

SECOND DIVISION

[G.R. No. 179628, January 16, 2013]

**THE MANILA INSURANCE COMPANY, INC., PETITIONER. VS.
SPOUSES ROBERTO AND AIDA AMURAO, RESPONDENTS.**

DECISION

DEL CASTILLO, J.:

The jurisdiction of the Construction Industry Arbitration Commission (CIAC) is conferred by law. Section 4^[1] of Executive Order (E.O.) No. I 008, otherwise known as the Construction Industry Arbitration Law, "is broad enough to cover any dispute arising from, or connected with construction contracts, whether these involve mere contractual money claims or execution of the works."^[2]

This Petition for Review on *Certiorari*^[3] under Rule 45 of the Rules of Court assails the Decision^[4] dated June 7, 2007 and the Resolution^[5] dated September 7, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 96815.

Factual Antecedents

On March 7, 2000, respondent-spouses Roberto and Aida Amurao entered into a Construction Contract Agreement (CCA)^[6] with Aegean Construction and Development Corporation (Aegean) for the construction of a six-storey commercial building in Tomas Morato corner E. Rodriguez Avenue, Quezon City.^[7] To guarantee its full and faithful compliance with the terms and conditions of the CCA, Aegean posted performance bonds secured by petitioner The Manila Insurance Company, Inc.^[8] (petitioner) and Intra Strata Assurance Corporation (Intra Strata).^[9]

On November 15, 2001, due to the failure of Aegean to complete the project, respondent spouses filed with the Regional Trial Court (RTC) of Quezon City, Branch 217, a Complaint,^[10] docketed as Civil Case No. Q-01-45573, against petitioner and Intra Strata to collect on the performance bonds they issued in the amounts of P2,760,000.00 and P4,440,000.00, respectively.^[11]

Intra Strata, for its part, filed an Answer^[12] and later, a Motion to Admit Third Party Complaint,^[13] with attached Third Party Complaint^[14] against Aegean, Ronald D. Nicdao, and Arnel A. Mariano.

Petitioner, on the other hand, filed a Motion to Dismiss^[15] on the grounds that the Complaint states no cause of action^[16] and that the filing of the Complaint is premature due to the failure of respondent-spouses to implead the principal contractor, Aegean.^[17] The RTC, however, denied the motion in an Order^[18] dated May 8, 2002. Thus, petitioner filed an Answer with Counterclaim and Cross-claim,

[19] followed by a Third Party Complaint^[20] against Aegean and spouses Ronald and Susana Nicdao.

During the pre-trial, petitioner and Intra Strata discovered that the CCA entered into by respondent-spouses and Aegean contained an arbitration clause.^[21] Hence, they filed separate Motions to Dismiss^[22] on the grounds of lack of cause of action and lack of jurisdiction.

Ruling of the Regional Trial Court

On May 5, 2006, the RTC denied both motions.^[23] Petitioner and Intra Strata separately moved for reconsideration but their motions were denied by the RTC in its subsequent Order^[24] dated September 11, 2006.

Aggrieved, petitioner elevated the case to the CA by way of special civil action for *certiorari*.^[25]

Ruling of the Court of Appeals

On June 7, 2007, the CA rendered a Decision^[26] dismissing the petition. The CA ruled that the presence of an arbitration clause in the CCA does not merit a dismissal of the case because under the CCA, it is only when there are differences in the interpretation of Article I of the construction agreement that the parties can resort to arbitration.^[27] The CA also found no grave abuse of discretion on the part of the RTC when it disregarded the fact that the CCA was not yet signed at the time petitioner issued the performance bond on February 29, 2000.^[28] The CA explained that the performance bond was intended to be coterminous with the construction of the building.^[29] It pointed out that "if the delivery of the original contract is contemporaneous with the delivery of the surety's obligation, each contract becomes completed at the same time, and the consideration which supports the principal contract likewise supports the subsidiary one."^[30] The CA likewise said that, although the contract of surety is only an accessory to the principal contract, the surety's liability is direct, primary and absolute.^[31] Thus:

WHEREFORE, we resolve to **DISMISS** the petition as we find that no grave abuse of discretion attended the issuance of the order of the public respondent denying the petitioner's motion to dismiss.

IT IS SO ORDERED.^[32]

Petitioner moved for reconsideration but the CA denied the same in a Resolution^[33] dated September 7, 2007.

Issues

Hence, this petition raising the following issues:

A.

THE HONORABLE [CA] ERRED WHEN IT HELD THAT IT IS ONLY WHEN THERE ARE DIFFERENCES IN THE INTERPRETATION OF ARTICLE I OF THE CONSTRUCTION AGREEMENT THAT THE PARTIES MAY RESORT TO ARBITRATION BY THE CIAC.

B.

THE HONORABLE [CA] ERRED IN TREATING [PETITIONER] AS A SOLIDARY DEBTOR INSTEAD OF A SOLIDARY GUARANTOR.

C.

THE HONORABLE [CA] OVERLOOKED AND FAILED TO CONSIDER THE FACT THAT THERE WAS NO ACTUAL AND EXISTING CONSTRUCTION AGREEMENT AT THE TIME THE MANILA INSURANCE BOND NO. G (13) 2082 WAS ISSUED ON FEBRUARY 29, 2000.^[34]

Petitioner's Arguments

Petitioner contends that the CA erred in ruling that the parties may resort to arbitration only when there is difference in the interpretation of the contract documents stated in Article I of the CCA.^[35] Petitioner insists that under Section 4 of E.O. No. 1008, it is the CIAC that has original and exclusive jurisdiction over construction disputes, such as the instant case.^[36]

Petitioner likewise imputes error on the part of the CA in treating petitioner as a solidary debtor instead of a solidary guarantor.^[37] Petitioner argues that while a surety is bound solidarily with the obligor, this does not make the surety a solidary co-debtor.^[38] A surety or guarantor is liable only if the debtor is himself liable.^[39] In this case, since respondent-spouses and Aegean agreed to submit any dispute for arbitration before the CIAC, it is imperative that the dispute between respondent-spouses and Aegean must first be referred to arbitration in order to establish the liability of Aegean.^[40] In other words, unless the liability of Aegean is determined, the filing of the instant case is premature.^[41]

Finally, petitioner puts in issue the fact that the performance bond was issued prior to the execution of the CCA.^[42] Petitioner claims that since there was no existing contract at the time the performance bond was executed, respondent-spouses have no cause of action against petitioner.^[43] Thus, the complaint should be dismissed.^[44]

Respondent spouses' Arguments

Respondent-spouses, on the other hand, maintain that the CIAC has no jurisdiction over the case because there is no ambiguity in the provisions of the CCA.^[45]

Besides, petitioner is not a party to the CCA.^[46] Hence, it cannot invoke Article XVII of the CCA, which provides for arbitration proceedings.^[47]

Respondent-spouses also insist that petitioner as a surety is directly and equally bound with the principal.^[48] The fact that the performance bond was issued prior to the execution of the CCA also does not affect the latter's validity because the performance bond is coterminous with the construction of the building.^[49]

Our Ruling

The petition has merit.

Nature of the liability of the surety

A contract of suretyship is defined as "an agreement whereby 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. It includes official recognizances, stipulations, bonds or undertakings issued by any company by virtue of and under the provisions of Act No. 536, as amended by Act No. 2206."^[50] We have consistently held that a surety's liability is joint and several, limited to the amount of the bond, and determined strictly by the terms of contract of suretyship in relation to the principal contract between the obligor and the obligee.^[51] It bears stressing, however, that although the contract of suretyship is secondary to the principal contract, the surety's liability to the obligee is nevertheless direct, primary, and absolute.^[52]

In this case, respondent-spouses (obligee) filed with the RTC a Complaint against petitioner (surety) to collect on the performance bond it issued. Petitioner, however, seeks the dismissal of the Complaint on the grounds of lack of cause of action and lack of jurisdiction.

The respondent-spouses have cause of action against the petitioner; the performance bond is coterminous with the CCA

Petitioner claims that respondent-spouses have no cause of action against it because at the time it issued the performance bond, the CCA was not yet signed by respondent-spouses and Aegean.

We do not agree.

A careful reading of the Performance Bond reveals that the "bond is coterminous with the final acceptance of the project."^[53] Thus, the fact that it was issued prior to the execution of the CCA does not affect its validity or effectivity.

But while there is a cause of action against petitioner, the complaint must still be dismissed for lack of jurisdiction.

The CIAC has jurisdiction over the case

Section 4 of E.O. No. 1008 provides that:

SEC. 4. *Jurisdiction.* – The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.

The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship, violation of the terms of agreement, interpretation and/or application of contractual time and delays, maintenance and defects, payment, default of employer or contractor, and changes in contract cost.

Excluded from the coverage of the law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

Based on the foregoing, in order for the CIAC to acquire jurisdiction two requisites must concur: “first, the dispute must be somehow connected to a construction contract; and second, the parties must have agreed to submit the dispute to arbitration proceedings.”^[54]

In this case, both requisites are present.

The parties agreed to submit to arbitration proceedings “[a]ny dispute arising in the course of the execution and performance of [the CCA] by reason of difference in interpretation of the Contract Documents x x x which [the parties] are unable to resolve amicably between themselves.”^[55] Article XVII of the CCA reads:

ARTICLE XVII – ARBITRATION

17.1 Any dispute arising in the course of the execution and performance of this Agreement by reason of difference in interpretation of the Contract Documents set forth in Article I which the OWNER and the CONTRACTOR are unable to resolve amicably between themselves shall be submitted by either party to a board of arbitrators composed of Three (3) members chosen as follows: One (1) member shall be chosen by the CONTRACTOR AND One (1) member shall be chosen by the OWNER. The said Two (2) members, in turn, shall select a third member acceptable to both of them. The decision of the Board of Arbitrators shall be rendered within Ten (10) days from the first meeting of the board, which decision when reached through the affirmative vote of at least Two (2) members of the board shall be final and binding upon the OWNER and CONTRACTOR.