

## FGU INSURANCE CORPORATION, PETITIONER, V. SPOUSES FLORO ROXAS AND EUFEMIA ROXAS, RESPONDENTS.

*G.R. No. 189526. August 09, 2017*

Ponente: LEONEN, J.

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### LEONEN, J.:

The liability of a surety is determined strictly in accordance with the actual terms of the performance bond it issued. It may, however, set up compensation against the amount owed by the creditor to the principal.

The Petitions for Review in G.R. Nos. 189526[1] and 189656[2] seek to reverse and set aside the May 26, 2009 Decision[3] and the September 14, 2009 Resolution[4] of the Court of Appeals in CA-G.R. CV No. 30340. The May 26, 2009 Decision modified the Regional Trial Court September 4, 1990 Decision,[5] while the September 14, 2009 Resolution denied the motions for reconsideration separately filed by FGU Insurance Corporation (FGU), Spouses Floro and Eufemia Roxas (the Spouses Roxas), and Philippine Trust Company (Philtrust Bank).

The Spouses Roxas entered into a Contract of Building Construction[6] dated May 22, 1979 with Rosendo P. Dominguez, Jr. (Dominguez) and Philtrust Bank to complete the construction of their housing project known as "Vista Del Mar Executive Houses." [7] The project was located at Cabcaben, Mariveles, Bataan and was estimated to cost P1,200,000.00

From the terms of the Contract, Philtrust Bank would finance the cost of materials and supplies to the extent of P 900,000.00, while Dominguez would undertake the construction works for P300,000.00.[8]

It was also stipulated that Philtrust Bank may only release the funds for materials upon Dominguez's request and with the Spouses Roxas' conformity. Invoices covering materials previously purchased should also be submitted to Philtrust Bank before any subsequent releases of funds were made.[9]

The P300,000.00 cost of labor would be shouldered by the Spouses Roxas, but the Contract stated that:

[W]hether or not the [Spouses Roxas] could provide/supply the funds to finance the labor costs as aforesaid, the Contractor binds himself to finish and complete the construction of the project within the stipulated period of One Hundred Fifty (150) working days [from April 25, 1979].[10]

Finally, it was provided that in case of Dominguez's non-compliance of the terms and conditions of the Contract, he would pay Philtrust Bank and/or the Spouses Roxas liquidated damages of P1,000.00 per day until he has complied with his obligation.[11]

On May 24, 1979, the Spouses Roxas and Dominguez entered into another Agreement,[12] which provided for the terms of payment of the P300,000.00 "cost of labor, supervision and engineering services"[13] as follows:

a)

first cash payment of P30,000.00 - 45 working days from April 25, 1979, the start of the work on the project;

b)

second cash payment of P30,000.00 - 30 working days from the first cash payment;

c)

third cash payment of P 30,000.00 - 30 working days from the second cash payment; and

d)

last and final payment of P210,000.00 in the form of real properties, consisting of a 3,000-square-meter parcel of land in Mariveles, Bataan under Transfer Certificate of Title (TCT) Nos. 71591 and 77270 to 77273, and a 2,000-square-meter parcel of land in Limay, Bataan under TCT No. 2140, upon completion and acceptance of the project.[14]

It was also stipulated that an interest of 14% per annum would be paid by the Spouses Roxas in the event of non-payment of the amounts due to Dominguez.[15]

Also on May 24, 1979, pursuant to the Contract of Building Construction, Dominguez secured a performance bond, FIC Bond No. G(23) 5954[16] (Surety Bond), with face amount of P450,000.00, from FGU. FGU and Dominguez bound themselves to jointly and severally pay Floro Roxas (Floro) and Philtrust Bank the agreed amount in the event of Dominguez's non-performance of his obligation under the Contract.[17]

Dominguez averred that on September 20, 1979, he requested an upward adjustment of the contract price from the Spouses Roxas due to the rising costs of materials and supplies. But the Spouses Roxas did not heed his request.[18]

He added that the Spouses Roxas also failed to make the three (3) payments of P30,000.00 each as agreed upon. Thus, on October 22, 1979, he formally demanded that they pay the amounts due plus the stipulated interest of 14% per annum,[19] with a warning that he would stop further work and withdraw his workers unless payment was received on or before October 31, 1979.[20]

On November 9, 1979, Dominguez sent another demand letter to the Spouses Roxas, this time, for the payment of P73,136.75,[21] which they allegedly borrowed from the funds allotted for the project for their personal use and benefit. The Spouses Roxas were required to pay the amount within seven (7) days from receipt of the letter. However, they refused to pay.[22]

Dominguez also asked Philtrust Bank to release the remaining balance of P24,000.00 but to no avail.[23]

On March 28, 1980, Dominguez filed a Complaint against the Spouses Roxas and Philtrust Bank before Branch 40, Court of First Instance of Manila. This was docketed as Civil Case No. 130783. In addition to the amounts claimed, he also sought the following: the annulment of the "Whereas Clause" providing for the completion of the construction project within 150 working days; the rescission/annulment of the Contract of Building Construction dated May 22, 1979 and the Agreement dated May 24, 1979; and the declaration of the FGU Surety Bond as unenforceable.[24]

In its Answer with Compulsory Counterclaim dated June 30, 1980,[25] Philtrust Bank claimed that it did not release the P24,000.00 because Dominguez failed to submit an accounting of the previous releases made. Philtrust Bank added that Dominguez failed to complete even 60% of the project despite its release of P876,000.00. As

such, it asked Dominguez to pay P1,000.00 per day of delay as liquidated damages until fulfillment of his obligation.[26] Lastly, Philtrust Bank averred that it sent several demand letters[27] to FGU to pay P450,000.00 for non-performance of its principal, but the latter re/fused to pay. Hence, Philtrust Bank sought to implead FGU for non-payment of P450,000.00 under its Surety Bond.[28]

For their part, the Spouses Roxas claimed that:

a)

"the upward adjustment of the stipulated contract price demanded by Dominguez, Jr. was without any legal or contractual basis";

b)

"under the terms of the contract, he bound himself to finish and complete the construction of the project within 150 working days from April 25, 1979 'whether or not the [Spouses Roxas] could provide/supply the funds to finance the labor costs";

c)

"of the amounts released by Philtrust [Bank], they only conformed to the release of [P]450,000.00"; and

d)

FGU failed to pay the P450,000.00 amount "stipulated in the [Surety] [B]ond." [29]

The Spouses Roxas further averred that Philtrust Bank's unjustified release of the funds to Dominguez had resulted in the non-completion of the housing project and consequent unrealized rental income from prospective lessees and delay in their amortization payments to Philtrust Bank.[30]

Hence, the Spouses Roxas "prayed for the reimbursement of the amount of P422,000.00 unjustifiably released by [Philtrust Bank]" and damages of P48,000.00 monthly beginning October 1979, representing unearned rentals from the non-completion of the project.[31]

Philtrust Bank countered that all the funds released to Dominguez "were with the conformity of the [S]pouses [Roxas]; ... the non-completion of the housing project was due to the failure of the [S]pouses [Roxas] to release the [P]300,000.00 . . . [for the] costs of labor and other engineering services" and claimed that the Spouses Roxas had an unpaid loan of "[P]3,053,739.50." [32] Hence, Philtrust Bank additionally prayed that the Spouses Roxas be ordered to pay their indebtedness in the total amount of "P3,053,738.50 plus 19% yearly interest" from April 1, 1980 until fully paid and "P245,720.00 stipulated in the various promissory notes as and for attorney's fees." [33] In default of these payments, Philtrust Bank prayed that the real estate mortgages be foreclosed.[34]

FGU argued that the Surety Bond was issued in favor of Floro and Philtrust Bank only, Eufemia Roxas (Eufemia) excluded; and recovery from this Surety Bond may be allowed to Floro only to the extent of one-half (1/2) of its face value. It prayed for reimbursement against Dominguez for any amount it may be adjudged to pay to the Spouses Roxas. It also filed a fourth-party complaint against Dominguez, Gloria Dominguez, Dominador Caiyod, Felicisima Caiyod, Rufino Andal, and Amada Caiyod under their May 29, 1979 Agreement of Counterguaranty "to secure the obligation of FGU [Insurance Corporation] under the surety bond." [35]

FGU later moved to strike the fourth-party complaint but it was denied by the trial court.[36]

Branch 40, Regional Trial Court, Manila found that the Spouses Roxas breached their obligation to Dominguez under the Contract of Building Construction and the May 24, 1979 Agreement. Likewise, it ruled that Dominguez's non-completion of the project within the stipulated period was justified because of the rising prices of materials and labor. Finally, it held that Dominguez was made to accept the construction contract due to the deceit and misrepresentation of the Spouses Roxas and Philtrust Bank. Hence, it rendered judgment in favor of Dominguez as follows:

WHEREFORE, viewed in the light of the foregoing circumstances, this court hereby renders judgment in favor of plaintiff Rosendo Dominguez[, Jr.] as follows:

(a)

Declaring the "Whereas Clause" paragraph 7 of the Contract Building Construction dated May 22, 1979 as voided and cancelled, as well as the agreement dated May 24, 1979 between the plaintiffs and defendant Roxas spouses;

(b)

Ordering the cancellation of the Performance Bond of the FGU Insurance Corporation for P450,000.00 of no further force and effect;

(c)

Ordering the defendants Roxas spouses to pay Rosendo Dominguez[, Jr.] the sum of P90,000.00 with 14% yearly interest from due date until fully paid;

(d)

Ordering the defendants Roxas spouses to pay P73,146.75 with legal rate thereon from October 27, 1971 until fully paid;

(e)

Ordering the defendants Roxas spouses to pay Rosendo Dominguez[, Jr.] moral and exemplary damages in the amount of P50,000.00 and ordering them to pay [a]ttorney's fees in the amount of P50,000;

(f)

Denying other claims and counterclaims for lack of sufficient proof;

This is without prejudice to the filing of the proper case for collection by the Philippine Trust Company against defendant Roxas spouses for their indebtedness to the Bank;

(g)

Defendant spouses Roxases (sic) are ordered to pay the cost of this suit.[37]

The Court of Appeals modified the Decision of the Regional Trial Court. It held that the "Whereas Clause" of the Contract of Building Construction dated May 22, 1979 and the Agreement dated May 24, 1979 were valid. According to the Court of Appeals, the Spouses Roxas' non-payment of the stipulated P90,000.00 in three (3) equal installments and their offering of properties different from those stipulated in the May 24, 1979 Agreement did not constitute the kind of fraud that would give rise to the annulment of the contracts. It held that the parcels of land were not even mentioned in the May 22, 1979 Contract and that Dominguez agreed to finish the project within the 150-day period whether or not the Spouses Roxas could supply the funds to finance the labor costs.[38]

The Court of Appeals also found no basis for the upward adjustment of the contract price claimed by Dominguez. It held that no proof was presented by Dominguez to establish extraordinary inflation during the intervening period. In addition, the precedent conditions for the recovery of additional construction costs under Article 1724[39] of the Civil Code were not complied with.[40]

On the liability of the Spouses Roxas to Philtrust Bank, the Court of Appeals held that Philtrust Bank failed to prove that the requests for the release of the sum of P422,000.00 to Dominguez were with the conformity of the Spouses Roxas. Hence, Philtrust Bank had no one else to blame but itself.[41]

The Court of Appeals also reversed the Regional Trial Court decision to cancel the Surety Bond. It held that FGU, as surety under FGUIC Bond No. G(23) 5994 dated May 24, 1979, was obligated to pay the Spouses Roxas and Philtrust Bank the amount of P450,000.00 for Dominguez's non-completion of the construction project within the stipulated period.[42]

Finally, the Court of Appeals found the award of damages in favor of Dominguez to be improper. It held that Dominguez failed to prove bad faith, fraud, or ill motive on the part of the Spouses Roxas that would justify the award of moral damages. Furthermore, without the award of moral damages, exemplary damages and attorney's fees could likewise not be awarded.[43]

On the other hand, it ruled that "the unjustified stoppage and abandonment of the construction works by Dominguez, Jr. constitute a breach of his contractual obligation characterized by bad faith." [44] Hence, the Court of Appeals adjudged Dominguez liable to the Spouses Roxas for P100,000.00 as moral damages, P100,000.00 as exemplary damages, and P50,000.00 as attorney's fees.[45]

The Court of Appeals May 26, 2009 Decision disposed as follows:

WHEREFORE, in view of all the foregoing, the appeal is partially GRANTED, Accordingly, the assailed decision of the Regional Trial Court of Manila dated September 4, 1990 is MODIFIED as follows:

1. Declaring the "Whereas Clause" in paragraph 7 of the Contract of Building Construction dated May 22, 1979 as well as the Agreement dated May 24, 1979 valid;
2. Declaring the FGU Insurance Corporation FIC Bond No. G(23) 5994 to be in full force and effect. Thus, FGUIC is solidarily liable with Rosendo Dominguez, Jr. to spouses Roxas to the extent of P450,000.00;
3. Ordering spouses Roxas to pay Dominguez, Jr. the sum of P90,000 with the stipulated 14% annual interest from due date until fully paid;
4. Ordering spouses Roxas to pay Dominguez, Jr. the amount of P73,136.75 with legal rate of interest from November 16, 1979 until fully paid;

5. Ordering Dominguez, Jr. to pay P100,000.00 as moral damages; P100,000.00 as exemplary damages; and P50,000.00 as attorney's fees; and

6. Remanding the case to the trial court for the reception of evidence and proper computation of the other claims of Philtrust against spouses Roxas.

SO ORDERED.[46]

The separate motions for reconsideration of FGU, the Spouses Roxas, and Philtrust Bank were denied in the Court of Appeals September 14, 2009 Resolution.

FGU and the Spouses Roxas filed their separate Petitions for Review before this Court, docketed as G.R. Nos. 189526[47] and 189656,[48] respectively.

On November 26, 2009, the Spouses Roxas, through their counsel, filed a Manifestation and Motion to Dispense with Service upon Atty. Tomas Matic, Jr. (Atty. Matic) informing this Court that no appearance was made either by Dominguez or his counsel Atty. Matic before the Court of Appeals despite notice. Moreover, the counsel of the Spouses Roxas knew that Atty. Matic had already passed away.[49]

On March 17, 2010,[50] this Court resolved to consolidate these two (2) cases.

On February 23, 2011, this Court deemed as waived Dominguez's filing of his comment on the petitions for review as copies of this Court's resolutions requiring him to file comment, which were served on Dominguez's last known address, were returned unserved with notation "moved out." [51]

The issues for this Court's resolution are as follows: First, whether or not the Court of Appeals erred in holding FGU Insurance Corporation liable for the full amount of P450,000.00 of its Surety Bond rather than the cost overrun on account of Rosendo P. Dominguez, Jr.'s non-completion of the project;

Second, whether or not the Spouses Floro and Eufemia Roxas are entitled to liquidated damages under the Contract for Building Construction; Third, whether or not there is factual basis for the award of P90,000.00 with 14% stipulated interest and P 73,146.75 with legal interest in favor of Rosendo P. Dominguez, Jr.;

Fourth, whether or not the liabilities of the Spouses Floro and Eufemia Roxas to Rosendo P. Dominguez, Jr. may be set off against any liability of FGU Insurance Corporation pursuant to Articles 1280[52] and 1283[53] of the Civil Code; and

Fifth, whether or not the Court of Appeals erred in remanding the case to the trial court for the reception of evidence and computation of the other claims of the Philippine Trust Company against the Spouses Floro and Eufemia Roxas.

Finally, whether or not Philtrust Bank should be held liable for the unauthorized release of the remaining construction funds.

FGU questions the Court of Appeals Decision, which held it liable to the Spouses Roxas for the full amount of the Surety Bond.

First, it argues that the face amount of P450,000.00 only indicates its maximum potential liability in case Dominguez does not comply with its obligation under the Contract of Building Construction. FGU submits that it should only be liable for the actual damages that may have been sustained by the Spouses Roxas or the cost that may have been incurred by them to finish the contracted work. Since the Spouses Roxas failed to prove the added cost to them to finish the construction, FGU argues that their claim for damages cannot be granted.[54]

Second, FGU contends that under Article 2054 of the Civil Code, its liability cannot be greater than the liability of the principal. Thus, it was erroneous for the Court of Appeals to adjudge it liable for actual damages but without adjudging any liability upon Dominguez.[55]

Third, FGU submits that the Spouses Roxas may only claim up to one-half (1/2) of the face amount because Philtrust Bank is a joint creditor under the Surety Bond.

The Spouses Roxas counter that under the Contract of Building Construction, Dominguez's liability in case of non-completion of the project is not limited to the additional cost that the Spouses Roxas would have incurred to finish the project. They hold that his liability includes liquidated damages of P1,000.00 per day until the contractor shall have complied with his obligation. They add that the face amount of P450,000.00 would even be "grossly inadequate since the project remained uncompleted." [56]

The Spouses Roxas further contend that the Contract of Building Construction refer to "the Bank and/or owner," which means that payment under the Surety Bond could be made either to both of them or to any of them.[57] Considering that Philtrust Bank was aptly found by the Court of Appeals to be at fault in releasing the funds to the contractor without their conformity and the supporting invoices, the Spouses Roxas maintain that they alone should be entitled to the entire proceeds of the Surety Bond.[58]

In its Reply,[59] FGU argues that the stipulation in the Contract of Building Construction providing for liquidated damages contemplates delay in construction, not abandonment of the project.[60] Hence, what applies is Article 1167 of the Civil Code, which states: "If a person obliged to do something fails to do it, the same shall be executed at his cost." Consequently, the liability of Dominguez "should be based on the additional cost to complete the project." [61]

FGU adds that contrary to the Spouses Roxas' claims, Philtrust Bank could file a claim to the extent of one-half (1/2) of the amount of the Surety Bond,[62] under which FGU bound itself in favor of "Floro Roxas and Philippine Trust Company," as joint, and not solidary, creditors.[63]

## I

Under Section 175 of Presidential Decree No. 612 or the Insurance Code, a contract of suretyship is defined as an agreement where "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."

A performance bond is a kind of suretyship agreement. It is "designed to afford the project owner security that the . . . contractor, will faithfully comply with the requirements of the contract . . . and make good [on the] damages sustained by the project owner in case of the contractor's failure to so perform." [64]

A surety's liability is joint and several with the principal.[65] "Article 2047 of the Civil Code provides that suretyship arises upon the solidary binding of a person deemed the surety with the principal debtor for the purpose of fulfilling an obligation." [66]

Although the surety's obligation is merely secondary or collateral to the obligation contracted by the principal, this Court has nevertheless characterized the surety's liability to the creditor of the principal as "direct, primary, and absolute[;]" [i]n other words, the surety is directly and equally bound with the principal." [67]

Moreover, Article 1216 in relation to Article 2047[68] of the Civil Code provides:

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.

Pursuant to the foregoing provisions, FGU, as surety, may be sued by the creditor separately or together with Dominguez as principal, in view of the solidary nature of its liability.[69]

### I.A

Liability under a surety bond is "limited to the amount of the bond" and is determined strictly in accordance with the particular terms and conditions set out in this bond.[70] It is, thus, necessary to look into the actual terms of the performance bond.

FGUIC Bond No. G(23) 5954 states:

That we, ROSENDO P. DOMINGUEZ, JR. as PRINCIPAL, and THE FGU INSURANCE CORPORATION ... as SURETY, are held and firmly bound unto the FLORO ROXAS AND PHILIPINE TRUST COMPANY, as the OBLIGEE, in the sum of FOUR HUNDRED FIFTY THOUSAND PESOS ONLY (P450,000.00), Philippine Currency, for the payment of which well and truly to be made, we bind ourselves .. . jointly and severally firmly by these presents.

THE CONDITIONS OF THE OBLIGATION ARE AS FOLLOWS:

WHEREAS, the above bounden Principal . . . entered into a contract/agreement with the said OBLIGEE to fully and faithfully perform and fulfill all the undertakings, covenants, terms, conditions and agreement stipulated in said contract, for the supply of necessary labor, materials, supervision and other engineering service related for the completion and ready for occupancy of the proposed Vista Del Mar-Executive Houses at Cabcaban, Mariveles, Bataan;

....

NOW, THEREFORE, if the PRINCIPAL shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements stipulated in said contract/agreement, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.[71]

The FGU Surety Bond is conditioned upon the full and faithful performance by Dominguez of his obligations under the Contract of Building Construction. Under the terms of this bond, FGU guaranteed to pay the amount of P450,000.00 should Dominguez be unable to faithfully comply with the contract for the completion of the Spouses Roxas' housing project. FGU's obligation to pay is solidary with Dominguez and is realized once the latter fails to perform his obligation under the Contract of Building Construction.

FGU's contention that the P450,000.00 face amount simply indicates its maximum potential liability and that it should only be liable for actual damages or the cost overrun as a result, of the non-completion of the project is untenable. The terms of the bond were clear; hence, the literal meaning of its stipulation should control.

The specific condition in the FGU Surety Bond did not clearly state the limitation of FGU's liability. From the terms of this bond, FGU guaranteed to pay the amount of P450,000.00 in the event of Dominguez's breach of his contractual undertaking. Hence, FGU was bound to pay the stipulated indemnity upon proof of Dominguez's default without the necessity of proof on the measure of damages caused by the breach. A stipulation not contrary to law, morals, or public order is binding upon the obligor.[72]

If FGU's intention was to limit its liability to the cost overrun or additional cost to the Spouses Roxas to complete the project up to the extent of P450,000.00, then it should have included in the Surety Bond specific words indicating this intention. Its failure to do so must be construed against it.

A suretyship agreement is a contract of adhesion ordinarily prepared by the surety or insurance company. Therefore, its provisions are interpreted liberally in favor of the insured and strictly against the Insurer who, as the drafter of the bond, had the opportunity to state plainly the terms of its obligation.[73]

It was undisputed that Dominguez failed to finish the construction work within the agreed time frame, triggering FGU's liability under the Surety Bond. Dominguez's breach of the Contract of Building Construction gave the Spouses Roxas and/or Philtrust Bank the immediate right to pursue FGU on the surety bond. Thus, FGU is duty-bound to perform what it has guaranteed—to pay P450,000.00 upon notice of Dominguez's default.

FGU, on the other hand, has the right to be indemnified for any payments made, both under the law and the indemnity agreement. In *Escaño v. Ortigas, Jr.*,<sup>[74]</sup> this Court explained this right to full reimbursement by a surety:

[E]ven as the surety is solidarity bound with the principal debtor to the creditor, the surety who does pay the creditor has the right to recover the full amount paid, and not just any proportional share, from the principal debtor or debtors. Such right to full reimbursement falls within the other rights, actions and benefits which pertain to the surety by reason of the subsidiary obligation assumed by the surety.

What is the source of this right to full reimbursement by the surety? We find the right under Article 2066 of the Civil Code, which assures that "[t]he guarantor who pays for a debtor must be indemnified by the latter," such indemnity comprising of, among others, "the total amount of the debt." Further, Article 2067 of the Civil Code likewise establishes that "[t]he guarantor who pays is subrogated by virtue thereof to all the rights which the creditor had against the debtor."

Articles 2066 and 2067 explicitly pertain to guarantors, and one might argue that the provisions should not extend to sureties, especially in light of the qualifier in Article 2047 that the provisions on joint and several obligations should apply to sureties. We reject that argument, and instead adopt Dr. Tolentino's observation that "[t]he reference in the second paragraph of [Article 2047] to the provisions of Section 4, Chapter 3, Title I, Book IV, on solidary or several obligations, however, does not mean that suretyship is withdrawn from the applicable provisions governing guaranty." For if that were not the implication, there would be no material difference between the surety as defined under Article 2047 and the joint and several debtors, for both classes of obligors would be governed by exactly the same rules and limitations.

Accordingly, the rights to indemnification and subrogation as established and granted to the guarantor by Articles 2066 and 2067 extend as well to sureties as defined under Article 2047.<sup>[75]</sup>

## I.B

This Court disagrees with FGU's contention that it should only be liable to the Spouses Roxas for one-half (1/2) of the face amount of the Surety Bond.

Under the Surety Bond, FGU guaranteed Dominguez's fulfilment of the undertakings, terms, and conditions stipulated in the Contract of Building Construction. A copy of the contract was attached to and made a part of the Surety Bond.<sup>[76]</sup>

FGU's undertaking under the Surety Bond was that of a surety to the obligation of Dominguez, who is the principal under the construction contract. This bond expressly incorporated the Contract of Building Construction. Hence, in enforcing this bond, its provisions must be read together with the Contract of Building Construction.

Jurisprudence refers to this rule as the "complementary-contracts-construed-together" doctrine, which mandates that the stipulations, terms, and conditions of both the principal and accessory contracts must be construed together in order to arrive at the true intention of the parties.<sup>[77]</sup>

This doctrine is consistent with Article 1374 of the Civil Code, which states:

Article 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.

While FGU's Surety Bond indicates "Floro Roxas and Philippine Trust Company" as obligees, the Contract of Building Construction clearly refers to Philtrust Bank and the Spouses Roxas as solidary creditors of Dominguez, as can be gleaned from the following provisions:

6. In the event the Contractor fails to comply with its obligation under any of the aforementioned premises and the herein terms and conditions of this Contract, the Contractor shall pay to the Bank and/or Owners the sum of One Thousand Pesos (P1,000.00), Philippine Currency, daily, as liquidated damages, until it shall have complied with its obligation;

7. To insure and guarantee the faithful performance of its obligation under this Contract, the Contractor binds himself to post and file a Performance Bond of P450,000.00 and a Contractor's All Risk Bond of P1,200,000.00 in favor of the Bank and/or Owners to be issued by a reputable insurance/surety firm approved by the Bank.[78] (Emphasis supplied)

Consequently, FGU is bound to pay the Spouses Roxas and Philtrust Bank as solidary creditors and not joint creditors.

## II

Dominguez is liable to pay liquidated damages to the Spouses Roxas under the Contract of Building Construction from scheduled date of completion until the time he effectively abandoned the project.

The Contract of Building Construction contains the following stipulation for liquidated damages:

6. In the event the Contractor fails to comply with its obligation under any of the aforementioned premises and the herein terms and conditions of this Contract, the Contractor shall pay to the Bank and/or Owners the sum of One Thousand Pesos (P1,000.00), Philippine Currency, daily, as liquidated damages, until it shall have complied with its obligation.[79]

Under the Contract, the liability for liquidated damages would start accruing daily from the stipulated date of completion until the date of the actual completion of the project.

However, FGU contends that this provision applies only where there is delay in the completion of the project and does not contemplate situations where the contractor abandoned the project.

This Court is not persuaded.

The parties have agreed and articulated on the payment of liquidated damages in case of breach. What is decisive for the recovery of liquidated damages in this case is the fact of delay in the completion of the works.

The law allows parties to stipulate on liquidated damages.[80] A clause on liquidated damages is normally added to construction contracts not only to provide indemnity for damages but also to ensure performance of the contractor "by the threat of greater responsibility in the event of breach." [81] In *Philippine Economic Zone Authority v. Pilhino Sales Corp.*, [82] this Court said:

By definition, liquidated damages are a penalty, meant to impress upon defaulting obligors the graver consequences of their own culpability. Liquidated damages must necessarily make non-compliance more cumbersome than compliance. Otherwise, contracts might as well make no threat of a penalty at all:

Liquidated damages are those that the parties agree to be paid in case of a breach. As worded, the amount agreed upon answers for damages suffered by the owner due to delays in the completion of the project. Under Philippine laws, these damages take the nature of penalties. A penal clause is an accessory undertaking to assume greater liability in case of a breach. It is attached to an obligation in order to ensure performance.[83] (Emphasis in the original)

If this Court goes by FGU's reasoning that the liquidated-damages clause does not apply in case of abandonment, then, in effect, this Court diminishes or disregards altogether the coercive force of this stipulation. Moreover, it is contrary to the intention of the parties because it was clearly provided that liquidated damages are recoverable for delay in the completion of the project; hence, there is more reason in case of non-completion.

Thus, this Court holds that Dominguez is bound to pay liquidated damages from September 23, 1979, the scheduled date of completion, until October 31, 1979,[84] when he effectively abandoned the project. FGU cannot be held liable for it because it is not a party to the Contract of Building Construction. Neither does the Surety Bond contain any stipulation for liquidated damages on top of FGU's liability to pay the face amount in case of Dominguez' s non-performance.

### III

The Spouses Roxas ask this Court to review the records of the case and re-examine the evidence presented before the trial court. They contend that there was no factual basis for ordering them to pay Dominguez the sums of P90,000.00 and P73,136.75 with interests.[85]

FGU counters that the liability of the Spouses Roxas to pay Dominguez these amounts were sufficiently proven by the Agreement dated May 24, 1979, the checks and cash vouchers evidencing the loan, and the testimony and admissions of Eufemia.[86] The foregoing amounts, together with accrued interest, should be set off against FGU's liability, if any, under the Surety Bond.[87]

As a rule, only questions of law may be appealed to this Court in a petition for review. This Court is not a trier of facts; its jurisdiction being limited to errors of law. Moreover, factual findings of the trial court, particularly when affirmed by the Court of Appeals, are generally binding on this Court.[88]

The Regional Trial Court held:

This court has gone over the evidence presented in this case which included the testimonial and documentary exhibits . . . The evidence do not show that the defendants spouses complied with the agreement with Rosendo Dominguez with regards to the three (3) payments for P30,000.00 each. The parcels of land mentioned in the agreement were different from what was later shown the plaintiff. It should be noted that Mrs. Eufemia Roxas did not rebutt this. This court believes that the defendant spouses reneged in their obligations . . . Moreover, the defendant spouses borrowed sums of money which should be used for the project but instead, were diverted to their personal benefits ... This court has assessed the sincerity of Rosendo Doming[u]ez to make good his commitment but there was no rec[i]procity with regards to the spouses Roxases. There was no attempt to comply with their agreement and moreover, they got money from Rosendo Dominguez for their personal benefit. The failure of the defendant Philippine Trust Company to release the balance of P24,000 to Rosendo Dominguez was because of his failure to submit the invoices and receipts of the previous releases other than the P450,000.00. However, there is no proof that the subsequent releases were diverted from the use they were intended. Only the amount of P73,136.75 went to the spouses Roxases. To require Rosendo Dominguez to return these amounts to the [Philtrust] Bank would be unfair to the plaintiff in the absence of proof that he spent the amount for other purposes. The indebtedness of the spouses Roxases to the Philippine Trust Company was not refuted.[89]

The Regional Trial Court categorically ruled that the cash installments were not given to Dominguez. Aside from this, the real properties promised were also different from those shown to him. It also found sufficient evidence showing the Spouses Roxas' debt to Dominguez in the amount of P73,136.75.

In this case, the factual findings of the trial court, which were affirmed by the Court of Appeals, were based on substantial evidence and were not refuted with contrary proof by the Spouses Roxas. Therefore, this Court finds no cogent reason to disturb the consistent factual findings of the trial court and of the Court of Appeals.

#### IV

On the issue of judicial compensation, this Court finds for FGU.

Article 1280 of the Civil Code provides:

Article 1280. Notwithstanding the provisions of the preceding article, the guarantor may set up compensation as regards what the creditor may owe the principal debtor.

While Article 1280 specifically pertains to a guarantor, the provision nonetheless applies to a surety.[90] Contracts of guaranty and surety are closely related in the sense that In both, "there is a promise to answer for the debt or default of another." [91] The difference lies in that "a guarantor is the insurer of the solvency of the debtor and thus binds himself to pay if the principal is unable to pay while a surety is the insurer of the debt, and he obligates himself to pay if the principal does not pay." [92]

Hence, FGU could offset its liability under the Surety Bond against Dominguez's collectibles from the Spouses Roxas. His collectibles include the unpaid contractor's fee of P 90,000.00 plus 14% interest per annum from October 31, 1979 until fully paid. Additionally, his collectibles cover the Spouses Roxas' advances from the construction funds in the amount of P73,136.75 plus 6% legal interest from November 16, 1979 until fully paid.

In the event of compensation, the Spouses Roxas shall be liable to Philtrust Bank for the latter's share in the obligation.[93]

#### V

Philtrust Bank, for its part, assails the Court of Appeals Decision and submits that there is no need to remand the case to the trial court because it has already presented several pieces of evidence to prove its other claims against the Spouses Roxas.[94] Philtrust Bank adds that during the proceedings in the trial court, the Spouses Roxas did not deny the existence of their loan obligations and the mortgage of several of their properties to secure these loan obligations.[95]

Philtrust Bank further disputes the Court of Appeals' findings that the release of the construction funds was without the conformity of the Spouses Roxas. Philtrust Bank points to two (2) promissory notes executed by the Spouses Roxas dated April 11, 1979 and July 16, 1979 for P450,000.00 each, which the Spouses Roxas allegedly admitted in their Answer. They also referred to the testimony of Penafrancia Gabriel (Gabriel), the Senior Loan Clerk of Philtrust Bank-Limay Branch in charge of the Spouses Roxas' account. These promissory notes and Gabriel's testimony explained that "Philtrust [Bank] released the proceeds of the loan as the need arose and [these] releases were reflected in a record to keep track of the account." [96]

Finally, Philtrust Bank avers that the claim of the Spouses Roxas for unrealized rentals has not been proven and is "highly speculative." [97]

Philtrust Bank prays for the following reliefs:

- To include Philtrust as one of the parties-obligees to whom FGU [Insurance Corporation] and Mr. Dominguez are solidarity liable under FIC Bond No. G(23)5994.
- To order Mr. Dominguez to pay Philtrust liquidated damages in the amount of P1,000.00 per day from the time he was supposed to finish the contract, i.e., 22 September 1979, until the project is fully completed.
- To order Spouses Roxas to pay Philtrust [Bank] their loan obligations, plus interest, penalty and attorney[']s fees until fully paid, which as of 15 March 1990 amounts to P13,761,400.56.
- In default of such payments, the mortgaged real properties be ordered sold and the proceeds thereof applied to the payment of the various sums due Philtrust [Bank]; that Spouses Roxas and all persons and/or entities holding claims under them subsequent to the execution of the mortgages, either as purchasers, encumbrances, or otherwise, be barred and foreclosed forever of all rights, claims and equity of redemption in said mortgaged properties; and that Philtrust [Bank] may have execution against Spouses Roxas for any deficiency which may remain unpaid after applying the proceeds of the sale of said properties to the satisfaction of said judgment.[98]

The Regional Trial Court dismissed without prejudice the counterclaims of Philtrust Bank. However, this was effectively reversed by the Court of Appeals when it ordered the remand of the case to the trial court for reception of evidence and proper computation of the other claims of Philtrust Bank.

This Court agrees with Philtrust Bank that remand is improper and unnecessary because it has already presented its evidence to prove the loans it extended to the Spouses Roxas.

Eufemia admitted the consolidation of their previous credit accommodations from Philtrust Bank to P2,000,000.00 on February 22, 1978[99] and the due execution of the mortgages executed by them in favor of Philtrust Bank.[100] She also admitted that their loan accommodation was further increased to P2,523,200.00 on July 17, 1979.[101] She likewise admitted that out of the P2,000,000.00 credit accommodation, Philtrust Bank was able to release P1,557,200.00, covered by promissory notes, which they were not able to pay on their maturity dates.[102] The details of the promissory notes are as follows:

Promissory Note No.

Promissory Note Date

Amount (P)

253

March 3, 1978

100,000.00

255

March 6, 1978

625,000.00

257

March 10, 1978

175,000.00

277

March 22, 1978

20,000.00

294

March 31, 1978

35,000.00

315

April 18, 1978

45,000.00

356

May 19, 1978

25,000.00

371

June 16, 1978

100,000.00

392

July 13, 1978

40,800.00

414

July 27, 1978

86,400.00

445

August 24, 1978

10,000.00

505

November 15, 1978

228,000.00

536

December 19, 1978

12,500.00

586

January 17, 1979

25,000.00  
591  
January 23, 1979  
10,000.00  
610  
February 15, 1979  
17,000.00  
615  
February 19, 1979  
2,500.00  
TOTAL  
1,557,200.00[103]

It is stipulated in the promissory notes that the principal amount would be subject to interest at the rate of 19% per annum payable in advance. While the Spouses Roxas averred that the advance interests were immediately deducted from the releases of the proceeds on the note,[104] they did not present any supporting proof. It is a rule that the party who alleges a fact, in this case, the prepayment of interest, has the burden of proving it.[105] This Court cannot accept their affirmative defense for failure to present any evidence to prove such payment.

Furthermore, the Spouses Roxas' contention on prepaid interest was belied by Eufemia's admission that a total sum of P1,557,200.00 was released to them. Hence, this Court rules that the stipulated interest on the principal amounts has not yet been paid.

Under the terms of the promissory notes, in case of non-payment at maturity, the Spouses Roxas further bound themselves to pay:

- 1)  
19% on the outstanding obligation until fully paid as penalty for delinquency; and
- 2)  
30% of the promissory note amount as attorney's fees and expenses of collection.

The Spouses Roxas do not dispute the validity of these penalty charges and attorney's fees. Therefore, these stipulations in the promissory notes must be upheld as the law between the parties, and are, thus, binding on them.[106]

The amounts due on each promissory note including the stipulated 19% interest, as of June 30, 1980, the date of Philtrust Bank's Answer with Counterclaim, are as follows:

PN No.  
PN Date  
Date Due

No. of Days

Principal (P)

Accrued Interest  
(P)[107]

Total (P)

253

3-Mar-78 30-Jun-80

850

100,000.00

44,246.58

144,246.58

255

6-Mar-78 30-Jun-80

847

625,000.00

275,565.07

900,565.07

257

10-Mar-78 30-Jun-80

843

175,000.00

76,793.84

251,793.84

277

22-Mar-78 30-Jun-80

831

20,000.00

8,651.51

28,651.51

294

31-Mar-78 30-Jun-80

822

35,000.00

14,976.16

49,976.16

315

18-Apr-78 30-Jun-80

804

45,000.00

18,833.42

63,833.42

356

19-May-78 30-Jun-80

773

25,000.00

10,059.59

35,059.59

371

16-Jun-78 30-Jun-80

745

100,000.00

38,780.82

138,780.82

392

13-Jul-78 30-Jun-80

718

40,800.00

15,249.14

56,049.14

414

27-Jul-78 30-Jun-80

704

86,400.00

33,662.64

118,062.64

445

24-Aug-78 30-Jun-80

676

10,000.00

3,518.90

13,518.90

505

15-Nov-78 30-Jun-80

593

228,000.00

70,380.16

298,380.16

536

19-Dec-78 30-Jun-80

559

12,500.00

3,637.33

16,137.33

586

17-Jan-79 30-Jun-80

530

25,000.00

6,897.26

31,897.26

591

23-Jan-79 30-Jun-80

524

10,000.00

2,727.67

12,727.67

610

15-Feb-79 30-Jun-80

501

17,000.00

4,433.51

21,433.51

615

19-Feb-79 30-Jun-80

497

2,500.00

646.78

3,146.78

1,557,200.00

62,7060.38

2,184,269.38

The total amount of P2,184,260.38 shall further be subject to 19% penalty interest from June 30, 1980 until fully paid in accordance with the stipulations of the parties. The Spouses Roxas would also be liable to attorney's fees equivalent to 10% of the principal amount of their obligation.

With respect to the P900,000.00 loan subject of the Contract of Building Construction, the Court of Appeals found that of the P876,000.00 construction funds released by Philtrust Bank, the release of P426,000.00[108] to Dominguez was not approved by the Spouses Roxas. Despite this, the trial court found no evidence showing that these unauthorized releases were diverted to other uses.[109] Thus, this Court holds the Spouses Roxas liable for the loaned amount of P876,000.00, with payment of stipulated interest of 19% from judicial demand until fully paid.

## VI

The Spouses Roxas contend that Philtrust Bank's unauthorized releases to Dominguez of the construction funds paved the way for the latter's diversion of the funds,[110] which resulted in the non-completion of the project.[111] Thus, they add that the rental payments, which they should have earned from the houses had they been completed, should be offset against their liability to Philtrust Bank.[112]

The Spouses Roxas' contention is untenable.

For one, the Regional Trial Court found no evidence to prove the alleged diversion of funds.[113] If at all, it was only the amount of P73,136.75 that was advanced to the Spouses Roxas for their personal use and benefit.

On Philtrust Bank's liability under the Contract of Building Construction for the unauthorized release of P426,000.00 construction fund, this Court takes judicial notice of the facts in a related case involving Philtrust Bank and the Spouses Roxas, docketed as G.R. No. 171897.[114] That case involved the execution of the final and executory December 26, 1988 Decision of the Regional Trial Court of Bataan, with the dispositive portion as follows:

WHEREFORE, the Court hereby renders judgment (a) Ordering the issuance of a writ of permanent injunction perpetually enjoining defendant Philippine Trust Company and defendant provincial sheriff of Bataan or any of his deputies from foreclosing extrajudicially the real estate mortgage(s) executed in its favor by plaintiffs covering the real properties subject of this action;

(b) Condemning said defendant bank to pay to plaintiffs: (1) Ordinary damages for breach of the provisions of the contract of building construction (Exits. "B" & "26"), in the sum of One Hundred Thousand Pesos (P100,000.00); (2) Moral damages for the improvident extrajudicial foreclosure of plaintiffs' mortgage(s) after it had elected judicial foreclosure thereof, in the amount of Three Hundred Thousand Pesos (P300,000.00) for both plaintiffs; (3) Exemplary damages by way of example or correction for the public good in the sum of Fifty Thousand Pesos (P50,000.00); (4) Attorney's fees in the amount of Fifty Thousand Pesos (P50,000.00); and (5) Double costs of suit[ ].

SO ORDERED.[115]

It appears from the narration of facts in GR. No. 171897 that while this case was pending in the trial court, Philtrust Bank sought to extra-judicially foreclose the mortgaged properties of the Spouses Roxas. Consequently, the Spouses Roxas filed a complaint against Philtrust Bank for damages with preliminary injunction in the Regional Trial Court of Bataan docketed as Civil Case No. 4809. The Regional Trial Court of Bataan eventually ruled in favor of the Spouses Roxas. Upon the finality of the decision, the Spouses Roxas sought and were granted a writ of execution. Philtrust Bank opposed the issuance of the writ all the way up to this Court in G.R. No. 171897 mainly setting up the defense of legal compensation to offset the judgment debt due to the Spouses Roxas against the latter's loan obligation to Philtrust Bank. This Court rejected Philtrust Bank's contention on several grounds. This Court ruled that this defense of legal compensation to offset Philtrust Bank's judgment debt against the Spouses Roxas' loan obligation was belatedly raised. Additionally, legal compensation could not take place because the amount and demandability of the loan obligation are still being disputed, and hence, could not be considered liquidated. Finally, this Court found Philtrust Bank guilty of forum shopping.

The question of Philtrust Bank's liability for unauthorized release of the funds has already been settled in Civil Case No. 4809, Philtrust Bank has been adjudged liable by the Regional Trial Court of Bataan to the Spouses Roxas for damages of P100,000.00 for breach of the provisions of the Contract of Building Construction in a decision that has already attained finality. The principle of *res judicata* bars the relitigation in a subsequent case of the same facts and issues actually and directly resolved in a former case between the same parties.[116] Hence, this Court shall no longer pass upon the issue of the liability of Philtrust Bank with regard to the unauthorized release of the remaining construction funds.

WHEREFORE, the Petitions are PARTIALLY GRANTED. The May 26, 2009 Decision of the Court of Appeals in CA-G.R. CV. No. 30340 is AFFIRMED WITH MODIFICATION as follows:

- Ordering Rosendo P. Dominguez, Jr. and FGU Insurance Corporation to jointly and severally pay the Spouses Floro and Eufemia Roxas and/or Philippine Trust Company the amount of P450,000.00 with 12% legal interest from March 6, 1980, the date of Philippine Trust Company's extrajudicial demand, until June 30, 2013 and six percent (6%) legal interest from July 1, 2013 until fully paid, pursuant to this Court's ruling in *Nacar v. Gallery Frames*:[117]

- Ordering Rosendo P. Dominguez, Jr. to pay the Spouses Floro and Eufemia Roxas and/or Philippine Trust Company:

- liquidated damages in the total amount of P38,000.00 (P1,000.00 x 38 days [September 23, 1979 to October 31, 1979]);

- P100,000.00 as moral damages; P100,000.00 as exemplary damages; and P50,000.00 as attorney's fees.

The foregoing amounts shall earn interest at the legal rate of six percent (6%) from finality of this Decision until fully paid;

- Ordering the Spouses Floro and Eufemia Roxas to pay Rosendo P. Dominguez, Jr. the amounts of:

- P90,000.00 with the stipulated fourteen percent (14%) annual interest from October 31, 1979 until fully paid;

- P73,136.75 with interest at the legal rate of 12% per annum from November 16, 1979 up to June 30, 2013 and six percent (6%) per annum from July 1, 2013 until full payment.

FGU Insurance Corporation shall be allowed to offset its liability against the foregoing amounts.

The Spouses Floro and Eufemia Roxas, in turn, are liable to Philippine Trust Company for the latter's share in the obligation.

- Ordering the Spouses Floro and Eufemia Roxas to pay Philippine Trust Company the amounts of:

- P876,000.00 with stipulated nineteen percent (19%) annual interest from June 30, 1980 until fully paid;

- P2,184,260.38 with nineteen percent (19%) annual interest as penalty for delinquency from June 30, 1980 until fully paid; and

- Attorney's fees of P243,320.00.

- In default of such payments, the mortgaged real properties shall be sold at a public auction to pay off the various sums due the Philippine Trust Company. The latter may have execution against the Spouses Floro and Eufemia Roxas for any deficiency which may remain unpaid after applying the proceeds of the sale of said properties to the satisfaction of this Decision;

- This case is remanded to the Regional Trial Court for execution.

### **SO ORDERED.**

Carpio (Chairperson), Peralta, Mendoza, and Martires, JJ., concur.

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[1] Rollo (G.R. No. 189526), pp. 8-23.

[2] Rollo (G.R. No. 189656), pp. 9-26.

[3] Rollo (G.R. No. 189526), pp. 25-53. The Decision was penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Bienvenido L. Reyes and Isaias P. Dicdican of the Seventh Division, Court of Appeals, Manila.

[4] Id. at 64-65.

[5] Rollo (G.R. No. 189656), pp. 67-73. The Decision, docketed as Civil Case No. 130783, was penned by Judge Felicidad Carandang-Villalon of Branch XI, Regional Trial Court, Manila.

[6] RTC Records (Vol. I), pp. 11-14.

[7] Id. at 11.

[8] Id. at 11-12.

[9] RTC Records (Vol. I), p. 12.

[10] Id. Seventh Whereas Clause of the Contract for Building Construction.

The Fifth Whereas Clause also states:

5. Whereas, the Contractor is willing and has expressed his willingness to do and perform all the labor and/or construction works mentioned in whereas 3 hereof for the total sum of THREE HUNDRED THOUSAND PESOS (P300,000.00), Philippine Currency, which construction project the Contractor warrants and guarantees to finish and complete within a period of One Hundred Fifty (150) working days from April 25, 1979.

[11] Id. at 13.

[12] Rollo (G.R. No. 189526), pp. 71-73.

[13] Id. at 71.

[14] RTC Records (Vol. I), p. 16.

[15] Rollo (G.R. No. 189526), p. 28.

[16] Id. at 74.

[17] Id.

[18] Id. at 28.

[19] Id.

[20] RTC Records (Vol. I), p. 19.

[21] Rollo (G.R. No. 189656), pp. 30-31. Footnote 8 itemized the amount of P73,136.75 as follows:

Personal loan to Mrs. Roxas =

P53,000.00

Advances to Mr. Domingo Castro for the painting of the Roxas residence =

P 1,200.00

Advances to Architect Pablo Pestano for Mr. & Mrs. Roxas' account =

P 7,356.75

Cost of labor repair works and improvements on Roxas residence =

P11,580.00

P73,136.75

[22] Rollo (G.R. No. 189526), pp. 28-29.

[23] Id. at 29.

[24] Id.

[25] RTC Records, pp. 71-81.

[26] Rollo (G.R. No. 189526), pp. 29-30.

[27] RTC Records (Vol. 1), p. 39. Demand letters dated November 8, 1979, November 28, 1979, December 10, 1979 and March 6, 1980.

[28] Rollo (G.R. No. 189526), p. 30.

[29] Id.

[30] RTC Records (Vol. I), p. 48.

[31] Rollo (G.R. No. 189656), p. 69.

[32] Rollo (G.R. No. 189526), p. 30.

[33] Rollo, p. 69 (G.R. No. 189656); RTC Records (Vol. I), p. 80.

[34] RTC Records (Vol. I), pp. 80-81.

[35] Rollo (G.R. No. 189526), p. 31.

[36] Id.

[37] Rollo (G.R. No. 189656), p. 73.

[38] Rollo (G.R. No. 189526), p. 39.

[39] CIVIL CODE, art. 1724 provides:

Article 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the land-owner, can neither withdraw from the contract nor demand an increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specifications, provided:

(1) Such change has been authorized by the proprietor in writing; and

(2) The additional price to be paid to the contractor has been determined in writing by both parties.

[40] Rollo (G.R. No. 189526), p. 46.

[41] Id. at 46-47.

[42] Id. at 50.

[43] Id. at 51.

[44] Id.

[45] Id.

[46] Id. at 52.

[47] Id. at 8-23.

[48] Rollo (G.R. No. 189656), pp. 9-25.

[49] Id. at 153-154.

[50] Rollo (G.R. No. 139526), pp. 103-104.

[51] Id. at 135.

[52] CIVIL CODE, art. 1280 provides:

Article 1280. Notwithstanding the provisions of the preceding article, the guarantor may set up compensation as regards what the creditor may owe the principal debtor.

[53] CIVIL CODE, art. 1283 provides:

Article 1283. If one of the parties to a suit over an obligation has a claim for damages against the other, the former may set it off by proving his right to said damages and the amount thereof.

[54] Rollo (G.R. No. 189526), pp. 14-15.

[55] Id. at 15-16.

[56] Id. at 85-86.

[57] Id. at 93.

[58] Id.

[59] Id. at 106-119.

[60] Id. at 108.

[61] Id. at 111.

[62] Id.

[63] Id. at 115.

[64] *Eastern Assurance & Surety Corp. v. Intermediate Appellate Court*, 259 Phil. 164, 171 (1989) [Per J. Feliciano, Third Division].

[65] INS. CODE, sec. 176.

[66] *Prudential Guarantee and Assurance, Inc. v. Equinox Land Corp.*, 559 Phil. 672, 681 (2007) [Per J. Sandoval-Gutierrez, First Division].

[67] Id. at 682.

[68] CIVIL CODE, art. 2047 provides:

Article 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.

[69] See *Gilat Satellite Networks, Ltd. v. United Coconut Planters Bank General Insurance Co., Inc.*, 731 Phil. 464 (2014) [Per C.J. Sereno, First Division]; *Stronghold Insurance Co., Inc. v. Republic-Asahi Glass Corp.*, 525 Phil. 270 (2006) [Per C.J. Panganiban, First Division].

[70] INS. CODE, sec. 176. See *Trade & Investment Development Corporation of the Philippines v. Roblett Industrial Construction Corp.*, 511 Phil. 127 (2005) [Per J. Tinga, Second Division].

[71] *Rollo* (G.R. No. 189526), p. 74.

[72] CIVIL CODE, art. 1306 and 1315 provide:

Article 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

Article 1315. Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.

[73] See *Luzon Surety Co., Inc. v. Quebrar*, 212 Phil. 275 (1984) [Per J. Makasiar, Second Division].

[74] 553 Phil. 24 (2007) [Per J. Tinga, Second Division].

[75] *Id.* at 43.

[76] *Rollo* (G.R. No. 189526), p. 74.

[77] *Prudential Guarantee and Assurance, Inc. v. Anscor Land, Inc.*, 644 Phil. 634, 644 (2010) [Per J. Villarama, Jr., Third Division] citing *Velasquez v. Court of Appeals*, 368 Phil. 863 (1999) [Per J. Bellosillo, Second Division].

[78] RTC Records (Vol. I), p. 13.

[79] *Id.*

[80] CIVIL CODE, art. 2226 provides:

Article 2226. Liquidated damages are those agreed upon by the parties to a contract, to be paid in case of breach thereof.

[81] *Atlantic Erectors, Inc. v. Court of Appeals*, 697 Phil. 342, 352 (2012) [Per J. Peralta, Third Division].

[82] G.R. No. 185765, September 28, 2016 < <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/september2016/185765.pdf> > [Per J. Leonen, Second Division].

[83] *Id.* at 12 citing *H.L. Carlos Construction Inc. v. Marina Properties Corp.*, 466 Phil. 182, 205 (2004) [Per J. Panganiban, First Division].

[84] RTC Records (Vol. I), p. 19; TSN dated September 14, 1982, pp. 118-125.

[85] *Rollo* (G.R. No. 189656), pp. 15 and 18.

[86] *Id.* at 166-173.

[87] *Rollo* (G.R. No. 189526), p. 16.

[88] *American Home Insurance Co. of New York v. F.F. Cruz & Co., Inc.*, 671 Phil. 1, 14 (2011) [Per J. Peralta, Third Division].

[89] *Rollo* (G.R. No. 189656), pp. 71-72.

[90] See *Abad v. Court of Appeals*, 260 Phil. 200 (1990) [Per J. Griño-Aquino, First Division]. See also *Escaño v. Ortigas, Jr.*, 553 Phil. 24 (2007) [Per J. Tinga, Second Division], wherein the Court ruled to the effect that the provisions of the Civil Code on guaranty are applicable and available to the surety. In that case, the rights to indemnification and subrogation granted to the guarantor under Articles 2066 and 2067 of the Civil Code were held to extend as well to sureties under Article 2047.

[91] *Phil. Export & Foreign Loan Guarantee Corp. v. V.P. Eusebio Construction, Inc.*, 478 Phil. 269, 285 (2004) [Per C.J. Davide, Jr., First Division].

[92] *E. Zobel Inc. v. Court of Appeals*, 352 Phil. 608, 615 (1998) [Per J. Martinez, Second Division].

[93] CIVIL CODE, art. 1215 provides:

Article 1215. "Novation, compensation, confusion or remission of the debt, made by any of the solidary creditors or with any of the solidary debtors, shall extinguish the obligation, without prejudice to the provisions of article 1219.

The creditor who may have executed any of these acts, as well as he who collects the debt, shall be liable to the others for the share in the obligation corresponding to them. (Emphasis supplied)

[94] *Rollo* (G.R. No. 189656), p. 206.

[95] *Id.* at 207.

[96] *Id.* at 214.

[97] *Id.* at 216.

[98] *Id.* at 216-217.

[99] TSN, May 20, 1986, pp. 8-9.

[100] *Id.* at 6-8.

[101] *Id.* at 30.

[102] *Id.* at 9-10.

[103] RTC records, pp. 51-67.

[104] RTC Records (Vol. I), p. 102.

[[105]] RULES OF COURT, Rule 131, sec. 1. See *Co v. Admiral Savings Bank*, 574 Phil. 609 (2008) [Per J. Nachura, Third Division].

[106] CIVIL CODE, art. 1159.

[107] The accrued interest is computed as follows: (No. of days lapsed)\*(.19/365)\*(principal).

[108] The Court of Appeals Decision stated P422,000.00 (see *rollo* (G.R. No. 189656), p. 48), but this should be P426,000.00 considering the undisputed fact found in other parts of the *Rollo* and RTC Records that of the additional loan of P900,000.00 obtained by the Spouses Roxas from Philtrust Bank, the remaining balance of P24,000.00 was not released by Philtrust Bank and only P450,000.00 of the released funds were approved by the Spouses Roxas.

[109] *Rollo* (G.R. No. 189656), p. 72.

[110] Id. at 225.

[111] Id. at 226-227.

[112] Id. at 22.

[113] Id. at 72.

[114] Philippine Trust Co. v. Spouses Roxas, 771 Phil. 98 (2015) [Per J. Jardeleza, Third Division].

[115] Id. at 103.

[116] Pilipinas Shell Foundation, Inc. v. Fredeluces, G.R. No. 174333, April 20, 2016 [Per J. Leonen, Second Division]; Aboitiz Equity Ventures, Inc. v. Chiongbian, 738 Phil. 773 (2014) [Per J. Leonen, Third Division]; Union Bank of the Philippines v. Development Bank of the Philippines, 725 Phil. 94 (2014) [Per J. Perlas-Bernabe, Second Division].

[117] 716 Phil. 267 (2013) [Per J. Peralta, En Banc].

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