

## THIRD DIVISION

[ G.R. No. 172404, August 13, 2014 ]

**PEOPLE'S TRANS-EAST ASIA INSURANCE CORPORATION, A.K.A.  
PEOPLE'S GENERAL INSURANCE CORPORATION, PETITIONER,  
VS. DOCTORS OF NEW MILLENNIUM HOLDINGS, INC.,  
RESPONDENT.**

### D E C I S I O N

**LEONEN, J.:**

The liabilities of an insurer under the surety bond are not extinguished when the modifications in the principal contract do not substantially or materially alter the principal's obligations. The surety is jointly and severally liable with its principal when the latter defaults from its obligations under the principal contract.

This is a petition for review on certiorari under Rule 45 of the Rules of Court, praying for the reversal of the decision<sup>[1]</sup> of the Court of Appeals which set aside the decision<sup>[2]</sup> of the Regional Trial Court of Pasig City, Branch 267. In the assailed decision, the Court of Appeals held People's General Insurance Corporation and Million State Development Corporation jointly and severally liable to respondent Doctors of New Millennium Holdings, Inc.

As found by the trial court and the Court of Appeals, the facts are as follows.

Doctors of New Millennium Holdings, Inc. is a domestic corporation comprised of about 80 doctors. On March 2, 1999, it entered into a construction and development agreement (signed agreement) with Million State Development Corporation, a contractor, for the construction of a 200-bed capacity hospital in Cainta, Rizal.<sup>[3]</sup>

According to the terms of the signed agreement, Doctors of New Millennium obliged itself to pay P10,000,000.00 to Million State Development at the time of the signing of the agreement to commence the construction of the hospital. Million State Development was to shoulder 95% of the project cost and committed itself to secure P385,000,000.00 within 25 banking days from Doctors of New Millennium's initial payment,<sup>[4]</sup> part of which was to be used for the purchase of the lot where the hospital was to be constructed.<sup>[5]</sup>

As part of the conditions prior to the initial payment, Million State Development submitted a surety bond of P10,000,000.00 to Doctors of New Millennium. The surety bond was issued by People's Trans-East Asia Insurance Corporation, now known as People's General Insurance Corporation. Doctors of New Millennium, on the other hand, made the initial payment of P10,000,000.00.<sup>[6]</sup>

Million State Development, however, failed to comply with its obligation to secure P385,000,000.00 within 25 banking days from initial payment.<sup>[7]</sup> On April 7, 1999, it faxed a letter to Doctors of New Millennium explaining its delay was caused by its foreign creditors' delay in processing its application.<sup>[8]</sup>

On April 9, 1999, Doctors of New Millennium sent a formal demand letter to Million State Development for the remittance of the funds to be used for the purchase of the lot and demanding for the cost of money from the time the remittance was due. Instead of replying to the demand letter, Million State Development sent another letter on April 16, 1999, explaining that they would have their standby letter of credit within 15 banking days.<sup>[9]</sup>

When Million State Development reneged on its obligations, Doctors of New Millennium sent a demand letter dated June 14, 1999 to People's General Insurance for the return of its initial payment of P10,000,000.00, in accordance with its surety bond.<sup>[10]</sup> On July 9, 1999, Doctors of New Millennium sent another letter to People's General Insurance, this time furnishing a copy to the Insurance Commission. The Insurance Commission referred the matter to its Public Assistance and Investigation Division, which conducted conciliation proceeding.<sup>[11]</sup>

After several conferences, People's General Insurance sent a letter dated September 15, 1999 to then Insurance Commissioner Eduardo T. Malinis, stating that Doctors of New Millennium's surety claim was denied on the ground that the guarantee only extended to "the full and faithful construction of a First Class 200 hospital bed building"<sup>[12]</sup> and not to "the 'funding' of the construction of the hospital."<sup>[13]</sup> As a result of the letter, the conciliation proceedings were terminated, and Doctors of New Millennium filed an administrative complaint for unfair claim settlement practice against People's General Insurance.<sup>[14]</sup>

On October 5, 1999, while the administrative complaint was pending before the Insurance Commission, Doctors of New Millennium sent a demand letter to Million State Development for the return of their initial payment of P10,000,000.00.<sup>[15]</sup> Due to Million State Development's inaction, Doctors of New Millennium filed a complaint for breach of contract with damages with prayer for the issuance of preliminary attachment against Million State Development and People's General Insurance with the Regional Trial Court of Pasig City.<sup>[16]</sup>

In the proceedings before the trial court, Million State Development did not appear or submit any responsive pleading and was declared in default. The trial court resolved the issues of the case only as to the remaining parties and primarily involving the surety bond.<sup>[17]</sup>

Doctors of New Millennium, represented by its President, Dr. Cenon Alfonso, testified that the surety bond was entered into to protect the release of the ₱10,000,000.00 initial mobilization fund. People's General Insurance, on the other hand, represented by its President, Manual Liboro, testified that its liability was only limited to the construction of the hospital.<sup>[18]</sup>

Mr. Liboro also argued that the terms of the surety bond were based on the Draft Construction and Development Agreement (draft agreement). It alleged that

without its knowledge and consent, Doctors of New Millennium and Million State Development substantially altered the conditions of the draft agreement by inserting the clause "or the Project Owner's waiver," which appeared in the signed agreement.  
[19]

The draft agreement stated:

#### ARTICLE XIII

##### CONDITIONS TO DISBURSEMENT OF INITIAL PAYMENT

13.1 The obligations of the Project Owner to pay to the Contractor the amount constituting the Initial Payment shall be subject to and shall be made on the date (the "Closing Date") following the fulfillment of the following conditions:

- (a) the approval and selections by the Project Owner of the subcontractor that shall perform the Works, in accordance with Section 5.1[;]
- (b) the submission by the Contractor of a breakdown of the phases of the Work to be performed in pursuance of the Project, the corresponding percentage value and weight of each such phase, and the schedule of the Works indicating the chronological order in which the Contractor proposed to carry out such Works, together with the dates on which each phase of work shall be completed (the "Schedule of Work");
- (c) the submission by the Contractor of a copy of the (Surety Bond) in the form and substance satisfactory to the Project Owner, in accordance with Section 9.1;
- (d) the submission by the Contractor of proof of a firm commitment by banking institution(s) to fund the Project in the form of a committed credit line and representing committed funds in the amount not less than the Contract Price, or such other similar financing arrangements acceptable to the Project Owner; and
- (e) the compliance by the Contractor with all the obligations required to be performed by the Contractor as of the Closing Date.  
[20]

The same provisions appeared in Article XIII of the signed agreement, except for its first paragraph, which stated:

#### ARTICLE XIII

##### CONDITIONS TO DISBURSEMENT OF INITIAL PAYMENT

13.1 The obligation of the Project Owner to pay to the Contractor the amount constituting the Initial Payment shall be subject to and shall be made on the date (the "Closing Date") following the fulfillment **or the Project Owner's waiver** of the following conditions: . . . (Emphasis supplied)  
[21]

Mr. Liboro claimed that they became aware of the alteration during the conciliation proceedings before the Insurance Commission.<sup>[22]</sup>

On February 18, 2002, the Insurance Commission rendered its decision on the administrative complaint, finding that People's General Insurance engaged in unfair claim settlement practice under Section 241(1) of the Insurance Code. The Commission imposed a fine of ₱500.00, the suspension of its certificate of registration of its bond underwriter for six months, and the suspension of its authority to issue bonds for six months.<sup>[23]</sup>

On August 25, 2004, the trial court rendered its decision<sup>[24]</sup> finding only Million State Development liable to Doctors of New Millennium. It discharged People's General Insurance from any liability on the ground that the inclusion of the clause "or the Project Owner's waiver" in the signed agreement was a novation of the draft agreement. It found that the Doctors of New Millennium's right under the surety bond can only be exercised upon the fulfillment of the conditions provided for in Article XIII(13.1).<sup>[25]</sup> The dispositive portion states:

WHEREFORE, IN VIEW OF THE FOREGOING CONSIDERATIONS, judgment is hereby rendered declaring the defaulted defendant Contractor, Million State Development Corporation represented by Peter A. Perez, President solely liable to plaintiff Doctors of New Millen[n]ium Holdings, Inc., represented by Cenon R. Alfonso in the amount of Ten Million Pesos (PhP 10,000,000.00), plus legal interests from October 1999 until fully paid. Said defendant Contractor is likewise directed to pay plaintiff the amount of PhP150,000.00 as attorney's fees and litigation expenses as well as the costs of the suit.

In the meantime, the instant complaint as against the defendant People's Trans East Asia Insurance Corporation a.k.a. People's General Insurance Corporation is hereby dismissed for lack of merit.

SO ORDERED.<sup>[26]</sup>

Upon the denial of its motion for partial reconsideration, Doctors of New Millennium filed an appeal with the Court of Appeals, seeking the reversal of the trial court's finding that the surety was not liable.<sup>[27]</sup>

On December 29, 2005, the Court of Appeals rendered a decision<sup>[28]</sup> granting the appeal and holding People's General Insurance jointly and severally liable with Million State Development.

The appellate court found that the surety bond was made to cover for the initial payment made by Doctors of New Millennium. Citing the Whereas Clause of the surety bond, it ruled that People's General Insurance guaranteed not only the construction of the hospital but also secured the initial payment in case the contractor defaults.<sup>[29]</sup> The surety bond stated:

That we MILLION STATE DEVELOPMENT CORPORATION . . ., as principal, and PEOPLE'S TRANS-EAST ASIA INSURANCE CORPORATION, a corporation duly organized and existing under and by virtue of the laws of the Philippines, as surety, are held and firmly bound unto the DOCTORS OF NEW MILLENNIUM HOLDINGS, INC. . . . in the sum of TEN MILLION PESOS ONLY (P10,000,000.00) Philippine Currency, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally firmly by these presents:

The condition[s] of this obligation are as follows:

WHEREAS, the above bounded principal, on the 2nd day of March, 1999 entered into a construction and Dev't. Agreement with DOCTORS OF NEW MILLENNIUM HOLDINGS, INC. to full and faithfully guarantee for the construction of a first class 200 bed capacity hospital building project Site.

WHEREAS, the DOCTORS OF NEW MILLENNIUM HOLDINGS, INC. requires the Principal to post a Surety (Downpayment) Bond in the above-stated sum to guarantee the repayment of the downpayment as provided under the terms and conditions of its contract with the obligee, a copy of which is hereto attached and made an integral part of this bond.

WHEREAS, the liability of the herein Surety shall in no case exceed the sum of TEN MILLION PESOS (P10,000,000.00) ONLY, Philippine Currency.

WHEREAS, said DOCTORS OF NEW MILLENNIUM HOLDINGS, INC. requires said principal to give a good and sufficient bond in the above stated sum to secure the full and faithful performance on his part said contract agreement.

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.<sup>[30]</sup>

The appellate court also ruled that the Doctors of New Millennium's waiver of the preconditions stated in Article XIII of the signed agreement *did not increase the surety's risk since it has "absolutely no relation at all and are not material to the undertaking of People's General Insurance to guarantee repayment."*<sup>[31]</sup> The dispositive portion of the decision states:

WHEREFORE, the judgment appealed as regards the dismissal of the complaint against defendant People's General Insurance is hereby REVERSED and SET ASIDE. Surety is hereby adjudged jointly and severally liable with Million State Development Corporation for the damages suffered by the plaintiff in a) the amount of ten million pesos (P10,000,000.00), plus legal interests from October 1999 until fully paid and; b) the amount of P200,000.00 representing attorney's fees and