

## THIRD DIVISION

**[ G.R. No. 160113, April 30, 2008 ]**

**CHINA BANKING CORPORATION, PETITIONER, VS. TA FA INDUSTRIES, INC., J & H INDUSTRIES, INC., AND JEAN LONG INDUSTRIES, INC., RESPONDENTS.**

### D E C I S I O N

#### **AUSTRIA-MARTINEZ, J.:**

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by China Banking Corporation (petitioner), praying that the Decision<sup>[1]</sup> of the Court of Appeals (CA) dated June 30, 2003, and the CA Resolution<sup>[2]</sup> dated September 26, 2003, be reversed and set aside.

The undisputed facts of the case as summarized by the CA are as follows:

On different dates, private respondent Ta Fa Industries, Inc., through its authorized signatory, Hung Chen Chen, for value received, signed and delivered in favor of petitioner bank:

Promissory Note	Date	Amount
(a) MK-T-22165	November 15, 1995	P19,000,000.00
(b) TS-25175	August 23, 1996	P37,928,416.67
(c) TS-29078-8	July 30, 1997	P12,000,000.00

In order to secure the payment of the aforesaid promissory notes, private respondents respectively executed in favor of petitioner bank, the following real estate mortgages, to wit:

Date of Mortgage	Mortgagor	Property Mortgaged
(a) April 10, 1995  Amended on July 10, 1995	Ta Fa Industries, Inc. Thru: Hung Chen Chen	TCT No. 98056
(b) May 20, 1996	Jean Long Industries, Inc. Thru: Hung	TCT No. PT- 89703 TCT No. PT-

Chen Chen 89704  
TCT No. PT-  
89705

(c) July 21, 1997 J & H TCT No. PT-  
Industries, Inc. 106315  
Thru: Hung  
Chen Chen

For private respondents' failure to pay the quarterly amortizations, petitioner Bank instituted a *Petition for Extra-judicial Foreclosure of Real Estate Mortgages* with the Executive Judge of the court *a quo*.

Acting upon the petition, the *Notice of Auction Sale by Notary Public* was duly published and posted in accordance with the requirements of the law, and a copy was duly served upon private respondents through Hung Chen Chen. The auction sale was set on 22 November 2001 at 10:00 o'clock in the morning at the Main Entrance, City Hall Building.

On 16 November 2001, private respondents filed their *Verified Complaint for Accounting/Reconciliation of Accounts, Specific Performance, Write (sic) of Preliminary Injunction with Temporary Restraining Order, and Damages* against petitioner. This was docketed as Civil Case No. 68747 and raffled to RTC - Pasig City, Branch 71.

On 22 November 2001, after summary hearing, respondent Judge issued an *Order* granting private respondents' application for temporary restraining order. And on 21 January 2002, respondent Judge issued the herein assailed Order, granting private respondents' application for the issuance of a writ of preliminary injunction.

Aggrieved by the denial of its Motion for Reconsideration by respondent Judge in an Order dated 10 April 2002, petitioner Bank elevated the case before this Tribunal.<sup>[3]</sup>

On June 30, 2003, the CA promulgated its Decision dismissing the petition for *certiorari*, concluding that the Regional Trial Court of Pasig City, Branch 71 (RTC) did not commit any grave abuse of discretion amounting to lack of jurisdiction in issuing the temporary restraining order and, eventually, the writ of preliminary injunction, based on the RTC's finding that petitioner failed to refute respondents' claim that the loan proceeds had not been released in full.

The dispositive portion of the CA Decision reads:

**WHEREFORE**, premises considered, the Petition is **DISMISSED** for lack of merit and the assailed 21 January 2002 Order of the trial court is hereby **AFFIRMED** in toto. No costs.

**SO ORDERED.**<sup>[4]</sup>

Petitioner moved for reconsideration but the CA denied said motion per Resolution dated September 26, 2003.

Hence, herein petition alleging that:

## I

THE HONORABLE COURT OF APPEALS' DECISION AFFIRMING THE TRIAL COURT'S IMPROVIDENT GRANT OF RESPONDENTS' APPLICATION FOR WRIT OF PRELIMINARY INJUNCTION PROMOTED AN ERRONEOUS CONCLUSION OF FACTS BASED ON PURE CONJECTURE AND NOT ON THE EVIDENCE ON RECORD, WHICH THE TRIAL COURT EVEN UNFAIRLY CREATED IN FAVOR OF THE RESPONDENTS, IN CLEAR DISPLAY OF PARTIALITY.

(a) Hence, the conclusion of facts that formed the basis of the erroneous Decision (*Annex "A"*) would not attain conclusiveness and deserves to be reviewed by this Honorable Court.

## II

THE HONORABLE COURT OF APPEALS' DECISION ERRONEOUSLY SANCTIONED THE TRIAL COURT'S DEPARTURE FROM THE ESTABLISHED PROCEDURAL AND JURISPRUDENTIAL RULE ON THE LEGAL GROUNDS FOR ISSUANCE OF WRIT OF PRELIMINARY INJUNCTION.<sup>[5]</sup>

The Court finds the petition meritorious.

The grounds for the issuance of a writ of preliminary injunction are enumerated in Rule 58, Section 3 of the Revised Rules of Court, which reads as follows:

*Sec. 3. Grounds for issuance of preliminary injunction.* - A preliminary injunction may be granted when it is established;

- (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;
- (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
- (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

Under the rule, it is incumbent upon respondents to prove that they are entitled to the relief of having the public auction sale of their properties restrained. Petitioner claims that respondents failed to adduce proof that they are entitled to a writ of preliminary injunction; hence, the trial court gravely abused its discretion in granting the application for said writ.

Petitioner's allegation that the factual findings of the trial court, as affirmed by the CA, are based on conjecture, misapprehension and misinterpretation of respondents' evidence, are borne out by the records. Indubitably, it is a clear exception to the general rule that findings of fact of the CA are conclusive upon this Court.<sup>[6]</sup>

The CA conclusion that there was no grave abuse of discretion committed by the RTC is based mainly on its finding that "petitioner is silent as to the factual finding of the trial court that it (petitioner) failed to remit in full the considerations for the real estate mortgages. Thus, it renders such findings conclusive against petitioner."<sup>[7]</sup> However, an examination of the records reveals that in petitioner's motion for reconsideration of the RTC Order dated January 21, 2002 granting the application for a writ of preliminary injunction, and again in its petition for *certiorari* before the CA, petitioner had consistently assailed the RTC finding that there was no full remittance of the consideration for the real estate mortgages. Thus, the CA seriously erred in ruling that the trial court's factual finding that petitioner failed to release the loan proceeds in full to respondent Ta Fa Industries, Inc. (Ta Fa) is conclusive on petitioner.

Moreover, petitioner has a valid ground for questioning the sufficiency of the evidence presented by respondents to support their application for a writ of preliminary injunction. Section 1, Rule 131 of the Rules of Court provides, thus:

Sec. 1. *Burden of proof.* - Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.

Here, the burden of proof rests with respondents to establish their claim that they have a legal right that should be protected by a writ of preliminary injunction. In *L.C. Ordoñez Construction v. Nicdao*,<sup>[8]</sup> the Court reiterated the ruling that "the burden of proof is on the part of the party who makes the allegations - *ei incumbit probatio, qui dicit, non qui negat*. **If he claims a right granted by law, he must prove his claim by competent evidence, relying on the strength of his own evidence and not upon the weakness of that of his opponent.**" (Emphasis ours)

Respondents failed to discharge said burden of proof. They do not dispute petitioner's claim that the main evidence in support of their application for the writ of preliminary injunction is the testimony of Atty. Jesus S. Silo. We note the salient points of his testimony, to wit:

Atty. Tomacruz:

Q Under subparagraph A of paragraph 3 it is alleged that plaintiffs have not received in full the consideration for the real estate mortgages being foreclosed. What can you say to that?

A That is true. That is the reason why, because it is a little complicated, I advised the plaintiffs herein to consult directly with a lawyer who's very knowledgeable on the details on this.

Q When you said that is true, will you explain a little further?

A I mean when I gone through the records, from just a cursory observation of the documents, the companies itself on the

plaintiffs herein have not received yet the full amount of the loan from the bank.

x x x x

Q When you say balance, to which amount are you referring, balance of what?

A Balance of the loan being obtained by the plaintiffs.

Q Which according to you has not yet been given to the plaintiffs?

A That's right, Sir.

Q **Do you know how much balance has not yet been given to the plaintiffs?**

A **I'm sorry, I would not be able to tell you the amount. The exact amount because as I said this is complicated and the details of this I have not gone through.**

Q Is it substantial?

A It is substantial. I know it is ranging to millions.

x x x x

COURT:

Q You mean the loan amounted to 67 Million?

A That is the demand of the bank, your Honor.

Q **No, I'm asking you how much is the loan obtained by the plaintiffs from defendant bank?**

A **I would not know exactly the amount, your Honor, because I came to know about this one only when the letter already was shown to me by the plaintiffs.**

Q **How can you say that there is still a balance?**

A **Because in the records, I've seen in the documents there is still in the documents.**

Q **More or less how much is the balance?**

A **I would not remember exactly, your Honor.**

x x x x [9]

On cross-examination, the same witness gave the following answers:

Q **Would you know in how many times or in how many branches were the loan proceeds released to the plaintiffs corporation?**

A **These are money matter, I did not participate in this.**

x x x x

Q My question is, do you know how many promissory notes were executed to evidence the loan?