

## THIRD DIVISION

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

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

### DECISION

**PANGANIBAN, J.:**

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

#### Statement of the Case

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

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

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

#### The Facts

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

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

compliance with specifications.

x x x x x x x x

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

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

1. Pay plaintiff the sum of P4,854,229.94 for the unpaid construction services already rendered;
2. To x x x pay plaintiff the sum of P1,595,551.00 for the construction materials, equipment and tools of plaintiff held by defendant;
3. To x x x pay plaintiff the sum of P2,250,000.00 for the [loss] x x x of expected income from the construction project;
4. [T]o x x x pay plaintiff the sum of P800,000.00 for the cost of income by way of rental from the equipment of plaintiff held by defendants;
5. To x x x pay plaintiff the sum of P5,000,000.00 for moral damages;
6. To x x x pay plaintiff the sum of P5,000,000.00 for exemplary damages;
7. To x x x pay plaintiff the sum equivalent of 25% of the total money claim plus P200,000.00 acceptance fee and P2,500.00 per court appearance;
8. To x x x pay the cost of suit.'

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

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

Construction Contract contained a clause requiring them to submit their dispute to arbitration.

x x x x x x x x

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

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

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

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

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

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

'1. The Court finds no merit in plaintiff's contention that in dismissing the above-entitled case for lack of jurisdiction, and at the same time granting defendant Herbal Cove's motion to cancel notice of lis pendens, the Court [took] an inconsistent posture. The Rules provide that prior to the transmittal of the original record on appeal, the court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal (3rd par., Sec. 10, Rule 41). Even as it declared itself without jurisdiction, this Court still has power to act on incidents in this case, such as acting on motions for reconsideration, for correction, for lifting of lis pendens, or approving appeals, etc.

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

'The Court notes that when it issued the Order of 30 July 1998 lifting the notice of lis pendens, there was as yet no appeal filed by plaintiff. Subsequently, on 10 September 1998, after a

notice of appeal was filed by plaintiff on 4 September 1998, the Branch Clerk of Court was ordered by the Court to elevate the entire records of the above-entitled case to the Court of Appeals. It therefore results that the above-entitled case is still pending. After a careful consideration of all matters relevant to the *lis pendens*, the Court believes that justice will be better served by setting aside the Order of 30 July 1998.'

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

x x x x x x x x

"On October 22, 1999, [Judge Ranada] issued an order denying [respondent's] Motion for Reconsideration of the November 4, 1998 Order for lack of sufficient merit."<sup>[5]</sup>

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

### **Ruling of the Court of Appeals**

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

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

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

The appellate court further explained that the re-annotation of the Notice of *Lis Pendens* was no longer warranted after the court *a quo* had ruled that the latter had no jurisdiction over the case. The former held that the rationale behind the principle of *lis pendens* -- to keep the subject matter of the litigation within the power of the

court until the entry of final judgment -- was no longer applicable. The reason for such inapplicability was that the Makati RTC already declared that it had no jurisdiction or power over the subject matter of the case.

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

Hence, this Petition.<sup>[7]</sup>

### **The Issues**

Petitioner raises the following issues for our consideration:

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

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

### **This Court's Ruling**

The Petition has no merit.

#### **First Issue:** **Proper Basis for a** **Notice of *Lis Pendens***

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

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

As a general rule, the only instances in which a notice of *lis pendens* may be availed of are as follows: (a) an action to recover possession of real estate; (b) an action for partition; and (c) any other court proceedings that directly affect the title to the land or the building thereon or the use or the occupation thereof.<sup>[10]</sup> Additionally, this