STRONGHOLD INSURANCE COMPANY, INC., PETITIONER, VS. REPUBLIC-ASAHI GLASS CORPORATION, RESPONDENT.

G.R. No. 147561. June 22, 2006

Ponente: PANGANIBAN, C.J.

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PANGANIBAN, C.J.:

A surety companys liability under the performance bond it issues is solidary. The death of the principal obligor does not, as a rule, extinguish the obligation and the solidary nature of that liability.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to reverse the March 13, 2001 Decision[2] of the Court of Appeals (CA) in CA-GR CV No. 41630. The assailed Decision disposed as follows:

> WHEREFORE, the Order dated January 28, 1993 issued by the lower court is REVERSED and SET ASIDE. Let the records of the instant case be REMANDED to the lower court for the reception of evidence of all parties.[3]

The Facts

The facts of the case are narrated by the CA in this wise:

> "On May 24, 1989, [respondent] Republic-Asahi Glass Corporation (Republic-Asahi) entered into a contract with x x x Jose D. Santos, Jr., the proprietor of JDS Construction (JDS), for the construction of roadways and a drainage system in Republic-Asahis compound in Barrio Pinagbuhatan, Pasig City, where [respondent] was to pay x x x JDS five million three hundred thousand pesos (P5,300,000.00) inclusive of value added tax for said construction, which was supposed to be completed within a period of two hundred forty (240) days beginning May 8, 1989. In order to guarantee the faithful and satisfactory performance of its undertakings x x x JDS, shall post a performance bond of seven hundred ninety five thousand pesos (P795,000.00). x x x JDS executed, jointly and severally with [petitioner] Stronghold Insurance Co., Inc. (SICI) Performance Bond No. SICI-25849/g(13)9769.
>
> "On May 23, 1989, [respondent] paid to x x x JDS seven hundred ninety five thousand pesos (P795,000.00) by way of downpayment.
>
> "Two progress billings dated August 14, 1989 and September 15, 1989, for the total amount of two hundred seventy four thousand six hundred twenty one pesos and one centavo (P274,621.01) were submitted by x x x JDS to [respondent], which the latter paid. According to [respondent], these two progress billings accounted

for only 7.301% of the work supposed to be undertaken by x x x JDS under the terms of the contract.

"Several times prior to November of 1989, [respondents] engineers called the attention of x x x JDS to the alleged alarmingly slow pace of the construction, which resulted in the fear that the construction will not be finished within the stipulated 240-day period. However, said reminders went unheeded by x x x JDS.

"On November 24, 1989, dissatisfied with the progress of the work undertaken by x x x JDS, [respondent] Republic-Asahi extrajudicially rescinded the contract pursuant to Article XIII of said contract, and wrote a letter to x x x JDS informing the latter of such rescission. Such rescission, according to Article XV of the contract shall not be construed as a waiver of [respondents] right to recover damages from x x x JDS and the latter's sureties.

"[Respondent] alleged that, as a result of x x x JDSs failure to comply with the provisions of the contract, which resulted in the said contracts rescission, it had to hire another contractor to finish the project, for which it incurred an additional expense of three million two hundred fifty six thousand, eight hundred seventy four pesos (P3,256,874.00).

"On January 6, 1990, [respondent] sent a letter to [petitioner] SICI filing its claim under the bond for not less than P795,000.00. On March 22, 1991, [respondent] again sent another letter reiterating its demand for payment under the aforementioned bond. Both letters allegedly went unheeded.

"[Respondent] then filed [a] complaint against x x x JDS and SICI. It sought from x x x JDS payment of P3,256,874.00 representing the additional expenses incurred by [respondent] for the completion of the project using another contractor, and from x x x JDS and SICI, jointly and severally, payment of P750,000.00 as damages in accordance with the performance bond; exemplary damages in the amount of P100,000.00 and attorneys fees in the amount of at least P100,000.00.

"According to the Sheriffs Return dated June 14, 1991, submitted to the lower court by Deputy Sheriff Rene R. Salvador, summons were duly served on defendant-appellee SICI. However, x x x Jose D. Santos, Jr. died the previous year (1990), and x x x JDS Construction was no longer at its address at 2nd Floor, Room 208-A, San Buena Bldg. Cor. Pioneer St., Pasig, Metro Manila, and its whereabouts were unknown.

"On July 10, 1991, [petitioner] SICI filed its answer, alleging that the [respondents] money claims against [petitioner and JDS] have been extinguished by the death of Jose D. Santos, Jr. Even if this were not the case, [petitioner] SICI had been released from its liability under the performance bond because there was no liquidation, with the active participation and/or involvement, pursuant to procedural due process, of herein surety and contractor Jose D. Santos, Jr., hence, there was no ascertainment of the corresponding liabilities of Santos and SICI under the performance bond. At this point in time, said liquidation was impossible because of the death of Santos, who as such can no longer participate in any liquidation. The unilateral liquidation on the party (sic) of [respondent] of the work accomplishments did not bind SICI for being violative of procedural due process. The claim of [respondent] for the forfeiture of the performance bond in the amount of

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> P795,000.00 had no factual and legal basis, as payment of said bond was conditioned on the payment of damages which [respondent] may sustain in the event x x x JDS failed to complete the contracted works. [Respondent] can no longer prove its claim for damages in view of the death of Santos. SICI was not informed by [respondent] of the death of Santos. SICI was not informed by [respondent] of the unilateral rescission of its contract with JDS, thus SICI was deprived of its right to protect its interests as surety under the performance bond, and therefore it was released from all liability. SICI was likewise denied due process when it was not notified of plaintiff-appellants process of determining and fixing the amount to be spent in the completion of the unfinished project. The procedure contained in Article XV of the contract is against public policy in that it denies SICI the right to procedural due process. Finally, SICI alleged that [respondent] deviated from the terms and conditions of the contract without the written consent of SICI, thus the latter was released from all liability. SICI also prayed for the award of P59,750.00 as attorneys fees, and P5,000.00 as litigation expenses.
>
> "On August 16, 1991, the lower court issued an order dismissing the complaint of [respondent] against x x x JDS and SICI, on the ground that the claim against JDS did not survive the death of its sole proprietor, Jose D. Santos, Jr. The dispositive portion of the [O]rder reads as follows:
>
> 'ACCORDINGLY, the complaint against the defendants Jose D. Santos, Jr., doing business under trade and style, JDS Construction and Stronghold Insurance Company, Inc. is ordered DISMISSED.
>
> SO ORDERED.'

"On September 4, 1991, [respondent] filed a Motion for Reconsideration seeking reconsideration of the lower courts August 16, 1991 order dismissing its complaint. [Petitioner] SICI field its Comment and/or Opposition to the Motion for Reconsideration. On October 15, 1991, the lower court issued an Order, the dispositive portion of which reads as follows:

> 'WHEREFORE, premises considered, the Motion for Reconsideration is hereby given due course. The Order dated 16 August 1991 for the dismissal of the case against Stronghold Insurance Company, Inc., is reconsidered and hereby reinstated (sic). However, the case against defendant Jose D. Santos, Jr. (deceased) remains undisturbed.
>
> Motion for Preliminary hearing and Manifestation with Motion filed by [Stronghold] Insurance Company Inc., are set for hearing on November 7, 1991 at 2:00 oclock in the afternoon.
>
> SO ORDERED.'

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"On June 4, 1992, [petitioner] SICI filed its Memorandum for Bondsman/Defendant SICI (Re: Effect of Death of defendant Jose D. Santos, Jr.) reiterating its prayer for the dismissal of [respondents] complaint.

"On January 28, 1993, the lower court issued the assailed Order reconsidering its Order dated October 15, 1991, and ordered the case, insofar as SICI is concerned, dismissed. [Respondent] filed its motion for reconsideration which was opposed by [petitioner] SICI. On April 16, 1993, the lower court denied [respondents] motion for reconsideration. x x x."[4]

Ruling of the Court of Appeals

The CA ruled that SICIs obligation under the surety agreement was not extinguished by the death of Jose D. Santos, Jr. Consequently, Republic-Asahi could still go after SICI for the bond.

The appellate court also found that the lower court had erred in pronouncing that the performance of the Contract in question had become impossible by respondents act of rescission. The Contract was rescinded because of the dissatisfaction of respondent with the slow pace of work and pursuant to Article XIII of its Contract with JDS.

The CA ruled that [p]erformance of the [C]ontract was impossible, not because of [respondents] fault, but because of the fault of JDS Construction and Jose D. Santos, Jr. for failure on their part to make satisfactory progress on the project, which amounted to non-performance of the same. x x x [P]ursuant to the [S]urety [C] ontract, SICI is liable for the non-performance of said [C]ontract on the part of JDS Construction.[5]

Hence, this Petition.[6]

Issue

Petitioner states the issue for the Courts consideration in the following manner:

> "Death is a defense of Santos heirs which Stronghold could also adopt as its defense against obligees claim."[7]

More precisely, the issue is whether petitioners liability under the performance bond was automatically extinguished by the death of Santos, the principal.

The Court's Ruling

The Petition has no merit.

Sole Issue:
Effect of Death on the Surety's Liability

Petitioner contends that the death of Santos, the bond principal, extinguished his liability under the surety bond. Consequently, it says, it is automatically released from any liability under the bond.

As a general rule, the death of either the creditor or the debtor does not extinguish the obligation.[8] Obligations are transmissible to the heirs, except when the transmission is prevented by the law, the stipulations of the parties, or the nature of the obligation.[9] Only obligations that are personal[10] or are identified with the persons themselves are extinguished by death.[11]

Section 5 of Rule 86[12] of the Rules of Court expressly allows the prosecution of money claims arising from a contract against the estate of a deceased debtor. Evidently, those claims are not actually extinguished.[13] What is

extinguished is only the obligees action or suit filed before the court, which is not then acting as a probate court.[14]

In the present case, whatever monetary liabilities or obligations Santos had under his contracts with respondent were not intransmissible by their nature, by stipulation, or by provision of law. Hence, his death did not result in the extinguishment of those obligations or liabilities, which merely passed on to his estate.[15] Death is not a defense that he or his estate can set up to wipe out the obligations under the performance bond. Consequently, petitioner as surety cannot use his death to escape its monetary obligation under its performance bond.

The liability of petitioner is contractual in nature, because it executed a performance bond worded as follows:

> "KNOW ALL MEN BY THESE PRESENTS:
>
> "That we, JDS CONSTRUCTION of 208-A San Buena Building, contractor, of Shaw Blvd., Pasig, MM Philippines, as principal and the STRONGHOLD INSURANCE COMPANY, INC. a corporation duly organized and existing under and by virtue of the laws of the Philippines with head office at Makati, as Surety, are held and firmly bound unto the REPUBLIC ASAHI GLASS CORPORATION and to any individual, firm, partnership, corporation or association supplying the principal with labor or materials in the penal sum of SEVEN HUNDRED NINETY FIVE THOUSAND (P795,000.00), Philippine Currency, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.
>
> "The CONDITIONS OF THIS OBLIGATION are as follows;
>
> "WHEREAS the above bounden principal on the ___ day of _____, 19__ entered into a contract with the REPUBLIC ASAHI GLASS CORPORATION represented by _____, to fully and faithfully. Comply with the site preparation works road and drainage system of Philippine Float Plant at Pinagbuhatan, Pasig, Metro Manila.
>
> "WHEREAS, the liability of the Surety Company under this bond shall in no case exceed the sum of PESOS SEVEN HUNDRED NINETY FIVE THOUSAND (P795,000.00) Philippine Currency, inclusive of interest, attorneys fee, and other damages, and shall not be liable for any advances of the obligee to the principal.
>
> "WHEREAS, said contract requires the said principal to give a good and sufficient bond in the above-stated sum to secure the full and faithfull performance on its part of said contract, and the satisfaction of obligations for materials used and labor employed upon the work;
>
> "NOW THEREFORE, if the principal shall perform well and truly and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term of said contract and any extension thereof that may be granted by the obligee, with notice to the surety and during the life of any guaranty required under the contract, and shall also perform well and truly and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may

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> hereinafter be made, without notice to the surety except when such modifications increase the contract price; and such principal contractor or his or its sub-contractors shall promptly make payment to any individual, firm, partnership, corporation or association supplying the principal of its sub-contractors with labor and materials in the prosecution of the work provided for in the said contract, then, this obligation shall be null and void; otherwise it shall remain in full force and effect. Any extension of the period of time which may be granted by the obligee to the contractor shall be considered as given, and any modifications of said contract shall be considered as authorized, with the express consent of the Surety.
>
> "The right of any individual, firm, partnership, corporation or association supplying the contractor with labor or materials for the prosecution of the work hereinbefore stated, to institute action on the penal bond, pursuant to the provision of Act No. 3688, is hereby acknowledge and confirmed.[16]

As a surety, petitioner is solidarily liable with Santos in accordance with the Civil Code, which provides as follows:

> "Art. 2047. By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.
>
> "If a person binds himself solidarily with the principal debtor, the provisions of Section 4,[17] Chapter 3, Title I of this Book shall be observed. In such case the contract is called a suretyship.
>
> xxx xxx xxx
>
> "Art. 1216. The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected.

Elucidating on these provisions, the Court in Garcia v. Court of Appeals[18] stated thus:

> "x x x. The suretys obligation is not an original and direct one for the performance of his own act, but merely accessory or collateral to the obligation contracted by the principal. Nevertheless, although the contract of a surety is in essence secondary only to a valid principal obligation, his liability to the creditor or promisee of the principal is said to be direct, primary and absolute; in other words, he is directly and equally bound with the principal. x x x."[19]

Under the law and jurisprudence, respondent may sue, separately or together, the principal debtor and the petitioner herein, in view of the solidary nature of their liability. The death of the principal debtor will not work to convert, decrease or nullify the substantive right of the solidary creditor. Evidently, despite the death of the principal debtor, respondent may still sue petitioner alone, in accordance with the solidary nature of the latters liability under the performance bond.

WHEREFORE, the Petition is DENIED and the Decision of the Court of Appeals AFFIRMED. Costs against petitioner.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

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[1] Rollo, pp. 9-20.

[2] Id. at 23-37. Seventeenth Division. Penned by Justice Remedios A. Salazar-Fernando, with the concurrence of Justices Romeo A. Brawner (Division chair) and Juan Q. Enriquez Jr. (member).

[3] Assailed CA Decision, p. 14; rollo, p. 36.

[4] Id. at 2-5; id. at 24-27.

[5] Id. at 13-14; id. at 35-36.

[6] To resolve old cases, the Court created the Committee on Zero Backlog of Cases on January 26, 2006. Consequently, the Court resolved to prioritize the adjudication of long-pending cases by redistributing them among all the justices. This case was recently raffled and assigned to the undersigned ponente for study and report.

[7] Petitioners Memorandum, p. 6; rollo, p. 172. Original in uppercase.

[8] A. Tolentino, Commentaries And Jurisprudence On The Civil Code 272, Vol. IV (1991).

[9] Id. See also the Civil Code, Art. 1311, which states:

Art. 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

[10] Examples of purely personal actions are those for support, divorce, annulment of marriage, legal separation (Lapuz Sy v. Eufemio, 43 SCRA 177, January 31, 1972). See also Javier Security Special Watchman Agency v. Shell-Craft & Button Corp., 117 Phil. 218, January 31, 1963, for an illustration of a contract that is not transmissible by its nature, as when the special or personal qualification of the obligor constitutes one of the principal motives of the contract.

[11] A. Tolentino, Commentaries And Jurisprudence On The Civil Code, supra note 8.

[12] SEC. 5. Claims which must be filed under the notice. If not filed, barred; exceptions.--All claims for money against the decedent, arising from contract, express or implied, whether the same be due, not due, or contingent, all claims for funeral expenses and expenses for the last sickness of the decedent, and judgment for money against the decedent, must be filed within the time limited in the notice; otherwise they are barred forever, except that they may be set forth as counterclaims in any action that the executor or administrator may bring against the claimants. x x x.

[13] E. Paras, Rules Of Court Annotated 125, Vol. 1 (1989).

[14] Id.

[15] See Limjoco v. Intestate of Fragante, 80 Phil. 776, April 27, 1948; Suiliong &Co. v. Chio-Taysan, 12 Phil. 13, November 11, 1908; Pavia v. De La Rosa, 8 Phil. 70, March 18, 1907.

[16] Performance Bond; rollo, p. 69.

[17] This refers to the Civil Code, Arts. 1207 to 1222.

[18] 191 SCRA 493, November 20, 1990. See also International Finance Corporation v. Imperial Textile Mills, Inc., GR 160324, November 15, 2005.

[19] Id. at 495-496, per Cruz, J.

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