

**IN RE: PETITION FOR CANCELLATION OF NOTICE OF LIS PENDENS
ANNOTATED IN TRANSFER CERTIFICATE OF TITLE NO. 12226,
QUEZON CITY. REHABILITATION FINANCE CORPORATION,
PETITIONER AND A...**

G. R. No. L-10064. April 23, 1957

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition filed by the Rehabilitation Finance Corporation in G.L.R.O. Rec. No. 7671 of the Court of First Instance of Rizal for the cancellation of a notice of lis pendens annotated on the back of Transfer Certificate of Title No. 12226 under section 112 of Act No. 496.

Buen Morales opposed the petition on the main ground that, being an innocent third party, he is protected by the notice of lis pendens, and if the same will be cancelled, he will suffer considerable damages as a result of the cancellation. He also claims that the issues raised in his opposition which involve the ownership of the property affected by the notice of lis pendens cannot be resolved in the present incident and as such the court has no jurisdiction to act on the matter.

After hearing, the court sustained the opposition holding that while the notice of lis pendens annotated subsequently to the mortgage in favor of petitioner cannot affect its right as mortgagee, yet "said notice certainly affected its right as purchaser because notice of lis pendens simply means that a certain property is involved in a litigation and serves as notice to the whole world that one who buys the same does it at his own risks." Petitioner moved to reconsider the order, and when the motion was denied, it appealed the order to this Court.

The background of the incident is as follows: The property covered by the title on which the notice of lis pendens was annotated was originally bought by Consuelo A. Agoncillo from Gregorio Araneta, Inc. under an installment plan and before fully complying with it, Agoncillo sold the property, together with the improvements thereon, in favor of Buen Morales. The understanding between vendor and vendee was that the account would continue to be carried in the name of Agoncillo until it is fully paid, and when full payment is effected and the corresponding title issued, Agoncillo would execute the necessary transfer of title in favor of Morales. By reason of this agreement, the sale was not made of record in the office of Gregorio Araneta, Inc.

Without the knowledge of Morales, however, Agoncillo made an arrangement with the Rehabilitation Finance Corporation whereby she offered the property as a security for certain loan, said corporation agreeing to guarantee the payment of the balance of the purchase price to Gregorio Araneta, Inc. With this guarantee, Gregorio Araneta, Inc. caused to issue a certificate of title in the name of Agoncillo, on the back of which the mortgage in favor of the Rehabilitation Finance Corporation was annotated. This annotation having been made, the Rehabilitation Finance Corporation paid Gregorio Araneta, Inc. the balance of the account in full and turned over to Agoncillo the rest of the loan.

It was only after the loan had been obtained that Buen Morales discovered the anomalous transaction, and he immediately filed a complaint for estafa against Agoncillo in the office of the City Fiscal of Manila which culminated in her criminal prosecution. At the same time, Morales filed a civil action in the court of first instance against Agoncillo and the Rehabilitation Finance Corporation for the recovery of the property and caused to be annotated a notice of lis pendens on the back of the title which was in the name of Agoncillo. In the meantime, the mortgage in favor of the Rehabilitation Finance Corporation was foreclosed upon failure of Agoncillo to pay her obligation and at the public auction that ensued, said corporation bought the property as the highest bidder. The notice of lis pendens was carried forward and annotated on the new title issued in the name of the corporation. This is the notice which petitioner now seeks to cancel in the present proceeding.

There is no dispute that the notice of lis pendens was annotated on the back of the certificate of title issued in the name of Consuelo A. Agoncillo as a necessary incident of the civil action instituted by Buen Morales to recover the ownership of the property affected by it against Agoncillo and the Rehabilitation Finance Corporation. There is likewise no dispute that the mortgage executed by Agoncillo in favor of said corporation was annotated on the same title prior to the annotation of the notice of lis pendens, but that when it bought the property as the highest bidder at the auction sale made as an aftermath of the foreclosure of the mortgage, the title already bore the notice of lis pendens. The question now to be determined is: Can said notice of lis pendens be cancelled at the instance of petitioner considering that the property affected by it is involved in a litigation wherein both Agoncillo and petitioner appear as party defendants?

Resolving this issue, the lower court made the following comment:

"While it may be true that the notice of Us "pendens was annotated subsequent to the mortgage in favor of the Rehabilitation Finance Corporation and cannot, therefore, affect its right as mortgagee, yet the said notice certainly affected its right as purchaser because notice of lis pendens simply means that a certain property is involved in a litigation and serves as a notice to the whole world that one who buys the same does so at his own risk."

On the other hand, Section 24, Rule 7, which authorizes the annotation of a notice of lis pendens, provides:

"Sec. 24. Notice itf Us 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, ihe 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 ihe action, and only of its pendency against parties designated by their real names." (Italics supplied).

In the light of the above-quoted provision of the rule relating to the annotation of a notice of lis pendens, we find correct the finding of the lower court that the notice of lis pendens as annotated should be maintained. It should be noted that said notice was caused to be annotated as an incident of the action taken by the oppositor against both Consuelo A. Agoncillo and the Rehabilitation Finance Corporation to recover precisely the ownership of the property affected by the mortgage and said action, when the petition for cancellation was filed, was still pending and undisposed of. In that case, not only the propriety of the mortgage was involved, but also the very title acquired by petitioner when it subsequently bought the property as the highest bidder, and in said litigation petitioner was a party defendant. It can therefore be said that petitioner not only has a constructive knowledge of said litigation but is a party to the ease. The notice is therefore intended to be a warning to the whole world that one who buys the property does so at his own risk.

This is necessary in order to save innocent third persons from any involvement in any future litigation concerning the property.

It is true that as a matter of general principle the notice of *Us pendens* cannot affect the right of petitioner as mortgagee because the mortgage was annotated prior to the annotation of said notice and to that extent its right is protected by law as against subsequent encumbrancers, but such cannot preclude the continuance of the notice of *lis pendens* for the simple reason that the property is actually in litigation. This is more so when the validity of the mortgage is involved. Until the civil case is finally terminated, it would not be right nor proper to cancel the notice of *lis pendens*.

The order appealed from is affirmed, without pronouncement as to costs.

Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Conception, Reyes, J. B. L., and Endencia, JJ., concur.
Order affirmed.

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