Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

COCA-COLA FEMSA PHILIPPINES, INC.,
Petitioner,

-versus-

PACIFIC SUGAR HOLDINGS CORPORATION,
Respondent.

G.R. No. 241333

Present:

LEONEN, *J., Chairperson,*
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., *JJ.*

Promulgated:
JUN 27 2022

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DECISION

LEONEN, *J.*:

The manner upon which a writ of preliminary attachment may be discharged is prescribed in Rule 57, Sections 12 and 13 of the Rules of Court. The dissolution of a writ through a method outside of that prescribed by statute is an obstinate disregard of the rules of law and procedure and should not be allowed by the courts. By allowing the filing of a standby letter of credit instead of a counter-bond contemplated in Rule 57, Section 12, the trial court supplanted the law and sanctioned a remedy not contemplated therein.

This resolves a Petition for Review seeking the reversal of the Decision[1] and Resolution[2] of the Court of Appeals which affirmed the Regional Trial Court's dissolution of a writ of preliminary attachment on Pacific Sugar Holding's properties upon the latter's filing of a standby letter of credit.

Petitioner Coca-Cola Femsa Philippines, Inc. (Coca-Cola) is a corporation engaged in the manufacture and sale of non-alcoholic beverages.[3]

On December 13, 2007, it entered into a Supply and Purchase Agreement (first supply agreement) with respondent Pacific Sugar Holdings Corporation (Pacific Sugar) for the purchase of 360,000 Lkg[4] bags of Premium Grade Refined Sugar from January 2008 to April 2008.[5]

Subsequently, Coca-Cola and Pacific Sugar entered into another Supply and Purchase Agreement (second supply agreement) dated September 15, 2008 wherein Pacific Sugar agreed to sell and deliver to Coca-Cola 400,000 Lkg bags of Standard Grade Refined Sugar from January 2009 to June 2009.[6]

Due to Pacific Sugar's failure to deliver the amount of premium grade refined sugar agreed upon in the first supply agreement, Coca-Cola and Pacific Sugar executed on April 27, 2009 and July 13, 2009 two amendments to the first supply agreement.[7]

Similarly, Coca-Cola and Pacific Sugar executed an amendment supply agreement dated July 13, 2009, modifying their second supply agreement.[8]

Due to alleged "extremely low productivity of sugar cane" in the country, Pacific Sugar sent a letter[9] to Coca-Cola stating that it will no longer deliver the remaining undelivered sugar products and that it is terminating the Supply and Purchase Agreements.

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1 *Rollo*, pp. 9–26. The February 13, 2018 Decision in CA-G.R. SP No. 143593 was penned by Associate Justice Henri Jean Paul B. Inting (now a Member of this Court) and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Danton Q. Bueser of the Ninth Division, Court of Appeals, Manila.

2 Id. at 27–28. The August 8, 2018 Resolution was penned by Associate Justice Henri Jean Paul B. Inting (now a Member of this Court) and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Danton Q. Bueser of the Ninth Division, Court of Appeals, Manila.

3 Id. at 97.

4 One Lkg is a unit of measurement equal to one 50- kilogram bag of sugar.

5 *Rollo*, p. 97.

6 Id.

7 Id. at 97–98.

8 Id. at 98.

9 Id. at 333.

In its January 11, 2009 letter,[10] Coca-Cola informed Pacific Sugar that it found Pacific Sugar's reason unacceptable and demanded full compliance of its obligations under the Supply and Purchase Agreements.[11]

On January 27, 2010, Pacific Sugar sent another letter[12] to Coca-Cola notifying it of its unilateral termination of the Supply and Purchase Agreements. Pacific Sugar invoked paragraph 17[13] of the second supply agreement which provided that should a party fail to comply with any of its material obligations under the agreement, the other party shall have the right to terminate the agreement upon written notice to the other party.[14]

Claiming violation of their agreements, Coca-Cola sent another letter[15] to Pacific Sugar demanding payment of ₱347,410,104.66 representing the additional expenses it incurred after it was constrained to purchase the undelivered sugar products from other sellers.

After Pacific Sugar refused to heed Coca-Cola's demand,[16] the latter filed a Complaint[17] with the Regional Trial Court praying that Pacific Sugar's unilateral termination of the agreements be declared null and void.[18] Additionally, Coca-Cola prayed that an order be issued directing the issuance of a writ of preliminary attachment against Pacific Sugar.[19]

In its January 21, 2011 Order[20] the Regional Trial Court granted Coca-Cola's prayer for the issuance of a writ of preliminary attachment, conditioned upon its posting of a bond in the amount of ₱347,410,104.68.[21]

On February 8, 2011, the Regional Trial Court issued a Writ of Preliminary Attachment ordering the sheriff to attach Pacific Sugar's properties, unless the latter makes a deposit or gives a counter-bond in an amount sufficient to satisfy Coca-Cola's demands.[22] On the same day,

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10 Id. at 336.
11 Id.
12 Id. at 365.
13 17. TERMINATION – Should either party fail to comply with any of its material obligations and warranties under this Agreement, the other party shall have the right to terminate this Agreement with immediate effect by written notice to the other party. Either party may at any time, without cause, terminate this Agreement provided a written notice thereof is sent to the other party at least thirty (30) days before the intended date of termination. It is understood that the termination shall not prejudice the right of either party to recover any sum due at the time of such termination, except as provided in paragraph 12 hereof, nor shall it prejudice any cause of action or claim of either party which has accrued or which may accrue on account of any breach, default or any violation under this Agreement by either party prior to such termination.
14 *Rollo*, pp. 323–324.
15 Id. at 366.
16 Id. at 368.
17 Id. at 226–272.
18 Id. at 271.
19 Id. at 270.
20 Id. at 515–518. The Order in Civil Case No. 10-1067 was penned by Presiding Judge Encarnacion Jaja G. Moya of the Regional Trial Court, Makati City, Branch 146.
21 Id. at 518.
22 Id. at 519–520.

summons were issued by the Regional Trial Court, copies of which were served on Pacific Sugar on February 17, 2011.[23] Thereafter, trial on merits ensued.[24]

Meanwhile, on May 22, 2015 Pacific Sugar filed a Motion to Dissolve Writ of Preliminary Attachment[25] praying that the writ of preliminary attachment issued in favor of Coca-Cola be quashed, dissolved or discharged upon the former's filing of a standby letter of credit.[26]

Despite Coca-Cola's insistent opposition,[27] the Regional Trial Court issued an Order[28] granting Pacific Sugar's Motion to Dissolve Writ of Preliminary Attachment.

The Regional Trial Court held that since both instruments work to secure the payment of an obligation, the counter-bond required under Rule 57, Section 17 may be substituted by the standby letter of credit.[29]

The Regional Trial Court further noted that the standby letter of credit is more favorable than a surety agreement because the beneficiary in a letter of credit can immediately collect from the issuing bank upon its presentment of the required documents.[30]

Coca-Cola moved for reconsideration[31] but it was denied on October 22, 2015.[32] Aggrieved, Coca-Cola filed a Petition for Certiorari[33] before the Court of Appeals on January 4, 2016.

Meanwhile, the Regional Trial Court issued an Order[34] granting Pacific Sugar's Motion to discharge attachment.

During the pendency of the case before the Court of Appeals, the Regional Trial Court continued hearing the main case and rendered a

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23 Id. at 42.
24 Id. at 44.
25 Id. at 696–703.
26 Id. at 701.
27 Id. at 706–717.
28 Id. at 187–191. The July 7, 2015 Order was penned by Presiding Judge Encarnacion Jaja G. Moya of the Regional Trial Court of Makati City, Branch 146.
29 Id. at 190.
30 Id.
31 Id. at 195–204.
32 Id. at 192–194.
33 Id. at 136–177.
34 Id. at 934. The April 12, 2016 Order was penned by Presiding Judge Encarnacion Jaja G. Moya of the Regional Trial Court of Makati City, Branch 146.

Decision[35] dated August 11, 2017 partially granting petitioner's complaint. Both parties appealed from the Regional Trial Court's Decision.[36]

In its February 13, 2018 Decision,[37] the Court of Appeals dismissed Coca-Cola's petition for certiorari, affirming the Regional Trial Court's ruling that a standby letter of credit serves the same purpose as a counter-bond.[38]

Coca-Cola filed a Motion for Reconsideration of the Court of Appeal's Decision[39] which was denied on August 8, 2018.[40]

Dissatisfied, petitioner filed a Petition for Review[41] before this Court praying for the reversal of the Court of Appeals' February 13, 2018 Decision and the reinstatement of the February 8, 2011 writ of preliminary attachment.

In its Petition, petitioner argues that contrary to the findings of the Regional Trial Court, the standby letter of credit filed by respondent is more onerous than a simple cash deposit or counter-bond.[42] It maintains that the Court of Appeals erred in failing to rule that the Regional Trial Court committed grave abuse of discretion when it continued to exercise jurisdiction over the dissolution of the writ of preliminary attachment despite the pendency of petitioner's certiorari petition before the Court of Appeals.[43]

In its Comment,[44] respondent asserts that the Court of Appeals was correct not to issue a writ of certiorari as petitioner failed to prove that the assailed orders from the Regional Trial Court were issued in a capricious or whimsical manner. It claims that the orders of the Regional Trial Court were proper given that a standby letter of credit serves the same purpose as a counter-bond and is even more favorable than a surety agreement.[45]

Respondent adds that the Regional Trial Court Judge made no mistake when she continued exercising jurisdiction over the main case despite the presence of a Petition for Certiorari before the Court of Appeals since no injunctive relief was granted by the appellate court.[46]

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35 Id. at 876–893. The Decision was penned by Presiding Judge Encarnacion Jaja G. Moya of the Regional Trial Court of Makati City, Branch 146.
36 Id. at 1028–1029.
37 Id. at 96–113.
38 Id. at 107.
39 Id. at 119–133.
40 Id. at 116-117.
41 Id. at 31–83.
42 Id. at 67.
43 Id. at 78.
44 Id. at 1309–1327
45 Id. at 1313–1314.
46 Id. at 1315.

In its Reply,[47] petitioner reiterates that the Regional Trial Court Judge committed a grievous error when she ruled that respondent's standby letter of credit was a valid substitute for a counter-bond or cash deposit to discharge a writ of attachment. Petitioner claims that a violation of the Rules of Court is not an error of judgment but an error of jurisdiction.[48] It asserts that since the Court of Appeals affirmed the ruling of the Regional Trial Court, it likewise committed grave abuse of discretion.[49]

Furthermore, it posits that the independence principle in standby letters of credit is irrelevant for counter-bonds as the latter already provides its own assurance.[50] Moreover, respondent's standby letter of credit, as worded, serves merely as a guarantee, not a surety.[51] Ultimately, the standby letter of credit cannot be a substitute for the required cash deposit or counter-bond under Rule 57, Section 12 of the Rules of Court.

The issues for resolution are: (1) whether or not the Regional Trial Court erred in exercising jurisdiction over the dissolution of the writ of preliminary attachment despite the pendency of petitioner's petition for certiorari before the Court of Appeals; and (2) whether or not a counter bond under Rule 57, Section 13 of the Rules of Court may be substituted by a standby letter of credit.

I

In a petition for certiorari, this Court is limited to the finding of whether or not the judge committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed decision or resolution.[52] Grave abuse of discretion has been defined as "an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law, such as when the assailed decision or resolution rendered is not based on law and the evidence but on caprice, whim and despotism."[53]

This Court rules that the Court of Appeals seriously erred when it did not issue the writ of certiorari prayed for by petitioner.

First, we rule on the procedural issue before this Court.

Petitioner argues that the Regional Trial Court committed grave abuse of discretion amounting to lack or excess of jurisdiction when it continued to

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47 Id. at 1334–1367.
48 Id. at 1337.
49 Id. at 1338.
50 Id. at 1350.
51 Id. at 1351.
52 RULES OF COURT, Rule 64, sec. 1.
53 *Miralles v. Commission on Audit*, 818 Phil. 380, 389–390 (2017) [Per J. Bersamin, En Banc].

exercise jurisdiction over the dissolution of the writ of preliminary attachment despite the pendency of a Petition for Certiorari before the Court of Appeals.

Petitioner cites *Joy Mart Consolidated Corporation v. Court of Appeals*,[54] wherein Joy Mart filed a complaint for specific performance against Phoenix and Light Rail Transit Authority with a prayer for a writ of preliminary injunction. The Regional Trial Court issued the writ in favor of Joy Mart which was questioned by Phoenix before the Court of Appeals through a petition for certiorari and prohibition. While the petition for certiorari was pending, Phoenix and Light Rail Transit Authority filed a motion to dissolve the writ of preliminary injunction which was granted by the trial court. Joy Mart claimed that the trial court could no longer exercise its jurisdiction on matters regarding the writ when the propriety of its issuance was raised to the Court of Appeals. This Court ruled that the Regional Trial Court was divested of jurisdiction to further act on the writ of preliminary injunction when the question of its issuance was elevated to the Court of Appeals through a petition for certiorari, thus:

> . . . the lone issue [is] whether the trial court continued to have control of the writ of preliminary injunction even after the same had been raised to the Court of Appeals for review.
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> The answer is no. After the LRTA and Phoenix had elevated the writ of preliminary injunction to the Court of Appeals for determination of the propriety of its issuance (CA-G.R. SP No. 12998), the trial court (notwithstanding the absence of a temporary restraining order from the appellate court) could not interfere with or preempt the action or decision of the Court of Appeals on the writ of preliminary injunction whose annulment was sought therein by Phoenix and the LRTA.
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> In petitioning the trial court to lift the writ of preliminary injunction which they themselves had brought up to the Court of Appeals for review, Phoenix and the LRTA engaged in forum-shopping. After the question of whether the writ of preliminary injunction should be annulled or continued had been elevated to the Court of Appeals for determination, the trial court lost jurisdiction or authority to act on the same matter. By seeking from the trial court an order lifting the writ of preliminary injunction. Phoenix and LRTA sought to divest the Court of Appeals of its jurisdiction to review the writ. They improperly tried to moot their own petition in the Court of Appeals — a clear case of trifling with the proceedings in the appellate court or of disrespect for said court.[55]

This Court went on to say that in granting the motion to dissolve the writ of injunction despite the pending petition in the Court of Appeals, the trial court judge acted with grave abuse of discretion amounting to excess of jurisdiction. There, this Court added that judicial courtesy dictates that the

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[54] 285 Phil. 315 (1992) [Per J. Griño-Aquino, First Division].
[55] Id. at 324–325.

trial court defer to the judgment of the Court of Appeals as it determines the propriety of the writ of injunction.[56]

This is similar to the developments in this case. Here, the Regional Trial Court granted respondent's motion to dissolve the writ of preliminary attachment in its July 7, 2015 Order. This prompted petitioner to file a petition for certiorari before the Court of Appeals. However, while the certiorari petition was pending, the Regional Trial Court issued an April 12, 2016 Order discharging the attachment after respondent complied with the conditions laid down in the prior Order. The Regional Trial Court ruled:

> Acting on the Submission of Standby Letter of Credit with Motion to Discharge Attachment, the same is granted it appearing that the conditions of the Order dated July 7, 2015 were complied with.
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> Although plaintiff argues that said Order is the subject of a Petition for Certiorari before a higher court, neither a temporary restraining order nor a preliminary injunction was issued by a higher court restraining this court from further proceeding with the directives of said Order. Considering that Section 7 Rule 65 of the Rules of Court mandates that the petition shall not interrupt the course of the principal case unless a writ of preliminary injunction or temporary restraining order has been issued, this court is left with no discretion but to continue with the instant proceeding.[57]

Thereafter, Notices of Lifting were issued, informing the garnishees that the attachment on garnished properties of respondent had been lifted. From the sequence of events, it is apparent that the danger petitioner had hoped to prevent and correct by filing its petition for certiorari with the Court of Appeals turned into a reality due to the trial court's actions.

The Regional Trial Court anchors its assailed orders on Rule 65, Section 7 of the Rules of Court which provides that the filing of a petition for certiorari "shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case." However, judicial courtesy must be exercised when "there is a strong probability that the issues before the higher court would be rendered moot and moribund as a result of the continuation of the proceedings in the lower court."[58]

In *Trajano v. Uniwide Sales Warehouse Club*,[59] this Court expounded on the principle of judicial courtesy and its possible limitations:

> Indeed, we introduced in *Eternal Gardens Memorial Park v. Court of Appeals* the principle of judicial courtesy to justify the suspension of the

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56 Id.

57 *Rollo*, p. 934.

58 *Trajano v. Uniwide Sales Warehouse Club*, 736 Phil. 264, 278 (2014) [Per J. Brion, Second Division].

59 736 Phil. 264 (2014) [Per J. Brion, Second Division].

> 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." We subsequently reiterated the concept of judicial courtesy in *Joy Mart Consolidated Corp. v. Court of Appeals*.
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> We, however, have qualified and limited the application of judicial courtesy in *Go v. Abrogar* and *Republic v. Sandiganbayan*. In these cases, we expressly delimited the application of judicial courtesy to maintain the efficacy of Section 7, Rule 65 of the Rules of Court, and held that the principle of judicial courtesy applies only "if there is a strong probability that the issues before the higher court would be rendered moot and moribund as a result of the continuation of the proceedings in the lower court." Through these cases, we clarified that the principle of judicial courtesy remains to be the exception rather than the rule.[60] (Citations omitted)

While judicial courtesy is a mere exception to the rule, it will apply if there is a strong probability that the issue brought before the Court of Appeals would be rendered moot and nugatory by the action of the lower court.

Accordingly, the Regional Trial Court erred when it continued to hear the merits of the dissolution of the writ of preliminary attachment despite the pendency of the same issue before the Court of Appeals. Judicial courtesy should have prevented the trial court from approving the lifting of the preliminary attachment as the petition for certiorari was already pending in the Court of Appeals. Thus, any further action of the trial court regarding the preliminary attachment would interfere with the findings of the Court of Appeals and render the same moot.

II

For the substantive issue, we hold that a standby letter of credit cannot be considered a substitute for a counter-bond in a preliminary attachment.

A preliminary attachment is an ancillary remedy provided to a litigant which protects their prospective rights while a case is pending by attaching on an opponent's property in an amount equivalent to their claim. This ensures the preservation of the relief or claim sought.[61] This is found in Rule 57, Section 1 of the Rules of Court which provides: "[a]t 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[.]"

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60 Id. at 276–278.

61 *Excellent Quality Apparel Inc. v. Visayan Surety and Insurance Corporation and Far Eastern Surety and Insurance Co. Inc.*, 762 Phil. 706 (2015) [Per J. Mendoza, Second Division].

In *Excellent Quality Apparel Inc. v. Visayan Surety and Insurance Corporation and Far Eastern Surety and Insurance Co. Inc.*,[62] it was explained:

> By its nature, preliminary attachment, under Rule 57 of the Rules of Court, "is an ancillary remedy applied for not for its own sake but to enable the attaching party to realize upon relief sought and expected to be granted in the main or principal action; it is a measure auxiliary or incidental to the main action. As such, it is available during the pendency of the action which may be resorted to by a litigant to preserve and protect certain rights and interests therein pending rendition and for purposes of the ultimate effects, of a final judgment in the case. In addition, attachment is also availed of in order to acquire jurisdiction over the action by actual or constructive seizure of the property in those instances where personal or substituted service of summons on the defendant cannot be effected."
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> The party applying for the order of attachment must thereafter give a bond executed to the adverse party in the amount fixed by the court in its order granting the issuance of the writ. The purpose of an attachment bond is to answer for all costs and damages which the adverse party may sustain by reason of the attachment if the court finally rules that the applicant is not entitled to the writ.[63] (Citations omitted)

A writ of preliminary attachment serves two purposes. First, it takes hold of the property of a debtor prior to promulgation of judgment to prevent depletion or loss of the property; and second, it subjects the property to payment to the creditor, assuming a favorable decision is met on the latter's claim. The writ aims to create a lien on the property of a debtor as security until a judgment is obtained. This ensures the creditor that while the case is pending, the debtor will not dispose or conceal their property to evade responsibilities. Ultimately, the writ ensures that judgment will be satisfied.[64]

Nevertheless, the writ of preliminary attachment is not a permanent lien on one's property. The law provides two ways upon which the writ may be discharged. Rule 57, Sections 12 and 13 of the Rules of Court provide:

> SECTION 12. *Discharge of attachment upon giving counter-bond.* — After a writ of attachment has been enforced, the party whose property has been attached, or the person appearing on his behalf, may move for the discharge of the attachment wholly or in part on the security given. The court shall, after due notice and hearing, order the discharge of the attachment if the movant makes a cash deposit, or files a counter-bond executed to the attaching party with the clerk of the court where the application is made, in an amount equal to that fixed by the court in the order of attachment, exclusive of costs. But if the attachment is sought to be discharged with respect to a particular property, the counter-bond shall be

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62 762 Phil. 706 (2015) [Per J. Mendoza, Second Division].

63 Id. at 718–719.

64 *Republic v. Mega Pacific eSolutions Inc.*, 788 Phil. 160 (2016) [Per J. Sereno, First Division].

> equal to the value of that property as determined by the court. In either case, the cash deposit or the counter-bond shall secure the payment of any judgment that the attaching party may recover in the action. A notice of the deposit shall forthwith be served on the attaching party. Upon the discharge of an attachment in accordance with the provisions of this section, the property attached, or the proceeds of any sale thereof, shall be delivered to the party making the deposit or giving the counter-bond, or to the person appearing on his behalf, the deposit or counter-bond aforesaid standing in place of the property so released. Should such counter-bond for any reason be found to be or become insufficient, and the party furnishing the same fail to file an additional counter-bond, the attaching party may apply for a new order of attachment.
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> SECTION 13. *Discharge of attachment on other grounds.* — The party whose property has been ordered attached may file a motion with the court in which the action is pending, before or after levy or even after the release of the attached property, for an order to set aside or discharge the attachment on the ground that the same was improperly or irregularly issued or enforced, or that the bond is insufficient. If the attachment is excessive, the discharge shall be limited to the excess. If the motion be made on affidavits on the part of the movant but not otherwise, the attaching party may oppose the motion by counter-affidavits or other evidence in addition to that on which the attachment was made. After due notice and hearing, the court shall order the setting aside or the corresponding discharge of the attachment if it appears that it was improperly or irregularly issued or enforced, or that the bond is insufficient, or that the attachment is excessive, and the defect is not cured forthwith.

The procedure by which a writ of preliminary attachment may be dissolved is prescribed in the Rules of Court. The law limits the various modes upon which an attachment may be discharged to the following: (1) posting a cash bond or counter-bond; (2) proving that the attachment bond was improperly or irregularly issued or enforced, or the bond is insufficient; or (3) proving the attachment is excessive.

Here, there is no question that no counter-bond was filed by respondent. Neither did respondent allege that the attachment on its property was excessive or improperly done. Instead, respondent submitted a standby letter of credit claiming it would serve the same purpose as that of a counter-bond and should thus be sufficient to dissolve the writ of preliminary attachment. This was granted by the Regional Trial Court and affirmed by the Court of Appeals.

We disagree.

Party litigants are required to comply with the rules laid down in the Rules of Court. *Malixi v. Baltazar*[65] explained:

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[65] 821 Phil. 423 (2017) [Per J. Leonen, Third Division].

> Technical rules serve a purpose. They are not made to discourage litigants from pursuing their case nor are they fabricated out of thin air. Every section in the Rules of Court and every issuance of this Court with respect to procedural rules are promulgated with the objective of a more efficient judicial system.[66]

Clearly, the law does not state that an attachment may be discharged through the submission of a standby letter of credit. Sections 12 and 13 of Rule 57 unequivocally enumerates specific manners upon which one may dissolve a preliminary attachment and not one of them can be likened to a standby letter of credit. By allowing the filing of a standby letter of credit instead of a counter-bond, the trial court sanctioned a remedy not contemplated in the law. The courts cannot, in exercising its power of interpretation, supplant what is written in the law. To do so would be tantamount to judicial legislation.[67] This blatant disregard of the established rules of law and procedure was not merely an error of judgment but an excess in performing one's duty. It was "grave abuse of discretion correctible by certiorari."[68] However, the Court of Appeals failed to rule as such and instead affirmed the findings of the trial court.

In allowing the filing of a standby letter of credit as a substitute, the Regional Trial Court held that since petitioner can immediately collect from the surety by mere presentation of certain documents, the filing of a standby letter of credit is more favorable to petitioner than a counter-bond. However, the Regional Trial Court failed to consider that the demands of the standby letter of credit is more onerous than that imposed under the Rules of Court.

Under the Rules of Court,[69] "a surety on a counter-bond given to secure the payment of a judgment becomes liable for the payment of the amount due upon: (1) demand made upon the surety; and (2) notice and summary hearing on the same action."[70] The judgment obligee need not make a prior demand on the obligor before they may recover upon the counter bond.

Conversely, the standby letter of credit filed by respondent and issued by East West Bank requires petitioner to submit a certification stating among other things that: (1) respondent was given 15 days from service of the writ of execution to satisfy the amount of judgment; (2) respondent failed to comply

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66 Id. at 436.

67 *Umali v. Judicial and Bar Council,* 814 Phil. 253 (2017) [Per J. Velasco, Jr., En Banc].

68 *Abutin v. San Juan,* G.R. No. 247345, July 6, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66590> [Per J. Leonen, Third Division].

69 RULES OF COURT, Rule 67, sec. 17 provides:
SECTION 17. *Recovery upon the counter-bond.* — When the judgment has become executory, the surety or sureties on any counter-bond given pursuant to the provisions of this Rule to secure the payment of the judgment shall become charged on such counter-bond and bound to pay the judgment obligee upon demand the amount due under the judgment, which amount may be recovered from such surety or sureties after notice and summary hearing in the same action.

70 *Excellent Quality Apparel, Inc. v. Visayan Surety & Insurance Corp.,* 762 Phil. 706, 727 (2015) [Per J. Mendoza, Second Division].

with the writ of execution; and (3) the amount of judgment was left unsatisfied by respondent.[71]

Evidently, the conditions imposed under the standby letter of credit are not favorable, but are in fact more onerous than the demands of the Rules of Court. Furthermore, the condition that respondent must first fail to satisfy the judgment after demand is made on it transforms the standby letter of credit from a surety to that of a guarantee. The difference between the two were described in *Trade and Investment Development Corp. of the Philippines v. Asia Paces Corporation*:[72]

> A surety is considered in law as being the same party as the debtor in relation to whatever is adjudged touching the obligation of the latter, and their liabilities are interwoven as to be inseparable. Although the contract of a surety is in essence secondary only to a valid principal obligation, his liability to the creditor is direct, primary and absolute; he becomes liable for the debt and duty of another although he possesses no direct or personal interest over the obligations nor does he receive any benefit therefrom. The fundamental reason therefor is that a contract of suretyship effectively binds the surety as a solidary debtor. . . .
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> . . . .
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> Thus, since the surety is a solidary debtor, it is not necessary that the original debtor first failed to pay before the surety could be made liable; it is enough that a demand for payment is made by the creditor for the surety's liability to attach. . . .
>
> Comparing a surety's obligations with that of a guarantor, the Court, in the case of *Palmares v. CA*, illumined that a surety is responsible for the debt's payment at once if the principal debtor makes default, whereas a guarantor pays only if the principal debtor is unable to pay, *viz.*;
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> > **A surety is an insurer of the debt, whereas a guarantor is an insurer of the solvency of the debtor.** A suretyship is an undertaking that the debt shall be paid; a guaranty, an undertaking that the debtor shall pay. Stated differently, a surety promises to pay the principal's debt if the principal will not pay, while a guarantor agrees that the creditor, after proceeding against the principal, may proceed against the guarantor if the principal is unable to pay. A surety binds himself to perform if the principal does not, without regard to his ability to do so. A guarantor, on the other hand, does not contract that the principal will pay, but simply that he is able to do so. In other words, **a surety undertakes directly for the payment and is so responsible at once if the principal debtor makes default, while a guarantor contracts to pay if, by the use of due diligence, the debt cannot be made out of the principal debtor**.[73] (Emphases in the original, citations omitted)

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71 *Rollo*, p. 68.

72 726 Phil. 555 (2014) [Per J. Perlas-Bernabe, Second Division].

73 Id. at 565–566.

Applying these, we hold that the standby letter of credit cannot serve the same purpose as that of a counter bond in Rule 57, Section 12.

Moreover, a standby letter of credit is not an ironclad financial instrument that ensures the automatic payment of a debt once judgment is promulgated. A standby letter of credit brings a third-party into the transaction that stands to satisfy the judgment once demand is made. However, if the third-party involved—East West Bank in this case—reneges on its obligation, petitioner is left with no recourse but to initiate another proceeding or litigation to enforce satisfaction of judgment. By dissolving the writ of preliminary attachment, the trial court deprived petitioner of security on specific property already earmarked for the purpose of satisfying judgment.

In fine, this Court rules that a standby letter of credit is not sufficient to dissolve a writ of preliminary attachment.

ACCORDINGLY, premises considered, the Petition is **GRANTED**. The February 13, 2018 Decision and August 8, 2018 Resolution of the Court of Appeals in CA–G.R. SP No. 143593 are **REVERSED AND SET ASIDE**.

The writ of preliminary attachment subject of this case is ordered restored for the satisfaction of judgment.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice