

ISABELITA CUNANAN, CAROLYN CUNANAN AND CARMENCITA F. NEMOTO, PETITIONERS, VS. JUMPING JAP TRADING CORPORATION, REPRESENTED BY REUBEN M. PROTACIO, RESPONDENT.

G.R. No. 173834. April 24, 2009

Ponente: TINGA, J.

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TINGA, J.:

This is a petition for review on certiorari[1] under Rule 45 of the 7 April 2006 decision of the Court of Appeals[2] and the 28 July 2006 resolution[3] of the same court denying petitioners' motion for reconsideration.

The pertinent facts as culled from the records follow.

Petitioner Carmencita Fradejas Nemoto (Carmencita) is the registered owner of a 618 square meter-lot, with the house and improvements thereon, located at No. 167 Pili Drive, Ayala Alabang Village, Muntinlupa City and covered by Transfer Certificate of Title (TCT) No. 213246[4]. She acquired the property by virtue of a deed of sale executed in her favor by Metropolitan Land Corporation (MLC).

On 22 March 2001, respondent Jumping Jap Trading Corporation (respondent), represented by its President, Rueben Protacio (Protacio), filed Civil Case No. 01-098 with the Regional Trial Court (RTC) of Muntinlupa City seeking the annulment of both the deed of sale and TCT No. 213246, as well as the reconveyance of the property. Respondent anchored the complaint on its alleged superior right over the property by virtue of the execution of a previous deed of conditional sale by MLC in its favor and its having paid P18,300,000.00 by itself using corporate funds and P5,000,000.00 by Protacio, or a total of P23,300,000.00 which was more than the P12,600,000.00 that the spouses Nemoto had paid on the purchase price of P35,900,000.00. It was allegedly agreed that Nobuyasu Nemoto (Nobuyasu), who is one of respondent's stockholders and also a friend of Protacio, would pay the remaining installment of P12,600,000.00 and reimburse the amount already paid by respondent and Protacio while the title, to be placed in the name of the minor daughter of spouses Nemoto, Sakura Nemoto, would be in respondent's possession. However, MLC did not deliver the title to the property to respondent despite repeated oral demands. Respondent later discovered that a deed of absolute sale was executed between MLC and Carmencita with a stated consideration of P12,500,000.00 and that TCT No. 213246 was issued in the name of Carmencita.[5]

Despite several demands and assurances in a span of more than three years, the spouses Nemoto still failed to pay the purchase price advanced by respondent and Protacio amounting to P23,400,000.00.

On 19 April 2001, respondent caused the annotation of a notice of lis pendens involving Civil Case No. 01-098 on TCT No. 213246. Despite the notice of lis pendens, Carmencita executed a deed of real estate mortgage[6] dated 20 July 2001 over the property in favor of petitioners Isabelita and Carolyn Cunanan (the Cunanans) as security for the payment of a P10 million loan plus interest, as well as all subsequent loans and obligations. She also executed a promissory note dated 22 July 2001,[7] undertaking to pay on or before 22 December 2001 the P10 million loan with interest of 3% per month.

In an Order dated 18 July 2001, the RTC dismissed the case and ordered the cancellation of the notice of lis pendens.[8] Subsequently, on 23 July 2001, the RTC issued an amended order[9] specifically ordering the Register of Deeds of Muntinlupa City to immediately cancel the notice of lis pendens on TCT No. 213246.[10] Within the

same day, the Register of Deeds cancelled the notice of lis pendens and, immediately thereafter, annotated the deed of real estate mortgage.[11]

The RTC subsequently granted respondent's motion for reconsideration of the amended order of dismissal in its order dated 24 October 2001.[12] Thereafter, the Register of Deeds of Muntinlupa City re-annotated the notice of lis pendens on 12 December 2001.[13]

Ultimately, the RTC decided Civil Case No. 01-098 in favor of respondent in a Decision[14] dated 26 February 2002.

In the meantime, the Cunanans effected the extra-judicial foreclosure of the mortgage on the property on 17 July 2002.[15] This prompted respondent to file on 12 August 2002 before the RTC of Muntinlupa City Civil Case No. 02-189[16] seeking the nullification of mortgage deed and the extra-judicial foreclosure proceedings, as well as the cancellation of the mortgage deed annotation on TCT No. 213246. In the complaint in that case, from which the present case stemmed, respondent as plaintiff, averred that the mortgage deed was executed fraudulently and deceitfully to deprive respondent of its right over the property and that the Cunanans are mortgagees in bad faith since Civil Case No. 01-098 was still pending when the deed of real estate mortgage was executed in their favor.[17]

On 16 April 2004, the RTC rendered its decision[18] in favor of respondent. It found that the execution of the real estate mortgage was done in bad faith for Civil Case No. 01-098 was still pending as the dismissal thereof was not yet final and executory and the notice of lis pendens was not yet cancelled by the Register of Deeds. In fact, a timely motion for reconsideration of the order dismissing the complaint and canceling the notice of lis pendens was filed and granted.

On appeal, the Court of Appeals affirmed the decision of the trial court per its decision[19] of 7 April 2006. It found that the notice of lis pendens was subsisting at the time the contract of real estate mortgage was executed between the Cunanans and Carmencita. And even when the notice of lis pendens was cancelled on 23 July 2001, the Cunanans were aware that the proceedings in Civil Case No. 01-098 was not yet terminated, as in fact, the notice was subsequently re-annotated after the RTC had granted respondent's motion for reconsideration. Moreover, the Court of Appeals held that at the time of the extra-judicial foreclosure sale of the property the notice of lis pendens had been reinstated by the RTC and this tainted the Cunanans' status as purchasers at the foreclosure sale with bad faith.

Now, petitioners are before this Court.

Prefatorily, the Court agrees with the appellate court in affirming the trial court ruling that Protacio is authorized to institute the complaint against the petitioners. The certification issued by the majority of the directors clearly indicates that he is authorized to demand and collect the corporation's claims over the Ayala Alabang property and the institution of actions in court.[20] The authority granted to Protacio is broad enough to enable him to take any legal action necessary to protect respondent's interest in the disputed property. This Court has also held that the power to institute actions necessarily includes the power to execute the verification and certification against forum shopping[21] required in initiatory pleadings, such as the complaint in Civil Case No. 02-189.

The sole remaining issue is whether or not the Cunanans are bound by the notice of lis pendens which was

ordered cancelled by the RTC.

A notice of lis pendens[22] is an announcement to the whole world that a particular real property is in litigation, serving as a warning that one who acquires an interest over said property does so at his own risk, or that he gambles on the result of the litigation over the said property.[23] The filing of a notice of lis pendens charges all strangers with a notice of the particular litigation referred to therein and, therefore, any right they may thereafter acquire on the property is subject to the eventuality of the suit.[24] Such announcement is founded upon public policy and necessity, the purpose of which is to keep the properties in litigation within the power of the court until the litigation is terminated and to prevent the defeat of the judgment or decree by subsequent alienation.[25]

Under Section 77 of Presidential Decree (P.D.) No. 1529,[26] a notice of lis pendens shall be deemed cancelled only 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 if there was a final judgment in favor of the defendant or the action was disposed of terminating finally all rights of the plaintiff over the property in litigation.

Given the antecedent facts in the present case, the Court should deny the petition.

There is no question that the Register of Deeds cancelled the notice of lis pendens annotated on TCT No. 213246 only on 23 July 2001 while the Cunanans and Carmencita executed the deed of real estate mortgage three days before, or on 20 July 2001. The Cunanans are bound by the notice of lis pendens because on the date they executed the mortgage deed with Carmencita the annotation was still subsisting and had not yet been cancelled. The Order dated 18 July 2001 dismissing the complaint and directing the cancellation of the notice of lis pendens did not improve the situations of the Cunanans simply because said Order was not registered at all and therefore did not preclude the notice of lis pendens from continuing in effect.

Neither did the issuance and registration of the amended Order dated 23 July 2001, although it even commanded the Register of Deeds to cancel the notice of lis pendens apart from containing the same directives as those in the 18 July 2001 Order. The simple reason this time is the fact that the last order was issued after the execution of the mortgage deed. As the mortgage had already been executed and therefore deemed valid and effective between the parties as of the date of its execution, the Cunanans had taken a gamble on the result of the litigation referred to in the notice of lis pendens when they accepted the properties as security.

The result in the present case would still be the same even if the parties executed the mortgage deed after the Register of Deeds had cancelled the notice of lis pendens. It is true that one who deals with property registered under the Torrens system need not go beyond the same, but only has to rely on the face of the title. He is charged with notice only of such burdens and claims as are annotated on the title. However, this principle does not apply when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry or when the purchaser or mortgagee has knowledge of a defect or the lack of title in his vendor or mortgagor or of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property in litigation. One who falls within the exception can neither be denominated an innocent purchaser or mortgagee for value nor a purchaser or mortgagee in good faith.[27] In the present case, the fact that the orders dismissing the case and directing the cancellation of the notice of lis pendens was not yet final and executory should have impelled the Cunanans to be wary of further developments, as in fact plaintiff filed a motion for reconsideration and the RTC granted the same. In short, the Cunanans' knowledge of the existence of a pending litigation involving the disputed property makes them mortgagees in bad faith. Hence, respondent could still recover the property from the Cunanans.

Petitioners mistakenly rely on the Court's holding in *Po Lam v. Court of Appeals*. [28] The case involves a dispute over two parcels of lands with notice of lis pendens annotated on the titles. The trial court declared the

predecessor-in-interest of the petitioner spouses Po Lam as owners of the properties and ordered the cancellation of the notice of lis pendens on both titles. The Register of Deeds was only able to cancel the annotation on one of the titles. During the pendency of the appeal to the Court of Appeals, the two properties were sold to the petitioners. It was only after four years that the petitioners had the notice of lis pendens on the title of the other property cancelled. New certificates of titles were issued to petitioners. In declaring that the spouses Po Lam are not purchasers in bad faith, we ruled, thus:

A possessor in good faith has been defined as "one who is unaware that there exists a flaw which invalidates his acquisition of the thing (See Article 526, Civil Code). Good faith consists in the possessor's belief that the person from whom he received the thing was the owner of the same and could convey his title (Piño v. CA, 198 SCRA 434 [1991]). In this case, while petitioners bought Lot No. 2581 from LAHCO while a notice of lis pendens was still annotated thereon, there was also existing a court order canceling the same. Hence, petitioners cannot be considered as being "aware of a flaw which invalidates their acquisition of the thing" since the alleged flaw, the notice of lis pendens, was already being ordered cancelled at the time of the purchase. On this ground alone, petitioners can already be considered buyers in good faith. (Emphasis ours.)

More importantly, however, the notice of lis pendens inscribed on TCT No. 2581 was cancelled on May 20, 1974, pursuant to the order of the trial court in Civil Case No. 2953. Felix Lim did not move for the reinstatement of the cancelled notices of lis pendens. What is the effect of this cancellation? To follow the prior ruling of the Court in the instant case, the cancellation of the notice of lis pendens would have no effect. Regardless of the cancellation of the notice of lis pendens, the Po Lam spouses are still considered as having notice of a possible defect in the title of LAHCO, making them purchasers in bad faith.[29] (Emphasis ours.)

In the Po Lam case, the Register of Deeds only cancelled the notice of lis pendens on one of the titles that were in dispute. It was almost a year passed when the trial court's order was annotated on the title of the other property. The spouses Po Lam purchased both properties at the same time several months after the trial court declared their predecessor-in-interest as owner of the properties and ordered the cancellation of the notice of lis pendens. There was no finding that the spouses Po Lam were aware of any pending litigation over the property for no motion for reconsideration or motion for reinstatement of the notice of lis pendens was filed with the trial court. The Court had no choice but to give effect to the trial court's order and considered the petitioners as buyers in good faith.

In the present case, the mortgage deed was executed even before the Register of Deeds had the chance to cancel the annotated

notice of lis pendens on the title of the disputed property. Moreover, the RTC's orders had not even attained finality when the mortgage deed was executed. The respondent in fact filed on 2 August 2001 a motion for reconsideration of the trial court's order and sought the reinstatement of the cancelled notice of lis pendens. On 24 October 2001, the trial court reconsidered its previous ruling and ordered the reinstatement of the notice of lis pendens.

WHEREFORE, the Court AFFIRMS the decision of the Court of Appeals in CA-G.R. CV No. 82588. Cost against petitioners.

SO ORDERED.

Carpio Morales, (Acting Chairperson), Velasco, Jr., Leonardo-De Castro, and Brion, JJ., concur.

[*]Acting Chairperson as replacement of Justice Leonardo A. Quisumbing who is on official leave per Special Order No. 618.

[**] Additional member of the Second Division per Special Order No. 619.

[1] Rollo, pp.55-88.

[2]Id. at 10-44. Penned by Associate Justice Martin Villarama, Jr. and concurred in by Associate Justices Edgardo Sundiam and Japar Dimaampao. The dispositive portion reads as follows:

WHEREFORE, premises considered, the present appeal is hereby DISMISSED for lack of merit. The appealed Decision dated April 16, 2004 of the Regional Trial Court of Muntinlupa City, Branch 276 in Civil Case No. 02-189 is hereby AFFIRMED. However, nothing in this decision will affect the rights of appellants Isabelita Cunanan and Carolyn Cunanan as mortgagees in the event of reversal on appeal of the decision rendered by the RTC of Muntinlupa City, Branch 256 in Civil Case No. 01-098.

With costs against the defendants-appellants.

SO ORDERED.

[3]Id. at 46.

[4] Id. at 119-122.

[5] Id. at 11. See also pp. 112-115.

[6] Id. at 226-231.

[7]Id. at 232-233.

[8] Id. at 219-225. Penned by Judge Alberto Lerma of RTC Branch 256 of Muntinlupa City. The dispositive portion reads as follows:

Premises considered and viewed in proper perspective, the Court is of the ineluctable conclusion, and so holds, that plaintiff's motion to declare defendants in default is bereft of factual and legal basis and that defendants' motion to dismiss and cancel notice of lis pendens is granted.

[9] Id. at 234-240.

[10]Id. at 240.

[11] Id. at 122.

[12] Id. at 245-246. The Order was penned by Presided by Judge Norma Perello for Judge Alberto Lerma voluntarily inhibited himself. The dispositive portion reads as follows:

Accordingly, the ORDER dated July 23, 2001 is reconsidered and the COMPLAINT with Amended Verification admitted before answer. Defendants are directed to file their answer within the remaining period of time for them to do so, but not less than five (5) days from receipt hereof.

The Registry of Deeds of Muntinlupa City is directed to maintain the Notice of Lis Pendens in Transfer Certificate of Title No. 213246 subject matter of this annulment case.

IT IS SO ORDERED.

[13]Id. at 122.

[14]Id. at 144-166. On appeal, the Court of Appeals affirmed the judgment of the trial court in a decision promulgated on 24 March 2004 in CA-G.R. CV No. 74990. This Court denied petitioners' Rule 45 petition from

the Court of Appeals' decision in a Resolution dated 22 September 2004 in G.R. No. 164043. See rollo, G.R. No. 164043.

[15] Id. at 167.

[16] Id. at 96-108.

[17] Id. at 102-103.

[18] Id. at 249-264. The dispositive portion reads as such:

PREMISES CONSIDERED, CARMENCITA FRADEJAS NEMOTO had no right to validly mortgage the property, hence the mortgage constituted by her over this same parcel is void. The mortgagees ISABELITA CUNANAN and CAROLYN CUNANAN, with malice of the defect of the ownership of the mortgage and bad faith, even greed, in a hurry to get the property, disregarded all measures of prudence, are not mortgagees in good faith, did not acquire any right to the property more than the Plaintiff.

Accordingly, the mortgage not legally constituted is hereby cancelled and lifted. The extrajudicial foreclosure did not vest any right on the purchaser and mortgagees and said proceedings also voided as there was no valid mortgage. The Preliminary injunction issued by this Court on 21 September 2002 is hereby made permanent. The Register of Deeds of Muntinlupa City is directed to so cancel such an encumbrance on Transfer Certificate of Title No. 213246 with the mortgage being void, should be cancelled, the foreclosure on the same void mortgage is likewise voided. There was no mortgage to foreclose.

IT IS SO ORDERED.

[19] Note 2.

[20] Rollo, p. 109. RESOLVED, that pursuant to paragraph "h," Art. IV, Sec. of the By-Laws of this Corporation, the President, Mr. Rueben Protacio is hereby authorized to collect, receive and/or demand any amount of money or similar claims in relation to and connected with the Ayala Alabang Property including the institution of appropriate court actions.

[21] *Pilipinas Shell Petroleum Corporation v. John Bordman Ltd. of Iloilo, Inc.*, G.R. No. 159831, 14 October 2005, 473 SCRA 151,161-162.

[22] 1997 Rules of Civil Procedure, Rule 13, Sec. 14. Notice of lis pendens.--In an action affecting the title or the right of possession of real property, the plaintiff and the defendant, when affirmative relief is claimed in his answer, may record in the office of the registry of deeds of the province in which the property is situated a notice of the pendency of the action. Said notice shall contain the names of the parties and the object of the action or defense, and a description of the property in that province affected thereby. Only from the time of filing such notice for record shall a purchaser, or encumbrancer of the property affected thereby, be deemed to have constructive notice of the pendency of the action, and only of its pendency against the parties designated by their real names.

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

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

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

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

[26] Property Registration Decree.

[27] Sandoval v. Court of Appeals, 329 Phil. 48 (1996); Leung Yee vs. F.L. Strong Machinery Co., 37 Phil. 644.

[28] G.R. No. 116220, 6 December 2000, 347 SCRA 86.

[29] Id. at 94-95.

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