

Special section on cooperative law and housing cooperatives

HOUSING COOPERATIVES' STATUTES AND THE QUEST FOR COOPERATIVE IDENTITY IN PUERTO RICO

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Abstract

A legal framework that accurately reflects the identity of housing cooperatives is crucial to address the issue of inadequate housing in financially struggling countries like Puerto Rico. However, the Puerto Rico Supreme Court decision in *Rolling Hills Housing Cooperative v. Doris Colón* highlights the need for further action. In this case, the court examines whether a housing cooperative may resort to general eviction law to vacate a user-member who was in arrears in her monthly fees. The court states that housing cooperative by-laws shall not subvert the statutorily established process to vacate user-members. A housing cooperative that resorts to general eviction law operates like a capitalistic for-profit leasehold, contradicting its cooperative identity to the detriment of its user-members. Thus, *Rolling Hills Housing Cooperative v. Doris Colón* is a call to action to train housing cooperative leaders to uphold their cooperatives' identity in their operations.

Introduction

Puerto Rico has experienced a more than decade-long recession worsened by the devastating impact of Hurricane Maria in 2017 and the COVID-19 pandemic.¹ These events have intensified a long-standing housing crisis, dramatically increasing eviction cases in Puerto Rico

¹ GAO, Hurricane Recovery Can Take Years—But For Puerto Rico, 5 Years Show Its Unique Challenges (November 14, 2022) available at <https://www.gao.gov/blog/hurricane-recovery-can-take-years-puerto-rico-5-years-show-its-unique-challenges>; Marxuach S.M., The Threefold Challenge to the Puerto Rican Economy, Center for a New Economy (September 2021) available at <https://grupocne.org/wp-content/uploads/2021/09/2021.09.15-The-Threefold-Challenge-to-the-Puerto-Rican-Economy.pdf>; Hernández-Padilla J.A. & Méndez-Piñero M.I., Economic Impact of the COVID-19 Pandemic in Puerto Rico, Proceedings of the 9th Annual World Conference of the Society for Industrial and Systems Engineering, (September 2020) available at <https://ieworldconference.org/content/SISE2020/Papers/Hernandez-Padilla.pdf>; Caraballo-Cueto J. & Lara J., From Deindustrialization to Unsustainable Debt: The Case of Puerto Rico, pages 5-6 (October 2016) available at https://www.researchgate.net/publication/309736965_From_deindustrialization_to_unsustainable_debt_The_Case_of_Puerto_Rico

state courts.² Housing cooperatives have the potential to offer an attractive and affordable alternative for Puerto Ricans who are facing this acute housing crisis.³

Since 1940, there have been housing cooperatives in Puerto Rico.⁴ Currently, only 13 housing cooperatives are operating. They are located in the capital city (San Juan) metropolitan area and a southern town (Ponce) of Puerto Rico's main island.⁵

Although the absence of an appropriate legal framework could become an obstacle to effectively implementing the social benefits that a housing cooperative may render, that is not the case in Puerto Rico. The organizational law of Puerto Rico housing cooperatives was enacted in 2004.⁶

However, the main obstacle to achieving the benefits of a housing cooperative may not be the absence of an appropriate legal framework but the lack of an adequate understanding of its cooperative identity and how it should determine the housing cooperative's operation.⁷ The implementation of the cooperative identity needs a legal framework that supports it. Indeed, Antonio Fici has affirmed that "[s]tipulating the cooperative identity and preserving their distinguishing features should ... be considered the primary objective of cooperative law".⁸ Furthermore, Fici states that the legal dimension of cooperative identity enables courts to affirm cooperatives' distinct identity relative to other business enterprises.⁹ And precisely that is what the Puerto Rico Supreme Court did in *Rolling Hills Housing Cooperative* [hereinafter *Housing Cooperative*] v. Doris Colón [hereinafter *Mrs. Colón*] affirming that Puerto Rico's cooperative

² See, Pineda-Dattari L., Evictions Due To Non-payment Increase In Puerto Rico: Totaling 970 So Far This Year *available at* <https://www.noticel.com/economia/top-stories/20220713/desahucios-por-impago-aumentan-en-puerto-rico-son-970-en-lo-que-va-de-ano/> (Spanish text).

³ Cf., Suarez D., Rodriguez-Velazquez V. & Sosa-Pascual O., A Nightmare for Puerto Ricans to Find a Home, While Others Accumulate Properties (December 19, 2022) *available at* <https://periodismoinvestigativo.com/2022/12/a-nightmare-for-puerto-ricans-to-find-a-home-while-others-accumulate-properties/#>

⁴ *Rolling Hills Housing Cooperative v. Doris Colón*, AC-2018-0096, 2020 TSPR 04, page 12, *available at* <https://dts.poderjudicial.pr/ts/2020/2020tspr04.pdf> (Spanish text). See also, https://camarapr.org/presentaciones/vivienda/5-Vivienda_Torres.pdf, slides 22-23 (Spanish text).

⁵ Rosado-Leon C., Housing Cooperatives in Puerto Rico, slide 4, VI Cooperative Summit of the Americas (October 2022) *available at* <https://aciamericas.coop/wp-content/uploads/2023/08/PRESENTACION-CARMEN-ROSADO-LEON-PUERTO-RICO.pdf> (Spanish text).

⁶ See *infra* note 16.

⁷ The challenge of implementing the cooperative identity through cooperative governance has already been identified. "Efforts to translate the Statement's [on the Cooperative Identity (ICA, 1995)] values-based, humanistic organizational philosophy into a coherent system of governance, however, have proven challenging for even the most committed of cooperators. This difficulty lies in no small part with the role played by organizational theory, as a bridge between abstract co-op philosophy and its operationalization through cooperative governance practice." Emphasis added. McMahon C., Miner K., Novkovic, S., *Walking the Talk: Cooperative Identity and Humanistic Governance*, 107 *Review of International Cooperation* 22, 24 (2023).

⁸ Fici A., *An Introduction to Cooperative Law in International Handbook of Cooperative Law* 18 (Cracogna D., Fici A. & Henry H., eds. 2013).

⁹ Cf., "[I]t is more arduous to defend an identity that does not correspond to an identity defined by law. It is worth recalling again the use of the SCE Regulation by the EU Court of Justice to recognize the cooperative's distinct identity relative to other business organisations". Fici, A., *Cooperative Identity and the Law* 4-5 (February 14, 2012). Euricse Working Paper No. 23/12 *available at* SSRN: <https://ssrn.com/abstract=2005014> or <http://dx.doi.org/10.2139/ssrn.2005014>.

law must be construed and implemented to uphold the cooperative identity of housing cooperatives.¹⁰

The Case

Administrative & Judicial Proceedings at Trial and Appellate Courts

In 2016, after 21 years as a housing cooperative user-member, Mrs. Colón accrued debt from the monthly payments she agreed to make to contribute to the Housing Cooperative's operating costs. These payments also granted her the right to reside in an apartment and utilize the Cooperative's facilities. The Housing Cooperative manager summoned Mrs. Colón to a hearing. Mrs. Colón did not attend, and the Housing Cooperative issued a resolution terminating her status as a housing cooperative user-member and granting her a 30-day period to vacate her apartment.¹¹

Two days after the resolution was issued, the Housing Cooperative sent Mrs. Colón a letter informing her of the resolution and scheduling a meeting to discuss her situation. The meeting resulted in the Housing Cooperative granting Mrs. Colón a payment plan. This agreement was formalized in a letter in which the Housing Cooperative acknowledged Mrs. Colón's health issues and stated that she was no longer required to vacate her apartment.¹²

After several months, Mrs. Colón again missed payments, and the Housing Cooperative filed a civil complaint against her under the Puerto Rico's Eviction Act [hereinafter Eviction Act], petitioning Puerto Rico Trial Court to issue an order to evict Mrs. Colón from her apartment.¹³ Puerto Rico operates under a three-tier court system. The Trial Court has general jurisdiction and handles cases within Puerto Rico's territorial limits. The Court of Appeals serves as the appellate forum for decisions made by the Trial Court. The Supreme Court is the highest-ranking court in Puerto Rico and is responsible for interpreting the Constitution and Puerto Rico laws.¹⁴

Mrs. Colón appeared at the Trial Court hearing without legal representation. The Trial Court conducted a summary eviction procedure, provided by the Eviction Act, and issued an eviction and money collection judgment against Mrs. Colón.¹⁵

This judicial decision forced Mrs. Colón to hire an attorney. Afterward, her legal representation filed a motion at the Trial Court arguing that both the Housing Cooperative administrative

¹⁰ Rolling Hills Housing Cooperative v. Doris Colón, AC-2018-0096, 2020 TSPR 04, available at <https://dts.poderjudicial.pr/ts/2020/2020tspr04.pdf> (Spanish text).

¹¹ *Id.*, at page 2.

¹² *Id.*, at pages 2-4.

¹³ Puerto Rico Eviction Act, Act 2011-86, 32 LPRA §§ 2821-2838 (LPRA: Laws of Puerto Rico Annotated). See also, Eviction at <https://poderjudicial.pr/eng/community-education/legal-topics/civil-cases/eviction/>

¹⁴ See, <https://poderjudicial.pr/documentos/Educo/Government-and-Court-System.pdf>

Puerto Rico is an unincorporated territory of the United States, which means that most, but not all, US statutes and regulations, as well as the US Constitution, apply in Puerto Rico. Laws enacted by the Puerto Rico Legislative Assembly must comply with US law and may not contradict it. Similarly, rules and regulations must align with Puerto Rico statutes and may not contradict them.

¹⁵ Rolling Hills Housing Cooperative v. Doris Colón, *supra* note 10 at page 4.

procedure against her and the judicial proceeding should have been conducted under the provisions of the special statute that governs housing cooperatives, the General Law of Cooperative Societies of Puerto Rico of 2004 [hereinafter Cooperative Societies Act] instead of the Evictions Act.¹⁶ The Trial Court denied the motion.¹⁷

To appeal the decision, Mrs. Colón asked the Trial Court to exempt her from the Eviction Act jurisdictional requirement to post an appeal bond.¹⁸ Again, the Trial Court ruled against Mrs. Colón and ordered her to post a \$5,016.00 appeal bond.¹⁹

Mrs. Colón appealed the Trial Court decision to the Court of Appeals, arguing again that both the Housing Cooperative administrative procedure and the Trial Court ruling were invalid because they should have complied with the specific provisions of the Cooperative Societies Act that govern housing cooperatives in Puerto Rico.²⁰ On the other hand, the Housing Cooperative argued that after Mrs. Colón was deprived of her user-membership status in the administrative procedure, the agreed-upon payment plan constituted an ordinary lease contract. Therefore, Mrs. Colón became a tenant without the benefits of a housing cooperative user-member status. As a tenant, her eviction process should be governed by the Eviction Act, not the Cooperative Societies Act.²¹

The Court of Appeals ruled in favor of the Housing Cooperative, affirming the Trial Court decision that the Eviction Act applied to Mrs. Colón's case.²² The Court of Appeals dismissed Mrs. Colón's appeal based on its lack of jurisdiction due to Mrs. Colón failure to post the Eviction Act's required appeal bond. Puerto Rico Supreme Court caselaw has established that the Eviction Act's appeal bond is a jurisdictional requirement. Thus, failure to post it deprives the Court of Appeals of jurisdiction over the case, and it shall dismiss the case as happened in Mrs. Colón's case.²³

Finally, Mrs. Colón filed a *certiorari* petition at the Puerto Rico Supreme Court asking the Court of Appeals decision to be overruled because her eviction procedure should have been conducted under the provisions of the Cooperative Societies Act. On the other hand, the Housing Cooperative reiterated its arguments for applying the Eviction Act to Mrs. Colón's case.²⁴

¹⁶ Act No. 239 of September 1, 2004, Chapter 35, Articles 35.0-35.10; 5 LPRA §§ 4580-4589a. Rolling Hills Housing Cooperative v. Doris Colón, *supra* note 10 at pages 4-5.

¹⁷ Rolling Hills Housing Cooperative v. Doris Colón, *supra* note 10 at page 5.

¹⁸ See *infra* note 39.

¹⁹ Rolling Hills Housing Cooperative v. Doris Colón, *supra* note 10 at page 6.

²⁰ *Id.*

²¹ *Id.*, at pages 6-7.

²² *Id.*, at page 7.

²³ Rolling Hills Housing Cooperative v. Doris Colón, KLAN201800862 (September 13, 2018).

²⁴ Rolling Hills Housing Cooperative v. Doris Colón, *supra* note 10 at page 7.

The Case

Puerto Rico Supreme Court Decision

In its decision, the Puerto Rico Supreme Court [hereinafter PRSC] addresses two issues. (1) Which law applies to the eviction of a housing cooperative user-member: the Eviction Act (a statute that applies to eviction procedures in general) or the Cooperative Societies Act (a special law that governs housing cooperatives)?²⁵ (2) Was the administrative procedure used to terminate Mrs. Colón's housing cooperative user-member status correct?²⁶

First Issue

Which law applies to the eviction of a housing cooperative user-member: the Eviction Act or the Cooperative Societies Act?

On the first issue, the PRSC ruled that the eviction of a housing cooperative user-member must be conducted under the provisions of the Cooperative Societies Act, the special statute that governs housing cooperatives.²⁷ The Cooperative Societies Act provides the legal framework for "the organization, operation, and regulation of cooperatives."²⁸ Its legislative intent is to "help, stimulate, develop, promote, and support the cooperative movement."²⁹ Under the statute, the primary purpose of housing cooperatives is "to provide adequate housing for families of limited and moderate resources, ensure a quiet and safe community environment, educate members and residents in the principles of self-management, responsibility, and social coexistence,...."³⁰ Furthermore, it was enacted to "provide for the protection and development of this type of housing".³¹

Cooperatives organized under this statute "shall be governed by its provisions and by cooperative law in general. Otherwise, they shall be governed by applicable laws inasmuch as they are compatible with their nature".³² The statute expressly states that its provisions shall be construed considering the protection of the special social nature of this type of community housing and cooperative law, and no other guidelines shall be applied whose effect is contrary to this (sic.). For example, provisions regarding what constitutes improper conduct shall not be construed pursuant to the strictest standards of criminal law.³³

The Cooperative Societies Act provides protections against the eviction of housing cooperative user-members that are not available under the Eviction Act to tenants who do not reside in housing cooperatives. Article 35.7 of the Cooperative Societies Act enumerates some of those protections.

²⁵ *Id.*, at pages 18-22.

²⁶ *Id.*, at pages 22-25.

²⁷ Act No. 239 of September 1, 2004, 5 LPRA § 4387 (LPRA: Laws of Puerto Rico Annotated)

²⁸ 5 LPRA § 4381

²⁹ 5 LPRA § 4382

³⁰ 5 LPRA § 4580

³¹ *Id.*

³² 5 LPRA § 4384

³³ 5 LPRA § 4588

- First, it stops enforcement procedures of an eviction order for 40 days to allow the housing cooperative user-member to find a new housing arrangement.³⁴ Outside the housing cooperative setting, an eviction order may be enforced as soon as the judgment against the tenant is final.³⁵
- Second, the Cooperative Societies Act states that a Trial Court shall notify the Puerto Rico Department of the Family and the Department of Housing of eviction orders to mobilize governmental resources to reduce the risk of homelessness.³⁶ In contrast, the Eviction Act imposes a similar requirement, but only in cases where a judicial finding of economic insolvency has been made.³⁷
- Third, the Cooperative Societies Act does not require payment of an appeal bond.³⁸ To the contrary, the Eviction Act requires the payment of an appeal bond.³⁹

Therefore, the Cooperative Societies Act provides a special eviction procedure for housing cooperative user-members. Consequently, there was no legal basis for the Housing Cooperative nor the Trial Court and the Court of Appeals to apply the Eviction Act to Mrs. Colón's case. They flagrantly disregarded Puerto Rico Cooperative Law. Furthermore, their actions undermined the public interest in strengthening housing cooperatives and protecting low-income and vulnerable people who constitute housing cooperative user-members, just as Mrs. Colón was.

Second Issue

Was the administrative procedure used to terminate Mrs. Colón's housing cooperative user-member status correct?

The second issue addressed by the PRSC examines whether the Housing Cooperative followed the correct procedure to deprive Mrs. Colón of her user-member status.

The Cooperative Societies Act states that non-payment or late payment of monthly fees constitutes a proper cause to impose sanctions or even terminate the user-member status of a

³⁴ "Any eviction order issued by the court shall specify a term of forty (40) days from the date the notice of said order is issued for the eviction to take place." 5 LPRA § 4587

³⁵ "The judgment which upholds the unlawful detainer shall order the eviction of the defendant from the date said judgment becomes final and binding. Said order of eviction shall be issued by the Office of the Clerk of the Court at the request of the party on the date such judgment becomes final and binding." 32 LPRA § 2836

³⁶ "The court order shall be accompanied by a certified copy of the decision of the Board and must be notified to the Secretary of the Department of the Family and the Secretary of the Department of Housing." 5 LPRA § 4587

³⁷ "In those cases in which the court has established the financial insolvency of the family being evicted, a copy of the final and binding judgment shall be served immediately to the Secretaries of the Departments of the Family and Housing, so that said agencies may continue to provide their services to the family concerned." Emphasis added. 32 LPRA § 2836.

³⁸ *Cf.*, 5 LPRA § 4580 ("Any party who is adversely affected by the judgment issued by the Court of First Instance may request a review of said ruling through [a] writ of certiorari within thirty (30) days after the decision of the Court of First Instance is filed. This term shall be jurisdictional in nature.")

³⁹ "The defendant shall not be granted the appeal procedure if he/she does not post a bond in the amount fixed by the court, to answer for damages that may be caused to the plaintiff and the costs of the appeal; the defendant may, when the eviction is based on non-payment of the sums agreed to, at his/her choice, post said bond or deposit the amount of the debt with the Clerk's office until the date of sentencing." 32 LPRA § 2832

housing cooperative user-member. Article 35.5 of the Cooperative Societies Act enumerates a list of potential sanctions and states that the housing cooperative may adopt additional sanctions in its Bylaws.

Article 35.5.: When a member fails to fulfill his/her payment obligations to the cooperative or incurs improper conduct, as defined in § 4584 of this title, the Board of Directors may make the following decisions, after a summons and hearing:

- (a)
- (b)
- (c) impose upon the member fair penalties in proportion to the conduct incurred, including conditions or probationary terms, in addition to those that are allowed pursuant to the bylaws;
- (d)
- (e) separate the member depriving him/her of his/her rights as such and granting him/her a term of thirty (30) days to vacate the unit....

All determinations of the Board shall be made within thirty (30) days following the date of the hearing and the member shall be notified at his/her last known address, personally or by certified mail, in a term which shall not exceed ten (10) days from the date on which the decision is made.⁴⁰

In this case, the Housing Cooperative Bylaws expressly authorized offering a payment plan to a user-member delinquent on the payment of monthly fees.

(iii) Accept payment for the current month and offer a payment plan for the debt balance, subject to a trial period for the same term as the plan. When the member demonstrates that she/he failed (sic.) due to reasons beyond her/his control, her/his good faith, and her/his intention not to breach the payment plan, the Board of Directors may determine that the member violated the conditions of the trial period and may proceed to deprive her/him of the member status without further notice or hearing. If the payment plan is fulfilled, the Board of Directors will proceed to dismiss the case.⁴¹

Under this provision, the Housing Cooperative granted Mrs. Colón a payment plan. However, the same Bylaw provision states that user-members who fail to fulfill their obligations under the payment plan may be deprived of their user-membership status. Thus, the Housing Cooperative's argument that Mrs. Colón was effectively deprived of her user-member status before the payment plan was agreed violates the clear text of its own Bylaws.⁴²

According to its Bylaws, when the Housing Cooperative granted Mrs. Colón a payment plan, it reversed its previous decision to terminate her user-member status.⁴³ By granting Mrs. Colón a remedy exclusively available to Housing Cooperative user-members, the Housing Cooperative acknowledged that Mrs. Colón remained a *bona fide* Housing Cooperative user-

⁴⁰ Emphasis added. 5 LPRA § 4585

⁴¹ Emphasis added. Rolling Hills Cooperative Bylaws Article XVI, Section 2, (June 22, 2008) *quoted at* Rolling Hills Housing Cooperative v. Doris Colón, *supra* note 10 at pages 14-15.

⁴² *Supra* note 21.

⁴³ Rolling Hills Housing Cooperative v. Doris Colón, *supra* note 10 at page 24.

member. Thus, contrary to the Housing Cooperative's argument, the payment plan could not constitute an ordinary lease contract. Under the payment plan, Mrs. Colón retained her housing cooperative user-member status, and therefore, she was entitled to the procedures and protections of the Cooperative Societies Act.⁴⁴

The Cooperative Societies Act provides the process to expel a housing cooperative user-member. Thus, it cannot be modified by housing cooperative bylaws. Under Article 35.6 of the Act, the Housing Cooperative was required to comply with the following procedure to deprive Mrs. Colón of her user-member status.

In the case of housing cooperatives, when the Board of Directors determines that a member is delinquent in complying with the periodic monetary contributions contracted with the cooperative, or has incurred conduct which is improper or unacceptable as defined in § 4584 of this title, it may separate said member and deprive him/her of the rights and benefits in the cooperative, pursuant to the procedure established hereinbelow:

- (a) The Board shall grant the member, with prior opportunity to be heard at a hearing held before it, after being notified at least ten (10) days before the hearing. Said notice shall be delivered personally or by certified mail to the last known address of the member.
- (b) Said notice shall include the date, time and place of the hearing, a statement providing the legal authority to hold the hearing, and a brief statement of the allegations against the member.
- (c) The hearing shall be carried out simply and informally, without the need to comply strictly with the evidentiary procedures of the administrative, adjudicative [,] and judicial systems.
- (d) The member may be represented or advised by an attorney.
- (e) If the member fails to appear at the hearing and does not justify said (sic.) absence, the Board may proceed to separate the member by completely depriving him/her of every right he/she may have as such and granting him/her thirty (30) days to vacate the unit.⁴⁵

Therefore, after Mrs. Colón failed to comply with her obligations under the payment plan, the Housing Cooperative was required to follow the above-quoted procedure. Instead, the Housing Cooperative flagrantly disregarded the clear text of the Cooperative Societies Act, depriving Mrs. Colón of her statutory rights as a housing cooperative user-member.

The PRSC clarified that a housing cooperative bylaw might not nullify user-members' statutory rights.⁴⁶ However, as Article 35.5(c) of the Act expressly allows, housing cooperative bylaws may enlarge user-members' rights.⁴⁷ But limiting user-members' statutory rights through the housing cooperative bylaw is not permitted. By prohibiting this action, the PRSC underscored that housing cooperative leadership and administrators must not mimic the operation of capitalistic for-profit landlords. On the contrary, housing cooperatives must be operated to uphold their cooperative identity by fulfilling the Cooperative Societies Act's legislative intent

⁴⁴ Rolling Hills Housing Cooperative v. Doris Colón, *supra* note 10 at pages 24-25.

⁴⁵ Emphasis added. 5 LPRA §4586

⁴⁶ Under Puerto Rico's hierarchy of laws, rules, and regulations adopted to implement a statute shall not contradict the statute's provisions.

⁴⁷ *Supra* note 40.

"to provide adequate housing for families of limited and moderate resources, ensure a quiet and safe community environment, educate members and residents in the principles of self-management, responsibility, and social coexistence...."⁴⁸

Conclusion

Rolling Hills Housing Cooperative v. Doris Colón shows that having an adequate legal framework is not the end of the story. A comprehensive cooperative law may become futile if those responsible for implementing it (i.e. cooperative leadership, government officials, and judges) lack an understanding of cooperative identity.

Ironically, Mrs. Colón's case shows how an adequate housing cooperative legal framework was implemented to frustrate its objectives. Managing a housing cooperative as a capitalistic commercial business annihilates its cooperative identity and may, perversely, become a means to injure the people the statute aims to protect. Indeed, Mrs. Colón caused severe damage by being forced to litigate for four years to vindicate her housing cooperative user-member status. Thus, achieving the virtuous objectives of housing cooperatives requires much more than enacting a statute. There is a need for an intense and continuing educational effort to train both housing cooperative leaders and judges in their responsibility to uphold housing cooperatives' identity in their bylaws and operations.

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⁴⁸ *Supra* note 30.

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