

THIRD DIVISION

[G.R. No. 152445, July 04, 2008]

**CAMBRIDGE REALTY AND RESOURCES CORP., PETITIONER, VS.
ERIDANUS DEVELOPMENT, INC. AND CHITON REALTY CORP.,
RESPONDENTS.**

DECISION

YNARES-SATIAGO, J.:

This Petition for Review on *Certiorari*^[1] assails the October 17, 2001 Decision^[2] of the Court of Appeals in CA-G.R. CV No. 51967 reversing and setting aside the October 10, 1995 Decision^[3] of the Regional Trial Court of Quezon City, Branch 96 in Civil Case Nos. Q-89-2636 and Q-89-2750, which dismissed the complaints filed by respondents Eridanus Development Inc. (**ERIDANUS**) and Chiton Realty Corporation (**CHITON**) against petitioner Cambridge Realty and Resources Corporation (**CAMBRIDGE**). Also assailed is the March 1, 2002 Resolution^[4] denying the Motion for Reconsideration.^[5]

The antecedent facts are as follows:

Petitioner **CAMBRIDGE** is the registered owner of a 9,992-square meter lot, covered by **Transfer Certificate of Title No. (TCT) 367213 (the CAMBRIDGE title/property)**,^[6] in the Registry of Deeds of Quezon City.

Respondent **ERIDANUS** is the registered owner of a 2,794 square meter parcel of land covered by **Transfer Certificate of Title No. (TCT) RT-38481 (the ERIDANUS title/property)**,^[7] in the Registry of Deeds of Quezon City. A portion of the covering title thereof partially reads, as follows:

IT IS FURTHER CERTIFIED that said land was originally registered on the ___23rd___ day of _____, in the year nineteen hundred and ___Veinte___ in the Registration Book of the Office of the Register of Deeds of ___Rizal___, Volume ___T-27___, page ___, as Original Certificate of Title No. _____, pursuant to Decree No. ___Case no. 917___, issued in L.R.C. _____ Record No. _____, in the name of _____.

This certificate is a transfer from ___Trans.___ Certificate of Title No. ___346380/T-1736___ which is cancelled by virtue hereof in so far as the above-described land is concerned.

On the other hand, respondent **CHITON** is the registered owner of a 2,563 square meter lot, covered by **Transfer Certificate of Title No. (TCT) 12667 (the**

CHITON title/property),^[8] in the Registry of Deeds of Quezon City. A portion of the covering title thereof reads in part, as follows:

IT IS FURTHER CERTIFIED that said land was originally registered on the ___23rd___ day of ___Sept._____, in the year nineteen hundred and ___veinte___ in the Registration Book of the Office of the Register of Deeds of ___Rizal___, Volume ___T-27___, page ___6___, as Original Certificate of Title No. _____, pursuant to Decree No. Case no. 917, issued in L.R.C. _____ Record No. _____, in the name of _____.

This certificate is a transfer from Trans. Certificate of Title No. 346381/T-1736 which is cancelled by virtue hereof in so far as the above-described land is concerned.

The CAMBRIDGE title has a covering title that reads in part, thus -

IT IS FURTHER CERTIFIED that said land was originally registered on the ___21st___ day of ___August___, in the year nineteen hundred and ___seven___ in the Registration Book of the Office of the Register of Deeds of ___RIZAL___, Volume ___A-4___, page ___56___, as Original (sic) of Title No. 355, pursuant to Decree No. 1425, issued in L.R.C. Rec. No. 917.

This certificate is a transfer from Trans. Certificate of Title No. 363717/T-1823 which is cancelled by virtue hereof in so far as the above-described land is concerned.^[9]

The foregoing properties are adjoining lots located in Barangay Valencia, Quezon City, and constitute the subject matter of the present controversy.

Original Certificate of Title No. (OCT) 362^[10] was issued under Act 496 (The Land Registration Act) by virtue of Decree of Registration 1425, GLRO No. 917, based on the original survey conducted on November 17, 1906. It was subdivided into three portions: Lots 27-A, 27-B and 27-C. **Lot 27-C** was titled in the name of Rafael Reyes, under **Transfer Certificate of Title No. (TCT) 5506**^[11] issued on September 23, 1920. TCT 5506, in turn, *appears* to have been transferred in the name of Susana Realty, Inc. (SUSANA) under **Transfer Certificate of Title No. (TCT) 18250**.^[12] TCT 18250 was then subdivided into eight (8) lots, of which the ERIDANUS lot is *claimed* to be Lot 3 thereof and CHITON's is Lot 4.

The subdivision of TCT 18250 (or Lot 27-C) was claimed to have been made by geodetic surveyor Jaime V. Nerit (Nerit). Nerit said he began computing the boundaries based on the SUSANA title. He noticed that the **tie point**^[13] of the property was not fixed and there were no fixed or permanent markers, so he conducted research and obtained from the Bureau of Lands the approved consolidated subdivision plan of an adjoining property, Gilmore Townhouses^[14] - located on the western side and owned by Ayala Investments and Development Corporation (the AYALA property) - which had fixed monuments to which Nerit could establish and connect with those of TCT 18250. He found a fixed tie point therein, BLLM 1, Marikina^[15] ("S. 68'19 W. Pt. 6785 from BLLM Marikina I, Marikina, Rizal"),

and from there he next computed the relation between corner 1 as described in the technical description of TCT 18250, and corner 1 as described in that of the Ayala property. In this manner, Nerit said he was able to establish the position of respondents' property and prepare the subdivision plan of TCT 18250, which was subsequently approved by the Land Registration Commission.^[16]

Original Certificate of Title No. (OCT) 355^[17] was registered under Act 496 on August 21, 1907, based on the original survey conducted on June 16 to August 16, 1907. It was registered in the name of La Compania Agricola de Ultramar (AGRICOLA). Lot 21 thereof was subdivided and a portion thereof - Lot 21-A - was covered by **Transfer Certificate of Title No. (TCT) 578^[18]**, from which TCT 367213, the CAMBRIDGE title, was *allegedly* derived.

On May 30, 1989, ERIDANUS filed Civil Case No. Q-89-2636 to enjoin CAMBRIDGE from pursuing the planned subdivision and development of its property, which ERIDANUS claims encroached upon its own. The Complaint prays for a writ of injunction; the removal of an alleged encroaching wall CAMBRIDGE constructed; that the encroached portion be vacated and surrendered to it; that it be paid P3,500.00 per month, from the time of filing of the complaint to surrender of possession, as reasonable value for the use and occupation by CAMBRIDGE of the encroached portion; and litigation expenses, attorney's fees and costs of suit.

On June 15, 1989, CHITON instituted Civil Case No. Q-89-2750, with a similar prayer for relief as in Civil Case No. Q-89-2636, except that CHITON seeks a lower monthly charge of P1,700.00 for the use and occupation of the alleged encroached portion, and a lesser amount for attorney's fees.

Both complaints were subsequently consolidated in Civil Case No. Q-89-2636 upon motion of CHITON.

The civil complaints were triggered by a previous verification survey conducted on respondents' respective properties, where the results allegedly showed that the CAMBRIDGE property encroached or overlapped upon respondents' lots, to the extent of **357 square meters** for ERIDANUS and **177 square meters** for CHITON.

Upon motion of the respondents, surveyors from the Survey Division of the Department of Environment and Natural Resources (DENR) Lands Management Services conducted a relocation survey of the subject properties, pursuant to an Order of the trial court dated May 8, 1992. On February 10, 1993, they prepared a two-page Report,^[19] finding in part thus -

1. That the Verification/Relocation Survey has been conducted on October 1, 2 and November 5, 1992.
2. At the outset, corresponding Technical Descriptions along the two (2) properties TCT 18250 and TCT 367213, supposedly common to both has already a difference of 3 degrees 10 minutes (3-0-00) as described on their respective titles inspite of the deficiency of TCT No. 18250 (Susana Realty Inc.) for not having any tie line.

3. That a subdivision of the lot covered by TCT No. 18250 under (LRC) Psd-335633 had been approved, June 19, 1986 referring to Lot 27-C, Psd -13458 as the source which records when researched could not be made available at hand, has established its tie line.
4. That the lot covered by TCT No. 367213 (Cambridge Realty and Resource Corporation) has also been subdivided under Psd-13-005784 approved by the Lands Management Services of this Region last May 3, 1988.
5. That the Technical Descriptions of TCT No. 367213 under Psd-13-005784 boundary referred from Lot 1, Sub-Block 1-A, Psd-225 was also researched and could not be made available at hand.

x x x x

1. 8. Party litigants has not paid corresponding survey deposit in the amount of ONE THOUSAND SIX HUNDRED PESOS (P1,600.00).

x x x x

(signed)

ELPIDIO T. DE LARA

Chief, Technical Services Section

The trial court received the evidence of both parties, which in the main consisted of the expert testimonies of practicing private geodetic surveyors. Thus, respondents, as plaintiffs *a quo*, presented Nerit, who claimed to have conducted a survey of the respondents' properties, as well as a study of the CAMBRIDGE property and its alleged predecessor title (TCT 578). He testified that in the course of his work, he found out that the CAMBRIDGE property overlapped that of ERIDANUS at the north with a distance of eight (8) linear meters;^[20] that although the CAMBRIDGE property was formerly a portion of TCT 578, the former does not conform to the latter;^[21] that when it was segregated from TCT 578, the bearings on the side abutting the respondents' property were altered;^[22] that TCT 578 was issued in 1907, yet the original survey of the property covered by the CAMBRIDGE title was made in 1920;^[23] that there is no record of the subdivision plan of the CAMBRIDGE lot;^[24] and that it does not appear that the CAMBRIDGE lot came from TCT 578 (despite stating previously that the former used to be a portion of the latter).^[25]

On cross-examination, Nerit stated that there is no basis for him to say that the CAMBRIDGE lot came from TCT 578,^[26] because there is nothing in the title thereof that indicates that it was derived from the latter;^[27] that when he first surveyed the SUSANA property (TCT 18250) in 1960, he did not discover any overlapping, and he did so only in 1990;^[28] that he found out that there was a discrepancy between the tie point in the respondents' titles and their predecessor's, the SUSANA title;^[29] that the tie point of the SUSANA property was just a PLS monument (i.e., technically, there is no tie point - meaning that the property's geographical position could not be found, such that there could be no starting point for the conduct of a survey), which he could not rely on for the survey;^[30] so, he had to find a solution by creating a new one, BLLM 1 Marikina.^[31]

Likewise, Nerit testified on cross-examination that there is no evidence to show that the CAMBRIDGE property was derived from OCT 355 (the AGRICOLA property, or the mother title);^[32] that the CAMBRIDGE property came from TCT 578 but the common azimuth of the two titles do not conform to each other;^[33] that the overlapping of titles could have occurred during the original survey of the CAMBRIDGE property on November 10, 1920;^[34] that when he conducted the subdivision survey of the SUSANA property (TCT 18250), he certified that he did not find any overlapping;^[35] that the blank spaces in the SUSANA title^[36] were mere typographical errors or inadvertent mistakes;^[37] that, knowing that these blank spaces existed, he did not endeavor to determine the reasons or causes thereof.^[38]

On re-direct examination, Nerit testified that as to the respondents' properties, notwithstanding that they have no tie points, the boundaries thereof may still be determined and identified.^[39] Nerit made a sketch of how he went about changing the floating (or "not fixed") tie point to a fixed one.^[40]

Respondents next presented Engineer Oliver A. Morales, a licensed appraiser of real estate properties, for the purpose of establishing the fair market value of the ERIDANUS and CHITON properties in connection with the prayer for indemnification of fair rental value for the use of the alleged encroached property.

Respondents thereafter presented Ernesto Vidal, Clerk III of the Registry of Deeds of Rizal, who testified that he was specifically sent to testify in court by the Register of Deeds of Rizal, and he brought with him the original copies of OCTs 362 and 355 on file with the Registry. Said titles, however, have been rendered, by the passage of time, incapable of being read and deciphered for the most part.

Another witness, Elpidio T. De Lara, geodetic engineer and Chief (Engineer IV) of the Technical Services Sector of the Land Management Services, DENR, has been with the office since 1960 and had served as chief of the Technical Services Sector for five (5) years at the time of the taking of his testimony. He testified that he conducted an actual verification survey of the CAMBRIDGE, ERIDANUS and CHITON properties on October 1, 2, and November 5, 1992;^[41] in connection therewith, he prepared a relocation/verification plan^[42] which was duly approved by his superiors; he found out that there is an overlapping of the boundaries of the petitioner and respondents' properties.^[43]

De Lara likewise testified that in the preparation of the relocation plan, he used as basis the SUSANA title for the respondents' properties, and for the petitioner, the CAMBRIDGE title;^[44] but that with regard to the SUSANA title, there is no tie point;^[45] there being no tie point, it would be difficult and impossible to make a relocation plan;^[46] being so, respondents' properties were plotted on the basis of the technical descriptions in the title of an adjoining property, the AYALA property;^[47] that if he plotted the respondents' properties on the basis of the common boundary (lines 1 to 2) between the adjacent AYALA and SUSANA properties as stated in the technical description of the SUSANA title, there would be no overlapping of boundaries between petitioner and respondents' titles;^[48] on the other hand, if the survey were conducted based on the respondents' respective titles