

THIRD DIVISION

[G.R. NO. 147191, March 20, 2007]

**SPOUSES MANUEL & LUISA TAN LEE, RENWICK WARREN LEE
AND JANSSEN THADDEUS LEE, PETITIONERS, VS. HON. COURT
OF APPEALS AND CHINA BANKING CORPORATION,
RESPONDENTS.**

R E S O L U T I O N

CHICO-NAZARIO, J.:

This is a Motion for Reconsideration seeking the reversal of our 27 July 2006 Decision in a Petition for Review on Certiorari against the Decision^[1] of the Court of Appeals promulgated on 24 October 2000 and its Resolution dated 19 February 2001, which nullified and set aside Orders of Presiding Judge Francisco Calingin dated 11 and 25 March 1999. In said Orders, Presiding Judge Calingin issued a Writ of Preliminary Injunction against respondent China Banking Corporation (CBC), enjoining the latter from conducting and proceeding with the extrajudicial foreclosure and public auction sale of the subject mortgaged properties.

In our 27 July 2006 Decision, we affirmed the finding of the Court of Appeals that there was grave abuse of discretion on the part of the presiding Judge. We held:

While we agree with petitioners that "the assessment and evaluation of evidence in the issuance of the writ of preliminary injunction involves findings of facts ordinarily left to the trial court for conclusive determination," and that the Court of Appeals had been in error when it sought to determine the facts based on evidence not presented or offered in evidence in the trial court, we would still find grave abuse of discretion on the part of the trial court even if the facts contested by petitioners are determined in their favor. Section 5, Rule 58 of the 1997 Rules on Civil Procedure provides:

Sec.5. Preliminary injunction not granted without notice; exception. - **No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined.** If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue ex parte a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. **Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine**