

**IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION**

ESTATE OF BOBBY SUKRAD, rep. by VALYNN SUKRAD,
Appellant,
v.
TOSKO ARBEDUL,
Appellee.

Cite as: 2023 Palau 23
Civil Appeal No. 22-019
Appeal from Civil Action No. 21-115

Decided: November 14, 2023

Counsel for Appellant Johnson Toribiong
Counsel for Appellee Raynold B. Oilouch

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice, presiding
FRED M. ISAACS, Associate Justice
DANIEL R. FOLEY, Associate Justice

Appeal from the Trial Division, the Honorable Honora E. Remengesau Rudimch, Associate Justice, presiding.

OPINION

PER CURIAM:

[¶ 1] The Bureau of Lands and Survey made a calculation error when computing the boundaries of Cadastral Plat 033 B 00. This computing error led to a shift in the boundaries of the lots belonging to the Estate of Bobby Sukrad (“Sukrad”) and Tosko Arbedul (“Arbedul”). Sukrad now appeals the Trial Division’s August 31, 2022 Judgment correcting the boundaries of Cadastral Plat 033 B 00 and finding that Sukrad is encroaching on Arbedul’s property.

[¶ 2] Because we find that the Trial Division exceeded the scope of its jurisdiction when it corrected the boundaries set by a conclusive certificate of

title issued by the Land Court, but that the Trial Division did not err in declining the parties' claims for damages, we **AFFIRM** in part and **VACATE** and **REMAND** in part.

BACKGROUND

[¶ 3] This case concerns land known as *Lemel* or *Mowai* located in Ngerchemai, Koror. The owner of the land, Omengkar, sold a portion of the land to Henry Arbedul on November 30, 1965. This portion of the land is now identified as Cadastral Lot No. 033 B 17, but was formerly described as Cadastral Lots Nos. 033 B 08 and 033 B 09. Upon Omengkar's passing, his son Willy O. Wally Jr. claimed the remaining lands along with Valentina Sukrad. Bobby Sukrad received his piece of property, Cadastral Lot No. 033 B 10 from Valentina Sukrad.

[¶ 4] Arbedul's property was monumented on February 27, 1975. In the presence of a Bureau of Lands and Survey surveyor, Henry Arbedul and his wife Tosko placed their boundary markers on the markers Omengkar had showed them during the purchase. Wally Jr. and Valentina were not present at the monumentation. Records indicate that there was no dispute regarding the north, south, and west boundaries of Arbedul's property, but the adjacent owner to the east boundary claimed a portion of Arbedul's property. The surveyor made a sketch of the boundaries, and BLS prepared a worksheet map depicting Arbedul's lot and the surrounding area.

[¶ 5] When computing the boundaries to prepare the worksheet map, an error caused the boundaries to shift to the south by about 12 feet. Thus, the southern boundary of Arbedul's land was no longer located along the edge of the public road, but in the middle of it. Unfortunately, this mistake was not caught by BLS, the Land Court, or the parties. The cadastral map for the area, Cadastral Plat 033 B 00, was finalized on December 7, 1999 and depicted the erroneous boundary.

[¶ 6] Because the eastern boundary of Arbedul's land was disputed by the adjacent owner, the Land Court held two hearings over the land, to settle first the western boundary, then the eastern one. A first Determination of Ownership was issued for the western portion on November 12, 1997, and a corresponding Certificate of Title was issued on January 11, 2000. The Land

Court then issued a second Determination of Ownership over the eastern boundary on September 05, 2001, and the corresponding Certificate of Title was issued on April 25, 2002. Both Certificates of Title were based on Cadastral Plat 033 B 00, and accordingly, match the shifted boundaries that first appeared on the worksheet map.

[¶ 7] Henry Arbedul passed away in 2006, and his wife Tosko was awarded the properties and Certificates of Title were issued in her name. On June 9, 2021, Tosko Arbedul filed suit in the Trial Division, arguing that Sukrad was encroaching on her property. The trial court heard the case and received into evidence a map produced by BLS representing the two boundary lines: in green, boundary lines depicting the erroneously shifted boundaries, and in blue, boundary lines retracing the boundaries before the computing error. The trial court entered a final judgment on August 31, 2022, finding that Sukrad was encroaching on Arbedul's property, and that the correct boundaries to the property were the ones created before the shift, or the blue boundary lines.

STANDARD OF REVIEW

[¶ 8] We have delineated the appellate standards of review as follows:

A trial judge decides issues that come in three forms, and a decision on each type of issue requires a separate standard of review on appeal: there are conclusions of law, findings of fact, and matters of discretion. *Salvador v. Renguul*, 2016 Palau 14 ¶ 7. Matters of law we decide de novo. *Id.* at 4. We review findings of fact for clear error. *Id.* Exercises of discretion are reviewed for abuse of that discretion. *Id.*

Kiuluul v. Elilai Clan, 2017 Palau 14 ¶ 4 (internal citations omitted).

DISCUSSION

[¶ 9] The trial court's decision found that Sukrad is encroaching on the northern part of Arbedul's property and corrected the boundaries of the land to what they were before the shift. Sukrad submits that the trial court erred in rejecting the boundaries established by the Certificates of Title, because once issued, certificates of title are final and conclusive.

[¶ 10] The Palau National Code provides that certificates of title “shall be conclusive upon all persons so long as notice was given. . . .” 35 PNC § 1314(b). Accordingly, it is well-established that a certificate of title is *prima facie* evidence of ownership and is conclusive on all persons who have notice of the proceedings. *Irikl Clan v. Renguul*, 8 ROP Intrm. 156, 158 (2000); *Heirs of Drairoro v. Dalton*, 7 ROP Intrm. 162, 165 (1999). This generally precludes all parties to a prior adjudication of ownership from contesting the boundaries identified in the resulting certificate of title “even if the certificates are mistaken in their description of the boundaries of the land covered.” *Dilubech Clan v. Ngeremlengui State Gov’t*, 8 ROP Intrm. 106, 110 (2000).

[¶ 11] Nevertheless, “[a] person may collaterally attack an unappealed determination of ownership or certificate of title rendered by the Land [Court] on the grounds that statutory or constitutional procedural requirements were not complied with” *Nakamura v. Isechal*, 10 ROP 134, 136 (2003). This is for instance the case where certificates of title are procured in violation of due process or through fraud. *See e.g., Uchel v. Deluus*, 8 ROP Intrm. 120, 121 (2000) (certificate of title issued without a hearing or determination of ownership that could have been appealed); *Wong v. Obichang*, 16 ROP 209 (2009) (fraud). Because these issues are generally outside the purview of the Land Court’s limited jurisdiction, the Trial Division of this Court has long been considered the proper venue for collateral attacks. *Blailes v. Bekebekmad*, 2018 Palau 5 ¶ 14 (collecting cases).

[¶ 12] In this case, Arbedul asserted that Sukrad encroached on her land because of BLS’ error. In resolving this dispute, the trial court began by acknowledging the well-settled rule that a certificate of title is final and conclusive on all persons as long as notice was provided. Essentially, the trial court considered Arbedul’s complaint as a collateral attack on the existing Certificates of Title. The trial court then found no violation of due process regarding the determination of the parties’ properties. Despite this finding, the trial court proceeded to correct the boundaries and entered judgment in favor of Arbedul. In doing so, the trial court reasoned that the well-settled rule on the conclusiveness of a certificate of title was inapplicable to the facts of the

case, citing as support our opinion in *Ngirasibong v. Adelbai*, 4 ROP Intrm. 95, 101 (1993).

[¶ 13] On appeal, Arbedul argued that he was entitled to collaterally attack the Determinations of Ownership and Certificates of Title because he was denied due process when the land registration proceedings failed to comply with the statutory procedural requirements set forth in 35 PNC Chapter 13. He maintains that this failure resulted in the survey error and the loss of his property. We hold that once the Trial Division found no violation of due process nor any fraud, the enquiry should have ended there. *See In re Estate of Tellames*, 22 ROP 218, 223 (Tr. Div. 2015) (“[A]ny party seeking to collaterally attack the determination of ownership and the subsequently issued certificate of title may do so only in one of two ways”). The Trial Division exceeded its jurisdiction by correcting the boundaries set by the Certificates of Title.

[¶ 14] In addition, the trial court’s reliance on the *Ngirasibong* exception to correct the boundaries was misplaced. In *Ngirasibong*, the Land Commission withdrew an erroneous certificate of title because it did not reflect the parties’ stipulation as to a disputed boundary, and instead relied on an erroneous survey. *Ngirasibong*, 4 ROP Intrm. at 97. We affirmed this correction, and noted that no actions were taken in reliance on the erroneous certificate. *Id.* at 102. Thereafter, we explicitly limited *Ngirasibong* to these unique circumstances and declined to find any others. *See Sumang v. Skibang Lineage*, 16 ROP 4, 5-6 (2008) (refusing to find a *Ngirasibong* exception to overturn a thirty-years old determination in the absence of an agreement between the parties or a clerical error).

[¶ 15] *Ngirasibong*’s facts are markedly different from the ones at hand: there was no stipulation or agreement as to the boundaries between Sukrad and Henry Arbedul, and Sukrad relied on the erroneous worksheet map to build his house. Moreover, *Ngirasibong* is broadly inapplicable as it operates under the rationale that the Land Court has inherent authority to review its own decisions, which is not the case here. *See Shmull v. Ngirirs Clan*, 11 ROP 198, 202 (2004) (affirming Land Court’s reconsideration of its determination of ownership because “[w]here, as here, a court misapprehends the evidence or commits an inadvertent mistake, that court historically has

had the inherent authority to correct its own erroneous decision”); *In re Idelui*, 17 ROP 300, 304 (2010) (affirming Land Court’s *sua sponte* decision to set aside a void 2008 judgment it issued in 2010 because its inherent authority allowed it to do so).

[¶ 16] We have repeatedly established that our public policy favors the finality of land titles to promote certainty and to preclude endless litigation.¹ *Ngirasibong*, 4 ROP Intrm. at 100. Accordingly, unappealed determinations of ownership are generally valid against the world. *See Bilamang v. Oit*, 4 ROP Intrm. 23, 28 (1993). “A party that chooses not to appeal loses the opportunity to come back in another lawsuit to raise arguments that should have been pressed in the original case.” *Ngatpang State v. Amboi*, 7 ROP Intrm 12, 16 (1998). Along this line of reasoning, we observe that the Cadastral Plat with the shifted boundaries was finalized on December 7, 1999, and the corresponding Certificates of Titles for Arbedul’s property were issued in 2000 and 2002 after two hearings. Arbedul now comes over twenty years later to challenge the validity of Certificates of Title that could have been appealed at that time.

[¶ 17] Our review of the record indicates that Sukrad began constructing his house in 1989, relying on the worksheet with the erroneous boundary line. After Sukrad commenced construction, Henry Arbedul complained to Sukrad that he was encroaching on the property on more than one occasion. Thus, Henry Arbedul was most likely aware of the shifted boundaries at the time of the hearings on his land. Had he raised these complaints at the hearings, the survey error would have been discovered much earlier. In short, Henry Arbedul could have appealed the Determinations of Ownership in a timely manner before the Certificates of Title were issued. As matters stand, the Certificates of Title and the boundaries indicated therein are conclusive upon all persons, and we vacate the trial court’s decision.

¹ We observe that the Trial Division’s correction of the cadastral map’s boundaries affects between sixteen and twenty of the neighboring lots within the Cadastral Plat. These landowners were not parties to the case below or this appeal, despite the fact that they would undoubtedly be affected by any shifting in the boundaries and may have a vested interest against it.

[¶ 18] We affirm in part on the issue of damages, albeit for different reasons than those accepted by the trial court. *See e.g., Republic of Palau v. Pacific Dev. Corp.*, 1 ROP Interim. 383, 392 (1987) (affirming the trial court's result under a different reasoning); *Uchellas v. Etpison*, 5 ROP Intrm. 86, 87 (1995) (same). A plaintiff can recover damages for a particular harm only by proving that the harm occurred as the result of the tortious conduct of the defendant. *PPLA v. Emesiochel*, 22 ROP 126, 134-35 (2015). Sukrad properly relied on the Certificates of Title and did not encroach on Arbedul's property; therefore, Arbedul cannot obtain compensatory damages for encroachment. Similarly, Sukrad cannot obtain damages for tortious harassment, annoyance and deprivation of his peaceful enjoyment of property, where Arbedul's conduct was based on the mistake of a third party. Because neither party proved that the other acted tortiously, neither is entitled to damages.

CONCLUSION

[¶ 19] We **VACATE** and **REMAND** the Trial Division's judgment in part on the issue of the boundaries and **AFFIRM** in part on the issue of damages.