

LUCINA BIGLANGAWA AND LUCIA ESPIRITU, PETITIONERS AND APPELLEES, VS. PASTOR B. CONSTANTINO, ET AL., RESPONDENTS. PASTOR B. CONSTANTINO, RESPONDENT AND APPELLANT.

G.R. No. L-9965. August 29, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

The only issue, which is of law, involved in this appeal, is the legality of the annotation of lis pendens predicated on the complaint of respondent-appellant Pastor B. Constantino.

On June 25, 1953, respondent Pastor B. Constantino filed with the Court of First Instance of Rizal an amended complaint (docketed as Civil Case No. 2138) against petitioners Lucina Biglangawa and Lucia Espiritu, as follows:

"AMENDED COMPLAINT

"Plaintiff, by his undersigned counsel, alleges:

"As First Cause of Action

"1. Plaintiff and defendants are residents of Malabon, Rizal.

"2. Defendants Lucina Biglangawa and Lucia Espiritu were or have been the owners of a parcel of land in Manila, Polo, Bulacan, more particularly described in "Transfer Certificate of Title No. 5459 as follows: * * *.

"3. On January 14, 1950, defendant Lucina Biglangawa, with the consent of her co-owner Lucia Espiritu, appointed plaintiff their exclusive agent to develop the area described in paragraph 2 into subdivision lots and to sell them to prospective homeowners; and as compensation for his services, defendants promised to pay him a commission of 20% on the gross sales and a fee of 10% on the collections made by him payable from 'the first collections received from the purchasers in respect to each lot sold.' * * *.

"4. The power thus conferred by Lucina Biglangawa to plaintiff was confirmed in a notarial document executed on March 3, 1950 by her and her co-defendants, who are husband and wife, with the added stipulation that they could not revoke the contract of agency without plaintiff's consent. * * *.

"5. Advancing all the expenses incurred in the development and administration of the project, plaintiff caused the subdivision of said property into 203 lots and advertised them for sale under the name 'BBB Marulas Subdivision No. 3'; and up to October, 1951 plaintiff had disposed of more than half of the entire area at P10.00 and P12.00 per square meter.

"6. Although under the express terms of the contract of January 14, 1950 (Exhibit 'A') the commissions of plaintiff for making those sales and his collection fees of 10% were to be paid to him 'from the first collections, received from the purchasers in respect to each lot sold', defendants, in contravention of that agreement, oppressively and in bad faith adopted the practice of paying the latter's compensation out of 30% only of the

gross monthly collections from the sales, such that, as of October 15, 1951 when a liquidation was made, there was still a balance on plaintiff's commissions in the amount of P48,899.20.

7. "Later, in October, 1951, defendants wantonly, oppressively, and in evident bad faith terminated the agency contracts Exhibits 'A' and 'B' depriving plaintiff of his rights to commission fees of 20% on the sale of the remaining lots and 10% fee on the cash receipts of the business every month.

"8. Defendants nevertheless, expressly acknowledged their liability to plaintiff in the sum of P48,899.20 for unpaid-commissions as of October 16, 1951; and they promised to pay said indebtedness to plaintiff in successive monthly installments beginning November, 1951, as follows: * * *.

"9. Plaintiff consented to the settlement of the balance of his commission in monthly installments after the termination of the agency in consideration of defendant's promises that they would compute and faithfully pay the percentage of monthly installments on the basis of their monthly gross collections from the operation of 'BBB Marulas Subdivision No. 3', as stipulated in Exhibit 'C', and shall follow that procedure until their total indebtedness is fully settled.

"10. From October 16, 1961 to March 31, 1953, defendants made a total monthly gross collection of around P52,849.63 from the business, and out of these receipts plaintiff was entitled to minimum payments of P8,711.13 pursuant to Exhibit 'C', but again defendant wantonly, fraudulently, oppressively, and in evident bad faith paid plaintiff only the sum of P6,204.13 or P2,507.00 short of what plaintiff should have received during the period.

"11. Upon gaining information of the breach of the contract by defendants about the end of March, 1958 and verifying the existence of such breach, plaintiff immediately demanded of defendants the difference between the amounts due to him under the contract Exhibit 'C' and those actually paid by them, but defendants wantonly, fraudulently, and without cause refused to make the necessary settlement.

* * * * *

"13. The balance of plaintiff's commissions remaining unpaid as of the filing of this complaint, excluding the underpayments from November, 1961 to March, 1953, is P39,534.62.

"As to Second Cause of Action

"1. Plaintiff reproduces paragraphs 1 to 13 of the first cause of action.

"2. For defendants' gross and evident bad faith in refusing plaintiff's valid, just, and demandable claim against them, plaintiff was forced to prosecute the present case against them, and became liable for attorney's fees in the sum of P7,000.00.

"Wherefore, plaintiff prays for judgment—

"(a) Ordering defendants to pay plaintiff the sum of P2,507.06 which is defendants' underpayments from November, 1951 to March, 1953, with interest at the legal rate;

"(b) Declaring defendants to have lost the right to pay plaintiff in monthly installments and requiring them to pay plaintiff at once the balance of his commissions and fees in the amount of P89,543.62, with interest at the legal rate from the filing of this complaint;

"(c) Ordering defendants to pay plaintiff moral damages in the sum of P40,000.00, exemplary damages in the sum of P30,000.00, and attorney's fees in the sum of P7,000.00.

"(d) Granting costs and such other reliefs as this court may deem just and equitable in the premises."

To this complaint, petitioners filed their answer on August 25, 1953.

While said Civil Case No. 2138 was pending in said court, respondent, on April 5, 1955, filed with the Office of the Register of Deeds of Bulacan, the following notice of lis pendens:

"Please make of record the pendency of a complaint involving, among other things, rights and interest and claims for services and damages on the following described property, which has been converted into a subdivision as shown by the plan Psd-29964, situated in Marulas, Polo, Bulacan, to wit: (Technical description of the real property mentioned in the complaint) which property is more particularly described in Transfer Certificate of Title No. 5459 of the Register of Deeds of Bulacan. A copy of the complaint and amended complaint, marked Appendices A and A-1, are attached hereto and made integral part hereof."

On April 6, 1955, the Register of Deeds of Bulacan requested petitioners to surrender their owner's copy of Transfer Certificate of Title No. 5459 for annotation of said notice of lis pendens, but petitioners refused to do so. However, on May 17, 1955, when petitioners registered the absolute deed of sale in favor of Carmelita L. Santos covering some of the lots of the subdivision, said official, without their knowledge and consent, made the annotation of the lis pendens on petitioners' aforementioned title, as well as on the title issued to Carmelita L. Santos.

Petitioners, therefore, on June 11, 1955, filed with the Court of First Instance of Bulacan, a petition praying for the cancellation of said notice of lis pendens. To this petition, respondent filed his answer on June 17, 1955, to which, petitioners filed their reply on June 23, 1955. On June 24, 1955, respondent filed a rejoinder to said reply.

Acting on said petition, the court issued an order on July 19, 1955, which reads:

"ORDER

"Upon consideration of the petition filed by Lucina Biglangawa and Lucia Espiritu dated June 11, 1955 and the answer thereto, and it appearing from the amended complaint of Pastor B. Constantino, plaintiff in Civil Case No. 2138 of the Court of First Instance of Rizal (respondent herein) that said action is purely and clearly a claim for money judgment which does not affect the title or the right of possession of real property covered by Transfer Certificate of Title No. T-5459 and it being a settled rule in this jurisdiction that a notice of lis pendens may be invoked as a remedy in cases where the very lis mota of the pending litigation concerns directly the possession of, or title to a specific real property;

"Wherefore, as prayed for, the Register of Deeds of Bulacan is hereby ordered to cancel Entry No. 28176 for lis pendens on Transfer Certificate of Title No. T-5459 of the petitioners as well as the annotation of the same on Transfer Certificate of Title No. T-014480 of Carmelita L. Santos.

"So ordered."

Respondent, on August 8, 1955, filed a motion for reconsideration of the above order, but the same was denied by the court on September 30, 1955. Hence, this appeal.

Respondent-appellant claims that the lower court erred in holding that his pending action (Civil Case No. 2138) in the Court of First Instance of Rizal, is purely a claim for money judgment which does not affect the title or right of possession of petitioners' real property, covered by Transfer Certificate of Title No. T-5459. Instead, he contends that the agreement whereby he was to be paid a commission of 20% on the gross sales and a fee of 10% on the collections made by him, converted him into a partner and gave him 1/5 participation in the property itself. Hence, he argues, his suit is one for the settlement and adjustment of partnership interest or a partition action or proceeding.

Appellant's theory is neither supported by the allegations of his complaint, nor borne out by the purpose of his action. There is no word or expression in the various paragraphs of his amended complaint that suggests any idea

of partnership. On the contrary, appellant expressly averred that petitioners "appointed plaintiff (appellant) their exclusive agent to develop the area described in paragraph 2 into subdivision lots and to sell them to prospective homeowners; and as compensation for his services defendants (appellees) promised to pay him a commission of 20% on the gross sales and a fee of 10% on the collections made by him * * *." (See paragraph 3 of amended complaint.) Categorically, appellant referred to himself as an agent, not a partner; entitled to compensation, not participation, in the form of commission or fee, not a share.

It is true that in paragraph 5 of the amended complaint (supra) appellant claims to have made advances for the expenses incurred in the development and administration of the property. But again he never considered these as contributions to the business as to make him a partner; otherwise, he would have so stated it in his complaint. In fact, after a liquidation of these advances and the commissions due to appellant at the time of the termination of the agency, the whole balance was considered, as appellees' indebtedness which appellant consented to be settled in monthly installments (see paragraphs 6, 8, and 9 of the amended complaint).

While it is true again that the prayer in a complaint does not determine the nature of the action, it not being a material part of the cause of action, still it logically indicates, as it does in this case, the purpose of the actor. The four paragraphs of the prayer seeks the recovery of fixed amounts of underpayments and commissions and fees; not liquidation or accounting or partition as now insisted upon by appellant.

Appellants' amended complaint, not being "an action affecting the title or the right of possession of real property",^[1] nor one "to recover possession of real estate, or to quiet title thereto, or to remove clouds upon the title thereof, or for partition or other proceeding of any kind in court affecting the title to real estate or the use or occupation thereof or the buildings thereon * * *",^[2] the same can not be the basis for annotating a notice of lis pendens on the title of the petitioners-appellees.

Having reached the above conclusion, this Court finds it unnecessary to decide, the incidental matters raised by the parties during the pendency of this appeal.

Wherefore, finding no error in the appealed order of the court a quo, the same is hereby affirmed, with costs against the respondent-appellant. So ordered.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., and Gutierrez David, JJ., concur.

[1] Sec 24, Rule 7, Rules of Court. [2] Sec. 79, Land Registration Act (Act No. 496, as amended.)

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