

## The Supreme Court and Paseo Caribe

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The Supreme Court handed down its opinion on the legal nature of two notorious parcels of land, one where the Caribe Hilton stands and the other where the controversial Paseo Caribe condominium is being constructed.

The opinion is centered on the question of whether the parcels were of public domain or were of a proprietary nature and, thus, proper objects for sale by the government. It doesn't go into the questions of the extent of title to the parcels or possible permit violations to Regulation 23—the building regulations applicable to Paseo Caribe—because these matters weren't at issue in the case that went to the court.

The court's opinion was written by Chief Justice Federico Hernández Denton. Associate Justice Liana Fiol concurred with the court's opinion regarding the "Condado Bay Parcel," on which the Caribe Hilton buildings stand, but dissented as to the "Coast Guard Parcel," on which the Paseo Caribe condominium is being built.

Both opinions are quite lengthy. They exhibit profound historical legal research going back to Spanish rule over Puerto Rico, the Treaty of Paris—which ended the Spanish American War—federal legislation during the early 20th century and the laws approved by the government of Puerto Rico during the past century regarding our ports and maritime or coastal zone.

The legal issue was whether artificial or human-made land fills of areas submerged under the sea constitute land under the public domain or whether they belong to the entity or person who, under the proper government permits, carried out the land fills. The public domain is a technical legal term which isn't the same as government property. Roads, rivers and coastal waters, for example, are under the public domain but they aren't government property; they aren't property the government can sell. So, if the land claimed from the sea to build the Caribe Hilton or Paseo Caribe was under the public domain, the government didn't follow the proper procedure to sell these properties. In this case, the land fill where the Caribe Hilton stands was carried out by the government of Puerto Rico and the one where Paseo Caribe is being built was carried out by the federal government. Both land fills occurred during the decade of the '40s and both had proper permits.

The court ruled the land in both parcels claimed from the sea wasn't land in the public domain and, thus, were of a proprietary nature such that the government could sell them. This ruling, in which Justice Fiol concurred for Condado Bay Parcel, is supported by the overwhelming weight of legal doctrine cited by the chief justice and Justice Fiol.

Upon being made public, the court's opinion was blasted not only by the protestors camping out in front of Paseo Caribe but also by their legal advocates and many of the so-called analysts who occupy our radio waves and the space in our newspapers. Shooting from the hip, without any kind of reasoned analysis, they proclaimed the court's opinion had set up the final battle between good and evil—Armageddon—upon our coastal zones.

This thoughtless behavior has permeated public opinion in Puerto Rico in recent years. It is in part the cause of the malaise that besets us and threatens the rule of law. It fosters “ungovernability” because, on too many occasions, the currents of opinion that it generates sway public officials and leads them to err in making decisions.

Two things must be made clear regarding the courts' opinion:

The court's opinion doesn't foreclose the case of Paseo Caribe. The questions of the extent of title to the land and possible violations to Regulation 23 are open questions still under investigation.

The court's opinion doesn't open the door to uncontrolled land fills of submerged lands. It states the law as it was during the 1940s. The opinion doesn't apply to land fills that may have taken place after our law covering the maritime zone was approved in 1968 or to those that may take place in the future.

As to the law after 1968, there are two possible interpretations, neither which permits uncontrolled land fills to claim submerged lands. One is that such land fills would fall under the public domain and only the Legislature could authorize that they become private property. This is the opinion of Justice Fiol. This is why she dissents regarding the Coast Guard Parcel. Although the land fill occurred in the early 1940s, she understands—I disagree—that the fact it was sold by the federal government to the Commonwealth in 1991, brings the parcel under the 1968 law.

The other interpretation, which the court's opinion doesn't authorize but leaves as an open question, is that such land fills may become private property if they are duly authorized by the executive agencies with jurisdiction over this matter. This interpretation, in my view, is correct. As I read it, the law only brings under the public domain the part of the land fill that is bathed by the waves in high tide.

Under the standards of the public administrations—1960 to 1992—which I knew as a public official, this interpretation would be the most favorable. A competent and responsible administration would authorize a land fill only if it is in the public interest or if it doesn't affect the public interest. Proprietary title under such conditions accruing to the government or to private individuals would be authorized if it were in the public interest. The public interest isn't necessarily served by denying economic value to land claimed from the sea. Judgment must be rendered on a case-by-case basis. Administrative handling of such matters would be more efficient and objective than legislative handling.

But the lack of confidence as to the competency, responsibility and integrity of public administrations raised by the handling of the Paseo Caribe permits during the Rosselló administration does present serious doubts as to whether this responsibility can be entrusted to administrative officials.

We must overcome such doubts not by ignoring them but by the conscious selection at the polls of our public officials and eternal vigilance as to their conduct while in office.

