

FIRST LEPANTO-TAISHO INSURANCE CORPORATION (NOW KNOWN AS FLT PRIME INSURANCE CORPORATION), PETITIONER, VS. CHEVRON PHILIPPINES, INC. (FORMERLY KNOWN AS CALTEX [PHILIPPINES], INC...

G.R. No. 177839. January 18, 2012

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

Before this Court is a Rule 45 Petition assailing the Decision[1] dated November 20, 2006 and Resolution[2] dated May 8, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 86623, which reversed the Decision[3] dated August 5, 2005 of the Regional Trial Court (RTC) of Makati City, Branch 59 in Civil Case No 02-857.

Respondent Chevron Philippines, Inc., formerly Caltex Philippines, Inc., sued petitioner First Lepanto-Taisho Insurance Corporation (now known as FLT Prime Insurance Corporation) for the payment of unpaid oil and petroleum purchases made by its distributor Fumitechniks Corporation (Fumitechniks).

Fumitechniks, represented by Ma. Lourdes Apostol, had applied for and was issued Surety Bond FLTICG (16) No. 01012 by petitioner for the amount of P15,700,000.00. As stated in the attached rider, the bond was in compliance with the requirement for the grant of a credit line with the respondent "to guarantee payment/remittance of the cost of fuel products withdrawn within the stipulated time in accordance with the terms and conditions of the agreement." The surety bond was executed on October 15, 2001 and will expire on October 15, 2002.[4]

Fumitechniks defaulted on its obligation. The check dated December 14, 2001 it issued to respondent in the amount of P11,461,773.10, when presented for payment, was dishonored for reason of "Account Closed." In a letter dated February 6, 2002, respondent notified petitioner of Fumitechniks' unpaid purchases in the total amount of P15,084,030.30. In its letter-reply dated February 13, 2002, petitioner through its counsel, requested that it be furnished copies of the documents such as delivery receipts.[5] Respondent complied by sending copies of invoices showing deliveries of fuel and petroleum products between November 11, 2001 and December 1, 2001.

Simultaneously, a letter[6] was sent to Fumitechniks demanding that the latter submit to petitioner the following: (1) its comment on respondent's February 6, 2002 letter; (2) copy of the agreement secured by the Bond, together with copies of documents such as delivery receipts; and (3) information on the particulars, including "the terms and conditions, of any arrangement that [Fumitechniks] might have made or any ongoing negotiation with Caltex in connection with the settlement of the obligations subject of the Caltex letter."

In its letter dated March 1, 2002, Fumitechniks through its counsel wrote petitioner's counsel informing that it cannot submit the requested agreement since no such agreement was executed between Fumitechniks and respondent. Fumitechniks also enclosed a copy of another surety bond issued by CICI General Insurance Corporation in favor of respondent to secure the obligation of Fumitechniks and/or Prime Asia Sales and Services,

Inc. in the amount of P15,000,000.00.[7] Consequently, petitioner advised respondent of the non-existence of the principal agreement as confirmed by Fumitechniks. Petitioner explained that being an accessory contract, the bond cannot exist without a principal agreement as it is essential that the copy of the basic contract be submitted to the proposed surety for the appreciation of the extent of the obligation to be covered by the bond applied for.[8]

On April 9, 2002, respondent formally demanded from petitioner the payment of its claim under the surety bond. However, petitioner reiterated its position that without the basic contract subject of the bond, it cannot act on respondent's claim; petitioner also contested the amount of Fumitechniks' supposed obligation.[9]

Alleging that petitioner unjustifiably refused to heed its demand for payment, respondent prayed for judgment ordering petitioner to pay the sum of P15,080,030.30, plus interest, costs and attorney's fees equivalent to ten percent of the total obligation.[10]

Petitioner, in its Answer with Counterclaim,[11] asserted that the Surety Bond was issued for the purpose of securing the performance of the obligations embodied in the Principal Agreement stated therein, which contract should have been attached and made part thereof.

After trial, the RTC rendered judgment dismissing the complaint as well as petitioner's counterclaim. Said court found that the terms and conditions of the oral credit line agreement between respondent and Fumitechniks have not been relayed to petitioner and neither were the same conveyed even during trial. Since the surety bond is a mere accessory contract, the RTC concluded that the bond cannot stand in the absence of the written agreement secured thereby. In holding that petitioner cannot be held liable under the bond it issued to Fumitechniks, the RTC noted the practice of petitioner, as testified on by its witnesses, to attach a copy of the written agreement (principal contract) whenever it issues a surety bond, or to be submitted later if not yet in the possession of the assured, and in case of failure to submit the said written agreement, the surety contract will not be binding despite payment of the premium.

Respondent filed a motion for reconsideration while petitioner filed a motion for partial reconsideration as to the dismissal of its counterclaim. With the denial of their motions, both parties filed their respective notice of appeal.

The CA ruled in favor of respondent, the dispositive portion of its decision reads:

WHEREFORE, the appealed Decision is REVERSED and SET ASIDE. A new judgment is hereby entered ORDERING defendant-appellant First Lepanto-Taisho Insurance Corporation to pay plaintiff-appellant Caltex (Philippines) Inc. now Chevron Philippines, Inc. the sum of P15,084,030.00.

SO ORDERED.[12]

According to the appellate court, petitioner cannot insist on the submission of a written agreement to be attached to the surety bond considering that respondent was not aware of such requirement and unwritten company policy. It also declared that petitioner is estopped from assailing the oral credit line agreement, having consented to the same upon presentation by Fumitechniks of the surety bond it issued. Considering that such oral contract between Fumitechniks and respondent has been partially executed, the CA ruled that the provisions of the Statute of Frauds do not apply.

With the denial of its motion for reconsideration, petitioner appealed to this Court raising the following issues:

I. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN ITS INTERPRETATION OF THE PROVISIONS OF THE SURETY BOND WHEN IT HELD THAT THE SURETY BOND SECURED AN ORAL CREDIT LINE AGREEMENT NOTWITHSTANDING THE STIPULATIONS THEREIN CLEARLY SHOWING BEYOND DOUBT THAT WHAT WAS BEING SECURED WAS A WRITTEN AGREEMENT, PARTICULARLY, THE WRITTEN AGREEMENT A COPY OF WHICH WAS

EVEN REQUIRED TO BE ATTACHED TO THE SURETY BOND AND MADE A PART THEREOF.

II. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT STRIKING OUT THE QUESTIONED RESPONDENT'S EVIDENCE FOR BEING CONTRARY TO THE PAROL EVIDENCE RULE, IMMATERIAL AND IRRELEVANT AND CONTRARY TO THE STATUTE OF FRAUDS.

III. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT STRIKING OUT THE RESPONDENT'S MOTION FOR RECONSIDERATION OF THE RTC DECISION FOR BEING A MERE SCRAP OF PAPER AND PRO FORMA AND, CONSEQUENTLY, IN NOT DECLARING THE RTC DECISION AS FINAL AND EXECUTORY IN SO FAR AS IT DISMISSED THE COMPLAINT.

IV. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN REVERSING THE RTC DECISION AND IN NOT GRANTING PETITIONER'S COUNTERCLAIM.[13]

The main issue to be resolved is one of first impression: whether a surety is liable to the creditor in the absence of a written contract with the principal.

Section 175 of the Insurance Code defines a suretyship as a contract or agreement whereby a party, called the surety, guarantees the performance by another party, called the principal or obligor, of an obligation or undertaking in favor of a third party, called the obligee. It includes official recognizances, stipulations, bonds or undertakings issued under Act 536,[14] as amended. Suretyship arises upon the solidary binding of a person - deemed the surety - with the principal debtor, for the purpose of fulfilling an obligation.[15] Such undertaking makes a surety agreement an ancillary contract as it presupposes the existence of a principal contract. Although the contract of a surety is in essence secondary only to a valid principal obligation, the surety becomes liable for the debt or duty of another although it possesses no direct or personal interest over the obligations nor does it receive any benefit therefrom. And notwithstanding the fact that the surety contract is secondary to the principal obligation, the surety assumes liability as a regular party to the undertaking.[16]

The extent of a surety's liability is determined by the language of the suretyship contract or bond itself. It cannot be extended by implication, beyond the terms of the contract.[17] Thus, to determine whether petitioner is liable to respondent under the surety bond, it becomes necessary to examine the terms of the contract itself.

Surety Bond FLTICG (16) No. 01012 is a standard form used by petitioner, which states:

That we, FUMITECHNIKS CORP. OF THE PHILS. of #154 Anahaw St., Project 7, Quezon City as principal and First Lepanto-Taisho Insurance Corporation a corporation duly organized and existing under and by virtue of the laws of the Philippines as Surety, are held firmly bound unto CALTEX PHILIPPINES, INC. of _____ in the sum of FIFTEEN MILLION SEVEN HUNDRED THOUSAND ONLY PESOS (P15,700,000.00), 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 15[th] day of October, 2001 entered into [an] agreement with CALTEX PHILIPPINES, INC. of _____ to fully and faithfully

a copy of which is attached hereto and made a part hereof:

WHEREAS, said Obligee__ requires said principal to give a good and sufficient bond in the above stated sum to secure the full and faithful performance on his part of said agreement__.

NOW THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements stipulated in said agreement__ then this obligation shall be null and void;

otherwise it shall remain in full force and effect.

The liability of First Lepanto-Taisho Insurance Corporation under this bond will expire on October 15, 2002__.

x x x x[18] (Emphasis supplied.)

The rider attached to the bond sets forth the following:

WHEREAS, the Principal has applied for a Credit Line in the amount of PESOS: Fifteen Million Seven Hundred thousand only (P15,700,000.00), Philippine Currency with the Obligee for the purchase of Fuel Products;

WHEREAS, the obligee requires the Principal to post a bond to guarantee payment/remittance of the cost of fuel products withdrawn within the stipulated time in accordance with terms and conditions of the agreement;

IN NO CASE, however, shall the liability of the Surety hereunder exceed the sum of PESOS: Fifteen million seven hundred thousand only (P15,700,000.00), Philippine Currency.

NOW THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms and conditions and agreements stipulated in said undertakings, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

The liability of FIRST LEPANTO-TAISHO INSURANCE CORPORATION, under this Bond will expire on 10.15.01_. Furthermore, it is hereby understood that FIRST LEPANTO-TAISHO INSURANCE CORPORATION will not be liable for any claim not presented to it in writing within fifteen (15) days from the expiration of this bond, and that the Obligee hereby waives its right to claim or file any court action against the Surety after the termination of fifteen (15) days from the time its cause of action accrues.[19]

Petitioner posits that non-compliance with the submission of the written agreement, which by the express terms of the surety bond, should be attached and made part thereof, rendered the bond ineffective. Since all stipulations and provisions of the surety contract should be taken and interpreted together, in this case, the unmistakable intention of the parties was to secure only those terms and conditions of the written agreement. Thus, by deleting the required submission and attachment of the written agreement to the surety bond and replacing it with the oral credit agreement, the obligations of the surety have been extended beyond the limits of the surety contract.

On the other hand, respondent contends that the surety bond had been delivered by petitioner to Fumitechniks which paid the premiums and delivered the bond to respondent, who in turn, opened the credit line which Fumitechniks availed of to purchase its merchandise from respondent on credit. Respondent points out that a careful reading of the surety contract shows that there is no such requirement of submission of the written credit agreement for the bond's effectivity. Moreover, respondent's witnesses had already explained that distributorship accounts are not covered by written distribution agreements. Supplying the details of these agreements is allowed as an exception to the parol evidence rule even if it is proof of an oral agreement. Respondent argues that by introducing documents that petitioner sought to exclude, it never intended to change or modify the contents of the surety bond but merely to establish the actual terms of the distribution agreement between Fumitechniks and respondent, a separate agreement that was executed shortly after the issuance of the surety bond. Because petitioner still issued the bond and allowed it to be delivered to respondent despite the fact that a copy of the written distribution agreement was never attached thereto, respondent avers that clearly, such attaching of the copy of the principal agreement, was for evidentiary purposes only. The real intention of the bond was to secure the payment of all the purchases of Fumitechniks from respondent up to the maximum amount allowed under the bond.

A reading of Surety Bond FLTICG (16) No. 01012 shows that it secures the payment of purchases on credit by Fumitechniks in accordance with the terms and conditions of the "agreement" it entered into with respondent. The word "agreement" has reference to the distributorship agreement, the principal contract and by implication included the credit agreement mentioned in the rider. However, it turned out that respondent has executed written agreements only with its direct customers but not distributors like Fumitechniks and it also never relayed the terms and conditions of its distributorship agreement to the petitioner after the delivery of the bond. This was clearly admitted by respondent's Marketing Coordinator, Alden Casas Fajardo, who testified as follows:

Atty. Selim:

Q :

Mr. Fajardo[,] you mentioned during your cross-examination that the surety bond as part of the requirements of [Fumitechniks] before the Distributorship Agreement was approved?

A :

Yes Sir.

x x x x

Q :

Is it the practice or procedure at Caltex to reduce distributorship account into writing?

x x x x

A :

No, its not a practice to make an agreement.

x x x x

Atty. Quiroz:

Q :

What was the reason why you are not reducing your agreement with your client into writing?

A :

Well, of course as I said, there is no fix pricing in terms of distributorship agreement, its usually with regards to direct service to the customers which have direct fixed price.

x x x x

Q :

These supposed terms and conditions that you agreed with [Fumitechniks], did you relay to the defendant...

A :

Yes Sir.

x x x x

Q :

How did you relay that, how did you relay the terms and conditions to the defendant?

A :

I don't know, it was during the time for collection because I collected them and explain the terms and conditions.

Q :

You testified awhile ago that you did not talk to the defendant First Lepanto-Taisho Insurance Corporation?

A :

I was confused with the question. I'm talking about Malou Apostol.

Q :

So, in your answer, you have not relayed those terms and conditions to the defendant First Lepanto, you have not?

A :

Yes Sir.

Q :

And as of this present, you have not yet relayed the terms and conditions?

A :

Yes Sir.

x x x x [20]

Respondent, however, maintains that the delivery of the bond and acceptance of premium payment by petitioner binds the latter as surety, notwithstanding the non-submission of the oral distributorship and credit agreement which understandably cannot be attached to the bond.

The contention has no merit.

The law is clear that a surety contract should be read and interpreted together with the contract entered into between the creditor and the principal. Section 176 of the Insurance Code states:

Sec. 176. The liability of the surety or sureties shall be joint and several with the obligor and shall be limited to the amount of the bond. It is determined strictly by the terms of the contract of suretyship in relation to the principal contract between the obligor and the obligee. (Emphasis supplied.)

A surety contract is merely a collateral one, its basis is the principal contract or undertaking which it secures.[21] Necessarily, the stipulations in such principal agreement must at least be communicated or made known to the surety particularly in this case where the bond expressly guarantees the payment of respondent's fuel products withdrawn by Fumitechniks in accordance with the terms and conditions of their agreement. The bond specifically makes reference to a written agreement. It is basic that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.[22] Moreover, being an onerous undertaking, a surety agreement is strictly construed against the creditor, and every doubt is resolved in favor of the solidary debtor.[23] Having accepted the bond, respondent as creditor must be held bound by the recital in the surety bond that the terms and conditions of its distributorship contract be reduced in writing or at the very least communicated in writing to the surety. Such non-compliance by the creditor (respondent) impacts not on the validity or legality of the surety contract but on the creditor's right to demand performance.

It bears stressing that the contract of suretyship imports entire good faith and confidence between the parties in regard to the whole transaction, although it has been said that the creditor does not stand as a fiduciary in his relation to the surety. The creditor is generally held bound to a faithful observance of the rights of the surety and to the performance of every duty necessary for the protection of those rights.[24] Moreover, in this jurisdiction, obligations arising from contracts have the force of law between the parties and should be complied with in good faith.[25] Respondent is charged with notice of the specified form of the agreement or at least the disclosure of basic terms and conditions of its distributorship and credit agreements with its client Fumitechniks after its acceptance of the bond delivered by the latter. However, it never made any effort to relay those terms and conditions of its contract with Fumitechniks upon the commencement of its transactions with said client, which obligations are covered by the surety bond issued by petitioner. Contrary to respondent's assertion, there is no indication in the records that petitioner had actual knowledge of its alleged business practice of not having written contracts with distributors; and even assuming petitioner was aware of such practice, the bond issued to Fumitechniks and accepted by respondent specifically referred to a "written agreement."

As to the contention of petitioner that respondent's motion for reconsideration filed before the trial court should have been deemed not filed for being pro forma, the Court finds it to be without merit. The mere fact that a motion for reconsideration reiterates issues already passed upon by the court does not, by itself, make it a pro forma motion. Among the ends to which a motion for reconsideration is addressed is precisely to convince the court that its ruling is erroneous and improper, contrary to the law or evidence; the movant has to dwell of necessity on issues already passed upon.[26]

Finally, we hold that the trial court correctly dismissed petitioner's counterclaim for moral damages and attorney's fees. The filing alone of a civil action should not be a ground for an award of moral damages in the same way that a clearly unfounded civil action is not among the grounds for moral damages.[27] Besides, a juridical person is generally not entitled to moral damages because, unlike a natural person, it cannot experience physical suffering or such sentiments as wounded feelings, serious anxiety, mental anguish or moral shock.[28] Although in some recent cases we have held that the Court may allow the grant of moral damages to corporations, it is not automatically granted; there must still be proof of the existence of the factual basis of the damage and its causal relation to the defendant's acts. This is so because moral damages, though incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer.[29] There is no evidence presented to establish the factual basis of petitioner's claim for moral damages.

Petitioner is likewise not entitled to attorney's fees. The settled rule is that no premium should be placed on the right to litigate and that not every winning party is entitled to an automatic grant of attorney's fees.[30] In pursuing its claim on the surety bond, respondent was acting on the belief that it can collect on the obligation of Fumitechniks notwithstanding the non-submission of the written principal contract.

WHEREFORE, the petition for review on certiorari is PARTLY GRANTED. The Decision dated November 20, 2006 and Resolution dated May 8, 2007 of the Court of Appeals in CA-G.R. CV No. 86623, are REVERSED and SET ASIDE. The Decision dated August 5, 2005 of the Regional Trial Court of Makati City, Branch 59 in Civil Case No. 02-857 dismissing respondent's complaint as well as petitioner's counterclaim, is hereby REINSTATED and UPHELD.

No pronouncement as to costs.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Del Castillo, JJ., concur.

[1] Rollo, pp. 79-101. Penned by Presiding Justice (former Member of this Court) Ruben T. Reyes with Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso concurring.

[2] Id. at 103-104.

[3] Id. at 105-110. Penned by Judge Winlove M. Dumayas.

[4] Records, p. 129.

[5] Id. at 8, 26, 51-53, 131 and 132.

[6] Id. at 27-29.

[7] Id. at 30-34.

[8] Id. at 89.

[9] Id. at 90-91.

[10] Id. at 3.

[11] Id. at 14-25.

[12] Rollo, p. 100.

[13] Id. at 25.

[14] An Act Relative to Recognizances, Stipulations, Bonds, and Undertakings, and to Allow Certain Corporations to be Accepted as Surety Thereon.

[15] Philippine Bank of Communications v. Lim, G.R. No. 158138, April 12, 2005, 455 SCRA 714, 721, citing Art. 2047 of the Civil Code of the Philippines.

[16] Asset Builders Corporation v. Stronghold Insurance Company, Incorporated, G.R. No. 187116, October 18, 2010, 633 SCRA 370, 379-380, citing Security Pacific Assurance Corporation v. Hon. Tria-Infante, 505 Phil. 609, 620 (2005) and Philippine Bank of Communications v. Lim, id. at 721-722.

[17] Garon v. Project Movers Realty and Development Corporation, G.R. No. 166058, April 3, 2007, 520 SCRA 317, 329-330.

[18] Records, p. 129.

[19] Id.

[20] TSN, May 19, 2003, pp. 49, 51, 53, 57-59.

[21] Hector S. De Leon and Hector M. De Leon, Jr., The Insurance Code of the Philippines, 2010 Ed., p. 424.

[22] Art. 1370, Civil Code of the Philippines.

[23] See Security Bank and Trust Company, Inc. v. Cuenca, G.R. No. 138544, October 3, 2000, 341 SCRA 781, 801.

[24] 74 Am Jur 2d, §127, pp. 90-91.

[25] Art. 1159, Civil Code of the Philippines.

[26] Republic v. International Communications Corporation (ICC), G.R. No. 141667, July 17, 2006, 495 SCRA 192, 198.

[27] Rudolf Lietz, Inc. v. Court of Appeals, G.R. No. 122463, December 19, 2005, 478 SCRA 451, 460.

[28] Crystal v. Bank of the Philippine Islands, G.R. No. 172428, November 28, 2008, 572 SCRA 697, 705, citing People v. Manero, Jr., G.R. Nos. 86883-85, January 29, 1993, 218 SCRA 85, 96-97.

[29] Id. at 706, citing Development Bank of the Phil. v. Court of Appeals, 451 Phil 563, 586-587 (2003).

[30] Tanay Recreation Center and Development Corp. v. Fausto, G.R. No. 140182, April 12, 2005, 455 SCRA 436, 457

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