

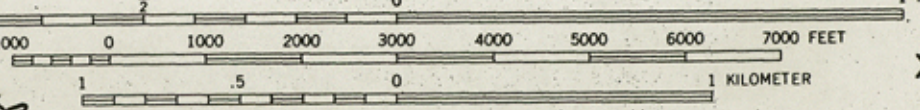
*Carrithers vs Terramar*



X=3,248,755.81

X=3,262,300  
Y=504,500  
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Y=503,750  
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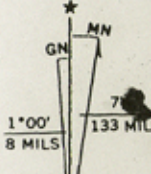
SCALE 1:24 000



CONTOUR INTERVAL 5 FEET  
NATIONAL GEODETIC VERTICAL DATUM OF 1929

DEPTH CURVES AND SOUNDINGS IN FEET-DATUM IS MEAN LOW WATER  
SHORELINE SHOWN REPRESENTS THE APPROXIMATE LINE OF MEAN HIGH WATER  
THE MEAN RANGE OF TIDE IS APPROXIMATELY 1 FOOT

THIS MAP COMPLIES WITH NATIONAL MAP ACCURACY STANDARDS  
FOR SALE BY U.S. GEOLOGICAL SURVEY, DENVER, COLORADO 80225, OR RESTON, VIRGINIA 22092  
A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST



1974 MAGNETIC NORTH  
AT CENTER OF SHEET

Sample compiled from aerial photographs  
Information not field checked.

*FILED FOR INFORMATION ONLY*  
*Sketch File 70*  
*Galveston*  
*Quitclaim deed to State of Texas*  
*8-7-53 ac. of dredged upland*  
*Filed Aug 15 1956*  
*GARRY MAURO, Com'r*  
*Dougherty Howard*

REFERENCE MAP: Chocolate Bay, West Portion  
of West Bay and Vicinity, October 1948,

*Counter 123928*

claiming under a royalty deed which contains no shut-in payment clause will not extend the interest beyond the primary term. This is so even if the royalty owners have executed an instrument ratifying the lease on the property. *Midwest Oil Corp. v. Mengers*, 372 S.W.2d 247 (Tex.Civ.App.—Waco 1963, writ ref'd).

[4] Peveto next argues the royalty deed to Starkey violates the Rule against Perpetuities. Article I, section 26 of the Texas Constitution expressly provides: "Perpetuities . . . are contrary to the genius of a free government and shall never be allowed . . ." Tex.Const. Art. I, § 26. The Rule states that no interest is valid unless it must vest, if at all, within twenty-one years after the death of some life or lives in being at the time of the conveyance. *Foshee v. Republic Nat'l Bank of Dallas*, 617 S.W.2d 675, 677 (Tex.1981). The Rule requires that a challenged conveyance be viewed as of the date the instrument is executed, and it is void if by any possible contingency the grant or devise could violate the Rule. *Brooker v. Brooker*, 130 Tex. 27, 106 S.W.2d 247, 254 (1937).

The deed from Jones conveying the term royalty interest to Starkey was a standard form nonparticipating royalty deed. The printed portion of the granting clause conveyed a presently vested three-fourths royalty interest. However, following the property description, the parties inserted: "this grant shall become effective only upon the expiration of [Peveto's] . . . Deed . . ." This additional clause causes the Jones-Starkey deed to violate the Rule.

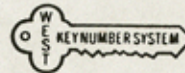
The interest Jones conveyed to Peveto by the first term royalty deed was a determinable fee. This Court defined a determinable fee to be "an interest which may continue forever, but the estate is liable to be determined, without the aid of a conveyance, by some act or event circumscribing its continuance or extent." *Stephens County v. Mid-Kansas Oil & Gas Co.*, 113 Tex. 160, 254 S.W. 290, 295 (1923).

[5, 6] All parties agree the deed from Jones to Starkey is unambiguous. Thus, the intent of the parties must be determined from the four corners of the instru-

ment. *Rutherford v. Randal*, 593 S.W.2d 949, 953 (Tex.1980). The rights of the parties are governed by the language used and the choice of designating words is of controlling importance. *Morris v. First National Bank of Mission*, 249 S.W.2d 269, 275 (Tex.Civ.App.—San Antonio 1952, writ ref'd n.r.e.). The words used here postpone the vesting of Starkey's interest until some uncertain future date. A grant "effective only upon" the termination of a determinable fee cannot vest until the prior interest has terminated. A determinable fee could continue forever, and may not terminate within the time period prescribed by the Rule. The words "effective only upon" created a springing executory interest in Starkey which may not vest within the period of the Rule; therefore, the deed is void.

Because the restrictive language used in the Jones-Starkey deed prevented the grant of the interest from Jones to Starkey from vesting in interest until after Peveto's interest terminated, and since this might not occur within the period prescribed by the Rule, we hold that the instrument violates the Rule against Perpetuities.

Accordingly, we reverse the judgment of the courts below. Judgment is here rendered that the deed from Jones to Starkey is void.



C. Ed CARRITHERS and Robert G. Coulter, Petitioners,

v.

TERRAMAR BEACH COMMUNITY IMPROVEMENT ASSOCIATION, INC., Respondent.

No. C-1066.

Supreme Court of Texas.

Jan. 5, 1983.

Rehearing Denied March 9, 1983.

Grantee of perpetual exclusive easement and right-of-way over submerged

"turning basin" tion prohibiting over basin. T. County, Blanton manently enjoir An appeal was peals, 630 S.W.2 was taken. Th held that grant limit use of r. with state and eighty over such invalid.

Reversed.

#### 1. Navigable W.

Waters of p held by the sta primarily for r. C.A., Natural R

#### 2. Easements ⊖

An easemer express grant, o travenation of a policy.

#### 3. Easements ⊖

An easemen interest in gran himself did not p

#### 4. Navigable W.

Grant of e land in turning ! porting to limit conflicted with ments' sovereign as such, was inv:

Fred A. Lange  
Robert M. Mo  
dent.

RAY, Justice.

Terramar soug nent injunction p Ed Carrithers a constructing a land, but mostly basin" in which

"turning basin" sought a permanent injunction prohibiting construction of a marina over basin. The District Court, Galveston County, Blanton, J., entered an order permanently enjoining construction of marina. An appeal was taken. The Court of Appeals, 630 S.W.2d 648, affirmed. An appeal was taken. The Supreme Court, Ray, J., held that grant of easement purporting to limit use of navigable waters conflicted with state and federal governments' sovereignty over such waters, and, as such, was invalid.

Reversed.

#### 1. Navigable Waters ⇌ 16

Waters of public navigable streams are held by the state in trust for the public, primarily for navigation purposes. V.T. C.A., Natural Resources Code § 11.012(c).

#### 2. Easements ⇌ 12(1)

An easement may not be created by express grant, or otherwise, if it is in contravention of a statute or is against public policy.

#### 3. Easements ⇌ 42

An easement may not create right or interest in grantee's favor which grantor himself did not possess.

#### 4. Navigable Waters ⇌ 16

Grant of easement over submerged land in turning basin open to sea and purporting to limit use of navigable waters conflicted with state and federal governments' sovereignty over such waters, and, as such, was invalid.

Fred A. Lange, Houston, for petitioners.

Robert M. Moore, Galveston, for respondent.

RAY, Justice.

Terramar sought and obtained a permanent injunction prohibiting the defendants, Ed Carrithers and Robert Coulter, from constructing a marina partially on their land, but mostly in a submerged "turning basin" in which the plaintiff, Terramar

Beach Subdivision, Inc., claims an easement. The trial court determined Terramar owned a perpetual, irrevocable and exclusive easement over all the submerged land in the turning basin and found the proposed marina would infringe on its easement rights. Carrithers and Coulter were permanently enjoined from constructing the marina. The court of appeals affirmed. Tex.App., 630 S.W.2d 648. At issue is the validity of the easement. Finding the easement to be invalid, we reverse the judgments of the courts below, dissolve the injunction and dismiss the cause of action.

The area in dispute is an 8.27172-acre turning basin on Galveston Island, which was submerged in 1963 by artificial means. The parties have stipulated that the turning basin is a navigable body of water, open to the Gulf of Mexico. At the time of submergence, the HGC Development Corporation owned legal title to all of the land which both plaintiffs and defendants now own. The turning basin and the canals leaving the basin were created by HGC from the tract of land. HGC then conveyed all of its rights to Timewealth Corporation, its trustee in bankruptcy. Subsequently, Timewealth Corporation conveyed the turning basin and canals to the 7500 Bellaire Corporation. In 1975, the Bellaire Corporation granted Cary White an easement of the full, free and uninterrupted use of all the turning basin and the waters overlying the basin. In turn, White assigned the easement to Terramar. Carrithers and Coulter acquired their property rights from the Bellaire Corporation subject to Terramar's easement. In 1978, the bed of the turning basin was conveyed by the Bellaire Corporation to the State of Texas by quitclaim deed. Carrithers and Coulter obtained a permit in 1980 from the United States Army Corps of Engineers to construct a marina located mainly in the turning basin. Terramar sought this injunction prohibiting construction on the basis of its exclusive easement to the land and the overlying navigable waters. The trial court's injunctive order permanently prohibits Carrithers and Coulter from essentially placing any

objects in or on the land area, and on or over the surface water of the "turning basin" where Terramar's easement exists, or otherwise obstructing, impairing, or interfering with Terramar's exclusive easement. The order expressly provides, however, that it should not be construed to limit or enjoin any person from using the waters of the turning basin for swimming, boating, fishing, or water transportation.

[1] In Texas, the state owns the water, the beds and shores of the Gulf of Mexico. Tex.Nat.Res.Code Ann. art. 11.012(c). The waters of public navigable streams are held by the State in trust for the public, primarily for navigation purposes. *Mottl v. Boyd*, 116 Tex. 82, 111, 286 S.W. 458 (1926). Texas has full sovereignty over the waters of the Gulf within its boundaries, subject to the United States government's right to exercise complete dominion over navigable waters under the "commerce clause" of the Constitution. U.S. Const. art. I, § 8, cl. 3; Tex.Nat.Res.Code Ann. art. 11.012(c).

[2-4] An easement may not be created by express grant, or otherwise, if it is in contravention of a statute or is against public policy. See *Woolsey v. Panhandle Refining Co.*, 131 Tex. 449, 116 S.W.2d 675 (1938); *Neff v. Ulmer*, 404 S.W.2d 644, 646 (Tex.Civ.App.—Amarillo 1966, writ ref'd n.r.e.); *Wilson v. Meredith, Clegg & Hunt*, 268 S.W.2d 511, 518 (Tex.Civ.App.—Beaumont 1954, writ ref'd n.r.e.). Further, an easement may not create a right or interest in a grantee's favor which the grantor himself did not possess. See *Drye v. Eagle Rock Ranch, Inc.*, 364 S.W.2d 196, 202 (Tex. 1962). The exclusive right to control, impede or otherwise limit navigable waters in this State belongs to the governments of Texas and the United States. An individual landowner is without power to convey such a right. Thus, as grantor, the Bellaire Corporation could not give White (or Terramar as his assignee) the exclusive use of navigable waters which are owned by the State of Texas. We hold that a grant of the easement purporting to limit the use of navigable waters conflicts with the state and United States governments' sovereign-

ty over such waters. U.S. Const. art. I, § 8; Tex.Nat.Res.Code Ann. art. 11.012(b).

The Bellaire Corporation purported to convey a perpetual exclusive easement and right of way not only for the full, free and uninterrupted use of the tract of land, but also for the waters overlying the land. Terramar contends the easement across the underlying beds would still be valid and enforceable even though the public might own the waters above the bed, relying on *Port Acres Sportsman Club v. Mann*, 541 S.W.2d 847 (Tex.Civ.App.—Beaumont 1976, writ ref'd n.r.e.). In *Mann*, a fee simple owner of the bed of a navigable stream was enjoined and prevented from maintaining a fence across the navigable stream and from preventing the defendants and other members of the general public the right of free passage. The court in *Mann* held that since the waters over the plaintiff's land were not navigable at the time the land was acquired, the subsequent event of the waters becoming navigable could not deprive plaintiffs of their title to the underlying land. Although the fee owner owned the bed, he could not control the use of the bed by maintaining a fence to prevent the public use of the overlying waters. *Mann*, *supra* at 849. The facts of the instant case are distinguishable in that Terramar does not own a fee simple interest in the bed, but instead it claims an easement therein.

Having found the easement invalid, the title the State took by the 1978 quitclaim deed to the turning basin bed is unencumbered by the purported easement. Consequently, construction of the marina is subject only to the State's consent as owner of the bed, and authorization from the United States government under 33 U.S.C. §§ 401, 403 (1976).

Accordingly, the judgments of the courts below are reversed and the permanent injunction issued by the trial court is hereby dissolved.

ROBERTSON and KILGARLIN, JJ., not sitting.

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Tex Cases 6

We are not furnished a statement of facts, but we do have the trial court's findings of fact from which we gather that the trial court was satisfied that the testator and the "witnesses" innocently completed the typed instrument and filled all the blanks therein in the belief that they had accomplished the making of a lawful will. Despite their efforts, the trial court and this court are compelled to obey § 59 as construed by our supreme court. Consequently, we hold that the instrument offered is not entitled to probate.

Affirmed.



C. Ed CARRITHERS and Robert G.  
Coulter, Appellants,

v.

TERRAMAR BEACH COMMUNITY  
IMPROVEMENT ASSOCIATION,  
INC., Appellee.

No. 18026.

Court of Appeals of Texas,  
Houston (1st Dist.).

Nov. 19, 1981.

Rehearing Denied Jan. 7, 1982.

In an action seeking to have landowners, whose interest in land was subject to exclusive easement over submerged land in turning basin, prohibited from constructing marina on their land and in the turning basin, the District Court, Galveston County, I. Allan Lerner, J., granted injunctive relief, and owners appealed. The Court of Appeals, Evans, C. J., held that: (1) in regard to such situation in which parties held under common grantor and instrument conveying easement to plaintiff easement owner's predecessor contained covenants of general warranty, the landowners, who were granted permit by Army Corps of

Engineers to construct marina, were, by virtue of claiming title under such common source of ownership, estopped from questioning validity of estate, which deed purported to convey, by arguing that regulatory agencies had exclusive authority to control all navigable waters; (2) Corps of Engineers' issuance of the permit did not bestow any property rights on landowners with respect to the submerged lands; (3) order granting the injunctive relief did not conflict with rights of the public; and (4) submergence of basin did not effect abandonment of the exclusive easement on theory that public character of the waters made it impossible for owner of easement to control installation of piers, pilings, and docks in basin without interference with public's right of use.

Affirmed.

#### 1. Estoppel ⇐38

In regard to situation in which parties held under common grantor, defendant owners' property rights were subject to plaintiff's exclusive easement in submerged land in turning basin area and instrument conveying easement to plaintiff's predecessor contained covenants of general warranty, the defendants, who were granted permit by Army Corps of Engineers to construct marina, were, by virtue of claiming title under such common source of ownership, estopped from questioning validity of estate, which deed purported to convey, by arguing that regulatory agencies had exclusive authority to control navigable waters and that easement rights were subservient to defendants' rights under permit.

#### 2. Navigable Waters ⇐14(1)

Army Corps of Engineers' issuance of permit for construction of marina to landowners, whose interest in the land was subject to exclusive easement over submerged land in turning basin, did not bestow any property rights on landowners with respect to the submerged lands.

3. Navigable Waters  
Order granting the injunctive relief did not conflict with rights of the public; and (4) submergence of basin did not effect abandonment of the exclusive easement on theory that public character of the waters made it impossible for owner of easement to control installation of piers, pilings, and docks in basin without interference with public's right of use.

4. Easement  
Submergence of basin did not effect abandonment of the exclusive easement on theory that public character of the waters made it impossible for owner of easement to control installation of piers, pilings, and docks in basin without interference with public's right of use.

Fred A.  
Robert

Before  
STILLEY

EVANS

The defendant's motion for summary judgment was denied. The trial court's judgment is affirmed.

The trial court's judgment is affirmed. The plaintiff's motion for summary judgment was denied. The trial court's judgment is affirmed.

The plaintiff's motion for summary judgment was denied. The trial court's judgment is affirmed.

3. Navigable Waters  $\Leftrightarrow$  14(1)

Order permanently enjoining landowners, whose interest in the land was subject to exclusive easement over submerged land in turning basin, from constructing marina on their land in the basin did not conflict with rights of public, in light of fact that order expressly recognized rights of general public to make appropriate use of waters overlying bed of basin.

4. Easements  $\Leftrightarrow$  30(1)

Submergence of turning basin did not effect an abandonment of exclusive easement over submerged land in the basin on theory that public character of the waters made it impossible for owner of easement to control installation of piers, pilings, and docks in basin without interference with public's right of use, in view of fact that purpose of easement was to control marine traffic within basin by restricting structures which could be erected therein and that the easement rights were created after bed of the basin was submerged beneath navigable waters.

Fred A. Lange, Houston, for appellants.  
Robert M. Moore, Houston, for appellee.

Before EVANS, C. J., and DOYLE and STILLEY, JJ.

EVANS, Chief Justice.

The defendants appeal from a permanent injunction prohibiting them from constructing a marina on their land and in a submerged "turning basin" of the Terramar Beach Subdivision in Galveston County.

The trial court determined that the plaintiff owned a perpetual, irrevocable and exclusive easement over all the submerged land in the turning basin and found that the proposed marina would infringe on the plaintiff's easement rights.

The principal contention of the defendants is that they hold a valid permit which was granted by the United States Army Corps of Engineers to construct the proposed marina, and that this permit supercedes any easement rights previously held

by the plaintiff. In support of this contention, the defendants argue that state and federal regulatory agencies have exclusive authority to control all navigable waters, and that the plaintiff's easement rights must therefore be considered subservient to their rights under the federally issued permit.

The parties stipulated that the area in dispute was a navigable body of water, submerged by artificial means in 1963 from dry land owned by the plaintiff's predecessor in title. The easement held by the plaintiff was created by written instrument in May 1975, and the defendants acquired their property rights subject to the plaintiff's easement. The trial court found the following facts, which are unchallenged.

1. Plaintiff is the owner of a perpetual, irrevocable and exclusive easement and right of way which includes the full, free and uninterrupted use of all of the turning basin of Terramar Beach Subdivision in Galveston County and the waters overlying said turning basin.

2. Defendants, owners of certain lands close to the turning basin, were granted a permit from the United States Army Corps of Engineers to construct a marina, bulkhead, docks, boat ramps, timber pilings, walkways and boat sheds, part of which would be located on their land, but most of which would be located in the turning basin where the plaintiff has its easement.

3. Defendants' proposed project would intrude into the plaintiff's exclusive easement to the land beneath the waters of the turning basin and would deprive plaintiff and its members of the rights held by them under such easement.

4. Although the surface waters of the turning basin are open for public use, the underlying land has never been dedicated to or appropriated for public use and the plaintiff has never abandoned its easement.

The trial court's injunctive order permanently prohibits the defendants from:

- (1) Digging or removing earth, sand, marl or in any way displacing same, blocking, filling in, driving pilings of any size or length into, anchoring into or on, dumping, dredging, or placing any permanent or stationary objects or appurtenances in or on the land area where the Plaintiff's exclusive easement exists;
- (2) Placing any objects on or over the surface waters of the "turning basin" where Plaintiff's easement exists which are in any way designed or meant to facilitate the temporary or permanent storage of boats, barges, boat ramps, docks or any facility which in any way blocks or impedes the full and complete usage of the surface waters of the "turning basin" where Plaintiff's easement exists;
- (3) Obstructing or in any other manner impairing or interfering with the Plaintiff's exclusive easement.

The order further provides that it shall not be construed to limit or enjoin any person from using the waters of the turning basin for swimming, boating, fishing or water transportation.

[1] It is undisputed that the parties hold under a common grantor and that the property rights of the defendants were acquired subject to the easement held by the plaintiff in the turning basin area. The instrument conveying the easement to the plaintiff's predecessor in title contains covenants of general warranty, and the defendants, claiming title under such common source of ownership, are therefore estopped to question the validity of the estate which the deed purports to convey. *Burns v. Goodrich*, 392 S.W.2d 689, 691 (Tex.1965). Thus, because of the relationship between the plaintiff and the defendants, it is immaterial that the waters overlying the bed of the turning basin are navigable. *Lorino v. Crawford Packing Co.*, 142 Tex. 51, 175 S.W.2d 410, 416 (1943).

[2] The grant of a permit by the U. S. Army Corps of Engineers to the defendants did not bestow upon them any property

rights with respect to the submerged lands in the turning basin. In fact, both the permit and the Corps' rules and regulations upon which the permit was issued, expressly provide to the contrary:

"Authorization of work or structures by the Department of the Army does not convey a property right nor authorize any injury of property or invasion of other rights." 33 C.F.R., § 320.4(g) (1980).

The permit itself provides:

That this permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and, that it does not authorize any injury to property or invasion of rights or any infringement of Federal, State or local laws and regulations, nor does it obviate the requirement to obtain State or local assent required by law for the activity authorized herein.

The grant of a permit by the U. S. Army Corps of Engineers merely reflects the determination by that agency that it has reviewed and approved the proposed activity as being in the "public interest" with respect to navigation, fish and wildlife, conservation, pollution and other environmental considerations. 33 C.F.R. § 209.120 (1968); *Zabel v. Tabb*, 430 F.2d 199 (5th Cir. 1970).

[3] No dispute exists between the plaintiff and the public at large concerning the use of the turning basin, and the injunction order expressly recognizes the rights of the general public to make appropriate use of the waters overlying the bed of the turning basin. Thus, there is no conflict between the rights of the plaintiff, which the injunction order seeks to protect, and the rights of the public, which are protected by State and Federal laws. The relationship between the plaintiff and the defendant makes it unnecessary to decide the question of ownership of the bed of the turning basin as between the plaintiff and the State of Texas, and this court has made no determination with respect to that issue.

[4] The defendants further contend that the submergence of the turning basin ef-

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Cite as, Tex.App., 630 S.W.2d 651

ected an abandonment of the easement, arguing that the public character of the waters made it impossible for the owner of the easement to control the installation of piers, pilings and docks in the turning basin without interference with the public's right of use. This contention will be overruled. It is undisputed that the purpose of the easement was to control marine traffic within the turning basin by restricting the structures that could be erected therein. The plaintiff's easement rights were created after the bed of the turning basin was submerged beneath navigable waters, and the public character of the waters overlying the turning basin does not prevent the plaintiff from exercising the rights granted it under the easement.

The permanent injunction order is affirmed.

establish priority in favor of garnishing creditor.

Reversed and remanded.

1. Garnishment ⇌ 107

Garnishment establishes priority in favor of creditor garnishor; among creditor garnishors garnishment which is prior in time of service is prior in time of right and subsequent writs of garnishment cannot impair or affect rights of prior garnishor.

2. Garnishment ⇌ 44, 107

Demand, although liquidated and fixed by terms of judgment, is not subject to garnishment until judgment becomes final in sense that it can neither be set aside nor reversed on appeal, and thus garnishment of proceeds of judgment for theft losses against insurers, which was not final because of pending appeal, did not establish priority in favor of garnishing creditor.

Painter & Painter, J. H. Painter, III, Houston, for appellant.

Lackshin & Nathan, Bernus Wm. Fischman, Smith & Lamm, Edwin Lamm, III, Houston, for appellees.

Before EVANS, C. J., and STILLEY and WARREN, JJ.

WARREN, Justice.

Summary judgment was granted awarding appellees Oak Forest Bank and Northshore Bank funds in the registry of the court which had been interpleaded by United States Fire Insurance Co. (U.S. Fire) and Home Indemnity Insurance Co. (Home Indemnity).

The question for our determination is whether the garnishment of the proceeds of a judgment, which is not final because of a pending appeal, is sufficient to establish a priority in favor of the garnishing creditor. We hold that it is not.

Frank and Wanda Skatell suffered business reversals, and as a result many judgments were taken against them. Their only



COMMERCIAL CREDIT CORPORATION, Appellant,

v.

UNITED STATES FIRE INSURANCE CO., et al, Appellees.

No. 18042.

Court of Appeals of Texas, Houston (1st Dist.).

Nov. 19, 1981.

Rehearing Denied Jan. 14, 1982.

After judgment for insureds' theft losses became final, insurers filed interpleader requesting that court divide money among insureds' creditors. The District Court, Harris County, Wm. N. Blanton, J., awarded funds, and creditor appealed. The Court of Appeals, Warren, J., held that garnishment of proceeds of judgment, which was not final because of pending appeal, did not

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Deed for  
0121-0027-0000-000

CORRECTION DEED

189261

THE STATE OF TEXAS )  
COUNTY OF GALVESTON )

7500 Bellaire Corporation, Houston, a Texas corporation, acting herein by and through its duly authorized officers and agents, for and in consideration of the sum of Ten Dollars (\$10.00) in hand paid by the State of Texas, receipt of which is hereby acknowledged, has quitclaimed and by these presents does quitclaim to the State of Texas, all of its right, title and interest in that certain property located in Galveston County, Texas, which is described as follows:

Description of a 8.78532 acre tract, more or less, out of Division 4, Section 13 of the Hall and Jones Survey, Abstract No. 121 in Galveston County, Texas

TRACT DESCRIPTION: Commencing at the Northwest Corner of Terramar Beach, Section 2, a subdivision in Galveston County, Texas, according to the map or plat thereof recorded in Volume 1616, Page 88 in the Office of the County Clerk of Galveston County, Texas; THENCE S32°25'E, a distance of 30 feet; THENCE N58°48'04"E, a distance of 1018.75 feet; THENCE N32°25'W, along the West Right of Way line of Marina Drive, a distance of 64.22 feet to a point for corner in the South line of Terramar Beach Marina Subdivision as recorded in Volume 15, Page 82 in the Office of the County Clerk of Galveston County, Texas; THENCE S80°W, along the South line of Terramar Beach Marina Subdivision, a distance of 169.55 feet to the Southwest corner of Terramar Beach Marina Subdivision; THENCE N10°W, along the West line of Terramar Beach Marina Subdivision, a distance of 125 feet to the place of beginning of the tract hereinafter described, said point being the Northwest Corner of Terramar Beach Marina Subdivision; THENCE from said beginning point N71°21'02"W a distance of 77.68 feet to a point for corner; THENCE S73°10'02"W, a distance of 78.49 feet to a point for corner; THENCE N51°02'47"W, a distance of 110.83 feet to a point for corner; THENCE N46°32'48"W, a distance of 117.89 feet to a point for corner; THENCE N13°46'34"E, a distance of 66.77 feet to a point for corner; THENCE N 13°31'57"W, a distance of 119.70 feet to a point for corner; THENCE N50°35'25"E, a distance of 134.94 feet to a point for corner; THENCE N56°32'02"E, a distance of 118.43 feet to a point for corner; THENCE N41°56'07"E, a distance of 6.12 feet to a point for corner; THENCE N58°48'04"E, a distance of 450.89 feet to a point for corner in the West line of Terramar Beach, Section 3, recorded in Volume 1616, Page 89 in the Office of the County Clerk of Galveston County, Texas; THENCE along the West line of Terramar Beach Section 3, S32°25'E - 101.86 feet, S32°03'58"E - 82.99 feet and S31°33'44"E - 100.01 feet to a point for corner being the Southwest corner of Terramar Beach, Section 3; THENCE S57°35'00"W, a distance of 2.00 feet to a point for corner; THENCE S31°22'35"E, a distance of 100 feet to a point for corner; THENCE S31°33'16"E, a distance of 77.03 feet to a point for corner; THENCE S41°40'17"E, a distance of 78.18 feet to a point for corner in the North line of Terramar Beach Marina Subdivision; THENCE along the North line of Terramar Beach Marina Subdivision S57°35'W, a distance of 403.55 feet to the P.C. of a curve; THENCE around a curve to the right whose radius is 67.26 feet, an arc distance of 26.32 feet to the PT of the curve; THENCE S80°W, a distance of 193.79 feet to the place of beginning and containing 8.78532 acres, more or less.

N51°02'47"W ? →

0-2-E-D  
ACR 3081 MAR 72A

L-2632  
F-6726

TO HAVE AND TO HOLD all of such right, title and interest in and to the property and premises unto the Grantee, the State of Texas, its successors and assigns forever, so that neither the undersigned nor its successors, legal representatives or assigns may at any time hereafter have, claim or demand any right or title to the property, premises, or appurtenances or any part thereof.

This is a correction deed only and corrects a clerical error in the property description contained in the original Quitclaim Deed, recorded in the Deed Records of Galveston County at Book 3021, Page 220. The effective date of conveyance of the property correctly described herein was the date of the prior deed referred to.

WITNESS MY HAND this 29 day of January, 1979.

7500 Bellaire Corporation, Houston  
A Texas Corporation

By Thomas P. Procopio  
Its President

0 F E O  
Book 3081 p. 725

THE STATE OF TEXAS )  
HARRIS )  
COUNTY OF HARRIS )

BEFORE ME, the undersigned authority, on this day personally appeared Thomas P. Procopio, President of 7500 Bellaire Corporation, Houston, a Texas corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated, and as the act and deed of said corporation.

GIVEN UNDER my hand and seal of office, this the 29 day of January, 1979.


Margaret J. Latta  
NOTARY PUBLIC in and for  
Galveston County, Texas  
Harris County, Texas



t/10

D E E D  
BOOK 3081 PAGE 726

189261

<p><b>BILLED FOR RECORD</b>  <i>M. J. Christmas</i>          FEB 5 1979  <i>Mary Jane Christmas</i>          CLERK CO. CL. GALVESTON, TEX.</p>	<p>STATE OF TEXAS          COUNTY OF GALVESTON          I hereby certify that this instrument was filed on the          date and time of record herein by me and was duly recorded          in the books and page of the official records of Galveston          County, Texas as shown herein to me.</p>		<p>FEB 5 1979  <i>Mary Jane Christmas</i>          COUNTY CLERK GALVESTON, TEXAS</p>	<p>LAW OFFICES          MILLS, SHIRLEY, MCHICKEN &amp; ECKEL          GALVESTON, TEXAS  <i>M. J. Christmas</i></p>
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11

Plat of Deed Calls for: TERRAMAR 8.78532AC  
TERRAMAR 8.78532 AC. GALVESTON CO. SAM 31

8/15/1996 dh

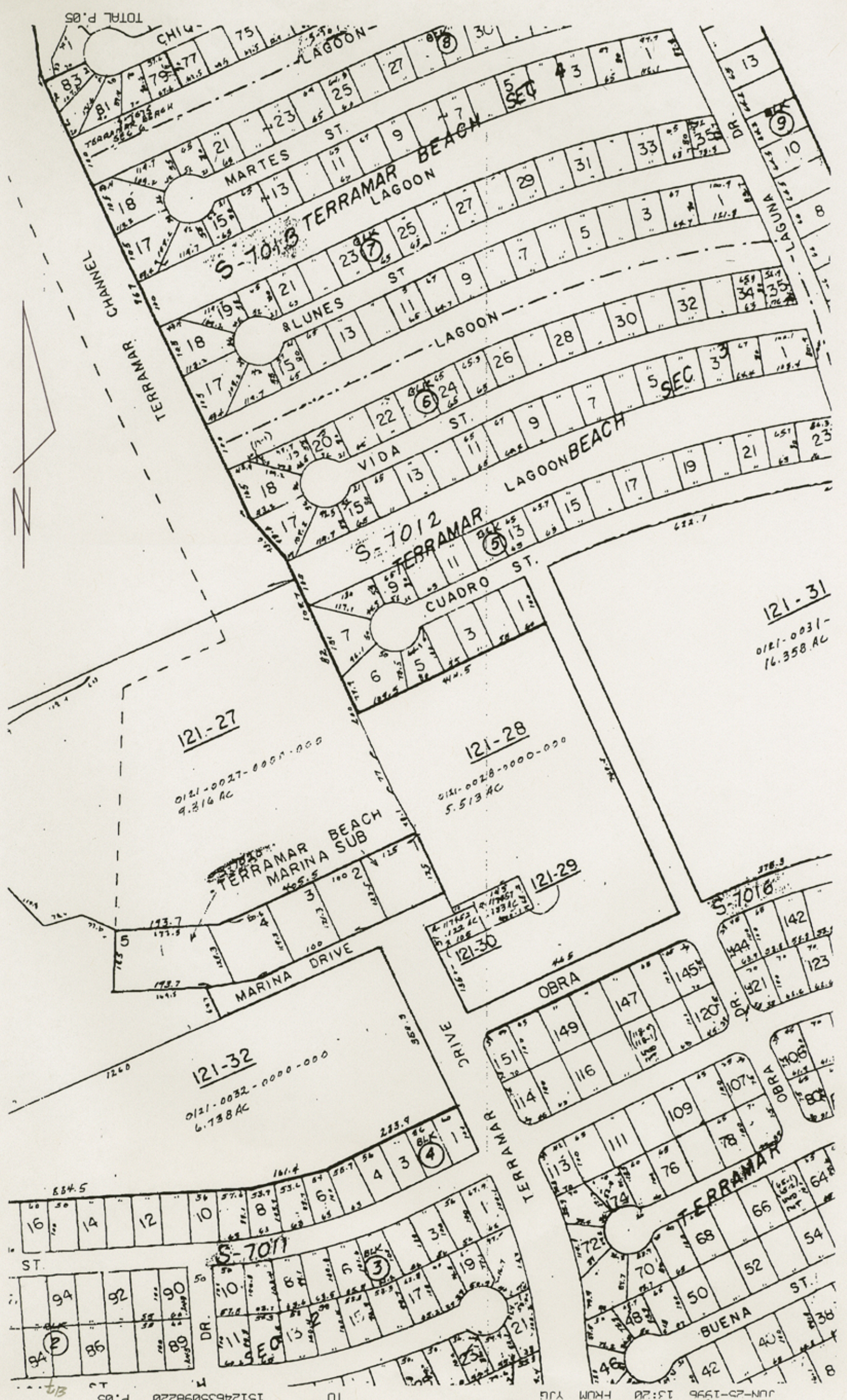


TERRAMAR 8.78532AC	..... AREA .....	.. CLOSING ERROR ..
Scale : 178 ft/in	Acres : 8.800 ±	Bearing: S09.4002E
North Shift: +0	Sq. Feet : 383317 ±	Feet : 11.90
East Shift : +0	Sq. Meters: 35611.3 ±	Meters : 3.626
DMS Rotated: +000.0000	Perimeter : 2447.47	Precision: 1/206

- |                        |                                |
|------------------------|--------------------------------|
| 1. N71.2102W 77.68 ✓   | 16. S31.3316E 77.03            |
| 2. S73.1002W 78.49 ✓   | 17. S41.4017E 78.18            |
| 3. N51.0247W 110.83 ✓  | 18. S57.35W 403.55             |
| 4. N46.3248W 117.89 ✓  | 19. C1 Right, Radius= 67.26    |
| 5. N13.4634E 66.77 ✓   | Bng= not given Dist= not given |
| 6. N13.3157W 119.70 ✓  | Del= not given Len= 26.32      |
| 7. N50.3525E 134.94 ✓  | Tan= not given Rdl= not given  |
| 8. N56.3202E 118.43 ✓  | 20. S80W 193.79                |
| 9. N41.5607E 6.12 ✓    |                                |
| 10. N58.4804E 450.89 ✓ |                                |
| 11. S32.25E 101.86 ✓   |                                |
| 12. S32.0358E 82.99 ✓  |                                |
| 13. S31.3344E 100.01 ✓ |                                |
| 14. S57.35W 2.00 ✓     |                                |
| 15. S31.2235E 100 ✓    |                                |

t<sub>12</sub>

Counter 23939



TOTAL P.05

121-27

0121-0027-0000-000  
9.816 AC

121-28

0121-0028-0000-000  
5.513 AC

121-31  
0121-0031-  
16.358 AC

121-32

0121-0032-0000-000  
6.738 AC

121-29

121-30

S-7016

S-7011

TERRAMAR