

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

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

Ponente: CHICO-NAZARIO, J.

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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 within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

The trial court failed to comply with the above provision when it failed to let respondent CBC finish its presentation of its evidence proving why injunction should not be granted.

Hearings on the application for preliminary injunction were held on 25 February 1999, 02 March 1999, 16 March 1999, and 19 March 1999. As pointed out by respondent CBC, the hearing on 19 March 1999 was adjourned upon motion of petitioners' counsel and over the objections of counsel for respondent CBC and despite the fact that there was ample time left for further proceedings on that day. The application was also set for hearing on 18 March 1999; however, said hearing was canceled at the instance of petitioners' counsel.

On the hearing held on 19 March 1999, respondent CBC's counsel tried to have the continuation of the hearings set before 29 March 1999, the date at which the extra-judicial foreclosure sale of the subject property was re-scheduled, to no avail.

As early as 16 March 1999 and before the hearing of 19 March 1999, petitioners and the presiding judge of the trial court were aware of the public auction set on 29 March 1999. At the hearing held on 19 March 1999, petitioners could, therefore, have joined respondent CBC in the latter's efforts to have the hearings continued on a date prior to 29 March 1999. Instead of doing so, petitioners' counsel, however, informed the court that he did not have any available date in his calendar for that week.

Section 5, Rule 135 of the 1997 Rules of Civil Procedure provides:

Sec. 5. Inherent powers of courts. - Every court shall have the power: x x x (b) to enforce order in proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority; x x x (d) to control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a case before it, in every manner appertaining thereto; x x x

By means of its inherent powers stated in the above provision, the trial court should have forced respondent CBC, under pain of contempt, to finish presenting its evidence within the scheduled hearings, and to focus only on the most important evidence. It should have proceeded with marathon hearings if necessary, which would seldom be the case because of its power to limit the same in accordance with the summary nature of such proceeding. But the trial court cannot issue a writ of preliminary injunction based solely on plaintiff's evidence, as was expressly stated in the Order itself. The trial court cannot, without gravely abusing its discretion, issue such writ prior to the termination of the presentation of evidence by the party against whom the injunction shall be issued. The order to show cause (why the injunction should not be granted) stated in Section 5, Rule 58, is precisely directed on such party, and not on the party asking for the injunction, and therefore it was an error for the trial court to have given priority to petitioners' presentation of evidence.[2]

Upon taking a second hard look into the issues in the case at bar, we failed to find any new argument to convince us to reverse our finding that there was grave abuse of discretion in the issuance of the subject Writ of Preliminary Injunction.

We, however, agree with petitioners that they could not be faulted for the abuse of discretion on the part of the trial court. Petitioners did not seek the termination of the hearings for the issuance of the writ, but merely asked that respondent CBC be cited for contempt in view of the foreclosure sale scheduled after the expiry of the Temporary Restraining Order. As such, petitioners should not be deprived of the right to a Preliminary Injunction, if warranted, just because of errors in its issuance not attributable to them. We therefore resolve that the trial court should be given time within which to proceed with the hearings concerning the preliminary injunction in accordance and in compliance with the procedures laid down in our Rules of Court.

WHEREFORE, the Motion for Reconsideration is DENIED. Our 27 July 2006 Decision is, however, MODIFIED. The Regional Trial Court of Misamis Oriental is hereby given twelve (12) days from the finality of this Resolution to resume the hearings in the application for Preliminary Injunction in Civil Case No. 98-765, and twelve (12) days from their resumption to terminate the same. Thereafter, the Regional Trial Court of Misamis Oriental should issue an order granting or denying the application for preliminary injunction.

SO ORDERED.

Ynares-Santiago, (Chairperson), Callejo, Sr, and Nachura., JJ., concur.
Austria-Martinez., J., on leave.

[1] CA-G.R. SP No. 53789. Penned by Associate Justice Cancio C. Garcia (now Supreme Court Associate Justice) with Associate Justices Romeo A. Brawner and Andres B. Reyes, Jr., concurring.

[2] Lee v. Court of Appeals, G.R. No. 147191, 27 July 2006, 496 SCRA 668, 697-699.

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