Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

ASB REALTY CORPORATION,
Petitioner,

-versus-

THE HONORABLE HEARING PANEL VERNETTE G. UMALI-PACO, ARMANDO PAN JR., MICHAEL MIRANDA, and BSA MANSION CONDOMINIUM CORP.

Respondents.

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SEC EB CASE NO. 04-05-24
Petition for Review on Certiorari of the Hearing Panel's Order dated March 29,2005

DECISION

This refers to the Petition for Review on Certiorari filed by ASB Realty Corporation seeking the reversal of the Order dated March 29, 2005 issued by the respondent Hearing Panel, denying the petitioner's Motion for Issuance of TRO and/or Preliminary Injunction against BSA Mansion Condominium Corporation and the Registry of Deeds, Makati City.

The material facts of this case are as follows:

Petitioner ASB Realty Corporation ("ASBRC") is a corporation duly organized and existing under the laws of the Philippines. It is engaged in the business of real estate and belongs to the ASB Group of Companies, which filed a Petition for Rehabilitation with this Commission on May 2, 2000 docketed as SEC Case No. 05-00-6609. On May 4, 2000, the Commission issued an Order suspending all actions for claims against ASB Group of Companies, and appointing the latter's interim receiver. The said Petition for Rehabilitation was given due course and the proposed Rehabilitation Plan was approved by the Commission in its separate Orders dated October 10, 2000 and April 26, 2001, respectively.

Among the projects of petitioner is the BSA Mansion located at 108 Benavidez St., Legaspi Village, Makati City, wherein the following twelve (12) units are still registered under its name; thus, included in the list of assets for disposition according to its approved Rehabilitation Plan:

UNIT NO.

G-1 38606
G-2 38607
G-3 38608
G-4 38609
2003 38858
2103 38870
2201 38880
2202 38881
2203 38882
2204 38883
2205 38884
2206 38885

On March 26, 2002, Atty. Renon V. Cruz, legal counsel of BSA Mansion Condominium Corporation ("private respondent") caused the annotation by the Register of Deeds of Makati City of a "Notice of Assessment" on the following CCT's for non-payment by petitioner of overdue condominium fees for the four condo units:

Unit No.	CCT No.	Amt. of Unpaid Condo Fees	As of
G-1	38606	965,040.83	February 2002
2201	38880	907,288.09	February 2002
2204	38883	911,922.08	February 2002
2103	38870	361,305.86	February 2002

On January 7, 2004, petitioner filed before the Hearing Panel of this Commission a Motion for Issuance of TRO and/or Preliminary Injunction praying for the following:

a) To enjoin private respondent from enforcing penalties and interests on the unpaid association dues;

b) To enjoin the further annotation of a notice of lien on and/or eventual foreclosure of the remaining seven (should be eight) units;

c) To restrain the Register of Deeds of Makati City from accepting, annotating and/or registering any such application for a notice of lien on or foreclosure of the remaining seven (should be eight) units; and

d) To recall, lift, set aside and/or nullify, as the case may be, the annotation of said notice of lien or certificate of foreclosure proceedings (in the event such acts have already been accomplished when the instant Motion is filed) on the four units above-listed.

The Statement of Accounts as of October 2004[1] shows that the accrued association dues, interests, penalties, water bills and special assessments ("SA") for the following condominium units total Seven Million Twenty Three Thousand Six Hundred Fifty Nine Pesos and Thirty Four Centavos (P 7,023,659.34), computed as follows:

Unit Owner/ Units	Dues	Interests	Penalties	Water	SA	Total
ASBRC GI-G44	1,145,061.52	711,069.41	699,247.08	-	3,787.32	2,559,165.33
Ho Chi 2201C	735,346.81	524,128.47	517,579.84	49.68	2,097.84	1,779,202.63
Ho Chi 2204C	738,961.17	526,762.01	520,182.31	3,265.86	2,107.80	1,791,279.16
Kimberly Melencio 2103	234,062.49	188,509.61	186,742.37	3.14	566.16	609,883.77
Ho Chi 2003	152,392.15	65,585.07	65,585.07	-	566.16	284,128.45
TOTAL	3,005,824.14	2,016,054.57	1,989,336.868	3,318.68	9,125.28	7,023,659.34

In a letter[2] dated November 24, 2004, petitioner offered to pay the association dues, water bills and special assessments of the foregoing accounts, excluding penalties and interest charges, in the amount of Three Million Eighteen Thousand Two Hundred Sixty Eight Pesos and Ten Centavos (P 3,018,268.10). It appears, however, that respondent declined petitioner's offer of payment and instead insisted on collecting at least 50% of the penalties and interest due.

On March 29, 2005, the respondent Hearing Panel issued an Order denying the January 7, 2004 Motion filed by petitioner.

In the instant petition, petitioner assails the said Order based on the following assignment of errors:

1. The respondent Hearing Panel failed to resolve petitioner's principal prayer for waiver of penalties and interests imposed by private respondent on the association dues;

2. The respondent Hearing Panel gravely abused its discretion amounting to lack or excess of jurisdiction when it denied

[1] *Annex P of the Petition.*
[2] Annex O of the Petition.

petitioner's prayer to enjoin private respondent from further annotating notice of lien on the seven (should be eight) condominium units specified; and

3. The respondent Hearing Panel gravely abused its discretion amounting to lack of jurisdiction in not giving due course to petitioner's prayer for the lifting of the notice of lien on four condominium units listed.

On June 15, 2005, private respondent filed its Comment praying for the dismissal of the Petition for failure of the petitioner to show any substantial violations of law by the respondent Hearing Panel's issuance of the subject order.

After a careful evaluation of the facts and the pertinent laws and jurisprudence, we find the petition partly meritorious.

In the questioned Order dated March 29, 2005, the respondent Hearing Panel denied the January 7, 2004 Motion, stating in part that:

> "Contrary to Petitioners' claim, the act of annotating the notice of lien does not violate the provision of P.D. 902-A and the Interim Rules on Corporate Rehabilitation because no claim is paid and no property is allowed to be sold or disposed of by the registration of a notice of lien. As its name implies, a notice of claim is merely a notice to third parties dealing with the property that someone is claiming an interest on the same or a better right than the registered owner thereof..."

In support of this position, the Hearing Panel cited various jurisprudence[3] on *lis pendens* and adverse claims that, in essence, pronounce that the annotation of such notice of *lis pendens* or adverse claims does not create a nonexistent right or lien, and only serves to give notice to all persons that the property in question is under litigation.

We find that the cited cases on notice of *lis pendens* and adverse claims are not applicable in this case.

A notice of *lis pendens* may be invoked as a remedy only in cases where the very *lis mota* of the pending litigation concerns directly the title or possession of a specific real property. If the property is affected only incidentally or indirectly by the pending litigation, the doctrine of *lis pendens* will not apply. Hence, if the case instituted is a real action, it does not necessarily follow that *lis pendens* may be resorted to. Nor does it apply to a proceeding in which recovery of a money

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[3] Somes v. Government of the Philippines, 62 Phil. 432 (1935); Villanueva v. Court of Appeals, 281 SCRA 298 (1997); Gurbax Sing Pabla & Co. v. Reyes, 92 Phil. 177 (1952).

judgment is sought, although the title or right of possession to property may be incidentally affected.[4]

On the other hand, the remedy of annotating an adverse claim is available only when the claim asserted affects the title or is adverse to the title of the registered owner. The annotation of an adverse claim is a measure designed to protect the interest of a person over a piece of real property where the registration of such interest or right is not otherwise provided for by the Land Registration Act, and serves as a notice and warning to third parties dealing with said property that someone is claiming an interest on the same or a better right than the registered owner.

A perusal of the four affected CCT's, however, reveal that what was annotated therein was neither a notice of *lis pendens* nor of adverse claim, but a *Notice of Assessment executed by Renon Y. Cruz, Legal Counsel of private* respondent BSA Mansion Condominium Corporation for the overdue condominium fees that have remained unpaid by petitioner.

Indubitably, the claim asserted under the Notice of Assessment does not affect the title or possession of the condominium units. Likewise, such Notice of Assessment does not constitute a mere warning to the third parties. Instead, it is considered a lien or encumbrance on the property, as stated in Section 20 of Republic Act 4726 or otherwise known as "An Act to Define Condominium, Establish Requirements for its Creation, and Govern its Incidents," which provides that:

> "SECTION 20. An assessment upon any condominium made in accordance with a duly registered declaration of restrictions shall be an obligation of the owner thereof at the time the assessment is made. The amount of any such assessment plus any other charges thereon, such as interest, costs (including attorney's fees) and penalties, as such may be provided for in the declaration of restrictions, shall be and become a lien upon the condominium assessed when the management body causes a notice of assessment to be registered with the Register of Deeds of the city or province where such condominium project is located. The notice shall state the amount of such assessment and such other charges thereon as may be authorized by the declaration of restrictions, a description of the condominium unit against which same has been assessed, and the name of the registered owner thereof. Such notice shall be signed by an authorized representative of the management body or as otherwise provided in the declaration of restrictions. Upon payment of said assessment and charges or other satisfaction thereof, the management body shall cause to be registered a release of the lien.
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> Such lien shall be superior to all other liens registered subsequent to the registration of said notice of assessment except real property tax liens and except that the declaration of restrictions

[4] LRC Consultas No. 32 & 34, Ysmael, et. al. v. Register of Deeds of Quezon City, February 12, 1955.

> may provide for the subordination thereof to any other liens and encumbrances.
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> Such liens may be enforced in the same manner provided for by law for the judicial or extra-judicial foreclosure of mortgages of real property. Unless otherwise provided for in the declaration of restrictions, the management body shall have power to bid at foreclosure sale. The condominium owner shall have the same right of redemption as in cases of judicial or extra-judicial foreclosure of mortgages."

An issue that needs to be resolved thus, is whether the annotation of the Notice of Assessment, as a lien or encumbrance on the property of ASBRC, is considered an "action or proceeding for claims" against the ASB Group of Companies that has been ordered suspended by the Commission in its Order dated May 4,2000.

We answer in the affirmative.

In the case of *Alemar's Sibal & Sons, Inc. v. Honorable Jesus M. Elbiñas et al.*[5], the Supreme Court stated that:

> "It must be stressed that the SEC had earlier ordered the suspension of all actions for claims against Alemar's in order that all the assets of said petitioner could be inventoried and kept intact for the purpose of ascertaining an equitable scheme of distribution among its creditors. During rehabilitation receivership, the assets are held in trust for the equal benefit of all creditors to preclude one from obtaining an advantage or preference over another by the expediency of an attachment, execution or otherwise. For what would prevent an alert creditor, upon learning of the receivership, from rushing posthaste to the courts to secure judgments for the satisfaction of its claims to the prejudice of the less alert creditors.
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> As between creditors, the key phrase is "equality is equity." When a corporation threatened by bankruptcy is taken over by a receiver, all the creditors should stand on an equal footing. Not anyone of them should be given any preference by paying one or some of them ahead of the others. This is precisely the reason for the suspension of all pending claims against the corporation under receivership. Instead of creditors vexing the courts with suits against the distressed firm, they are directed to file their claims with the receiver who is a duly appointed officer of the SEC."[6]

Likewise, established American jurisprudence dictates that, "the filing of a bankruptcy petition in a voluntary, joint, or involuntary case, or the filing of an application for a protective decree under specified provisions of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of any act to create, perfect, or enforce against property of the debtor any lien to the

[5] G.R. No. 75414, June 4, 1990
[6] Emphasis added.

extent that such lien secures a claim that arose before the commencement of the bankruptcy case."[7]

From the foregoing, it is clear that the creditors of a corporation undergoing rehabilitation are precluded not only from exacting payment from the debtor corporation through the means of an execution or foreclosure, but also from attaching, and creating, perfecting or enforcing any lien against the debtor's properties.

While it may be argued that a Notice of Assessment is different from an attachment, we find that both are considered a lien or encumbrance, and have the same effect on the property of the debtor corporation. Thus, the annotation of a Notice of Assessment on the CCT's of the subject units is prohibited during the rehabilitation proceedings, particularly upon the appointment of the management committee, rehabilitation receiver, board or body, as the case may be.

Thus, we hereby grant the relief prayed for by petitioner to enjoin private respondent from further annotating on the CCT's of the remaining eight condominium units and from foreclosing the same.

However, we cannot lift, set aside or nullify the annotation of Notice of Assessment on the four condominium units. Under Act No. 4966,[8] there are two ways by which liens and encumbrances on titles may be cancelled, namely: (1) by registering the instrument extinguishing or releasing such liens or encumbrances or, (2) in the absence thereof, by order of the court which may be obtained in proper cases under Section 112 of the said Act. Hence, where there is no instrument extinguishing or releasing an annotated encumbrance, the cancellation thereof falls within the power of the court under Section 112 of Act No. 496 (now Section 108 of P.D. No. 1529).

On the prayer of petitioner for the waiver of penalties and interests imposed by private respondent on the condominium dues, we find the waiver not justified.

In determining whether the imposition of penalties and interests on the accrued condominium dues of ASBRC is proper, the provisions of the approved rehabilitation plan of ASB Group of Companies should govern.

A reading of the said rehabilitation plan reveals that the creditors of ASBRC are mainly classified as secured and unsecured creditors.

Based on the rehabilitation plan, "(S)ecured creditors' claims amounting to Php 5.192 billion will be paid in full including interest up to April 30, 2000. Secured creditors have been asked to waive all penalties and other charges. "

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[7] § 1437 9A Am Jur 2d citing 11 USCS § 362(a)(5).
[8] Otherwise known as "An Act to Provide for the Adjudication and Registration of Titles to Lands in the Philippine Islands."

On the other hand, unsecured creditors shall be issued Creditors' Participation Certificates ("CPC's") and paid within the term of said certificates. The plan also provides that "Interest at the rate of six percent (6%) per annum shall be accrued and paid after all the principal obligations have been paid from the residual cash, if any."

From the foregoing, it is evident that petitioner itself, as part of the ASB Group of Companies, committed to pay interest to its secured and unsecured creditors in accordance with the provisions of the rehabilitation plan. Thus, petitioner cannot now justify its prayer for a waiver of penalties and interests based on the fact that it is suffering from financial reverses. Contrary to the allegation of petitioner, the suspension of payment of claims by the petitioner does not result in the suspension of the accrual of penalties and interests on the claims of petitioner's creditors.

WHEREFORE, premises considered, we hereby render judgment **ENJOINING** the private respondent, its agents, representatives or assignees or any other persons acting in its behalf from annotating a Notice of Lien or Assessment on the remaining eight condominium units, with CCT Nos. 38607, 38608, 38609, 38858, 38881, 38882, 38884 and 38885. However, we hereby **DENY** the prayers of petitioner for the lifting of the Notice of Lien or Assessment on the four condominium units and the waiver of penalties and interests on the association dues imposed by private respondent.

SO ORDERED.

Mandaluyong City, Philippines, 21 October 2010.

FE B. BARIN*
Chairperson

MA. JUANITA E. CUETO
Commissioner
Officer-in-Charge

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

* On official travel.