

## SECOND DIVISION

[ G.R. No. 141923, September 17, 2002 ]

**CHINA BANKING CORPORATION, PETER S. DEE, ALEX O. LIM,  
AND ATTY. OMAR D. VIGILIA, PETITIONERS, VS. HON. NORMA C.  
PERELLO, IN HER CAPACITY AS THE PRESIDING JUDGE OF THE  
REGIONAL TRIAL COURT OF MUNTINLUPA CITY, BRANCH 276,  
AND THELMA M. ZUÑIGA, RESPONDENTS.**

### D E C I S I O N

#### **QUISUMBING, J.:**

In this special civil action for certiorari, petitioners China Banking Corporation, Peter S. Dee, Alex O. Lim, and Atty. Omar D. Vigilia seek to annul the decision<sup>[1]</sup> dated September 24, 1999 and the order<sup>[2]</sup> dated February 3, 2000, both issued by respondent Judge Norma C. Perello in Civil Case No. 97-204, and to restrain and prohibit respondent judge from conducting any further proceedings in said civil case, including acting on any impending execution of the assailed decision.

The factual antecedents of this case, culled from the records, are as follows:

Private respondent Thelma M. Zuñiga mortgaged to petitioner China Banking Corporation (Chinabank) her residential property at 141 Apitong St., New Alabang Village, Muntinlupa City to secure a loan of P4,024,396.25. Later, she became cash-strapped and requested petitioner bank for time to settle her obligations. To show her good faith, she paid Chinabank P1,000,000 on April 23, 1997. On June 23, 1997, she issued two postdated checks for P500,000 each to Chinabank. The checks were drawn on the Far East Bank & Trust Company (FEBTC). Petitioner bank claimed that it had returned the checks to respondent, but the latter denied it.<sup>[3]</sup>

On July 2, 1997, petitioner bank declined private respondent's request for extension of time to pay and directed her to immediately settle her loan, plus interest, penalties, and other charges.<sup>[4]</sup>

In August 1997, private respondent closed her account at the FEBTC to prevent encashment of her checks.<sup>[5]</sup>

On August 18, 1997, Chinabank instituted extrajudicial foreclosure proceedings.<sup>[6]</sup> Chinabank emerged as the highest bidder at the ensuing foreclosure sale with a bid of P8,583,123.27.<sup>[7]</sup>

On October 10, 1997, private respondent filed a complaint<sup>[8]</sup> against the bank for annulment of the foreclosure sale and for the issuance of a writ of preliminary injunction and/or temporary restraining order. The case was raffled to the sala of respondent Judge Norma C. Perello of the Regional Trial Court of Muntinlupa City, Branch 276. Judge Perello issued, first, a temporary restraining order and, later, a

writ of preliminary injunction against petitioner Chinabank and its officers, namely Peter M. Dee, Alex O. Lim, Atty. Omar D. Vigilia, and Melvin T. Bagabaldo. They were ordered to stop the foreclosure of private respondent's property.<sup>[9]</sup>

Aggrieved, petitioners filed a petition for certiorari in the Court of Appeals, docketed as CA-G.R. SP No. 46708, praying for the annulment and setting aside of respondent judge's order. On June 29, 1998, the appellate court granted the bank's petition and dissolved the writ of preliminary injunction issued by the RTC.<sup>[10]</sup> The CA also denied private respondent's motion for reconsideration of said decision.<sup>[11]</sup>

Private respondent appealed the CA decision and order to this Court. In a resolution<sup>[12]</sup> dated November 18, 1998, we denied the petition and affirmed the appellate court's decision and ordered that the writ of preliminary injunction issued by respondent judge be set aside.

After receipt of our resolution, respondent judge set the pre-trial of the case for annulment of the foreclosure sale on June 9, 1999.<sup>[13]</sup> Counsel for petitioners appeared at the pre-trial with a special power of attorney but failed to bring the memorandum executed by the corporate secretary adverted to in the SPA, on which the SPA was based. Private respondent moved that petitioners be declared "as in default," contending that the said memorandum referred to in the SPA cannot take the place of a resolution of the Board of Directors of petitioner bank authorizing said counsel to appear for the bank during the pre-trial.<sup>[14]</sup> In an order dated June 9, 1999, respondent judge granted private respondent's motion and set the *ex-parte* hearing of the case on June 30, 1999.<sup>[15]</sup>

On June 10, 1999, petitioners filed a motion for reconsideration of the aforesaid order. They also filed a motion for inhibition of respondent judge on June 14, 1999. On June 28, 1999, respondent judge denied the motion for inhibition.<sup>[16]</sup>

On August 23, 1999, petitioners filed a petition for certiorari with the Court of Appeals in CA-G.R. SP No. 54905, for the nullification of the following orders of respondent judge: (1) order declaring petitioners "as in default"; (2) order submitting the case for decision; and (3) order denying petitioners' motion for inhibition. They likewise prayed for the issuance of a temporary restraining order and/or a writ of preliminary injunction.<sup>[17]</sup> On September 24, 1999, the CA issued a resolution granting the temporary restraining order.<sup>[18]</sup>

On the same date that the appellate court issued the temporary restraining order, respondent judge promulgated a decision on the main case for annulment of foreclosure in favor of private respondent. Thus:

This foreclosure should therefore be annulled as it is hereby annulled.

Considering however that Plaintiff is still in debt to the Defendant on her principal loan of P4,574,396.35 and the interest of P288,225.28, she is therefore directed to pay the said loan in the total sum of FOUR MILLION EIGHT HUNDRED SIXTY TWO THOUSAND SIX HUNDRED TWENTY ONE AND 63/100 (P4,862,621.63) PESOS, within ninety (90) days from receipt of this decision.

Defendant upon payment of the sum is directed to cancel the mortgage and return the title of the Plaintiff over her property located at 141 Apitong Street, New Alabang Village, Muntinlupa City under TCT No. 200427, free and clean of the said mortgage encumbrance.

Defendant is also directed to pay attorney's fees in the sum of FIVE HUNDRED THOUSAND PESOS (P500,000.00) and cost of the litigation, and moral damages of P500,000.00.

It is SO ORDERED.<sup>[19]</sup>

On October 29, 1999, pending the resolution of petitioners' motion for reconsideration of the RTC decision, the CA rendered a decision that: (1) nullified the default order of respondent judge with respect to petitioner bank; (2) nullified the order, only with respect to petitioner bank, that submitted the case for decision after private respondent adduced her testimonial evidence *ex parte*; and (3) affirmed the order denying petitioners' motion for inhibition. The CA disposed:

IN THE LIGHT OF ALL THE FOREGOING, the Petition of Peter Dee, Alex Lim, Atty. Omar Vigilia is DISMISSED. The Petition of the Petitioner Bank is GRANTED. Accordingly, the Orders of the Respondent Judge, Annexes "A" and "C" of the Petition, declaring the Petitioner Bank "*as in default*" and allowing the Private Respondent to present, *ex-parte* evidence against the Petitioner Bank and declaring Civil Case No. 97-204 deemed submitted for Decision, are nullified. The Petition of the Petitioners for the nullification of the Order of the Respondent Judge, Annex "B" of the Petition is DENIED DUE COURSE and DISMISSED. The aforesaid Order of the Respondent Judge, Annex "B" of the Petition is AFFIRMED.

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

Petitioner filed a motion for reconsideration of the September 24, 1999 decision issued by the respondent judge, based on the CA resolution enjoining respondent judge from rendering and promulgating any Decision in Civil Case No. 97-204 and later, the CA decision that nullified the default order of respondent judge against Chinabank. Respondent judge denied the motion in the assailed order dated February 3, 2000.<sup>[21]</sup>

On March 2, 2000, petitioners filed the present petition ascribing grave abuse of discretion to respondent judge based on the following grounds:

## I

THE DECISION ALLEGEDLY DATED SEPTEMBER 24, 1999 WAS CONTEMPTUOUSLY ISSUED BY THE RESPONDENT JUDGE IN DEFIANCE OF THE HIGHER AUTHORITY OF THE HONORABLE COURT OF APPEALS WHICH ISSUED ON SEPTEMBER 24, 1999 IN CA-G.R. SP. NO. 54905, A TEMPORARY RESTRAINING ORDER ENJOINING THE RESPONDENT JUDGE FROM RENDERING AND PROMULGATING ANY DECISION IN CIVIL CASE NO. 97-204 PENDING BEFORE HER.

## II

THE DECISION ALLEGEDLY DATED SEPTEMBER 24, 1999 WAS RENDERED BY THE RESPONDENT JUDGE IN DIRECT DISREGARD OF THE DECISION PROMULGATED BY

THE HONORABLE COURT OF APPEALS ON OCTOBER 29, 1999 IN CA-G.R. SP NO. 54905, WHICH ANNULLED AND SET ASIDE THE DEFAULT ORDER AGAINST PETITIONER CHINA BANKING CORPORATION, AS WELL AS THE ORDER WHICH DEEMED CIVIL CASE NO. 97-204 SUBMITTED FOR DECISION.

### III

THE DECISION ALLEGEDLY DATED SEPTEMBER 24, 1999 WAS RENDERED BY THE RESPONDENT JUDGE IN FLAGRANT DISOBEDIENCE TO THE AUTHORITY OF THE HONORABLE COURT OF APPEALS AND TO THE AUTHORITY OF THIS HONORABLE COURT AS SHE REVERSED THE DECISION OF THE HONORABLE COURT OF APPEALS AND THE RESOLUTION OF THIS HONORABLE COURT WHICH HAD ATTAINED FINALITY.

### IV

THE DECISION ALLEGEDLY DATED SEPTEMBER 24, 1999 RENDERED BY THE RESPONDENT JUDGE AND THE ORDER DATED FEBRUARY 3, 2000 ARE NULL AND VOID.<sup>[22]</sup>

After a review of the foregoing allegations, we find that the main issue for our consideration is whether or not respondent judge issued the impugned decision and order with grave abuse of discretion.

Petitioners assert that respondent judge acted with grave abuse of discretion amounting to lack or in excess of jurisdiction when she issued the said orders in defiance of the following: (1) TRO issued by the Court of Appeals on September 24, 1999 in CA-G.R. SP. No. 54905, enjoining her from rendering and promulgating any decision in Civil Case No. 97-204; (2) October 29, 1999 decision rendered by the CA nullifying respondent judge's default order; and (3) resolution issued by this Court affirming the Court of Appeals' decision dissolving the writ of preliminary injunction issued by respondent judge.

As a general rule, a petition for certiorari is the proper remedy when any tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, nor any plain, speedy, and adequate remedy at law.<sup>[23]</sup> We have gone over the records of the case at bar and found sufficient reason to hold that respondent judge has indeed gravely abused her discretion.

A copy of the temporary restraining order itself and the Notice of Resolution were actually delivered to and received by the RTC, Branch 276, Muntinlupa City on September 28, 1999 at 10:10 AM. This is clearly indicated at the upper right corner of a copy of the temporary restraining order where it is stamped:

RECEIVED

Regional Trial Court, Branch 276, Muntinlupa City

Date: 9-28-99

Time: 10:10

By: (Signed)<sup>[24]</sup>