

EL DORADO CONSULTING REALTY AND DEVELOPMENT GROUP CORP., PETITIONER, VS. PACIFIC UNION INSURANCE COMPANY, RESPONDENT.

G.R. Nos. 245617 & 245836. November 10, 2020

Ponente: CARANDANG, J.

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CARANDANG, J.:

Before this Court is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court, assailing the Consolidated Decision[2] dated July 23, 2018 and Consolidated Resolution[3] dated February 28, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 150085 and 150092 which denied the petitions for review filed by both parties and affirmed with modification the ruling of the Construction Industry Arbitration Commission (CIAC).

Facts of the Case

On July 27, 2014, El Dorado Consulting Realty and Development Group Corporation (El Dorado) entered into an Owner-Contractor Agreement[4] with ASPF Construction and Development, Inc. (ASPF Construction) for the construction of a seven-storey condominium hotel named "The Ritz" located in Pampanga for a contract price of P170,000,000.00.[5]

On July 10, 2014, ASPF Construction obtained a Performance Bond from Pacific Union Insurance Company (PUIC) in the amount of P19,641,807.80 to guarantee compliance with all its obligations under the Owner-Contractor Agreement. Subsequently, the parties amended the Owner-Contractor Agreement to increase the Performance Bond to P98,209,039.00, equivalent to the total contract price for Phase 1 of the project. Hence, PUIC issued another Performance Bond in the amount of P78,567,231.20.[6]

During the construction of the project, El Dorado sent several notices to ASPF Construction for Warnings/Notices of Delayed Works, Site Safety Violation, Notices of Defect, and Notices to Comply.[7] Eventually, on February 5, 2015, ASPF Construction requested that a revision of the schedule of payments, which provided for the payment by condominium units, be made. ASPF Construction asked that El Dorado pay in cash instead because it has encountered liquidity problems. However, El Dorado refused, explaining that the payment by condominium units was a major consideration why it agreed to enter into the contract.[8]

On April 30, 2015, El Dorado sent a Notice of Default, Notice of Termination of Agreement, Denial of Claim for Payment Billings and Demand for Return of Unliquidated Down Payment to ASPF Construction.[9]

On May 6, 2015, El Dorado submitted a Notice of Claim to PUIC under Performance Bond No. 25628[10] in the amount of P19,641,807.80 and Performance Bond No. 26198[11] amounting to P78,567,231.20. In the letter sent by El Dorado, it stated that ASPF Construction has incurred substantial delay in the performance of its obligations which are all events of default under the Owner-Contractor Agreement. Hence, El Dorado requested that PUIC release the full amount of P98,209,039.20 under the Performance Bonds.[12]

On June 25, 2015, PUIC informed El Dorado that the Performance Bonds were cancelled for non-payment of premiums.[13]

Due to this, on July 13, 2016, El Dorado filed a Request for Arbitration against PUIC before the CIAC and prayed that it be awarded the following: (1) unliquidated down payment amounting to P17,000,000.00; (2) cost of retrofitting in the amount of P350,000.00; (3) liquidated damages in the amount of P21,538,294.76; and (4) interest and costs of arbitration amounting to P3,500,000.00.[14]

In its Answer with Compulsory Counterclaim,[15] PUIC questioned the jurisdiction of the CIAC alleging that it was not a party to the Owner-Contractor Agreement which contains the Arbitration Clause and sought the recovery of exemplary damages in the amount of P1,000,000.00 and attorney's fees amounting to P1,000,000.00.[16]

Ruling of the CIAC

On March 6, 2017, the CIAC issued its Final Award.[17] The CIAC discussed that is within its jurisdiction to take cognizance of the case because the dispute between the parties arose from or is connected with the Owner-Contractor Agreement entered into between El Dorado and ASPF Construction.[18]

The CIAC found that El Dorado only paid a total of P17,000,000.00 representing the 10% down payment for the whole project. The actual accomplishment of ASPF Construction as of March 28, 2015 was estimated to be 10.39%. Compensating the two, there is still left a balance of 0.39% of the contract price or P663,000.00 in favor of ASPF Construction. Hence, El Dorado cannot recover the P17,000,000.00 it paid to ASPF Construction.[19] As to the cost of retrofitting or pre-requisite works, the CIAC held that it cannot grant the same to El Dorado because the latter is still liable to ASPF Construction for the 0.39% of the contract price as discussed above. El Dorado will be unjustly enriched at the expense of ASPF Construction if the same is granted.[20] However, the CIAC found it proper to award P1,700,000.00 as liquidated damages in favor of El Dorado.[21] The CIAC also ordered the parties to pay their pro rata share of the arbitration costs.[22]

On the other hand, the CIAC denied the prayer for exemplary damages and attorney's fees submitted by PUIC.[23]

Both El Dorado and PUIC filed an appeal to the CA.

Ruling of the CA

In its July 23, 2018 Consolidated Decision,[24] the CA agreed with the CIAC that El Dorado is not entitled to its claim for unliquidated damages, costs of retrofitting, and the interests and costs of arbitration. Further, the CA deleted CIAC's award of P1,700,000.00 liquidated damages in favor of El Dorado.[25]

The CA agreed that El Dorado is not entitled to reimbursement of rehabilitation and other prerequisite work because the same is in the nature of actual damages that has to be proved. Here, El Dorado failed to adduce actual receipts, invoices, contracts, and similar documents to support such claim.[26]

In deleting the P1,700,000.00 liquidated damages awarded by the CIAC to El Dorado, the CA discussed that as a precondition thereto, there must be proof that ASPF Construction incurred delay in the performance of its obligation. In this case, the CA found that there is insufficiency of evidence to establish the fact of delay. Moreover, since El Dorado did not pay the down payment on time and deliberately refused to settle the progress billings or perform its other contractual obligations, it cannot demand that ASPF Construction deliver on time or recover damages by reason of its own breach. The CA concluded that El Dorado was equally at fault.[27]

Lastly, the CA denied PUIC's contention that the unpaid First Variation Order Billing in the amount of

P729,668.11 be offset against El Dorado's claim because there is no proof to support the billings.[28]

El Dorado filed a motion for partial reconsideration[29] which was denied in the Consolidated Resolution[30] dated February 28, 2019.

Since the CA deleted the only monetary claim awarded by CIAC in its favor, El Dorado filed this Petition for Review on Certiorari[31] reiterating its demand to be reimbursed the amount of P17,000,000.00 it paid as down payment, P21,538,294.76 as liquidated damages, interest, costs of arbitration, and attorney's fees.[32]

In its Comment,[33] PUIC agreed with the CA in deleting the award of liquidated damages in the amount of P1,700,000.00 in favor of El Dorado for lack of legal basis.[34]

Issue

Whether the CA correctly affirmed with modification the ruling of the CIAC.

Ruling of the Court

This case originated from a Request for Arbitration[35] filed by El Dorado against PUIC without impleading ASPF Construction. At the outset, it must be first determined whether the CIAC correctly took cognizance of the case. PUIC questioned the jurisdiction of the CIAC in its Answer with Counterclaim but did not insist on the same argument when the case reached the CA. The silence of PUIC and its failure to raise the issue of jurisdiction before the CA and before this Court is immaterial. Jurisprudence has consistently held that for a court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. Jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. Thus, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.[36]

A judgment rendered by a court without jurisdiction is null and void and may be attacked anytime. It creates no rights and produces no effect. It remains a basic fact in law that the decision of a court or tribunal without jurisdiction is a total nullity. A void judgment for want of jurisdiction is no judgment at all. All acts performed pursuant to it and all claims emanating from it have no legal effect.[37]

The question of whether the CIAC has jurisdiction over a surety, which issued a performance bond to guarantee the performance by the contractor of its obligation under the construction agreement, is not novel. In *Prudential Guarantee and Assurance, Inc. v. Anscor Land, Inc.*,[38] property owner Anscor Land, Inc. (ALI) entered into a contract for the construction of an eight-unit townhouse with Kraft Realty and Development Corporation (KRDC). KRDC secured the completion of the construction project through a surety and performance bond it obtained from Prudential Guarantee. The delay in the construction project prompted ALI to terminate the contract and to file arbitration proceedings against both KRDC and Prudential Guarantee. Prudential Guarantee argued that CIAC did not have jurisdiction over it for not being a signatory of the construction agreement between ALI and KRDC. In ruling that the CIAC has jurisdiction over Prudential Guarantee, the Supreme Court held that:

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

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

event KRDC fails in its contractual undertaking.

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

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

However, in the case of *Stronghold Insurance Company, Inc. v. Spouses Stroem*,^[39] which involved property owners Sps. Stroem who entered into an Owner-Contractor Agreement with Asis-Leif and Company, Inc. (Asis-Leif) for the construction of a two-storey house, Asis-Leif likewise secured a performance bond from Stronghold Insurance Company, Inc. (Stronghold). When Asis-Leif failed to finish the project on time, Sps. Stroem filed a Complaint for breach of contract and for sum of money with claims for damages against both Asis-Leif and Stronghold before the Regional Trial Court (RTC). Stronghold argued that the RTC has no jurisdiction over it in view of the arbitration clause found in the Owners-Contractor Agreement entered into by Sps. Stroem and Asis-Leif. This time, the Supreme Court held that the RTC and not CIAC has jurisdiction over the surety ruling thus:

This court, however, cannot apply the ruling in *Prudential* to the present case. Several factors militate against petitioner's claim.

The contractual stipulations in this case and in *Prudential* are different. The relevant provisions of the Owners-Contractor Agreement in this case state:

ARTICLE 5. THE CONTRACT DOCUMENTS. –

The following documents prepared by the CONTRACTOR shall constitute an integral part of this contract as fully as if hereto attached or herein stated, except as otherwise modified by mutual agreement of parties, and attached to this agreement.

Attachment 5.1 Working Drawings

Attachment 5.2 Outline Specifications

Attachment 5.3 Bill of Quantities

Attachment 5.4 CONTRACTOR Business License

x x x x

ARTICLE 7. PERFORMANCE (SURETY) BOND. –

7.1 Within 30 days of the signing of this agreement, CONTRACTOR shall provide to OWNERS a performance bond, issued by a duly licensed authority, acceptable to the OWNERS, and equal to the amount of PHP4,500,000.00 (Four Million and Five Hundred Thousand Philippine Pesos), with the OWNERS as beneficiary.

7.2 The performance bond will guarantee the satisfactory and faithful performance by the CONTRACTOR of all provisions stated within this contract.

ARTICLE 8. ARBITRATION. –

8.1 Any dispute between the parties hereto which cannot be amicably settled shall be finally settled by arbitration in accordance with the provision of Republic Act 876, of The Philippines, as amended by the Executive Order 1008 dated February 4, 1985.

In contrast, the provisions of the construction contract in Prudential provide:

Article 1

CONTRACT DOCUMENTS

1.1 The following shall form part of this Contract and together with this Contract, are known as the "Contract Documents":

a. Bid Proposal

x x x x

d. Notice to proceed

x x x x

j. Appendices A & B (respectively, Surety Bond for Performance and, Supply of Materials by the Developer)

This court in Prudential held that the construction contract expressly incorporated the performance bond into the contract. In the present case, Article 7 of the Owners-Contractor Agreement merely stated that a performance bond shall be issued in favor of respondents, in which case petitioner and Asis-Leif Builders and/or Ms. Ma. Cynthia Asis-Leif shall pay P4,500,000.00 in the event that Asis-Leif fails to perform its duty under the Owners-Contractor Agreement. Consequently, the performance bond merely referenced the contract entered into by respondents and Asis-Leif, which pertained to Asis-Leif's duty to construct a two-storey residence building with attic, pool, and landscaping over respondents' property.

To be clear, it is in the Owners-Contractor Agreement that the arbitration clause is found. The construction agreement was signed only by respondents and the contractor, Asis-Leif, as represented by Ms. Ma. Cynthia Asis-Leif. It is basic that "[c]ontracts take effect only between the parties, their assigns and heirs[.]" Not being a party to the construction agreement, petitioner cannot invoke the arbitration clause. Petitioner, thus, cannot invoke the jurisdiction of the CIAC.[40] (Emphasis supplied)

The Owner-Contractor Agreement in this case is the same as in Stronghold in the sense that it failed to expressly incorporate the performance bonds thereto. Article 2 of the Owner-Contractor Agreement between El Dorado and ASPF Construction provides the following:

Article 2

CONTRACT DOCUMENTS

2.01 The CONTRACT DOCUMENTS, which are hereto incorporated and made integral part hereof, and which are duly signed by the OWNER and the CONTRACTOR, shall consist of, but not limited to the following:

- Contractor's Proposals dated May 22, 2014 - Annex "A";
- Plans, Specifications and other bid documents dated Annex "B";
- Notice of Award dated and instruction to Bidders - Annex "C";
- Unit Price Schedule - Annex "D";

- Bar Chart/CPM Network - Annex "E";
- United Architects of the Philippines (UAP) Document 301 General Conditions - Annex "F";
- Schedule of Payment - Annex "G"

x x x x[41]

It is clear from the Owner-Contractor Agreement that the Performance Bonds were not made an integral part of the same. Even though the Performance Bonds made reference to the Owner-Contractor Agreement, nevertheless, the arbitration clause, which is the basis for CIAC to take cognizance of the case, was only signed by El Dorado and ASPF Construction. PUIC is not a signatory of the Owner-Contractor Agreement. Thus, only El Dorado and ASPF Construction, the parties to the Owner-Contractor Agreement who agreed to the arbitration clause, can invoke the same. Not being a party to the Agreement, it is not proper for PUIC to be impleaded in the arbitration proceedings before the CIAC. This is consistent with the basic principle that contracts shall take effect only between the parties, their assigns, and heirs.[42]

Since the CIAC has no jurisdiction over PUIC, the CIAC cannot rule on the liability of PUIC over the Performance Bonds.

WHEREFORE, the Petition for Review on Certiorari is DENIED. CIAC Case No. 36-2016 is DISMISSED for lack of jurisdiction on the part of the Construction Industry Arbitration Commission.

SO ORDERED.

Peralta, C.J., (Chairperson), Caguioa, Zalameda, and Gaerlan, JJ., concur.

[1] Rollo, pp. 8-50.

[2] Penned by Associate Justice Henri Jean Paul B. Inting (now a member of this Court), with the concurrence of Associate Justices Mariflor P. Punzalan Castillo and Danton Q. Bueser; id at 57-81.

[3] Id. at 105-109.

[4] Id. at 188-205.

[5] Id. at 58.

[6] Id. at 59.

[7] Id.

[8] Id. at 60.

[9] Id. at 60, 233.

[10] Id. at 212.

[11] Id. at 214.

[12] Id. at 60-62.

[13] Id. at 62.

[14] Id. at 158.

[15] Id. at 366-376.

[16] Id. at 159, 375.

[17] Id. at 158-176.

[18] Id. at 166-167.

[19] Id. at 169-170.

[20] Id. at 170.

[21] Id. at 173.

[22] Id.

[23] Id.

[24] Supra note 2.

[25] Rollo, p. 80.

[26] Id. at 71.

[27] Id. at 72-75.

[28] Id. at 79.

[29] Id. at 82-101.

[30] Supra note 3.

[31] Rollo, pp. 8-50.

[32] Id. at 49.

[33] Id. at 259-292.

[34] Id. at 266.

[35] Id. at 10.

[36] Bilag v. Ay-ay, 809 Phil. 236, 248 (2017), citing Mitsubishi Motors Philippines Corporation v. Bureau of Customs, 760 Phil. 954, 960 (2015).

[37] Id.

[38] 644 Phil. 634 (2010).

[39] 751 Phil. 262 (2015).

[40] Id. at 281-282.

[41] Rollo, p. 190.

[42] CIVIL CODE OF THE PHILIPPINES, Art. 131

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