

**EASTERN ASSURANCE & SURETY CORPORATION, PETITIONER,
VS. INTERMEDIATE APPELLATE COURT AND REPUBLIC OF THE
PHILIPPINES (DEPT. OF AGRARIAN REFORM), RESPONDENTS.**

G.R. No. 69450, November 22, 1989

Ponente: FELICIANO, J.

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FELICIANO, J.:

The Petition at bar seeks a review of the Decision[1] dated 11 December 1984 rendered by the then Intermediate Appellate Court, in AC-G.R. CV No. 67253.

On 8 January 1976, the Region 7 (Cebu) Office of respondent Department of Agrarian Reform ("DAR") put up for public bidding a job or project consisting of the repair of seven (7) units of (USAID) Willys Mitsubishi/Eisenhower jeeps. Among the bidders was Motor City, an automotive repair company, which later on emerged as the winning bidder.

The winning bid was accompanied by a Proposal Bond[2] -- required by the DAR of all bidders -- in the amount of P33,275.00 and issued by petitioner Eastern Assurance and Surety Corporation ("Eastern"), as surety, on behalf of Motor City, its principal. The Proposal Bond provided, in pertinent part:

"NOW, THEREFORE, the conditions of this obligation are such that if the above-bounden principal [i.e., Motor City] shall, in the event of his becoming a successful bidder in the above proposal: (1) fails to guarantee the true and faithful performance of the contract in case of award; (2) shall refuse to accept the same or (3) shall not answer for any delay and/or default in the execution of the contract as provided in the proposal; then the DEPARTMENT OF AGRARIAN REFORM shall be entitled to be indemnified of any loss or damage it may suffer by reason thereof not to exceed the sum of THIRTY THREE THOUSAND TWO HUNDRED SEVENTY FIVE ONLY (P33,275.00) PESOS, Philippine Currency, otherwise this obligation shall be void and without effect." (Underscoring supplied)

On 31 January 1976, a Contract for Repair of Jeeps[3] was entered into between respondent DAR as owner and Motor City as contractor, the latter obligating itself thereunder as follows:

"1. That for and in consideration of the sum of THIRTY THOUSAND PESOS (P30,000.00) Philippine Currency, which the OWNER agrees to pay unto the CONTRACTOR, the said CONTRACTOR agrees and undertakes to repair the owner's seven (7) units of (USAID) Willys Mitsubishi/Eisenhower Jeeps, which are more particularly described as follows:

Motor Number

Chassis Number

1. MD – 136864

1. 95696

2. MD – 31015

2. 86038

3. MD – 70750

3. 36201

4. MD – 136846

4. 95670

5. JH4 – 34885

5. 15293

6. 4J – 24985

6. 15215

7. 4J – 54898

7. 16294

x x x x x x x x

5. That the CONTRACTOR agrees to put up the amount of TEN THOUSAND PESOS P10,000.00) as Performance Bond upon award of the bid;

x x x x x x x x

8. That the CONTRACTOR agrees to finish the repairs on all seven (7) units within ninety (90) working days, counted from the day of the award of the bid, and should the CONTRACTOR fail to finish the repairs within the said period, he (CONTRACTOR) shall indemnify the OWNER the amount equivalent to 1% of the quoted lot price for each day of late delivery.

x x x x x x x x"

(Underscoring supplied)

It turned out, however, that only six (6) out of the seven (7) aforementioned jeeps were repaired fully and delivered promptly to respondent DAR. The seventh unit, bearing Motor No. 70750 and Chassis No. 36201 continued to remain undelivered, despite the grant of several extensions in favor of and the issuance on 13 March 1978 of a final letter to Motor City, demanding that the latter complete the repair and effect delivery of the seventh vehicle.

On 12 July 1978, respondent DAR commenced a suit^[4] for specific performance and damages against Motor City. Included there as a co-defendant was petitioner Eastern which, it was alleged, "had posted the performance bond herewith attached as Annex 'B' undertaking to answer and guarantee the true and faithful compliance and performance of the [Contract for Repair of Jeeps]."

In an Answer with Cross-Claim,^[5] petitioner Eastern (defendant below) denied having incurred any liability under the Proposal Bond, alleging that such bond "did not bind answering defendant as [the] same was a mere proposal and not an actual undertaking." That pleading also sought, by way of cross-claim, judgment ordering Motor City to indemnify Eastern in an amount equivalent to whatever the latter would be ordered by the court to pay the complainant plus twenty percent (20%) thereof as attorney's fees. Eastern submitted in support of its

cross-claim an Indemnity Agreement,[6] executed in its favor by Antonio Puchadez, who had signed the document in his capacity as President and General Manager of Motor City as well as in his own personal capacity.

On 15 February 1980, the trial court rendered a Decision,[7] the dispositive portion of which read:

"THE FOREGOING CONSIDERED, judgment is hereby rendered in favor of the plaintiffs as follows: directing Motor City to deliver to the plaintiff one (1) unit of (USAID) Willys Mitsubishi/Eisenhower Jeep with Motor No. MD-70750 already repaired pursuant to the specifications in the "Contract for Repair of Jeeps;" directing Motor City to pay an indemnity equivalent to 1% of P30,000.00 for each day of late delivery (the period starts from February 1, 1976 until delivery of the unit); in case of default, the payment thereof to be assumed or to be liquidated by Eastern Assurance and Surety Corporation but not to exceed P33,275.00.

If eventually Eastern Assurance and Surety Corporation should pay following default by Motor City, then the latter solidarily with Antonio Puchadez should reimburse Eastern Assurance Surety Corporation all the amounts paid by the latter to the plaintiff with 20% of the amount as attorney's fees. With costs against both Motor City and Eastern Assurance and Surety Corporation.

SO ORDERED."

On appeal, the ruling of the trial court was affirmed with a slight modification. The appellate court held that the one percent (1%) indemnity charge for late delivery stipulated under the repair contract, "shall be [computed] from March 3, 1978" and not 1 February 1976.

The instant Petition for Review, in essence, raises only one (1) issue: whether or not petitioner Eastern may be held liable to respondent DAR for the contractual breach committed here by Motor City.

The broadest argument of petitioner Eastern is that it incurred no liability under the Proposal Bond after the Contract for Repair of Jeeps had been entered into between the DAR and Motor City. Eastern is here relying upon the difference, in conceptual terms, between a proposal bond and a performance bond. A proposal or bid bond has for its purpose to assure the owner of the project of the good faith of the bidder and that the bidder will enter into a contract with the project owner should his proposal be accepted. A performance bond is, upon the other hand, designed to afford the project owner security that the bidder, now the contractor, will faithfully comply with the requirements of the contract awarded to the contractor and make good damages sustained by the project owner in case of the contractor's failure to so perform.[8] Eastern's argument is, however, clearly too broad to be helpful; for liability under a surety bond is determined not upon the basis of its abstract nature or its title or caption but rather in accordance with the particular terms and conditions set out in such bond.[9] It is thus necessary to look into the actual terms of the Proposal Bond in question.

Thereunder, liability on the part of petitioner Eastern as surety would be incurred upon the happening of anyone of the following three (3) events: the failure or refusal of Motor City as principal (1) "to guarantee the true and faithful performance of the contract in case of an award; (2) "to accept the [award]; and (3) to "answer for any delay and/or default in the execution of the contract as provided in the proposal." There is no dispute that the first condition refers to failure to post a performance bond in the amount of P10,000.00; there is also no dispute that Eastern's principal did not in fact post any such performance bond. There should therefore be no question that there was a breach of condition no. 1 of the Proposal Bond. It is urged by petitioner Eastern that the beneficiary of the bond, public respondent DAR, had waived the stipulation in the Repair Contract providing for the posting of such bond by entering into the contract with Motor City although the latter had not posted the P10,000.00 Performance Bond. We do not believe that the DAR had waived the breach of this condition. Certainly there was no express waiver. Implied waiver of a contractual stipulation for the giving of security or collateral is not favored and has to be clearly shown. There is also no dispute that the second condition was not breached for Motor City

did accept the award of the contract and did enter into the Contract for Repair of Jeeps.

In respect of the third condition, i.e., failure of Motor City to answer for delay or default "in the execution of the contract as provided in the proposal", petitioner Eastern contends that this provision refers merely to the execution, that is, the signing or conclusion of the Contract for Repair of Jeeps, and not to the performance or implementation or carrying out of the provisions of such contract. There are at least two (2) difficulties with this argument of Eastern. First, the ordinary or dictionary meaning of "to execute" a contract (and especially to "execute a contract as provided in the proposal") is or includes

"x x x 1 : to put into effect : carry out fully and completely : PERFORM, EFFECT x x x 3 : to give effect to : do what is provided or required x x x : perform the requirements of : perform the acts necessary to the effectiveness of x x x 6 : COMPLETE x x x : perform what is required to give validity to (as by signing and perhaps sealing and delivering) x x x." [10]

Thus, the term "execution" is understood ordinarily and literally as referring to both

"x x x 1 : the act or process of executing : PERFORMANCE, ACCOMPLISHMENT x x x 3 x x x c : [and] the act of signing, sealing, and delivering a legal instrument or giving it the forms required to make it valid x x x." [11]

Thus, the ordinary meaning of execution is not limited to the signing or concluding of a contract but includes as well the performance or implementation or accomplishment of the terms and conditions of such contract. Second, if one assumes, for purposes of analysis only, that petitioner Eastern's contention is correct, then the second condition in the Proposal Bond (refusal "to accept [the contract]") and the third condition (failure to "answer for any delay and/or default in the execution of the contract as provided in the proposal") must be taken to refer to the same thing or circumstance. But either the second or the third condition would then have to be regarded as superfluous and meaningless, a result that must be abjured in view of the principle of effectiveness in the interpretation of contracts.

When viewed in its entirety, the Proposal Bond may be seen to be not merely a proposal (or bid) bond but also a performance bond. For it covers not merely the acceptance of the award and the conclusion of a contract but also the carrying out or performance of the provisions of the contract. We note also that the P10,000.00 Performance Bond explicitly required by paragraph 5 of the Contract for Repair of Jeeps is lower in face amount than the Proposal Bond which has a maximum value or face amount of P33,275.00. If petitioner Eastern's argument that its liability under the Proposal Bond ceased the moment the Repair Contract was entered into is correct, then paragraph 5 of that Contract would be reduced to nonsense: for it must be nonsensical to require a proposal bond in an amount 300% more than the amount of the required performance bond, if the proposal bond were to become functus officio the moment the contract was legally entered into. Upon the other hand, the requirement of posting of a performance bond of P10,000.00 is quite understandable if it be understood as simply additional security for the carrying out of the terms of the contract, that is, additional to the Proposal Bond. [12]

Finally, we note that the Proposal Bond is set out in a printed contract form of petitioner Eastern. The three (3) circumstances occurrence of which would trigger off the liability of Eastern under the bond, appear to be standard stipulations imposed by petitioner upon all persons seeking to secure proposal bonds from Eastern. To this extent, the Proposal Bond is a contract of adhesion, having been prepared solely by Eastern. Accordingly, any ambiguity or obscurity that may be found to infect the terms of the Proposal Bond, must be construed against Eastern. [13]

In sum, we hold that petitioner Eastern's liability under the Proposal Bond accrued the moment the principal obligor, Motor City, failed to post the P10,000.00 Performance Bond and incurred in delay and eventually defaulted in the repair and delivery of the seventh jeep unit, part of the subject matter of the Contract for Repair of

Jeeps with respondent DAR.

WHEREFORE, the Petition for Review is DENIED for lack of merit. The Decision dated 11 December 1984 of the then Intermediate Appellate Court in A.C. - G.R. CV 67523 is hereby AFFIRMED with the modification that the one percent (1%) indemnity charge per day of delay in delivery provided for in the Contract for Repair of Jeeps shall be computed from 13 March 1978 (not 3 March 1978), the date of last demand. Petitioner's liability for such indemnity charge shall not exceed the face amount of the Proposal Bond (P33,275.00). Costs against petitioner.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] Rollo, pp. 27-32.

[2] Folder of Exhibits, Exhibits "C" and "BB".

[3] Id., Exhibit "A".

[4] CFI Record on Appeal, pp. 1-4.

[5] Id., pp. 15-19.

[6] Folder of Exhibits, Exhibits "D" and "1."

[7] CFI Record on Appeal, pp. 35-58.

[8] See *Padilla v. Zaldivar*, 12 SCRA 260 (1964).

[9] Section 176, Insurance Code, as amended.

[10] Webster's Third New International Dictionary (1986 unabridged ed.), p. 794; underscoring supplied.

[11] Ibid., underscoring supplied.

[12] Cf. *Padilla v. Zaldivar*, 12 SCRA 260 at 265 (1964).

[13] Article 1377, Civil Code, *Angeles v. Calasanz*, 135 SCRA 323, (1985); and *De Borja v. Santos*, 79 SCRA 557 (1977).

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