

SECOND DIVISION

[CA-G.R. CV NO. 100316, May 26, 2014]

**FBM CONSTRUCTION AND AGRO-INDUSTRIAL CORP.,
PLAINTIFF-APPELLANT, VS. PIO BARRETTO REALTY
DEVELOPMENT INC. AND REGISTER OF DEEDS OF ANTIPOLO
CITY, DEFENDANTS-APPELLEES.**

D E C I S I O N

SALAZAR-FERNANDO, J.:

Before this Court is an appeal from the Decision^[1] dated August 24, 2012 of the Regional Trial Court (RTC), Fourth Judicial Region, Branch 73, Antipolo City in Civil Case No. 02-6447 for Quieting of Title with Prayer for Preliminary Injunction, entitled: "*FBM Construction and Agro-Industrial Corp., Plaintiff, versus Pio Barretto Realty Dev't., Inc., et al., Defendants.*", the dispositive portion of which reads:

"WHEREFORE, premises considered, this case is hereby DISMISSED. Cost against the plaintiff.

SO ORDERED."

The facts are:

On March 22, 2002, plaintiff-appellant FBM Construction and Agro-Industrial Corporation (FBM for brevity) filed a Complaint^[2] for Quieting of Title with Prayer for Preliminary Injunction against defendants-appellees Pio Barretto Realty Development Corporation (Pio Barretto for brevity) and the Register of Deeds of Antipolo City, alleging that: sometime in 1995, Honor P. Moslares (Moslares for brevity) offered to sell to plaintiff-appellant FBM his three (3) parcels of land covered by Transfer Certificates of Title (TCT) Nos. 273837, 273838 and 273751, all situated in Antipolo, Rizal for and in consideration of the total sum of P25,000,000.00; before entering into a contract with Moslares, plaintiff-appellant FBM verified with the Registry of Deeds of Marikina and found that the subject properties were free and clear of all liens and encumbrances and there was no notice of *lis pendens* annotated at the back of said titles; since it did not have sufficient funds to buy all the subject properties, it first bought the lot covered by TCT No. 273838 for Ten Million Pesos (P10,000,000.00) and TCT No. 293771 was issued in its name; Moslares and plaintiff-appellant FBM agreed on the sale to the two (2) remaining lots covered by TCT Nos. 273837 and 273751 for Fifteen Million Pesos (P15,000,000.00) under certain terms and conditions, among them: the execution by Moslares of a special power of attorney authorizing its President, Felix B. Mariñas, to negotiate for a loan with the Rizal Commercial Banking Corporation (RCBC) in the amount of P15 million and applying the proceeds thereof to the purchase price of said lots; pursuant to the said agreement, plaintiff-appellant FBM obtained a P15 million loan from RCBC and paid it to Moslares; however, the latter demanded additional money and it was only in 1999 that he agreed to execute a

deed of absolute sale over the properties covered by TCT Nos. 273837 and 273751; on January 22, 1999, plaintiff-appellant FBM was issued TCT Nos. 362045 and 362046 in its name; subsequently, defendant-appellee Pio Barretto, through its counsel, Atty. Merito R. Fernandez, requested that TCT Nos. 273837, 273838, 273751 and 293771 be canceled; in the purchase of the subject properties, plaintiff-appellant FBM also relied on the Order dated April 15, 1996 of the RTC of Antipolo, Branch 73, dismissing Civil Case No. 95-3678 entitled "*Pio Barretto Realty Development Corp. vs. Honor P. Moslares*" and canceling all notices of *lis pendens* annotated on TCT Nos. 273837, 273838 and 273751; said order became final and executory; plaintiff-appellant FBM is an innocent purchaser for value of the subject properties covered by TCT Nos. 273837, 273838 and 273751 and it was issued TCT Nos. 362045, 362046 and 293771 in its name after the sale.

In its Answer with Compulsory Counterclaim,^[3] defendant-appellee Pio Barretto admitted having requested for the cancellation of Moslares' titles, including the title issued in the name of plaintiff-appellant FBM, but denied the rest of the material allegations in the complaint and averred that: TCT Nos. 273837, 273838 and 273751, all in the name of Moslares, are void, having been issued as a consequence of the execution by the Clerk of Court of RTC Branch 18, Manila of a Deed of Conveyance in Civil Case No. 84-27008 entitled "*Honor P. Moslares vs. Pio Barretto Realty Development Corporation*"; the subject properties were not free and clear of all liens and encumbrances at the time of the execution by Moslares of the deeds of sale in favor of plaintiff-appellant FBM, as shown by the notices of *lis pendens* under entry numbers 358548 and 373584 annotated on July 12, 1995 and January 12, 1996, respectively, at the back of said titles; the purchase of the property covered by TCT No. 273838 and the subsequent issuance of TCT No. 293771 in the name of plaintiff-appellant FBM are void in view of the promulgation on June 28, 2001 by the Supreme Court of a decision in G.R. No. 132662 entitled "*Pio Barretto Realty Development Corporation vs. Court of Appeals, Judge Perfecto A.S. Laguio, Jr., RTC, Br. 18, Manila and Honor P. Moslares*"; likewise, the alleged purchase by plaintiff-appellant FBM of the subject properties covered by TCT Nos. 273751 and 273837 and the issuance of TCT Nos. 362045 and 362046 are void in view of the Decision of the Supreme Court dated June 28, 2001; in his own notice of adverse claim under Entry No. 534130 annotated on July 12, 1999 at the back of the titles, Moslares himself admitted that deceit and misrepresentation attended the issuance of plaintiff-appellant FBM's titles.

By way of Special Affirmative and Negative Defenses, defendant-appellee Pio Barretto further alleged that: this case should be dismissed for failure to pay in full the prescribed docket fees; plaintiff-appellant FBM has no cause of action for quieting of title, thus it is not entitled to the issuance of writ of preliminary injunction; and, plaintiff-appellant FBM is not an innocent purchaser for value in view of the notices of *lis pendens* annotated on the face of Moslares' titles, thus its purchase of the subject properties is subject to the outcome of the case or eventuality of the litigation.

Before the pre-trial conference, plaintiff-appellant FBM's counsel sent written Interrogatories^[4] to defendant-appellee Pio Barretto and the latter, through its President Anthony U. Que, filed its Answer (to Plaintiff's Written Interrogatories) ^[5] thereto.

On March 20, 2003, plaintiff-appellant FBM filed a Motion to Declare Defendant in Default^[6] alleging that the answer caused to be prepared by Anthony Que is a mere scrap of paper because he was not duly authorized by defendant-appellee Pio Barretto to file said pleading. After the filing by defendant-appellee Pio Barretto of its Opposition (to Plaintiff's "Motion to Declare Defendant in Default"), the lower court, in an Order^[7] dated April 11, 2003 denied the motion to declare defendant-appellee Pio Barretto in default. Plaintiff-appellant FBM's Motion (to the Order dated 11 April 2003)^[8] for reconsideration thereof was denied in an Order^[9] dated July 3, 2003.

On December 5, 2003, Enriqueta Medina and Edilberto Medina filed a Motion for Intervention (With attached Answer-in-Intervention, Cross-Claim and Third Party Complaint),^[10] together with the appended Answer-in-Intervention (With Cross-Claim and Third Party Complaint).^[11] Both plaintiff-appellant FBM and defendant-appellee Pio Barretto filed their respective oppositions^[12] thereto. In an Order^[13] dated February 4, 2004, the motion for intervention was denied. A Motion for Reconsideration^[14] thereof was denied in an Order^[15] dated October 27, 2005.

After several postponements, due mainly to various pending incidents, the pre-trial conference was held on March 7, 2006 and a Pre-trial Order^[16] was issued on the same day. Thereafter, hearing on the merits ensued.

Plaintiff-appellant FBM presented Atty. Maria Victoria B. Ramirez, Atty. Marlon G. Facun, Felix B. Mariñas, Sr., as witnesses. On the other hand, defendant-appellee Pio Barretto's only witness is Anthony Que. On rebuttal, plaintiff-appellant FBM presented Teresita Moreno.

Atty. Victoria Bringas-Ramirez testified that: she is the counsel of record of plaintiff-appellant FBM who prepared the complaint in this case; when the return of summons showed that defendant-appellee Pio Barretto no longer exists, she filed a motion that the summons and the complaint be served by publication; defendant-appellee Pio Barretto filed a manifestation with the court stating that the summons mailed to it did not have a copy of the complaint with it; thus, she caused the service of another copy of the summons with the complaint by the court process server; when she received a copy of defendant-appellee Pio Barretto's answer, she secured a copy of its articles of incorporation from the Securities and Exchange Commission (SEC) and found out that the person purportedly authorized to represent it had an investment of only One Thousand Pesos (P1,000.00) and the 99.9 percent of the entire shares is owned by Pio Barretto and Sons Incorporated; she also found out from its articles of incorporation which was written in Spanish that Pio Barretto and Sons, Inc. was registered on July 27, 1927 and its lifetime is fifty (50) years; except for Anthony Que, the names of the directors of defendant-appellee Pio Barretto mentioned in defendant-appellee Pio Barretto's answer to the written interrogatories do not appear in the records of the SEC; from the General Information Sheet (GIS) submitted to the SEC in 1986, it appears that Pio Barretto and Sons, Inc. was a stockholder of defendant-appellee Pio Barretto with 10,350,000.00 shares, equivalent to 99.9% of the total shares; in the answer to written interrogatories, Anthony Que did not include Pio Barretto and Sons, Inc. as a stockholder of defendant-appellee Pio Barretto, however, the records of the SEC do not show that the assets of Pio Barretto and Sons, Inc. had been liquidated; and, thus, it remains a stockholder defendant-appellee Pio Barretto; defendant-appellee

Pio Barretto's registration was revoked by the SEC on August 11, 2003 for non-compliance with the reportorial requirement.^[17]

Atty. Marlon G. Facun, a Legal Officer of the SEC, merely testified that: the corporate existence of Pio Barretto and Sons, Inc. expired in 1977; there was no extension of its term; and, there was no record of liquidation of its assets.^[18]

Felix B. Marinas, Sr., the President and authorized representative of plaintiff-appellant FBM, testified that: sometime in 1995, plaintiff-appellant FBM agreed to purchase from Moslares the subject properties covered by TCT Nos. 273838, 273837 and 273751, all situated in Antipolo City; upon verification with the Office of the Register of Deeds, it was ascertained that said titles were clean; the Register of Deeds even issued a certification stating that said titles were free and clear of any lien or encumbrances; after paying for the first lot covered by TCT No. 273838, Moslares executed a deed of absolute sale on October 25, 1995, thereafter, plaintiff-appellant FBM was issued TCT No. 293771; later, Moslares offered to sell to plaintiff-appellant FBM his two (2) other lots covered by TCT Nos. 273751 and 273837; thus, they agreed that Moslares would execute a special power of attorney authorizing plaintiff-appellant FBM to utilize the lots covered by TCT Nos. 273751 and 273837 as security for a loan from RCBC; upon the release of the proceeds of the loan from RCBC, a portion thereof in the amount P15,000,000.00 was paid to Moslares as purchase price of the lots covered by TCT No. 273751 and 273837; however, Moslares refused to execute a deed of sale because he was asking for more money; thus, he told Moslares that if he would not sign the deed of sale, he would file a case against him; finally, in January, 1999, Moslares executed a deed of sale for the lots covered by TCT Nos. 273751 and 273837; consequently, TCT Nos. 362045 and 362046 were issued in the name of plaintiff-appellant FBM; later on, they found out that the titles issued in the name of plaintiff-appellant FBM bear annotations of *lis pendens*, which were not present in 1995 when he negotiated for the sale of the subject properties; when he confronted Moslares about it, the latter merely told him that he was sorry; the annotation shows that defendant-appellee Pio Barretto is the other claimant of the subject properties; when Moslares died, he could no longer file a case against him, thus he instituted a complaint against defendant-appellee Pio Barretto.

While plaintiff-appellant FBM was presenting evidence, it filed a Motion for Joinder of Indispensable Party,^[19] praying that Enriqueta Medina and Spouses Edilberto and Gregoria Medina be joined as party defendants, in a clear reversal of its previous stance opposing the intervention. The lower court denied said motion in an Order^[20] dated May 19, 2010.

Defendant-appellee Pio Barretto's lone witness, Anthony Que, testified that: he is the President of defendant-appellee Pio Barretto which has an original 25-year corporate life, but was extended to another 25 years from December 8, 2003 by virtue of an Amended Articles of Incorporation approved by the SEC; while Atty. Ramirez of the SEC testified that the registration of defendant-appellee Pio Barretto was revoked for non-compliance with reportorial requirements, its request for extension and reinstatement were approved by the SEC after payment of the fine; on July 12, 1995, defendant-appellee Pio Barretto, through its lawyer, Atty. Ramon Encarnacion, caused the annotation of a notice of *lis pendens* on the original copies of TCT Nos. 273837, 273838 and 273751 in the name of Moslares; on January 12, 1996, it had another notice of *lis pendens* annotated on the same titles, in

connection with a petition for certiorari then pending before the Court of Appeals; plaintiff-appellant FBM could not claim that it was a purchaser in good faith because when it bought the subject properties from Moslares, the titles thereof already had notices of *lis pendens* annotations; in fact, the annotations of the notices of *lis pendens* were carried over to the new certificates of title issued in the name plaintiff-appellant FBM; the case subject of the notice of *lis pendens* dated July 12, 1995 was dismissed, while the petition for certiorari filed with the Court of Appeals and subject of the second notice of *lis pendens* dated January 11, 1996 reached the Supreme Court and eventually decided in favor of defendant-appellee Pio Barretto; and, when the decision of the Supreme Court became final and executory, defendant-appellee Pio Barretto, through its lawyers, filed notices of judicial lien with the Office of the Register of Deeds, requesting that the titles of the subject properties be canceled and new titles be issued in its name.^[21]

Plaintiff-appellant FBM presented Teresita Moreno as a rebuttal witness who testified that: she was a legal assistant of plaintiff-appellant FBM and one of her functions, as such, was to secure copies of documents relative to cases handled by their lawyers; she was able to secure copies of the Deed of Absolute Sale between defendant-appellee Pio Barretto and Enriqueta Medina over the subject properties; she was also able to secure a copy of the Court of Appeals' Decision dated June 30, 1997 in a case between defendant-appellee Pio Barretto and Hon. Perfect A. Laguio; she also obtained copies of Moslares' and plaintiff-appellant FBM's titles over the subject properties which are the same properties sold by defendant-appellee Pio Barretto to Enriqueta Medina.

After hearing, the lower court rendered the assailed judgment. Hence, this appeal assigning the following errors:

A. THE HONORABLE REGIONAL TRIAL COURT OF ANTIPOLO, BRANCH 73 ERRED WHEN IT DECLARED THAT THE APPELLANT IS NOT A BUYER IN GOOD FAITH AND FOR VALUE BY:

1. SIMPLY RELYING ON THE JULY 12, 1995 NOTICE OF LIS PENDENS PERTAINING TO A CASE WHICH WAS DISMISSED WITH FINALITY BY THE VERY SAME COURT AND HAS NOTHING TO DO WITH THE CASE UPON WHICH THE RIGHT OF APPELLEE OVER THE PROPERTIES ARE BASED;
2. TOTALLY IGNORING THE TESTIMONY OF APPELLANT'S WITNESS THAT THE TITLES WERE CLEAN WHEN THEY WERE DOUBLE CHECKED WITH THE REGISTER OF DEEDS BEFORE PURCHASING THE PROPERTIES, A FACT WHICH WAS CATEGORICALLY STRESSED BY THE APPELLEE ITSELF;
3. TOTALLY DISREGARDING THE FACT THAT THE ANNOTATIONS AT THE BACK OF THE THREE (3) TITLES IN THE NAME OF HONOR MOSLARES REGARDING THE JULY 12, 1995 LIS PENDENS ARE THEMSELVES HIGHLY IRREGULAR BECAUSE: (A) THE NOTICE OF LIS PENDENS WERE ALL ANNOTATED AT THE BACK OF PAGE "A" OF EACH TITLE, IMMEDIATELY AFTER THE TECHNICAL DESCRIPTION OF THE PROPERTY AND FOLLOWED BY EARLIER ANNOTATIONS IN VIOLATION OF THE PROVISIONS OF (sic) ; (B) THE ANNOTATIONS REGARDING THE JULY 12, 1995 LIS PENDENS FOUND AT THE BACK