

DANIEL C. VILLANUEVA, PETITIONER, VS. COURT OF APPEALS, LAND REGISTRATION AUTHORITY AND OO KIAN TIOK, RESPONDENTS.

G.R. No. 117108. November 05, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

May the Register of Deeds refuse to register an application for a notice of lis pendens on the ground that the applicant does not have any title or right of possession over the subject properties?

The Case

Petitioner seeks reversal of the Decision[1] of Respondent Court of Appeals[2] promulgated on August 31, 1994 in CA-G.R. SP No. 34449, which answered the foregoing question in the affirmative:

“In view of the foregoing, the Lis Pendens in question is not registrable since it seeks to affect property not belonging to the defendant [petitioner herein], and the action of the Register of Deeds in denying the registration of the same is hereby sustained.” [3]

The lis pendens sought to be registered is Civil Case No. 92-2358 pending before Branch 74 of the Regional Trial Court of Antipolo, Rizal.[4]

The Facts

The assailed Decision fairly narrates the facts as follows: [5]

“Records show that TCT Nos. 262631; 273873 and 2777938 [sic] were issued in the name of Valiant Realty and Development Corporation and Filipinas Textile Mills, Inc. and the same were mortgaged in favor of Equitable Banking Corp. Upon failure of the mortgagors to comply with the terms and conditions of the mortgage, the bank foreclosed the mortgaged properties [and] sold the same to the Equitable Banking Corp. as the highest bidder at public auction sale. After the expiration of the redemption period, mortgagors did not exercise the right of redemption and as a consequence thereof, the mortgagee sold all its rights, interests and participation of said properties to the herein oppositor, Oo Kian Tiok.

Immediately after acquiring the rights, titles and interests of the bank in said properties, Oo Kian Tiok took possession up to the present time, except for a brief period of time when his possession was interrupted by the herein petitioner [who] together with armed goons, [and] without [any] court order swooped down on the properties and disarmed the security guards assigned therein and forcibly removed the 30 workers therefrom, which prompted Oo Kian Tiok to file Civil Case No. 92-2358 against Filipinas Textile Mills, Inc., [and] Daniel Villanueva, et als. for Recovery of Possession and Damages with Prayers for Writ of Preliminary Mandatory Injunction and/or Temporary Order.

As a consequence, the herein petitioner, being one of the defendants of the above-mentioned case, filed a formal request with the Office of the Register of Deeds to annotate a corresponding Notice of Lis Pendens of

Civil Case No. 92-2358 in the respective Memorandum of Encumbrances of TCT Nos. 262631; 273873 and 277938 but the same was denied registration based on the following grounds, to wit:

‘...that Mr. Villanueva is merely asserting possession of the property not on the title or right over the property. While it appears that Mr. Villanueva is an officer of the owner-corporation, Filipinas Textile Mills, Inc., the latter is no longer the owner thereof but plaintiff Oo Tian [sic] Tiok. Moreover, no Board Resolution has been submitted indicating that said Villanueva has been duly authorized by the former owner to file the notice of lis pendens’.

Hence, the petitioner elevated the matter on consulta [to Respondent Land Registration Authority] pursuant to Section 117 of P.D. 1529 on the grounds that the herein petitioner, together with his sister Terry Villanueva-Yap, Eden Villanueva, Susan Villanueva and his brother Frank Villanueva are the lawful owners of the 63% of the beneficial shares of Filipinas Textile Mills, Inc. and are not merely asserting possession but also ownership over the subject properties contrary to the conclusion submitted by the Register of Deeds. (Resolution, pp. 1-2)”

The consulta was decided against petitioner by Respondent Land Registration Authority and later, on appeal, by Respondent Court. Hence, this petition for review under Rule 45 of the Rules of Court.[6]

The Issues

Petitioner assigns the following errors to Respondent Court: [7]

"A. Not appreciating petitioner’s compliance with all the requirements set forth under the Land Registration Act and the Rules of Court;

B. Not finding that the petitioner duly raised the affirmative defense of ownership over the properties subject of Civil Case No. 92-2358;

C. Not finding that the Respondent Land Registration Authority erred in assuming jurisdiction to determine the issue of ownership over the properties subject of civil case no. 92-2358;

D. In affirming the resolution of the Respondent Land Registration Authority in Consulta No. 2131.”

The Solicitor General, as counsel for Respondent Land Registration Authority, summarizes the issue:[8]

“Whether or not the notice of lis pendens requested by petitioner to be annotated in the respective memorandum of encumbrances at the back of TCT Nos. 262631, 273873 and 277938 is registrable.”

Stated simply, the issue is whether petitioner’s application for registration of the notice of lis pendens should be rejected on the ground that it affects a property which does not belong to him personally, but is merely claimed by a corporation, the majority (63%) of which is owned by him and his brothers and sisters.

Respondent Court’s Ruling

In dismissing petitioner’s appeal, Respondent Court ruled:[9]

“Even if the petitioner were able to comply with all the requirements (referring to the formalities) for the annotation of a notice of lis pendens, it does not necessarily follow that he would ipso facto be entitled to such annotation. There is need for him to show that he owns the subject property or that he has right or interest vis-à-vis its possession. The mere possession of a property does not give rise to the right to annotate. Without such title or interest, whence would his right to annotate come from?

The petitioner contends that the determination of registrability of a notice of lis pendens is ministerial as far as the Register of Deeds is concerned. On the basis of the evidence on record, this is exactly what the Register of

Deeds of Rizal did - he refused to annotate because it clearly appears from the documents submitted (specifically, T.C.T. Nos. 262631, 273873 and 277938) that the subject parcels of land are registered not in the name of Villanueva but in the name of Valiant Realty and Development Corporation and co-defendant Filipinas Textile Mills, Inc. The Register of Deeds did not attempt to go beyond what clearly appears in the aforementioned Transfer Certificates of Title. He did not attempt, as the petitioner would imply, to inquire into and try to resolve conflicting allegations of the claimants of the aforesaid property.

The Land Registration Authority in its assailed resolution had aptly pointed out that petitioner Villanueva had not produced a board resolution of Filipinas Textile Mills, Inc. authorizing him to take possession of the litigated property. Hence, although it may be conceded that Villanueva is in possession thereof, it would appear that his possession is illegal which would not result in vesting in him any right or interest over the above-cited property. As far as the said property is concerned, Villanueva is a third person, a stranger. There could be no dispute as to the fact that Filipinas Textile Mills, Inc. (in the name of which the contested parcels of land are registered) and Villanueva are, before the law, two separate and distinct persons. Indubitably Villanueva is not Filipinas Textiles Mills, Inc.”

The Court’s Ruling

The petition is meritorious.

Sole Issue: Registration of Lis Pendens

Who May Register Notice of Lis Pendens?

Petitioner contends that a notice of lis pendens may be filed in relation to actions “affecting the title to or possession of real property.” In the instant petition, defendants in Civil Case No. 92-2358, among whom is petitioner, “repeatedly and emphatically” allege that it is Filipinas Textile Mills, Inc. (FTMI), of which petitioner is a stockholder, which owns the properties in question. Thus, an affirmative relief of ownership is prayed for in the answer which sanctions registration of the notice of lis pendens.[10]

Private Respondent Oo Kian Tiok counters¹⁰ that the errors and arguments raised in the petition at bar are “mere repetitions of those already discussed in [the] petition for review” submitted before Respondent Court, “which the latter had already considered, weighed and resolved adversely to the herein petitioner.” [11]

The Solicitor General, on the other hand, asserts:[12]

“Based on the incontrovertible facts, the notice of lis pendens requested by petitioner to be annotated on the back of the aforesaid certificates of title is not registrable, because the registration will affect the property obviously not belonging to petitioner, who is one of the defendants in Civil Case No. 92-2358 filed before the Regional Trial Court of Antipolo, Branch 74. It has been consistently held by public respondent LRA, as in Consulta No. 430, Pedro del Rosario, petitioner versus the Register of Deeds of Quezon City, respondent, and in Consulta No. 146, the Register of Deeds of Sorsogon, petitioner, that a notice of lis pendens is not registrable if it seeks to affect property not belonging to the defendant.”

The notice of lis pendens is an announcement to the whole world that a particular real property is in litigation, and serves 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 said property.[13] The registration of a notice of lis pendens is governed by Section 24, Rule 14 of the Rules of Court:[14]

“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 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.”

In *Magdalena Homeowners Association, Inc. vs. Court of Appeals*,^[15] this Court enumerated the cases where a notice of lis pendens is proper:

“According to Section 24, Rule 14 of the Rules of Court and Section 76 of Presidential Decree No. 1529, a notice of lis pendens is proper in the following cases, viz.:

- a) An action to recover possession of real estate;
- b) An action to quiet title thereto;
- c) An action to remove clouds thereon;
- d) An action for partition; and
- e) Any other proceedings of any kind in Court directly affecting the title to the land or the use or occupation thereof or the buildings thereon.

The notice of lis pendens--i.e., that real property is involved in an action--is ordinarily recorded without the intervention of the court where the action is pending. The notice is but an incident in an action, an extrajudicial one, to be sure. It does not affect the merits thereof. It is intended merely to constructively advise, or warn, all people who deal with the property that they so deal with it at their own risk, and whatever rights they may acquire in the property in any voluntary action transaction are subject to the results of the action, and may well be inferior and subordinate to those which may finally be determined and laid down therein. The cancellation of such a precautionary notice is therefore also a mere incident in the action, and may be ordered by the Court having jurisdiction of it at any given time. And its continuance or removal--like the continuance or removal of a preliminary attachment or injunction--is not contingent on the existence of a final judgment in the action, and ordinarily has no effect on the merits thereof.”

To annotate a notice of lis pendens, the following elements must be present: (a) the property must be of such character as to be subject to the rule; (b) the court must have jurisdiction both over the person and the res; and (c) the property or res involved must be sufficiently described in the pleadings.^[16]

Only the first requisite is at issue in this case; the second and the third requisites are not. In explaining the first requirement, former Senator Vicente J. Francisco wrote:^[17]

“x x x to all suits or actions which directly affect real property and not only those which involve the question of title, but also those which are brought to establish an equitable estate, interest, or right, in specific real property or to enforce any lien, charge, or encumbrance against it, there being in some cases a lis pendens, although at the commencement of the suit there is no present vested interest, claim, or lien in or on the property which it seeks to charge. It has also been held to apply in the case of a proceeding to declare an absolute deed a mortgage, or to redeem from a foreclosure sale, or to establish a trust, or to suits for the settlement and adjustment of partnership interests. [fn: 54 C.J.S., 577-578]

It is not sufficient that the title or right of possession may be incidentally affected. Thus a proceeding to forfeit the charter of a corporation does not deprive it of the power to dispose of its property, nor does it place such

property within the rule of lis pendens, so that purchasers thereof may lose the property or right to the possession through the appointment of a receiver. [fn: Havemeyer vs. Superior Court, 84 Cal. 327, 18 Am. St. Rep. 192, 24 Pac. 121, 10 L.R.A. 627 x x x]

In order that the doctrine of lis pendens may apply, so that purchaser of property may be bound by the judgment or decree rendered, it is essential that there be in existence a pending action, suit or proceeding, and there can be no lis pendens because of the fact that an action or suit is contemplated. [fn: 54 C.J.S., 583]"

Civil Case No. 92-2358, which petitioner sought to annotate, is an action for "recovery of possession and damages with prayer for writ of preliminary mandatory injunction and/or temporary restraining order." That civil case is an accion publiciana or a plenary action in an ordinary civil proceeding to determine the better and legal right to possess (independently of title).¹⁹ What private respondent sought to recover was not just possession de facto but possession de jure.²⁰ On the other hand, the defendants in Civil Case No. 92-2358 alleged in their answer that there was fraud committed among Bernardino Villanueva, Equitable Banking Corporation and Respondent Oo Kian Tiok, such that the real estate mortgage was invalid. Hence, the subsequent auction of the mortgaged property transferred "no right, title and interest whatsoever" to Equitable Bank as the highest bidder and thence to private respondent as buyer. In effect, the defendants in the civil case directly opposed the recovery of possession prayed for by the plaintiff and in fact challenged the very validity of the title of private respondent. Both contentions of the parties thus directly put the properties under the coverage of the rule, thereby sufficiently satisfying the first requisite and placing the case squarely within the parameters set by Magdalena.²¹

In our jurisdiction, the following may file a notice of lis pendens:²²

"(a) The plaintiff -- at the time of filing the complaint.

(b) The defendant --

1) at the time of filing his answer (when affirmative relief is claimed in such answer)

2) or at any time afterwards (See Sec. 24, Rule 14)"

Petitioner is one of the defendants in Civil Case No. 92-2358.²³ Now, is it necessary for him to prove to the Register of Deeds that the properties to which he seeks annotation of the notice of lis pendens belong to him as required by Respondent Court? We do not believe so. The law does not require such proof from the defendant. We cannot find any valid reason why we should add to the requirements set in the Rules. The settled doctrine in statutory construction is that legal intent is determined principally from the language of the statute. Where the language of a statute is clear and unambiguous, the law is applied according to its express terms, and interpretation would be resorted to only where a literal interpretation would be either impossible or absurd or would lead to an injustice.²⁴

We stress that although it is not necessary for the applicant to prove his ownership or interest over the property sought to be affected by lis pendens, the applicant must, in the complaint or answer filed in the subject litigation, assert a claim of possession or title over the subject property in order to give due course to his application. As settled, lis pendens may be annotated only where there is an action or proceeding in court, which affects the title to, or possession of, real property.²⁵

Be it remembered that a notation of lis pendens does not create a nonexistent right or lien. It serves merely as a warning to a person who purchases or contracts on the subject property that he does so at his peril and subject to the result of the pending litigation.²⁶ The registration of the notice of lis pendens is done without leave of court. The Rule merely requires an affirmative relief to be claimed in the answer to enable a defendant to apply for the annotation of the notice.²⁷ There is no requirement that the applying defendant must prove his right or interest

over the property sought to be annotated. In deciding the issue of whether the application by petitioner is registerable, Respondent Court concluded: “it would appear that his possession is illegal which would not result in vesting in him any right or interest over the above-cited properties.”²⁸ This conclusion of Respondent Court was premature, as it preempted the trial on the merits of the main case sought to be registered.

On the other hand, an affirmative relief or defense is an allegation of a new matter which, while admitting, expressly or impliedly, the material allegations of the complaint would nevertheless prevent or bar recovery by the plaintiff. Affirmative defenses include fraud, statute of limitations, release, payment, illegality, statute of frauds, estoppel, former recovery, discharge in bankruptcy, and other matters alleged by way of confession and avoidance.²⁹ An affirmative defense may be an allegation of new matters -- that is, facts different from those averred by the plaintiff which, if true, destroys or negates the plaintiff’s right of action. An affirmative defense admits the facts alleged by the plaintiff, or at least those not necessarily denied by the interposition of the affirmative defense itself. Even though an affirmative defense contains allegations inconsistent with those of the complaint, the latter must, in the absence of denials, nevertheless be taken as admitted in the defense.³⁰ In the case at bar, the defendants in Civil Case No. 92-2358 insist that fraud attended the agreement among Bernardino Villanueva, Equitable Banking Corporation and Respondent Oo Kian Tiok. Such fraud, if proven true, will defeat or bar the claim of said respondent and benefit the defendants.

Petitioner in this case was impleaded by private respondent as one of the defendants in the trial court; thus, he falls under the definition of the Rules as a party claiming affirmative relief. His status as a mere stockholder can no longer be questioned in this case, much less his capacity to sue on the mere pretext that he was not authorized by the corporation to litigate on its behalf. We emphasize that the issue at bar is the right to annotate the pendency of Civil Case No. 92-2358, not the legal standing of petitioner to represent the corporation in the said case.

Wary that the properties which were mortgaged and auctioned would be dissipated and/or passed to innocent purchasers for value, petitioner initiated the move to annotate the lis pendens to protect the corporation’s right. He correctly acted, considering that there was, as alleged by private respondent, an intra-corporate controversy which effectively barred a common action by the management of the corporation.³¹

In any event, a reading of the allegations in the answer will readily show that defendants (herein petitioner included) were not merely asserting a right of possession over the disputed properties. Rather, they were insisting on their ownership over the said real estate, claiming that plaintiff (herein private respondent) was “not entitled at all to their possession, because he did not have any right, title or interest whatsoever over them.”³² The following allegations in the answer illustrate the claim of petitioner for affirmative relief:³³

“Answering Defendants, for the reasons and facts stated herein and in their Affirmative Allegations and Affirmative Defenses, specifically deny the following allegations in the original Complaint dated 08 May 1992:

x x x x x x x x

3.3.1. The compound located on Amang E. Rodriguez Avenue, Barangay San Roque, Cainta, Rizal is owned by plaintiff, the truth being that such compound is owned by defendant FTMI being covered by the titles of the Subject Properties which are registered in the name of defendant FTMI;

x x x x x x x x

3.3.4. The compound located on Amang E. Rodriguez Avenue, Barangay San Roque, Cainta, Rizal was being unlawfully occupied by defendants Daniel Villanueva, Terry Villanueva-Yu, Susan Villanueva, Eden Villanueva, Frankie Villanueva, Artemio Tuquero, Mel P. Dimat and Bienvenido Bulaong, the truth being that the occupation of the compound by said defendants was lawful because they are duly elected and authorized

directors, officers and/or representatives of defendant FTMI which is the registered owner thereof;

3.4 Paragraph 5, insofar as it is alleged that:

3.4.1. Plaintiff is the lawful owner of three (3) parcels of land together with the properties and improvements that may be found therein, situated in Barangay San Roque, Cainta, Rizal, the truth being that plaintiff has no right, title and interest whatsoever in the said properties; and

3.4.2. The Certification dated 06 April 1992 of Mr. Vicente A. Garcia, Register of Deeds of Pasig, attached as Annex 'B' to the Complaint proves that plaintiff Oo Kian Tiok purchased the rights and interests over the titles of defendant FTMI from EBC, the truth being that such a Certification merely shows that defendant Bernardino Villanueva connived and colluded with EBC and plaintiff whereby the Subject Properties were illegally mortgaged, and then sold at public auction auction [sic] in favor of EBC, and thereafter allegedly purchased by Oo Kian Tiok through a Redemption Contract;

3.5 Paragraph 6, in so far as it is made to appear that defendant FTMI is the former-owner of the three (3) lots covered by T.C.T. Nos. 262631, 273873, and 277938 of the Registry of Deeds for the Province of Rizal, the truth being that defendant FTMI remains as the registered owner of the aforementioned three (3) lots;

3.6 Paragraph 7, insofar as it is alleged, that:

3.6.1 Defendant FTMI obtained a loan of Twenty Five Million Pesos (P25,000,000.00) from EBC, the truth being that the loan purportedly obtained by defendant Bernardino Villanueva ostensibly on behalf of defendant FTMI was not duly authorized by defendant FTMI's board of directors, and thus not binding upon defendant FTMI;

3.6.2 Defendant FTMI mortgaged the Subject Properties, with all the buildings, improvements, machineries and equipment thereon, to EBC on 14 July 1982, the truth being that the alleged mortgage was never authorized by defendant FTMI's board of directors and therefore, not binding upon defendant FTMI;

x x x x x x x x

3.8 Paragraph 10, insofar as it is stated that defendant FTMI had one (1) year from 01 August 1988, or until 01 August 1989, to redeem the Subject Properties, the truth being that since the Subject Properties were never validly mortgaged nor foreclosed, there was, in reality, no period within which to redeem the Subject Properties.

x x x x x x x x

3.12. Paragraph 15, insofar as it is made to appear that:

3.12.1. The action taken on 04 April 1992 is merely an offshoot of an intra-corporate controversy between the owners and stockholders of defendant FTMI, the truth being that the action taken on 04 April 1992 was a valid exercise by defendant FTMI and/or its authorized representatives of its power of administration over its own properties;

3.12.2. Plaintiff is an innocent bystander and is allegedly being helplessly dragged into the controversy, the truth being that plaintiff is conniving and colluding with defendant Bernardino Villanueva in order to wrest ownership and possession of the Subject Properties from its registered owner, defendant FTMI, in order to favor defendant Bernardino Villanueva;"

To require that an applicant must prove his ownership or his interest over the property sought to be affected with the notice of lis pendens will unduly restrict the scope of the rule. In such case, a party questioning the ownership of the registered owner will litigate his or her case without an assurance that the property will be protected from unwanted alienation during the pendency of the action, thereby defeating the very purpose and rationale of the

registration.Kyle

WHEREFORE, the petition is hereby GRANTED. The assailed Decision is REVERSED and SET ASIDE. The Land Registration Authority is hereby ORDERED to annotate the application for a notice of lis pendens in TCT Nos. 262631, 273873 and 277938. No costs.
SO ORDERED.

Romero, Melo, and Francisco, JJ., concur.
Narvasa, C.J., (Chairman), on official leave.

[1] Rollo, pp. 148-156.

[2] Sixth Division composed of J. Serafin V.C. Guingona, ponente; and JJ. Gloria C. Paras and Eubulo G. Verzola, concurring.

[3] Rollo, p. 148.

[4] Ibid., p. 44.

[5] Ibid., pp. 148-150; Decision, pp. 1-3.

[6] This case was deemed submitted for resolution or decision upon receipt by the Court of public respondent's memorandum on May 11, 1996.

[7] Ibid., p. 27; Petition, p. 9; original text in upper case.

[8] Ibid., p. 262; Solicitor General's Memorandum, p. 4; original text in upper case.

[9] Ibid., pp. 154-155; Decision, pp. 7-8.

[10] Ibid., pp. 28-34; Petition, pp. 10-16.

10 We need not discuss Respondent Tiok's contention that petitioner failed to comply with Requirement No. 4 of Revised Circular 1-88 as to verified statement of material dates. Page 8 of the petition states (Rollo, p. 26):

"20. On September 14, 1994, petitioner received duplicate copy of the DECISION promulgated on August 31, 1994 by the Honorable Court of Appeals, x x x

The verification is on pages 22-23 of the petition, if private respondent only cared to read.

[11] Rollo, p. 194; Private Respondent's Memorandum, p. 5; original text in upper case.

[12] Ibid., p. 263; Solicitor General's Memorandum, p. 5.

[13] Yu vs. Court of Appeals, 251 SCRA 509, 513, December 26, 1995; Tanchoco, et al. vs. Hon. Aquino, et al., 154 SCRA 1, September 15, 1987; J.P. Pellicer & Co., Inc. vs. Philippine Realty Corp., 87 Phil. 302 (1950); Constantino vs. Espiritu, 45 SCRA 557, 563, June 30, 1972 citing Sikatuna vs. Guevara, 43 Phil. 371 (1922) and Jose vs. Blue, L-28646, November 29, 1971, 42 SCRA 351. Some other cases after Sikatuna and before Blue follow: Fetalino vs. Sanz, 44 Phil. 691 (1923); Atkins, Kroll and Co. vs. Domingo, 46 Phil. 362 (1924); De Gomez vs. Jugo, 48 Phil. 118 (1925); Pineda vs. Santos, 56 Phil. 583 (1931); Lazaro vs. Mariano, 59 Phil. 627 (1934) and Jamara vs. Duran, 69 Phil. 3 (1939).

[14] This was the rule in effect at the time the application was made. For the current rule, please see Section 14, Rule 13 of the 1997 Rules of Court.

[15] 184 SCRA 325, 329-330, April 17, 1990, per Narvasa, J., now CJ.

[16] Francisco, Vicente, J., *The Revised Rules of Court in the Philippines*, Volume I, 1973 edition, p. 831 citing 54 C.J.S. 574.

[17] *Ibid.*

[19] *Reyes vs. Sta. Maria*, 91 SCRA 164, 168-169, June 29, 1979.

[20] The Complaint filed on May 8, 1992 with the Regional Trial Court in Civil Case 92-2358, alleges the following (Rollo, p. 47-a):

[14]. On April 4, 1992 at around 11:00 o' clock in the morning, defendants DANIEL VILLANUEVA, MEL DIMAT, BIENVENIDO BULAONG, with the aid of several other individuals, with the use of armalites, hand guns and other weapons forced their way into the COMPOUND, and with the use of violence, threats, force and intimidation, drove away the security guards and employees of plaintiff and took over actual and physical possession thereof and took control over the buildings, machineries, equipment and other improvements found therein.

[15]. In justifying their actions, defendants Villanueva, Bulaong, and Dimat alleged that the COMPOUND and the properties therein are still owned by defendant FILTEX and that as officers of FILTEX, they were authorized by Defendant FILTEX to take over possession of the COMPOUND. Apparently, this action taken by Defendants Villanueva, Dimat, and Bulaong is merely an offshoot of an intra-corporate corporate [sic] controversy between the owners and stockholders of Defendant FILTEX, to which controversy plaintiff, as an innocent bystander, is now being helplessly dragged. However, the alleged intra-corporate between the stockholders of of [sic] defendant FILTEX has no bearing whatsoever on the issue of ownership of the COMPOUND by virtue of the failure of FILTEX to redeem the said properties from EBC, and the exercise of the said right to redeem by plaintiff."

[21] *Supra*, note 15.

[22] *Paras, Rules of Court*, Volume I, second edition, 1989, p. 380.

[23] Rollo, p. 44.

[24] *Ramirez vs. Court of Appeals*, 248 SCRA 590, September 28, 1995, citing *Pacific Oxygen and Acetylene Co. vs. Central Bank*, 37 SCRA 685 (1971) and *Casela vs. Court of Appeals*, 35 SCRA 279 (1970); *Allarde vs. Commission on Audit*, 218 SCRA 227, January 29, 1993 citing *Provincial Board of Cebu vs. Presiding Judge of Cebu, CFI, Branch IV*, 171 SCRA 1; *Libanan vs. Sandiganbayan*, 233 SCRA 163, June 14, 1994.

[25] *Dino vs. Court of Appeals*, 213 SCRA 422, September 2, 1992.

[26] *Chan Gan vs. Collector of Customs*, 62 Phil. 432, 442, October 30, 1935.

[27] 34 Am. Jur. 382.

[28] Rollo, p. 155; Decision, p. 8.

[29] Section 5, Rule 6 of Rules of Court.

[30] 71 C.J.S. 328.

[31] Page 5 (Rollo, p. 47-a) of Respondent Oo Kian Tiok's Complaint reads:

"15. In justifying their actions, defendants Villanueva, Bulaong, and Dimat alleged that the COMPOUND and the

properties therein are still owned by defendant FILTEX and that as officers of FILTEX, they were authorized by defendant FILTEX to take over possession of the COMPOUND. Apparently, this action taken by Defendants Villanueva, Dimat, and Bulaong is merely an offshoot of an intra-corporate corporate [sic] controversy between the owners and stockholders of Defendant FILTEX, to which controversy plaintiff, as an innocent bystander, is now being helplessly dragged. However, the alleged intra-corporate [controversy] between the stockholders of of [sic] defendant FILTEX has no bearing whatsoever on the issue of ownership of the COMPOUND by virtue of the failure of FILTEX to redeem the said properties from EBC, and the exercise of the said right to redeem by plaintiff.”

[32] Rollo, p. 30; Petition, p. 12.

[33] Ibid., pp. 84-90.

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