

**ST. MARY OF THE WOODS SCHOOL, INC. AND MARCIAL P. SORIANO,
PETITIONERS, VS. OFFICE OF THE REGISTRY OF DEEDS OF MAKATI
CITY AND HILARIO P. SORIANO, RESPONDENTS.**

G.R. No. 174290. January 20, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before this Court are two special civil actions for Certiorari and Prohibition under Rule 65 of the 1997 Revised Rules of Civil Procedure, which were consolidated per Resolution[1] dated 5 February 2007.

The petitioners in G.R. No. 174290, namely: St. Mary of the Woods School, Inc. (SMWSI) and Marcial P. Soriano, seek to annul and set aside on the ground of grave abuse of discretion tantamount to lack or excess of jurisdiction the Resolution[2] dated 18 August 2006 of the Court of Appeals in CA-G.R. CV No. 85561, which granted herein private respondent Hilario P. Soriano's Motion to Reinstate/Re-annotate the Notice of Lis Pendens over Transfer Certificates of Title (TCT) No. 175029,[3] 220977[4] and 220978,[5] of the Registry of Deeds of Makati City, all registered in the name of herein petitioner SMWSI.

The afore-named petitioners are the same petitioners in G.R. No. 176116 in which they also seek to annul and set aside, on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction, the three Resolutions similarly rendered by the Court of Appeals in CA-G.R. CV No. 85561, to wit: (1) Resolution[6] dated 18 August 2006 denying petitioners' Motion to Dismiss Appeal of herein private respondent Hilario P. Soriano; (2) Resolution[7] dated 9 November 2006 denying for lack of merit petitioners' Motion for Reconsideration of the 18 August 2006 Resolution of the appellate court, as well as the supplement to the said motion; and (3) Resolution[8] dated 9 November 2006 requiring the Register of Deeds of Makati City to submit to the appellate court the original copies of the documents involved in Civil Case No. 03-954 so that they can be presented to the National Bureau of Investigation (NBI) for comparative analysis of the signatures of Tomas Q. Soriano.

Petitioner SMWSI is an educational institution incorporated and existing by virtue of the laws of the Republic of the Philippines. It is the current registered owner of the three parcels of land (subject properties), located in Makati City and covered by TCTs No. 175029, No. 220977 and No. 220978. Petitioner Marcial P. Soriano is the President of petitioner SMWSI.

Private respondent Hilario P. Soriano, on the other hand, is one of the siblings of petitioner Marcial P. Soriano.

The consolidated cases presently before this Court originated from the Complaint[9] filed on 14 August 2003 by the private respondent with the Regional Trial Court (RTC) of Makati City, Branch 148, for Declaration of Nullity of Deed of Assignment, Deed of Sale and Cancellation of TCTs No. 156249, No. 156250, and No. 156251 of the Register of Deeds of Makati, Metro Manila,[10] registered in the name of Oro Development Corporation (ODC); and TCT No. 175029, registered in the name of petitioner SMWSI. Named defendants therein were the petitioners, together with ODC, Antonio P. Soriano, Aurelia P. Soriano-Hernandez, Rosario P. Soriano-Villasor, Eugenia Ma. P. Soriano-Lao and Josefina P. Soriano (hereinafter collectively referred to as petitioners, et al.). The

Complaint was docketed as Civil Case No. 03-954.

In his Complaint, private respondent alleged that during the marriage of his parents, Tomas Q. Soriano and Josefina P. Soriano, the couple acquired both real and personal properties, including the subject properties, which were then covered by TCTs No. 169941,[11] No. 114408,[12] and No. 114409.[13] On 10 May 1988, the Soriano couple allegedly executed[14] a Deed of Assignment[15] in favor of ODC involving the subject properties to pay for Tomas Q. Soriano's subscription of stocks in the said corporation. On 14 June 1988, Tomas Q. Soriano died[16] intestate.

By virtue of the said Deed of Assignment, the ownership and title over the subject properties were transferred to ODC. Consequently, TCTs No. 169941, No. 114408 and No. 114409 were cancelled and the new TCTs No. 156249,[17] No. 156250[18] and No. 156251[19] were issued in the name of ODC.

Thereafter, on 26 April 1991, ODC executed[20] in favor of petitioner SMWSI a Deed of Sale[21] over the subject property covered by TCT No. 156249. By virtue of the sale, petitioner SMWSI acquired ownership and title over the particular property. Thus, TCT No. 156249 was cancelled and the new TCT No. 175209 was issued in the name of petitioner SMWSI.

Private respondent claimed that several years after his father Tomas Q. Soriano's death, he discovered that the latter's signature in the Deed of Assignment of 10 May 1988 in favor of ODC was a forgery. Being very familiar with his father's signature, private respondent compared Tomas Q. Soriano's purported signature in the Deed of Assignment of 10 May 1988 with Tomas Q. Soriano's genuine signature in another document captioned Second Amendment of Credit Agreement.[22] Private respondent also presented a Certification[23] from the Records Management and Archives Office which stated that the forged Deed of Assignment dated 10 May 1988 was not available in the files of the Office.

Meanwhile, by reason of the pendency of Civil Case No. 03-954, a Notice of Lis Pendens was annotated on TCTs No. 156249, No. 156250, and No. 156251, in the name of ODC. With the subsequent cancellation of TCT No. 156249 and the issuance of TCT No. 175209 in the name of petitioner SMWSI, the Notice of Lis Pendens was carried over to the new certificate of title.

In a Joint Affidavit[24] dated 18 July 1990 executed by petitioner Marcial P. Soriano, it appears that the other individual defendants in Civil Case No. 03-954, and private respondent, recognized and acknowledged the validity, legality and propriety of the transfer of the subject properties from Tomas Q. Soriano to ODC. On this basis, defendants filed with the RTC a Motion to Dismiss[25] Civil Case No. 03-954 on the grounds that: (1) the Complaint states no cause of action; (2) the claim set forth in the Complaint has been paid, waived, abandoned or otherwise extinguished; (3) the Complaint is barred by estoppel or laches; (4) the Complaint is barred by prescription; (5) the titles to the subject properties are incontestable and can no longer be annulled; and (6) a condition precedent for filing the claim has not been complied with, i.e., the compromise agreement failed despite earnest efforts towards that end.

On 17 January 2005, the RTC issued an Order[26] dismissing the private respondent's Complaint. The RTC ratiocinated in this manner:

A careful reading of the [14] August 2003 Complaint filed by [herein private respondent] Hilario P. Soriano would suffice that he indeed failed to state that he has a right over the [subject properties] and that the [herein petitioners, et al.] have the obligation to observe such right. Assuming for the sake of argument that the signature was forged, the [private respondent] did not state that he was deprived of his share in the legitime of the deceased. Thus, his right over the [subject properties which were] assigned by the deceased was not clearly defined and stated in the [C]omplaint filed.

x x x x

x x x. Also, the [private respondent] must comply with the provision of the Civil Code of [the] Philippines, to wit:

"Article 222[27] - No suit shall be filed or maintained between members of the same family unless it should appear that earnest efforts toward a compromise have been made, but that the same have failed, subject to the limitations in Article 2035."

x x x. There is no showing in the allegations in the [C]omplaint of the [private respondent] that he complied with the requirement of the law. Thus, the Court finds merit in the position of the [petitioners, et al.]

x x x x

x x x. Clearly, the act of the [private respondent] in acknowledging the legality, validity and genuineness of the [D]eed of [A]ssignment in the [J]oint [A]ffidavit placed him in no better position to question the validity of the subject document. [Private respondent] never questioned the distribution of the properties among the heirs of Tomas Soriano. [Private respondent] even accepted the conveyance of a parcel of land covered by TCT No. 156253. By accepting said property as his share in the estate of his late father, [private respondent] is now deemed to have been paid or compensated because there was delivery of his share in the estate of the deceased. It can now be conclusively presumed that his share in the legitime of deceased Tomas Soriano was fully awarded to [private respondent]. He is now estopped in questioning the validity of the [D]eed of [A]ssignment by Tomas Q. Soriano in favor of [ODC]. Accordingly, all subsequent conveyances involving the subject properties can no longer be questioned by [private respondent] Hilario P. Soriano.[28]

Accordingly, the RTC decreed:

WHEREFORE, finding merits on the [M]otion to [D]ismiss filed by [herein petitioners, et al.] and in the prayer set forth in the [A]nswer of defendants Josefina P. Soriano and Rosario P. Soriano-Villasor, the dismissal of this case is hereby GRANTED. Accordingly, the Complaint filed by [private respondent] Hilario P. Soriano is dismissed because it asserts no cause of action and the claim or demand set forth in the [private respondent's] pleading has been waived, abandoned, or otherwise extinguished, and that a condition precedent for filing the claim has not been complied with.[29]

In the interim, the subject properties covered by TCTs No. 156250 and No. 156251 in the name of ODC were also transferred to petitioner SMWSI by virtue of a Deed of Sale dated 3 February 2005. TCTs No. 156250 and No. 156251 in the name of ODC were then cancelled and the new TCTs No. 220977 and No. 220978 were issued in the name of petitioner SMWSI. The Notice of Lis Pendens annotated on the cancelled TCTs was copied into the new TCTs in the name of petitioner SMWSI.

Aggrieved by the RTC Order dated 17 January 2005, private respondent moved for its reconsideration, but the RTC denied the same in an Order[30] dated 26 April 2005.

On 16 May 2005, petitioners, et al., filed with the RTC a Motion to Cancel Notice of Lis Pendens[31] annotated on the titles covering the subject properties, which Motion was opposed by the private respondent.

The very next day, 17 May 2005, private respondent filed a Notice of Appeal stating his intention to elevate the RTC Orders dated 17 January 2005 and 26 April 2005 to the Court of Appeals. Private respondent's appeal before the Court of Appeals was docketed as CA-G.R. CV No. 85561.

Meanwhile, the RTC issued its Order[32] dated 20 June 2005 granting the Motion to Cancel Notice of Lis Pendens filed by petitioners, et al., and ordering the Registrar of Deeds of Makati City to cancel the Notice of Lis Pendens annotated on TCTs No. 156249, No. 156250, No. 156251 in the name of ODC and TCT No. 175029 in

the name of petitioner SMWSI. The RTC justified its latest Order as follows:

As mentioned in the case, the notice of lis pendens can be cancelled if it is not necessary to protect the interest of the party who caused it to be recorded. In this case, the [herein private respondent's] interest should be considered on whether the notice of lis pendens should be cancelled or not. As it is the Court believes that the cancellation is proper in this case. First, the Court still has jurisdiction of the case considering that the Notice of Appeal was only filed on [17 May 2005], while the Motion to cancel Notice of Lis Pendens was filed on [16 May 2005]. Second, [private respondent] Hilario P. Soriano has no interest to be protected insofar as the subject properties are concerned because of his acknowledgment that he already received his share in the estate of Tomas Soriano. Lastly, the contention of the [private respondent] that the motion is premature is not tenable. The authority of the Court to Cancel Notice of Lis Pendens is even evident in the Comment/Opposition of the [private respondent] which states that "While it may be true that the cancellation of a notice of lis pendens may be ordered at any given time even before final judgment, x x x." [33]

On 4 July 2005, the petitioners, et al., filed with the RTC a Motion for Issuance of Supplement to Order Cancelling Notice of Lis Pendens [34] to clarify that TCTs No. 156249, No. 156250, and No. 156251 in the name of ODC were already cancelled and replaced with TCTs No. 175209, No. 220977, and No. 220978 all registered in the name of petitioner SMWSI in which the Notice of Lis Pendens was carried over. The private respondent, on the other hand, filed a Motion for Reconsideration of the RTC Order dated 20 June 2005 with Comment on the petitioners, et al.'s, Motion for Issuance of Supplement to the same RTC Order.

On 15 July 2005, the RTC issued another Order [35] by way of supplement to its Order dated 20 June 2005, directing anew the Registrar of Deeds of Makati City to cancel the Notice of Lis Pendens annotated on TCTs No. 175209, No. 220977 and No. 220978 in the name of petitioner SMWSI.

In a subsequent Order [36] dated 15 August 2005, the RTC denied for lack of merit private respondent's Motion for Reconsideration of the RTC Order dated 20 June 2005.

On 28 September 2005, private respondent received a directive from the Court of Appeals dated 20 September 2005 requiring him to file his Appellant's Brief pursuant to his Notice of Appeal dated 17 May 2005. In compliance therewith, private respondent submitted his Appellant's Brief to the Court of Appeals with the following assignment of errors:

- The lower court erred in dismissing the [C]omplaint on the ground that no certificate from a signature expert was attached to affirm the conclusion of the [herein private respondent] that the signature of Tomas Q. Soriano in the [D]eed of [A]ssignment was forged and on the ground that neither can the certificate issued by the Records Management and Archive Office support such allegation and that the [herein petitioners, et al.] cannot shoulder the burden caused by the Notary Public in failing to file the notarized documents, if he indeed failed.
- The lower court erred in dismissing the [C]omplaint on the ground that the [private respondent] failed to state that he has a right over the subject properties and that the [petitioners, et al.] have the obligation to observe such right.
- The lower court erred in ruling that Article 151 of the Family Code should have been complied with.
- The lower court erred in denying [private respondent's] [M]otion for [R]econsideration despite valid and compelling arguments that warrant the reconsideration prayed for.
- The lower court erred in granting [petitioners, et al.] [M]otion for [C]ancellation of Lis Pendens.
- The lower court erred in dismissing the [C]omplaint on the ground that by accepting the conveyance of a parcel of land covered by TCT No. 156253 as his share in the estate of his late father, [private respondent] is now deemed to have been paid or compensated because there was delivery of his share in the estate of the

deceased.[37]

While CA-G.R. CV No. 85561 was still pending, and since the Notice of Lis Pendens annotated on the TCTs of the subject properties in the name of petitioner SMWSI was already cancelled per RTC Orders dated 20 June 2005 and 15 July 2005, petitioner SMWSI mortgaged the subject properties on 15 February 2006 for the amount of P8,000,000.00.

On 14 March 2006, private respondent filed before the Court of Appeals a Motion to Reinstate/Re-annotate Notice of Lis Pendens on the TCTs of the subject properties given that there was yet no final judgment of dismissal of his Complaint, as its dismissal had been duly appealed. Moreover, it had not been shown that the Notice of Lis Pendens was to molest the petitioners, et al., or that the same was not necessary to protect his interests; thus, its re-annotation on the TCTs of the subject properties while the appeal was pending would be in accordance with public policy. Petitioners, et al., opposed the aforesaid Motion of private respondent.

On 17 March 2006, petitioners, et al., filed a Motion to Dismiss Appeal on the ground that "the issues in the appeal are and can only be questions of law, the appellate jurisdiction over which belongs exclusively to the Supreme Court, thus the dismissal of [private respondent's] appeal is mandatory pursuant to Supreme Court Circular No. 2-90 and Section 2, Rule 50 of the 1997 Rules of Civil procedure." [38]

Thereafter, on 18 August 2006, the Court of Appeals issued a Resolution granting private respondent's Motion to Reinstate/Re-annotate Notice of Lis Pendens on the TCTs of the subject properties. The Court of Appeals ruled that although the RTC found that private respondent had no interest to be protected by the Notice of Lis Pendens, since the appellate court already acquired jurisdiction over the case, it was the latter which must ascertain the propriety of canceling the Notice of Lis Pendens upon proper motion and hearing.[39] On the same day, the Court of Appeals also issued a separate Resolution denying petitioners, et al.'s, Motion to Dismiss Appeal of private respondent. According to the appellate court, private respondent raised both questions of fact and law in his appeal; hence, the ground for the dismissal of the appeal relied upon by the petitioners, et al., was untenable.

G.R. No. 174290[40]

Aggrieved by the Resolution dated 18 August 2006 of the Court of Appeals granting private respondent's Motion to Reinstate/Re-annotate Notice of Lis Pendens on the subject properties, petitioners, without filing a Motion for Reconsideration, filed on 11 September 2006 before this Court the instant Petition for Certiorari under Rule 65 of the 1997 Revised Rules of Civil Procedure alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the appellate court in rendering the assailed Resolution. The Petition is docketed as G.R. No. 174290.

Petitioners maintain that the RTC Orders canceling the Notice of Lis Pendens on the TCTs of the subject properties were valid and proper as they were issued on the basis of private respondent's lack of interest/right over the subject properties to be protected by the annotation of such Notice. Moreover, the cancellation of the Notice of Lis Pendens is authorized by Section 14,[41] Rule 13 of the 1997 Revised Rules of Civil Procedure, as well as under Section 77,[42] Presidential Decree No. 1529.[43] Hence, the reinstatement of the Notice of Lis Pendens should not have been allowed.

Petitioners opine that the Court of Appeals gravely abused its discretion when it ordered the re-annotation of the Notice of Lis Pendens based on the mere motion filed by private respondent, as it was violative of the proper procedures prescribed under Presidential Decree No. 1529.

Grave abuse of discretion is committed when an act is 1) done contrary to the Constitution, the law or jurisprudence; or 2) executed "whimsically or arbitrarily" in a manner "so patent and so gross as to amount to an

evasion of a positive duty, or to a virtual refusal to perform the duty enjoined." What constitutes grave abuse of discretion is such capricious and arbitrary exercise of judgment as that which is equivalent, in the eyes of the law, to lack of jurisdiction.[44] It does not encompass an error of law.[45]

At the outset, it is significant to note that petitioners filed the instant Petition without filing a Motion for Reconsideration of the assailed Resolution. A Motion for Reconsideration of the order or resolution is a condition precedent for the filing of a Petition for Certiorari challenging the issuance of the same.[46]

The general rule that the filing of a Motion for Reconsideration before resort to certiorari will lie is intended to afford the public respondent an opportunity to correct any factual or fancied error attributed to it by way of re-examination of the legal and factual aspects of the case.[47] This rule, however, is subject to certain recognized exceptions, to wit: (1) where the order or a resolution, is a patent nullity, as where the court a quo has no jurisdiction; (2) where the questions raised in the certiorari proceeding have been duly raised and passed upon in the lower court; (3) where there is an urgent necessity for the resolution of the question, and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (4) where, under the circumstances, a Motion for Reconsideration would be useless; (5) where petitioner was deprived of due process and there is extreme urgency for relief; (6) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (7) where the proceedings in the lower court are a nullity for lack of due process; (8) where the proceedings were ex parte or were such that the petitioner had no opportunity to object; and (9) where the issue raised is one purely of law or where public interest is involved.[48]

In the case at bar, petitioners aver that they dispensed with the filing of a Motion for Reconsideration of the 18 August 2006 before the Court of Appeals because of the extreme urgency of the relief prayed for, and the issues raised herein are purely of law and involve public interest, therefore, placing the instant case within the ambit of the exceptions to the general rule. Petitioners claim that at the time of filing of this Petition, private respondent was taking steps and other measures to present for registration the 18 August 2006 Resolution of the Court of Appeals to the Office of the Registry of Deeds of Makati City so as to already re-annotate the Notice of Lis Pendens on the TCTs of the subject properties, prompting petitioners to immediately file the instant Petition without seeking reconsideration of the assailed Resolution.

We find that petitioners' reasons for excusing themselves from filing a Motion for Reconsideration before filing the present Petition for Certiorari are baseless and unsubstantiated.

Petitioners' averment of sense of urgency in that private respondent was already taking steps and other measures to have the Notice of Lis Pendens re-annotated by presenting the 18 August 2006 Resolution of the Court of Appeals to the Office of the Registry of Deeds of Makati City deserves scant consideration. Petitioners never described with particularity, much less, presented proof of the steps purportedly taken by the private respondent that would justify their immediate resort to this Court on certiorari without seeking reconsideration of the Resolution in question from the Court of Appeals. Petitioners simply made a sweeping allegation that absolutely has no basis. The records themselves are bare of any proof that would convince this Court that the private respondent indeed, took steps to have the challenged Resolution implemented. In fact, petitioners themselves, in their letter[49] dated 8 September 2006 addressed to the Office of the Registry of Deeds of Makati City, pointed out that the questioned Resolution of the Court of Appeals did not yet order the said Office to re-annotate the Notice of Lis Pendens. Petitioners explained in their letter that the 18 August 2006 Resolution granting private respondent's Motion to Reinstate/Re-annotate Notice of Lis Pendens is a mere indication that private respondent can proceed with the legal procedure leading to the actual re-annotation of the said notice. They even reminded the Register of Deeds of Makati City that even if it would be furnished with a copy of the assailed Resolution, it

had no authority to reinstate/re-annotate the Notice of Lis Pendens without a proper and direct order from the appellate court. More importantly, petitioners explicitly revealed in their letter that they intended to file a Motion for Reconsideration with the Court of Appeals, as its Resolution dated 18 August 2006 had not yet acquired finality. Why then did petitioners not proceed with filing their motion for reconsideration, and opted to immediately file the present Petition for Certiorari?

Similarly baseless is petitioners' bare assertion, without even an attempt at explaining, that the issues subject of the Petition at bar involve public interest sufficient to excuse them from filing a Motion for Reconsideration of the Resolution dated 18 August 2006.

Given the foregoing, the Court dismisses the instant Petition for Certiorari for petitioners' failure to comply with a condition precedent for filing such a petition.

Granting *arguendo* that the present special civil action for certiorari can be given due course, the Court still finds that the Court of Appeals did not commit any grave abuse of discretion in granting private respondent's Motion to Reinstate/Re-annotate Notice of Lis Pendens.

Lis pendens, which literally means pending suit, refers to the jurisdiction, power or control which a court acquires over property involved in a suit, pending the continuance of the action, and until final judgment. Founded upon public policy and necessity, lis pendens is intended (1) 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; and (2) to announce 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.[50]

A trial court has, however, the inherent power to cancel a notice of lis pendens, under the express provisions of law.[51] As provided for by Sec. 14, Rule 13 of the 1997 Rules of Civil Procedure, a notice of lis pendens may be cancelled on two grounds: (1) if the annotation was for the purpose of molesting the title of the adverse party; or (2) when the annotation is not necessary to protect the title of the party who caused it to be recorded.

Considering that the dismissal of private respondent's Complaint by the RTC was appealed to the Court of Appeals, which Complaint refers to the properties covered by TCTs No. 175209, No. 220977, and No. 220978 that bear the annotations of lis pendens, and such properties therefore are irrefragably still the subject matter of litigation, the appellate court rightly saw the need for giving notice to the public of such a fact. The necessity becomes even more compelling considering that petitioner SMWSI had already entered into transactions with third parties involving the subject properties.

On the issue of jurisdiction of the Court of Appeals to entertain the issue on the notice of lis pendens, we adhere to the Court of Appeals' *ratiocination*, thus:

However, as the dismissal of this case by the lower court has been appealed to us, we now have jurisdiction over the case.

The doctrine of lis pendens is based on consideration of public policy and convenience, under the view that once a court has taken cognizance of a controversy, it should be impossible to interfere with the consummation of the judgment by any *ad interim* transfer, encumbrance, or change of possession.

Now that the case is pending before us on appeal, there is no certainty as to the outcome of the case. There is a need to warn the whole world that a particular property is in litigation, serving as a warning that the 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.

x x x. Although the lower court made a finding that [herein private respondent] Hilario has no interest to be protected by the annotation of the notice of the pendency of the case as we now have jurisdiction over the case, we have to ascertain for ourselves the propriety of canceling the annotation of the notice of lis pendens upon proper motion and hearing.[52]

There is likewise no merit in petitioners' contention that the filing by private respondent with the Court of Appeals of an appeal (where he already raised the issue of re-annotating the Notice of Lis Pendens) and, subsequently, a separate Motion to Reinstate/Re-annotate Notice of Lis Pendens is tantamount to forum shopping.

Forum shopping is committed by a party who, having received an adverse judgment in one forum, seeks another opinion in another court, other than by appeal or the special civil action of certiorari. More accurately, however, forum shopping is the institution of two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes and/or to grant the same or substantially the same reliefs.[53] The essence of forum-shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, to secure a favorable judgment. Forum-shopping is present when in the two or more cases pending, there is identity of parties, rights of action and reliefs sought.[54]

In the present case, what were filed by the private respondent before the appellate court were an appeal and a motion relative to the same case. The appeal and the motion filed by the private respondent cannot be regarded as separate and distinct cases or suits. It is settled that the office of a motion is not to initiate new litigation, but to bring up a material but incidental matter arising in the progress of the case in which the motion was filed. A motion is not an independent right or remedy, but is confined to incidental matters in the progress of a cause. It relates to some question that is collateral to the main object of the action and is connected with and dependent upon the principal remedy.[55] Private respondent's Motion to Reinstate/Re-annotate Notice of Lis Pendens is, at the very least, a mere reiteration of one particular issue already raised in the appeal, and an insistence on the urgency of resolving the same ahead of the other issues. The filing of said Motion cannot be considered forum shopping and the admission thereof by the Court of Appeals did not constitute grave abuse of discretion.

Finally, petitioners futilely attempt to convince this Court that the Court of Appeals acted with grave abuse of discretion in granting private respondent's Motion to Reinstate/Re-annotate Notice of Lis Pendens in violation of the proper procedures prescribed under Presidential Decree No. 1529:

Section 117. Procedure. When the Register of Deeds is in doubt with regard to the proper step to be taken or memorandum to be made in pursuance of any deed, mortgage or other instrument presented to him for registration, or where any party in interest does not agree with the action taken by the Register of Deeds with reference to any such instrument, the question shall be submitted to the Commissioner of Land Registration by the Register of Deeds, or by the party in interest thru the Register of Deeds.

Where the instrument is denied registration, the Register of Deeds shall notify the interested party in writing, setting forth the defects of the instrument or legal grounds relied upon, and advising him that if he is not agreeable to such ruling, he may, without withdrawing the documents from the Registry, elevate the matter by consulta within five days from receipt of notice of the denial of registration to the Commissioner of Land Registration.

The Register of Deeds shall make a memorandum of the pending consulta on the certificate of title which shall be canceled motu proprio by the Register of Deeds after final resolution or decision thereof, or before resolution, if withdrawn by petitioner.

The Commissioner of Land Registration, considering the consulta and the records certified to him after notice to the parties and hearing, shall enter an order prescribing the step to be taken or memorandum to be made. His resolution or ruling in consultas shall be conclusive and binding upon all Registers of Deeds, provided, that the

party in interest who disagrees with the final resolution, ruling or order of the Commissioner relative to consultas may appeal to the Court of Appeals within the period and in the manner provided in Republic Act No. 5434.

It is clear that the afore-quoted procedure applies only when the instrument is already presented for registration and: (1) the Register of Deeds is in doubt with regard to the proper step to be taken or memorandum to be made in pursuance of any deed, mortgage or other instrument presented to him for registration; or (2) where any party in interest does not agree with the action taken by the Register of Deeds with reference to any such instrument; and (3) when the registration is denied. None of these situations is present in this case.

There was no evidence that the 18 August 2006 Resolution of the Court of Appeals was already presented to the Register of Deeds of Makati City for the re-annotation of the Notice of Lis Pendens. There is also no showing that the Register of Deeds denied the re-annotation.

G.R. No. 176116[56]

Unsatisfied with the other Resolution dated 18 August 2006 of the Court of Appeals denying their Motion to Dismiss Appeal, petitioners moved for its reconsideration, but it was denied by the appellate court in a Resolution[57] dated 9 November 2006. In a separate Resolution[58] also dated 9 November 2006, the Court of Appeals ordered the Register of Deeds of Makati City to submit the original copies of the Minutes of the Meeting of the Board of Directors of ODC dated 7 May 1988, together with the Deed of Assignment dated 10 May 1988 entered into by and between Tomas Q. Soriano and ODC involving the subject properties, so that they could be referred to the NBI for comparative analysis of Tomas Q. Soriano's signatures.

Following the foregoing development, petitioners filed before this Court another Petition for Certiorari under Rule 65 of the 1997 Revised Rules of Civil Procedure on 29 December 2006, docketed as G.R. No. 176116.

Petitioners assert that the Court of Appeals acted with grave abuse of discretion amounting to lack or excess of jurisdiction in refusing to dismiss private respondent's appeal in its Resolutions dated 18 August 2006 and 9 November 2006, even though the appeal raised only questions of law. Petitioners argue that an appeal raising pure questions of law must be filed with the Supreme Court via Petition for Review under Rule 45 and not with the Court of Appeals.

Petitioners also contend that the Resolution dated 9 November 2006 of the Court of Appeals ordering the submission of documents so that the NBI could perform a comparative analysis of Tomas Q. Soriano's signatures, was apparently for the purpose of finding out whether forgery was committed in the Deed of Assignment dated 10 May 1988. Petitioners assert that the appellate court has absolutely no original jurisdiction to rule whether Tomas Q. Soriano's signature was forged in the Deed of Assignment in question. There is no need for the Court of Appeals to have done an analytical comparison of Tomas Q. Soriano's signatures considering that the RTC made no factual finding as regards the existence or non-existence of forgery. Accordingly, the Court of Appeals has no power to inquire into the allegations of forgery made in the private respondent's Complaint, and for it to proceed to do so is grave abuse of discretion tantamount to lack or excess of jurisdiction.

The Court resolves first the issue of whether the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioners' Motion to Dismiss Appeal.

In resolving such issue, it is necessary to determine only if private respondent's appeal to the Court of Appeals involves purely questions of law, in which case, the proper mode of appeal would be a Petition for Review on Certiorari to the Supreme Court under Rule 45 of the 1997 Revised Rules of Civil Procedure; or questions of fact or mixed questions of fact and law, in which case, the proper mode would be by ordinary appeal to the Court of

Appeals under Rule 41.

A question of law exists when there is doubt or controversy as to what the law is on a certain state of facts, and there is a question of fact when the doubt or difference arises as to the truth or falsehood of facts, or when the query necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to one another and to the whole, and probabilities of the situation. Ordinarily, the determination of whether an appeal involves only questions of law or questions both of law and of fact is best left to the appellate court, and all doubts as to the correctness of such conclusions will be resolved in favor of the Court of Appeals.[59]

Among the grounds raised by petitioners in seeking the dismissal by the RTC of private respondent's Complaint in Civil Case No. 03-954 are: (1) the Complaint stated no cause of action;[60] (2) the claim or demand set forth in the Complaint had been paid, waived, abandoned, or otherwise extinguished;[61] and (3) a condition precedent for filing the claim has not been complied with.[62]

Settled is the rule that in a Motion to Dismiss based on lack of cause of action, the issue is passed upon on the basis of the allegations in the complaint, assuming them to be true. The court does not inquire into the truth of the allegations and declare them to be false; otherwise, it would be a procedural error and a denial of due process to the plaintiff. Only the statements in the complaint may be properly considered, and the court cannot take cognizance of external facts or hold preliminary hearings to ascertain their existence. To put it simply, the test for determining whether a complaint states or does not state a cause of action against the defendants is whether or not, admitting hypothetically the truth of the allegations of fact made in the complaint, the judge may validly grant the relief demanded in the complaint.[63]

In a Motion to Dismiss based on failure to state a cause of action, there cannot be any question of fact or "doubt or difference as to the truth or falsehood of facts," simply because there are no findings of fact in the first place. What the trial court merely does is to apply the law to the facts as alleged in the complaint, assuming such allegations to be true. It follows then that any appeal therefrom could only raise questions of law or "doubt or controversy as to what the law is on a certain state of facts." Therefore, a decision dismissing a complaint based on failure to state a cause of action necessarily precludes a review of the same decision on questions of fact. One is the legal and logical opposite of the other.[64]

Hence, private respondent did raise a question of law when he assigned as an error in his appeal to the Court of Appeals the RTC's alleged error in dismissing his Complaint in Civil Case No. 03-954 for failure to state a cause of action.

It must be remembered, however, that the basis of the RTC Order on 17 January 2005 dismissing private respondent's Complaint was not only its failure to state a cause of action, but also the fact that the claim or demand set forth therein had been paid, waived, abandoned, or otherwise extinguished, and that the condition precedent for filing a claim had not been complied with.

According to the RTC, the Complaint was dismissible on the ground that the claim or demand set forth therein had been paid, waived, abandoned, or otherwise extinguished. Private respondent, in accepting a certain parcel of land as his share in the estate of his late father Tomas Q. Soriano, was now deemed to have been paid or compensated because his share in the estate of the deceased had been delivered to him. In arriving at such a finding, the RTC necessarily made a preliminary determination of the facts in order to verify that, indeed, private respondent's claim or demand had been paid. When the private respondent assigned as error in his appeal such finding of the RTC, he raised not only a question of law, but also a question of fact.

The Court agrees in the following observation and pronouncement made by the Court of Appeals:

The lower court evaluated the documents [herein private respondent] Hilario submitted to prove his claim of forgery. The lower court practically made a finding of fact that the signature of Tomas Q. Soriano in the [D]eed of [A]ssignment is a forgery when the court stated that "the signatures in the [D]eed of [A]ssignment and in the [S]econd [A]mendment of [C]redit [A]greement are the same." Whether the signature of Tomas Q. Soriano was a forgery or not should have been determined during a trial, and not merely in the resolution of a [M]otion to [D]ismiss.

[Private respondent] Hilario likewise raised the issue of whether or not there was payment or estoppel as claimed by the [herein petitioners]. At first glance, it could be surmised that the issue of estoppel is a question of law. However, in this case, there is a question of fact involved.

[Private respondent] Hilario comments that there is precisely a need to factually ascertain whether there has been full payment or award of his legitime, as a compulsory heir of Tomas Q. Soriano, before the court can conclude that [private respondent] Hilario is estopped from questioning the [D]eed of [A]ssignment.

x x x x

As [private respondent] Hilario raised questions of fact as well as questions of law in his appeal, the ground for dismissal relied upon by the [petitioners] is not applicable in his case.[65]

The rule is that the determination of whether an appeal involves only questions of law or questions of both law and fact is best left to the appellate court, and all doubts as to the correctness of such conclusions will be resolved in favor of the Court of Appeals.[66]

Finally, we do not perceive any abusive exercise of power in the Resolution dated 9 November 2006 of the Court of Appeals requiring the submission of the original copies of the documents involved in Civil Case No. 03-954 to enable the NBI to perform a comparative analysis of Tomas Q. Soriano's signatures therein.

It must be stressed that in its 17 January 2005 Order, the trial court expressed a finding that "in the beholder of untrained eyes, the signatures in the Deed of Assignment and in the Second Amendment of Credit Agreement are the same." [67] Considering that the trial court made a finding of fact as regards the issue of forgery and such issue was properly raised in the private respondent's appeal with the appellate court, it certainly behooves the appellate court to review the said findings. Accordingly, as the Court of Appeals has the power to inquire into the allegations of forgery made in the private respondent's Complaint, it can validly require the submission of the original copies of the documents involved in Civil Case No. 03-954 to enable the NBI to perform a comparative analysis of Tomas Q. Soriano's signatures therein.

WHEREFORE, premises considered, these consolidated Petitions for Certiorari are hereby DISMISSED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Leonardo-De Castro,[*] JJ., concur.

[*] Per Special Order No. 546, Associate Justice Teresita J. Leonardo-De Castro was designated to sit as additional member in view of the retirement of Associate Justice Ruben T. Reyes dated 5 January 2009.

[1] Rollo (G.R. No. 176116), p. 297.

[2] Penned by Associate Justice Santiago Javier Ranada with Associate Justices Portia Aliño-Hormachuelos and Amelita G. Tolentino, concurring; rollo (G.R. No. 174290), pp. 30-34.

[3] Rollo (G.R. No. 174290), pp. 35-37.

[4] Id. at 38-40.

[5] Id. at 41-43.

[6] Penned by Associate Justice Santiago Javier Ranada with Associate Justices Portia Aliño-Hormachuelos and Amelita G. Tolentino, concurring; rollo (G.R. No. 176116), pp. 55-58.

[7] Rollo (G.R. No. 176116), pp. 59.

[8] Id. at 60.

[9] Rollo (G.R. No. 174290), pp. 44-51.

[10] Now Makati City.

[11] Rollo (G.R. No. 174290), pp. 64-66.

[12] Id. at 67-69.

[13] Id. at 70-72.

[14] The Deed of Assignment and the Minutes of the Meeting of the Board of Directors of ODC dated 7 May 1988 were signed by the couple and Eugenia P. Soriano (See rollo [G.R. No. 174290], p. 79).

[15] Rollo (G.R. No. 174290), pp. 74-77.

[16] As evidenced by a Certificate of Death; id. at 73.

[17] Id. at 86-87.

[18] Id. at 88-90.

[19] Id. at 91-93.

[20] The Deed of Sale was signed by Josefina P. Soriano, Rosario P. Soriano and Marcial P. Soriano. The said transaction was contained in the Minutes of the Meeting of the Board of Directors of ODC dated 25 April 1991 (See rollo [G.R. No. 174290], p. 97).

[21] Rollo (G.R. No. 174290), pp. 94-96.

[22] Id. at 82-84.

[23] Id. at 85.

[24] Id. at 125-127.

[25] Id. at 105-124.

[26] Penned by Judge Oscar B. Pimental, id. at 170-182.

[27] Now Article 151 of the Family Code of the Philippines.

[28] Rollo (G.R. No. 174290), pp. 177-179, 181-182.

[29] Id. at 182.

[30] Id. at 199-201.

[31] Id. at 202-207.

[32] Id. at 225-228.

[33] Id. at 228.

[34] Id. at 229-232.

[35] Id. at 248-249.

[36] Id. at 250.

[37] Id. at 260-261.

[38] Id. at 271.

[39] Id. at 33.

[40] In this case, the only petitioners are SMWSI and Marcial P. Soriano. The rest of the original defendants in Civil Case No. 03-954 and CA-G.R. CV No. 85561 did not anymore join in filing this Petition for Certiorari.

[41] 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. 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 rights of the party who caused it to be recorded.

[42] Section 77. Cancellation of lis pendens. Before final judgment, a notice of lis pendens may be canceled 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 canceled 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 canceled 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.

[43] Also known as "Property Registration Decree."

[44] Pablo-Gualberto v. Gualberto V, G.R. No. 154994, 28 June 2005, 461 SCRA 450, 467.

[45] Romy's Freight Service v. Castro, G.R. No. 141637, 8 June 2006, 490 SCRA 160, 166.

[46] Estate of Salvador Serra Serra v. Heirs of Primitivo Hernaez, G.R. No. 142913, 9 August 2005, 466 SCRA 120, 127.

[47] Davao New Town Development Corporation v. Commission on the Settlement of Land Problems, G.R. No. 141523, 8 June 2005, 459 SCRA 491, 505-506.

- [48] Tan, Jr. v. Sandiganbayan, 354 Phil. 463, 469-470 (1998).
- [49] Rollo (G.R. No. 174290), pp. 325-326.
- [50] Romero v. Court of Appeals, G.R. No. 142406, 16 May 2005, 458 SCRA 483, 492.
- [51] Fernandez v. Court of Appeals, 397 Phil. 205, 216 (2000).
- [52] Rollo (G.R. No. 174290), pp. 32-33.
- [53] Young v. Keng Seng, 446 Phil. 823, 832 (2003).
- [54] Casupanan v. Laroya, 436 Phil. 582, 593 (2002).
- [55] Arquiza v. Court of Appeals, G.R. No. 160479, 8 June 2005, 459 SCRA 753, 762-763.
- [56] In this case, the only petitioners are SMWSI and Marcial P. Soriano. The rest of the original defendants in Civil Case No. 03-954 and CA-G.R. CV No. 85561 did not anymore join in filing this Petition for Certiorari.
- [57] Rollo (G.R. No. 176116), p.59.
- [58] Id. at 60.
- [59] China Road and Bridge Corporation v. Court of Appeals, 401 Phil. 590, 598-599 (2000).
- [60] 1997 Revised Rules of Civil Procedure, Rule 16, Section 1(g).
- [61] Id., Section 1(h).
- [62] Id., Section 1(j).
- [63] China Road and Bridge Corporation v. Court of Appeals, supra note 58.
- [64] Id.
- [65] Rollo (G.R. No. 176116), pp. 57-58.
- [66] China Road and Bridge Corporation v. Court of Appeals, supra note 58.
- [67] Rollo (G.R. No. 174290), p. 178.

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