

**BISAYA LAND TRANSPORTATION COMPANY INC.,
PETITIONER-APPELLEE, VS. MIGUEL CUENCO,
RESPONDENT-APPELLANT.***G.R. No. L-18173. April 22, 1968*

Ponente: MAKALINTAL, J.

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In 1959 the Solicitor General, in representation of the Republic, filed a petition for quo warranto against the Bisaya Land Transportation Co., Inc., seeking its forcible dissolution on the ground that it had committed and was continuing to commit acts amounting to a forfeiture of its franchise rights and privileges. The petition was docketed as special civil case No. 39766, Court of First Instance of Manila. Impleaded with the corporation as respondents were its officers, namely, Miguel Cuenco, Manuel Cuenco, Lourdes Cuenco, Jose P. Velez, Federico A. Reyes and Jesus P. Velez. Alleged in nine separate causes of action, were numerous violations of law and of the articles of incorporation, transactions and activities beyond the corporate powers, fraudulent machinations and channeling of funds and properties for extra-corporate purposes, and acts of mis-management on the part of the co-respondents above-mentioned. The petitioner prayed that during the pendency of the case a receiver be appointed for the assets of the corporation.

Miguel Cuenco filed his individual answer to the petition, admitting the allegations therein insofar as the offending acts of the corporation and of the other individual respondents were concerned but disclaiming any participation in such acts by him. He joined in the prayer for dissolution as well as for the appointment of a receiver, and at the same time filed a cross-claim "in his own behalf as bonafide stockholder and as director . . . for the benefit of cross-respondent corporation." In the eighteen causes of action constituting the cross-claim Miguel Cuenco attributed to the individual cross-respondents, as members of the board of directors of the corporation, the commission of acts which "offend the law of its creation as well as several applicable statutes, rules and regulations adopted by the Republic of the Philippines." On the cross-claim he prayed that said individual cross-respondents be ordered to return and/or reimburse to the Corporation different sums of money aggregating several million pesos, such return and/or reimbursement being, according to him, "a condition precedent to the receipt of said cross-respondents of any share in the liquidating dividends of the cross-respondent corporation once its dissolution is decreed by the court."

On August 31, 1959 Miguel Cuenco, as cross-claimant, filed notice of lis pendens with the Register of Deeds for the City of Cebu, covering real properties of the Bisaya Land Transportation Co., Inc., with transfer certificates of title Nos. 4293 and 3425. On November 17, 1959 the corporation went to the Court of First Instance of Cebu and in the original land registration records of said properties filed a petition for the cancellation of the notice of lis pendens, making Miguel Cuenco the party-respondent. The latter presented his written opposition, and after hearing the court (Hon. Jose S. Rodriguez presiding), in its decision rendered September 29, 1960, held the annotation of lis pendens to be irregular and unwarranted and so ordered its cancellation. It is from that decision that the present appeal has been taken.

The subject of *lis pendens* is dealt with expressly in Rule 14 (formerly Rule 7), Section 24 of the Rules of Court, and indirectly in Section 79 of the Land Registration Act. They provide:

"SEC. 24. Notice of *lis pendens*.- In an action affecting the title or the right of possession of real property, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing his answer, when affirmative relief is claimed in such answer, or at any time afterwards, may record in the office of the registrar of deeds of the province in which the property is situated a notice of the pendency of the action, containing the names of the parties and the object of the action or defense, and a description of the property in that province affected thereby. From the time only of filing such notice for record shall a purchaser, or incumbrancer of the property affected thereby, be deemed to have constructive notice of the pendency of the action, and only of its pendency against parties designated by their real names.

The notice of *lis pendens* hereinabove mentioned may be cancelled only upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be recorded."

"SEC. 79.- No action to recover possession of real estate, or to quiet title thereto or to remove clouds upon the title thereof, or for the partition or other proceeding of any kind in court affecting the title to real estate or the use and occupation thereof or the buildings thereon, and no judgment or decree, and no proceeding to vacate or reverse any judgment or decree, shall have any effect upon registered land as against persons other than parties thereto, unless a memorandum stating the institution of such action or proceeding and the court wherein the same is pending and the date of the institution thereof, containing also a reference to the number of the certificate of title of the land affected, and the volume and page of the registration book where it is entered, shall be filed and registered. This section shall not apply to attachments, levies or execution, or to proceedings for the probate of wills or for administration of estates of deceased persons in the Court of First Instance; provided, however, That in case of notice of the pendency of the action has been duly registered it shall be sufficient to register the judgment or decree in such action within sixty days after the rendition thereof."

Section 24 of Rule 14 authorizes a notice of *lis pendens* to be filed by the plaintiff, as well as by the defendant when affirmative relief is claimed in his answer. In either case the action must affect the title or the right of possession of real property. The same requirement is prescribed in Section 79 of the Land Registration Act.

The crux of the question here is whether or not the petition for quo warranto filed by the Solicitor General for the dissolution of the appellee corporation affects the latter's title or right of possession to the real properties subject of the *lis pendens*. In none of the nine causes of action included in the Solicitor General's petition below is there any allegation which puts in issue such title or right of possession. The only issue raised is the propriety of the dissolution of the corporation upon the grounds set forth in the petition. To be sure, dissolution of a corporate entity would result in the liquidation of its assets and the termination of its title to and right to possess its properties, but this does not mean that they are affected by the action in the sense which would justify the notation of *lis pendens*.

A notice of *lis pendens* is intended for third persons, such as purchasers or incumbrancers of the property in litigation, to the end that the transactions entered into by them subsequent to the notation may be subject to whatever judgment may be rendered. The very purpose of this procedural remedy circumscribes its availability to real actions, that is, actions where the title to or possession of real property is directly affected. Thus, for instance, a purchaser of property involved in an action may lose the same to the winning party therein by virtue of the notice of *lis pendens* made prior to the purchase. This result could not conceivably arise in the present case. Neither the Republic nor respondent cross-claimant Miguel Cuenco lays any claim of right or title to the lands covered by the notice: they admit ownership thereof by the corporation; indeed the cross-claim is for the latter's

benefit and against the other individual cross-respondents, who likewise do not claim any right or title to the said properties. As far as the cross-claim is concerned it merely prays that the cross-respondents be ordered to reimburse the corporation certain sums of money allegedly realized by them as a result of their fraudulent transactions. The title to or right to possess the properties subject of the lis pendens is nowhere in issue.

The fact that in case the petitioning corporation is dissolved its assets will be liquidated and distributed among the stockholders, after paying off the creditors, and that part of those assets as of the present consists of the pro-perties now in question, does not convert this proceeding into a real action involving the title to these properties so as to justify the notation of lis pendens. The rights of the stockholders to the assets will arise only after dissolution of the corporation, and even then they cannot individually lay claim to any particular property or any part thereof as their own except as a result of the liquidation. They have therefore no title or possessory right to protect by the notice.

Appellant cites the case of *Register of Deeds vs. Magdalena Estate, Inc.*, G. R. No. L-9102, May 22, 1959. The citation is not in point. The main issue there involved the power and jurisdiction of the Court of First Instance of Manila, Branch IV, to order the registered owner of real property to surrender his copy of the certificate of title so that a notice of lis pendens may be annotated thereon, considering that at the time the power and jurisdiction of said court with respect to "consultas" from Registers of Deeds had been transferred by Republic Act No. 1151 to the Land Registration Commissioner. The decision dealt but briefly on the question of whether or not the notation of lis pendens was proper. This Court held that it was, on the ground that "the complaint... involves a real action and not a personal one," since the plaintiffs claimed that they were entitled to 25 per cent of all the assets of the defendant corporation, including the pro-perties covered by the notice of lis pendens. There is no similar claim or pretension in the present case. The appellee corporation is admittedly the owner of the properties, and until it is dissolved and liquidated no question as to the title to or possession thereof will arise vis-a-vis the stockholders as such.

Wherefore, the decision appealed from is affirmed, with costs.

Reyes, J.B.L., (Acting C.J.), Dizon, Bengzon, J.P., Zaldivar, Sanchez, and Angeles, JJ., concur.

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