

NATIONAL POWER CORPORATION, PETITIONER, VS. COURT OF APPEALS AND PHILIPPINE AMERICAN GENERAL INSURANCE CO., INC., RESPONDENTS.

G.R. No. L-43706. November 14, 1986

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari seeking to set aside: (a) the judgment of respondent Court of Appeals dated March 25, 1976 in CA-G.R. No. 50112-R, entitled National Power Corporation, Plaintiff-Appellee versus The Philippine American Insurance Company, Inc. Defendant-Appellant, which reversed the decision of the Court of First Instance of Manila in Civil Case No. 70811 entitled "National Power Corporation v. Far Eastern Electric, Inc., et al. and (b) respondent's Court's resolution dated April 19, 1976 denying petitioner National Power Corporation's Motion for Reconsideration (Petition, p.13, Rollo).

The undisputed facts of this case are as follows:

The National Power Corporation (NPC) entered into a contract with the Far Eastern Electric, Inc. (FEEI) on December 26, 1962 for the erection of the Angat Balintawak 115-KW-3-Phase transmission lines for the Angat Hydroelectric Project. FEEI agreed to complete the work within 120 days from the signing of the contract, otherwise it would pay NPC P200.00 per calendar day as liquidated damages, while NPC agreed to pay the sum of P97,829.00 as consideration. On the other hand, Philippine American General Insurance Co., Inc. (Philamgen) issued a surety bond in the amount of P30,672.00 for the faithful performance of the undertaking by FEEI, as required.

The condition of the bond reads:

"The liability of the PHILIPPINE AMERICAN GENERAL INSURANCE COMPANY, INC. under this bond will expire One (1) year from final Completion and Acceptance and said bond will be cancelled 30 days after its expiration, unless surety is notified of any existing obligation thereunder." (Exhibit 1-a)

in correlation with the provisions of the construction contract between Petitioner and Far Eastern Electric, Inc. particularly the following provisions of the Specifications, to wit:

1. Par. 1B-21 Release of Bond

"1B-21 Release of Bond

"The Contractor's performance bond will be released by the National Power Corporation at the expiration of one (1) year from the completion and final acceptance of the work, pursuant to the provisions of Act No. 3959, and subject to the General Conditions of this contract:" Page 49, Printed Record on Appeal); and

2. GP-19 of Specifications, which reads:

"(a) Should the Contractor fail to complete the construction of the work as herein specified and agreed upon, or

if the work is abandoned, x x x the Corporation shall have the power to take over the work by giving notice in writing to that effect to the Contractor and his sureties of its intention to take over the construction work.

"(b) x x x It is expressly agreed that in the event the Corporation takes over the work from the Contractor, the latter and his bondsmen shall continue to be liable under this contract for any expense in the completion of the work in excess of the contract price and the bond filed by the Contractor shall be answerable for the same and for any and all damages that the Corporation may suffer as a result thereof."

(pp. 76-78, Printed Record on Appeal)

FEEI started construction on December 26, 1962 but on May 30, 1963, both FEEI and Philamgen wrote NPC requesting the assistance of the latter to complete the project due to unavailability of the equipment of FEEI. The work was abandoned on June 26, 1963, leaving the construction unfinished. On July 19, 1963, in a joint letter, Philamgen and FEEI informed NPC that FEEI was giving up the construction due to financial difficulties. On the same date, NPC wrote Philamgen informing it of the withdrawal of FEEI from the work and formally holding both FEEI and Philamgen liable for the cost of the work to be completed as of July 20, 1962 plus damages.

The work was completed by NPC on September 30, 1963. On January 30, 1967 NPC notified Philamgen that FEEI had an outstanding obligation in the amount of P75,019.85, exclusive of interest and damages, and demanded the remittance of the amount of the surety bond to answer for the cost of completion of the work. In reply, Philamgen requested for a detailed statement of account, but after receipt of the same, Philamgen did not pay as demanded but contended instead that its liability under the bond has expired on September 20, 1964 and claimed that no notice of any obligation of the surety was made within 30 days after its expiration. (Record on Appeal, pp. 191-194; Rollo, pp. 62-64).

NPC filed Civil Case No. 70811 for collection of the amount of P75,019.89 spent to complete the work abandoned; P144,000.00 as liquidated damages and P20,000.00 as attorney's fees. Only Philamgen answered while FEEI was declared in default.

The trial court rendered judgment in favor of NPC, the dispositive portion of which reads:

"WHEREFORE, the defendant Far Eastern Electric, Inc., is ordered to pay the plaintiff the sum of P75,019.86 plus interest at the legal rate from September 21, 1967 until fully paid. Out of said amount, both defendants, Far Eastern Electric, Inc., and the Philippine American Insurance Company, Inc., are ordered to pay, jointly and severally, the amount of P30,672.00 covered by Surety Bond No. 26268, dated December 26, 1962, plus interest at the legal rate from September 21, 1967 until fully paid.

"Both defendants are also ordered to pay plaintiff the sum of P3,000.00 as attorney's fees and costs."

On appeal by Philamgen, the Court of Appeals reversed the lower court's decision and dismissed the complaint.

Hence this petition.

Respondent Philamgen filed its comment on the petition on August 6, 1978 (Rollo, p. 62) in compliance with the resolution dated June 16, 1976 of the First Division of this Court (Rollo, p. 52) while petitioner NPC filed its Reply to the comment of respondent (Rollo, p. 76) as required in the resolution of this Court of August 16, 1976 (Rollo, p. 70). In the resolution of September 20, 1976, the petition for certiorari was given due course (Rollo, p. 85). Petitioner's brief was filed on November 27, 1976 (Rollo, p. 97) while Philamgen failed to file brief within the required period and this case was submitted for decision without respondent's brief in the resolution of this Court of February 25, 1977 (Rollo, 103).

In its brief, petitioner raised the following assignment of errors:

I.

RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER SHOULD HAVE GIVEN NOTICE TO PRIVATE RESPONDENT PHILAMGEN OF ANY EXISTING OBLIGATION WITHIN 30 DAYS FROM EXPIRATION OF THE BOND TO HOLD SAID SURETY LIABLE THEREUNDER, DESPITE PETITIONER'S TAKING OVER OF THE WORK ABANDONED BY THE CONTRACTOR BEFORE ITS COMPLETION.

II.

ASSUMING ARGUENDO THAT PETITIONER SHOULD STILL NOTIFY PRIVATE RESPONDENT PHILAMGEN OF ANY EXISTING OBLIGATION UNDER THE BOND DESPITE THE TAKE-OVER OF WORK BY PETITIONER, RESPONDENT COURT OF APPEALS NONETHELESS ERRED IN HOLDING THAT PETITIONER'S LETTER DATED JULY 19, 1963 (EXH. E) TO PRIVATE RESPONDENT WAS NOT SUFFICIENT COMPLIANCE WITH THE CONDITION OF THE BOND.

III.

RESPONDENT COURT OF APPEALS ERRED IN ABSOLVING PRIVATE RESPONDENT PHILAMGEN FROM ITS LIABILITY UNDER THE BOND.

The decisive issue in this case is the correct interpretation and/or application of the condition of the bond relative to its expiration, in correlation with the provisions of the construction contract, the faithful performance of which, said bond was issued to secure.

The bone of contention in this case is the compliance with the notice requirement as a condition in order to hold the surety liable under the bond.

Petitioner claims that it has already complied with such requirement by virtue of its notice dated July 19, 1963 of abandonment of work by FEEI and of its takeover to finish the construction, at the same time formally holding both FEEI and Philamgen liable for the uncompleted work and damages. It further argued that the notice required in the bond within 30 days after its expiration of any existing obligation, is applicable only in case the contractor itself had completed the contract and not when the contractor failed to complete the work, from which arises the continued liability of the surety under its bond as expressly provided for in the contract. Petitioner's contention was sustained by the trial court.

On the other hand, private respondent insists that petitioner's notice dated July 19, 1983 is not sufficient despite previous events that it had knowledge of FEEI's failure to comply with the contract and claims that it cannot be held liable under the bond without notice within thirty days from the expiration of the bond, that there is a subsisting obligation. Private respondent's contention is sustained by the Court of Appeals.

The petition is impressed with merit.

As correctly assessed by the trial court, the evidence on record shows that as early as May 30, 1963, Philamgen was duly informed of the failure of its principal to comply with its undertaking. In fact, said notice of failure was also signed by its Assistant Vice President. On July 19, 1963, when FEEI informed NPC that it was abandoning the construction job, the latter forthwith informed Philamgen of the fact on the same date. Moreover, on August 1, 1963, the fact that Philamgen was seasonably notified, was even bolstered by its request from NPC for information of the per-centage completed by the bond principal prior to the relinquishment of the job to the latter and the reason for said relinquishment. (Record on Appeal, pp. 193-195). The 30-day notice adverted to in the surety bond applies to the completion of the work by the contractor. This completion by the contractor never materialized.

The surety bond must be read in its entirety and together with the contract between NPC and the contractors. The provisions must be construed together to arrive at their true meaning. Certain stipulations cannot be segregated and then made to control.

Furthermore, it is well settled that contracts of insurance are to be construed liberally in favor of the insured and strictly against the insurer. Thus ambiguity in the words of an insurance contract should be interpreted in favor of its beneficiary. (*Serrano v. Court of Appeals*, 130 SCRA 327; July 16, 1984).

In the case at bar, it cannot be denied that the breach of contract in this case, that is, the abandonment of the unfinished work of the transmission line of the petitioner by the contractor Far Eastern Electric, Inc. was within the effective date of the contract and the surety bond. Such abandonment gave rise to the continuing liability of the bond as provided for in the contract which is deemed incorporated in the surety bond executed for its completion. To rule therefore that private respondent was not properly notified would be gross error.

PREMISES CONSIDERED, the decision dated March 25, 1976 and the resolution dated April 19, 1976 of the Court of Appeals are hereby SET ASIDE, and a new one is hereby rendered reinstating the decision of the Court of First Instance of Manila in Civil Case No. 70811 entitled "*National Power Corporation v. Far Eastern Electric, Inc., et al.*"

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Gutierrez, Jr., JJ., concur.

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