

**FBM CONSTRUCTION AND AGRO-INDUSTRIAL CORP.,
PLAINTIFF-APPELLANT, VS. PIO BARRETTO REALTY DEVELOPMENT
INC. AND REGISTER OF DEEDS OF ANTIPOLO CITY,
DEFENDANTS-APPELLEES.**

Ponente: SALAZAR-FERNANDO, J.

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SALAZAR-FERNANDO, J.:

Before this Court is an appeal from the Decision[1] dated August 24, 2012 of the Regional Trial Court (RTC), Fourth Judicial Region, Branch 73, Antipolo City in Civil Case No. 02-6447 for Quieting of Title with Prayer for Preliminary Injunction, entitled: “FBM Construction and Agro-Industrial Corp., Plaintiff, versus Pio Barretto Realty Dev’t., Inc., et al., Defendants.”, the dispositive portion of which reads:

“WHEREFORE, premises considered, this case is hereby DISMISSED. Cost against the plaintiff.

SO ORDERED.”

The facts are:

On March 22, 2002, plaintiff-appellant FBM Construction and Agro-Industrial Corporation (FBM for brevity) filed a Complaint[2] for Quieting of Title with Prayer for Preliminary Injunction against defendants-appellees Pio Barretto Realty Development Corporation (Pio Barretto for brevity) and the Register of Deeds of Antipolo City, alleging that: sometime in 1995, Honor P. Moslares (Moslares for brevity) offered to sell to plaintiff-appellant FBM his three (3) parcels of land covered by Transfer Certificates of Title (TCT) Nos. 273837, 273838 and 273751, all situated in Antipolo, Rizal for and in consideration of the total sum of P25,000,000.00; before entering into a contract with Moslares, plaintiff-appellant FBM verified with the Registry of Deeds of Marikina and found that the subject properties were free and clear of all liens and encumbrances and there was no notice of lis pendens annotated at the back of said titles; since it did not have sufficient funds to buy all the subject properties, it first bought the lot covered by TCT No. 273838 for Ten Million Pesos (P10,000,000.00) and TCT No. 293771 was issued in its name; Moslares and plaintiff-appellant FBM agreed on the sale to the two (2) remaining lots covered by TCT Nos. 273837 and 273751 for Fifteen Million Pesos (P15,000,000.00) under certain terms and conditions, among them: the execution by Moslares of a special power of attorney authorizing its President, Felix B. Mariñas, to negotiate for a loan with the Rizal Commercial Banking Corporation (RCBC) in the amount of P15 million and applying the proceeds thereof to the purchase price of said lots; pursuant to the said agreement, plaintiff-appellant FBM obtained a P15 million loan from RCBC and paid it to Moslares; however, the latter demanded additional money and it was only in 1999 that he agreed to execute a deed of absolute sale over the properties covered by TCT Nos. 273837 and 273751; on January 22, 1999, plaintiff-appellant FBM was issued TCT Nos. 362045 and 362046 in its name; subsequently, defendant-appellee Pio Barretto, through its counsel, Atty. Merito R. Fernandez, requested that TCT Nos. 273837, 273838, 273751 and 293771 be canceled; in the purchase of the subject properties, plaintiff-appellant FBM also relied on the Order dated April 15, 1996 of the RTC of Antipolo, Branch 73, dismissing Civil Case No. 95-3678 entitled “Pio Barretto Realty Development Corp. vs. Honor P.

Moslares” and canceling all notices of lis pendens annotated on TCT Nos. 273837, 273838 and 273751; said order became final and executory; plaintiff-appellant FBM is an innocent purchaser for value of the subject properties covered by TCT Nos. 273837, 273838 and 273751 and it was issued TCT Nos. 362045, 362046 and 293771 in its name after the sale.

In its Answer with Compulsory Counterclaim,[3] defendant-appellee Pio Barretto admitted having requested for the cancellation of Moslares' titles, including the title issued in the name of plaintiff-appellant FBM, but denied the rest of the material allegations in the complaint and averred that: TCT Nos. 273837, 273838 and 273751, all in the name of Moslares, are void, having been issued as a consequence of the execution by the Clerk of Court of RTC Branch 18, Manila of a Deed of Conveyance in Civil Case No. 84-27008 entitled “Honor P. Moslares vs. Pio Barretto Realty Development Corporation”; the subject properties were not free and clear of all liens and encumbrances at the time of the execution by Moslares of the deeds of sale in favor of plaintiff-appellant FBM, as shown by the notices of lis pendens under entry numbers 358548 and 373584 annotated on July 12, 1995 and January 12, 1996, respectively, at the back of said titles; the purchase of the property covered by TCT No. 273838 and the subsequent issuance of TCT No. 293771 in the name of plaintiff-appellant FBM are void in view of the promulgation on June 28, 2001 by the Supreme Court of a decision in G.R. No. 132662 entitled “Pio Barretto Realty Development Corporation vs. Court of Appeals, Judge Perfecto A.S. Laguio, Jr., RTC, Br. 18, Manila and Honor P. Moslares”; likewise, the alleged purchase by plaintiff-appellant FBM of the subject properties covered by TCT Nos. 273751 and 273837 and the issuance of TCT Nos. 362045 and 362046 are void in view of the Decision of the Supreme Court dated June 28, 2001; in his own notice of adverse claim under Entry No. 534130 annotated on July 12, 1999 at the back of the titles, Moslares himself admitted that deceit and misrepresentation attended the issuance of plaintiff-appellant FBM's titles.

By way of Special Affirmative and Negative Defenses, defendant-appellee Pio Barretto further alleged that: this case should be dismissed for failure to pay in full the prescribed docket fees; plaintiff-appellant FBM has no cause of action for quieting of title, thus it is not entitled to the issuance of writ of preliminary injunction; and, plaintiff-appellant FBM is not an innocent purchaser for value in view of the notices of lis pendens annotated on the face of Moslares' titles, thus its purchase of the subject properties is subject to the outcome of the case or eventuality of the litigation.

Before the pre-trial conference, plaintiff-appellant FBM's counsel sent written Interrogatories[4] to defendant-appellee Pio Barretto and the latter, through its President Anthony U. Que, filed its Answer (to Plaintiff's Written Interrogatories) [5] thereto.

On March 20, 2003, plaintiff-appellant FBM filed a Motion to Declare Defendant in Default[6] alleging that the answer caused to be prepared by Anthony Que is a mere scrap of paper because he was not duly authorized by defendant-appellee Pio Barretto to file said pleading. After the filing by defendant-appellee Pio Barretto of its Opposition (to Plaintiff's “Motion to Declare Defendant in Default”), the lower court, in an Order[7] dated April 11, 2003 denied the motion to declare defendant-appellee Pio Barretto in default. Plaintiff-appellant FBM's Motion (to the Order dated 11 April 2003)[8] for reconsideration thereof was denied in an Order[9] dated July 3, 2003.

On December 5, 2003, Enriqueta Medina and Edilberto Medina filed a Motion for Intervention (With attached Answer-in-Intervention, Cross-Claim and Third Party Complaint),[10] together with the appended Answer-in-Intervention (With Cross-Claim and Third Party Complaint).[11] Both plaintiff-appellant FBM and defendant-appellee Pio Barretto filed their respective oppositions[12] thereto. In an Order[13] dated February 4, 2004, the motion for intervention was denied. A Motion for Reconsideration[14] thereof was denied in an Order[15] dated October 27, 2005.

After several postponements, due mainly to various pending incidents, the pre-trial conference was held on March 7, 2006 and a Pre-trial Order[16] was issued on the same day. Thereafter, hearing on the merits ensued.

Plaintiff-appellant FBM presented Atty. Maria Victoria B. Ramirez, Atty. Marlon G. Facun, Felix B. Mariñas, Sr., as witnesses. On the other hand, defendant-appellee Pio Barretto's only witness is Anthony Que. On rebuttal, plaintiff-appellant FBM presented Teresita Moreno.

Atty. Victoria Bringas-Ramirez testified that: she is the counsel of record of plaintiff-appellant FBM who prepared the complaint in this case; when the return of summons showed that defendant-appellee Pio Barretto no longer exists, she filed a motion that the summons and the complaint be served by publication; defendant-appellee Pio Barretto filed a manifestation with the court stating that the summons mailed to it did not have a copy of the complaint with it; thus, she caused the service of another copy of the summons with the complaint by the court process server; when she received a copy of defendant-appellee Pio Barretto's answer, she secured a copy of its articles of incorporation from the Securities and Exchange Commission (SEC) and found out that the person purportedly authorized to represent it had an investment of only One Thousand Pesos (P1,000.00) and the 99.9 percent of the entire shares is owned by Pio Barretto and Sons Incorporated; she also found out from its articles of incorporation which was written in Spanish that Pio Barretto and Sons, Inc. was registered on July 27, 1927 and its lifetime is fifty (50) years; except for Anthony Que, the names of the directors of defendant-appellee Pio Barretto mentioned in defendant-appellee Pio Barretto's answer to the written interrogatories do not appear in the records of the SEC; from the General Information Sheet (GIS) submitted to the SEC in 1986, it appears that Pio Barretto and Sons, Inc. was a stockholder of defendant-appellee Pio Barretto with 10,350,000.00 shares, equivalent to 99.9% of the total shares; in the answer to written interrogatories, Anthony Que did not include Pio Barretto and Sons, Inc. as a stockholder of defendant-appellee Pio Barretto, however, the records of the SEC do not show that the assets of Pio Barretto and Sons, Inc. had been liquidated; and, thus, it remains a stockholder defendant-appellee Pio Barretto; defendant-appellee Pio Barretto's registration was revoked by the SEC on August 11, 2003 for non-compliance with the reportorial requirement.[17]

Atty. Marlon G. Facun, a Legal Officer of the SEC, merely testified that: the corporate existence of Pio Barretto and Sons, Inc. expired in 1977; there was no extension of its term; and, there was no record of liquidation of its assets.[18]

Felix B. Marinas, Sr., the President and authorized representative of plaintiff-appellant FBM, testified that: sometime in 1995, plaintiff-appellant FBM agreed to purchase from Moslares the subject properties covered by TCT Nos. 273838, 273837 and 273751, all situated in Antipolo City; upon verification with the Office of the Register of Deeds, it was ascertained that said titles were clean; the Register of Deeds even issued a certification stating that said titles were free and clear of any lien or encumbrances; after paying for the first lot covered by TCT No. 273838, Moslares executed a deed of absolute sale on October 25, 1995, thereafter, plaintiff-appellant FBM was issued TCT No. 293771; later, Moslares offered to sell to plaintiff-appellant FBM his two (2) other lots covered by TCT Nos. 273751 and 273837; thus, they agreed that Moslares would execute a special power of attorney authorizing plaintiff-appellant FBM to utilize the lots covered by TCT Nos. 273751 and 273837 as security for a loan from RCBC; upon the release of the proceeds of the loan from RCBC, a portion thereof in the amount P15,000,000.00 was paid to Moslares as purchase price of the lots covered by TCT No. 273751 and 273837; however, Moslares refused to execute a deed of sale because he was asking for more money; thus, he told Moslares that if he would not sign the deed of sale, he would file a case against him; finally, in January, 1999, Moslares executed a deed of sale for the lots covered by TCT Nos. 273751 and 273837; consequently, TCT Nos. 362045 and 362046 were issued in the name of plaintiff-appellant FBM; later on, they found out that the titles issued in the name of plaintiff-appellant FBM bear annotations of *lis pendens*, which were not present in 1995

when he negotiated for the sale of the subject properties; when he confronted Moslares about it, the latter merely told him that he was sorry; the annotation shows that defendant-appellee Pio Barretto is the other claimant of the subject properties; when Moslares died, he could no longer file a case against him, thus he instituted a complaint against defendant-appellee Pio Barretto.

While plaintiff-appellant FBM was presenting evidence, it filed a Motion for Joinder of Indispensable Party,[19] praying that Enriqueta Medina and Spouses Edilberto and Gregoria Medina be joined as party defendants, in a clear reversal of its previous stance opposing the intervention. The lower court denied said motion in an Order[20] dated May 19, 2010.

Defendant-appellee Pio Barretto's lone witness, Anthony Que, testified that: he is the President of defendant-appellee Pio Barretto which has an original 25-year corporate life, but was extended to another 25 years from December 8, 2003 by virtue of an Amended Articles of Incorporation approved by the SEC; while Atty. Ramirez of the SEC testified that the registration of defendant-appellee Pio Barretto was revoked for non-compliance with reportorial requirements, its request for extension and reinstatement were approved by the SEC after payment of the fine; on July 12, 1995, defendant-appellee Pio Barretto, through its lawyer, Atty. Ramon Encarnacion, caused the annotation of a notice of lis pendens on the original copies of TCT Nos. 273837, 273838 and 273751 in the name of Moslares; on January 12, 1996, it had another notice of lis pendens annotated on the same titles, in connection with a petition for certiorari then pending before the Court of Appeals; plaintiff-appellant FBM could not claim that it was a purchaser in good faith because when it bought the subject properties from Moslares, the titles thereof already had notices of lis pendens annotations; in fact, the annotations of the notices of lis pendens were carried over to the new certificates of title issued in the name plaintiff-appellant FBM; the case subject of the notice of lis pendens dated July 12, 1995 was dismissed, while the petition for certiorari filed with the Court of Appeals and subject of the second notice of lis pendens dated January 11, 1996 reached the Supreme Court and eventually decided in favor of defendant-appellee Pio Barretto; and, when the decision of the Supreme Court became final and executory, defendant-appellee Pio Barretto, through its lawyers, filed notices of judicial lien with the Office of the Register of Deeds, requesting that the titles of the subject properties be canceled and new titles be issued in its name.[21]

Plaintiff-appellant FBM presented Teresita Moreno as a rebuttal witness who testified that: she was a legal assistant of plaintiff-appellant FBM and one of her functions, as such, was to secure copies of documents relative to cases handled by their lawyers; she was able to secure copies of the Deed of Absolute Sale between defendant-appellee Pio Barretto and Enriqueta Medina over the subject properties; she was also able to secure a copy of the Court of Appeals' Decision dated June 30, 1997 in a case between defendant-appellee Pio Barretto and Hon. Perfect A. Laguio; she also obtained copies of Moslares' and plaintiff-appellant FBM's titles over the subject properties which are the same properties sold by defendant-appellee Pio Barretto to Enriqueta Medina.

After hearing, the lower court rendered the assailed judgment. Hence, this appeal assigning the following errors:

A. THE HONORABLE REGIONAL TRIAL COURT OF ANTIPOLLO, BRANCH 73 ERRED WHEN IT DECLARED THAT THE APPELLANT IS NOT A BUYER IN GOOD FAITH AND FOR VALUE BY:

- SIMPLY RELYING ON THE JULY 12, 1995 NOTICE OF LIS PENDENS PERTAINING TO A CASE WHICH WAS DISMISSED WITH FINALITY BY THE VERY SAME COURT AND HAS NOTHING TO DO WITH THE CASE UPON WHICH THE RIGHT OF APPELLEE OVER THE PROPERTIES ARE BASED;

- TOTALLY IGNORING THE TESTIMONY OF APPELLANT'S WITNESS THAT THE TITLES WERE

CLEAN WHEN THEY WERE DOUBLE CHECKED WITH THE REGISTER OF DEEDS BEFORE PURCHASING THE PROPERTIES, A FACT WHICH WAS CATEGORICALLY STRESSED BY THE APPELLEE ITSELF;

- TOTALLY DISREGARDING THE FACT THAT THE ANNOTATIONS AT THE BACK OF THE THREE (3) TITLES IN THE NAME OF HONOR MOSLARES REGARDING THE JULY 12, 1995 LIS PENDENS ARE THEMSELVES HIGHLY IRREGULAR BECAUSE: (A) THE NOTICE OF LIS PENDENS WERE ALL ANNOTATED AT THE BACK OF PAGE "A" OF EACH TITLE, IMMEDIATELY AFTER THE TECHNICAL DESCRIPTION OF THE PROPERTY AND FOLLOWED BY EARLIER ANNOTATIONS IN VIOLATION OF THE PROVISIONS OF (sic) ; (B) THE ANNOTATIONS REGARDING THE JULY 12, 1995 LIS PENDENS FOUND AT THE BACK OF EACH OF THE THREE (3) TITLES ALL CONTAIN EXACTLY THE SAME ENTRIES AND EVEN THE SAME TYPOGRAPHICAL ERROR; THE SAME INDENTION ON THE LEFT AND RIGHT MARGIN OF EACH LINE; BUT WITH DIFFERENT LEVELS OF PRINT IMPRESSION; (C) THE DATES WHEN THE INSTRUMENTS WERE EXECUTED WERE PRIOR TO THE DATES OF THE RECEIPTS; AND (D) THE ENTRY NUMBER APPEARING ON EACH ANNOTATION ARE DIFFERENT FROM THE ENTRY NUMBER INDICATED IN THE RECEIPT.

B. THE HONORABLE REGIONAL TRIAL COURT OF ANTIPOLO, BRANCH 73 ERRED WHEN IT TOTALLY DISREGARDED THE CIRCUMSTANCES THAT WERE STRESSED BY THE APPELLEE ITSELF RELATIVE TO THE TIME WHEN THE APPELLANT PURCHASED THE PROPERTIES E.G. THAT THE TITLES WERE CLEAN ETC.

C. THE HONORABLE REGIONAL TRIAL COURT OF ANTIPOLO, BRANCH 73 ERRED WHEN IT SOLELY BASED ITS DECISION ON THE APPARENT FLAW OF ONE PARTY AND FAILED TO BALANCE THE SCALES OF JUSTICE BY NOT TAKING INTO CONSIDERATION THE ACTUATIONS OF BOTH PARTIES BASED ON EVIDENCE AND EVENLY APPLYING THE PROVISION OF ARTICLE 19 OF THE CIVIL CODE IN RELATION TO THE BUYER IN GOOD FAITH AND FOR VALUE DOCTRINE TO THE CASE

D. THE HONORABLE REGIONAL TRIAL COURT OF ANTIPOLO, BRANCH 73 ERRED WHEN IT APPLIED THE FINAL AND EXECUTORY DECISION OF THE SUPREME COURT DECLARING THE APPELLEE AS ABSOLUTE OWNER OF THE DISPUTED SUBJECT MATTER OF THE COMPROMISE DATED MAY 2, 1986 AS FULLY IMPLEMENTED PURSUANT TO THE FINAL AND EXECUTORY ORDER DATED JUNE 14, 1990 OF ITS PRESIDING JUDGE AS RES JUDICATA IN THE INSTANT CASE BECAUSE DESPITE SUCH DECLARATION OF THE HONORABLE SUPREME COURT, THE FACT REMAINS THAT THE APPELLEE ALREADY SOLD IN NO UNCERTAIN TERMS ITS OWNERSHIP OVER THE SAID PROPERTIES IN 1990. HENCE, RES JUDICATA CANNOT AND SHOULD NOT APPLY TO THE INSTANT CASE FOR QUIETING OF TITLE SINCE THE APPELLEE ALREADY LOST ITS RIGHT OF OWNERSHIP ON THE AFORESAID PROPERTIES BY VIRTUE OF THE DEED OF ABSOLUTE SALE.

The appeal has no merit.

Plaintiff-appellant FBM argues that: when it purchased one of the subject properties covered by TCT No. 273838 from Moslares on October 26, 1995, the case filed by defendant-appellee Pio Barretto against Moslares and Acting Register of Deeds Artemio Caña, docketed as Civil Case No. 95-3678 with the Regional Trial Court (RTC) of Antipolo, Branch 73 and subject of the notice of lis pendens dated July 12, 1995, had already been dismissed by virtue of the Order dated October 20, 1995 and said order of dismissal had become final and executory; since Civil Case No. 95-3678 had already been dismissed with finality, the notices of lis pendens annotated on the titles of the subject properties had been rendered nugatory; the lower court should have given

credence to the testimony of plaintiff-appellant FBM's witness that the titles were clean when he inspected the same in the Office of the Register of Deeds before purchasing the subject properties; defendant-appellee Pio Barretto even admitted in their complaint in Civil Case No. 95-3678 that TCT Nos. 273837, 273838 and 273751 were clean; the annotations of the notices of lis pendens dated July 12, 1995 and January 12, 1996 on TCT Nos. 273837, 273838 and 273751 are tainted with anomalies and while said annotations were the responsibility of the Register of Deeds, defendant-appellee Pio Barretto had participation therein as shown by its payments of the fees therefor; besides, if the titles were not clean, the bank would not have granted the loan of plaintiff-appellant FBM; in holding that plaintiff-appellant FBM was not a buyer in good faith and for value, the lower court merely relied on the notion that there were notices of lis pendens annotated on the titles of Moslares without applying the provisions of Article 19[22] of the Civil Code; having sold the subject properties in 1990, defendant-appellee Pio Barretto was no longer the owner thereof, nonetheless it continued to exercise the attributes of ownership over the same and even filed cases with the RTC of Antipolo City, the Court of Appeals and the Supreme Court; eventually, through fraud, it was able to obtain a favorable judgment; the lower court also erred in applying the decision of the Supreme Court declaring defendant-appellee Pio Barretto as the absolute owner of the subject properties because despite such declaration, the fact remains that defendant-appellee Pio Barretto had already sold the subject properties in 1990; having been divested of its rights over the subject properties, defendant-appellee Pio Barretto cannot claim ownership thereof on the basis of the ruling of the Supreme Court; and, even if plaintiff-appellant FBM merely acquired its ownership of the subject properties from Moslares, it does not necessarily mean that it has no right over them.

Defendant-appellee Pio Barretto counters that: the dismissal of Civil Case No. 95-3678, the subject of the notice of lis pendens dated July 12, 1995, was on the ground of a) *litis pendencia* or the pendency of an action between the same parties involving the cause and for the same properties, and b) violation of the prohibition against forum shopping, thus it was not a judgment on the merits; the Order dated October 20, 1995 of the RTC of Antipolo dismissing Civil Case No.95-3678 was annotated at the back of TCT Nos. 273837, 273838 and 273751 and the grounds for dismissal are stated therein; as held in *Casimiro Development Corporation vs. Mateo*,[23] a purchaser cannot close his eyes to the facts which should put a reasonable man on his guard and still claim he acted in good faith; plaintiff-appellant FBM's allegation that the titles of Moslares were clean when they checked them twice is belied by the documentary evidence on record showing that the notice of lis pendens dated July 12, 1995 was already inscribed at the back of the titles as early as July 12, 1995; on the other hand, the notice of lis pendens dated January 12, 1996 was annotated on January 12, 1996, while plaintiff-appellant FBM purchased the lots covered by TCT Nos. 273837 and 273751 only on January 31, 1999; plaintiff-appellant FBM deliberately omitted key sentences and phrases in paragraphs 5 and 6 of the complaint, quoting only selected portions thereof, to make it appear that defendant-appellee Pio Barretto alleged therein that the titles of the subject properties were clean; plaintiff-appellant FBM's witness Felix B. Mariñas' testimony that he checked the titles twice and found the same to be clean is self-serving and unworthy of belief; the alleged certified true copies of the titles that purportedly did not bear the notices of lis pendens attached as Annexes "A", "B" and "C" to the complaint in Civil Case No. 95-3678 were not identified, marked and offered in evidence; there is no such thing as "irregular insertion" of the July 12, 1995 notice of lis pendens on the titles of Moslares because the entry of notice lis pendens in the Day Book is sufficient notice to all persons of such adverse claim; plaintiff-appellant FBM's contention that the bank would not have agreed to the use of the said titles as collateral if the same were not clean is also self-serving and gratuitous, because it appears from the evidence that the alleged loan is spurious; it would also appear that there were no payments of P10 million for the first lot and P15 million for the two (2) other lots made to Moslares because Felix B. Mariñas testified that he immediately paid Moslares P15 million upon the release of the proceeds in November 1995; however, he also testified that he paid Moslares P15 million and P10 million with checks dated June 10, 1995 and June 15, 1995; thus, it would appear that even before the execution of the first deed of

sale dated October 26, 1995 and the second deed of sale dated January 31, 1999, Moslares had already been paid a total of P35 million and when the payments were made, plaintiff-appellant FBM was supposedly still verifying whether the titles were clean; contrary to the allegation of plaintiff-appellant FBM, there is nothing irregular in the annotations of the notices of lis pendens on Moslares' titles and its claim that said notices were made simultaneously, after it paid in full the purchase price, is unsubstantiated; if it is true that the subject properties were sold by defendant-appellee Pio Barretto to another person in 1990, then no such properties could have been transferred on October 17, 1994 to Moslares, plaintiff-appellant FBM's predecessor-in-interest; and, granting that said properties were sold by defendant-appellee Pio Barretto to another person in 1990, then it is no longer the concern of plaintiff-appellant FBM whose derivative titles from Moslares had been declared null and void by the Supreme Court decision.

The only issues involved in this appeal are: a) whether or not plaintiff-appellant FBM is a buyer in good faith and for value; and, b) whether or not the lower court erred in applying the principle of *res judicata* in this case.

A notice of lis pendens[24] is an announcement to the whole world that a particular real property is in litigation, serving as a warning that one who acquires an interest over said property does so at his own risk, or that he gambles on the result of the litigation over the said property.[25] The filing of a notice of lis pendens charges all strangers with a notice of the particular litigation referred to therein and, therefore, any right they may thereafter acquire on the property is subject to the eventuality of the suit.[26] Such announcement is founded upon public policy and necessity, the purpose of which is to keep the properties in litigation within the power of the court until the litigation is terminated and to prevent the defeat of the judgment or decree by subsequent alienation.[27]

In this case, there is no question that the notices of lis pendens dated July 12, 1995 and January 12, 1996 were both annotated on TCT Nos. 273837, 273838 and 273751. However, plaintiff-appellant FBM claims that before buying the subject properties from Moslares, the titles thereof were clean upon verification with the Office of the Register of Deeds. It insists that the annotations of the notice of lis pendens were anomalous and tainted with irregularity, citing several observations which, according to it, suggest that said entries were made after it paid in full the purchase price of the subject properties. Said observations, however, are insufficient to overthrow the presumption of regularity in the performance of official functions by a public officer. To overthrow such presumption, there must be clear and convincing evidence, which plaintiff-appellant FBM failed to adduce in this case. Nonetheless, granting that said observations were true, plaintiff-appellant FBM failed to state what specific provisions of the law were violated and whether violations thereof were sufficient to render the alleged irregular annotation invalid.

Granting *arguendo* that the annotations of the notices of lis pendens were tainted with irregularity, it is quite perplexing why plaintiff-appellant FBM does not appear to have taken steps to have said annotations invalidated. It failed to explain why it filed this case with the lower court only when the case subject of the notices of lis pendens dated January 12, 1996 became final and executory. While it insinuates that defendant-appellee Pio Barretto had something to do with the alleged irregular annotations, it does not escape this Court's attention that plaintiff-appellant FBM was the one benefited by the issuance of "clean" TCTs in its name that were utilized as collateral for a loan with RCBC. For, indeed, the bank would not grant the loan if the titles to be used as collateral therefor bore notices of lis pendens.

Contrary to plaintiff-appellant FBM's contention, there is no categorical allegation in defendant-appellee Pio Barretto's Complaint[28] in Civil Case No. 95-3678 that the TCTs in the name of Moslares were clean. The substance of defendant-appellee Pio Barretto's complaint is that its titles were fraudulently canceled and the Register of Deeds issued fake or spurious TCT Nos. 273751, 273837 and 273838 in the name of Moslares. Having alleged that Moslares' titles were fake, defendant-appellee Pio Barretto could have not meant that the

same were free and clear of all liens and encumbrances.

Between the oral testimony of Felix B. Mariñas that TCT No. 273838 was clean before plaintiff-appellant FBM purchased the lot covered by it on October 26, 1995 and a documentary evidence consisting of a copy[29] of TCT No. 273838, which is a common exhibit, bearing the July 12, 1995 annotation of lis pendens, the latter has more weight and credence. It bears to note that plaintiff-appellant FBM was not able to present a certified true copy of TCT No. 272838 which does not bear an annotation of the July 12, 1995 notice of lis pendens. It also failed to present a certification from the Register of Deeds attesting to the fact that TCT No. 273838 bore no annotation of lis pendens dated July 12, 1995 at the time of the execution of the deed of sale dated October 26, 1995. If it was true that TCT No. 273838 had no annotation of the July 12, 1995 notice of lis pendens before and at the time of the sale to plaintiff-appellant FBM, there is no reason why the Register of Deeds would not issue a certification to that effect.

With regard to TCT Nos. 273837 and 273751, there is no question that the notice of lis pendens dated January 12, 1996 was annotated thereon before the execution of the Deed of Absolute Sale[30] dated January 31, 1999. While plaintiff-appellant FBM claims that it paid Moslares after the release of its loan from the bank in November 1995, the Deed of Absolute Sale[31] for the lots covered by TCT Nos. 273837 and 273751 was executed only on January 31, 1999. Even assuming that the sale of the lots covered by TCT Nos. 273837 and 273751 between Moslares and plaintiff-appellant FBM was consummated as early as November 1995, the same would not prevail over the notice of lis pendens dated January 12, 1996 because there was no contract of sale registered before January 12, 1996. Sections 51 and 52 of PD 1529, otherwise known as the Property Registration Decree, are pertinent:

“Sec. 51. Conveyance and other dealings by registered owner. – An owner of registered land may convey, mortgage, lease, charge or otherwise deal with the same in accordance with existing laws. He may use such forms of deeds, mortgages, lease or other voluntary instruments as are sufficient in law. But no deed, mortgage, lease or other voluntary instrument, except a will purporting to convey or affect registered land shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Register of Deeds to make Registration.

The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or city where the land lies.

Sec. 52. Constructive notice upon registration. – Every conveyance, mortgage, lease, lien attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering.”

Thus, plaintiff-appellant FBM is bound by the notice of lis pendens dated January 12, 1996 even if it acquired in good faith and for value the lots covered by TCT Nos. 273837 and 273752 in November 1995.

The evidence, however, shows that the contract of sale could not be deemed to have been consummated in November 1995 because there was no meeting of the minds between the parties thereto on the purchase price of the two remaining lots, as Moslares was asking for more money from plaintiff-appellant FBM. They might have initially agreed to a P15 million purchase price and Moslares might have been paid said amount, but his refusal to execute a deed of sale prevented the consummation of the sale due to deficient consideration.

Another factor that militates against the contention of plaintiff-appellant FBM that it is a buyer in good faith and for value is its allegation in paragraph 10 of the Complaint, thus:

10. In the purchase of the properties, the plaintiff also relied on the Order of the Regional Trial Court of Antipolo, Branch 73 dated 15 April 1996 in the case entitled Pio Barretto Realty Development Inc. vs. Honor P. Moslares, et al Civil Case No. 95-3678 which reads:

“Wherefore, premises considered, the Court hereby denies the motion for reconsideration for lace (sic) of merit and hereby reiterates its order of October 20, 1995, dismissing this case. The Register of Deeds of Marikina, Metro Manila is hereby ordered to cancel all the notice of lis pendens annotated at the back of TCT No. 273837, 273838 and 273751.”

On 7 November 1996, the Honorable Court issued a certificate of Finality which reads:

“This is to certify that the Order of the Court dated April 15, 1996 in the above-entitled case had not been supplemented, amended or modified and the same is now final and executory, there being no appeal taken therefrom.”

The Import of the Order of the Honorable Court is that all notices of lis pendens, including that pertaining to the Court of Appeals should be canceled, yet, the counsel for the defendant never requested or sought to clarify the Order. X x x.”

The Order dated April 15, 1996 was a resolution of defendant-appellee Pio Barretto's motion for reconsideration of the Order dated October 25, 1995 which dismissed Civil Case No. 95-3678. The dispositive portion of the Order dated October 25, 1995 was annotated on June 7, 1996 on TCT No. 273751[32] as Entry No. 386055 and TCT No. 273837[33] as Entry 524219 and reads as follows:

“WHEREFORE, premises considered, this court hereby grants the motion to dismiss and hereby dismisses the complaint on the grounds that thereis (sic) a pending action between the same parties for the same cause involving the same properties and that plaintiff Pio Barretto Realty Development, Inc. and its counsel have violated the prohibition against forum shopping. The Register of Deeds of Marikina,MM, (sic) is hereby ordered to cancel whatever notice of lis pendens that may be annotated at the back of TCT's Nos. 273837, 273838 and 273751 by virtue of this dismissal. (Underscoring supplied)

While the Order dated October 25, 1995 dismissed Civil Case No. 95-3678, the dismissal was not on the merits, but on grounds of *litis pendencia* and violation of the prohibition against forum shopping. The annotation of order of dismissal itself gives notice to the whole world that “there is a pending action between the same parties for the same cause involving the same properties.” Thus, plaintiff-appellant FBM could not feign ignorance of the pending case between defendant-appellee Pio Barretto and Moslares, which ultimately reached the Supreme Court. Contrary to plaintiff-appellant FBM's stance, the cancellation of the notice of lis pendens dated July 12, 1995 pursuant to the Order dated October 25, 1995 did not include the notice of lis pendens dated January 12, 1996 since the cancellation of the notices of lis pendens ordered by the lower court was “by virtue of this dismissal.” The subject of the notice of lis pendens dated January 12, 1996 was C.A. G.R. SP No. 33982 which was still pending before the Court of Appeals at the time of the dismissal of Civil Case No. 95-3678.

Having actual knowledge of the pending case between defendant-appellee Pio Barretto and Moslares for the same cause, involving the same properties before it acquired the subject properties covered by TCT Nos. 273837 and 273751, plaintiff-appellant FBM could not claim that it was a buyer in good faith and for value. In *Sandoval v. Court of Appeals*[34] the Supreme Court said:

“It is true that one who deals with property registered under the Torrens system need not go beyond the same, but only has to rely on the face of the title. He is charged with notice only of such burdens and claims as are annotated on the title. However, this principle does not apply when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry or when the purchaser or mortgagee has knowledge of a defect or the lack of title in his vendor or mortgagor or of sufficient facts to

induce a reasonably prudent man to inquire into the status of the title of the property in litigation. One who falls within the exception can neither be denominated an innocent purchaser or mortgagee for value nor a purchaser or mortgagee in good faith.”

The lower court is correct when it held that this case is barred by prior judgment. Res judicata exists when the following elements are present:

- “(a) the former judgment must be final;
- (b) the court which rendered judgment had jurisdiction over the parties and the subject matter;
- (c) it must be a judgment on the merits;
- (d) and there must be between the first and second actions identity of parties, subject matter, and cause of action.”[35]

It is axiomatic that to invoke res judicata, absolute identity of parties is not required. A substantial identity of parties is sufficient. There is substantial identity of parties when there is a community of interest between a party in the first case and that in the second one, even if the latter party was not impleaded in the first case.[36]

In this case, the Decision[37] of the Supreme Court in Pio Barretto vs. Court of Appeals,[38] declaring defendant-appellee Pio Barretto as the absolute owner of the subject properties is now final and executory. The subject matter of the case before the Supreme Court is the same as the subject properties in this case. While plaintiff-appellant FBM was not a party to the case filed by Moslares with the RTC of Manila, Branch 18 for Annulment of Sale with Damages docketed Civil Case No. 84-27008 which was eventually decided with finality by the Supreme Court in favor of defendant-appellee Pio Barretto, it is bound by said judgment because it merely stepped into the shoes of Moslares. As aptly observed the lower court:

“X x x . Herein plaintiff, successor-in-interest of Moslares, though not a party therein, shared an identity of interest from which flowed an identity of relief sought, namely, to declare them the true owner of the said parcels of land. Such identity of interest is sufficient to make them privy-in-law, thereby satisfying the requisite identity of parties.

In effect, this case for quieting of title is simply a second cycle of review involving a subject matter that has already been decided with finality by the Supreme Court.”

Anent the alleged sale by defendant-appellee Pio Barretto of the subject properties in favor of Enriqueta Medina and Edilberto Medina, any controversy relative thereto is a matter that should be resolved in a separate proceeding and only then can it be determined whether there was indeed such a sale. It should be stressed that the motion for intervention of Enriqueta Medina and Edilberto Medina and plaintiff-appellant FBM's motion for joinder of indispensable party were denied by the lower court with finality. Had it been granted, the intervenors or indispensable parties would have been allowed to adduce evidence in support of their allegation. Besides, the deed of sale allegedly executed by defendant-appellee Pio Barretto in favor of Enriqueta Medina and Edilberto Medina does not appear to have been annotated on the titles of the subject properties in order to bind third parties, like plaintiff-appellant FBM.

All told, the lower court did not err in dismissing this case.

WHEREFORE, the appeal is hereby DENIED. The assailed Decision August 24, 2012 of the Regional Trial Court of Antipolo City, Branch 73 in Civil Case No. 02-6447 is AFFIRMED.

SO ORDERED.**C E R T I F I C A T I O N**

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Bruselas, Jr. A.D., and Gaerlan, S.H., JJ., concur.

[1] Record, pp. 188-194

[2] Record, pp. 1-7

[3] Record, pp. 129-143

[4] Record, pp. 196-198

[5] Record, pp. 202-204

[6] Record, pp. 231-234

[7] Record p. 282

[8] Record, pp. 254-263

[9] Record, p. 278

[10] Record, pp. 287-296

[11] Record, pp. 305-325

[12]Plaintiff-appellant FBM's Comments (Motion for Intervention dated 27 November 2003), Record, pp. 450-454; Defendant-appellee Pio Barretto's Opposition (to Intervenor's "Motion for Intervention"), Record, pp. 445-447

[13]Record, pp. 473-474

[14] Record, pp. 475-477

[15] Record, pp. 491-492

[16] Record, pp. 495-496

[17] TSN, May 23, 2006; June 27, 2006

[18]TSN, November 28, 2006

[19] Record, pp. 570-572

[20] Record, p. 597

[21] TSN, February 1, 2011

[22]"Art. 19. Everyone must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith."

[23] G.R. No. 175485, July 27, 2011

[24] 1997 Rules of Civil Procedure, Rule 13, Sec. 14. Notice of lis pendens.--In an action affecting the title or the right of possession of real property, the plaintiff and the defendant, when affirmative relief is claimed in his answer, may record in the office of the registry of deeds of the province in which the property is situated a notice of the pendency of the action. Said notice shall contain the names of the parties and the object of the action or defense, and a description of the property in that province affected thereby. Only from the time of filing such notice for record shall a purchaser, or encumbrancer of the property affected thereby, be deemed to have constructive notice of the pendency of the action, and only of its pendency against the parties designated by their real names.

The notice of lis pendens hereinabove mentioned may be canceled 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 right of the party who caused it to be recorded.

[25] AFP Mutual Benefit Association, Inc. v. Court of Appeals, G.R. No. 104769, 3 March 2000, 327 SCRA 203, 214-215.

[26] Laroza v. Guia, 134 SCRA 341 (1985).

[27] Eduardo Fernandez, et. al. v. Court of Appeals, G.R. No. 115813, 16 October 2000, 343 SCRA 184, 194. Citing Tan et al. v. Lantin et al., 142 SCRA 423, 425 (1986). See Po Lam v. Court of Appeals, G.R. No. 116220, 6 December 2000, 347 SCRA 86, 96-97.

[28] Exhibit Folder, pp. 160-165

[29] Exhibit "K" for plaintiff-appellant FBM; Exhibit "4" for defendant-appellee Pio Barretto, Exhibit Folder, pp. 46-47

[30] Exhibit "Q", Exhibit Folder, pp. 61-64

[31] Exhibit Folder, pp. 61-64

[32] Exhibit Folder, pp. 197-202

[33] Exhibit Folder, pp. 208

[34] 329 Phil. 48 (1996)

[35] Arenas v. Court of Appeals, G.R. No. 126640, November 23, 2000.

[36] Sempio v. CA, 284 SCRA 580, 587, January 22, 1998.

[37] Exhibit 10, Exhibit Folder, pp. 216-232

[38] G.R. No. 132362, June 28, 2001

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