

## **FIRST DIVISION**

**[ G.R. NO. 120827, February 15, 2007 ]**

**LIFE HOMES REALTY CORPORATION, PETITIONER, VS. COURT OF APPEALS AND MARVI DEVELOPMENT, INC., RESPONDENTS.**

### **D E C I S I O N**

**AZCUNA, J.:**

This is an appeal from the Decision of the Court of Appeals (CA) in CA-G.R. CV No. 38409 dismissing the appeal of petitioner Life Homes Realty Corporation for lack of merit. The CA ruled that the ordinary civil action for recovery of possession filed by petitioner against private respondent Marvi Development, Inc. (Marvi) is not the proper remedy in this case.

The facts are:

Petitioner Life Homes Realty Corporation is the registered owner of two parcels of land located in Barrio Ampid, San Mateo, Rizal covered by TCT No. N-28603 (Psu-52080) and TCT No. 31730 (Psu-52085) of the Register of Deeds of Rizal, which have been subdivided into lots for residential/subdivision purposes. To the south and southwest of the lots is a parcel of land registered in the name of private respondent Marvi under TCT No. 309740 (Psu-52084) of the Register of Deeds of Rizal. Private respondent's property has likewise been subdivided into lots for residential/subdivision purposes.

In 1979, petitioner discovered, upon a relocation and verification of the boundaries of its property, that the southern and southwestern portions of its property were encroached upon, developed and occupied by private respondent for subdivision purposes. The encroachment of private respondent's property (plan Psu-52084) over petitioner's properties (plan Psu-52080 and Psu-52085) allegedly covered a total area of 10,365 square meters.

Both parties subsequently agreed to have an independent relocation survey conducted by a Government Geodetic Engineer to decide whether there was overlapping of the aforementioned properties, and that the party found to have an erroneous survey shall shoulder the expenses of the relocation survey. Marvi agreed to such proposal in its letter of April 10, 1981.<sup>[1]</sup>

Thus, in a letter<sup>[2]</sup> dated May 11, 1981, the parties requested the Director of the Bureau of Lands, Manila for a relocation survey of their properties.

After acceding to the request, the Chief of the Technical Services of the Bureau of Lands, Engr. Felipe R. Venezuela, submitted his report (Venezuela report) of the verification survey of Psu-52080, Psu-52084 and Psu-52085, Barrio Ampid, San Mateo, Rizal in a letter dated April 28, 1983 addressed to the Regional Land Director

through the Chief, Surveys Division of the Bureau of Lands.

The report reads:

x x x

Sir:

In connection with Office Memorandum dated 26 April 1981 regarding the joint request of Life Homes Realty Corporation and Marvi Hills Development to verify the lots covered by plan Psu-52080, Psu-52084 and Psu-52085 as relocated by their respective surveyors, the undersigned respectfully submit[s] the following findings based on the verification survey conducted to wit:

1) Engr. Isabelo Muñoz was hired by Marvi Hills Development to relocate their properties covered by plan Psu-177242 and plan Psu-52084. His relocation was conducted prior to the cadastral survey of San Mateo, Rizal. The boundaries and corners were then set on the ground by using the technical description as appearing on transfer certificate of title No. 4641 and approved plan Psu-52084;

2) On November 10, 1964 to December 20, 1965, the municipality of San Mateo, Rizal was cadastrally surveyed by Engr. Regino Rigor under Cad-375-D, San Mateo, Rizal, plan Psu-52084 becomes identical to lot 3680 and 3031, San Mateo Cadastre. Similarly plan Psu-52080 and plan Psu-52085 were assigned a cadastral lot number of 3037 and 3031, Cad-375-D, San Mateo Cadastre. These three lots were accepted by the cadastral survey;

3) Engr. Regino Natividad is the Geodetic Engineer of Life Homes Realty Corporation. As such, his duty is to relocate the boundaries of plan Psu-52080 and plan Psu-52085 for the development of Life Homes Subdivision. It was during this relocation survey that he found out plan Psu-52084 encroached plan Psu-52080 and plan Psu-52085 thus the request for verification survey was referred to this office;

4) Considering that the request is for us to decide who is correct between Engr. Isabelo Muñoz and Engr. Regino Natividad relocation survey, the survey done by Engr. Natividad is correct in the sense that it adopt[s] the system of Cadastral survey. Furthermore, during the execution of the cadastral survey, plan Psu-177242 a titled property was found defective. It was not accepted and as amended, line 9-10 was amended from S.35 deg. 22'E., 108.75 m. to S. 28 deg. 43'E., 129.62 m. Also line 14-15 was amended from N.64 deg. 17'W., 371.91 m. to N.60 deg. 52'W., 382.58 m. Due to this amendments its area increases by THREE THOUSAND FIVE HUNDRED THIRTY NINE (3,539) SQ. METERS.

In view of the foregoing findings it is recommended that the Relocation survey executed by Engr. Regino Natividad be followed and that plan Psu-52084 as relocated by Engr. Isabelo Muñoz be Re-relocated using corner

7 and 8 of plan Psu-52080 and corner 4 of plan Psu-52085 as starting point and reference.<sup>[3]</sup>

Thereafter, petitioner made a demand on private respondent to vacate the alleged encroached area but private respondent refused.

On July 11, 1984, petitioner filed a complaint<sup>[4]</sup> against private respondent with the Regional Trial Court of San Mateo, Rizal, Branch 76 (RTC) for recovery of possession and damages, and prayed that private respondent be directed to move its boundaries common with that of the two parcels of land owned by it to those points and lines as determined by the verification and relocation survey included in the Venezuela report dated April 28, 1983; to vacate the encroached area, and pay the expenses for the relocation survey, attorney's fees and litigation expenses.

In its Answer, private respondent alleged that it is petitioner's parcels of land that wrongfully overlap its (private respondent's) property. By way of affirmative and/or special defenses, private respondent alleged that the agreement to allow Geodetic Engineer Venezuela to decide which of the two conflicting surveys is correct is null and void, and that the petitioner's land survey was a later survey which disregarded the previous survey of private respondent's property.

In its counterclaim, private respondent alleged that petitioner put up a steep boundary along private respondent's property, which posed a grave risk and danger of soil erosion, causing lot buyers to discontinue paying for the subdivision lots affected, and as a result deprived private respondent of profits. Hence, private respondent sought payment of unrealized profits, attorney's fees of P50,000, litigation expenses of P10,000 and the refund of P3,482 which it paid to the Bureau of Lands.

On May 21, 1992, the RTC dismissed both the Complaint and the Counterclaim for lack of basis. The RTC ruled:

There is no gainsaying the fact that this case is anchored on the report of Felipe R. Venezuela. Objections interposed to the said report by the defendant are found to be impressed with merit in view of the following considerations: The report contained an admission that Plan Psu-177242, a titled property, was found defective and hence was amended. There is no showing, however, that the amendment of the said Plan was made by virtue of a Court Order nor that notice thereof was given to the owners of the adjoining lots, in violation of law and indeed, of due process. Since Plan Psu-177242 was approved by the Court resulting in the titling of the property, it follows that any amendment or alteration thereof, being mere incidents, would equally have to have judicial sanction.

Under the circumstances therefore, Venezuela's report, which sustained as correct the survey done by Engineer Natividad (for the plaintiff) based on the aforesaid amendment done violative of law, is necessarily void and of no effect.

Further compounding the observable inefficacy of Venezuela's report is the fact that said report was merely recommendatory, which can only

mean that without the approval of the Regional Director of the Bureau of Lands to whom it was submitted, it can have no force and effect, and fittingly, can only be regarded as a mere scrap of paper. Plaintiff offered no proof that Venezuela's report was duly approved.

Rejecting therefore the correctness, validity and efficacy of Venezuela's report, this complaint, which primordially hinges on the said report, has no more leg to stand on.

WHEREFORE, premises considered, this case is hereby ordered dismissed for lack of basis. No pronouncement as to costs.

Defendant's counterclaim is likewise dismissed for lack of credible basis, the evidence submitted in support thereof being at the most, self-serving.

SO ORDERED.<sup>[5]</sup>

Both petitioner and private respondent appealed from the decision of the trial court to the CA.

Petitioner questioned the dismissal of its complaint, while private respondent questioned the dismissal of its counterclaim.

On June 22, 1995, the CA rendered judgment dismissing both appeals for lack of merit. The CA ruled that the report of Government Geodetic Engineer Venezuela was not binding upon the parties. Moreover, as pointed out by petitioner, the defects in the technical description contained in the plans prepared in connection with areas adjudicated in ordinary or voluntary registration proceedings may be corrected after a cadastral survey in accordance with Sec. 112 of Act 496,<sup>[6]</sup> which has been superseded by Sec. 108 of Presidential Decree (P.D.) No. 1529.<sup>[7]</sup>

The CA stated that under Sec. 112 of Act 496, now Sec. 108 of P.D. No. 1529, the petition for correction shall be filed and entitled in the original case in which the decree of registration was entered. Hence, the CA held that the ordinary civil action for recovery of possession is not the proper remedy of petitioner.

On August 8, 1995, petitioner filed this petition for review on certiorari of the decision of the CA.

Petitioner raised the following issues:

- I. The respondent Court erred in holding that the Venezuela report is not binding upon the parties.
- II. The respondent court erred in holding that the re-relocation survey recommended by Venezuela amounts to an erasure, alteration or amendment of a certificate of title which requires the filing of a petition for that purpose in the original case in which the decree of registration was entered.<sup>[8]</sup>