

ATLANTIC ERECTORS, INC., PETITIONER, VS. HERBAL COVE REALTY CORPORATION, RESPONDENT.

G.R. No. 148568. March 20, 2003

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The pendency of a simple collection suit arising from the alleged nonpayment of construction services, materials, unrealized income and damages does not justify the annotation of a notice of lis pendens on the title to a property where construction has been done.

Statement of the Case

Before the Court is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court, challenging the May 30, 2000 Decision[2] of the Court of Appeals (CA) in CA-GR SP No. 56432. The dispositive portion of the Decision is reproduced as follows:

“WHEREFORE, the petition is granted and the assailed November 4, 1998 and October 22, 1999 orders annulled and set aside. The July 30, 1998 order of respondent judge is reinstated granting the cancellation of the notices of lis pendens subject of this petition.”[3]

In its July 21, 2001 Resolution,[4] the CA denied petitioner’s Motion for Reconsideration.

The Facts

The factual antecedents of the case are summarized by the CA in this wise:

“On June 20, 1996, [respondent] and [petitioner] entered into a Construction Contract whereby the former agreed to construct four (4) units of [townhouses] designated as 16-A, 16-B, 17-A and 17-B and one (1) single detached unit for an original contract price of P15,726,745.19 which was late[r] adjusted to P16,726,745.19 as a result of additional works. The contract period is 180 days commencing [on] July 7, 1996 and to terminate on January 7, 1997. [Petitioner] claimed that the said period was not followed due to reasons attributable to [respondent], namely: suspension orders, additional works, force majeure, and unjustifiable acts of omission or delay on the part of said [respondent]. [Respondent], however, denied such claim and instead pointed to [petitioner] as having exceeded the 180 day contract period aggravated by defective workmanship and utilization of materials which are not in compliance with specifications.

x x x x x x x x

“On November 21, 1997, [petitioner] filed a complaint for sum of money with damages (Civil Case No. 97-2707) with the Regional Trial Court of Makati entitled ‘Atlantic Erectors, Incorporated vs. Herbal Cove Realty Corp. and Ernest C. Escal[e]r’. This case was raffled to Branch 137, x x x Judge Santiago J. Ranada presiding. In said initiatory pleading, [petitioner] AEI asked for the following reliefs:

‘AFTER DUE NOTICE AND HEARING, to order x x x defendant to:

- Pay plaintiff the sum of P4,854,229.94 for the unpaid construction services already rendered;

- To x x x pay plaintiff the sum of P1,595,551.00 for the construction materials, equipment and tools of plaintiff held by defendant;
- To x x x pay plaintiff the sum of P2,250,000.00 for the [loss] x x x of expected income from the construction project;
- [T]o x x x pay plaintiff the sum of P800,000.00 for the cost of income by way of rental from the equipment of plaintiff held by defendants;
- To x x x pay plaintiff the sum of P5,000,000.00 for moral damages;
- To x x x pay plaintiff the sum of P5,000,000.00 for exemplary damages;
- To x x x pay plaintiff the sum equivalent of 25% of the total money claim plus P200,000.00 acceptance fee and P2,500.00 per court appearance;
- To x x x pay the cost of suit.'

"On the same day of November 21, 1997, [petitioner] filed a notice of lis pendens for annotation of the pendency of Civil Case No. 97-707 on titles TCTs nos. T-30228, 30229, 30230, 30231 and 30232. When the lots covered by said titles were subsequently subdivided into 50 lots, the notices of lis pendens were carried over to the titles of the subdivided lots, i.e., Transfer Certificate of Title Nos. T-36179 to T-36226 and T-36245 to T-36246 of the Register of Deeds of Tagaytay City.

"On January 30, 1998, [respondent] and x x x Ernest L. Escaler, filed a Motion to Dismiss [petitioner's] Complaint for lack of jurisdiction and for failure to state a cause of action. They claimed [that] the Makati RTC has no jurisdiction over the subject matter of the case because the parties' Construction Contract contained a clause requiring them to submit their dispute to arbitration.

x x x x x x x x

"On March 17, 1998, [RTC Judge Ranada] dismissed the Complaint as against [respondent] for [petitioner's] failure to comply with a condition precedent to the filing of a court action which is the prior resort to arbitration and as against x x x Escaler for failure of the Complaint to state a cause of action x x x.

"[Petitioner] filed a Motion for Reconsideration of the March 17, 1998 dismissal order. [Respondent] filed its Opposition thereto.

"On April 24, 1998, [respondent] filed a Motion to Cancel Notice of Lis Pendens. It argued that the notices of lis pendens are without basis because [petitioner's] action is a purely personal action to collect a sum of money and recover damages and x x x does not directly affect title to, use or possession of real property.

"In his July 30, 1998 Order, [Judge Ranada] granted [respondent's] Motion to Cancel Notice of Lis Pendens x x x:

"[Petitioner] filed a Motion for Reconsideration of the aforesaid July 30, 1998 Order to which [respondent] filed an Opposition.

"In a November 4, 1998 Order, [Judge Ranada,] while finding no merit in the grounds raised by [petitioner] in its Motion for Reconsideration, reversed his July 30, 1998 Order and reinstated the notices of lis pendens, as follows:

- '1. The Court finds no merit in plaintiff's contention that in dismissing the above-entitled case for lack of jurisdiction, and at the same time granting defendant Herbal Cove's motion to cancel notice of lis pendens, the Court [took] an inconsistent posture. The Rules provide that prior to the transmittal of the original record on

appeal, the court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal (3rd par., Sec. 10, Rule 41). Even as it declared itself without jurisdiction, this Court still has power to act on incidents in this case, such as acting on motions for reconsideration, for correction, for lifting of lis pendens, or approving appeals, etc.

‘As correctly argued by defendant Herbal Cove, a notice of lis pendens serves only as a precautionary measure or warning to prospective buyers of a property that there is a pending litigation involving the same.

‘The Court notes that when it issued the Order of 30 July 1998 lifting the notice of lis pendens, there was as yet no appeal filed by plaintiff. Subsequently, on 10 September 1998, after a notice of appeal was filed by plaintiff on 4 September 1998, the Branch Clerk of Court was ordered by the Court to elevate the entire records of the above-entitled case to the Court of Appeals. It therefore results that the above-entitled case is still pending. After a careful consideration of all matters relevant to the lis pendens, the Court believes that justice will be better served by setting aside the Order of 30 July 1998.’

“On November 27, 1998, [respondent] filed a Motion for Reconsideration of the November 4, 1998 Order arguing that allowing the notice of lis pendens to remain annotated on the titles would defeat, not serve, the ends of justice and that equitable considerations cannot be resorted to when there is an applicable provision of law.

x x x x x x x x

“On October 22, 1999, [Judge Ranada] issued an order denying [respondent’s] Motion for Reconsideration of the November 4, 1998 Order for lack of sufficient merit.”[5]

Thereafter, Respondent Herbal Cove filed with the CA a Petition for Certiorari.

Ruling of the Court of Appeals

Setting aside the Orders of the RTC dated November 4, 1998 and October 22, 1999, the CA reinstated the former’s July 30, 1998 Order[6] granting Herbal Cove’s Motion to Cancel the Notice of Lis Pendens. According to the appellate court, the re-annotation of those notices was improper for want of any legal basis. It specifically cited Section 76 of Presidential Decree No. 1529 (the Property Registration Decree). The decree provides that the registration of such notices is allowed only when court proceedings directly affect the title to, or the use or the occupation of, the land or any building thereon.

The CA opined that the Complaint filed by petitioner in Civil Case No. 97-2707 was intended purely to collect a sum of money and to recover damages. The appellate court ruled that the Complaint did not aver any ownership claim to the subject land or any right of possession over the buildings constructed thereon. It further declared that absent any claim on the title to the buildings or on the possession thereof, the notices of lis pendens had no leg to stand on.

Likewise, the CA held that Judge Ranada should have maintained the notice cancellations, which he had directed in his July 30, 1998 Order. Those notices were no longer necessary to protect the rights of petitioner, inasmuch as it could have procured protective relief from the Construction Industry Arbitral Commission (CIAC), where provisional remedies were available. The CA also mentioned petitioner’s admission that there was already a pending case before the CIAC, which in fact rendered a decision on March 11, 1999.

The appellate court further explained that the re-annotation of the Notice of Lis Pendens was no longer warranted after the court a quo had ruled that the latter had no jurisdiction over the case. The former held that the rationale behind the principle of lis pendens -- to keep the subject matter of the litigation within the power of the court until the entry of final judgment -- was no longer applicable. The reason for such inapplicability was that the Makati RTC already declared that it had no jurisdiction or power over the subject matter of the case.

Finally, the CA opined that petitioner's Complaint had not alleged or claimed, as basis for the continued annotation of the Notice of Lis Pendens, the lien of contractors and laborers under Article 2242 of the New Civil Code. Moreover, petitioner had not even referred to any lien of whatever nature. Verily, the CA ruled that the failure to allege and claim the contractor's lien did not warrant the continued annotation on the property titles of Respondent Herbal Cove.

Hence, this Petition.[7]

The Issues

Petitioner raises the following issues for our consideration:

“I. Whether or not money claims representing cost of materials [for] and labor [on] the houses constructed on a property [are] a proper lien for annotation of lis pendens on the property title[.]

“II. Whether or not the trial court[,] after having declared itself without jurisdiction to try the case[,] may still decide on [the] substantial issue of the case.”[8]

This Court's Ruling

The Petition has no merit.

First Issue:

Proper Basis for a Notice of Lis Pendens

Petitioner avers that its money claim on the cost of labor and materials for the townhouses it constructed on the respondent's land is a proper lien that justifies the annotation of a notice of lis pendens on the land titles. According to petitioner, the money claim constitutes a lien that can be enforced to secure payment for the said obligations. It argues that, to preserve the alleged improvement it had made on the subject land, such annotation on the property titles of respondent is necessary.

On the other hand, Respondent Herbal Cove argues that the annotation is bereft of any factual or legal basis, because petitioner's Complaint[9] does not directly affect the title to the property, or the use or the possession thereof. It also claims that petitioner's Complaint did not assert ownership of the property or any right to possess it. Moreover, respondent attacks as baseless the annotation of the Notice of Lis Pendens through the enforcement of a contractor's lien under Article 2242 of the Civil Code. It points out that the said provision applies only to cases in which there are several creditors carrying on a legal action against an insolvent debtor.

As a general rule, the only instances in which a notice of lis pendens may be availed of are as follows: (a) an action to recover possession of real estate; (b) an action for partition; and (c) any other court proceedings that directly affect the title to the land or the building thereon or the use or the occupation thereof.[10] Additionally, this Court has held that resorting to lis pendens is not necessarily confined to cases that involve title to or possession of real property. This annotation also applies to suits seeking to establish a right to, or an equitable estate or interest in, a specific real property; or to enforce a lien, a charge or an encumbrance against it.[11]

Apparently, petitioner proceeds on the premise that its money claim involves the enforcement of a lien. Since the money claim is for the nonpayment of materials and labor used in the construction of townhouses, the lien referred to would have to be that provided under Article 2242 of the Civil Code. This provision describes a contractor's lien over an immovable property as follows:

“Art. 2242. With reference to specific immovable property and real rights of the debtor, the following claims,

mortgages and liens shall be preferred, and shall constitute an encumbrance on the immovable or real right:

x x x x x x x x

“(3) Claims of laborers, masons, mechanics and other workmen, as well as of architects, engineers and contractors, engaged in the construction, reconstruction or repair of buildings, canals or other works, upon said buildings, canals or other works;

“(4) Claims of furnishers of materials used in the construction, reconstruction, or repair of buildings, canals or other works, upon said buildings, canals or other works[.]” (Emphasis supplied)

However, a careful examination of petitioner’s Complaint, as well as the reliefs it seeks, reveals that no such lien or interest over the property was ever alleged. The Complaint merely asked for the payment of construction services and materials plus damages, without mentioning -- much less asserting -- a lien or an encumbrance over the property. Verily, it was a purely personal action and a simple collection case. It did not contain any material averment of any enforceable right, interest or lien in connection with the subject property.

As it is, petitioner’s money claim cannot be characterized as an action that involves the enforcement of a lien or an encumbrance, one that would thus warrant the annotation of the Notice of Lis Pendens. Indeed, the nature of an action is determined by the allegations of the complaint.[12]

Even assuming that petitioner had sufficiently alleged such lien or encumbrance in its Complaint, the annotation of the Notice of Lis Pendens would still be unjustified, because a complaint for collection and damages is not the proper mode for the enforcement of a contractor’s lien.

In *J.L. Bernardo Construction v. Court of Appeals*,^[13] the Court explained the concept of a contractor’s lien under Article 2242 of the Civil Code and the proper mode for its enforcement as follows:

“Articles 2241 and 2242 of the Civil Code enumerates certain credits which enjoy preference with respect to specific personal or real property of the debtor. Specifically, the contractor’s lien claimed by the petitioners is granted under the third paragraph of Article 2242 which provides that the claims of contractors engaged in the construction, reconstruction or repair of buildings or other works shall be preferred with respect to the specific building or other immovable property constructed.

“However, Article 2242 finds application when there is a concurrence of credits, i.e., when the same specific property of the debtor is subjected to the claims of several creditors and the value of such property of the debtor is insufficient to pay in full all the creditors. In such a situation, the question of preference will arise, that is, there will be a need to determine which of the creditors will be paid ahead of the others. Fundamental tenets of due process will dictate that this statutory lien should then only be enforced in the context of some kind of a proceeding where the claims of all the preferred creditors may be bindingly adjudicated, such as insolvency proceedings.”^[14] (Emphasis supplied)

Clearly then, neither Article 2242 of the Civil Code nor the enforcement of the lien thereunder is applicable here, because petitioner’s Complaint failed to satisfy the foregoing requirements. Nowhere does it show that respondent’s property was subject to the claims of other creditors or was insufficient to pay for all concurring debts. Moreover, the Complaint did not pertain to insolvency proceedings or to any other action in which the adjudication of claims of preferred creditors could be ascertained.

Another factor negates the argument of petitioner that its money claim involves the enforcement of a lien or the assertion of title to or possession of the subject property: the fact that it filed its action with the RTC of Makati, which is undisputedly bereft of any jurisdiction over respondent’s property in Tagaytay City. Certainly, actions affecting title to or possession of real property or the assertion of any interest therein should be commenced and

tried in the proper court that has jurisdiction over the area, where the real property involved or a portion thereof is situated.[15] If petitioner really intended to assert its claim or enforce its supposed lien, interest or right over respondent's subject properties, it would have instituted the proper proceedings or filed a real action with the RTC of Tagaytay City, which clearly had jurisdiction over those properties.[16]

Narciso Peña, a leading authority on the subject of land titles and registration, gives an explicit exposition on the inapplicability of the doctrine of *lis pendens* to certain actions and proceedings that specifically include money claims. He explains in this wise:

“By express provision of law, the doctrine of *lis pendens* does not apply to attachments, levies of execution, or to proceedings for the probate of wills, or for administration of the estate of deceased persons in the Court of First Instance. Also, it is held generally that the doctrine of *lis pendens* has no application to a proceeding in which the only object sought is the recovery of a money judgment, though the title or right of possession to property be incidentally affected. It is essential that the property be directly affected, as where the relief sought in the action or suit includes the recovery of possession, or the enforcement of a lien, or an adjudication between conflicting claims of title, possession, or the right of possession to specific property, or requiring its transfer or sale”[17] (Emphasis supplied)

Peña adds that even if a party initially avails itself of a notice of *lis pendens* upon the filing of a case in court, such notice is rendered nugatory if the case turns out to be a purely personal action. We quote him as follows:

“It may be possible also that the case when commenced may justify a resort to *lis pendens*, but during the progress thereof, it develops to be purely a personal action for damages or otherwise. In such event, the notice of *lis pendens* has become *functus officio*.”[18] (Emphasis supplied)

Thus, when a complaint or an action is determined by the courts to be in *personam*, the rationale for or purpose of the notice of *lis pendens* ceases to exist. To be sure, this Court has expressly and categorically declared that the annotation of a notice of *lis pendens* on titles to properties is not proper in cases wherein the proceedings instituted are actions in *personam*.[19]

Second Issue:

Jurisdiction of the Trial Court

Petitioner argues that the RTC had no jurisdiction to issue the Order canceling the Notice of *Lis Pendens* as well as the Order reinstating it. Supposedly, since both Orders were issued by the trial court without jurisdiction, the annotation made by the Register of Deeds of Tagaytay City must remain in force.

Petitioner avers that the trial court finally declared that the latter had no jurisdiction over the case on July 27, 1998, in an Order denying the former's Motion for Reconsideration of the March 17, 1998 Order dismissing the Complaint. Petitioner insists that the subsequent July 30, 1998 Order cancelling the subject Notice of *Lis Pendens* is void, because it was issued by a court that had no more jurisdiction over the case.

Rule 41 of the 1997 Rules on Civil Procedure, which governs appeals from regional trial courts, expressly provides that RTCs lose jurisdiction over a case when an appeal is filed. The rule reads thus:

“SEC. 9. Perfection of appeal; effect thereof. -- A party's appeal by notice of appeal is deemed perfected as to him upon the filing of the notice of appeal in due time.

x x x x x x x x

“In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.” (Emphasis supplied)

On the basis of the foregoing rule, the trial court lost jurisdiction over the case only on August 31, 1998, when petitioner filed its Notice of Appeal.[20] Thus, any order issued by the RTC prior to that date should be considered valid, because the court still had jurisdiction over the case. Accordingly, it still had the authority or jurisdiction to issue the July 30, 1998 Order canceling the Notice of Lis Pendens. On the other hand, the November 4, 1998 Order that set aside the July 30, 1998 Order and reinstated that Notice should be considered without force and effect, because it was issued by the trial court after it had already lost jurisdiction.

In any case, even if we were to adopt petitioner's theory that both the July 30, 1998 and the November 4, 1998 Orders were void for having been issued without jurisdiction, the annotation is still improper for lack of factual and legal bases.

As discussed previously, erroneously misplaced is the reliance of petitioner on the premise that its money claim is an action for the enforcement of a contractor's lien. Verily, the annotation of the Notice of Lis Pendens on the subject property titles should not have been made in the first place. The Complaint filed before the Makati RTC -- for the collection of a sum of money and for damages -- did not provide sufficient legal basis for such annotation.

Finally, petitioner vehemently insists that the trial court had no jurisdiction to cancel the Notice. Yet, the former filed before the CA an appeal, docketed as CA-GR CV No. 65647,[21] questioning the RTC's dismissal of the Complaint for lack of jurisdiction. Moreover, it must be remembered that it was petitioner which had initially invoked the jurisdiction of the trial court when the former sought a judgment for the recovery of money and damages against respondent. Yet again, it was also petitioner which assailed that same jurisdiction for issuing an order unfavorable to the former's cause. Indeed, parties cannot invoke the jurisdiction of a court to secure affirmative relief, then repudiate or question that same jurisdiction after obtaining or failing to obtain such relief.[22]

WHEREFORE, the Petition is hereby DENIED and the assailed Decision AFFIRMED. Costs against petitioner.

SO ORDERED.

Puno, (Chairman), Sandoval-Gutierrez, Corona and Carpio-Morales, JJ., concur.

[1] Rollo, pp. 7-28.

[2] Id., pp. 31-43. The Decision was penned by Justice Presbitero J. Velasco Jr. and concurred in by Justices Bernardo Ll. Salas and Edgardo P. Cruz.

[3] Assailed CA Decision, p. 13; rollo, p. 43.

[4] Id., pp. 46-47.

[5] Assailed CA Decision, pp. 2-7; rollo, pp. 32-37.

[6] Rollo, p. 72.

[7] This case was deemed submitted for decision on September 12, 2002, upon receipt by this Court of respondent's Memorandum signed by Atty. Salvador L. Peña of Abello Concepcion Regala & Cruz. Petitioner's Memorandum, signed by Atty. Benjaim A. Moraleda Jr., was received by this Court on August 12, 2002.

[8] Petitioner's Memorandum, p. 9; rollo, p. 159.

[9] Rollo, pp. 53-58.

[10] Yared v. Ilarde, 337 SCRA 53, August 1, 2000.

[11] Viewmaster Construction Corporation v. Maulit, 326 SCRA 821, February 29, 2000.

[12] Producers Bank of the Philippines v. Bank of the Philippine Islands, 340 SCRA 87, September 8, 2000; City of Olongapo v. Stallholders of the East Bajac-Bajac Public Market of Olongapo City, 343 SCRA 705, October 19, 2000.

[13] 324 SCRA 24, January 31, 2000.

[14] Id., pp. 35-36, per Gonzaga-Reyes, J.

[15] Rudolf Lietz Holdings, Inc. v. Registry of Deeds of Paranaque City, 344 SCRA 680, November 15, 2000.

[16] §§1 and 2 of Rule 4 of the 1997 Revised Rules on Civil Procedure provides the proper venue for the filing of real and personal actions as follows:

“Section 1. Venue of real actions. – Actions affecting title to or possession of real property, or any interest therein, shall be commenced and tried in the proper court, which has jurisdiction over the area, wherein the real property involved or a portion thereof, is situated.

“Forcible entry and detainer actions shall be commenced and tried in the municipal trial court of the municipality or city wherein the real property involved, or a portion thereof, is situated.

“Section 2. Venue of personal actions. – All other actions may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found at the election of the plaintiff.”

[17] 1988, p. 390.

[18] Ibid.

[19] AFP Mutual Benefit Association, Inc. v. CA, 327 SCRA 203, March 3, 2000.

[20] Petition, p. 7; rollo, p. 13.

[21] Ibid.

[22] Province of Bulacan v. Court of Appeals, 299 SCRA 442, November 27, 1998.

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