

**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 T...**

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

Ponente: QUISUMBING, J.

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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[1] dated September 24, 1999 and the order[2] 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.[3]

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.[4]

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

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

On October 10, 1997, private respondent filed a complaint[8] 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.[9]

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.[10] The CA also

denied private respondent's motion for reconsideration of said decision.[11]

Private respondent appealed the CA decision and order to this Court. In a resolution[12] 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.[13] 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.[14] 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.[15]

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.[16]

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.[17] On September 24, 1999, the CA issued a resolution granting the temporary restraining order.[18]

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.[19]

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.[20]

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.[21]

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.[22]

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.[23] 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)[24]

A copy of the temporary restraining order and the attached Notice of Resolution were personally delivered to respondent judge's office by the process server of the Court Appeals.[25] Whether or not respondent judge promulgated the decision on September 24, 1999 is of no moment. The indisputable fact is that the copies of the said decision were mailed to the parties only on November 17, 1999, almost two months after respondent judge received a copy of the temporary restraining order specifically enjoining her "from rendering and promulgating any Decision in Civil Case No. 97-204 pending before it."

The fact that the assailed decision was mailed to the parties only on November 17, 1999, almost two months after the purported date of its promulgation, taints the presumption of regularity in the performance of official duty and puts in doubt the true date when the assailed decision was promulgated. It defies belief that the decision would be sent to the parties, especially to the losing party, two months after its promulgation. This scenario creates a strong suspicion that the impugned decision was antedated and issued in precipitate haste in anticipation of the appellate court's order enjoining respondent judge from acting further on the main case for annulment of the foreclosure sale, and to thwart the CA's eventual decision annulling respondent judge's order declaring petitioner as in default.

Even assuming that the challenged decision was promulgated on September 24, 1999, respondent judge should have granted the motion for reconsideration filed by petitioner in the light of the September 24, 1999 order and October 29, 1999 decision of the Court of Appeals. Had the appellate court's decision been heeded, it would have abbreviated the proceedings and prevented the redundancy of having to appeal the case again.

Furthermore, the Resolution of the Court of Appeals ordering the issuance of the temporary restraining order is unmistakably worded:

The Private Respondent is hereby directed to file her "Comment" of the Petition and Petitioner's plea for a writ of preliminary injunction within ten (10) days from notice hereof.

In the meantime, so as not to render the issues posed, in the present recourse, moot and academic, and to protect the rights of the parties before the Court can resolve Petitioner's plea for a writ of preliminary injunction, the Respondent judge is hereby enjoined from rendering and promulgating any Decision in Civil Case No. 97-204 pending before it. (Emphasis supplied.)

SO ORDERED.[26]

The temporary restraining order is clearly and specifically directed at public respondent judge. It expressly specified the act to be restrained, i.e., rendering and promulgating any decision in Civil Case No. 97-204. Clearly, the words of the temporary restraining order alone should have placed respondent judge on guard that the intention of the Court of Appeals was to maintain the status quo pending the outcome of the case for certiorari and preliminary injunction.

Yet, heedless of prejudicial consequences, respondent judge issued a decision on the merits of the annulment case in favor of private respondent based solely on the evidence presented by private respondent after declaring petitioners as in default.

It bears stressing that in the October 29, 1999 decision of the CA which was received by the RTC prior to the promulgation of the February 3, 2000 order, the Court of Appeals considered the following facts in ruling that respondent judge, indeed, committed grave abuse of discretion in declaring petitioners as in default:

...Petitioner's "Motion for Reconsideration" was set for hearing on June 18, 1999 at 2:00 o'clock in the afternoon long before the date set for the reception, ex-parte, of Private Respondent's additional evidence, on the issue of the case on the merits. And yet, the Respondent Judge simply ignored Petitioners' "Motion for Reconsideration" and failed or deferred to resolve said motion before receiving Private Respondent's evidence on June 30, 1999, at 2:00 o'clock in the afternoon. Worse, the Respondent Judge issued an Order, on June 30, 1999, considering the case submitted for Decision within ninety (90) days from said date, thereby denying, en effet, the "Motion for Reconsideration" of the Petitioners' sans any grounds or ratiocinations therefor. A modicum of judicial circumspection should have impelled the Respondent Judge to first resolve Petitioners' "Motion for Reconsideration" before receiving Private Respondent's additional evidence, on June 30, 1999, stating, in said resolution, the grounds therefor and her ratiocinations in support of said "Resolution". The Petitioners were entitled to it as a matter of procedural due process....[27]

The irregularity in the conduct of the pre-trial hearing and reception of evidence raises questions concerning the validity of the decision rendered on September 24, 1999 by respondent judge. Also, the assailed decision issued by respondent judge defies the resolution issued on November 18, 1998 by no less than this Court, which appears to have been received by the Muntinlupa City RTC, Branch 276, on November 27, 1998. In said resolution, we held that private respondent showed no clear right to enjoin the foreclosure of the mortgaged property. The pertinent portion of said resolution reads:

In this case, petitioner [Thelma Zuniga] has not shown a clear legal right which must be protected by injunction. There is no dispute that petitioner was behind in her payments of her loan, that is why she asked for time within which to pay, which request the respondent bank however denied.

It is not true that she paid private respondent bank the total amount of P2,000,000.00 which would justify stopping the foreclosure of the mortgage. While it is true that she had paid respondent bank the amount of P1,000,000.00 on April 23, 1997, it is equally true that her FEBTC checks in the same amount were never encashed.

As to the propriety of the interests, penalties, and other charges which respondent bank had imposed on petitioner as well as the true state of the outstanding balance of petitioner's loan, the Court holds that these issues are more properly left for determination by the trial court in the main case.

WHEREFORE, the petition is DENIED for lack of showing that the Court of Appeals committed reversible error.[28]

Although the issue there was the propriety of the CA decision nullifying the writ of preliminary injunction issued

by respondent judge, the above conclusion by this Court is nevertheless binding on the trial court. To reiterate, this Court found that private respondent made no payments to Chinabank in the total amount of P2,000,000 to justify stopping foreclosure of the mortgage. Respondent judge, therefore, should not have resorted to technicalities to arrive at a contrary finding.

No doubt respondent judge knows her place in the judicial hierarchy, but failed to observe it. As said in *Villaflor vs. Amatong*, inferior courts must be modest enough to consciously realize the position that they occupy in the interrelation and operation of the integrated judicial system of the nation.[29] Occupying as she does a court lower in rank than the Court of Appeals, respondent judge owes respect to the latter and should, of necessity, defer to the orders of the higher court. The appellate jurisdiction of a higher court would be rendered meaningless if a lower court may, with impunity, disregard and disobey it.

Further, we find that respondent had delayed deciding petitioners' motion for reconsideration. Such motion should have been resolved within thirty days from the time it was submitted for resolution.[30] In this case, petitioners' motion for reconsideration was submitted for resolution on December 3, 1999.[31] Respondent judge eventually resolved the motion only on February 3, 2000,[32] or 62 days after it was submitted for resolution. In the recent case of *Bascug vs. Judge Arinday, Jr.*,[33] we held that the failure of respondent judge to act with reasonable dispatch on the matter constituted gross inefficiency on his part.

The Court has often issued reminders that delay in the disposition of cases erodes the faith and confidence of our people in the judiciary and brings it into unnecessary disrepute.[34] Undue delays ought not to be tolerated if reforms in the judiciary are to succeed.

WHEREFORE, this petition for certiorari is GRANTED. The decision of respondent Judge Norma C. Perello, Regional Trial Court, Muntinlupa City, Branch 276, dated September 24, 1999 and the order dated February 3, 2000, issued in Civil Case No. 97-204, are hereby ANNULLED. No pronouncement as to costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Austria-Martinez, and Callejo, Sr., JJ., concur.

[1] Rollo, pp. 36-46.

[2] Id. at 47.

[3] Id. at 195.

[4] Ibid.

[5] Ibid.

[6] Rollo, p. 85.

[7] Id. at 195.

[8] Id. at 65-72.

[9] Supra, note 7.

[10] Rollo, p. 170.

[11] Ibid.

- [12] Rollo, pp. 195-196.
- [13] Id. at 286.
- [14] Ibid.
- [15] Ibid.
- [16] Rollo, p. 287.
- [17] Id. at 288.
- [18] Ibid.
- [19] Rollo, p. 46.
- [20] Id. at 296-297.
- [21] Id. at 47.
- [22] Id. at 18-19.
- [23] Rules of Court, Rule 65, Sec. 1.
- [24] Records, Vol. III, p. 640.
- [25] Ibid.
- [26] Ibid.
- [27] Rollo, p. 294.
- [28] Records, Vol. III, p. 503.
- [29] Villaflor vs. Amatong, 344 SCRA 570, 580 (2000).
- [30] Bascug vs. Judge Arinday, Jr., A.M. RTJ-00-1591, April 11, 2002, p. 5.
- [31] Records, Vol. II, p. 404.
- [32] Id. at 406.
- [33] Supra, note 30.
- [34] Ibid.

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