

**LITIGATION ALERT**  
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**Conduct and Actions of Parties may Modify Written Contracts**

The Supreme Court of Puerto Rico had previously ruled that if a potential buyer failed to timely exercise its option to purchase a real estate property within the deadline agreed with the seller, then the option to purchase the property expired by its own terms. Recently, however, the Supreme Court decided that such a contract may be modified by the conduct and actions exercised by the parties. PDCM Assoc. S.E. v. Najul, 2008 TSPR 133

PDCM Associates, S.E. (“PDCM”) had an option to purchase certain real estate property owned by nine persons. PDCM failed twice to make timely payments to secure its option on the property. The second payment was made using a personal check of PDMC’s president which was tendered to three of the nine joint owners who cashed the check and allegedly reimbursed the others. At the end, the parties were unable to execute the deed of sale because one of the joint owners refused to do so arguing that the option had expired because PDMC had failed to make the payments to all joint owners within the contractual deadline. PDMC sued the joint owners. The Court of First Instance denied the complaint and the Court of Appeals affirmed. The Supreme Court reversed.

The Supreme Court held that the joint owners implicitly acquiesced to the modification of the option contract by, not only accepting the belated payments made by PDMC, but by failing to object to the way second payment was made by PDMC’s president. Accordingly, the Supreme Court compelled the joint owners to sell the property to PDMC.

If you have any questions or comments, or wish additional information regarding this matter, please contact Francisco G. Bruno, Director of our Litigation Practice Group at (787) 250-5608 or [fgb@mcvpr.com](mailto:fgb@mcvpr.com). The contact information of our Litigation Practice Group attorneys is available at our website: [www.mcvpr.com](http://www.mcvpr.com).

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