



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

MR HOLDINGS, LTD.,
Petitioner,

G.R. No. 153478

Present:

- versus -

SERENO, C.J.,
Chairperson,
LEONARDO-DE CASTRO,
PERALTA,*
BERSAMIN, and
VILLARAMA, JR., JJ.

SHERIFF CARLOS P. BAJAR,
Sheriff IV, RTC of Manila, Branch
26, CITADEL HOLDINGS, INC.,
VERCINGETORIX
CORPORATION, MANILA GOLF
& COUNTRY CLUB, INC. and
MARCOPPER MINING
CORPORATION,

Promulgated:

10 OCT 2012

Respondents.

X-----X

DECISION

VILLARAMA, JR., J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to reverse and set aside the Decision¹ dated May 8, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 59476.

Petitioner MR Holdings, Ltd. is a non-resident foreign corporation, organized and existing under the laws of Cayman Island with business address c/o Codan Trust Company (Cayman), Ltd., Zephyr House, Mary

* Designated additional member per Raffle dated September 17, 2012.

¹ *Rollo*, pp. 8-18. Penned by Associate Justice Bienvenido L. Reyes (now a Member of this Court) with Associate Justices Roberto A. Barrios and Edgardo F. Sundiam concurring.

Street, George Town, Grand Cayman, British West Indies. It is a subsidiary corporation of Placer Dome, Inc. (Placer Dome), a foreign corporation which owns 40% of respondent Marcopper Mining Corporation (Marcopper). This Court has adjudged petitioner to be a foreign corporation engaged only in isolated transactions and not “doing business” in the Philippines.²

On November 4, 1992, Marcopper and Asian Development Bank (ADB) executed a “Principal Loan Agreement” and a “Complementary Loan Agreement” whereby ADB agreed to extend a loan in the aggregate amount of US\$40,000,000.00 to finance Marcopper’s open-pit copper ore mining project (San Antonio Mine) at Sta. Cruz, Marinduque.³ On even date, ADB and Placer Dome executed a “Support and Standby Credit Agreement” whereby Placer Dome agreed to provide Marcopper with cash flow support for the payment of its obligations to ADB.

As security for the loan, Marcopper executed in favor of ADB a “Deed of Real Estate and Chattel Mortgage” dated November 11, 1992 covering substantially all of its real and personal properties including Manila Golf & Country Club (Manila Golf Club) Membership Certificate Nos. 1412 and 1444, and “Addendum to Mortgage” dated May 10, 1996.⁴ The Deed of Real Estate and Chattel Mortgage and Addendum to Mortgage were registered with the Register of Deeds on November 12, 1992 and May 15, 1996, respectively.

Sometime in March, 1996, Marcopper had to stop mining operations when tons of mine waste or tailings leaked from the drainage tunnel of its Mt. Tapian pit and spilled into the waters of the Boac and Makalupnit rivers. Due to massive damage to the environment and threat of serious health problems to local residents resulting from the incident, the Department of Environment and Natural Resources immediately issued a Closure Order,

² *MR Holdings, Ltd. v. Sheriff Bajar*, 430 Phil. 443 (2002).

³ *CA rollo*, pp. 75-143.

⁴ *Id.* at 144-180.

which was followed by a cease and desist order from the Pollution Adjudication Board.

Marcopper defaulted on its loan obligations to ADB. Pursuant to Placer Dome's undertaking under the "Support and Standby Credit Agreement," petitioner assumed Marcopper's obligation to ADB in the amount of US\$18,453,450.02. Consequently, under an "Assignment Agreement"⁵ dated March 20, 1997, ADB assigned to petitioner all its rights, interests and obligations under the principal and complementary loan agreements, Deed of Real Estate and Chattel Mortgage, and Support and Standby Credit Agreement. Marcopper subsequently executed a "Deed of Assignment" (December 8, 1997) whereby Marcopper assigns, cedes and conveys to petitioner, its assigns and/or successors-in-interest all of its properties, mining equipment and facilities.⁶

On account of its inability to meet production targets after the mine tailings disaster in its Marinduque project, Marcopper was sued by one of its creditors, Solidbank Corporation (Solidbank) on the foreign currency loans granted by the latter. Solidbank filed a civil complaint before the Regional Trial Court (RTC) of Manila, Branch 26, docketed as **Civil Case No. 96-80083**, entitled "*Solidbank Corporation v. Marcopper Mining Corporation, John E. Loney, Jose E. Reyes and Teodulo C. Gabor, Jr.*" Solidbank sought to collect a total amount of ₱52,970,756.89 plus interest, charges and litigation expenses. A writ of preliminary attachment was issued by said court on September 20, 1996, pursuant to which respondent Sheriff Carlos P. Bajar levied upon the properties of Marcopper such as personal properties consisting of club membership shares, including the subject Manila Golf Club shares.

On May 7, 1997, the Manila RTC issued in Civil Case No. 96-80083 a Partial Judgment,⁷ as follows:

⁵ Id. at 184-199.

⁶ *MR Holdings, Ltd. v. Sheriff Bajar*, supra note 2 at 452.

⁷ CA rollo, pp. 203-208. Penned by Judge Guillermo L. Loja, Sr.

WHEREFORE, PREMISES CONSIDERED, partial judgment is hereby rendered ordering defendant Marcopper Mining Corporation as follows:

1. To pay plaintiff Solidbank the sum of Fifty Two Million Nine Hundred Seventy Thousand Seven Hundred Fifty Six Pesos and 89/100 only (P52,970,756.89), plus interest and charges until fully paid;
2. To pay an amount equivalent to Ten Percent (10%) of abovestated amount as attorney's fees; and
3. To pay the costs of suit.

SO ORDERED.⁸

On June 25, 1997, the RTC also granted Solidbank's motion for execution pending appeal, conditioned on its posting of a bond in the amount of ₱30 million in addition to the ₱58.2 million attachment surety bond filed with the court. The writ of execution pending appeal issued on July 7, 1997 directed Sheriff Bajar to require Marcopper "to pay the sums of money to satisfy the partial judgment." On July 11, 1997, Sheriff Bajar issued a notice of sale on execution pending appeal covering several club membership shares, and setting the public auction sale thereof on July 21, 1997.⁹

On July 2, 1997, Marcopper filed a Petition for Certiorari and Prohibition in the CA, docketed as **CA-G.R. SP No. 44570**, praying for the issuance of a writ of preliminary injunction and the nullification of the June 25, 1997 Order of execution pending appeal. The CA, in its Resolution dated July 15, 1997, granted a temporary restraining order (TRO) enjoining the implementation of the writ of execution issued by the Manila RTC, Branch 26 in Civil Case No. 96-80083.¹⁰

In the meantime, petitioner pursued other remedies to protect its rights over the levied properties in Civil Case No. 96-80083. In a letter dated July 21, 1997, it formally notified the Corporate Secretary of Manila Golf Club of the assignment of mortgage under instruments duly registered, and requested the Corporate Secretary "to record and reflect the said mortgage

⁸ Id. at 207-208.

⁹ Id. at 209-215.

¹⁰ Id. at 216-220.

and encumbrance upon the described shares so as to put third parties and the public in general on notice of the fact [and] existence of said mortgage.”¹¹

On August 4, 1997, petitioner filed in Civil Case No. 96-80083 a “Manifestation And Notice of Prior Lien” asserting in particular, its rights as assignee of the club shares of Marcopper which had been mortgaged and conveyed to ADB, including the subject Manila Golf membership shares. Petitioner requested that the “Deed of Assignment,” “Deed of Real Estate and Chattel Mortgage,” and “Addendum to Mortgage” be entered and made part of the records of the case “in order to warn future bidders or buyers of said mortgaged properties presently subject to execution proceedings, of the existence of [petitioner’s] prior lien or encumbrance.”¹²

On September 4, 1997, petitioner as assignee filed an application for extrajudicial foreclosure of the Chattel Mortgage executed on November 11, 1992. In the auction sale held on September 15, 1997, the subject club shares consisting of Marcopper’s Manila Golf Club Membership Certificate Nos. 1412 and 1444, were sold to petitioner as the highest bidder, and accordingly a Certificate of Sale was issued to it by the Office of the Clerk of Court and Ex-Officio Sheriff of Makati City. On the same date, petitioner furnished the Corporate Secretary of Manila Golf Club a copy of the certificate of sale and warning the said officer “not to honor or effect any transfers or transactions involving the said shares other than the transfer of the said shares to [petitioner].”¹³

Meanwhile, on December 8, 1997, in payment of its obligations amounting to US\$19,550,747.00 as of December 31, 1997, Marcopper executed a Deed of Assignment whereby Marcopper assigned, ceded and conveyed to petitioner, its assigns and/or successors-in-interest all of its properties, mining equipment and facilities.

¹¹ Id. at 221.

¹² Id. at 222-224.

¹³ Id. at 226-240.

On December 12, 1997, the CA rendered judgment dismissing the petition in CA-G.R. SP No. 44570. The CA likewise denied the motion for reconsideration filed by Marcopper. On July 15, 1998, Marcopper filed before this Court a petition for review on certiorari under Rule 45, docketed as **G.R. No. 134049** entitled “*Marcopper Mining Corporation v. Solidbank Corporation, the Sheriff of Manila and Deputy Sheriff Carlos Bajar.*”¹⁴

On January 13, 1999, Sheriff Bajar issued in Civil Case No. 96-80083 a notice of sale on execution pending appeal which set the auction of the levied membership shares of Marcopper in various clubs on January 19, 1999. On that scheduled date, petitioner filed a “Manifestation and Warning” specifically addressed to Sheriff Bajar, all bidders and the general public, informing that the subject club shares which Sheriff Bajar intended to sell have already been acquired by petitioner at the foreclosure proceedings conducted by the Sheriff of Makati City on September 15, 1997. Petitioner likewise served an “Affidavit of Third-Party Claim” asserting such legal and beneficial ownership it acquired over the subject club membership shares by virtue of the foreclosure sale.¹⁵

The Manila RTC, Branch 26 denied the third-party claim, prompting the petitioner to file an independent reivindicatory action in the RTC of Boac, Marinduque against Solidbank, Marcopper and Sheriffs Bajar and Jandusay, pursuant to Rule 39, Section 16 of the 1997 Rules of Civil Procedure, as amended. The case was docketed as **Civil Case No. 98-13**. On October 6, 1998, the court in said case denied petitioner’s application for a writ of preliminary injunction.

Herein respondents Citadel Holdings, Inc. (Citadel) and Vercingetorix Corporation (Vercingetorix) were the highest bidders for Manila Golf Club Membership Certificate Nos. 1412 and 1444, respectively, during the public auction conducted by Sheriff Bajar on January 19, 1999 pursuant to the writ of execution pending appeal issued in Civil Case No. 96-80083. After the

¹⁴ 476 Phil. 415 (2004).

¹⁵ Id. at 241-247.

Certificates of Sale have been issued to them by Sheriff Bajar, the following Order¹⁶ dated January 26, 1999 was issued by the Manila RTC, Branch 26:

Acting on the two identical ex-parte motions filed by movants CITADEL HOLDINGS, INC. and VERCINGETORIX CORPORATION, which were declared awardees of MANILA GOLF AND COUNTRY CLUB CERTIFICATE NOS. 1412 and 1444, respectively, for having posted the highest bids during the Sheriff's Auction Sale on January 19, 1999, and finding both motions to be impressed with merit, the Court orders the corporate secretary and/or authorized officer of MANILA GOLF AND COUNTRY CLUB, INC. to register and transfer MANILA GOLF MEMBERSHIP CERTIFICATE NO. 1412 to CITADEL HOLDINGS, INC. and MANILA GOLF MEMBERSHIP CERTIFICATE NO. 1444 to VERCINGETORIX CORPORATION which were levied by virtue of the Writ of Attachment issued in the above-captioned case as early as September 20, 1996, to the movants and highest bidders CITADEL HOLDINGS, INC. and VERCINGETORIX CORPORATION, in place and in lieu of the old membership certificates registered in the name of the judgment-debtor, defendant MARCOPPER MINING CORPORATION, which said old membership certificates are hereby declared void and cancelled.

SO ORDERED.

Manila Golf Club's Corporate Secretary, Atty. Avelino V. Cruz, wrote petitioner's counsel informing the latter that they could not comply with petitioner's earlier request not to register any transfer of Membership Certificate Nos. 1412 and 1444 in view of the above court order "absent any further revision or amendment of that Order by the said court or by higher courts."¹⁷

On March 15, 1999, petitioner filed in the RTC of Makati City a complaint for "Reivindication of Possession/Right with Damages and Prayer for Preliminary Injunction and Temporary Restraining Order" against herein respondents, docketed as **Civil Case No. 99-605** (Branch 62). Petitioner argued that as assignee of the creditor-mortgagee, it had the right to foreclose the chattel mortgage on the subject certificates upon default of the debtor-mortgagor (Marcopper) according to the terms of the loan agreements. Having foreclosed a preferred/superior mortgage lien, all subordinate liens, such as the levy on attachment/execution for Solidbank as judgment obligee, has also been foreclosed. Petitioner thus asserted that as

¹⁶ Id. at 250.

¹⁷ Id. at 251.

purchaser in the extrajudicial foreclosure sale, it became the absolute owner of the subject certificates sold by respondent sheriff at the execution sale pending appeal, including the Manila Golf Club certificates which the Manila RTC, Branch 26 directed to be transferred to respondents Citadel and Vercingetorix.

In its complaint, petitioner prayed for the following reliefs:

1. Upon the posting of a bond in such sum as may be directed by the Honorable Court, to issue a writ of preliminary injunction or temporary restraining order enjoining, pending final adjudication of the instant complaint, the defendant Manila Golf from transferring to defendants Citadel and Vercingetorix Certificate Nos. 1412 and 1444, respectively, and issuing new certificates in lieu thereof.

2. And, making said writ of preliminary injunction final upon favorable consideration of the complaint.

3. To render judgment:

- a.) Declaring the plaintiff as the true absolute owner of Manila Golf Certificate Nos. 1412 and 1414.

- b.) Restoring possession/right of the subject club shares to plaintiff;

- c.) Ordering the defendant sheriff to pay damages to the plaintiff in such sums as may be proved in court but not less than the market value of the subject club shares in the sum of a total of Sixty Five Million Pesos (P65,000,000.00); exemplary damages of One Million Pesos (P1,000,000.00); litigation expenses in the sum of One Hundred Thousand Pesos (P100,000.00); attorney's fees in the sum of Five Hundred Thousand Pesos (P500,000.00); and cost of suit.

Or, in the alternative:

4. Should judgment be to deny plaintiff's reivindication of possession/right over the subject club shares, render judgment ordering defendant Marcopper to restitute plaintiff all such sums paid by it in consideration of the foreclosure sale, or so much thereof as will cover the consideration paid for the foreclosed Manila Golf Club shares or the total sum of Sixty Five Million Pesos (P65,000,000.00), plus legal interest thereon from date of filing of complaint until fully paid.

Other just and equitable reliefs are, likewise, prayed for.¹⁸

In their separate answers, respondents Citadel, Vercingetorix and Sheriff Bajar moved for the dismissal of the complaint on grounds of forum

¹⁸ Id. at 71-73.

shopping, *litis pendentia*, lack of legal capacity to sue and lack of cause of action. By way of cross-claim, Vercingetorix prayed that in the event of adverse judgment against it, its co-defendant Sheriff Bajar be ordered to indemnify it for all damages it sustained in the amount of not less than ₱15,300,000.00. On its part, Manila Golf Club filed a manifestation and motion praying that it be dropped as party defendant for the reason that it is not a real party in interest. On the other hand, Marcopper filed a motion to dismiss on the ground that the complaint states no cause of action against it.¹⁹

In his Order dated April 5, 1999, Presiding Judge Roberto C. Diokno denied petitioner's application for TRO and Preliminary Injunction, and set the case for pre-trial after the expiration of the periods for the filing of defendants' answers.²⁰

In a Manifestation dated September 16, 1999, Manila Golf Club stated that it is constrained to comply with the January 26, 1999 Order of the Manila RTC, Branch 26 in Civil Case No. 96-80083 by registering and transferring the subject membership certificates in the names of Citadel and Vercingetorix. It nevertheless reiterated its undertaking to abide in whatever Judgment/Decision will be rendered by the Makati City RTC in the case (Civil Case No. 99-605).²¹ This prompted petitioner to file a motion for the court "to order defendant Manila Golf & Country Club to annotate the pendency of the instant case on Manila Golf Membership Certificate Nos. 1412 and 1444 and to keep the annotation until final judgment has been rendered in the instant case."²² Petitioner stated that such annotation is necessary to protect its interest pending the final judgment or decision to be rendered in Civil Case No. 99-605. In the Order dated March 20, 2000, Judge Diokno denied petitioner's motion for lack of basis in law. Petitioner's motion for reconsideration was likewise denied under the Order dated May 10, 2000 stating that the notice of *lis pendens* provided in Section 76 of Presidential Decree (P.D.) No. 1529 pertains to real properties and not

¹⁹ Id. at 254-291.

²⁰ Id. at 252-253.

²¹ Id. at 292-294.

²² Id. at 295-296.

shares of stock which are considered chattels, and that granting the motion would constitute an undue restraint on the ownership of Citadel and Vercingetorix of the Manila Golf membership certificates.²³

On July 3, 2000, petitioner filed a petition for certiorari in the CA (CA-G.R. SP No. 59476) assailing the aforesaid orders of the Makati City RTC, Branch 62 denying its motion to annotate a notice of *lis pendens* on Manila Golf Membership Certificate Nos. 1412 and 1444.

Meanwhile, this Court promulgated the Decision dated April 11, 2002 granting the petition in G.R. No. 138104 on the denial of petitioner's application for preliminary injunction in Civil Case No. 98-13. The dispositive portion of said Decision reads:

WHEREFORE, the petition is GRANTED. The assailed Decision dated January 8, 1999 and the Resolution dated March 29, 1999 of the Court of Appeals in CA G.R. No. 49226 are set aside. Upon filing of a bond of ₱1,000,000.00, respondent sheriffs are restrained from further implementing the writ of execution issued in Civil Case No. 96-80083 by the RTC, Branch 26, Manila, until further orders from this Court. The RTC, Branch 94, Boac, Marinduque, is directed to dispose of Civil Case No. 98-13 with dispatch.

SO ORDERED.²⁴

On May 8, 2002, the CA rendered its Decision in CA-G.R. SP No. 59476 dismissing the petition for certiorari filed by petitioner. The CA found no grave abuse of discretion in the denial by the Makati City RTC, Branch 62 of petitioner's motion to annotate *lis pendens* on the subject certificates considering that Section 14, Rule 13 of the Rules of Court and Section 76 of P.D. No. 1529 both refer to actions affecting title or right of possession to real properties, and that even assuming that the public respondent erroneously opined on the matter, the same constitutes a mere error in judgment which cannot be corrected by the extraordinary remedy of certiorari but by ordinary appeal at the proper time.

Petitioner filed the present petition on May 28, 2002.

²³ Id. at 295-297, 305-313.

²⁴ *MR Holdings, Ltd. v. Sheriff Bajar*, supra note 2 at 474.

During the pendency of this case, on June 17, 2004, a decision was rendered in G.R. No. 134049 which nullified the order of RTC Manila, Branch 26 in Civil Case No. 96-80083 granting the respondents' motion for execution pending appeal. The dispositive portion of said decision reads:

IN LIGHT OF ALL THE FOREGOING, the petition in this case is GRANTED. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 44570 and the assailed Order of the RTC in Civil Case No. 96-80083 dated May 7, 1997 and the Writ of Execution issued by the RTC on the basis of the said Order, are REVERSED AND SET ASIDE.

SO ORDERED.²⁵

In this petition, the following issues are presented for resolution:

- I. WHETHER THE *LIS PENDENS* RULE CAN APPLY IN ACTIONS AFFECTING TITLE OR POSSESSION OF PERSONAL PROPERTIES.
- II. WHETHER THE PETITION AT BAR PRESENTS CIRCUMSTANCES SUFFICIENT FOR THE HONORABLE COURT AS A COURT OF LAW, JUSTICE AND EQUITY TO GRANT THE MOTION TO ANNOTATE.²⁶

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* 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.²⁷

A notice of *lis pendens* is governed by Rule 13, Section 14 of the 1997 Rules of Civil Procedure, as amended, which states:

²⁵ *Marcopper Mining Corporation v. Solidbank Corporation*, supra note 14 at 454.

²⁶ *Rollo*, p. 384.

²⁷ *St. Mary of the Woods School, Inc. v. Office of the Registry of Deeds of Makati City*, G.R. Nos. 174290 & 176116, January 20, 2009, 576 SCRA 713, 730, citing *Romero v. Court of Appeals*, G.R. No. 142406, May 16, 2005, 458 SCRA 483, 492.

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. (Emphasis supplied)

It is evident that a notice of *lis pendens* is availed of mainly in real actions. As a general rule, these actions are: (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 the annotation of *lis pendens* also applies to suits seeking to establish a right to, or an equitable estate or interest in, a specific real property, or to enforce a lien, a charge or an encumbrance against it.²⁸ Clearly, in this jurisdiction, a notice of *lis pendens* does not apply to actions involving title to or any right or interest in, *personal property*, such as the subject membership shares in a private non-stock corporation.

Petitioner, citing the 1958 case of *Diaz v. Hon. Perez, et al.*²⁹ argues that *lis pendens* may also be allowed in “other circumstances wherein equity and general convenience would make [it] appropriate.” In the said case, this Court declared that Section 79 of the Land Registration Act (Act No. 496) and Section 24, Rule 7 of the old Rules of Court are not exclusive enumeration of cases where *lis pendens* may be made.

We do not agree that the afore-cited case serves as authority for allowing the annotation of *lis pendens* in an action involving only personal property. The issue of the propriety of the annotation of a *lis pendens* in *Diaz v. Hon. Perez, et al.* arose from a guardianship proceedings instituted by

²⁸ *Lu v. Lu Ym, Sr.*, G.R. Nos. 153690, 157381 & 170889, August 4, 2009, 595 SCRA 79, 92, citing *Atlantic Erectors, Inc. v. Herbal Cove Realty Corporation*, G.R. No. 148568, March 20, 2003, 399 SCRA 409, 416.

²⁹ 103 Phil. 1023 (1958).

petitioner Diaz's children who petitioned the Court of First Instance to declare her incompetent to take care of herself and manage her properties and to appoint a guardian of her person and her properties. While the special proceedings was pending hearing, petitioner received from the Register of Deeds of Rizal a letter advising her that by reason of said proceedings, a notice of *lis pendens* had been annotated on her Transfer Certificate of Title No. 32872 covering a real property situated in that province. Whereupon, petitioner sought to cancel the annotation but her motion was denied by respondent Judge Perez. In a petition for mandamus and certiorari filed in this Court, petitioner sought to annul the order refusing cancellation of the notice of *lis pendens*.

On the issue of whether respondent Judge Perez committed grave abuse of discretion, this Court first explained the purpose of the annotation and then ruled that the notice of *lis pendens* may not be considered as improper in a guardianship proceeding. On petitioner Diaz's contention that guardianship proceedings is not included in the enumeration of the cases indicated in Section 79 of Act No. 496 and Section 24 of Rule 7 where *lis pendens* may be annotated, this Court expressed the view that it is to be doubted whether said enumeration were intended to be exclusive. However, the ruling was clearly confined to the issue of whether the annotation of *lis pendens* was proper in a guardianship proceeding which involves a specific real property. Our conclusion therein did not contemplate a reading of the subject provisions that would justify the application of the doctrine of *lis pendens* to personal property. Thus:

In the light of the object and salutary effects of the notation, **we see no reason to declare it improper in this case**, specially because the allegations of the guardianship petition specified instances wherein the incompetent disposed of her properties in favor of persons allegedly taking undue advantage of her advanced age and weak mental and physical condition.

The argument is presented that sec. 79 of Act No. 496 and sec. 24 of Rule 7 indicate the cases wherein *lis pendens* may be annotated, and that guardianship proceedings is not included therein. In the first place sec. 79 is not an exclusive enumeration. In the second place, **these proceedings affect "the use" or possession of the real estate within the meaning of above sections, even "the title", in the sense that the**

proceedings will curtail or take away the right of the owner to dispose of the same.

Anyway, it is to be doubted whether the above sections were intended to be exclusive of other circumstances wherein equity and general convenience would make *lis pendens* appropriate. Indeed, cases have held it to be proper in receivership proceedings involving realty, and in lunacy proceedings situations closely akin to the instant litigation.

In this connection, it is insisted that both sections only apply to “actions” which are different from “special proceedings”, like guardianship. It is enough to point out that the Rules provided for civil actions are generally applicable to special proceedings. (Rule 73, section 2.)

Lastly, we are advised that after hearing the petition the lower court found in April 1957 that by reason of her advanced age and weak mind, Roberta Diaz could not manage her properties - she does not even remember them - and needed a guardian to help administer her interests. This, in a way, vindicates the annotation and the court's refusal to cancel it.

Clearly then no abuse was made of the court's discretion. Petition denied, with costs.³⁰ (Emphasis supplied)

The foregoing shows that the issue presented in *Diaz v. Hon. Perez* pertains to the nature of the action where the motion for annotation of notice of *lis pendens* is filed, and not to the kind of property which may be the subject of the annotation because, obviously, the cited provisions (Section 79 of Act No. 496 and Section 24 of Rule 7, Rules of Court) make express reference to real estate/property. The denial by the RTC and CA of petitioner's motion to annotate *lis pendens* on the subject club membership certificates was rather based on the absence of law and rules to govern the application of the remedy over personal properties. No grave abuse of discretion can therefore arise from such adverse ruling predicated on the lack of statutory basis for grant of relief to a party.

It has been declared in a case decided by the US Supreme Court that the doctrine of *lis pendens* has no application to commercial securities.³¹ In some other cases the doctrine has been applied to personal properties such as corporate stock, non-negotiable bond, and non-negotiable notes.³² Statutes may also expressly provide for the filing of a formal notice of *lis*

³⁰ Id. at 1026-1027.

³¹ *Orleans v. Platt*, 99 U.S. 676, 99 U.S. 682, cited in *Presidio County v. Noel-Young Co.*, 212 U.S. 58 (1909).

³² 51 Am Jur 2d § 18, pp. 964-965.

pendenseven in actions involving only personal property.³³ However, there seems to be no uniformity of rulings with respect to the application of the doctrine of *lis pendens* to corporate stock.³⁴ In this case, the notice of *lis pendens* was sought to be annotated on membership certificates representing a proprietary interest in the assets of a private non-stock corporation.

Petitioner invokes equity and justice in seeking the annotation of *lis pendens* on the subject club membership shares, which may be justified by the attendant circumstances whereby its superior lien as assignee of a prior recorded chattel mortgage and purchaser at the foreclosure sale of the club membership shares subject of said mortgage, still runs the risk of being defeated by a subsequent alienation of such shares by either Citadel or Vercingetorix to a transferee for value and good faith. Should that eventuality take place, petitioner submits it would be the height of injustice, harassment and oppression if, to maintain its title and possession, petitioner were to be made again subject to another costly litigation against the would-be *bona fide* purchasers.

On the other hand, respondent Vercingetorix points out that the petition is now moot and academic because the trial court (Civil Case No. 99-605) had already issued a Writ of Preliminary Injunction dated July 1, 2003 against herein respondents, among others “from committing acts, allowing, or causing to allow the transfer and registration of Manila Golf [Club] Certificates Nos. 1412 and 1444 to third parties and from issuing new certificates in lieu of those already issued to CITADEL and VERCINGETORIX pending final adjudication of the instant complaint.”³⁵

On its part, respondent Citadel asserts that in case of conflict, our statutory provisions must prevail over the cited American jurisprudence especially since the subject matter is expressly covered by the Civil Code of the Philippines. Thus, the application of the American jurisprudence cited by

³³ Id. at 965.

³⁴ See 38 Corpus Juris § 16, pp. 16-17.

³⁵ *Rollo*, p. 273.

petitioner will cause undue restraint on respondent's right of ownership recognized under Article 428³⁶ of the Civil Code.³⁷

Reviewing the records, we find that, contrary to petitioner's submission, its rights and interest over the subject club membership shares are amply protected by the following: (1) Preliminary Injunction granted by virtue of this Court's Decision dated April 11, 2002 in G.R. No. 138104 restraining the further implementation of the writ of execution issued in Civil Case No. 96-80083 by the Manila RTC, Branch 26 "until further orders from this Court"; (2) Setting aside of the Writ of Execution issued by said court under the Decision dated June 17, 2004 in G.R. No. 134049 which effectively nullified the execution sale of the Manila Golf Club shares in favor of respondents Citadel and Vercingetorix; (3) Certificates of Sale dated September 15, 1997 issued to petitioner as the highest bidder in the extrajudicial foreclosure of the chattel mortgage conducted by the Office of the Clerk of Court and Ex-Officio Sheriff of Makati City RTC, covering Manila Golf Club Membership Certificate Nos. 1412 and 1444 for the sum of ₱32,500,000.00; (4) Writ of Preliminary Injunction issued on July 1, 2003 by the court *a quo* (Makati City RTC, Branch 62) in Civil Case No. 99-605 restraining the respondents from committing any act or allowing the transfer and/or registration of the aforesaid club shares to *third parties* until the final adjudication of the said case; and (5) Decision dated December 28, 2009 of the court *a quo* declaring petitioner as the true and absolute owner of the subject club shares and ordering defendant Manila Golf Club to cancel the Membership Certificate Nos. 2386 and 2387 it issued to Citadel and Vercingetorix, respectively, and to issue new membership certificates in petitioner's name. It does not appear in the records whether respondents have appealed the adverse judgment of the trial court in Civil Case No. 99-605.

The failure to file a notice of the pendency of the action, where a statute provides therefor as a condition precedent to the action being *lis*

³⁶ ART. 428. The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

³⁷ *Rollo*, p. 425.

pendens, ordinarily precludes the right to claim that the person acquiring interests *pendente lite* takes the property subject to the judgment. But this rule has no application where the purchaser has actual notice of the pendency of the suit, or where regardless of the *lis pendens* notice, other facts exist establishing constructive notice, or where the purchaser is chargeable with notice by reason of the filing of a lien or payment of the amount of the lien into court, or where the property is seized by court proceedings.³⁸ Notwithstanding the absence of statutory basis in this jurisdiction for availing of *lis pendens* in suits involving only personal property, the foregoing rule may be considered when actual or constructive notice are discernible from the records.

In this case, petitioner, as early as July 21, 1997 had formally notified Manila Golf Club's Corporate Secretary of the assignment of chattel mortgage duly registered covering the subject shares of Marcopper, and further requested that the same be recorded to put third parties on notice of petitioner's lien. After the chattel mortgage was extrajudicially foreclosed on September 15, 1997, petitioner promptly notified the said officer and furnished him with a copy of the Certificates of Sale issued by Sheriff Bajar in favor of petitioner as the highest bidder during the public auction sale of the subject club shares.

Subsequently, however, Manila Golf Club informed petitioner of its inability to comply with its request in view of the January 26, 1999 Order of the Manila RTC in Civil Case No. 96-80083 ordering Manila Golf Club to transfer Membership Certificate Nos. 1412 and 1444 in the name of respondents Citadel and Vercingetorix who purchased the same in the execution pending sale authorized by said court. Manila Golf Club thus declared that it has to comply with the said directive until the same is revised by the trial court or higher courts.

Clearly, Manila Golf Club had actual notice of petitioner's lien/title as assignee of the recorded chattel mortgage and as purchaser in the foreclosure

³⁸ 38 Corpus Juris §44, pp. 30-31.


sale, as well as the pendency of Civil Case No. 96-80083 before the Manila RTC which ordered the sale on execution pending appeal. Such actual knowledge, on the part of Manila Golf Club, of petitioner's interest and Civil Case No. 96-80083 involving the subject membership shares is deemed equivalent to registration of an encumbrance or assignment in its corporate books. By virtue of such registration of petitioner's lien/title and the pending litigation, third parties, or potential transferees *pendente lite*, may therefore be charged with constructive notice of petitioner's lien/title over the subject shares and the pending litigation involving the same, as of the time Manila Golf Club was formally notified by petitioner even prior to Manila Golf Club's receipt of the January 26, 1999 Order of the Manila RTC in Civil Case No. 96-80083.

It may be that Manila Golf Club could have been directly informed only of the pendency of Civil Case No. 96-80083 and not Civil Case No. 99-605 between petitioner and respondents. But while Civil Case No. 96-80083 was not the very proceeding wherein petitioner sought the *lis pendens* and not the case filed by petitioner against herein respondents Citadel and Vercingetorix (Civil Case No. 99-605), petitioner had filed therein (Civil Case No. 96-80083) his Affidavit of Third-Party Claim and Manifestation of Prior Lien, and it is the Manila RTC which ordered the sale on execution pending appeal during which *Citadel* and *Vercingetorix* purchased the subject Manila Golf Club shares. As it turned out, said writ of execution was nullified by this Court in G.R. No. 134049 and consequently no right was acquired by Citadel and Vercingetorix under the void execution sale.

WHEREFORE, the petition for review on certiorari is **DENIED**. The Decision dated May 8, 2002 of the Court of Appeals in CA-G.R. SP No. 59476 is **AFFIRMED**.

No pronouncement as to costs.

SO ORDERED.


MARTIN S. VILLARAMA, JR.
Associate Justice

WE CONCUR:



MARIA LOURDES P. A. SERENO


Chief Justice

Chairperson



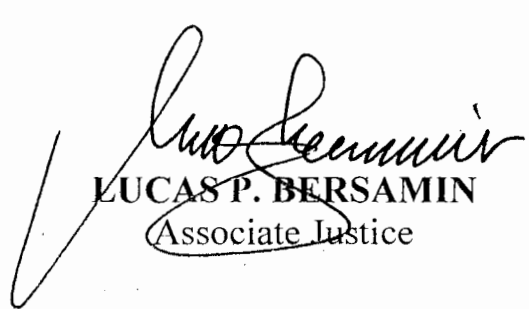
TERESITA J. LEONARDO-DE CASTRO

Associate Justice



DIOSDADO M. PERALTA

Associate Justice

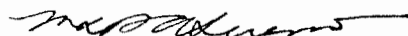


LUCAS P. BERSAMIN

Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO

Chief Justice