

FIRST DIVISION

[G.R. NO. 147191, July 27, 2006]

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

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, with prayer for the issuance of a Temporary Restraining Order (TRO) or a Preliminary Injunction against the Decision^[1] of the Court of Appeals promulgated on 24 October 2000 and its Resolution^[2] dated 19 February 2001, which nullified and set aside the Orders dated 25 March 1999 and 11 May 1999 of Hon. Francisco L. Calingin, Presiding Judge of Branch 22, Regional Trial Court (RTC), Misamis Oriental. In said Orders, Judge Calingin issued a Writ of Preliminary Injunction against respondent China Banking Corporation (CBC) from conducting and proceeding with the extrajudicial foreclosure and public auction sale of the subject mortgaged properties.

The facts as found by the Court of Appeals are as follows:

In 1992, CBC granted the spouses Lee credit facilities in the amount of P5 Million. For this facility, private respondents constituted on February 11, 1992 a real estate mortgage (REM) over the Borja property (Annex "B", Petition).

Against the secured credit accommodation, the spouses Lee initially borrowed P5 Million, the loan covered by promissory note (P/N) #TLS-20 that was to mature [i]n February 1997. While paying their amortization obligation under this note, the spouses Lee were able to secure as they did secure additional loans drawn against the usable/available portion of the credit facility.

Subsequently, to finance a building construction project, the spouses Lee's original credit facility was increased to P20 Million. To secure the increased facility and all loan availments/drawings made or to be made against such facility, the REM over the Borja property was correspondingly amended. The "Amendment to Real Estate Mortgage" (Annex "B-1", Petition), was signed by private respondents and Renwick Warren's wife, Marivic.

Against this facility as increased, CBC, as participant of the Land Bank of the Philippine[s] (LBP)-administered Countryside Loan Fund (CLF) agreed

to grant the spouses Lee, via bridge financing, a P20 Million loan to be sourced from its (CBC's) availment under the CLC program. In a letter-notice of June 16, 1997, CBC-Borja Branch manager Ronaldo Uy informed Manuel Lee of the approval by the Bank's Executive committee of his term loan in the amount of P20 Million to be funded out of the LBP-CLF, subject, *inter alia*, to the following terms/conditions:

"E. Against Real Estate Mortgage (REM) on the three parcels of land described under TCT Nos. 52273, 56321 and 56322 together with the proposed 3-storey commercial building, located at J.R. Borja Street" (Annex "F", Petition).

Manuel Lee handwrote his conformity to the conditions aforestated on the letter-notice itself.

On September 22, 1997, Manuel Lee and CBC formalized the P20 Million loan by executing a *"LOAN AGREEMENT"* (Annex "G", Petition), which thus paved the way for the release of the funds under the LBP-CLF to the former. Under the terms of this agreement, the loan of P20 Million shall be secured by a real estate mortgage over the Borja property. The series of replacements and/or conversion of the promissory notes vis-a-vis the P20 Million drawn down led to the execution of P/N #TLS-228 for P17,260,000.00 and P/N #TLS-229 for P2,740,000.00 (Annex "C", Petition).

Meanwhile, [i]n January 1995, the spouses Lee executed in favor of the Bank REM over the Lumbia property as security for a P2 Million credit facility (Annex "I", Petition). They would later execute the "Amendment to the Real Estate Mortgage" (Annex "I-1") over the land ["described under TCT No. T-23215"] to secure an increased credit facility. From this facility, the spouses Lee obtained a loan of P5 Million as evidenced, after renewal or restructuring, by P/N BDS-2021 and P/N BDS-2125 dated February 13, 1997 and October 31, 1997, respectively, for P2.5 Million each (Annex "D", Petition).

Subsequent events show the spouses Lee defaulting, starting November 1997, on their monthly amortization payments under the two (2) separate secured facilities. Consequently, and owing to the acceleration clause embodied in the covering promissory notes, CBC, thru its Mr. Uy, sent the spouses Lee a letter dated June 22, 1998 demanding a full settlement of account (Annex "J", Petition). Another demand letter dated August 11, 1998 with a threat of foreclosure of mortgage followed (Annex "K", Petition).

In a letter of July 8, 1998, Manuel Lee, responding to the first demand letter, informed Uy that he (Lee) could not, due to cash flow problem, remit the required full payment. Mr. Lee, however, assured payment *"as soon as funds would be available"* (Annex "L", Petition).

On October 9, 1998, CBC, thru counsel, wrote the spouses Lee, again demanding full liquidation of overdue accounts specifically covered by P/N Nos. TLS-228, TLS-229, BDS-2021 and BDS-2125, this time totaling

P24,833,333.34, or face extra-judicial foreclosure of mortgages (Annex "M", Petition). Answering, Mr. Lee, in his letter of October 23, 1998, reiterated his commitment to pay the family's account covered by the aforementioned (4) four promissory notes. He, however, in effect pleaded for the deferment of the foreclosure of their mortgages so as not "*to prejudice the negotiations [they] are pursuing ... to produce the funds to pay off our loans with [the] Bank*" (Annex "N", Petition).

Towards the end of 1998, CBC sent a fourth demand letter dated December 21, 1998. In their reply-letter of January 6, 1999, the spouses Lee acknowledged receipt of the December 21, 1998 letter and requested that they be given up to March 1999 to settle. In the same breath, they ask that the Bank make "*representation with [its] Manila Lawyer, to hold in abeyance whatever legal action they wish to take*" (Annex "P", Petition).

Unbeknownst to CBC while it was earnestly demanding payment, the spouses Lee, joined by their sons, filed on December 28, 1998 a suit with the Regional Trial Court at Cagayan de Oro City against the Bank for specific performance and cancellation of real estate mortgage. There, they contended that the real estate mortgage on the Borja property had been effectively terminated, the same having been constituted to secure a loan of P5 Million under P/N #TLS-20 which had already been paid. Docketed as Civil Case No. 98-765, the complaint was raffled to Branch 22 of the Court presided by the respondent judge.

In reaction to what it presently describes as a "*con job done on it by the private respondent,*" CBC set in motion the deferred extrajudicial foreclosure proceedings and scheduled, per Notice of Auction Sale by Notary Public Virgilio Cabanlet dated January 18, 1999 (Annex "Q", Petition), the auction sale of the Borja and the Lumbia properties on February 15, 1999. Thereupon, the Lees filed an *Ex parte motion* for injunctive relief, alleging that the foreclosure, if not restrained, will cause irreparable injury to them and would prejudice their rights before the trial court.

On February 12, 1999, the respondent judge issued a temporary restraining order (TRO) enjoining CBC, et al., from proceeding with the scheduled auction and set hearing dates on the application for preliminary injunction. Due to this development, CBC reset the foreclosure sale to March 29, 1999, or after the effectivity of the TRO thus issued. Reacting, the Lees interposed a motion to cite CBC, et al., in contempt of court for violating the anti-forum shopping rule, with a prayer to restrain those concerned from proceeding with the March 29, 1999 auction sale.

In the hearing on the issuance of the injunction, Manuel Lee in essence testified that he and the rest of his family signed the "*Amendment to Real Estate Mortgage*" (Annex "B-1", supra) in blank, thinking that it covered the Lumbia property. He also alleged that the only obligation, represented by P/N #TLS-20 for P5 Million, secured by the mortgage on the Borja Property dated February 11, 1992 (Annex "B", supra), had

already been paid. On this premise, he added, there was hardly any necessity to amend the said mortgage document.

CBC, for its part, adduced testimonial evidence to traverse the Lees' claim respecting the signing of aforementioned deed in blank and about the alleged settlement of their loan. It also presented documentary evidence *inter alia* consisting of the demand letters adverted to earlier, the fifty-five (55) promissory notes the spouses Lee had executed in the Bank's favor, the June 16, 1998 letter of Uy to Manuel Lee, *supra*, and a copy of the "Loan Agreement" (Annex "G," *supra*).

After the conclusion of the March 19, 1999 setting, another hearing was scheduled for March 29, 1999.

On March 25, 1999, however, respondent judge issued the first assailed order (Annex "A", Petition), granting private respondents' motion for the issuance of preliminary injunction with the following proffered justification:

"Based on plaintiffs evidence presented and because of another purported extra judicial foreclosure on March 29, 1999, which this Court finds to be an utter disregard of the proceeding which is still ongoing and there being bad faith on the part of the defendants in pursuing the same. . . this Court finds enough reason for the issuance of the writ of preliminary injunction . . . so as . . . to prevent any irreparable damages or injuries to plaintiffs, and likewise to prevent the claim of plaintiffs which is still to be investigated, heard and adjudicated, from becoming moot and academic."

On May 11, 1999, the respondent judge issued his second assailed order denying CBC's motion for reconsideration, as amended (Annex "A-2", Petition).^[3]

On 19 July 1999, CBC filed a Petition for *Certiorari* against petitioners and Judge Calingin with the Court of Appeals, praying for the annulment of the Orders rendered on 25 March 1999 and 11 May 1999.

On 19 August 1999, the Court of Appeals dismissed the Petition for having been belatedly filed. Upon motion for reconsideration filed by respondent CBC, the Court of Appeals reinstated the petition on 10 January 2000.

On 24 October 2000, the Court of Appeals issued the assailed Decision, disposing of the case as follows:

WHEREFORE, the instant petition is hereby GRANTED. Accordingly, the assailed orders of the respondent judge dated March 25, 1999 and May 11, 1999, are hereby NULLIFIED and SET ASIDE.^[4]

On 14 November 2000, petitioners filed a motion for reconsideration with prayer for the Issuance of a Temporary Restraining Order or Preliminary Injunction to stop the sale of the subject properties. The Court of Appeals issued a TRO on 12 December 2000.

Respondent CBC, nonetheless, proceeded with the conduct of the public auction sale on 14 December 2000. Subsequently, the Court of Appeals denied petitioners' motion for reconsideration in its assailed Resolution dated 19 February 2001.

Hence, this petition where petitioners bring before this Court the following assignment of errors:

1. THAT THE PUBLIC RESPONDENT COURT OF APPEALS GRAVELY ERRED IN RENDERING THE DECISION DATED OCTOBER 24, 2000 WHEN IT BASED THE ALLEGATIONS OF FACTS ENTIRELY FROM [THE] "STATEMENT OF FACTS PROPOUNDED BY THE PUBLIC RESPONDENT CBC IN ITS PETITION FOR CERTIORARI IN CA-G.R. SP NO. 53789 WHICH ARE NOT THE FACTS ESTABLISHED OR PROVEN IN THE HEARING FOR THE PURPOSE OF DETERMINING THE PROPRIETY OF THE ISSUANCE OF THE WRIT OF PRELIMINARY INJUNCTION ISSUED BY THE TRIAL COURT ON MARCH 25, 1999 AND RE-AFFIRMED ON MAY 11, 1999 IN CIVIL CASE NO. 98-765.
2. THAT, PUBLIC RESPONDENT COURT OF APPEALS GRAVELY ERRED IN FINDING THAT GRAVE ABUSE OF DISCRETION WAS COMMITTED BY THE TRIAL COURT WHEN IT MEASURED AND DETERMINED THE ACTUATIONS OF THE SAID COURT BASED UPON THE FACTS NOT PRESENTED AND ESTABLISHED, AS YET IN THE TRIAL COURT, THE FACT BEING THAT, TRIAL ON THE MERIT IN CIVIL CASE NO. 98-765 HAS NOT YET STARTED BEFORE THE SAID COURT.
3. THAT, THE PUBLIC RESPONDENT COURT OF APPEALS GRAVELY ERRED WHEN IT NULLIFIED AND SET ASIDE THE MARCH 25, 1999 AND MAY 11, 1999 ORDERS OF THE TRIAL COURT IN CIVIL CASE NO. 98-765 THEREBY VIOLATED THE CONSTITUTIONAL RIGHT OF THE HEREIN PETITIONERS TO DUE PROCESS IN THEIR COMPLAINT AGAINST PRIVATE RESPONDENT BECAUSE IT RENDERED THE ISSUES IN SAID CASE TO BECOME MOOT AND ACADEMIC, AND, PREJUDICIAL TO THE PROPRIETARY RIGHTS OF PETITIONERS, THAT WOULD CAUSE IRREPARABLE DAMAGE TO THEM IF NOT TIMELY RECALLED OR REVERSED BY THE ISSUANCE OF THIS HONORABLE SUPREME COURT OF A TRO/PRELIMINARY INJUNCTION; FURTHER, THE CIVIL CASE BEFORE RTC, BRANCH 22, CAGAYAN DE ORO CITY, WOULD RESULT IN ITS DISMISSAL BY THE IMPLEMENTATION OF THE OCTOBER 24, 2000 DECISION OF THE PUBLIC RESPONDENT COURT OF APPEALS.
4. THAT, THE PUBLIC RESPONDENT COURT OF APPEALS GRAVELY ERRED IN NULLIFYING THE MARCH 25, 1999 AND MAY 11, 1999 INTERLOCUTORY ORDERS OF THE TRIAL COURT IN CIVIL CASE NO. 98-765 BY DISREGARDING THE TIME-HONORED AND JUDICIALLY MANDATED PRINCIPLE THAT "THE ASSESSMENTS AND EVALUATION OF FACTS IN THE ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION, INVOLVES FACTUAL FINDINGS, ORDINARILY LEFT TO THE TRIAL COURT FOR ITS CONCLUSION AND DETERMINATION"; HENCE, THERE IS NO ABUSE, MUCH LESS GRAVE ABUSE, OF