

**MARPHIL EXPORT CORPORATION AND IRENEO LIM, PETITIONERS,
VS. ALLIED BANKING CORPORATION, SUBSTITUTED BY PHILIPPINE
NATIONAL BANK, RESPONDENT.***G.R. No. 187922. September 21, 2016*

Ponente: JARDELEZA, J.

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This is a petition[1] seeking to nullify the Court of Appeals' (CA) January 12, 2009 Decision[2] and May 12, 2009 Resolution[3] in CA-G.R. CV No. 89481. The CA modified[4] the April 23, 2007 Omnibus Decision[5] of Branch 61 of the Regional Trial Court (RTC), Makati City in the consolidated cases of petition for declaratory relief filed by petitioner Marphil Export Corporation (Marphil) against Allied Banking Corporation (Allied Bank), and the complaint for collection of sum of money with application for writ of attachment filed by Allied Bank against Marphil's surety, petitioner Ireneo Lim (Lim).

Facts

Marphil is a domestic company engaged in the exportation of cuttlefish, cashew nuts and similar agricultural products.[6] To finance its purchase and export of these products, Allied Bank granted Marphil a credit line from which Marphil availed of several loans evidenced by promissory notes (PN).[7] These loans were in the nature of advances to finance the exporter's working capital requirements and export bills.[8] The loans were secured by three (3) Continuing Guaranty or Continuing Surety (CG/CS) Agreements[9] executed by Lim, Lim Shiao Tong and Enrique Ching.[10] Apart from the CG/CS Agreements, irrevocable letters of credits also served as collaterals for the loans obtained to pay export bills.[11] In turn, Allied Bank required Marphil, through its authorized signatories Lim and Rebecca Lim So, to execute a Letter of Agreement[12] where they undertake to reimburse Allied Bank in the event the export bills/drafts covering the letters of credit are refused by the drawee. Upon negotiations of export bills/drafts that Allied Bank purchases from Marphil, the amount of the face value of the letters of credit is credited in favor of the latter.[13]

The transaction involved in this petition is the export of cashew nuts to Intan Trading Ltd. Hongkong (Intan) in Llong Kong. Upon application of Intan, Nanyang Commercial Bank (Nanyang Bank), a bank based in China, issued irrevocable letters of credit. These were Letter of Credit (L/C) No. 22518 and L/C No. 21970, with Marphil as beneficiary and Allied Bank as correspondent bank.[14] These covered two (2) separate purchase contracts/orders for cashew nuts made by Intan.

The first order of cashew nuts was covered by L/C No. 22518. After the first shipment was made, Marphil presented export documents including drafts to Allied Bank. The latter credited Marphil's credit line the peso equivalent of the face value of L/C No. 22518 (in the amount of P1,986,702.70 and this amount was deducted from the existing loans of Marphil.[15] There were no problems encountered for the shipment covered by L/C No. 22518. It was the second order covered by L/C No. 21970 that encountered problems.

When Intan placed a second order for cashew nuts, Marphil availed additional loans in their credit line evidenced

by PN No. 0100-88-02463[16] (PN No. 2463) for P500,000.00 and PN No. 0100-88-02730[17] (PN No. 2730) for P500,000.00. Similar to the previous transaction, Intan applied for and opened L/C No. 21970 with Nanyang Bank in the amount of US\$185,000.00, with Marphil as the beneficiary and Allied Bank as correspondent bank.[18] After receiving the export documents including the draft issued by Marphil, Allied Bank credited Marphil in the amount of P1,913,763.45, the peso value of the amount in the letter of credit.[19]

However, on July 2, 1988, Allied Bank informed Marphil that it received a cable from Nanyang Bank noting some discrepancies in the shipping documents.[20] On July 16, 1988, Allied Bank again informed Marphil that it received another cable from Nanyang Bank still noting the discrepancies and that Intan refused to accept the discrepancies.[21] Consequently, Nanyang Bank refused to reimburse Allied Bank the amount the latter had credited in Marphil's credit line. In its debit memo, Allied Bank informed Marphil of the dishonor of L/C No. 21970 and that it was reversing the earlier credit entry of P1,913,763.45.[22] Lim was made to sign a blank promissory note, PN No. 0100-88-04202,[23] (PN No. 4202) on September 9, 1988 to cover for the amount.[24] This was later filled up by Allied Bank in the amount of P1,505,391.36.

On March 6, 1990, Marphil filed a Complaint[25] for declaratory relief and damages against Allied Bank (Declaratory Relief Case) raffled to Branch 61 of RTC Makati.[26] In its Complaint, Marphil asked the court to declare PN No. 4202 void, to declare as fully paid its other obligations to Allied Bank, and to award it actual, moral and exemplary damages, and attorney's fees.[27] Marphil maintained that it had fully paid its account with Allied Bank, and that PN No. 4202, which Lim executed on September 9, 1988, was void for lack of consideration. Marphil alleged that it was constrained to send back the shipment to the Philippines thereby incurring expenses and tremendous business losses. It attributed bad faith to Allied Bank because the latter did nothing to protect its interest; Allied Bank merely accepted Nanyang Bank's position despite L/C No. 21970 being irrevocable, and Allied Bank allegedly confirmed Nanyang Bank's revocation.

On May 7, 1990, Allied Bank filed its Answer with Compulsory Counterclaim and Petition for Writ of Preliminary Attachment.[28] Allied Bank maintained that PN No. 4202 was supported by consideration, and denied that Marphil has fully paid its obligation to it. As counterclaim, Allied bank sought to collect on three (3) promissory notes, PN Nos. 2463, 2730 and 4202.[29]

On September 14, 1990, Allied Bank filed a Complaint with Petition for Writ of Preliminary Attachment[30] (Collection Case) against Lim and Lim Shao Tong which was raffled to Branch 145 of RTC Makati. Allied Bank sued them as sureties under the CG/CS Agreements for the loan obligations of Marphil under three (3) promissory notes, PN Nos. 2463, 2730 and 4202, in the total amount of P2,505,391.36. It also prayed for the issuance of a writ of preliminary attachment on the ground that Lim was guilty of fraud in contracting his obligations.

On February 7, 1992, Lim filed his Answer[31] in the Collection Case. He raised as defense that Marphil had fully paid the loans covered by PN Nos. 2463, 2730, while PN No. 4202 is null and void.[32] He likewise maintained he could not be held personally liable for the CG/CS Agreements because he could not remember signing them. Lim claimed that the issuance of the writ of preliminary attachment was improper because he never had any preconceived intention not to pay his obligations with the bank. He had been transacting with the bank for six (6) years and the gross value of the thirty-two (32) transactions between them amounted to US\$640,188.51.[33]

On March 15, 1994, Branch 145 of RTC Makati granted ex parte the prayer for preliminary attachment in the Collection Case.[34]

On May 7, 1991, Allied Bank filed a Motion to Consolidate/Be Accepted[35] with Branch 61 of RTC Makati, which was granted by Order dated June 25, 1991.[36] The two civil cases were jointly heard before Branch 61 of

RTC Makati.

On April 23, 2007, the RTC rendered the Omnibus Decision.[37] The RTC granted Marphil's complaint for declaratory relief, and declared PN No. 4202 void. However, it held Marphil and/or Ireneo Lim jointly and severally liable for any balance due on their obligation under PN Nos. 2463 and 2730, and additionally for the amount of P1,913,763.45 with interest rate fixed at 12% per annum until fully paid.[38]

On May 9, 2007, petitioners filed a Notice of Appeal[39] with the RTC. Allied Bank did not appeal the RTC decision. Records were then forwarded to the CA, which began proceedings.[40]

The CA rendered its Decision[41] on January 12, 2009 modifying the RTC decision. The CA declared PN Nos. 2463 and 2730 fully paid, but held petitioners liable for the amount of P1,913,763.45, the amount equal to the face value of L/C No. 21970.[42]

The CA found that Allied Bank is not directly liable for the P1,913,763.45 under L/C No. 21970 because it was not a confirming bank and did not undertake to assume the obligation of Nanyang Bank to Marphil as its own. At most, it could only be a discounting bank which bought drafts under the letter of credit. Following the ruling in *Bank of America, NT & SA v. Court of Appeals*,[43] it held that Allied Bank, as the negotiating bank, has the ordinary right of recourse against the exporter in the event of dishonor by the issuing bank. A negotiating bank has a right of recourse against the issuing bank, and until reimbursement is obtained, the drawer of the draft continues to assume a contingent liability on the draft. That there is no assumption of direct obligation is further affirmed by the terms of the Letter Agreement. The CA also declared PN Nos. 2463 and 2730 as fully paid. The CA held that with these payments, the only obligation left of Marphil was the amount of the reversed credit of P1,913,763.45. On the writ of preliminary attachment, the CA noted that petitioners did not file any motion to discharge it on the ground of irregular issue. The CA found that no forum shopping existed because the causes of actions for declaratory relief and collection suit are different.[44]

In a Resolution[45] dated May 12, 2009, the CA denied petitioners Motion for Partial Reconsideration[46] dated January 22, 2009.

Hence, this petition.

Meanwhile, Allied Bank and Philippine National Bank (PNB) jointly filed a Motion for Substitution of Party with Notice of Change of Address[47] on October 22, 2013 informing this Court that the Securities and Exchange Commission approved a merger between Allied Bank and PNB, with the latter as the surviving corporation. They prayed that Allied Bank be dropped and substituted by PNB as party respondent in this petition. This was granted by this Court in a Resolution[48] dated December 4, 2013.

Issues

The issues are as follows:

- Whether Allied Bank's debit memo on Marphil's credit line in the amount of P1,913,763.45 is valid.
- Whether the RTC and CA created a new obligation when it held Marphil liable for the amount of P1,913,763.45.
- Whether Allied Bank committed forum shopping in filing the Collection Case.
- Whether the writ of preliminary attachment should be dissolved.

Ruling

We partly grant the petition.

At the outset, Allied Bank did not appeal from the decisions of the RTC and CA respecting the nullification of PN No. 4202, and the extinguishment by payment of PN Nos. 2730 and 2463. Allied Bank (now PNB) can thus no longer seek their modification or reversal, but may only oppose the arguments of petitioners on grounds consistent with the judgment of the RTC and CA.[49] Bearing this in mind, we proceed to dispose of the issues.

I. Validity of the debit memo

a. Allied Bank as correspondent bank in L/C No. 21970

Both the RTC and CA found that Allied Bank is not a confirming bank which undertakes Nanyang Bank's obligation as issuing bank, but at most, buys the drafts drawn by Marphil as exporter at a discount.

Marphil, however, argues that the RTC and CA erred in ruling that Allied Bank is not a confirming bank. It insists that Allied Bank as correspondent bank assumed the risk when it confirmed L/C No. 21970. It invokes the ruling in *Feati Bank & Trust Company v. Court of Appeals*[50] on the rule of strict compliance in letters of credit stating that "[a] correspondent bank which departs from what has been stipulated under the letter of credit, as when it accepts a faulty tender, acts on its own risks and it may not thereafter be able to recover from the buyer or the issuing bank x x x." [51] Thus, Marphil claims that Allied Bank had no authority to debit the amount equivalent to the face value of L/C No. 21970 since the latter is directly liable for it.

We affirm the RTC and CA's findings that Allied Bank did not act as confirming bank in L/C No. 21970.

As noted by the CA, *Feati* is not in all fours with this case. The correspondent bank in that case refused to negotiate the letter of credit precisely because of the beneficiary's non-compliance with its terms. Here, it is Nanyang Bank, the issuing bank, which refused to make payment on L/C No. 21970 because there was no strict compliance by Marphil.[52]

Further, while we said in *Feati* that a correspondent bank may be held liable for accepting a faulty tender under the rule of strict compliance, its liability is necessarily defined by the role it assumed under the terms of the letter of credit. In order to consider a correspondent bank as a confirming bank, it must have assumed a direct obligation to the seller as if it had issued the letter of credit itself.[53] We said that "[i]f the [correspondent bank] was a confirming bank, then a categorical declaration should have been stated in the letter of credit that the [correspondent bank] is to honor all drafts drawn in conformity with the letter of credit." [54] Thus, if we were to hold Allied Bank liable to Marphil (which would result in a finding that the former's debit from the latter's account is wrong) based on the rule of strict compliance, it must be because Allied Bank acted as confirming bank under the language of L/C No. 21970.

In finding that Allied Bank, as correspondent bank, did not act as confirming bank; the CA reviewed the instructions of Nanyang Bank to Allied Bank in L/C No. 21970. It found that based on the instructions, there is nothing to support Marphil's argument that Allied Bank undertook, as its own, Nanyang Bank's obligations in the letter of credit:

In the case of [Bank of America], the functions assumed by a correspondent bank are classified according to the obligations taken up by it. In the case of a notifying bank, the correspondent bank assumes no liability except to notify and/or transmit to the beneficiary the existence of the L/C. A negotiating bank is a correspondent bank which buys or discounts a draft under the L/C. Its liability is dependent upon the stage of the negotiation. If before negotiation, it has no liability with respect to the seller but after negotiation, a contractual relationship will then prevail between the negotiating bank and the seller. A confirming bank is a correspondent bank which assumes a direct obligation to the seller and its liability is a primary one as if the correspondent bank itself had issued the L/C.

In the instant case, the letter of Nanyang to Allied provided the following instructions: 1) the negotiating bank is kindly requested to forward all documents to Nanyang in one lot; 2) in reimbursement for the negotiation(s), Nanyang shall remit cover to Allied upon receipt of documents in compliance with the terms and conditions of the credit; 3) the drafts drawn must be marked "drawn under Nanyang Commercial Bank"; and 4) to advise beneficiary.

From the above-instructions, it is clear that Allied did not undertake to assume the obligation of Nanyang to Marphil as its own, as if it had itself issued the L/C. At most, it can only be a discounting bank which bought the drafts under the L/C. Following then the rules laid down in the case of Bank of America, a negotiating bank has a right of recourse against the issuing bank, and until reimbursement is obtained, the drawer of the draft continues to assume a contingent liability thereon. x x x[55]

In this regard, this issue of whether Allied Bank confirmed L/C No. 21970 and assumed direct obligation on it is a question of fact that was resolved by both RTC and CA in the negative. This Court is not a trier of facts and does not normally undertake the re-examination of the evidence.[56] This is especially true where the trial court's factual findings are adopted and affirmed by the CA.[57] Factual findings of the trial court affirmed by the CA are final and conclusive and may not be reviewed on appeal.[58] Here, there is no reason to deviate from these findings of the RTC and CA.

In any event, we find that Allied Bank may seek reimbursement of the amount credited to Marphil's account on an independent obligation it undertook under the Letter Agreement.

b. Allied Bank's right to reimbursement under the Letter Agreement

To recall, Marphil and Allied Bank executed the Letter Agreement dated June 24, 1988 the subject of which is the draft equivalent to the face value of L/C No. 21970.

In the Letter Agreement, Marphil expressly bound itself to refund the amount paid by Allied Bank in purchasing the export bill or draft, in case of its dishonor by the drawee bank:

Purchase of the Draft shall be with recourse to me/us in the event of non-payment for any reason whatsoever. Notice of dishonor, non-acceptance, non-payment, protest and presentment for payment are hereby waived.

x x x

If, for any reason, my/our Draft is not finally honored or retired by the drawee, I/we hereby further undertake and bind myself/ourselves to refund to you, on demand, the full amount of this negotiation, together with the corresponding interest thereon as well as your or your correspondent's charges and expenses thereon, if any; and to compensate you fully for any damages that you might incur arising out of any suit, action or proceedings, whether judicial or extra-judicial that might be instituted by the buyer or importer on the ground of lack of faithful performance of the contract between said buyer or importer and myself/ourselves. Likewise, should my/our Draft be dishonored for any cause whatsoever, I/we hereby authorize you, at your discretion and without any responsibility on your part to sell, or cause to be sold, either publicly or privately, the underlying goods, wherever they may be found, and, from the proceeds thereof, I/we hereby empower you to collect all expenses incident thereto, together with your commission, interest and other charges, as well as to reimburse yourself therefrom x x x the full amount of this negotiation, interest, charges and other expenses thereon, returning to me/us only whatever amount that may remain thereafter; and, should there be any deficiency still in your favor, notwithstanding the sale made as herein authorized, I/we likewise bind myself/ourselves to pay the said deficiency to you upon demand.[59]

The case of *Velasquez v. Solidbank Corporation*[60] is instructive as to the nature of obligations arising from this form of undertaking. In that case, we ruled that the obligation under a letter of undertaking, where the drawer undertakes to pay the full amount of the draft in case of dishonor, is independent from the liability under the sight

draft.[61] The letter of undertaking of this tenor is a separate contract the consideration for which is the promise to pay the bank the value of the sight draft if it was dishonored for any reason.[62] The liability provided is direct and primary, without need to establish collateral facts such as the violation of the letter of credit connected to it.[63]

Similarly, the Letter of Agreement is a contract between Marphil and Allied Bank where the latter agreed to purchase the draft and credit the former its value on the undertaking that Allied Bank will be reimbursed in case the draft is dishonored. This obligation is direct, and is independent, not only from the obligation under the draft, but also from the obligation under L/C No. 21970. In this connection, the CA is incorrect to say that the Letter Agreement bolsters the bank's claim that it did not undertake direct obligation under the letter of credit. The Letter Agreement simply creates a separate obligation on Marphil's part to refund the amount of the proceeds, in case of dishonor.[64] As an independent obligation, Marphil is bound to fulfill this obligation to reimburse Allied Bank.

However, a conflict arose because instead of waiting for Marphil's own initiative to return the amount, Allied Bank on its own debited from the former's credit line.

c. Allied Banti 's right to debit Marphil's account

We now proceed to determine whether Allied Bank may unilaterally debit the amount it credited to Marphil's account.

In the case of *Associated Bank v. Tan*,^[65] we upheld the right of a collecting bank to debit a client's account for; the value of a dishonored check it previously credited by virtue of the principle of legal compensation. Since the relationship between banks and depositors has been held to be that of creditor and debtor in a simple loan, legal compensation may take place when the conditions in Article 1279 of the Civil Code are present: (1) that each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other; (2) that both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated; (3) that the two debts be due; (4) that they be liquidated and demandable; and (5) that over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.^[66]

In this case, when Allied Bank credited the amount of P1,913,763.45 to Marphil's account, it became the debtor of Marphil. However, once Nanyang Bank dishonored the export documents and draft for L/C No. 21970, Marphil became the debtor of Allied Bank for the amount by virtue of its obligation to reimburse the bank under the Letter Agreement. This obligation consisting of sum of money became demandable upon notice of the dishonor by Nanyang Bank. Thus, legal compensation may take place between the two debts.

In *Associated Bank*, we nevertheless emphasized that while the bank has the right to set off, the exercise of such right must be consistent with the required degree of diligence from banks, i.e., highest degree of care. Thus, the question that needs to be resolved now is whether Allied Bank properly exercised its right to set off.^[67]

We rule that Allied Bank properly exercised its right to set off. Firstly, having signed the Letter Agreement, Marphil expressly undertook that in case of dishonor of the draft for the letter of the credit, it will refund to Allied Bank whatever the latter has credited in its favor. This places Marphil on its guard that the dishonor will create an obligation to refund the amount credited. Secondly, prior to debiting the amount, Allied Bank informed Marphil twice of Nanyang Bank's refusal to honor the tender of documents on L/C No. 21970. Thirdly, it immediately informed Marphil that it was debiting the amount of the dishonored draft from the credit line.

Most importantly, the debiting of the account was not the proximate cause of the loss to Marphil brought about by the reshipment of goods back to Manila. The proximate cause of the loss is the subsequent dishonor of the

documents by Nanyang Bank, which came before the debiting of the account. The P1,913,763.45 subject of the debit memo was already the costs incurred in relation to the financing and shipping of the goods to Hong Kong, and do not refer to the loss incurred when the goods were shipped back to Manila. Thus, the debiting of Marphil's account did not result in additional losses for Marphil.

In sum, we affirm that Allied Bank is not a confirming bank under L/C No. 21970. In any case, whether Allied Bank is directly liable as confirming bank will not affect Marphil's obligation to reimburse Allied Bank the amount of P1,913,763.45 because its liability to refund the amount arose under an independent contract, i.e. the Letter Agreement. And while Allied Bank is the debtor of Marphil for the amount it credited under the draft, the obligation under the Letter Agreement made Allied Bank the creditor of Marphil for the same amount. Being debtor and creditor of each other, Allied Bank was entitled to legal compensation by debiting the amount, which did not result in any loss to Marphil.

II. Obligation of P1,913,763.45 to Allied Bank

Marphil next argues that the RTC and CA erroneously held it liable to Allied for P1,913,763.45 as a new obligation.

We rule that there is no new obligation created when both the RTC and CA held petitioners liable for the P1,913,763.45. This was a prior and existing obligation of Marphil separate from the amount covered by the draft under L/C No. 21970. In filing the Declaratory Relief Case, Marphil asked the court not only to determine the status of its obligations evidenced by PN Nos. 2463, 2730 and 4202, but also to determine the status of its existing loans with Allied Bank, regardless of the counterclaim of the latter.

To recall, the arrangement between Marphil and Allied Bank is that advances were made by the bank in the form of loans to finance the exportation business of Marphil. When Allied Bank purchases the drafts for the letters of credit from Marphil, it credits the amount to the latter's credit line and deducts; from the total amount of Marphil's existing loans from Allied Bank. This is what Allied Bank did in this case; it credited to Marphil's account the amount of P1,913,763.45 upon purchase of the draft. However, when L/C No. 21970 was dishonored by Nanyang Bank, it reversed the credit memo thereby leaving the parties in their situation prior to the credit memo — that Marphil has existing loan obligations arising from the advances made by Allied Bank. Simply put, Marphil is liable for the amount of P1,913,763.45 because this is the only amount not proven to be paid in the many loans obtained by Marphil in the credit line.

The CA imposed the legal interest rate of twelve percent (12%) on this loan obligation. Notably, the CA made no factual determination that the amount of P1,913,763.45 was subject to any stipulated interest between the parties. Likewise, Allied Bank neither claimed for the application of a stipulated interest nor questioned the imposition of legal interest on the loan, as it no longer appealed the decision. Considering this, we are constrained to uphold that the amount of P1,913,763.45, as a loan obligation, is only subject to the legal interest applicable as of the time of this decision. This is in line with our ruling in *Nacar v. Gallery Frames*[68] that in the absence of a stipulated interest, a loan obligation shall earn legal interest from the time of default, i.e., from judicial or extrajudicial demand.[69]

We, however, modify the rate of legal interest imposed by the CA also in conformity with *Nacar*. The amount of P1,913,763.45 shall earn legal interest at the rate of six percent (6%) per annum computed from the time of judicial demand, i.e. from the date of the filing of the counterclaim in the Declaratory Relief Case on May 7, 1990, until the date of finality of this judgment. The total amount shall thereafter earn interest at the rate of six percent (6%) per annum from such finality of judgment until its satisfaction.[70]

III. Forum Shopping

Marphil argues that in determining that Allied Bank committed forum shopping upon filing the Collection Case, the RTC and CA should have considered the counterclaim filed in the Declaratory Relief Case, and not the main petition itself. Marphil contends that Allied Bank is collecting on the same three promissory notes in its counterclaim in the two cases.

Forum shopping exists "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court." [71] Forum shopping is proscribed by the rules because of the vexation caused to the courts and parties-litigants by the filing of similar cases to claim the same reliefs. [72] The rule against forum shopping aims to avoid the grave evil that may result in the rendition by two competent tribunals of two separate and contradictory decisions. [73] Thus, any violation of the rule against forum shopping results in the dismissal of a case, or can result in holding of direct contempt against the actor. [74]

There is forum shopping when the elements of *litis pendentia* are present, or when a final judgment in one case amounts to *res judicata* in the other. [75] It must be shown that the following elements are present: (a) identity of parties, or at least such parties representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the, same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amounts to *res judicata* in the action under consideration. [76]

We rule that there is no forum shopping, albeit for a reason different from that explained by the CA.

The CA concluded that there is no forum shopping because the cases involve different causes of action: the first case is a petition for declaratory relief while the second case is one of collection of sum of money. We find this analysis too sweeping and erroneous. The CA failed to take into account that it was Allied Bank who is being charged with violating the rule on forum shopping. As such, the cause of action that should have been considered is the counterclaim of Allied Bank in the Declaratory Relief Case, which is essentially a collection suit against the principal debtor Marphil. Subsequently, it also filed another Collection Case seeking to collect also on the surety Lim under the same three (3) promissory notes. These cases are the actions that the CA should have considered in deciding whether Allied Bank committed forum shopping.

We rule that Allied Bank did not commit forum shopping when it initiated the Collection Case against Lim despite the pendency of the counterclaim in the Declaratory Relief Case, because there is no identity of parties and cause of action.

In *Gilat Satellite Networks, Ltd. v. United Coconut Planters Bank General Insurance Co., Inc.*, [77] we explained that while a surety contract is merely ancillary to a principal obligation, the surety's liability is direct, primary and absolute. The surety's obligation is joint and solidary with that of the principal, and he becomes liable for the debt and duty of the principal, even without possessing a direct or personal interest in the principal obligation. As such, a surety may be sued separately or together with principal. [78] We emphasized this in *Ong v. Philippine Commercial International Bank* [79] where we held that the right to collect payment from the surety exists independently of its right to proceed directly against the principal debtor. [80] In fact, the creditor bank may go against the surety alone without prior demand for payment on the principal debtor. [81]

Here, the parties in the counterclaim in the Declaratory Relief Case are Allied Bank, as creditor, and Marphil, as principal debtor. On the other hand, the parties in the Collection Case are Allied Bank, as creditor, and Lim, as

surety. There is no identity of parties. Also, the causes of action pleaded are different because the counterclaim in the Declaratory Relief Case involves collection on the loan obligations, while Allied Bank in its complaint in the Collection Case seeks to collect on the surety obligation of Lim under the CG/CS Agreements. Another reason why forum shopping does not obtain here is the circumstance that the two cases were subsequently consolidated, jointly heard, and a single decision was rendered. Thus, the evil that the rule against forum shopping avoids, and the vexation on the court and parties-litigant, are wanting.

IV. Validity of the writ of preliminary attachment

In its application for a writ of preliminary attachment in the Collection Case against the surety Lim, Allied Bank alleged:

25.

Defendants in conspiracy with Marphil and with one another, committed fraud in contracting the obligations upon which the first, second and third causes of action are brought (Sec. 1, par. (d) Rule 57, Rules of Court) when:

a.)

There is a preconceived intention not to pay their obligations as further manifested by the premature and unjust filing of a complaint by Marphil against the plaintiff in Civil Case No. 90-640 before RTC, Makati, Branch 61;

b.)

To induce plaintiff to grant the credit accommodation, defendants and Marphil represented to the plaintiff that they would present the proper and sufficient documents to the issuing bank when in truth and in fact, there were discrepancies noted in the documents presented to the issuing bank by Marphil.

c.)

Further, defendants and Marphil committed misrepresentation in shipping the cashew nuts at a volume less than that which was required by the foreign buyer.[82] (Emphasis supplied.)

Subsequently, Branch 145 of RTC Makati issued the writ of preliminary attachment ex parte. When the case reached it, the CA summarily disposed of the issue of the propriety of the writ by stating that petitioners did not file any motion to discharge. However, the records show that Lim filed his Motion to Discharge Attachment[83] dated May 20, 1994 before Branch 61 of RTC Makati where Lim raised that no ground exists for the writ of attachment, making it irregularly and improperly issued.

We grant the petition as to the dissolution of the writ of preliminary attachment.

A writ of preliminary attachment is "a provisional remedy issued upon order of the court where an action is pending to be levied upon the property or properties of the defendant therein, the same to be held thereafter by the sheriff as security for the satisfaction of whatever judgment might be secured in said action by the attaching creditor against the defendant." [84] Section 1, Rule 57 of the Revised Rules of Court provides for the grounds upon which the writ may issue. For this case, it is grounded under Section 1 (d) of Rule 57 of the Revised Rules of Court:

Sec. 1. Grounds upon which attachment may issue. — At the commencement of the action or at any time before entry of judgment, a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:

x x x

(d)

In an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof;

x x x

Once issued, a writ of attachment may be dissolved or discharged on the following grounds: (a) the debtor has posted, a counter-bond or has made the requisite cash deposit; (b) the attachment was improperly or irregularly issued as where there is no ground for attachment, or the affidavit and/or bond filed therefor are defective or insufficient; (c) the attachment is excessive, but the discharge shall be limited to the excess; (d) the property attachment is exempt from preliminary attachment; or (e) the judgment is rendered against the attaching creditor.[85]

In *Ng Wee v. Tankiansee*,^[86] we explained that to justify the attachment of the debtor's property under Section 1(d) of Rule 57 of the Rules of Court, the applicant must show that in incurring the obligation sued upon, fraud must be the reason which induced the other party into giving its consent. In addition, the particular acts constituting the fraud imputed to the defendant must be alleged with specificity. We held:

In the case at bench, the basis of petitioner's application for the issuance of the writ of preliminary attachment against the properties of respondent is Section 1(d) of Rule 57 of the Rules of Court which pertinently reads:

x x x

For a writ of attachment to issue under this rule, the applicant must sufficiently show the factual circumstances of the alleged fraud because fraudulent intent cannot be inferred from the debtor's mere non-payment of the debt or failure to comply with his obligation. The applicant must then be able to demonstrate that the debtor has intended to defraud the creditor. In *Liberty Insurance Corporation v. Court of Appeals*, we explained as follows:

"To sustain an attachment on this ground, it must be shown that the debtor in contracting the debt or incurring the obligation intended to defraud the creditor. The fraud must relate to the execution of the agreement and must have been the reason which induced the other party into giving consent which he would not have otherwise given. To constitute a ground for attachment in Section 1 (d), Rule 57 of the Rules of Court, fraud should be committed upon contracting the obligation sued upon. A debt is fraudulently contracted if at the time of contracting it the debtor has a preconceived plan or intention not to pay, as it is in this case. Fraud is a state of mind and need not be proved by direct evidence but may be inferred from the circumstances attendant in each case."

In the instant case, petitioner's October 12, 2000 Affidavit is bereft of any factual statement that respondent committed a fraud. The affidavit narrated only the alleged fraudulent transaction between Wincorp and Virata and/or Power Merge, which, by the way, explains why this Court, in G.R. No. 162928, affirmed the writ of attachment issued against the latter. As to the participation of respondent in the said transaction, the affidavit merely states that respondent, an officer and director of Wincorp, connived with the other defendants in the civil case to defraud petitioner of his money placements. No other factual averment or circumstance details how respondent committed a fraud or how he connived with the other defendants to commit a fraud in the transaction sued upon. In other words, petitioner has not shown any specific act or deed to support the allegation that respondent is guilty of fraud.

The affidavit, being the foundation of the writ, must contain such particulars as to how the fraud imputed to respondent was committed for the court to decide whether or not to issue the writ. Absent any statement of other factual circumstances to show that respondent, at the time of contracting the obligation, had a preconceived plan

or intention not to pay, or without any showing of how respondent committed the alleged fraud, the general averment in the affidavit that respondent is an officer and director of Wincorp who allegedly connived with the other defendants to commit a fraud, is insufficient to support the issuance of a writ of preliminary attachment. In the application for the writ under the said ground, compelling is the need to give a hint about what constituted the fraud and how it was perpetrated because established is the rule that fraud is never presumed. Verily, the mere fact that respondent is an officer and director of the company does not necessarily give rise to the inference that he committed a fraud or that he connived with the other defendants to commit a fraud. While under certain circumstances, courts may treat a corporation as a mere aggroupment of persons, to whom liability will directly attach, this is only done when the wrongdoing has been clearly and convincingly established.[87] (Citations omitted.)

We also reiterated in *Ng Wee* that the rules on the issuance of the writ of preliminary attachment as a provisional remedy are strictly construed against the applicant because it exposes the debtor to humiliation and annoyance.[88] The applicant must show that all requisites are present.[89] Otherwise, if issued on false or insufficient allegations, the court acts in excess of its jurisdiction which must be corrected.[90]

In this case, the writ of preliminary attachment was improperly or irregularly issued because there is no ground for the attachment.

To begin with, Allied Bank filed the application for the writ of preliminary attachment in the Collection Case against Lim as surety. However, the allegations of fraud refer to the execution of the promissory notes, and not on the surety agreement. The application was bereft of any allegation as to Lim's participation in the alleged conspiracy of fraud. Also, the writ of preliminary attachment was granted in the Collection Case against Lim as surety, yet there was no allegation on Lim's fraudulent intention in incurring its obligation under the CG/CS Agreements. It cannot be inferred that Lim had, at the time of contracting the obligation, the preconceived intention to renege on his obligation under the CG/CS Agreements. Continuing guaranty and surety agreements are normally required by a bank or financing company anticipating to enter into a series of credit transactions with a particular principal debtor.[91] This avoids a need to execute a separate surety contract or bond for each financing or credit accommodation extended to the principal debtor.[92] Here, the CG/CS Agreements were executed prior to the issuance of L/C No. 21970, and were in force during other transactions including the one involving L/C No. 22518 which encountered no problem. Thus, this transaction cannot be singled out to justify that the surety agreement has been contracted through fraud.

Moreover, the filing of the Declaratory Relief Case cannot be evidence of a preconceived intention not to pay the surety's obligation because it was filed by Marphil, and not Lim. In any case, the filing of the case is a legitimate means resorted to by Marphil in, seeking to clarify its existing obligations with Allied Bank. If its intention was to renege on its obligations, it would not have submitted itself to the jurisdiction of the court where it can be ordered to pay any existing obligations. The allegation that petitioners made representations to induce it to grant them a credit line is belied by the fact that it is only in the transaction involving L/C No. 21970 where Allied Bank encountered problems, because of Nanyang Bank's dishonor of the draft and documents. Also, the allegation that petitioners committed misrepresentation in shipping the cashew nuts at a volume less than that which was required by the foreign buyer, relates to the sale between Marphil and Intan, and not to the loan between Marphil and Allied Bank.

From the foregoing, Allied Bank was not able to sufficiently establish the factual circumstances of the alleged fraud in contracting the obligation. Thus, there being no ground for its issuance, the writ of preliminary attachment should be dissolved.

WHEREFORE, the petition for review on certiorari is PARTLY GRANTED. The January 12, 2009 Decision and May 12, 2009 Resolution of the Court of Appeals are MODIFIED. Marphil Export Corporation and Ireneo Lim are ordered to pay jointly and severally Allied Banking Corporation (now Philippine National Bank) the principal amount of P1,913,763.45, with interest at the rate of six percent (6%) per annum computed from May 7, 1990, until the date of finality of this judgment. The total amount shall thereafter earn interest at the rate of six percent (6%) per annum from the finality of judgment until its satisfaction. Let the writ of preliminary attachment issued against Ireneo Lim's property be DISSOLVED.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Perez, and Reyes, JJ., concur.

October 20, 2016

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on September 21, 2016 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on October 20, 2016 at 1:55 p.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[1] Rollo, pp. 8-32.

[2] Id. at 34-51; penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Isaias P. Dicdican and Marlene Gonzales-Sison.

[3] Id. at 53-55.

[4] Id. at 50. The fallo of the CA Decision reads:

WHEREFORE, the foregoing considered, the appeal is hereby PARTLY GRANTED. The assailed decision dated 23 April 2007 is hereby MODIFIED declaring appellants liable to Allied in the amount of [P]1,913,763.45 with interest fixed at the legal rate of 12% per annum from the time of the filing of the collection suit until the same is fully paid. The obligations of appellants under promissory notes Nos. 2463 and 2730 are hereby declared fully paid. The assailed decision is AFFIRMED in all other aspects.

No costs.

SO ORDERED.

[5] CA rollo, pp. 21-54; rendered by Judge Marissa Macaraig-Guillen.

[6] Rollo, pp. 8, 37; RTC records, Vol. I, p. 1.

[7] Rollo, p. 10. As admitted by Marphil in its complaint, the following amounts were obtained as loans from Allied Bank in the credit line:

PN No. 0100-88-00673 February 22, 1988

P 250,000.00

PN No. 0100-88-00691 February 24, 1988

P 300,000.00

PN No. 0100-88-01505 April 26, 1988

P 2,000,000.00

PN No. 0100-88-01815 May 16, 1988

P 450,000.00

PN No. 100-88-01963 May 26, 1988

P 500,000.00

PN No. 0100-88-02201 June 3, 1988

P 1,500,000.00

RTC records, Vol. I; pp. 1-3, 8-9, 14-15, 24-25, 26-27, 28-29, 35-36.

[8] Rollo, p. 10.

[9] CG/CS Agreement executed on June 1, 1988 for the amount of P1,000,000.00, CG/CS Agreement executed on June 2, 1987 for the amount of P500,000.00, and CG/CS Agreement executed on May 25, 1987 for the amount of P500,000.00. RTC records, Vol. I, pp. 2, 155, 166-168.

[10] RTC records, Vol. III, p. 21.

[11] RTC records, Vol. I, p. 470.

[12] Id. at 76-77.

[13] RTC records. Vol. III, pp. 377-378.

[14] Rollo, pp. 35-38.

[15] Id. at 35-36; RTC records, Vol. I, p. 514.

- [16] RTC records, Vol. I, pp. 37-38.
- [17] Id. at 40-41.
- [18] Rollo, p. 36.
- [19] RTC records, Vol. I, p. 39.
- [20] Rollo, p. 38.
- [21] Id.
- [22] RTC records, Vol. I, p. 4.
- [23] Id. at 42-43.
- [24] Rollo, p. 36.
- [25] RTC records, Vol. I, pp. 1-7.
- [26] Docketed as Civil Case No. 90-640. Id. at 1.
- [27] Id. at 7. The obligations referred to include loans incurred prior to the second shipment of cashew nuts to Intan.
- [28] Id. at 57-75.
- [29] Id. at 67-68.
- [30] Docketed as Civil Case No. 90-2584, RTC records Vol. II, pp. 339-350.
- [31] RTC records, Vol. I, pp. 222-226.
- [32] Rollo, p. 39.
- [33] Id. at 40.
- [34] CA rollo, p. 29.
- [35] RTC records Vol. I. pp. 151-153.
- [36] Id. at 183.
- [37] Supra note 5.
- [38] CA rollo, pp. 53-54. The fallo reads:

WHEREFORE, in view of the foregoing, judgment is rendered in the aforementioned consolidated cases granting the complaint for declaratory relief in that promissory No. [0100-88-0]4202 is herein declared NULL and VOID for want of consideration. Allied Bank is directed to compute the indebtedness of Marphil Export Corporation utilizing Promissory Notes [0100-88-0]2463 and, [0100-88-0]2730 as basis for the computation, taking into consideration all payments made as reflected in the plaintiff Marphil's evidence.

However, Marphil and/or Mr. Ireneo Lim are held jointly and severally liable for any balance due on the aforementioned obligations and in addition are held liable to pay Allied Bank the amount of [P]1,913,763.45 with interest to be fixed at the legal rate of 12% per annum until fully paid.

The parties' respective prayers for the award of damages and attorney's fees are denied for lack of merit.

Because of the difficulty experienced in having summons served upon defendant Lim Shiao Tong in Civil Case No. 90-2485, this case shall, remain ARCHIVED with respect to said defendant.

Costs to be borne equally by both parties.

SO ORDERED.

[39] Id. at 55-56.

[40] Id. at 57.

[41] Rollo, pp. 34-51.

[42] Id. at 50.

[43] G.R. No. 105395, December 10, 1993, 228 SCRA 357.

[44] Rollo, pp. 45-49.

[45] Supra note 3.

[46] CA rollo, pp. 218-223.

[47] Rollo, pp. 93-95.

[48] Id. at 100-101.

[49] *Communities Cagayan, Inc. v. Nanol*, G.R. No. 176791, November 14, 2012, 685 SCRA 453, 462-463, citing *Raquel-Santos v. Court of Appeals*, G.R. Nos. 174986, 175071 & 181415, July 7, 2009, 592 SCRA 169, 190-191.

[50] G.R. No. 94209, April 30, 1991, 196 SCRA 576.

[51] Id. at 586.

[52] Rollo, p. 43.

[53] *Feati Bank & Trust Company v. Court of Appeals*, supra at 589.

[54] Id. at 590.

[55] Rollo, pp. 45-46; citations omitted.

[56] *Pestaño v. Sumayang*, G.R. No. 139875, December 4, 2000, 346 SCRA 870, 878; *Bañas, Jr. v. Court of Appeals*, G.R. No. 102967, February 10, 2000, 325 SCRA 259, 271; *Borromeo v. Sun*, G.R. No. 75908, October 22, 1999, 317 SCRA 176, 182; *Lagrosa v. Court of Appeals*, G.R. Nos. 11581-82, August 12, 1999, 312 SCRA 298, 310; *Security Bank & Trust Company v. Triumph Lumber and Construction/Corporation*, G.R. No. 126696, January 21, 1999, 301 SCRA 537, 548.

[57] *Borromeo v. Sun*, supra; *Lagrosa v. Court of Appeals*, supra.

[58] Id.

[59] RTC records, Vol. I, p. 76.

[60] G.R. No. 157309, March 28, 2008, 550 SCRA 119.

[61] Id. at 128-131.

[62] Id. at 129.

- [63] Id. at 130.
- [64] Id. at 128-130.
- [65] G.R. No. 156940, December 14, 2004, 446 SCRA 282.
- [66] Id. at 289-290.
- [67] Id. at 290-291.
- [68] G.R. No. 189871, August 13, 2013, 703 SCRA 439.
- [69] Id. at 457-458.
- [70] Id.
- [71] Heirs of Marcelo Sotto v. Palicte, G.R. No. 159691, February 17, 2014, 716 SCRA 175, 178. Citation omitted.
- [72] Id.
- [73] Guevara v. BPI Securities Corporation, G.R. No. 159786, August 15, 2006, 498 SCRA 613, 638.
- [74] Arevalo v. Planters Development Bank, G.R. No. 193415, April 18, 2012, 670 SCRA 252, 267.
- [75] Heirs of Marcelo Sotto v. Palicte, supra at 178.
- [76] Id. at 178-179.
- [77] G.R. No. 189563, April 7, 2014, 720 SCRA 726.
- [78] Id. at 735.
- [79] G.R. No. 160466, January 17, 2005, 448 SCRA 705.
- [80] Id. at 709.
- [81] CIVIL CODE, Art. 1216.
- [82] RTC records, Vol. I, pp. 159-160.
- [83] Id. at 327-329.
- [84] Cuartero v. Court of Appeals, G.R. No. 102448, August 5, 1992, 212 SCRA 260, 264.
- [85] See Bank of the Philippine Islands v. Lee, G.R. No. 190144, August 1, 2012, 678 SCRA 171, 182-183.
- [86] G.R. No. 171124, February 13, 2008, 545 SCRA 263.
- [87] Id. at 272-274.
- [88] Id. at 274.
- [89] Id. at 275.
- [90] Id.
- [91] See Totanes v. China Banking Corporation, G.R. No. 179880, January 19, 2009, 576 SCRA 323, 329.
- [92] Id. at 329-330.

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