

## CHINA BANKING CORPORATION, PETITIONER, VS. ARMI S. ABEL, RESPONDENT.

*G.R. No. 182547. January 10, 2011*

Ponente: ABAD, J.

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### ABAD, J.:

This case is about the trial court's grant of a petition for the issuance of a writ of possession before the possessor of the property could be heard on her opposition and its subsequent denial of her motion for reconsideration.

#### The Facts and the Case

In a foreclosure sale, petitioner China Banking Corporation (China Bank) acquired title[1] over respondent Armi S. Abel's property at La Vista Subdivision, Quezon City, she having failed to pay her loan. To enforce its ownership, in January 2003 China Bank filed with the Regional Trial Court (RTC) of Quezon City in LRC Case Q-16014(03) an ex parte petition for the issuance of a writ of possession in its favor.

On October 2, 2003 the RTC rendered a decision, granting China Bank's petition and directing the issuance of a writ of possession over the property in its favor. Abel appealed from this decision but lost her appeal[2] in the Court of Appeals (CA). She filed a petition for review before this Court in G.R. 169229 but this, too, failed. She filed a motion for reconsideration and a second similar motion without success. The Court's judgment became final and executory and, eventually, the record of her case was remanded to the RTC for execution.

China Bank filed a motion for execution with the RTC, setting it for hearing on June 8, 2007. On June 7, 2007 Abel filed a motion to cancel and reset the hearing on the ground that she needed more time to comment on or oppose the bank's motion. On June 8, 2007 the RTC granted her the 10-day period she asked but "from notice."

On June 19, 2007, noting Abel's failure to file her opposition to or comment on the motion for execution, the RTC issued an Order granting China Bank's motion. After being served with the notice to vacate, Abel filed on June 21, 2007 an omnibus urgent motion for reconsideration and to admit her opposition to the bank's motion for execution. She set her urgent motion for hearing on June 29, 2007. On June 22, 2007, however, the day after receiving her motion, the RTC denied the same for lack of merit.

On June 25, 2007 the sheriff implemented the writ against Abel and placed China Bank in possession of the subject property. On even date, Abel filed a petition for certiorari with the CA in CA-G.R. SP 99413, assailing the RTC's June 19 and 22, 2007 Orders. On July 2, 2007, a Saturday, Abel took back possession of the premises on the strength of a Temporary Restraining Order (TRO) that the CA issued on June 29, 2007.

On January 3, 2008 the CA rendered a decision,[3] setting aside the assailed orders of the RTC. China Bank moved for its reconsideration but the CA denied this in an April 9, 2008 Resolution.[4] The CA ruled that the RTC committed grave abuse of discretion in granting the bank's motion for execution, noting that the latter court gave Abel 10 days from notice of its order, not 10 days from the issuance of such order, within which to file her opposition. Parenthetically, the shorter period was what she asked for in her motion for postponement. But there

was no proof, said the CA, as to when Abel had notice of the RTC's June 8, 2007 Order as to determine when the 10-day period actually began to run.

China Bank thus filed this petition for review on certiorari against the CA decision and resolution denying its motion for reconsideration.

#### The Issue Presented

The issue in this case is whether or not the CA erred in setting aside the assailed RTC's June 19 and 22, 2007 Orders on the ground of failure to observe due process respecting Abel's right to be heard on the bank's motion for execution.

#### The Court's Ruling

The CA erred in attributing grave abuse of discretion to the RTC. Although the RTC caused the issuance of the writ of execution before it could establish that Abel's 10 days "from notice" within which to file her opposition had lapsed, she filed with that court on June 21, 2007 an urgent motion for reconsideration with her opposition to the motion for execution attached. The Court, acting on her motion, denied it on the following day, June 22, 2007. Any perceived denial of her right to be heard on the bank's motion for execution had been cured by her motion for reconsideration and the RTC's action on the same.

True, Abel gave notice to China Bank that she would submit her motion for reconsideration for the RTC's consideration on June 29, 2007 but that notice is for the benefit of the bank, not for her, that it may be heard on the matter. She cannot complain that the court acted on her motion more promptly than she expected especially since she actually offered no legitimate reason for opposing the issuance of a writ of possession in the bank's favor.

Orders for the issuance of a writ of possession are issued as a matter of course upon the filing of the proper motion and approval of the corresponding bond since no discretion is left to the court to deny it.[5] The RTC's issuance of such writ conformably with the express provisions of law cannot be regarded as done without jurisdiction or with grave abuse of discretion. Such issuance being ministerial, its execution by the sheriff is likewise ministerial.[6] In truth, the bank has failed to take possession of the property after more than seven years on account of Abel's legal maneuverings.

ACCORDINGLY, the Court GRANTS the petition of China Banking Corporation, REVERSES and SETS ASIDE the Court of Appeals decision dated January 3, 2008 and resolution dated April 9, 2008 in CA-G.R. SP 99413, and REINSTATES the orders of the Regional Trial Court (Branch 220) in LRC Case Q-16014(03) dated June 19 and 22, 2007. With costs against respondent Armi S. Abel.

#### **SO ORDERED.**

Carpio, (Chairperson), Nachura, Peralta, and Mendoza, JJ., concur.

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[1] Transfer Certificate of Title N-241387 in the name of China Banking Corporation.

**[2] CA-G.R. CV 80522.**

[3] Rollo, pp. 49-61; penned by Associate Justice Vicente S.E. Veloso, with the concurrence of Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison.

[4] Id. at 62-63.

[5] *Spouses Camacho v. Philippine National Bank*, 415 Phil. 581, 586 (2001).

[6] *Mamerto Maniquiz Foundation, Inc. v. Pizarro*, 489 Phil. 127, 138 (2005).

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