

THIRD DIVISION

[G.R. No. 187922, September 21, 2016]

**MARPHIL EXPORT CORPORATION AND IRENEO LIM,
PETITIONERS, VS. ALLIED BANKING CORPORATION,
SUBSTITUTED BY PHILIPPINE NATIONAL BANK, RESPONDENT.**

D E C I S I O N

JARDELEZA, J.:

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 Irene 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:

- I. Whether Allied Bank's debit memo on Mapphil's credit line in the amount of P1,913,763.45 is valid.
- II. Whether the RTC and CA created a new obligation when it held Marphil liable for the amount of P1,913,763.45.
- III. Whether Allied Bank committed forum shopping in filing the Collection Case.
- IV. 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.