

SPECIAL THIRD DIVISION

[G.R. No. 153690, August 04, 2009]

DAVID LU, PETITIONER, VS. PATERNO LU YM, SR., PATERNO LU YM, JR., VICTOR LU YM, ET. AL. & LUYM DEVELOPMENT CORP., RESPONDENTS.

[G.R. NO. 157381]

PATERNO LU YM, SR., PATERNO LU YM, JR., VICTOR LU YM, JOHN LU YM, KELLY LU YM, AND LUDO & LUYM DEVELOPMENT CORP., PETITIONERS, VS. DAVID LU, RESPONDENT.

[G.R. NO. 170889]

JOHN LU YM AND LUDO & LUYM DEVELOPMENT CORPORATION, PETITIONER, VS. THE HON. COURT OF APPEALS OF CEBU CITY (FORMER TWENTIETH DIVISION), DAVID LU, ROSA GO, SILVANO LUDO & CL CORPORATION, RESPONDENTS.

R E S O L U T I O N

NACHURA, J.:

For resolution is the Motion for Reconsideration^[1] filed by petitioners John Lu Ym and Ludo & LuYm Development Corporation (movants), praying that we reconsider our Decision^[2] dated August 26, 2008, where we disposed of the three consolidated cases in this wise:

WHEREFORE, premises considered, the petitions in G.R. Nos. 153690 and 157381 are **DENIED** for being moot and academic; while the petition in G.R. No. 170889 is **DISMISSED** for lack of merit. Consequently, the *Status Quo* Order dated January 23, 2006 is hereby **LIFTED**.

The Court of Appeals is **DIRECTED** to proceed with CA-G.R. CV No. 81163 and to resolve the same with dispatch.

SO ORDERED.^[3]

In support of their motion, the movants advance the following arguments:

1. Private respondents are guilty of fraud in avoiding payment of the correct docket fees by not listing the real properties in their Complaint and Amended Complaint despite their admission that the real properties

are the subject matter of the case and by their act of annotating notices of *lis pendens* on the properties of Ludo Dev.

2. The present action is not an intra-corporate controversy and therefore the RTC, being a special commercial court, has no jurisdiction over the subject matter of the case.

3. The RTC has no jurisdiction to order the dissolution of the Corporation.

However, should this Honorable Court decide that the foregoing grounds are not sufficient justification to warrant a dismissal of SRC-021 CEB, petitioners ask that the *Status Quo* Order of this Court be maintained during the appeal of the case or that a Writ of Injunction be issued to stop the immediate implementation of the March 1, 2004 decision based on the following grounds:

a) The March 1, 2004 decision of the RTC was null and void for denying petitioners' right to due process.

b) The Management Committee organized by the RTC in the March 1, 2004 decision was unlawfully constituted.

c) Supervening event has made the management committee *functus officio*.^[4]

To resolve the motion judiciously, it is necessary to restate, albeit briefly, the factual and procedural antecedents that gave rise to these consolidated petitions.

On August 14, 2000, David Lu, Rosa Go, Silvano Ludo and CL Corporation filed with the Regional Trial Court (RTC) of Cebu City a complaint against Paterno Lu Ym, Sr., Paterno Lu Ym, Jr., Victor Lu Ym, John Lu Ym, Kelly Lu Ym, and Ludo & Luym Development Corporation (LLDC) for *Declaration of Nullity of Share Issue, Receivership and Dissolution*. The case was docketed as Civil Case No. CEB-25502. The plaintiffs, shareholders of LLDC, claimed that the Lu Ym father and sons, as members of the Board of Directors, caused the issuance to the latter of 600,000 of the corporation's unsubscribed and unissued shares for less than their actual value. They then prayed for the dissolution of the corporation and the appointment of a receiver during the pendency of the action.

The defendants therein moved to dismiss the complaint for non-compliance with the requirement of certification of non-forum shopping, and for failure of the plaintiffs to exert efforts towards a compromise. The trial court denied the motion and placed LLDC under receivership.

Defendants Lu Ym father and sons elevated the matter to the Court of Appeals through a petition for certiorari, docketed as CA-G.R. SP No. 64154. However, the same was dismissed for insufficient signatures on the verification and certification of non-forum shopping. Subsequently, they re-filed a petition, which was docketed as CA-G.R. SP No. 64523. On December 20, 2001, the CA granted the petition and ordered the dismissal of the complaint. Aggrieved, David Lu (David), et al., came to

this Court via G.R. No. 153690.

Meanwhile, the Presiding Judge of Branch 6 of the RTC of Cebu City, where the case was initially raffled, inhibited himself on motion of the Lu Ym father and sons. The case was re-raffled to Branch 11. The Presiding Judge of the latter branch directed the parties to amend their respective pleadings in order to conform to the requirements of Republic Act No. 8799, and the case was re-docketed as SRC Case No. 021-CEB.

The Lu Ym father and sons then filed with the trial court a motion to lift the order of receivership over LLDC. Before the matter could be heard, David instituted a petition for certiorari and prohibition before the CA on the issue of the motion to lift order of receivership, docketed as CA-G.R. SP No. 73383. On February 27, 2003, the CA granted the petition and ruled that the proceedings on the receivership could not proceed without the parties amending their pleadings. The Lu Ym father and sons thus filed a petition for review with this Court (G.R. No. 157381).

In the meantime, the Presiding Judge of Branch 11 also inhibited himself, and the case was transferred to Branch 12. On March 31, 2003, the plaintiffs therein filed a Motion to Admit Complaint to Conform to the Interim Rules Governing Intra-Corporate Controversies, which was admitted by the trial court.

On January 23, 2004, the Lu Ym father and sons inquired from the Clerk of Court as to the amount of docket fees paid by David, et al. John Lu Ym further inquired from the Office of the Court Administrator (OCA) on the correctness of the amount paid by David, et al. The OCA informed John Lu Ym that a query on the matter of docket fees should be addressed to the trial court and not to the OCA.

On March 1, 2004, the RTC decided the case on the merits. It annulled the issuance of LLDC's 600,000 shares of stock to the Lu Ym father and sons. It also ordered the dissolution of LLDC and the liquidation of its assets, and created a management committee to take over LLDC. The Lu Ym father and sons appealed to the CA, where the case was docketed as CA-G.R. CV No. 81163.

In view of the executory nature of the decision of the trial court, as mandated in the Interim Rules of Procedure for Intra-Corporate Controversies,^[5] the Lu Ym father and sons moved for the issuance of a writ of preliminary injunction which, however, was denied by the CA. They filed a motion for reconsideration, wherein they further questioned the sufficiency of the docket fees paid by David, et al. in the RTC. On December 8, 2005, the CA denied the motion for reconsideration and stated that the matter should be raised in the appellants' brief to be threshed out in the appeal. Hence, the Lu Ym father and sons filed with this Court a special civil action for *certiorari* and prohibition (G.R. No. 170889).

On August 26, 2008, this Court rendered judgment as aforesaid. Lu Ym father and sons filed the instant Motion for Reconsideration. We required David, et al., to submit their Comment thereto. With our directive complied with, we now resolve the Motion for Reconsideration.

In our August 26, 2008 Decision, we declared that the subject matter of the complaint filed by David, et al., was one incapable of pecuniary estimation. Movants beg us to reconsider this position, pointing out that the case filed below by David, et

al., had for its objective the nullification of the issuance of 600,000 shares of stock of LLDC. The complaint itself contained the allegation that the "real value of these shares, based on underlying real estate values, was One Billion Eighty Seven Million Fifty Five Thousand One Hundred Five Pesos (P1,087,055,105)."^[6]

Upon deeper reflection, we find that the movants' claim has merit. The 600,000 shares of stock were, indeed, properties in litigation. They were the subject matter of the complaint, and the relief prayed for entailed the nullification of the transfer thereof and their return to LLDC. David, et al., are minority shareholders of the corporation who claim to have been prejudiced by the sale of the shares of stock to the Lu Ym father and sons. Thus, to the extent of the damage or injury they allegedly have suffered from this sale of the shares of stock, the action they filed can be characterized as one capable of pecuniary estimation. The shares of stock have a definite value, which was declared by plaintiffs themselves in their complaint. Accordingly, the docket fees should have been computed based on this amount. This is clear from the following version of Rule 141, Section 7, which was in effect at the time the complaint was filed:

SEC. 7. *Clerks of Regional Trial Courts.* -

(a) For filing an action or a permissive counterclaim or money claim against an estate not based on judgment, or for filing with leave of court a third-party, fourth-party, etc. complaint, or a complaint in intervention, and for all clerical services in the same, if the total sum claimed, exclusive of interest, or the stated value of the property in litigation, is:

x x x x^[7]

We have earlier held that a court acquires jurisdiction over a case only upon the payment of the prescribed fees.^[8] Hence, without payment of the correct docket fees, the trial court did not acquire jurisdiction over the action filed by David, et al.

We also stated in our Decision that the earlier rule in *Manchester Development Corporation v. Court of Appeals*^[9] has been relaxed. Subsequent decisions now uniformly hold that when insufficient filing fees are initially paid by the plaintiffs and there is no intention to defraud the government, the Manchester rule does not apply.^[10]

Addressing this point, movants argue that David, et al., were guilty of fraud in that, while they did not mention any real property in their complaint, they were able to obtain the annotation of notices of *lis pendens* on various real properties of LLDC by alleging in their motion to conduct special raffle that there was an "imminent danger" that "properties subject matter of this case" might be disposed of. Moreover, David, et al., prayed for, among others, the liquidation and distribution of the assets of the corporation, so that they may receive their share therein. Among the assets of the corporation are real properties. Hence, the case was, in actuality, a real action that had for its objective the recovery of real property.

Fraud is a "generic term embracing all multifarious means which human ingenuity can devise and which are resorted to by one individual to secure an advantage over

another by false suggestions or by suppression of truth, and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated."^[11] Since fraud is a state of mind, its presence can only be determined by examining the attendant circumstances.^[12]

It is true, as we held in our Decision, that David, et al., merely relied on the assessment made by the Clerk of Court and cannot be faulted for their payment of insufficient docket fees. However, movants now point out that when David Lu moved for the annotation of notices of *lis pendens* on real properties owned by LLDC, they in effect acknowledged that the case they filed was a real action.

A notice of *lis pendens* is governed by Rule 13, Section 14 of the Rules of Court, which states:

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 rights of the party who caused it to be recorded.^[13]

A notice of *lis pendens* is an announcement to the whole world that a particular real property is in litigation, serving as a warning that one who acquires interest over said property does so at his own risk, or that he gambles on the result of the litigation over the said property. The filing of a notice of *lis pendens* charges all strangers with notice of the particular litigation referred to therein and, therefore, any right they may thereafter acquire over the property is subject to the eventuality of the suit. 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.^[14]

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