

**J. CASIM CONSTRUCTION SUPPLIES, INC., PETITIONER, VS.
REGISTRAR OF DEEDS OF LAS PIÑAS, RESPONDENT.***G.R. No. 168655. July 02, 2010*

Ponente: PERALTA, J.

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This is a petition for review under Rule 45 of the Rules of Court, taken directly on a pure question of law from the April 14, 2005 Resolution[1] and June 24, 2005 Order[2] issued by the Regional Trial Court (RTC) of Las Piñas City, Branch 253 in Civil Case No. LP-04-0071[3] ¹ one for cancellation of notice of lis pendens. The assailed Resolution dismissed for lack of jurisdiction the petition filed by J. Casim Construction Supplies Inc. for cancellation of notice of lis pendens annotated on its certificate of title, whereas the assailed Order denied reconsideration.

The facts follow.

Petitioner, represented herein by Rogelio C. Casim, is a duly organized domestic corporation[4] in whose name Transfer Certificate of Title (TCT) No. 49936,[5] covering a 10,715-square meter land was registered. Sometime in 1982, petitioner acquired the covered property by virtue of a Deed of Absolute Sale[6] and as a result the mother title, TCT No. 30459 was cancelled and TCT No. 49936 was issued in its stead.[7]

On March 22, 2004, petitioner filed with the RTC of Las Piñas City, Branch 253 an original petition for the cancellation of the notice of lis pendens, as well as of all the other entries of involuntary encumbrances annotated on the original copy of TCT No. 49936. Invoking the inherent power of the trial court to grant relief according to the petition, petitioner prayed that the notice of lis pendens as well as all the other annotations on the said title be cancelled. Petitioner claimed that its owner's duplicate copy of the TCT was clean at the time of its delivery and that it was surprised to learn later on that the original copy of its TCT, on file with the Register of Deeds, contained several entries which all signified that the covered property had been subjected to various claims. The subject notice of lis pendens is one of such entries.[8] The notations appearing on the title's memorandum of encumbrances are as follows:

Entry No. 81-8334/T-30459 - ADVERSE CLAIM - In an affidavit duly subscribed and sworn to, BRUNO F. CASIM claims, among other things, that he has the right and interest over the property described herein in accordance with Doc. No. 336; Page No. 69; Book No. 1; s. of 1981 of Not. Pub. of Makati, M.M., Romarie G. Villonco, dated August 4, 1981.

Date of inscription - Aug. 5, 1981 - 2:55 p.m.
(Sgd) VICTORIANO S. TORRES, Actg. Reg. of Deeds

Entry No. 82-4676/T-49936 - CANCELLATION OF ADVERSE CLAIM inscribed hereon under Entry No. 81-8334/T-30459 in accordance with Doc. No. 247; Page 50; Book No. CXLI; s. of 1982 of Not. Pub. of Pasay City, M.M., Julian G. Tubig, dated April 21, 1982.

Date of inscription - April 21, 1982 - 8:40 a.m.

(Sgd) VICTORIANO S. TORRES, Actg. Reg. of Deeds

Entry No. 82-4678/T-49936 - AFFIDAVIT - In accordance with the affidavit duly executed by the herein registered owners, this title is hereby cancelled and in lieu thereof TCT No. 49936/T-228 has been issued in accordance with Doc. No. 249; Page No. 80; Book No. CXLI; s. of 1982 of Not. Pub. of Pasay City, M.M., Julian G. Tubig, dated April 21, 1982.

Date of inscription - April 21, 1982 - 8:44 a.m.

(Sgd) VICTORIANO S. TORRES, Actg. Reg. of Deeds

Entry No. 81-12423/T-30459 - NOTICE OF LIS PENDENS: By virtue of the notice of Lis Pendens presented and filed by CESAR P. MANALAYSAY, counsel for the plaintiff, notice is hereby given that a petition for review has been commenced and now pending in the Court of First Instance of Rizal, Branch XXIX, Pasay, M.M, in Civil Case No. LP-9438-P, BRUNEO F. CASIM, Plaintiff, vs. SPS. JESUS A. CASIM & MARGARITA CHAVEZ and Sps. Urbano Nobleza and Cristita J. Nobleza, and Filomena C. Antonio, Defendants, involving the property described herein.

Date of the instrument - Sept. 17, 1981

Date of the inscription - Sept. 18, 1981 - 3:55 p.m.

(Sgd) VICTORIANO S. TORRES, Actg. Reg. of Deeds[9]

To justify the cancellation, petitioner alleged that the notice of lis pendens, in particular, was a forgery judging from the inconsistencies in the inscriber's signature as well as from the fact that the notice was entered non-chronologically, that is, the date thereof is much earlier than that of the preceding entry. In this regard, it noted the lack of any transaction record on file with the Register of Deeds that would support the notice of lis pendens annotation.[10]

Petitioner also stated that while Section 59 of Presidential Decree (P.D.) No. 1529 requires the carry-over of subsisting encumbrances in the new issuances of TCTs, petitioner's duplicate copy of the title did not contain any such carry-over, which means that it was an innocent purchaser for value, especially since it was never a party to the civil case referred to in the notice of lis pendens. Lastly, it alludes to the indefeasibility of its title despite the fact that the mother title, TCT No. 30459, might have suffered from certain defects and constraints.[11]

The Intestate Estate of Bruneo F. Casim, representing Bruneo F. Casim, intervened in the instant case and filed a Comment/Opposition[12] in which it maintained that the RTC of Las Piñas did not have jurisdiction over the present action, because the matter of canceling a notice of lis pendens lies within the jurisdiction of the court before which the main action referred to in the notice is pending. In this regard, it emphasized that the case referred to in the said notice had already attained finality as the Supreme Court had issued an entry of judgment therein and that the RTC of Makati City had ordered execution in that case.[13] It cited the lack of legal basis for the petition in that nothing in the allegations hints at any of the legal grounds for the cancellation of notice of lis pendens.[14] And, as opposed to petitioner's claim that there was no carry-over of encumbrances made in TCT No. 49936 from the mother title TCT No. 30459, the latter would show that it also had the same inscriptions as those found in TCT No. 49936 only that they were entered in the original copy on file with the Register of Deeds. Also, as per Certification[15] issued by the Register of Deeds, petitioner's claim of lack of transaction record could not stand, because the said certification stated merely that the corresponding transaction record could no longer be retrieved and might, therefore, be considered as either lost or destroyed.

On April 14, 2005, the trial court, ruling that it did not have jurisdiction over the action, resolved to dismiss the petition and declared that the action must have been filed before the same court and in the same action in relation to which the annotation of the notice of lis pendens had been sought. Anent the allegation that the entries in the TCT were forged, the trial court pointed out that not only did petitioner resort to the wrong forum to determine the

existence of forgery, but also that forgery could not be presumed merely from the alleged non-chronological entries in the TCT but instead must be positively proved. In this connection, the trial court noted petitioner's failure to name exactly who had committed the forgery, as well as the lack of evidence on which the allegation could be based.[16] The petition was disposed of as follows:

IN VIEW OF THE FOREGOING, the instant petition is hereby DISMISSED.

SO ORDERED.[17]

Petitioner moved for reconsideration,[18] but it was denied in the trial court's June 24, 2005 Order.[19]

Now, raising the purely legal question of whether the RTC of Las Piñas City, Branch 253 has jurisdiction in an original action to cancel the notice of lis pendens annotated on the subject title as an incident in a previous case, petitioner, in this present petition, ascribes error to the trial court in dismissing its petition for cancellation. An action for cancellation of notice of lis pendens, petitioner believes, is not always ancillary to an existing main action because a trial court has the inherent power to cause such cancellation, especially in this case that petitioner was never a party to the litigation to which the notice of lis pendens relates.[20] Petitioner further posits that the trial court has committed an error in declining to rule on the allegation of forgery, especially since there is no transaction record on file with the Register of Deeds relative to said entries. It likewise points out that granting the notice of lis pendens has been properly annotated on the title, the fact that its owner's duplicate title is clean suggests that it was never a party to the civil case referred to in the notice.[21] Finally, petitioner posits that TCT No. 49936 is indefeasible and holds it free from any liens and encumbrances which its mother title, TCT No. 30459, might have suffered.[22]

The Intestate Estate of Bruneo F. Casim (intervenor), in its Comment on the present petition, reiterates that the court a quo does not have jurisdiction to order the cancellation of the subject notice of lis pendens because it is only the court exercising jurisdiction over the property which may order the same ¹ that is, the court having jurisdiction over the main action in relation to which the registration of the notice has been sought. Also, it notes that even on the assumption that the trial court had such jurisdiction, the petition for cancellation still has no legal basis as petitioner failed to establish the grounds therefor. Also, the subject notice of lis pendens was validly carried over to TCT No. 49936 from the mother title, TCT No. 30459.

In its Reply,[23] petitioner, in a semantic slur, dealt primarily with the supposed inconsistencies in intervenor's arguments. Yet the core of its contention is that the non-chronological annotation of the notice stands to be the best evidence of forgery. From this, it advances the notion that forgery of the notice of lis pendens suffices as a ground for the cancellation thereof which may be availed of in an independent action by the aggrieved party.

The petition is utterly unmeritorious.

Lis pendens ¹ which literally means pending suit ¹ refers to the jurisdiction, power or control which a court acquires over the property involved in a suit, pending the continuance of the action, and until final judgment.[24] Founded upon public policy and necessity, lis pendens is intended 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.[25] Its notice is an announcement to the whole world that a particular 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.[26]

A notice of lis pendens, once duly registered, may be cancelled by the trial court before which the action involving the property is pending. This power is said to be inherent in the trial court and is exercised only under express provisions of law.[27] Accordingly, Section 14, Rule 13 of the 1997 Rules of Civil Procedure authorizes

the trial court to cancel a notice of lis pendens where it is properly shown that the purpose of its annotation is for molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be annotated. Be that as it may, the power to cancel a notice of lis pendens is exercised only under exceptional circumstances, such as: where such circumstances are imputable to the party who caused the annotation; where the litigation was unduly prolonged to the prejudice of the other party because of several continuances procured by petitioner; where the case which is the basis for the lis pendens notation was dismissed for non prosecutur on the part of the plaintiff; or where judgment was rendered against the party who caused such a notation. In such instances, said notice is deemed ipso facto cancelled.[28]

In theorizing that the RTC of Las Piñas City, Branch 253 has the inherent power to cancel the notice of lis pendens that was incidentally registered in relation to Civil Case No. 2137, a case which had been decided by the RTC of Makati City, Branch 62 and affirmed by the Supreme Court on appeal, petitioner advocates that the cancellation of such a notice is not always ancillary to a main action.

The argument fails.

From the available records, it appears that the subject notice of lis pendens had been recorded at the instance of Bruneo F. Casim (Bruneo) in relation to Civil Case No. 2137[29] ¹ one for annulment of sale and recovery of real property ² which he filed before the RTC of Makati City, Branch 62 against the spouses Jesus and Margarita Casim, predecessors-in-interest and stockholders of petitioner corporation. That case involved the property subject of the present case, then covered by TCT No. 30459. At the close of the trial on the merits therein, the RTC of Makati rendered a decision adverse to Bruneo and dismissed the complaint for lack of merit.[30] Aggrieved, Bruneo lodged an appeal with the Court of Appeals, docketed as CA-G.R. CV No. 54204, which reversed and set aside the trial court's decision.[31] Expectedly, the spouses Jesus and Margarita Casim elevated the case to the Supreme Court, docketed as G.R. No. 151957, but their appeal was dismissed for being filed out of time.[32]

A necessary incident of registering a notice of lis pendens is that the property covered thereby is effectively placed, until the litigation attains finality, under the power and control of the court having jurisdiction over the case to which the notice relates.[33] In this sense, parties dealing with the given property are charged with the knowledge of the existence of the action and are deemed to take the property subject to the outcome of the litigation.[34] It is also in this sense that the power possessed by a trial court to cancel the notice of lis pendens is said to be inherent as the same is merely ancillary to the main action.[35]

Thus, in *Vda. de Kilayko v. Judge Tengco*,[36] *Heirs of Maria Marasigan v. Intermediate Appellate Court*[37] and *Tanchoco v. Aquino*,[38] it was held that the precautionary notice of lis pendens may be ordered cancelled at any time by the court having jurisdiction over the main action inasmuch as the same is merely an incident to the said action. The pronouncement in *Heirs of Eugenio Lopez, Sr. v. Enriquez*, citing *Magdalena Homeowners Association, Inc. v. Court of Appeals*,[39] is equally instructive ³

The notice of lis pendens x x x 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 transaction are subject to the results of the action, and may well be inferior and subordinate to those which may be finally 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. x x x[40]

Clearly, the action for cancellation of the notice of lis pendens in this case must have been filed not before the

court a quo via an original action but rather, before the RTC of Makati City, Branch 62 as an incident of the annulment case in relation to which its registration was sought. Thus, it is the latter court that has jurisdiction over the main case referred to in the notice and it is that same court which exercises power and control over the real property subject of the notice.

But even so, the petition could no longer be expected to pursue before the proper forum inasmuch as the decision rendered in the annulment case has already attained finality before both the Court of Appeals and the Supreme Court on the appellate level, unless of course there exists substantial and genuine claims against the parties relative to the main case subject of the notice of lis pendens.^[41] There is none in this case. It is thus well to note that the precautionary notice that has been registered relative to the annulment case then pending before the RTC of Makati City, Branch 62 has served its purpose. With the finality of the decision therein on appeal, the notice has already been rendered functus officio. The rights of the parties, as well as of their successors-in-interest, petitioner included, in relation to the subject property, are hence to be decided according to the said final decision.

To be sure, petitioner is not altogether precluded from pursuing a specific remedy, only that the suitable course of action legally available is not judicial but rather administrative. Section 77 of P.D. No. 1529 provides the appropriate measure to have a notice of lis pendens cancelled out from the title, that is by presenting to the Register of Deeds, after finality of the judgment rendered in the main action, a certificate executed by the clerk of court before which the main action was pending to the effect that the case has already been finally decided by the court, stating the manner of the disposal thereof. Section 77 materially states:

SEC. 77. Cancellation of lis pendens. -- Before final judgment, a notice of lis pendens may be cancelled 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 registered. It may also be cancelled by the Register of Deeds upon verified petition of the party who caused the registration thereof.

At any time after final judgment in favor of the defendant, or other disposition of the action such as to terminate finally all rights of the plaintiff in and to the land and/or buildings involved, in any case in which a memorandum or notice of lis pendens has been registered as provided in the preceding section, the notice of lis pendens shall be deemed cancelled upon the registration of a certificate of the clerk of court in which the action or proceeding was pending stating the manner of disposal thereof. ^[42]

Lastly, petitioner tends to make an issue out of the fact that while the original TCT on file with the Register of Deeds does contain the annotations and notice referred to in this petition, its owner's duplicate copy of the title nevertheless does not reflect the same non-chronological inscriptions. From this, petitioner submits its puerile argument that the said annotations appearing on the original copy of the TCT are all a forgery, and goes on to assert the indefeasibility of its Torrens title as well as its supposed status as an innocent purchaser for value in good faith. Yet we decline to rule on these assumptions principally because they raise matters that call for factual determination which certainly are beyond the competence of the Court to dispose of in this petition.

All told, we find that the RTC of Las Piñas City, Branch 253 has committed no reversible error in issuing the assailed Resolution and Order dismissing for lack of jurisdiction the petition for cancellation of notice of lis pendens filed by petitioner, and in denying reconsideration.

WHEREFORE, the petition is DENIED. The April 14, 2005 Resolution and the June 24, 2005 Order issued by the Regional Trial Court of Las Piñas City, Branch 253, in Civil Case No. LP-04-0071, are hereby AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Nachura, Abad, and Mendoza, JJ., concur.

[1] Rollo, pp. 31-33A.

[2] Presided by Judge Elizabeth Yu-Garay; id. at 34.

[3] The case was entitled, "In the Matter of Cancellation of the Notice of Lis Pendens and Other Entries in TCT No. 49936."

[4] Rollo, p. 54.

[5] Id. at 55.

[6] Id. at 78-80.

[7] Id. at 85.

[8] Id. at 38, 43-45.

[9] Id. at 86.

[10] Id. at 40-43.

[11] Id. at 43-49.

[12] Id. at 191-210.

[13] Id. at 192-193, 195-196.

[14] Id. at 194.

[15] Id. at 75.

[16] Id. at 33-33A.

[17] Id. at 33A.

[18] Id. at 293-300.

[19] Id. at 34.

[20] Id. at 8-12.

[21] Id. at 14-17.

[22] Id. at 23-24.

[23] Id. at 366-372.

[24] St. Mary of the Woods School, Inc. v. Office of the Registry of Deeds of Makati City, G.R. No. 174290 and G.R. No. 176116, January 20, 2009, 576 SCRA 713, 730; Heirs of Eugenio Lopez, Sr. v. Enriquez, G.R. No. 146262, January 21, 2005, 449 SCRA 173, 186; Romero v. Court of Appeals, G.R. No. 142406, May 16, 2005, 458 SCRA 483, 492.

[25] Heirs of Eugenio Lopez, Sr. v. Enriquez, supra; Romero v. Court of Appeals, supra, citing Lim v. Vera Cruz, 356 SCRA 386, 393 (2001).

[26] Yared v. Ilarde, 391 Phil. 722, 730 (2000).

[27] St. Mary of the Woods School, Inc. v. Office of the Registry of Deeds of Makati City, supra note 24; Fernandez v. Court of Appeals, 397 Phil. 205, 216 (2000).

[28] Fernandez v. Court of Appeals, supra, at 217, citing Regalado, Justice Florenz D., Remedial Law Compendium, Vol. I, 5th Revised Edition, p. 145, 1988.

[29] The case was initially docketed as Civil Case No. 9134-P at the Court of First Instance of Rizal, but was re-docketed accordingly when it was re-raffled to the RTC of Makati City, Branch 62, following the effectivity of the Judiciary Reorganization Act.

[30] CA rollo (CA-G.R. CV No. 54204), pp. 902-905.

[31] Id. at 696-710.

[32] Id. at 768.

[33] Heirs of Eugenio Lopez, Sr. v. Enriquez, supra note 24; Romero v. Court of Appeals, supra note 24, at 495.

[34] St. Mary of the Woods School, Inc. v. Office of the Registry of Deeds of Makati City, supra note 24; Heirs of Eugenio Lopez, Sr. v. Enriquez, supra note 24; Romero v. Court of Appeals, supra note 24.

[35] Vda. de Kilayco v. Judge Tengco, G.R. No. 45425 and G.R. No. 45965, March 27, 1992, 207 SCRA 600; Magdalena Homeowners Association, Inc. v. Court of Appeals, G.R. No. 60323, April 17, 1990, 184 SCRA 325, 330.

[36] Supra.

[37] G.R. No. L-69303, July 23 1987, 152 SCRA 253.

[38] 238 Phil. 1 (1987).

[39] Supra note 35.

[40] Heirs of Eugenio Lopez, Sr. v. Enriquez, supra note 24. (Emphasis supplied.)

[41] See Garchitorena v. Director of Lands, 91 Phil. 157 (1952), where the Court suggested than an original action be brought for the cancellation of the notice of lis pendens in that case because the parties appeared to have substantial claims against each other relative to the civil case which is the subject of the notice.

[42] Emphasis supplied.

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