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LITIGATION ALERT

Puerto Rico Supreme Court Recognizes the Existence of Private Residential Roads under Puerto Rico Law

The Puerto Rico Supreme Court issued a groundbreaking decision recognizing the existence of private residential roads under Puerto Rico law. The Opinion of the Court, delivered by Associate Justice Rivera-García in the case of Watchtower Bible and Tract Society of New York, Inc. et al. v. Municipio de Dorado, et al. (Watchtower), substantially adopted the arguments advanced by the *amici curiae*, DBR Dorado Owners LLC, Coco Beach Maintenance, Inc. and Serrallés Hotel, Inc. represented by McConnell Valdés LLC (McV).

The case of Watchtower arose out of a federal complaint filed by Watchtower Bible and Tract Society and the Jehovah Witnesses against the Government of Puerto Rico and several municipalities, seeking declaratory judgment and permanent injunctive relief. Plaintiffs challenged the Puerto Rico Controlled Access Act (PRCAA) under various constitutional provisions, alleging that the regime imposed by the statute impermissibly limited their ability to pursue “a religious duty to share the Bible’s message publicly and to proselytize from house to house.” The United States Court of Appeals for the First Circuit (First Circuit) held that the PRCAA was constitutional on its face, but determined that some municipalities and urbanizations were applying the law in ways that “bore unreasonably on Jehovah’s Witnesses’ access to public streets.” Consequently, the First Circuit remanded the case to the United States District Court for the District of Puerto Rico (District Court), instructing it “to take prompt action to bring the municipalities and urbanizations into compliance.”

Accordingly, the District Court ordered various municipalities to present alternatives to allow Plaintiffs to enter gated urbanizations within their respective jurisdictions. The Municipality of Dorado complied, but indicated that the District Court’s order was inapplicable to Brighton Country Club (BCC), a closed gate urbanization in Dorado where the roads had been built with private funds and title thereof was never transferred to the municipality. In other words, the Municipality of Dorado argued that the order did not apply to Brighton Country Club because its roads were private.

Faced with a matter of first impression, namely, whether Puerto Rico law allows for private residential roads, the District Court certified the question to the Puerto Rico Supreme Court, which agreed to hear the issue. In October 2013, DBR Dorado Owners LLC, Coco Beach Maintenance, Inc. and Serrallés Hotel, Inc., represented by McV, requested leave to appear as *amici curiae* to defend the proposition that Puerto Rico law allows for the existence of private residential roads. An *amicus curiae* brief was filed on January 3, 2014 and oral argument was heard on February 11, 2014 before the Justices of the Puerto Rico Supreme Court.

After carefully considering the matter, on November 18, 2014 the Court issued an Opinion and Order recognizing the existence of private residential roads under Puerto Rico law. In so ruling, the Court interpreted various provisions of the Puerto Rico Civil Code and held that roads or streets that were built and are maintained exclusively with private funds do not fit within the definition of public goods established in Article 257 of the Puerto Rico Civil Code. Thus, roads so built and maintained are to be considered as private in nature.

At its core, the Supreme Court of Puerto Rico has laid out the rules necessary for the proper adjudication of whether a street or road may be considered public or private in nature. This decision has widespread implications and will certainly promote the construction industry and provide an incentive for future investments in Puerto Rico's real estate and hospitality industries.

Should you have any questions or comments, or wish additional information regarding this matter, please contact [Arturo J. García-Solá](#), Managing Director, or [Juan A. Marqués](#), Chair of the Litigation Practice Group.

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