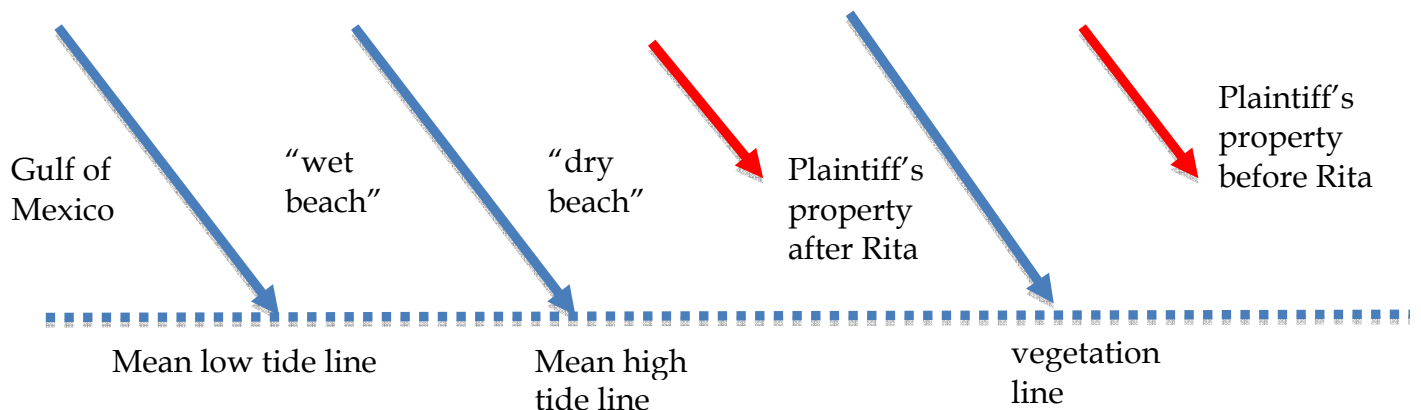
WL 1059341 (Decided on March 30, 2012), the divided Court answered the question of whether Texas recognizes a “rolling” beachfront access easement. In deciding the case, the Court focused on the following:



1. The State of Texas owns the “soil covered by the bays, inlets, and arms of the Gulf of Mexico within tidewater limits”, including the area from mean low tide to mean high tide (the “wet beach”), and “constitutes public property that is held in trust for the use and benefit of all people.”
2. The area from mean high tide to the vegetation line (the “dry beach”), is often privately owned and the right to use it is not presumed by Texas law.
3. The public has an important interest in the enjoyment of the “public beaches” vs. the right to exclude others

from privately owned realty.

4. If the dry beach is privately owned, in order for the public to have the right to enjoy it, the State must establish an easement over the land or show the public has a right to use of the beach “by virtue of continuous right in the public since time immemorial.”
5. It was clear that the public had a right to use the “dry beach” in question because an easement was established in 1975 by the State on a seaward property. Plaintiff’s property was not located on the “dry beach” until Hurricane Rita



wiped away the seaward property.

6. Current title to realty and corresponding encumbrances on the property may be affected in important ways by the breadth of and limitations on prior grants and titles. In 1840, the Republic of Texas granted the land to the original owners without any limitations.

7. There is no support for the proposition that, during the time of the Republic of Texas or at the inception of our State, the State reserved the oceanfront for public use.

8. Texas recognizes that property boundaries established by bodies of water are dynamic due to natural forces that affect the shoreline, but that there are different legal consequences for sudden, perceivable changes in land, as opposed to gradual changes in land due to natural causes.

9. If the public is to have an easement on newly created and privately owned dry beach after a hurricane, the State must prove that an easement exists or acquire one from the owner of the property.

10. Texas does not recognize a “rolling easement.”

Brandon M. Barchus is a Board Certified Attorney in Oil, Gas & Mineral Law by the Texas Board of Legal Specialization. If you wish to sign up for upcoming direct case updates or wish to discuss this case further, he can be reached directly at (713) 239.4000 or via email at bbarchus@faulkbarchus.com



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