

## TWENTIETH DIVISION

**[ CA-G.R. CEB CV NO. 04692, December 01, 2014 ]**

**WILSON CHAN, REPRESENTED BY UNIMASTERS  
CONGLOMERATION, INC., PETITIONER-APPELLEE, VS. REPUBLIC  
OF THE PHILIPPINES, OPPOSITOR-APPELLANT.**

### D E C I S I O N

**QUIJANO-PADILLA, J.:**

This is an appeal from the Decision<sup>[1]</sup> dated May 17, 2011 of the Regional Trial Court, 8<sup>th</sup> Judicial Region, Branch 8, Magsaysay Boulevard, Tacloban City in Civil Case No. 2010-02-06 for Issuance of Second Owner's Duplicate of Original Certificates of Title Nos. 31300, 31299, 31298, 31281,31280, 31236, 31235, 31234, 31233, 31232, 31231, 31230, 31229, 31228, 31227, 31181, 31180, 31179, 31178, 31177, 31176, 31175, 31174, 31173, 31182 and 31220 which are all registered in the name of Unimasters Conglomeration, Inc.

#### *The Facts*

Petitioner-Appellee Wilson Chan is the President of Unimasters Conglomeration, Inc., a corporation existing in accordance with the laws of the Philippines with office address at Leyte Park Resort Hotel, Magsaysay Boulevard, Tacloban City. As president, he was in charge of the safekeeping of various documents including all the certificates of title of the different parcels of land owned by the corporation.

That among the titles in the name of the corporation which he kept in the company safe were: Transfer Certificates of Title Nos. 31300, 31299, 31298, 31281,31280, 31236, 31235, 31234, 31233, 31232, 31231, 31230, 31229, 31228, 31227, 31181, 31180, 31179, 31178, 31177, 31176, 31175, 31174, 31173, 31182 and 31220.<sup>[2]</sup>

Sometime in August 2009, he discovered that the said titles were no longer inside the company safe.<sup>[3]</sup> Prior to that, the said titles were borrowed by his younger brother, Willard L. Chan because the latter used it as collateral for the loan at RCBC. He immediately went to the Register of Deeds and asked for a certified true copy of the said titles and it reflected that the mortgage of RCBC was still annotated thereon. So he went to RCBC to inquire about the mortgage and discovered that the loan was already paid. RCBC informed him that the titles were already returned to his brother, Willard L. Chan and the latter's staff, Adolfo De Guia.<sup>[4]</sup> Wilson Chan declared that the said titles were returned by his younger brother through one of his staff however, the latter died three [3 ] years prior to the filing of the complaint so he could not ascertain the veracity of the claim of his brother, Willard Chan.<sup>[5]</sup>

Thereafter, he went to the Register of Deeds for the cancellation of the annotation of the mortgage but the said office informed him that they need the owner's duplicate

certificates of title first before they could effect a cancellation of the mortgage.<sup>[6]</sup>

Hence, on February 8, 2010 he filed the instant petition for the issuance of second owners' duplicate certificates of title before the RTC.<sup>[7]</sup> Finding the said petition to be sufficient in form and substance, the RTC in its Order<sup>[8]</sup> dated August 2, 2010 set the case for hearing on September 29, 2010 and further mandated that a copy of said order be posted at the bulletin boards of Bulwagan ng Katarungan, Leyte Provincial Capitol, City Hall of Tacloban and the Register of Deeds for the City of Tacloban.<sup>[9]</sup> Thereafter, Sheriff IV Ludy D. Marmita issued a Certificate of Posting<sup>[10]</sup> stating that he had posted copies of the order on the places mentioned therein.

On September 29, 2010, after petitioner's counsel established the jurisdictional requirements, the RTC issued a general order of default and likewise ordered that the reception of evidence be done through a commissioner and as such designated Atty. Rhyna Peñaranda as commissioner.<sup>[11]</sup>

On October 11, 2010, the RTC received the Notice of Appearance<sup>[12]</sup> filed by the Office of the Solicitor General and deputized the City Prosecutor's Office to appear on the former's behalf.<sup>[13]</sup>

Petitioner presented the lone testimony of Wilson Chan on February 17, 2011.<sup>[14]</sup> On April 28, 2011, petitioner formally offered Exhibits "A" to "G"<sup>[15]</sup> which were all duly admitted by the RTC.<sup>[16]</sup>

Thereafter, on May 17, 2011, the RTC issued its Decision,<sup>[17]</sup> granting petitioner's prayer and ordered the Register of Deeds of Tacloban to issue a second owner's duplicate certificate, the dispositive portion of the decision, reads:

"WHEREFORE, premises considered, the Register of Deeds of Tacloban City is hereby directed to issue the second owner's duplicate certificate of OCT. (sic) Nos. 31300, 31299, 31298, 31281, 31280, 31236, 31235, 31234, 31233, 31232, 31231, 31230, 31229, 31228, 31227, 31181, 31180, 31179, 31178, 31177, 31176, 31175, 31174, 31173, 31182, 31220 in lieu of the ones that were lost, which are hereby declared null and void.

Furnish a copy of this Decision to the petitioner, his counsel, the Register of Deeds of Tacloban City and the Office of the Solicitor General.

SO ORDERED."<sup>[18]</sup>

On June 14, 2011<sup>[19]</sup> the Office of the Solicitor General filed a Notice of Appeal<sup>[20]</sup> stating that it received the May 17, 2011 Decision of the RTC on May 30, 2011.

This was opposed by the petitioner claiming that the instant case is a special proceeding so that a record of appeal is necessary in order to perfect the appeal and not just a notice of appeal.<sup>[21]</sup>

The RTC gave due course to the appeal and explained in its Order<sup>[22]</sup> dated October

18, 2012 that the issuance of second copies of title is merely an adjunct to the original land registration case and under Presidential Decree No. 1529, particularly Section 33 thereof provides that judgment is appealable to the Court of Appeals or the Supreme Court in the same manner as in ordinary actions.

Thus, the Republic of the Philippines through the Office of the Solicitor General, on appeal, raised the lone assignment of error, which reads:

“THE TRIAL COURT GRAVELY ERRED IN GRANTING THE PETITION DESPITE THE FACT THAT THE ALLEGED LOSS OF THE OWNER'S DUPLICATE COPIES OF THE SUBJECT TWENTY-SIX TITLES WAS NOT DULY ESTABLISHED.”<sup>[23]</sup>

### ***Our Ruling***

The OSG contends that from the testimony of Wilson Chan, it is very clear that the person who last possessed the subject owner's duplicate copies was Willard Chan. Accordingly, this jibes with the testimony of Wilson Chan that the titles could not be located in his drawer in their office where he usually keeps their files. It was thus crucial for Wilson Chan to prove that the subject titles were no longer in the possession of his brother Willard Chan, otherwise it could not safely be concluded that the duplicate copies sought to be replaced were lost and this petitioner-appellee failed to prove.<sup>[24]</sup>

On the other hand, Wilson Chan insists that the appeal should be dismissed for failure to perfect an appeal thus attaining finality. Accordingly, the subject petition is actually an incident to a land registration case so that it is continuing proceeding and that multiple appeals is allowed. As such, in order to perfect an appeal from said proceedings a record of appeal is necessary.<sup>[25]</sup>

This argument of the petitioner-appellee fails to persuade Us.

The pertinent provision governing the issuance of a lost title is Section 109 of P.D. 1529, which reads:

“Section 109. Notice and replacement of lost duplicate certificate. In case of loss or theft of an owner's duplicate certificate of title, due notice under oath shall be sent by the owner or by someone in his behalf to the Register of Deeds of the province or city where the land lies as soon as the loss or theft is discovered. If a duplicate certificate is lost or destroyed, or cannot be produced by a person applying for the entry of a new certificate to him or for the registration of any instrument, a sworn statement of the fact of such loss or destruction may be filed by the registered owner or other person in interest and registered.

Upon the petition of the registered owner or other person in interest, the court may, after notice and due hearing, direct the issuance of a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place of the lost duplicate certificate, but shall in all respects be entitled to like faith and credit as the original duplicate, and shall thereafter be regarded as such for all purposes of this decree.”

As already discussed by the RTC, appeals from the judgment in land registration proceedings may be taken like ordinary civil cases, thus as provided under Section 30 of the same Presidential Decree 1529, which reads:

"Section 30. When judgment becomes final; duty to cause issuance of decree. The judgment rendered in a land registration proceedings becomes final upon the expiration of thirty days to be counted from the date of receipt of notice of the judgment. An appeal may be taken from the judgment of the court as in ordinary civil cases."

Thus, like the RTC, We find that the appeal is already perfected by the filing of the notice of appeal.

Going now to the merits of the case, the Republic contended:

"From the testimony of Wilson Chan, it is very clear that the person who had last possession of the subject owner's duplicate copies was Willard Chan. This jibes with his own testimony that the titles could not be located in his drawer in their office where he usually keeps their files.

It is thus crucial for appellee to prove that the subject titles are no longer in the possession of Willard Chan, otherwise, it cannot be safely be concluded that the duplicate copies sought to be replaced were lost. Yes, appellee failed in this task, warranting the dismissal of its petition."<sup>[26]</sup>

Although We subscribe to the contention of the Republic that Wilson failed to prove loss, the failure could not be attributed only to the non-presentation of Willard Chan but also for failing to substantiate the claim regarding the death of Adolfo de Guia. The testimony of Wilson Chan regarding the loss, reads:

"Q: When did you first discover that the transfer certificates of titles were lost?

A: We found that sometime on (sic) August, 2009.

Q: Were you the one who kept these transfer certificates of title?

A: Yes, ma'am.

Q: Where did you keep these titles?

A: Usually we kept it in our safe however these was (sic) borrowed by my younger brother when he went to borrow money from RCBC, so when I was looking for it and we didn't know where it was, we went to Register of Deeds and we checked the titles and we learned that it was mortgaged to RCBC. So we went back to RCBC they showed us also the records that it has already been fully paid and that the papers were released to my younger brother and my younger brother told me that he gave it to me, through somebody, in one of my staff, and that one of my staff today is already dead so we could not confirm that staff. He died already about three years ago.

Q: And these 26 certificates of titles (sic) were mortgaged by your brother to RCBC?

A: Yes, that was RCBC records shows (sic).