



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON 25

B-71334

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The Honorable,

The Secretary of the Interior.

My dear Mr. Secretary:

Reference is made to your letter of November 20, 1947, with enclosures, requesting a decision as to whether a deed dated November 14, 1945 (contract No. ER-FR-LAF-808), conveying a certain tract of land to Samuel Martin Quinones may be reformed so as to allow a credit of \$3,774.62 on the purchase price of the land conveyed by the deed.

By the deed of November 14, 1945, the United States, by the Assistant Administrator of the Puerto Rico Reconstruction Administration, conveyed to Samuel Martin Quinones of Guayama, P. R., a farm known as "Romaguera" consisting of 34.447 cuerdas of land in the Municipality of Patillas, P. R., for a consideration of \$14,108.72. The purchaser appears to have paid \$1,410.92 in cash and to have given a promissory note for the balance of the purchase price payable in twenty annual installments beginning July 30, 1947—none of which installments it is reported has been paid.

Clause 30, page 20, of the deed—translated from the Spanish language—provides as follows:

"The irrigation service of this tract is by virtue of irrigation rights, as the said tract forms part of the lands of Hacienda Patillas, which enjoy a grant of water from the Patillas River amounting to one thousand fifty one and sixty five hundredths (1,051.65) acre feet per year for the irrigation of an area of two hundred ten and thirty three hundredths (210.33) acres of land, as is evidenced in the records of the Puerto Rico Irrigation Service, now the Puerto Rico Water Resources Authority."

It appears that during the summer of 1946, the purchaser ascertained that the tract of land acquired by him was not entitled to irrigation rights, and that he would not be able to get any water from the owners of the Patillas Farm and, consequently, the purchaser requested an equitable adjustment of the matter from the Puerto Rico Reconstruction Administration.

In your letter of November 20, 1947, it is stated that--

"At the time of the conveyance, both the seller and the purchaser erroneously believed that the property was entitled to irrigation rights from the Patillas River. The sale price of \$14,108.72 (approximately \$105 per cuerda) was fixed in accordance with an appraisal based upon the supposed existence of such irrigation rights. \* \* \*

Apparently, the belief that the tract of land was entitled to irrigation rights was based upon a letter dated February 12, 1942, addressed to the Assistant to the Assistant Administrator, Arroyo, P. R., from the Executive Director, Puerto Rico Water Resources Authority, Guayama, P. R., a copy of the translation of which is as follows:

"I am glad to acknowledge receipt of your letter dated January 22 wherein you request information on the portion of water corresponding to the lands of Parcel 10-P with an area of 33.1917 cuerdas, equivalent to 32.2364 acres, located in the municipality of Patillas and known as Farm 'Romaguera'."

"We have investigated this matter and found that parcel 10-P to which you refer in your letter is contained within the lands of Hacienda 'Patillas' which enjoys a water grant from the Patillas River appraised at 1051.65 acre-feet per year for the irrigation of an area of 210.33 acres of land."

Also, in your letter of November 20, 1947, it is stated that after careful investigation, attorneys of the Puerto Rico Reconstruction Administration have found that the recital in the deed concerning irrigation rights which were made in reliance on advice from the Puerto Rico Water Resources Authority "was erroneous." The non-existence of the referred-to rights and the fact that the Romaguera Farm constitutes no part of the lands of Hacienda Patillas which do enjoy an irrigation grant of water from the Patillas River was confirmed in a letter dated May 10, 1947, addressed to the Puerto Rico Reconstruction Administration, San Juan, P. R., by the Executive Director, Puerto Rico Water Resources Authority, Guayama, P. R., a copy of the translation of which is, in pertinent part, as follows:

"Herewith we are submitting the data in regard to the farm named 'Romaguera' situated at Barrio Cacao of the Municipality of Patillas, known also as Parcel No. 10-P which was owned by that Administration, and which were requested during a visit to our offices in Santurce by your attorney, Miss Reyes Chicano on the 6th of the present month.

"The farm mentioned has never been included in the Permanent Irrigation Service and therefore has never been furnished nor are we authorized to furnish it water from the Irrigation System as water pertaining to land included in the Irrigation District of the South Coast of Puerto Rico.

"According to plans contained in our files the aforesaid farm is next to and surrounded in its greater part by the lands of Hacienda Patillas which enjoys an irrigation grant of waters from the Patillas River. The grant of Hacienda Patillas was appraised

by the Irrigation Commission and therefore has been delivering from the Irrigation System the total amount of water pertaining to it in accordance with said appraisal for irrigation of the land of the said Hacienda.

"According to our records the farm named Romaguera does not enjoy any water concession from Patillas River."

It appears from your letter that the purchaser would prefer that the Administration drill a well and furnish a pump to provide his land with the irrigation he had been led to expect; that the drilling of an 80-foot well and installing a 600-gallon capacity pump together with other installations necessary to supply the farm with artificial irrigation would cost approximately \$3,000; and that the Administration has no available funds or any authorized project therefor. Also, in said letter it is stated that it appears that there was a mutual mistake as to a material fact but for which no contract or a different contract would have been made; that the alternative to the matter of supplying water to the purchaser by the Government would be either rescission or reformation of the contract; that reformation would be preferable to rescission which would involve some practical difficulties; that the Assistant Administrator had the property re-appraised at November 1945 values which resulted in a price of \$300 per cuerda or a total price of \$10,334.10, which price, it is stated, is the approximate price for which the sale would have been made but for the mutual mistake as to the irrigation rights recited in the deed.

On the basis of the facts of record, it appears that the Puerto Rico Reconstruction Administration sought information from the Puerto

Rico Water Resources Authority as to the irrigation rights with respect to the farm known as "Romaguera"; that said Authority informed the Administration that the farm was within the lands of Hacienda "Patillas" which enjoyed a water grant from the Patillas River; and that the Administration negotiated the sale of the farm to Samuel Martin Quinones on the basis that the farm was entitled to irrigation rights from the Patillas River and the sale price was fixed in accordance with an appraisal based upon the supposed existence of such irrigation rights, whereas, in fact, the farm was not entitled to irrigation rights. Consequently, the contract was based upon supposed facts but which were not the actual facts. An instrument drawn under the mistaken belief that an event has already happened which has not yet occurred will be reformed to carry out the intention of the parties, as will an instrument drawn on the basis of certain facts which are other than as supposed, so that the instrument when construed in the light of the real state of affairs does not carry out the intention of the parties. 53 C. J. 931. In the present case the purchaser, in negotiating for the land, apparently relied upon the erroneous information obtained by the Administration from the Puerto Rico Water Resources Authority that the farm was entitled to irrigation rights. Moreover, the deed from the United States conveying the property to the purchaser expressly provided that the tract of land formed a part of the lands of Hacienda Patillas which enjoyed a grant of water from the Patillas River.

Since the sale price of the land was fixed in accordance with an appraisal based upon the supposed existence of irrigation rights,

whereas such rights did not exist, it is apparent that the basis for fixing the sale price was erroneous and was not in accordance with the intention of the parties. Accordingly, this Office will interpose no objection to an amendment to contract No. ER-PR-LAF-808 in order to adjust the sale price of the land conveyed to Samuel Martin Quinones to \$300 per cuerda, or a total price of \$10,334.10, which is stated to be the re-appraisal price of the land at November 1945 values and the approximate price for which the sale would have been made but for the mutual mistake as to irrigation rights recited in the deed of conveyance.

Respectfully,

(Signed) Frank L. Yates

Asting Comptroller General  
of the United States.

Enclosure - Copy of contract ER-PR-LAF 808