

Lawyers: Paseo Caribe land was never public domain

BY JON RUST
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OF THE STAR STAFF

According to numerous local and federal laws and acts dating to 1886, the land at the site of the Paseo Caribe project has never been considered public domain, is not in the maritime zone and was duly sold by the local government years ago to private companies, attorneys for the developer argued in court on Wednesday.

Weeks after the commonwealth froze construction of the project in Puerta de Tierra, attorneys for developer Arturo Madero — who responded with a suit in San Juan Superior Court against the government — said that prior to the recent controversy, the commonwealth had repeatedly recognized the legal nature of the complex.

Following months of protests at the site, Justice Secretary Roberto Sánchez Ramos in December issued a decision alleging that parts of Paseo Caribe were on public land that was illegally sold, and days later La Fortaleza issued a 60-day freeze on construction.

The key finding by Justice was that parts of the project are being built on filled-in land that was reclaimed from the sea and so is public

domain.

But Paseo Caribe attorney Luis Sánchez Betances, in a three-hour opening argument, told Superior Court Judge Oscar Dávila Suliveres that Justice wrongly determined that all land reclaimed from the sea is in the public maritime zone.

The term *ganados al mar* is not “divine” or “sacred.”

The regulation applies to, for example, natural accumulation of sand, not to land reclaimed “through the work of man,” as is the case of the Paseo Caribe site, Sánchez Betances said.

“It’s as simple as that — it is not the maritime zone, it is not public domain, period,” he said.

Furthermore, the government has repeatedly recognized in 1994, 1998 and 2001 when the Department of Natural and Environmental Resources — under three different secretaries and two administrations — determined the limits of the maritime zone at the site along the Condado lagoon.

Before that though, after residents of a nearby condo filed suits over the project, the government testified in favor of the some 270 permits for Paseo Caribe.

“All the agencies appeared to defend the permits. All the agencies,” Sánchez Betances said.

A ‘state of rights’ created

The Justice Department, like the DNER, also determined in 2002 that the land was not in the maritime zone. Sánchez Ramos’ decision — which led to counterprotests by construction workers and developers — overturned the prior decision.

But the original determination “created a state of rights ... for the continuing construction and financing of the project,” Sánchez Betances said.

Dávila Suliveres on Wednesday denied a “friend of the court” petition from the Initiative for Sustainable Development, saying the case is strictly about the title to the land in question.

Madero has invested some \$320 million in the project, which



The Paseo Caribe development site in Puerta de Tierra

includes hotel villas, condos and an entertainment and commercial complex. Most of it has already been completed.

The land in question, along with the historic San Geronimo Fort, was acquired by the United States in 1898 under the Treaty of Paris.

Sánchez Ramos wrongly stated in his decision that the Jones Act ceded to Puerto Rico the possession of all submerged land and navigable waters, the Paseo Caribe developer said.

The site was given under a long-term lease to Navy Lt. Cmdr. Virgil Baker, who built a concrete house on top of the fort and lived there with his wife and six children — but it was never sold, and the United States continued to hold title.

“It’s in the Jones Act that the false opinion of the Justice secretary is anchored,” he said.

That is proven in the terms of the lease, which declares the waters and submerged land to be included in the property.

The Puerto Rico Land Authority bought the land in 1991 for \$4.8



Developer Arturo Madero

million from the U.S. General Services Administration.

“This transaction, for reasons I don’t know, is not even mentioned in the decision of the Justice secretary,” Sánchez Betances said.

As of 6 p.m., defense lawyers for the government had not yet given their opening arguments.

The matter of the title is the key to

the case, and Sánchez Betances said only the courts, not government agencies, can decide the matter.

The local government later sold the land to private company, which sold it to the Caribe Hilton before Madero purchased it in 1998.

“It’s not the owner of the title that has to prove ownership of the title,” Sánchez Betances said.



Attorney Luis Sánchez Betances, center, legal counsel for developer Arturo Madero

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Work resumes on Paseo Caribe

Surveyor: 'Substantial' portions of 2 resorts on land gained from sea

BY JOSE ALVARADO VEGA
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OF THE STAR STAFF

Work resumed Monday at the Paseo Caribe construction site in Puerta de Tierra without a hitch, as the commonwealth Justice Department examined a surveyor's report that says that "substantial" portions of the Caribe Hilton Hotel and Paseo Caribe are located on land gained from the sea.

These land segments, which Justice Secretary Roberto Sánchez Ramos said are public domain and should not have been sold to developers, are at the center of a legal dispute that kept the \$320 million Paseo Caribe project idle for more than two months. A Superior Court judge has disagreed, declaring the lands private.

"San Geronimo Caribe Project Inc. resumed operations today [Monday] at the Paseo Caribe site without any problems," said Jennifer Ramírez, spokeswoman for developer Arturo Madero.

A few protesters remained camped out near the construction site, where riot squad officers clashed with protesters in December, just hours before Gov. Acevedo Vilá announced his decision to freeze the project's permits for 60 days, following the release of Sánchez Ramos' opinion that part of the development was on public land that should not have been sold to private entities. The Regulations and Permits Administration issued the order on Dec. 27 paralyzing work on the project for 60 days while the disputed property was identified by surveyors and agencies reviewed the project's permits.

While the freeze expired last week, Arpe decided to extend it for an additional 60 days because it argued that the courts were still establish-

ing whether or not the land in question was public or private.

The Supreme Court, acting on a certiorari petition by Madero's attorneys, nullified the work stoppage order on Thursday, noting that a Feb. 8 ruling by San Juan Superior Court Judge Oscar Dávila Suliveres that found the project's site to be private property. While the government has said it would appeal, it has yet to do so.

'Land gained from sea'

About a third of former commonwealth property between the Yacht Club and the historic San Geronimo Fort sold to private developers and hoteliers in the late 1990s was gained from the sea, including "substantial" parts of the Caribe Hilton Hotel and the Paseo Caribe project, according to a survey report that Linda Vélez, professor at the Civil Engineering and Surveying department at the University of Puerto Rico's Mayagüez campus, handed in to the Justice Department on Friday.

The report found that Paseo Caribe's Condado Lagoon Villas I and II as well as the swimming pools and a seven-story wing of the Caribe Hilton Hotel are on land gained from the sea, Vélez told The STAR on Monday.

Other properties in the area such as the San Luis Condominium — whose residents have challenged the Paseo Caribe project since its inception in 1998 — are on firm land, said Vélez, who noted that the survey report is based on a computer study of aerial photographs, maps and land registry documentation since the federal government started to transfer the land to local authorities in 1938.

The report focuses on about 15 acres of land on the eastern tip of Puerta de Tierra on which Caribe Hilton, Pasco Caribe and San



Work began anew Monday on the Paseo Caribe project, shown here adjacent to the Caribe Hilton hotel in Puerta de Tierra.

Geronimo are located, which forms part of a 30-acre plot of land classified as number 196 in the property registry, Vélez said.

The federal government divided the land into three parcels, two of which — parcels A and B — include the land in question and which were owned by U.S. Navy Cmdr. Virgil M. Baker and the U.S. Coast Guard, and which were gradually transferred to local authorities in the 1920s and 1930s, she said.

The Caribe Hilton Hotel and Paseo Caribe structures were built on 2.8 acres of landfill bordering the Atlantic Ocean to the north and on 3.9 acres bordering the Condado Lagoon to the east, within the 14-acre Parcel A, Vélez said.

While Vélez said that landfill area in question totals 26,760 square meters, she could not say the size of the floors of identified structures on the site.

"One third of that land was gained from the sea as the Coast Guard and later the commonwealth govern-

ment added landfill," said Vélez, who noted that she had been hired by the Institute of Puerto Rican Culture in 2004 to determine the ownership of land that provided access to the deteriorating San Geronimo Fort and on which Paseo Caribe was being built.

Vélez said that another key finding of her report is that the federal government sold to the commonwealth in November 1992 some 6,272 square meters or 1.5 acres of land in Parcel B that President Franklin Delano Roosevelt had originally transferred to the island government through Executive Order 7857 in 1938. This includes land the local Legislature had sold to the Yacht Club in the 1930s, she said.

Solicitor General Salvador Antonetti Stutts said Monday that while the report's findings are "very important to determine the practical effects" of any final court ruling on the merits of the case, he acknowledged that they could be subject to further court litigation.



Solicitor General Salvador Antonetti

"This was needed to determine where exactly the line was to be drawn," said Antonetti, who noted that the case revolves around a 1968 law which says that the government can sell any public land, including land gained from the sea, if it is approved by the Legislature.

Gov. Acevedo Vilá has said it was up to the Legislature to determine public policy concerning such land gained from the sea.

Antonetti said the government would appeal Dávila Suliveres' decision this week.

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