

## SECOND DIVISION

[ G.R. NO. 162922, January 31, 2007 ]

**BANCO FILIPINO SAVINGS AND MORTGAGE BANK , PETITIONER,  
VS. HON. AMALIK P. ESPINOSA, JR., PRESIDING JUDGE,  
MUNICIPAL TRIAL COURT IN ILOILO CITY, BRANCH 2, AND TALA  
REALTY SERVICES CORPORATION, RESPONDENTS.**

### D E C I S I O N

**CARPIO MORALES, J.:**

The present petition for Certiorari stems from one of several complaints of private respondent, Tala Realty Services Corporation, which sought to evict petitioner, Banco Filipino Savings and Mortgage Bank, from the premises of its branch offices in nine different locations for non-payment of rent. The properties subject of the complaints were covered by separate but similarly-worded contracts of lease between petitioner as lessee and private respondent as lessor.

In a complaint for ejectment, docketed as Civil Case No. 51-95 in the Municipal Trial Court (MTC) Iloilo City, which reached this Court on appeal as G.R. No. **132051**, "*Tala Realty Services Corp. v. Banco Filipino Savings & Mortgage Bank*," private respondent sought to eject petitioner from its branch site in Iloilo City. By Decision of June 25, 2001, this Court (Third Division) ordered petitioner to vacate the subject premises and restore possession thereof to private respondent; and to pay the latter a monthly rental of P21,100 from April 1994 up to the time it vacated the premises.

This Court's June 25, 2001 Decision, however, was later modified by Resolution of July 24, 2002 which ordered petitioner to pay additional six percent (6%) interest per annum on the amount of monthly rental of P21,100 corresponding to the period from April 1994 up to the time it vacated the premises. To this Court's Resolution of July 24, 2002 petitioner seasonably filed a motion for reconsideration.

Pending resolution of petitioner's motion for reconsideration of the July 24, 2002 Resolution, the Court En Banc rendered a decision on November 22, 2002 in **G.R. No. 137533**, similarly entitled "*Tala Realty Services Corp. v. Banco Filipino Savings & Mortgage Bank*." In this En Banc case which involved petitioner's eviction from its branch site in Malolos, Bulacan and which was based on the same grounds as those in G.R. No. 132051, this Court adjudged herein petitioner not to be liable for unpaid rentals, both parties having "participated in the deceptive creation of a trust to circumvent the real estate investment limit" under the General Banking Act.<sup>[1]</sup> As both parties were in *pari delicto*, this Court gave no affirmative relief to one against the other. It, however, noted that as the 20-year lease contract (which had already expired in August 2001) had not been renewed or extended, "Tala ha[d] the right to eject the Bank from the subject Bulacan property on the ground of expiration of contract."<sup>[2]</sup>

Petitioner's motion for reconsideration of the July 24, 2002 Resolution in G.R. No. 132051 was subsequently granted by this Court's Third Division, by September 3, 2003 Resolution which applied the Court En Banc's pronouncement in G.R. No. 137533 that "Tala should not be allowed to collect rent from the Bank" during the period in question.

On September 26, 2003, this Court's June 25, 2001 Decision, as well as its July 24, 2002 and September 3, 2003 Resolutions, in G.R. No. 132051 were recorded in the Book of Entries of Judgment as having become final and executory.

Subsequently, private respondent filed with the trial court, the MTC in Iloilo City, Branch 2, a motion for execution of this Court's Decision of June 25, 2001 in G.R. No. 132051. Conformably with the disposition of said decision, private respondent prayed that petitioner be ordered to vacate the Iloilo branch office and to restore possession thereof to it, to pay the monthly rental of P21,100 computed from April 1994 up to the time petitioner vacates the premises, and to pay costs.

At the appointed time for the hearing of the Motion for Execution on February 26, 2004, petitioner verbally opposed the motion principally because this Court's June 25, 2001 Decision had been superseded by its September 3, 2003 Resolution. Petitioner's objection and manifestation for time to file a written opposition notwithstanding, public respondent, Presiding Judge Espinosa of Branch 2 of the MTC in Iloilo City, granted on even date private respondent's Motion for Execution *in accordance with this Court's June 25, 2001 Decision*, stating that there was nothing more for it to do but to have it fully executed. Petitioner's motion for reconsideration was denied by public respondent.

Hence, the present petition for certiorari under Rule 65 of the Rules of Court ascribing lack or excess of jurisdiction or grave abuse of discretion to public respondent.

The issue then is whether public respondent acted without or in excess of jurisdiction, or with grave abuse of discretion in ordering the execution of this Court's June 25, 2001 Decision in G.R. No. 132051 and in allegedly refusing to hear petitioner on private respondent's Motion for Execution.

A court, tribunal or administrative agency acts without jurisdiction if it does not have the legal power to determine the case.<sup>[3]</sup> Where the respondent is clothed with the power to determine the case, it nevertheless acts in excess of jurisdiction when it oversteps its authority as determined by law.<sup>[4]</sup>

Grave abuse of discretion exists if the public respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of his judgment as to be said to be equivalent to lack of jurisdiction.<sup>[5]</sup> Mere abuse of discretion is not enough; it must have been patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.<sup>[6]</sup>

Unquestionably, public respondent has the power to rule on respondent's Motion for Execution following Section 1 of Rule 39 of the Rules of Court which provides:

Sec. 1. Execution upon judgments or final orders. – Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.

**If the appeal has been duly perfected and finally resolved**, the execution may forthwith be applied for in the court of origin, on motion of the judgment obligee, submitting therewith certified true copies of the judgment or judgments or final order or orders sought to be enforced and of the entry thereof, with notice to the adverse party.

The appellate court may, on motion in the same case, when the interest of justice so requires, direct the court of origin to issue the writ of execution. (Emphasis and underscoring supplied)

Public respondent overstepped his authority, however, when he ordered the execution of this Court's Decision of June 25, 2001, the same not being the final resolution of petitioner's appeal as contemplated in the second paragraph of above-quoted Rule 39.

On its face, the Entry of Judgment<sup>[7]</sup> in G.R. No. 132051 showed that two Resolutions subsequent to the June 25, 2001 Decision were also certified as having become final and executory. Clearly apparent from the chronology of dispositions is the fact that the June 25, 2001 Decision was later modified by the July 24, 2002 Resolution which, in turn, was reconsidered and set aside by the September 3, 2003 Resolution. This matter was brought to the attention of public respondent by petitioner during the hearing of respondent's Motion for Execution on February 26, 2004.

Additionally, petitioner specifically pointed out in its written opposition to the motion that the "pronouncement of the . . . Resolution of September 3, 2003 that 'respondent bank is not liable for unpaid rents' and 'Tala should not be allowed to collect rent from the bank' was diametrically inconsistent with the directive in the Decision dated June 25, 2001, for the . . . Bank to pay Tala the monthly rental of P21,100.00 from April 1994 until the Bank vacates the premises . . ."<sup>[8]</sup>

Not being the final resolution of petitioner's duly perfected appeal, this Court's June 25, 2001 Decision was not a judgment that private respondent was entitled to execute as a matter of right, hence, it could not have provided the basis for the grant of the motion for and issuance of the writ of execution.<sup>[9]</sup>

Parenthetically, this Court notes that even the writ of execution fell short of the requirement under paragraph (e), Section 8 of Rule 39 of the Rules of Court that it should "specifically state the amount of the interest, costs, damages, **rents**, or profits **due as of the date of the issuance of the writ**, aside from the principal obligation under the judgment." (Emphasis supplied) Its directive to the sheriff concerned merely reiterated the dispositive portion of this Court's June 25, 2001 Decision without specifying the amount due as of April 6, 2004, the date the writ was issued, thus:

NOW, THEREFORE, you are hereby commanded to cause the execution of the aforesaid judgment that is, to oust Banco Filipino Savings and