

FIRST DIVISION

[G.R. No. 166044, June 18, 2012]

**COUNTRY BANKERS INSURANCE CORPORATION, PETITIONER,
VS. KEPPEL CEBU SHIPYARD, UNIMARINE SHIPPING LINES,
INC., PAUL RODRIGUEZ, PETER RODRIGUEZ, ALBERT
HONTANOSAS, AND BETHOVEN QUINAIN, RESPONDENTS.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This is a petition for review on *certiorari*^[1] to reverse and set aside the January 29, 2004 Decision^[2] and October 28, 2004 Resolution^[3] of the Court of Appeals in **CA-G.R. CV No. 58001**, wherein the Court of Appeals affirmed with modification the February 10, 1997 Decision^[4] of the Regional Trial Court (RTC) of Cebu City, Branch 7, in Civil Case No. CBB-13447.

Hereunder are the undisputed facts as culled from the records of the case.

On January 27, 1992, Unimarine Shipping Lines, Inc. (Unimarine), a corporation engaged in the shipping industry, contracted the services of Keppel Cebu Shipyard, formerly known as Cebu Shipyard and Engineering Works, Inc. (Cebu Shipyard), for dry docking and ship repair works on its vessel, the M/V Pacific Fortune.^[5]

On February 14, 1992, Cebu Shipyard issued Bill No. 26035 to Unimarine in consideration for its services, which amounted to P4,486,052.00.^[6] Negotiations between Cebu Shipyard and Unimarine led to the reduction of this amount to P3,850,000.00. The terms of this agreement were embodied in Cebu Shipyard's February 18, 1992 letter to the President/General Manager of Unimarine, Paul Rodriguez, who signed his conformity to said letter, quoted in full below:

18 February 1992
Ref No.: LL92/0383

UNIMARINE SHIPPING LINES, INC.
C/O Autographics, Inc.
Gorordo Avenue, Lahug, Cebu City

Attention: Mr. Paul Rodriguez
President/General Manager

This is to confirm our agreement on the shiprepair bills charged for the repair of MV Pacific Fortune, our invoice no. 26035.

The shiprepair bill (Bill No. 26035) is agreed at a negotiated amount of

P3,850,000.00 excluding VAT.

Unimarine Shipping Lines, Inc. ("Unimarine") will pay the above amount of [P3,850,000.00] in US Dollars to be fixed at the prevailing USDollar to Philippine Peso exchange rate at the time of payment. The payment terms to be extended to Unimarine is as follows:

<u>Installments</u>	<u>Amount</u>	<u>Due Date</u>
1 st Installment	P2,350,000.00	30 May 1992
2 nd Installment	P1,500,000.00	30 Jun 1992

Unimarine will deposit post-dated checks equivalent to the above amounts in Philippine Peso and an additional check amount of P385,000.00, representing 10% [Value Added Tax] VAT on the above bill of P3,850,000.00. In the event that Unimarine fails to make full payment on the above due dates in US Dollars, the post-dated checks will be deposited by CSEW in payment of the amounts owned by Unimarine and Unimarine agree that the 10% VAT (P385,000.00) shall also become payable to CSEW.

Unimarine in consideration of the credit terms extended by CSEW and the release of the vessel before full payment of the above debt, agree to present CSEW surety bonds equal to 120% of the value of the credit extended. The total bond amount shall be P4,620,000.00.

Yours faithfully,

CEBU SHIPYARD & ENG'G WORKS, INC Conforme:

(SGD)
SEET KENG TAT
Treasurer/VP-Admin.

(SGD)

PAUL RODRIGUEZ
Unimarine Shipping Lines, Inc. ^[7]

In compliance with the agreement, Unimarine, through Paul Rodriguez, secured from Country Bankers Insurance Corp. (CBIC), through the latter's agent, Bethoven Quinain (Quinain), CBIC Surety Bond No. G (16) 29419^[8] (the surety bond) on January 15, 1992 in the amount of P3,000,000.00. The expiration of this surety bond was extended to January 15, 1993, through Endorsement No. 33152^[9] (the endorsement), which was later on attached to and formed part of the surety bond. In addition to this, Unimarine, on February 19, 1992, obtained another bond from Plaridel Surety and Insurance Co. (Plaridel), PSIC Bond No. G (16)-00365^[10] in the amount of P1,620,000.00.

On February 17, 1992, Unimarine executed a Contract of Undertaking in favor of Cebu Shipyard. The pertinent portions of the contract read as follows:

Messrs, **Uni-Marine Shipping Lines, Inc.** ("the Debtor") of Gorordo Avenue, Cebu City hereby acknowledges that in consideration of **Cebu Shipyard & Engineering Works, Inc.** ("Cebu Shipyard") at our request agreeing to release the vessel specified in part A of the Schedule ("name

of vessel”) prior to the receipt of the sum specified in part B of the Schedule (“Moneys Payable”) payable in respect of certain works performed or to be performed by Cebu Shipyard and/or its subcontractors and/or material and equipment supplied or to be supplied by Cebu Shipyard and/or its subcontractors in connection with the vessel for the party specified in part C of the Schedule (“the Debtor”), we hereby unconditionally, irrevocably undertake to make punctual payment to Cebu Shipyard of the Moneys Payable on the terms and conditions as set out in part B of the Schedule. We likewise hereby expressly waive whatever right of excussion we may have under the law and equity.

This contract shall be binding upon Uni-Marine Shipping Lines, Inc., its heirs, executors, administrators, successors, and assigns and shall not be discharged until all obligation of this contract shall have been faithfully and fully performed by the Debtor.^[11]

Because Unimarine failed to remit the first installment when it became due on May 30, 1992, Cebu Shipyard was constrained to deposit the peso check corresponding to the initial installment of P2,350,000.00. The check, however, was dishonored by the bank due to insufficient funds.^[12] Cebu Shipyard faxed a message to Unimarine, informing it of the situation, and reminding it to settle its account immediately.^[13]

On June 24, 1992, Cebu Shipyard again faxed a message^[14] to Unimarine, to confirm Paul Rodriguez’s promise that Unimarine will pay in full the P3,850,000.00, in US Dollars on July 1, 1992.

Since Unimarine failed to deliver on the above promise, Cebu Shipyard, on July 2, 1992, through a faxed letter, asked Unimarine if the payment could be picked up the next day. This was followed by another faxed message on July 6, 1992, wherein Cebu Shipyard reminded Unimarine of its promise to pay in full on July 28, 1992. On August 24, 1992, Cebu Shipyard again faxed^[15] Unimarine, to inform it that interest charges will have to be imposed on their outstanding debt, and if it still fails to pay before August 28, 1992, Cebu Shipyard will have to enforce payment against the sureties and take legal action.

On November 18, 1992, Cebu Shipyard, through its counsel, sent Unimarine a letter, ^[16] demanding payment, within seven days from receipt of the letter, the amount of P4,859,458.00, broken down as follows:

B#26035	MV	PACIFIC	
FORTUNE			4,486,052.00
LESS: ADJUSTMENT:			
CN#00515-03/19/92			<u>(636,052.00).</u>
			3,850,000.00
Add: VAT on repair bill no.			<u>385,000.00</u>
26035			
			4,235,000.00
Add:	Interest/penalty		
charges:			

Debit Note No. 02381	189,888.00
Debit Note No. 02382	<u>434,570.00</u>
	4,859,458.00 ^[17]

Due to Unimarine's failure to heed Cebu Shipyard's repeated demands, Cebu Shipyard, through counsel, wrote the sureties CBIC^[18] on November 18, 1992, and Plaridel,^[19] on November 19, 1992, to inform them of Unimarine's nonpayment, and to ask them to fulfill their obligations as sureties, and to respond within seven days from receipt of the demand.

However, even the sureties failed to discharge their obligations, and so Cebu Shipyard filed a Complaint dated January 8, 1993, before the RTC, Branch 18 of Cebu City, against Unimarine, CBIC, and Plaridel. This was docketed as Civil Case No. CBB-13447.

CBIC, in its Answer,^[20] said that Cebu Shipyard's complaint states no cause of action. CBIC alleged that the surety bond was issued by its agent, Quinain, in excess of his authority. CBIC claimed that Cebu Shipyard should have doubted the authority of Quinain to issue the surety bond based on the following:

1. The nature of the bond undertaking (guarantee payment), and the amount involved.
2. The surety bond could only be issued in favor of the Department of Public Works and Highways, as stamped on the upper right portion of the face of the bond.^[21] This stamp was covered by documentary stamps.
3. The issuance of the surety bond was not reported, and the corresponding premiums were not remitted to CBIC.^[22]

CBIC added that its liability was extinguished when, without its knowledge and consent, Cebu Shipyard and Unimarine novated their agreement several times. Furthermore, CBIC stated that Cebu Shipyard's claim had already been paid or extinguished when Unimarine executed an Assignment of Claims^[23] of the proceeds of the sale of its vessel M/V Headline in favor of Cebu Shipyard. CBIC also averred that Cebu Shipyard's claim had already prescribed as the endorsement that extended the surety bond's expiry date, was not reported to CBIC. Finally, CBIC asseverated that if it were held to be liable, its liability should be limited to the face value of the bond and not for exemplary damages, attorney's fees, and costs of litigation.^[24]

Subsequently, CBIC filed a Motion to Admit Cross and Third Party Complaint^[25] against Unimarine, as cross defendant; Paul Rodriguez, Albert Hontanosas, and Peter Rodriguez, as signatories to the Indemnity Agreement they executed in favor of CBIC; and Bethoven Quinain, as the agent who issued the surety bond and endorsement in excess of his authority, as third party defendants.^[26]

CBIC claimed that Paul Rodriguez, Albert Hontanosas, and Peter Rodriguez executed

an Indemnity Agreement, wherein they bound themselves, jointly and severally, to indemnify CBIC for any amount it may sustain or incur in connection with the issuance of the surety bond and the endorsement.^[27] As for Quinain, CBIC alleged that he exceeded his authority as stated in the Special Power of Attorney, wherein he was authorized to solicit business and issue surety bonds not exceeding P500,000.00 but only in favor of the Department of Public Works and Highways, National Power Corporation, and other government agencies.^[28]

On August 23, 1993, third party defendant Hontanosas filed his Answer with Counterclaim, to the Cross and Third Party Complaint. Hontanosas claimed that he had no financial interest in Unimarine and was neither a stockholder, director nor an officer of Unimarine. He asseverated that his relationship to Unimarine was limited to his capacity as a lawyer, being its retained counsel. He further denied having any participation in the Indemnity Agreement executed in favor of CBIC, and alleged that his signature therein was forged, as he neither signed it nor appeared before the Notary Public who acknowledged such undertaking.^[29]

Various witnesses were presented by the parties during the course of the trial of the case. Myrna Obrinaga testified for Cebu Shipyard. She was the Chief Accountant in charge of the custody of the documents of the company. She corroborated Cebu Shipyard's allegations and produced in court the documents to support Cebu Shipyard's claim. She also testified that while it was true that the proceeds of the sale of Unimarine's vessel, M/V Headline, were assigned to Cebu Shipyard, nothing was turned over to them.^[30]

Paul Rodriguez admitted that Unimarine failed to pay Cebu Shipyard for the repairs it did on M/V Pacific Fortune, despite the extensions granted to Unimarine. He claimed that he signed the Indemnity Agreement because he trusted Quinain that it was a mere pre-requisite for the issuance of the surety bond. He added that he did not bother to read the documents and he was not aware of the consequences of signing an Indemnity Agreement. Paul Rodriguez also alleged to not having noticed the limitation "Valid only in favor of DPWH" stamped on the surety bond.^[31] However, Paul Rodriguez did not contradict the fact that Unimarine failed to pay Cebu Shipyard its obligation.^[32]

CBIC presented Dakila Rianzares, the Senior Manager of its Bonding Department. Her duties included the evaluation and approval of all applications for and reviews of bonds issued by their agents, as authorized under the Special Power of Attorney and General Agency Contract of CBIC. Rianzares testified that she only learned of the existence of CBIC Surety Bond No. G (16) 29419 when she received the summons for this case. Upon investigation, she found out that the surety bond was not reported to CBIC by Quinain, the issuing agent, in violation of their General Agency Contract, which provides that all bonds issued by the agent be reported to CBIC's office within one week from the date of issuance. She further stated that the surety bond issued in favor of Unimarine was issued beyond Quinain's authority. Rianzares added that she was not aware that an endorsement pertaining to the surety bond was also issued by Quinain.^[33]

After the trial, the RTC was faced with the lone issue of whether or not CBIC was liable to Cebu Shipyard based on Surety Bond No. G (16) 29419.^[34]