

AKE HERNUDD, GOSTA JANSBO, HANS BRYNGELSSON, PETER LOFGREN AND JORDANA HOLDINGS CORPORATION, FOR ITSELF AND ON BEHALF OF SAN REMO DEVELOPMENT CORP., INC., PETITIONERS, VS. LARS ...

G.R. NO. 140337. September 27, 2007

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Assailed in the instant Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, are the Decision dated July 28, 1999 and Resolution dated October 11, 1999 of the Court of Appeals in CA-G.R. SP No. 49246.

Ake Hernudd, Gosta Jansbo, Hans Bryngelsson and Peter Lofgren, petitioners, are a group of Swedish nationals who formed an unincorporated association in Stockholm, Sweden, known as the Swedish Investors Group (SIG) for the purpose of collectively investing their resources in the Philippines. San Remo Development Corporation, Inc. (SRDC), respondent, is a corporation organized by certain Swedish individuals residing in the Philippines, namely: Mats Hillerstam, spouses Sven and Eva Arnborg and Olof Arnborg; and four Filipinos, namely: Domingo Jhocson, Roberto Cabanos, Brigido Sibug and William Maceren. Its principal purpose is to own, develop and operate a planned golf resort and recreation project in San Remigio, Cebu. The interests of spouses Sven and Eva Arnborg were later acquired by spouses Lars and Liza Lofgren, also respondents.

On May 15, 1995, SIG, represented by petitioner Ake Hernudd and HILO (Hillerstam and Lofgren), a partnership represented by respondent Lars Lofgren, entered into a Joint Venture Agreement[1] with respondent SRDC, represented by respondent Liza S. Lofgren, to invest in the latter's business undertakings. For the purpose, SIG and HILO extended loans to SRDC in the amounts of US\$1,424,000.00 and US\$172,000.00, respectively. Both loans bear an interest of 10% per annum starting March 28, 1995 compounded annually and booked in US dollars.

Concomitant with the Joint Venture Agreement, the parties signed on the same date a Joint Venture Contract[2], the pertinent portions of which provide:

PURPOSE

SIG and Hilo are 50/50 investors in SAN REMO DEVELOPMENT CO. INC., hereinafter called SRDC. The overall intention is for SRDC to consolidate, convert and title land suitable for sales (part of the land can be sold, mortgaged or put as security for investment in Development). SRDC can also participate with stock certificates as collateral/investment in a Resort development. x x x

BASIS FOR COOPERATION

The basis for cooperation is a 50/50 joint-venture with profit sharing, ownership and future injections which in all shall be shared equally by HILO and SIG.

x x x

Repayment of loans and profit sharing shall be regulated in “J-V AGREEMENT MAY 15” which is duly notarized. Whether loans are repaid from company earnings or from sale of the corporate stock same technique shall be applied: loans shall be repaid in proportion to disposed assets. Evaluation of assets can be done by independent surveyor and shall be agreed upon by both parties in advance. The remaining land shall fully cover the value of the remaining loans.

From the proceeds of the loan, SRDC purchased parcels of land consisting of 1,337,479 square meters or more than 133 hectares in San Remigio, Cebu. Petitioners later gave SRDC an amount of US\$115,000 as additional capital contribution.

On December 8, 1997, petitioners filed a complaint for sum of money “to collect their loans to defendants” with the Regional Trial Court of Makati (RTC), Branch 141, docketed as Civil Case No. 97-2870. Among those impleaded as defendants were respondents Lars E. Lofgren, Liza S. Lofgren, Leosyl Salcedo and SRDC. The complaint alleges that respondent spouses Lofgren, together with Mats Hillerstam, have exercised absolute and total control and management of the property as if it belonged to them personally. They did not work for the parties’ mutual interests in San Remo, but instead enriched themselves at the expense of petitioners by setting up Sun Reno Development Corporation (Sun Reno), a new entity to compete with SRDC. Respondents were fictitiously and fraudulently transferring assets of SRDC to Sun Reno and its Satellite Companies,[3] owned and controlled by respondent spouses Lofgren, in order to render SRDC insolvent and unable to pay its loans. Almost half of the 133 hectares of lands has been transferred to Sun Reno and its Satellite Companies.

A day after, or on December 9, 1997, petitioners caused the annotation of a notice of lis pendens on the tax declarations covering the parcels of land in the name of SRDC.

Thereupon, respondents filed a Motion for the Cancellation of Notice of Lis Pendens claiming that the agreement between petitioners and SRDC involves the enforcement of a contract of loan and not a “direct and indirect alienation of parcels of land owned by the defendants in favor of the plaintiffs.” Petitioners timely filed their opposition thereto.

Meanwhile, petitioners Ake Hernudd, Gosta Jansbo, Hans Bryngelsson and Peter Lofgren assigned and transferred to Jordana Holdings Corporation (JHI), also a petitioner, all their rights, titles and interests in SRDC and their 50% shares of stock therein. Thus, the complaint was amended to include JHI as party plaintiff and a prayer that an order be issued by the RTC directing respondent SRDC to issue its 50% outstanding and subscribed shares of stock to JHI.

On September 2, 1998, respondents’ Motion for Cancellation of Notice of Lis Pendens was granted. The RTC found that “(t)here is nothing in the complaint that would indicate that the action is one affecting the title or right of possession over real property; this case is purely a collection suit.”

After their motion for reconsideration was denied on October 5, 1998, petitioners filed with the Court of Appeals a petition for certiorari alleging that the RTC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its Orders of September 2 and October 5, 1998. They maintained that their complaint is one “affecting title or right of possession over real property” and is not “purely a collection suit.” Thus, the annotation of a notice of lis pendens on the tax declarations covering SRDC’s real properties is in order.

Meanwhile, on January 28, 1999, petitioners entered into a Compromise Agreement with some of the defendants in Civil Case No. 97-2870, namely: Mats Hillerstam, Roberto Cabanos, Domingo L. Jhocson, Jr. and Brigido Sibug, Jr. On February 25, 1999, petitioners and defendant Olof Arnborg executed another Compromise

Agreement whereby the parties expressly acknowledged that:

4.1. SRDC is liable to SIG for the total amount of the Loans of US\$1,424,404 plus 10% interest per annum from 28 March 1995 until fully paid, compounded annually.

4.2 Fifty percent (50%) of the lands of the Project, including all lands in the name of SRDC and the lands transferred from SRDC to Sun Reno and the Satellite Companies, shall stand as security for the loans of SIG.

4.3 Sun Reno, the Satellite Companies, and any person or entity to whom any land of SRDC has been transferred, are trustees holding the lands in trust for SRDC.

In both Compromise Agreements, SIG agreed to drop Hillerstam, Cabanos, Jhocson, Sibug and Arnborg as defendants in Civil Case No. 97-2870 and that the latter shall join petitioners as plaintiffs in the case and “cooperate and work together with SIG and JHC to prosecute the causes of action in Civil Case No. 97-2870 against spouses Lofgren, the Arnborgs, Lysyl Salcedo and William Maceren, especially the recovery of lands fraudulently transferred to Sun Reno and the Satellite Companies.”

On July 8, 1999, the RTC rendered a Partial Decision approving the two Compromise Agreements.[4]

Going back to petitioners’ petition for certiorari, on July 28, 1999, the Court of Appeals denied the petition holding that no grave abuse of discretion was committed by the RTC in ordering the cancellation of the notice of lis pendens, thus:

At this point in time, We cannot rule on any other issue or matter, apart from our determination that public respondent judge had proper jurisdiction over the case and that he did not commit any grave abuse of discretion in issuing the assailed orders. A special civil action for certiorari is limited to questions of jurisdiction or grave abuse of discretion (*Philippine Air Lines, Inc. v. NLRC*, 276 SCRA 391).

Foregoing premises considered, we deny this petition.[5]

Petitioners filed a motion for reconsideration but it was denied by the appellate court in a Resolution dated October 11, 1999.

Hence, the instant Petition for Review on Certiorari alleging that the action before the RTC is one affecting title or right of possession over real properties. Hence, the Court of Appeals erred in finding that the RTC did not commit any grave abuse of discretion in ordering the cancellation of the notice of lis pendens on SRDC’s tax declarations on the ground that the action is purely a collection suit.

In their comment, respondents assert that the findings of fact by the trial court when affirmed by the Court of Appeals are binding on this Court. Consequently, such findings can no longer be reviewed by this Court.

We do not agree. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence, considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances, as well as their relation to each other and to the whole, and the probability of the situation.[6] A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted.[7]

Here, the issues to be resolved are: (1) whether the complaint filed by petitioners is purely a collection suit and

not one affecting title or right of possession over real property; and (2) whether petitioners may cause the annotation of lis pendens on SRDC's tax declarations. Obviously, these are questions of law, the determination of which does not involve a review or evaluation of the parties' evidence.

Settled is the rule that what determines the nature of the action as well as the court which has jurisdiction over the case are the allegations in the complaint. The cause of action in a complaint is not what the designation of the complaint states, but what the allegations in the body of the complaint define or describe. The designation or caption is not controlling, more than the allegations in the complaint, for it is not even an indispensable part of the complaint.[8] In *Caniza v. Court of Appeals*,[9] we held that what determines the nature of an action as well as which court has jurisdiction over it are the allegations of the complaint and the character of the relief sought.

Although the complaint filed by petitioners shows that they are suing to collect respondents' loans, the allegations therein and the reliefs sought indicate that the action is one affecting title or right of possession of real properties, thus:

x x x

b) In order to prevent further injury to petitioners from the fraudulent scheme to divest San Remo of all its lands, which stand as security for the loans, respondents should be enjoined from (a) transferring any more lands from San Remo to Sun Reno, the Satellite Companies or to any other person or entity; (b) further transferring the lands already transferred to Sun Reno and the Satellite Companies; and (c) entering into or implementing the joint venture or other agreement relating to Verdemar Golf Club or committing any of the subject lands to Verdemar Golf Club or other third parties;

c. In order to restore the land already transferred to Sun Remo and Satellite Companies, respondents should be declared to be trustees, holding such lands in trust for San Remo as security for the loans; and

x x x

The above allegations categorically show that petitioners' complaint involves their interest and title to the parcels of land subject of this litigation. As stated by the trial court in its assailed order of September 2, 1998, "(a) reading of the complaint reveals that plaintiffs' prayer for preliminary injunction was to preserve defendant SRDC's ownership over said lands and to ensure the satisfaction of any judgment that may be rendered in this suit." Hence, petitioners properly caused the annotation of the notice of lis pendens on respondents' tax declarations.

A 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 of said property.[10] It may involve actions that deal not only with the title or possession of a real property, but even with the use or occupation thereof.

Under Section 14, Rule 13 of the 1997 Rules of Civil Procedure[11], as amended, and Section 76 of Presidential Decree No. 1529[12], a notice of lis pendens may be availed of in any of the following cases, thus:

(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 building thereon.

In Villanueva v. Court of Appeals,[13] we declared that the rule of lis pendens applies also to 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 of mortgage, or to redeem from a foreclosure sale, or to establish a trust, or to suits for the settlement and adjustment of partnership interests.

In Viewmaster Construction Corporation v. Maulit,[14] petitioner Viewmaster agreed as guarantor for the loan of one Allen Roxas with the First Metro Investment, Inc. for two distinct considerations: (a) to enable it to purchase 50 percent of the stocks that Roxas may acquire in State Investment and (b) to co-develop with Roxas the properties of the corporation. On the issue of whether the doctrine of lis pendens is applicable to a proceeding in which the only object is the recovery of money judgment, though the title to or right of possession of property may be incidentally affected, we ruled:

Hence, by virtue of the alleged agreement with Allen Roxas, petitioner has a direct—not merely incidental—interest in the Las Piñas property. Contrary to respondents’ contention, the action involves not only the collection of a money judgment, but also the enforcement of petitioner’s right to co-develop and use the property.

The Court must stress that the purpose of lis pendens is (1) to protect the rights of the party causing the registration thereof and (2) to advise third persons who purchase or contract on the subject property that they do so at their peril and subject to the result of the pending litigation. One who deals with property subject of a notice of lis pendens cannot acquire better rights than those of his predecessors-in-interest.

While petitioners’ complaint is one for sum of money, however, the allegations call for the enforcement of their right over the subject real properties fraudulently being transferred by respondents to Sun Reno and the Satellite Companies. Wary that the properties of the SRDC would be dissipated and/or passed to innocent purchasers for value, petitioners correctly initiated the move to annotate the lis pendens to protect their rights. Without a notice of lis pendens, their rights over the properties would be left unprotected until the conflicting rights and interest of the parties are determined. For a third party who acquires the property after relying only on its title (tax declarations in this case) would be deemed a purchaser in good faith. Against such third party, the supposed rights of petitioners cannot be enforced because the former is not bound by the property owners’ undertakings not annotated in the title.[15]

In sum, considering that petitioners’ allegations in their complaint do not only involve a collection for sum of money, but also the enforcement of their right over the subject parcels of land, it follows that the RTC, in ordering its cancellation, committed grave abuse of discretion.

WHEREFORE, we GRANT the petition. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 49246 are REVERSED. The Register of Deeds and the Provincial Assessor of the Province of Cebu are directed to retain the annotation of lis pendens on the tax declarations covering the real properties of San Remo Development Corporation, Inc. No costs.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Azcuna, and Garcia, JJ., concur.

[1] Rollo, pp. 210-212.

[2] *Id.*, pp. 213-216.

[3] *Ake, Inc., Alptac Land, Inc., Baril Land, Inc., Beetla Land Inc., Gesta, Inc., Gooran Co., Inc., Gosta, Inc., Hans AB, Inc., Remigio Land, Inc., Riverat, Inc., and Tipon, Inc.*

[4] *Rollo*, p. 102.

[5] *Id.*, p. 69.

[6] *Republic v. Sandiganbayan*, G.R. No. 102508, January 30, 2002, 375 SCRA 145, citing *China Road and Bridge Corp. v. Court of Appeals*, 348 SCRA 401 (2000).

[7] *Ibid.*, citing *Uniland Resources v. Development Bank of the Philippines*, 200 SCRA 751, 755 (1991); *Roman Catholic Archbishop of Manila v. Court of Appeals*, 258 SCRA 186, 199 (1996); *China Road and Bridge Corp. v. Court of Appeals*, *supra*.

[8] *Sumulong v. Court of Appeals*, G.R. No. 108817, May 10, 1994, 232 SCRA 372.

[9] G.R. No. 110427, February 24, 1997, 268 SCRA 640.

[10] *Villanueva v. Court of Appeals*, G.R. No. 117108, November 5, 1997, 281 SCRA 298.

[11] Section 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. x x x

x x x

[12] Section 76. Notice of lis pendens. — No action to recover possession of real estate, or to quiet title thereto, or to remove clouds upon the title thereof, or for partition, or other proceedings of any kind in court directly affecting the title to land or the use or occupation thereof or the buildings thereon, and no judgment, and no proceeding to vacate or reverse any judgment, shall have any effect upon registered land as against persons other than the parties thereto, unless a memorandum or notice stating the institution of such action or proceeding and the court wherein the same is pending, as well as the date of the institution thereof, together with a reference to the number of the certificate of title, and an adequate description of the land affected and the registered owner thereof, shall have been filed and registered.

[13] *Supra*, citing 54 C.J.S. 577-578. See also *Viewmaster Construction Corporation v. Maulit*, G.R. No. 136283, February 29, 2000, 326 SCRA 821.

[14] *Id.*

[15] *Id.*, p. 832, citing *Pino v. Court of Appeals*, 198 SCRA 434 (1991); *Dino v. Court of Appeals*, 213 SCRA 422 (1992).

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