

## SECOND DIVISION

[ G.R. No. 179161, January 22, 2010 ]

**PHILIPPINE NATIONAL BANK, PETITIONER, VS. DKS  
INTERNATIONAL, INC. AND MICHAEL DY, RESPONDENTS.**

### DECISION

**DEL CASTILLO, J.:**

Considering that the sub-lessee which was ordered by the court to surrender possession of the disputed property in a case for forcible entry no longer possessed the same, having already surrendered possession thereof to the lessor and not to the prevailing party which is the lessee, the Regional Trial Court (RTC) recalled the Writ of Execution with Break Open it earlier issued. The question which now confronts this Court is: *Was the recall proper?*

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision<sup>[1]</sup> dated March 16, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 88098 which denied petitioner's Petition for *Certiorari*<sup>[2]</sup> as well as the Resolution<sup>[3]</sup> dated August 6, 2007 which likewise denied its Motion for Reconsideration thereto.

***Factual Antecedents***

On June 9, 1978, the Philippine Government (through the now defunct Department of General Services) and petitioner Philippine National Bank (PNB) entered into a Contract of Lease<sup>[4]</sup> where the former leased in favor of the latter its 21,727-square meter land located at Numancia St., Binondo, Manila. The contract was effective from August 1, 1978 to July 31, 2003 and renewable for a similar period upon agreement of the parties. It also stipulated that except for its subsidiary corporations, petitioner shall not directly or indirectly sublease, assign or encumber its leasehold rights in whole or in part on the leased area to any person or corporation without the prior written approval of the government.<sup>[5]</sup>

On October 12, 2000, respondent DKS International Inc. (DKS) applied for the sublease of a 9,500-square meter portion of the aforesaid property with petitioner. In a letter<sup>[6]</sup> dated February 1, 2001, petitioner informed Mr. Andres S. Dy (Dy) of DKS that petitioner's Executive Committee had already approved the amendments on the terms and conditions of the sublease. In another letter<sup>[7]</sup> dated March 5, 2001, petitioner advised Dy that it was ready to turn over possession of said property and required him to remit not later than March 15, 2001 the amount of P400,000.00 representing two months security deposit. However, the Land Management Bureau (LMB)<sup>[8]</sup> denied on August 31, 2001 and December 5, 2001 petitioner's request to sublease said portion of the property to DKS.<sup>[9]</sup> Hence, the sublease was not implemented.

Prior to DKS' application for sublease, petitioner signified its intention to renew the lease for another 25 years through a letter dated August 24, 2000 to the LMB as the original lease was about to expire. In a Memorandum dated May 6, 2002, then Secretary Heherson Alvarez (Sec. Alvarez) of the Department of Environment and Natural Resources (DENR) approved the recommendation of the LMB to renew the contract of lease for another 25 years effective August 1, 2003 or until August 1, 2028 with several conditions on the sublease, among which were: (1) that petitioner shall sublease the 9,500-square meter area in favor of DKS for the same period of 25 years and, (2) that DKS shall start its development of the portion of the property within two years from May 6, 2002 and complete its development as proposed within seven years.<sup>[10]</sup>

On August 6, 2002, however, Sec. Alvarez ordered the recall of his May 6, 2002 Memorandum until such time that the terms and conditions of the lease and the capability of the sub-lessees are re-evaluated and approved.<sup>[11]</sup>

Petitioner alleged that during the period recited above, it was in continuous and peaceful possession of the property including the subject 9,500-square meter portion which it operated as a car park until DKS, through force, intimidation, stealth and threat, forcibly and unlawfully took over possession on October 9, 2002.

According to petitioner, Dy and two men in civilian clothes arrived at the car park at around 6:30 p.m. on October 9, 2002. When the three requested the security guard on duty to let them enter the premises, the latter initially refused but was eventually prevailed upon. Dy thereafter instructed the two men to wear their complete security guard uniform and start their tour of duty in the area. The two, thus, respectively positioned themselves inside and outside the gate of the area and prevented the paying car park tenants from entering the premises. Two days later, 12 more security personnel from the Frontliner Security Agency arrived. The following day, the Operations Officer of Frontliner Security Agency posted at the car park's main gate a notice which read, *"This place is operated by DKS, No trespassing"*. From then on, DKS had possession and control of the car park in violation of petitioner's right as lessee of said premises.<sup>[12]</sup>

Hence, petitioner filed a case for forcible entry against DKS and Dy docketed as Civil Case No. 174024 which was raffled to the Metropolitan Trial Court (MeTC) of Manila, Branch 27.<sup>[13]</sup>

While said case was pending, the DENR came up with a Final Endorsement<sup>[14]</sup> signed by Sec. Alvarez on November 29, 2002, informing petitioner's president, Lorenzo V. Tan, of the DENR's approval of petitioner's request for renewal of the lease contract. In said endorsement, the DENR endorsed three sub-lessees excluding DKS.

Finding in favor of petitioner, the MeTC rendered its Decision<sup>[15]</sup> dated August 20, 2003 in this wise:

WHEREFORE, judgment is hereby rendered ordering defendants DKS International, Inc., Michael Dy and all persons claiming rights and

interest under them:

1. To vacate the property covering 9,500 square meters located at Numancia Street, Binondo, Manila, specifically designated as Lot No. 1, Block 1862 of the Manila Cadastre No. 13 and peacefully surrender possession thereof to plaintiff PNB;
2. To pay plaintiff PNB reasonable compensation in the amount of P200,000.00 per month starting October 2002, until completely vacated and fully surrendered;
3. To pay attorney's fees fixed in the reasonable amount of P10,000.00; and,
4. To pay the costs of the suit.

SO ORDERED.<sup>[16]</sup>

Upon motion<sup>[17]</sup> of petitioner, the MeTC issued a Writ of Execution<sup>[18]</sup> dated October 3, 2003 which, however, was not implemented because of the timely appeal of respondents to the RTC.

On March 10, 2004, the RTC-Manila, Branch 40 rendered its Decision<sup>[19]</sup> affirming the Decision of the MeTC and ordering the issuance of a writ of execution with break open order, *viz*:

WHEREFORE, the Decision, dated August 20, 2003, is AFFIRMED. Let the writ of execution be issued without prejudice to an appeal that may be taken by defendants-appellants. Likewise, let a break open order be issued authorizing this Court's Sheriff to break open the gate or any other facility for the ingress [to] and/or egress [from] of the subject premises and to employ all necessary means to carry out the writ of execution. The Branch Sheriff is authorized to secure the assistance and/or to deputize the Philippine National Police (PNP) in order to ensure effective enforcement of the Writ of Execution.

SO ORDERED.<sup>[20]</sup>

Accordingly, a Writ of Execution with Break Open Order was issued on March 29, 2004.<sup>[21]</sup>

On March 30, 2004, respondents appealed to the CA by way of Petition for Review which was docketed as CA-G.R. SP No. 83129.

Meanwhile, before the Writ of Execution with Break Open Order could be implemented, respondents filed before the RTC an Urgent Motion to Recall Writ and the Command to Sheriff With Comment<sup>[22]</sup> alleging that during the previous hearings of the case, they have proven that petitioner filed a Complaint for

Injunction with prayer for the issuance of a Temporary Restraining Order/Writ of Preliminary Injunction and Damages<sup>[23]</sup> against the government, docketed as Civil Case No. 03-0368-CFM and raffled to Branch 118 of RTC-Pasay City (Pasay case). Apparently, the Final Endorsement approving petitioner's request for renewal of lease contract earlier issued by Sec. Alvarez was withdrawn by his successor, Sec. Elisea G. Gozun (Sec. Gozun), on grounds that same was contrary to law and public policy and that the issuance thereof was without factual and legal bases.<sup>[24]</sup> In view of said withdrawal, a repossession and take-over team was created by virtue of LMB Special Order No. 2003-91.<sup>[25]</sup> In a Memorandum dated May 27, 2003, Sec. Gozun directed the LMB to immediately repossess and take over the subject property upon the expiration of the lease on July 31, 2003 thus, prompting petitioner to file the Pasay case. Unfortunately for petitioner, its application for TRO was denied by said court.<sup>[26]</sup>

Respondents further alleged that when the RTC Pasay's denial of the TRO was affirmed by the CA in its Decision<sup>[27]</sup> dated October 30, 2003 in a petition for *certiorari* docketed as CA-G.R. SP No. 78980, the government had taken over the premises by August 31, 2003. Thus, respondents manifested that they cannot anymore surrender possession of the premises to petitioner as they are no longer in possession thereof.

The government, through the LMB, also filed an Urgent Motion for Leave to Intervene on the Incident Involving the Enforcement of the Writ of Execution and to Treat this Motion as The Intervention.<sup>[28]</sup> It manifested therein that although it has nothing to do with the ejectment case, it vehemently objects to the notice of the sheriff, particularly on the matter of surrendering possession of the premises to petitioner. It pointed out that since the government was already in possession of the premises following petitioner's loss of any right of possession therein, it will be an abuse of discretion on the part of the court to order that the property be taken from the government and to have the same delivered to petitioner, under the guise of enforcing a writ of execution in the ejectment case. LMB likewise sought permission to intervene in the incident involving the enforcement of the writ.

To these two motions, petitioner filed an Opposition with Manifestation<sup>[29]</sup> asserting that the two motions are both *pro forma*, patently unmeritorious and serve no other purpose but to unduly delay the implementation of the Writ of Execution and therefore, should be denied.

The RTC did not find merit in LMB's prayer to intervene in the issue of the implementation of the writ. In its Order<sup>[30]</sup> dated July 14, 2004, it held that (1) the government's intervention will unduly delay the mandated immediate execution of the decision in the ejectment case to the prejudice of petitioner; (2) the government's rights may still be fully protected in a separate proceeding (particularly in the Pasay case); and, (3) the intervention preempts the decision in the Pasay case. The RTC also did not give credence to the claim of LMB that the government was already in possession of the property subject of the writ of execution saying that same was a mere general claim. Said court, thus, accordingly denied the two motions for lack of merit and again ordered the Branch Sheriff of the MeTC to immediately implement the Writ of Execution with Break Open Order it earlier issued.

Upon motion for reconsideration of the government however, the RTC recalled the Writ of Execution with Break Open Order. It considered the Sheriff's Partial Return dated May 5, 2004 signed by the Deputy Sheriff of MeTC-Manila, Br. 27, which reads:

This is to certify that on May 5, 2004 at around 10:50 in the morning, after the lapse of (the) five (5)-day period given by the undersigned to the Defendants to voluntarily vacate the place which they failed to do so, the undersigned, together with the representative of the Philippine National Bank, assisted by police officers, went back [to] the premises in question at Numancia St., Binondo, Manila to implement the Writ of Execution with a Break Open Order issued by Hon. Placido C. Marquez. Thereat, Mr. Matusalem Ruperto, Commander of Sphinx Security Investigation and Detective Services informed us that DKS has already turned over the premises to Land Management Bureau. Mr. Matusalem Ruperto further informed the undersigned that Judge Marquez issued an order [preventing us] from implementing the Writ. Our attention was caught by the phrase posted in the premises that the same is government property. And upon further inquiry, said property is already guarded by Sphinx Security Investigation and Detective Services.<sup>[31]</sup>

Thus, the RTC issued the Order dated July 29, 2004,<sup>[32]</sup> the pertinent portions of which read:

Considering that Land Management Bureau is now in physical possession of the subject property and not defendants-appellants DKS International Inc. and Michael Dy, it would be a blunt error for this Court to order the transfer of the physical possession of the government which is admittedly the owner of the subject property to plaintiff-appellee Philippine National Bank. The [W]rit of [E]xecution with [B]reak [O]pen [Order] dated March 29, 2001 issued by this Court can no longer be implemented and the same must be recalled. The Sheriff is ordered to desist from implementing the same. This renders movant Republic's reply (to plaintiff-appellee's opposition with manifestation dated April 30, 2004) dated June 1, 2004, with attached verification and certificate against forum shopping, with prayer that LMB'S urgent motion for leave to intervene etc., dated April 28, 2004 and related pleadings moot and academic.

On the question of damages or monetary judgment referred to in the Writ of Execution with [B]reak [O]pen [Order], dated March 29, 2004, plaintiff-appellee and defendants-appellants, thru counsel, agreed that same should be left [for resolution to] the Honorable Court of Appeals which has taken jurisdiction over the same.

WHEREFORE, in view of the foregoing, the Writ of Execution with [B]reak [O]pen [Order], dated March 29, 2004, is recalled and the Deputy Sheriff of the Metropolitan Trial Court of Manila, Br. 27, is directed to desist from