

****China Banking Corporation v. Asian Construction and Development Corporation: A Case of Premature Sale of Attached Properties****

****Facts:**** This case revolves around the grant of an Omnibus Credit Line by petitioner China Banking Corporation (China Bank) to respondent Asian Construction and Development Corporation (ACDC) amounting to P90,000,000.00 on July 24, 1996. China Bank initiated a Complaint on April 12, 1999, for the recovery of sum of money and issuance of writ of preliminary attachment against ACDC at the Regional Trial Court (RTC) of Makati, alleging misappropriation of funds by ACDC which were collected under various construction contracts and supposed to be held in trust for China Bank. A writ of preliminary attachment was issued and executed on April 22, 1999.

Subsequently, the RTC rendered a Summary Judgment in favor of China Bank on March 27, 2000, to which ACDC filed a Notice of Appeal. China Bank, aiming for the custody and proposed sale of ACDC's attached properties prior to the final judgment, encountered opposition from ACDC and was later denied by both the RTC and the CA. China Bank's motions at the CA were denied, prompting it to elevate the matter to the Supreme Court through a Petition for Review on Certiorari, arguing that the CA's resolutions were contrary to the provisions of Rule 57, Section 11 of the Rules of Court.

****Issues:**** The legal issues revolved around the determination of:

1. Whether the petition filed under Rule 45 was the correct recourse instead of a petition for certiorari under Rule 65.
2. Whether the CA's denial of the sale of attached properties before the final judgment was justifiable.
3. Whether the attached properties qualified as "perishable" under Rule 57, Section 11 of the Rules of Court, warranting their sale before the entry of final judgment.

****Court's Decision:**** The Supreme Court denied the petition and affirmed the CA's resolutions. The Court clarified that the petition for review on certiorari under Rule 45 improperly addressed interlocutory orders, suggesting Rule 65 as the appropriate procedure. Furthermore, the Court found no grave abuse of discretion by the CA, pointing out that the sale of attached property before final judgment is contingent upon both parties' interests and the perishability of the property. It recognized the CA's rationale in maintaining the status of attached properties to avoid undue prejudice to ACDC. The Court also evaluated foreign jurisprudence and clarified the definition of "perishable" goods, concluding that the factual determination of the properties' perishability and whether their sale before final judgment benefits all parties were inadequately addressed by China Bank

at the CA level.

****Doctrine:**** The doctrine established pertains to the application of Rule 57, Section 11 of the Rules of Court. An attached property may be sold after levy on attachment and before entry of judgment if proven to the court, through a hearing with notice to both parties, that the property is perishable, or the interests of all parties will be subserved by its sale. The decision also emphasized the procedural route of questioning interlocutory orders through a special civil action under Rule 65, rather than a petition for review under Rule 45.

****Class Notes:****

- ****Rule 45 vs. Rule 65 of the Rules of Court:**** Understand the procedural appropriateness of each rule when addressing interlocutory orders.
- ****Definition of “Perishable” Properties:**** Examine how properties’ physical state and the potential for economic depreciation or material deterioration may influence their classification as perishable.
- ****Application of Sec. 11, Rule 57:**** The court’s discretion in ordering the sale of attached properties before the judgment, prioritizing the preservation of property value and fairness to both parties.

****Historical Background:**** This case underscores the evolving interpretation and application of rules regarding the preliminary attachment of properties within Philippine jurisprudence. Reflecting on foreign and local contexts, the Supreme Court navigated through uncharted territories concerning “perishable” properties, setting significant precedents for future related legal disputes. The decision showcases the judiciary’s role in balancing the interests of involved parties while ensuring that procedural rules are adhered to, highlighting the importance of equity and procedural correctness in legal proceedings.