PRUDENTIAL GUARANTEE AND ASSURANCE INC., PETITIONER, VS. ANSCOR LAND, INC., RESPONDENT.

G.R. No. 177240. September 08, 2010

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

This petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assails the Decision[1] dated April 28, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 72854 which modified the Decision[2] promulgated on September 2, 2002 by the Construction Industry Arbitration Commission (CIAC) to the effect that herein petitioner Prudential Guarantee and Assurance Inc. (PGAI) was declared solidarily liable with its principal Kraft Realty and Development Corporation (KRDC) under the performance bond.

The facts follow.

On August 2, 2000, Anscor Land, Inc. (ALI) and KRDC entered into a Construction Contract[3] for the construction of an 8-unit townhouse (project) located in Capitol Hills, Quezon City.

Under the contract, KRDC was to build and complete the project within 275 continuous calendar days from the date of receipt of a notice to proceed for the consideration of P18,800,000.00.

As part of its undertaking, KRDC submitted a surety bond amounting to P4,500,000.00 to secure the reimbursement of the down payment paid by ALI in case of failure to finish the project and a performance bond amounting to P4,700,000.00 to guarantee the supply of labor, materials, tools, equipment, and necessary supervision to complete the project. The said bonds were issued in favor of ALI by herein petitioner PGAI.

Under the Performance Bond,[4] the parties agreed on a time-bar provision which states:

> ...Furthermore, it is hereby agreed and understood that PRUDENTIAL GUARANTEE AND ASSURANCE INC., shall not be liable for any claim not discovered and presented to the company within ten days from the expiration of this bond or from the occurrence of the default or failure of the principal, whichever is the earliest, and that the obligee hereby waives his right to file any claim against the Surety after the termination of the period of ten days above mentioned after which time this bond shall definitely terminate and be deemed absolutely cancelled.

KRDC then received a notice to proceed on November 24, 1999. On October 16, 2000 or 325 days after KRDC received the notice to proceed, and 50 days beyond the contract date of completion, ALI sent PGAI a letter[5] notifying the latter that the contract with KRDC was terminated due to "very serious delays". The letter also informed PGAI that ALI "may be making claims against the said bonds".

KRDC, through a letter on October 20, 2000, asked ALI to reconsider its decision to terminate the contract and requested that it be allowed to continue with the project. On October 27, 2000, ALI replied[6] with regrets that it stands by its earlier decision to terminate the construction contract.

Through a letter[7] dated November 29, 2001, or exactly one (1) year after the expiration date in the performance bond, ALI reiterated its claim against the performance bond issued by PGAI amounting to P3,852,800.84. PGAI however did not respond to the letter.

On February 7, 2002, ALI commenced arbitration proceedings against KRDC and PGAI in the CIAC. PGAI answered with cross-claim contending that it was not a party to the construction contract and that the claim of ALI against the bonds was filed beyond the expiration period.

On September 2, 2002, the CIAC rendered judgment[8] awarding a total of P7,552,632.74 to ALI and a total of P1,292,487.81 to KRDC. CIAC also allowed the offsetting of the awards to both parties which resulted to a net amount due to ALI of P6,260,144.93 to be paid by KRDC. Meanwhile, the CIAC found PGAI liable for the reimbursement of the unliquidated portion of the down payment as a solidary liability under the surety bond in the amount of P1,771,264.06.[9]

In the same judgment, the CIAC absolved PGAI from a claim against the performance bond. It reasoned that ALI belatedly filed its claim on the performance bond. The CIAC accepted the view that the November 29, 2001 letter of ALI to PGAI was the first and only claim on the performance bond, which was filed unquestionably beyond the allowed period for filing claims under the contract.

The CIAC ruled that the October 16, 2000 letter of ALI to PGAI did not constitute a proper "claim" under the performance bond. In so ruling, the CIAC relied on the tenor of the letter which used the phrase "may be making claims against the said bonds". The CIAC interpreted this phrase as tentative at best and far from a positive claim against PGAI. According to the CIAC, the letter merely informed PGAI of the termination of the construction contract between ALI and KRDC and in no sense did such letter present a valid claim against the performance bond issued by PGAI.

ALI then filed a petition for review on October 3, 2002[10] with the CA questioning the decision of the CIAC to release PGAI from its solidary liability on the performance bond.

The CA found the petition meritorious in its questioned Decision[11] dated April 28, 2006, to wit:

> WHEREFORE, the petition is GRANTED. The decretal portion of the decision is MODIFIED to the effect that PGAI is hereby pronounced solidarily liable with KRDC under the performance bond.
>
> SO ORDERED.[12]

Petitioner PGAI now comes to this Court to seek relief.

Petitioner argues that the CIAC had no jurisdiction over the dispute as regards the claim of ALI against the performance bond because petitioner was not a party to the construction contract. It maintains that Executive Order (EO) No. 1008[13] did not vest jurisdiction on the CIAC to settle disputes between a party to a construction contract on one hand and a non-party on the other.

The petitioner contends that CIAC's jurisdiction was limited to the construction industry and cannot extend to surety or guarantee contracts. By reason of the lack of jurisdiction of the CIAC over the dispute, the September 2, 2002 judgment[14] of the CIAC was void with regard to the liability of PGAI.

As to the award made by the CIAC on ALI's claims, petitioner maintains that it cannot be held liable under the performance bond because clearly, under the time-bar provision in the said bond, the claim made by ALI in its letter to PGAI dated November 29, 2001 was submitted one (1) year late. Petitioner points out that such letter was the first and only definite claim that ALI made against the performance bond and unfortunately, it was filed beyond the allowed period. Hence, the Decision of the CA declaring PGAI solidarily liable with KRDC under the

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performance bond is erroneous and should be struck down.

On the other hand, respondent avers that the construction contract itself provided that the performance and surety bond shall be deemed part of the construction contract, to wit:

> Article 1
> CONTRACT DOCUMENTS
>
> 1.1 The following shall form part of this Contract and together with this Contract, are known as the "Contract Documents":
>
> a. Bid Proposal
>
> x x x x
>
> d. Notice to proceed
>
> x x x x
>
> j. Appendices A & B (respectively, Surety Bond for Performance and, Supply of Materials by the Developer)[15]

By reason of this express provision in the construction contract, respondent maintains that petitioner PGAI became a party to such contract when it submitted its Surety and Performance bonds. Consequently, petitioner's argument that CIAC has not acquired jurisdiction over PGAI because the latter was not a party to the construction contract, is untenable.

As to the alleged lack of jurisdiction of CIAC over the dispute arising from the surety contract, respondent cites EO No. 1008, which provides that any dispute connected with a construction contract comes within the original and exclusive jurisdiction of the CIAC. The surety bond being an integral part of the construction contract, it is necessarily connected thereto which brings it under the jurisdiction of the CIAC.

On the issue of timeliness of the "claim", respondent insists that its letter dated October 16, 2000 was for all intents and purposes a notification of termination of the construction contract and at the same time a notice to petitioner that respondent is in fact making a claim on the performance bond. Contrary to PGAI's view that the November 29, 2001 letter was the first and only claim made, respondent asserts that the said letter was merely a reiteration of its earlier October 16, 2000 claim.

In fine, there are two (2) main issues for this Court to resolve, to wit:

> I.
>
> Whether or not the CIAC had jurisdiction over the dispute.
>
> II.
>
> Whether or not the respondent made its claim on the performance bond within the period allowed by the time-bar provision.

First Issue - Jurisdiction of the CIAC

Section 4 of EO No. 1008 defines the jurisdiction of the CIAC:

> Sec. 4. Jurisdiction. The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These

> disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.
>
> The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual time and delays; maintenance and defects; payment, default of employer or contractor and changes in contract cost.
>
> Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines. (Italics supplied.)

EO No. 1008 expressly vests in the CIAC original and exclusive jurisdiction over disputes arising from or connected with construction contracts entered into by parties that have agreed to submit their dispute to voluntary arbitration. Under the aforequoted provision, it is apparent that a dispute must meet two (2) requirements in order to fall under the jurisdiction of the CIAC: first, the dispute must be somehow connected to a construction contract; and second, the parties must have agreed to submit the dispute to arbitration proceedings.

As regards the first requirement, the Performance Bond issued by the petitioner was meant to guarantee the supply of labor, materials, tools, equipment, and necessary supervision to complete the project. A guarantee or a surety contract under Article 2047[16] of the Civil Code of the Philippines is an accessory contract because it is dependent for its existence upon the principal obligation guaranteed by it.[17]

In fact, the primary and only reason behind the acquisition of the performance bond by KRDC was to guarantee to ALI that the construction project would proceed in accordance with the contract terms and conditions. In effect, the performance bond becomes liable for the completion of the construction project in the event KRDC fails in its contractual undertaking.

Because of the performance bond, the construction contract between ALI and KRDC is guaranteed to be performed even if KRDC fails in its obligation. In practice, a performance bond is usually a condition or a necessary component of construction contracts. In the case at bar, the performance bond was so connected with the construction contract that the former was agreed by the parties to be a condition for the latter to push through and at the same time, the former is reliant on the latter for its existence as an accessory contract.

Although not the construction contract itself, the performance bond is deemed as an associate of the main construction contract that it cannot be separated or severed from its principal. The Performance Bond is significantly and substantially connected to the construction contract that there can be no doubt it is the CIAC, under Section 4 of EO No. 1008, which has jurisdiction over any dispute arising from or connected with it.

On the second requirement that the parties to a dispute must have previously agreed to submit to arbitration, it is clear from Article 24 of the Construction Contract itself that the parties have indeed agreed to submit their disputes to arbitration, to wit:

> Article 24
> DISPUTES AND ARBITRATION
>
> All disputes, controversies, or differences between the parties arising out of or in connection with this Contract, or arising out of or in connection with the execution of the WORK shall be settled in accordance with the procedures laid down by the Construction Industry Arbitration Commission. The cost of arbitration shall be borne jointly by both CONTRACTOR and DEVELOPER on a fifty-fifty (50-50) basis.[18]

Petitioner however argues that such provision in the construction contract does not bind it because it is not a party to such contract and in effect did not give its consent to submit to arbitration in case of any dispute on the performance bond. Such argument is untenable. The Performance Bond issued by petitioner states that PGAI

agreed --

> To guarantee the supply of labor, materials, tools, equipment and necessary supervision to complete the construction of Proposed Sigma Townhouses of the Obligee as per Notice to Proceed dated November 23, 1999, copy of which is hereto attached and made an integral part of this bond.[19]

When it executed the performance bond, PGAI's undertaking thereunder was that of a surety to the obligation of KRDC, the principal under the construction contract. PGAI should not be allowed now to insist that it had nothing to do with the construction contract and should be viewed as a non-party. Since the liability of petitioner as surety is solidary with that of KRDC, it was properly impleaded as it would be the party ultimately answerable under the bond should KRDC be adjudged liable for breach of contract. Furthermore, it is well settled that accessory contracts should not be read independently of the main contract. They should be construed together in order to arrive at their true meaning.[20] In Velasquez v. Court of Appeals,[21] the Court labeled such rule as the "complementary contracts construed together" doctrine. It states:

> That the "complementary contracts construed together" doctrine applies in this case finds support in the principle that the surety contract is merely an accessory contract and must be interpreted with its principal contract, which in this case was the loan agreement. This doctrine closely adheres to the spirit of Art. 1374 of the Civil Code which states that-
>
> Art. 1374. The various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly.

In the case at bar, the performance bond was silent with regard to arbitration. On the other hand, the construction contract was clear as to arbitration in the event of disputes. Applying the said doctrine, we rule that the silence of the accessory contract in this case could only be construed as acquiescence to the main contract. The construction contract breathes life into the performance bond. We are not ready to assume that the performance bond contains reservations with regard to some of the terms and conditions in the construction contract where in fact it is silent. On the other hand, it is more reasonable to assume that the party who issued the performance bond carefully and meticulously studied the construction contract that it guaranteed, and if it had reservations, it would have and should have mentioned them in the surety contract.

Second Issue - Petitioner's Liability Under the Performance Bond

On the second issue, the crux of the controversy revolves upon a letter dated October 16, 2000 sent by ALI to PGAI. It reads:

> x x x x
>
> This pertains to the contract between Kraft Realty Development Corp. and Anscor Land, Inc., which is covered by surety and performance bonds by your good company.
>
> Please be advised that we are now terminating the contract of Kraft due to the breach by Kraft of the terms and conditions of the construction contract. More specifically, the project has accumulated very serious delays, in spite of the full cooperation that this company has extended to Kraft.
>
> Kindly refer to the attached letter of termination dated 16 October 2000.
>
> Anscor Land [Inc.] may be making claims against the said bonds and in this regard, kindly coordinate with the following for any matter with which we can assist you with.
>
> Engr. Teodelito de Vera
> Anscor Land, Inc.

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> Tel. 812-7941 to 48 Fax 813-5301
>
> Thank you for your kind attention.[22] (Italics supplied.)

The question really is whether or not the foregoing letter constituted a valid claim and effectively complied with the time-bar provision in the performance bond.

It is clear that ALI communicated two (2) important points to PGAI in the letter. First, that ALI is terminating the construction contract with KRDC and second, that ALI may be making a claim on the bonds issued by PGAI.

The time-bar provision in the Performance Bond provides that any claim against the bond should be "discovered and presented to the company within ten days from the expiration of this bond or from the occurrence of the default or failure of the principal, whichever is the earliest". The purpose of this provision in the performance bond is to give the issuer, in this case PGAI, notice of the claim at the earliest possible time and to afford the issuer sufficient time to evaluate, and examine the validity of the claim while the evidence or indicators of breach are fresh. In the construction industry, time is precious, delay costs money and postponement in making a claim could cause additional expenses.

In line with the rationale behind the time-bar provision, we rule that the letter dated October 16, 2000 was a sufficient claim. The tenor of the letter adequately put PGAI on notice that ALI has terminated the contract because of serious delays tantamount to breach by KRDC of its obligations. The letter timely informed PGAI that ALI was in fact terminating the construction contract and thereby giving rise to the obligation of PGAI under the performance bond. PGAI was informed within the time-bar provision and had all the opportunity to conduct its evaluation and examination as to the validity of the termination.

The CA thus correctly ruled that:

> The fact of contract termination had been made known to PGAI as early as October 16, 2000. This termination consequently meant that the principal KRDC would no longer be able to supply "labor, materials, tools, equipment and necessary supervision" to complete the project. It was at this time, therefore, that PGAI's obligation guaranteeing the project completion arose, although the amount of payment was still undetermined.
>
> That ALI merely used the word "may" in expressing its intent to proceed against the bond does not make its claim any less categorical as argued by PGAI. The point is the very condition giving rise to the obligation to pay, i.e. KRDC's default and the resulting contract termination, was clearly mentioned in the 16 October 2000 letter. The citation of this fact is more than sufficient to place PGAI in notice that ALI shall be making claims on the bonds.
>
> x x x x
>
> But the important consideration is that ALI, by its 16 October 2000 letter, was informing PGAI of the contract termination, the very condition for its liabilities under the performance bond to accrue. ALI had no other purpose in sending the letter than to notify PGAI that it was intending to proceed against the performance bond. PGAI makes much out of ALI's failure to identify the particular bond against which it would be claiming. But the contract termination necessarily implies that there would be hiatus in the supply of labor and materials.
>
> Surely, no bond would answer for the non-implementation of contractual provisions other than the performance bond. Further, the surety bond only guarantees reimbursement of the portion of the downpayment and not the supply of labor, materials and equipment.[23] (Emphasis supplied, italics in the original.)

In interpreting the time-bar provision, the absence of any ambiguity in the words used would lead to the conclusion that the generally accepted meaning of the words shall control. In the time-bar provision, the word

"claim" does not give rise to any ambiguity in interpretation and does not call for a stretched understanding.

In Finasia Investments and Finance Corporation v. Court of Appeals,[24] the Court had the occasion to rule that:

> The word "claim" is also defined as:
>
> Right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, unsecured.
>
> In conflicts of law, a receiver may be appointed in any state which has jurisdiction over the defendant who owes a claim.[25] (Italics supplied.)

In the case at bar, the claim of ALI against PGAI arose from the failure of KRDC to perform its obligation under the construction contract. ALI therefore already had the "claim" or "right to payment" against PGAI in the maximum amount of P4,700,000.00 from the moment KRDC failed to comply with its obligation. According to the time-bar provision, in order to enforce such claim or recover the said amount, ALI shall present its claim within ten (10) days from the occurrence of the default or failure of KRDC.

The October 16, 2000 letter was the presentation of the claim. ALI's intent to recover its claim was communicated clearly to PGAI. By informing PGAI of the termination of the contract with KRDC, ALI in effect presented a situation where PGAI is put on notice that ALI in fact has a right to payment by virtue of the performance bond and it intends to recover it. Undeniably, ALI has substantially complied with the time-bar provision of the performance bond.

WHEREFORE, the petition is DENIED and the Decision dated April 28, 2006 of the Court of Appeals in CA-G.R. SP No. 72854 is hereby AFFIRMED.

With costs against the petitioner.

SO ORDERED.

Carpio Morales, (Chairperson), Bersamin, Del Castillo,[*] and Sereno, JJ., concur.

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[*] Designated additional member per Special Order No. 879 dated August 13, 2010.

[1] Rollo, pp. 47-64. Penned by Associate Justice Ruben T. Reyes (now a retired member of this Court), with Associate Justices Rebecca De Guia-Salvador and Aurora Santiago-Lagman concurring.

[2] Id. at 83-114.

[3] CA rollo, pp. 89-106.

[4] Id. at 57.

[5] Id. at 200.

[6] Id. at 201.

[7] Id. at 202.

[8] Id. at 24-56.

[9] Id. at 53-55.

[10] Id. at 6.

[11] Rollo, pp. 47-64.

[12] Id. at 63-64.

[13] CREATING AN ARBITRATION MACHINERY IN THE CONSTRUCTION INDUSTRY OF THE PHILIPPINES, February 4, 1985.

[14] CA rollo, pp. 24-56.

[15] Id. at 90.

[16] 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, Chapter 3, Title I of this Book shall be observed. In such case the contract is called a suretyship.

[17] Intra-Strata Assurance Corporation v. Republic, G.R. No. 156571, July 9, 2008, 557 SCRA 363, 369, citing Garcia, Jr. v. Court of Appeals, G.R. No. 80201, November 20, 1990, 191 SCRA 493, 495.

[18] CA rollo, p. 103.

[19] Id. at 57.

[20] Rigor v. Consolidated Orix Leasing and Finance Corporation, G.R. No. 136423, August 20, 2002, 387 SCRA 437, 445, citing National Power Corporation v. Court of Appeals, L-No. 43706, November 14, 1986, 145 SCRA 533, 539.

[21] G.R. No. 124049, June 30, 1999, 309 SCRA 539, 546.

[22] CA rollo, p. 200.

[23] Rollo, pp. 61 and 63.

[24] G.R. No. 107002, October 7, 1994, 237 SCRA 447, 450.

[25] BLACK'S LAW DICTIONARY, 5th ed., p. 224.

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