

## SECOND DIVISION

[ G.R. No. 204689, January 21, 2015 ]

**STRONGHOLD INSURANCE COMPANY, INC., PETITIONER, VS.  
SPOUSES RUNE AND LEA STROEM, RESPONDENTS.**

### DECISION

**LEONEN, J.:**

For resolution is a Petition for Review<sup>[1]</sup> under Rule 45 of the Rules of Court assailing the Decision<sup>[2]</sup> dated November 20, 2012 of the Court of Appeals in CA-G.R. CV No. 96017. The Court of Appeals affirmed the Decision<sup>[3]</sup> of the Regional Trial Court of Makati, Branch 133 in Civil Case No. 02-1108 for collection of a sum of money.

This case involves the proper invocation of the Construction Industry Arbitration Committee's (CIAC) jurisdiction through an arbitration clause in a construction contract. The main issue here is whether the dispute — liability of a surety under a performance bond — is connected to a construction contract and, therefore, falls under the exclusive jurisdiction of the CIAC.

Spouses Rune and Lea Stroem (Spouses Stroem) entered into an Owners-Contractor Agreement<sup>[4]</sup> with Asis-Leif & Company, Inc. (Asis-Leif) for the construction of a two-storey house on the lot owned by Spouses Stroem. The lot was located at Lot 4A, Block 24, Don Celso Tuason Street, Valley Golf Subdivision, Barangay Mayamot, Antipolo, Rizal.<sup>[5]</sup>

On November 15, 1999, pursuant to the agreement, Asis-Leif secured Performance Bond No. LP/G(13)83056 in the amount of P4,500,000.00 from Stronghold Insurance Company, Inc. (Stronghold).<sup>[6]</sup> Stronghold and Asis-Leif, through Ms. Ma. Cynthia Asis-Leif, bound themselves jointly and severally to pay the Spouses Stroem the agreed amount in the event that the construction project is not completed.<sup>[7]</sup>

Asis-Leif failed to finish the project on time despite repeated demands of the Spouses Stroem.<sup>[8]</sup>

Spouses Stroem subsequently rescinded the agreement.<sup>[9]</sup> They then hired an independent appraiser to evaluate the progress of the construction project.<sup>[10]</sup>

Appraiser Asian Appraisal Company, Inc.'s evaluation resulted in the following percentage of completion: 47.53% of the residential building, 65.62% of the garage, and 13.32% of the swimming pool, fence, gate, and land development.<sup>[11]</sup>

On April 5, 2001, Stronghold sent a letter to Asis-Leif requesting that the company settle its obligations with the Spouses Stroem. No response was received from Asis-Leif.<sup>[12]</sup>

On September 12, 2002, the Spouses Stroem filed a Complaint (with Prayer for Preliminary Attachment)<sup>[13]</sup> for breach of contract and for sum of money with a claim for damages against Asis-Leif, Ms. Cynthia Asis-Leif, and Stronghold.<sup>[14]</sup> Only Stronghold was served summons. Ms. Cynthia Asis-Leif allegedly absconded and moved out of the country.<sup>[15]</sup>

On July 13, 2010, the Regional Trial Court rendered a judgment in favor of the Spouses Stroem. The trial court ordered Stronghold to pay the Spouses Stroem ₱ 4,500,000.00 with 6% legal interest from the time of first demand.<sup>[16]</sup> The dispositive portion of the trial court Decision reads:

**WHEREFORE**, finding plaintiffs' cause of action to be sufficiently established being supported by evidence on records, judgement is hereby rendered in favor of the plaintiff spouses Rune and Lea Stroem and against the defendant Stronghold Insurance Company Incorporated ordering the latter to pay the plaintiff the sums of:

- 1) Php4,500,000.00 with six (6%) percent legal interest from the time of first demand and interest due shall earn legal interest from the time of judicial demand until fully paid.
- 2) Php35,000.00 by way of attorney's fees and other litigation expenses.

Defendant is further ordered to pay the costs of this suit.

SO ORDERED.<sup>[17]</sup>

Both Stronghold and the Spouses Stroem appealed to the Court of Appeals.<sup>[18]</sup>

The Court of Appeals affirmed with modification the trial court's Decision. It increased the amount of attorney's fees to ₱50,000.00.<sup>[19]</sup>

The dispositive portion of the Court of Appeals Decision reads:

**WHEREFORE**, the appeal of Stronghold Company, Inc[.] is **DISMISSED**, while the appeal of spouses Rune and Lea Stroem is **PARTLY GRANTED**. The November 27, 2009 Decision of the Regional Trial Court of Makati City is **AFFIRMED** with **MODIFICATION** that the award of attorney's fees is increased to P50,000.00

**SO ORDERED.**<sup>[20]</sup>

On March 20, 2013, this court required the Spouses Stroem to submit their

Comment on the Petition.<sup>[21]</sup>

We noted the Spouses Stroem's Comment on July 31, 2013.<sup>[22]</sup> We also required Stronghold to file its Reply to the Comment,<sup>[23]</sup> which was noted on December 9, 2013.<sup>[24]</sup>

Stronghold argues that the trial court did not acquire jurisdiction over the case and, therefore, the Court of Appeals committed reversible error when it upheld the Decision of the Regional Trial Court.<sup>[25]</sup> The lower courts should have dismissed the case in view of the arbitration clause in the agreement and considering that "[Republic Act No. 876] explicitly confines the court's authority only to pass upon the issue of whether there is [an] agreement . . . providing for arbitration. In the affirmative, the statute ordains that the court shall issue an order 'summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.'"<sup>[26]</sup>

Moreover, "the stipulations in said Agreement are part and parcel of the conditions in the bond. Were it not for such stipulations in said agreement, [Stronghold] would not have agreed to issue a bond in favor of the Spouses Stroem. The parties to the bond are ALB/Ms. Asis-[L]eif, Spouses Stroem and [Stronghold] such that ALB/Ms. Asis-[L]eif never ceased to be a party to the surety agreement."<sup>[27]</sup>

In any case, Stronghold's liability under the performance bond is limited only to additional costs for the completion of the project.<sup>[28]</sup> In addition, the Court of Appeals erred in holding that Stronghold changed its theory with regard to the notice requirement<sup>[29]</sup> and in modifying the trial court's award of attorney's fees.<sup>[30]</sup>

On the other hand, the Spouses Stroem argue that Stronghold committed forum shopping warranting dismissal of the case.<sup>[31]</sup> According to the Spouses Stroem, Stronghold deliberately committed forum shopping when it filed the present petition despite the pendency of the Spouses Stroem's Motion for Partial Reconsideration of the Court of Appeals Decision dated November 20, 2012.<sup>[32]</sup>

More importantly, the Owners-Contractor Agreement is "separate and distinct from the Bond. The parties to the Agreement are ALB/Ms. Asis-Leif and Spouses Stroem, while the parties to the Bond are Spouses Stroem and Stronghold. The considerations for the two contracts are likewise distinct. Thus, the arbitration clause in the Agreement is binding only on the parties thereto, specifically ALB/Ms. Asis-Leif and Spouses Stroem[.]"<sup>[33]</sup>

Contrary to Stronghold's argument, Spouses Stroem argues that stronghold is liable for the full amount of the performance bond. The terms of the bond clearly show that Stronghold is liable as surety.<sup>[34]</sup> Verily, notice to Stronghold is not required for its liability to attach.<sup>[35]</sup>

The issues for consideration are:

- (1) Whether the dispute involves a construction contract;
- (2) Whether the CIAC has exclusive jurisdiction over the controversy

- between the parties;
- (3) Whether the Regional Trial Court should have dismissed the petition outright as required by law and jurisprudence and referred the matter to the CIAC; and
  - (4) Whether petitioner Stronghold Insurance Company, Inc. is liable under Performance Bond No. LP/G(13)83056.
    - (a) Whether petitioner Stronghold Insurance Company, Inc. is only liable as to the extent of any additional cost for the completion of the project due to any increase in prices for labor and materials.
    - (b) Whether the case involves ordinary suretyship or corporate suretyship.

After considering the parties' arguments and the records of this case, this court resolves to deny the Petition.

### **On forum-shopping**

Respondents argue that petitioner committed forum shopping; hence, the case should have been dismissed outright.

Records show that petitioner received a copy of the Decision of the Court of Appeals on December 5, 2012.<sup>[36]</sup> Petitioner did not file a Motion for Reconsideration of the assailed Decision. It filed before this court a Motion for Extension of Time To File Petition for Review requesting an additional period of 30 days from December 20, 2012 or until January 19, 2013 to file the Petition.<sup>[37]</sup>

Respondents filed their Motion for Partial Reconsideration of the Court of Appeals Decision on December 11, 2012.<sup>[38]</sup> They sought the modification of the Decision as to the amounts of moral damages, exemplary damages, attorney's fees, and costs of the suit.<sup>[39]</sup>

Respondents alleged in their Comment that as early as January 9, 2013, petitioner received a copy of the Court of Appeals' Resolution requiring Comment on the Motion for Partial Reconsideration.<sup>[40]</sup> Still, petitioner did not disclose in its Verification and Certification Against Forum Shopping the pendency of respondents' Motion for Partial Reconsideration.<sup>[41]</sup>

For its part, petitioner claims that it did not commit forum shopping. It fully disclosed in its Petition that what it sought to be reviewed was the Decision dated November 20, 2012 of the Court of Appeals. "Petitioner merely exercised its available remedy with respect to the Decision of the Court of Appeals by filing [the] Petition."<sup>[42]</sup> What the rules mandate to be stated in the Certification Against Forum Shopping is the status of "any other action." This other action involves the same issues and parties but is an entirely different case.

Indeed, petitioner is guilty of forum shopping.

There is forum shopping when:

as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another. The principle applies not only with respect to suits filed in the courts but also in connection with litigations commenced in the courts while an administrative proceeding is pending[.]<sup>[43]</sup> (Citation omitted)

This court has enumerated the elements of forum-shopping: "(a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (c) the identity with respect to the two preceding particulars in the two cases is such that any judgment rendered in the pending cases, regardless of which party is successful, amount to *res judicata* in the other case."<sup>[44]</sup>

Rule 42, Section 2<sup>[45]</sup> in relation to Rule 45, Section 4 of the Rules of Court mandates petitioner to submit a Certification Against Forum Shopping and promptly inform this court about the pendency of any similar action or proceeding before other courts or tribunals. The rule's purpose is to deter the unethical practice of pursuing simultaneous remedies in different forums, which "wreaks havoc upon orderly judicial procedure."<sup>[46]</sup> Failure to comply with the rule is a sufficient ground for the dismissal of the petition.<sup>[47]</sup>

Records show that petitioner's duly authorized officer certified the following on January 21, 2013:

4. I further certify that: (a) I have not commenced any other action or proceeding involving the same issues in the Supreme Court, Court of Appeals, or any other tribunal or agency; (b) to the best of my knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals or different Divisions thereof, or any tribunal or agency; (c) if I should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different Divisions thereof, or any other tribunal or agency, I undertake to promptly inform the aforesaid courts and such tribunal or agency of the fact within five (5) days therefrom.<sup>[48]</sup>

Petitioner failed to carry out its duty of promptly informing this court of any pending action or proceeding before this court, the Court of Appeals, or any other tribunal or agency. This court cannot countenance petitioner's disregard of the rules.

This court has held before that:

[u]ltimately, what is truly important to consider in determining whether forum-shopping exists or not is the *vexation caused the courts and parties-litigant by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or to grant the same or substantially the same reliefs*, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issue.<sup>[49]</sup> (Emphasis supplied)