Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City

Office of the General Counsel

CHINA BANKING CORPORATION,
Petitioner,

SEC *En Banc* Case No. 01-15-352

- versus-

HON. DANIEL P. GABUYO and HON. MYRLA B. BARRIBAL, in their respective capacities as Head and Member of the Special Hearing Panel 2, and ST. FRANCIS SQUARE REALTY CORPORATION, AND ST. FRANCIS SQUARE DEVELOPMENT CORPORATION,
Respondents.

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27 April 2016

TO:

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ATTY. DANIEL P. GABUYO
ATTY. MYRLA B. BARRIBAL
Special Hearing Panel 2
Securities and Exchange Commission, SEC Bldg., EDSA, Greenhills Mandaluyong City

G R E E T I N G S:

Please take notice that on 27 April 2016 a **DECISION** was issued in the above-entitled case, the original of which is now on file with this office.

Mandaluyong City, Philippines

By Authority of the Commission *En Banc:*

ARMANDO A. PAN, JR.
Officer-in-charge
Office of the Commission Secretary

tlt/avf

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CHINA BANKING CORPORATION,
Petitioner,

-versus- **SEC *En Banc* Case No. 01-15-352**

HON. DANIEL P. GABUYO and HON. MYRLA B. BARRIBAL, in their respective capacities as Head and Member of the Special Hearing Panel 2, and ST. FRANCIS SQUARE REALTY CORPORATION, AND ST. FRANCIS SQUARE DEVELOPMENT CORPORATION,
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D E C I S I O N

This is the second time this case has come to us for the determination of interrelated issues arising from substantially similar facts as previously raised by the same parties.

The Case

The Commission now resolves the pending *Petition for Review on Certiorari with prayer for issuance of Stay/Status Quo Order*[1] filed, on 08 January 2015, and *Supplemental Petition for Review on Certiorari with prayer for issuance of Stay/Status Quo Order and/or Cease and Desist Order*[2] filed, on 09 January 2015, by China Banking Corporation (**Chinabank**) against Attys. Daniel P. Gabuyo and Myrla B. Barribal, in their respective capacities as Head and Member of the Special Hearing Panel 2 (**SHP2**), St. Francis Square Realty Corporation (**SFSRC**), and St. Francis Square Development Corporation (**SFSDC**).

The Petitioner seeks the cancellation of the *Order* of the SHP2 of the Commission dated 22 December 2014 (**Assailed Order**) issued in relation to SEC Case No. 05-00-6609 entitled "*In the Matter of: Petition for Rehabilitation with Prayer for Suspension of Actions and Proceedings against Petitioners, ASB Holdings, Inc., ASB Realty Corp., ASB Development Corp. (formerly Tiffany Tower Realty Corp.), ASB Land, Inc., ASB Finance, Inc., Makati Hope Christian School, Inc., Bel-Air Holdings Corp., Winchester Trading, Inc., VYL Development*

[1] Dated 07 January 2015.
[2] Dated 08 January 2015.

Corp., Genrick Holdings Corp., and Neighborhood Holdings, Inc." (ASB Group). The dispositive portion of which reads as follows:

> "WHEREFORE, premises considered, the Hearing Panel hereby resolves the Motion dated 18 November 2014 as follows:
>
> 1. Taking note of the Sheriff's Return dated 11 December 2014 prepared and submitted by Mr. Rommel M. Ignacio, Sheriff IV of the Regional Trial Court of Makati City;
> 2. Designating said Sheriff Ignacio, as he is hereby designated pursuant to Section 10, Rule 39 of the Revised Rules of Court, to execute the necessary Deeds of Cancellation of Mortgage in accordance with the Writ of Execution dated October 28, 2014 issued in relation to the Order dated 25 March 2014;
> 3. Ordering the Register of Deeds of Makati City and the Register of Deed of Caloocan City, as the case may be, as follows:
>   3.1 To register the aforesaid Deeds of Cancellation of Mortgage on TCT No. 206189, 201933, 205136, 298110 and 298109;
>   3.2 To cancel or revoke, or to consider as cancelled or revoked, the Owner's Duplicate Copies of TCT Nos. 206189, 201933, 205136, 298110 and 298109 which are in the possession or custody of China Banking Corporation;
>   3.3 To issue new Owner's Duplicate Copies of TCT Nos. 206189, 201933 and 205136 to and in the name of St. Francis Square Realty Corporation (formerly ASB Realty Corporation) all free from any liens and encumbrances; and
>   3.4 To issue Owner's Duplicate Copies of TCT Nos. 298110 and 298109 to and in the name of St. Francis Square Development Corporation (formerly Tiffany Tower realty Corporation), all free from any liens and encumbrances.

The Antecedent

The facts and issues in SEC Case No. 04-14-325, which was previously decided by the Commission *En Banc,* on 27 April 2016, are substantially the same as follows:

> "On 02 May 2000, SFSRC (formerly known as ASB Realty Corporation) and SFSDC (formerly known as ASB Development Corporation), along with several other affiliate companies, initiated rehabilitation proceedings with the Hearing Panel of the Commission's Securities Investigation and Clearing Department (SEC Hearing Panel, presently SHP2) after suffering financially from the Asian currency crisis in the late 90's.
>
> At the time of filing of the petition for corporate rehabilitation, SFSRC is indebted to Chinabank for the total principal amount of Two Hundred Sixty Five Million Pesos (Php265,000,000.00) which is secured by two (2) real estate mortgages over 1.) two (2) parcels of land located in Salcedo Street, Legaspi Village, Makati City (Legaspi Property) and 2.) a parcel of land located in Bel-Air 2, Makati City (Bel-Air Property).While, SFSDC was indebted to Chinabank in the sum of Thirty Five Million (Php35,000,000.00) secured by a real estate mortgage over two (2) contiguous lots in Caloocan City (Caloocan Property).

To preserve the ASB Group's assets while the rehabilitation proceedings are on-going, a *Stay Order* was issued by the SEC Hearing Panel on 04 May 2000.

After due proceedings, the ASB Rehabilitation Plan was approved by the SEC Hearing Panel on 26 April 2001 and, eventually, upheld by the Supreme Court in several cases filed by the various Creditor-Banks of the ASB Group namely, Metropolitan Bank & Trust Company (Metrobank), Bank of the Philippine Islands (BPI) and Chinabank.

On 13 September 2013, SFSRC and SFSDC filed an *Omnibus Motion* with the SHP2 alleging that the mortgaged properties' market value increase based on the appraisal report of Cuervo Appraisers, Inc. (**CAI**), to wit: Legaspi Property – Php 1,086,102,000.00; Bel-Air Property – Php 46,462,000.00; and Caloocan Property – Php 82,031,000.00.

In their *Omnibus Motion*, SFSRC and SFSDC sought that an order be issued: 1.) confirming that the SFSRC and SFSDC's loans to Chinabank are "over-collateralized"; 2.) directing the immediate release of the Bel-Air and Caloocan Properties; 3.) authorizing the sale of the Bel-Air and Caloocan Properties and the proceeds to be used to pay SFSRC and SFSDC's loans to Chinabank; 4.) directing Chinabank to release the mortgage on the Legaspi Property and ASB Group will complete the construction of the same; 5.) upon completion of the Legaspi Property, directing SFSRC to set aside units to fully settle the remaining balance of its loan with Chinabank based on their prevailing market value.

On 03 October 2013, the Rehabilitation Receiver filed his comment recommending that the secured status of Chinabank will not be diminished considering that the cash generated from the sale of the Bel-Air and Caloocan properties with a combined value of Php 128,491,000.00 will be applied to the loan of the ASB Group. He also noted that the completion of the unfinished Legaspi Place will finally settle ASB Group's debt to Chinabank, allocating such number of units in said project after completion, sufficient to pay-off the remaining loan balance and to pay unsecured creditors.

On 25 March 2014, SHP2 issued the Assailed Order granting SFSRC and SFSDC's *Omnibus Motion*."

Thereafter, Chinabank, in SEC Case No. 04-14-325, appealed the said SHP2 *Order* via *Petition for Certiorari* with the Commission *En Banc* on 02 April 2014. The Commission *En Banc* did not issue any injunctive order.

Subsequently, SFSRC and SFSDC filed with SHP2, on 25 April 2014, a *Motion for Issuance of Writ of Execution* to implement SHP2 *Order* dated 25 March 2014. The SHP2 in an *Order*, dated 28 October 2014, issued a *Writ of Execution*.

Sheriff Rommel M. Ignacio (Sheriff Ignacio) personally served the *Writ of Execution* to Chinabank, through its President, Mr. Ricardo R. Chua. However, Chinabank requested for an extension of time to comply with the said writ[3].

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[3] Sheriff's Report dated 13 November 2014.

On 18 November 2014, SFSRC and SFSDC filed with SHP2 a *Motion (To Cite China Banking Corporation in Indirect Contempt)*[4] stating that Chinabank has no intention to comply with the writ because it asked the Court of Appeals to enjoin the implementation of the same. Thereafter, SHP2 issued the Assailed Order.

Aggrieved, Petitioner comes before the Commission in this Petition for Review on Certiorari alleging that SHP2 acted with grave abuse of discretion amounting to lack or in excess of jurisdiction when:

I. Public Respondents acted with grave abuse of discretion amounting to lack or excess of jurisdiction when they issued the writ of execution dated 28 October 2014;
II. Public Respondents acted with grave abuse of discretion amounting to lack or excess of jurisdiction when they directed the Sheriff of the Regional Trial Court of Makati City to execute Deeds of Cancellation of Mortgage over the mortgaged properties;
III. Public Respondents acted with grave abuse of discretion amounting to lack or excess of jurisdiction when they unlawfully ordered the cancellation of the owners duplicate copies of TCT Nos. 206189, 201933, 205136, 298110 and 29809 and the issuance of new owners duplicate copies in replacement thereof;
IV. Public Respondents acted with grave abuse of discretion amounting to lack or excess of jurisdiction they capriciously ordered the cancellation of all liens and encumbrances on the certificates of title covering the mortgaged properties.[5]

On 30 January 2015, SFSRC and SFSDC filed its *Reply Memorandum*[6] refuting all the allegations and arguments in Chinabank's petition and prayed for its dismissal for lack of merit. SFSRC and SFSDC argue that orders of the Commission relating to rehabilitation cases are immediately executory as expressly provided under the Rules of Procedure on Corporate Recovery (Rules on Corporate Recovery)[7]. Furthermore, the Commission *En Banc* did not issued any injunctive writ to enjoin the implementation of SHP2 *Order* dated 25 March 2014.

Issues

1.) Whether or not SHP2 was correct in implementing its *Order* dated 25 March 2014 despite the fact that said order was appealed to the Commission *En Banc*.

2.) Whether or not the SHP2 was correct in designating Sheriff Rommel M. Ignacio to implement its *Order* dated 25 March 2014;

3.) Whether or not the SHP2 was correct in ordering that the mortgages over the Caloocan, Bel-Air and Legaspi properties be cancelled.

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[4] Dated 18 November 2014.
[5] Pages 8-9 of Chinabank's Petition and Supplemental Petition.
[6] Dated 30 January 2015.
[7] Page 3 of SFSRC's Reply Memorandum.

Ruling

Implementation of SHP2's Order dated 25 March 2014

Section 2-5, Rule II of the Rules of Procedure on Corporate Recovery (Rules on Corporate Recovery) provides that:

> Section 2-5. Orders immediately executory – **Every order issued by the Commission under these Rules is immediately executory. A petition for review on appeal therefrom shall not stay the execution of the order unless restrained or enjoined**. The review of any order or decision or an appeal therefrom shall be in accordance with the provisions of P.D. 902-A and the Rules of Procedure of the Commission.

Chinabank argues that upon filing of a *Petition for Certiorari* with the Commission *En Banc* assailing SHP2's *Order* dated 25 March 2014, SHP2 should not have implemented the same for it will violate due process of law and there should be judicial courtesy.

As expressly provided in Section 2-5 of the Rules on Corporate Recovery, all the orders of the Commission in rehabilitation cases are immediately executory. In fact, the filing of a petition for review on certiorari, which was docketed as SEC En Banc Case No. 04-14-325, shall not stay its execution unless it is clearly enjoined by the Commission *En Banc*. At the time of the issuance of the Assailed Order, the Commission *En Banc* has not issue any injunctive writ to enjoin the implementation of the same. Thus, the SHP2's may execute the Assailed Order.

As to the Chinabank's argument on judicial courtesy, we are not convinced. In the case of *Trajano v. Uniwide Sales Warehouse Club*[8], the Supreme Court gave a brief discourse on judicial courtesy, to wit:

> "x x x [t]he principle of judicial courtesy to justify the **suspension of the proceedings before the lower court even without an injunctive writ or order from the higher court**. In that case, we pronounced that "[d]ue respect for the Supreme Court and practical and ethical considerations should have prompted the appellate court to wait for the final determination of the petition [for certiorari] before taking cognizance of the case and trying to render moot exactly what was before this [C]ourt. x x x"

In *Bernardo De Leon vs. Public Estates Authority*[9], the Supreme Court further expounded that:

> "**The principle of judicial courtesy, however, remains to be the exception rather than the rule**. As held by this Court in Go v. Abrogar,[34] the precept of judicial courtesy should not be applied indiscriminately and haphazardly if we are to maintain the relevance of Section 7, Rule 65 of the Rules of Court."

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[8] G.R. No. 190253, 11 June 2014.
[9] G.R. Nos. 181970 and 182678, August 3, 2010.

In the instant case, Section 2-5 of the Rules on Corporate Recovery expressly provides that the Commission's orders on rehabilitation are immediately executory. Moreover, Chinabank merely raised the principle of judicial courtesy without providing any factual justification or evidence to support such claim. Hence, the principle of judicial courtesy cannot be applied on Chinabank's bare allegations.

Designation of Sheriff Ignacio to implement SHP2'S Order dated 25 March 2014

In *A.M. No. 14-7-224-RTC* dated 26 August 2014, the Supreme Court *En Banc* issued a *Resolution* on the designation of court Sheriffs to implement writs, to wit:

> "**This Court has long recognized that sheriffs are judicial officers**. Thus, **they are part of the judiciary and adjuncts of courts of law**. The National Commission on Indigenous Peoples, through Chapter IX of Republic Act No. 8371, otherwise known as "The Indigenous Peoples' Rights Act of 1997" (IPRA), exercises quasi-judicial powers. However, Section 3(k) of the IPRA specifies that the NCIP "shall be under the Office of the President" Thus, **the NCIP is an agency under the executive, rather than the judicial, branch of government. Its orders are not judicial orders, which are within the authority if sheriffs, as judicial officers, to execute.**"

Applying the same principle to the instant case, the Commission is under the Department of Finance, pursuant to Executive Order No. 202, dated 22 September 1994[10]. Thus, it is part of the executive branch of government. Therefore, its orders cannot be executed by court sheriffs because these are not judicial orders, which are within the authority of the latter to execute.

In the instant case, SHP2 designated Sheriff Ignacio, Sheriff IV of the Regional Trial Court of Makati City, to implement its *Order* dated 25 March 2014. It evidently clear from the above-stated Supreme Court *Resolution* that it is not within the authority of court sheriffs to execute orders from other branches of government aside from the judiciary. Hence, it was erroneous of SHP2 to designate Sheriff Ignacio to implements its order.

Moreover, in SEC Resolution No. 586, s. of 2015, we already have designated Mr. Anthony Glenn C. Paggao as Special Sheriff to implement the orders of the Commission, its Operating Departments, and Special Offices.

SHP2's Order to cancel the mortgage over the Legaspi, Caloocan and Bel-Air Properties

Considering that we have, in SEC En Banc Case No. 04-14-325, modified SHP2's *Order* dated 25 March 2014, the SHP2 should make the necessary changes in conformity with the Commission *En Banc*'s *Decision* on the same.

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[10] TRANSFERRING THE SECURITIES AND EXCHANGE COMMISSION TO THE DEPARTMENT OF FINANCE.

WHEREFORE, premises considered, the instant petition is hereby **MODIFIED.** Paragraph 1of the Special Hearing Panel 2's *Order* dated 22 December 2014:

> "1. Taking note of the Sheriff's Return dated 11 December 2014 prepared and submitted by Mr. Rommel M. Ignacio, Sheriff IV of the Regional Trial Court of Makati City;"

is hereby **AFFIRMED**.

Paragraph 2 wherein -

> "2. Designating said Sheriff Ignacio, as he is hereby designated pursuant to Section 10, Rule 39 of the Revised Rules of Court, to execute the necessary Deeds of Cancellation of Mortgage in accordance with the Writ of Execution dated October 28, 2014 issued in relation to the Order dated 25 March 2014;"

is hereby **REVERSED and SET ASIDE**. The Commission hereby designates Mr. Anthony Glenn C. Paggao as a Special Sheriff to implement SHP2's orders relating to the instant case.

Paragraph 3 wherein -

> "3. Ordering the Register of Deeds of Makati City and the Register of Deed of Caloocan City, as the case may be, as follows:
>
> 1.1 To register the aforesaid Deeds of Cancellation of Mortgage on TCT No. 206189, 201933, 205136, 298110 and 298109;
>
> 1.2 To cancel or revoke, or to consider as cancelled or revoked, the Owner's Duplicate Copies of TCT Nos. 206189, 201933, 205136, 298110 and 298109 which are in the possession or custody of China Banking Corporation;
>
> 1.3 To issue new Owner's Duplicate Copies of TCT Nos. 206189, 201933 and 205136 to and in the name of St. Francis Square Realty Corporation (formerly ASB Realty Corporation) all free from any liens and encumbrances; and
>
> 1.4 To issue Owner's Duplicate Copies of TCT Nos. 298110 and 298109 to and in the name of St. Francis Square Development Corporation (formerly Tiffany Tower realty Corporation), all free from any liens and encumbrances."

is hereby **REVERSED and SET ASIDE**. This is hereby REMANDED to SHP2 to issue an *Order* that conforms with the Commission *En Banc*'s *Decision* in SEC En Banc Case No. 04-14-325.

SO ORDERED.

City of Mandaluyong, 27 April 2016.

TERESITA J. HERBOSA
Chairperson

MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG*
Commissioner

BLAS JAMES G.VITERBO**
Commissioner

*On Leave
**On Official Business