

SECOND DIVISION

[G.R. No. 193753, September 26, 2012]

LIVING @ SENSE, INC., PETITIONER, VS. MALAYAN INSURANCE COMPANY, INC., RESPONDENT.

R E S O L U T I O N

PERLAS-BERNABE, J.:

This Petition for Review on Certiorari assails, on pure question of law, the Orders dated April 8, 2010^[1] and August 25, 2010^[2] of the Regional Trial Court (RTC) of Parañaque City, Branch 257 dismissing, without prejudice, the complaint for specific performance and breach of contract filed by petitioner Living @ Sense, Inc. (petitioner) for failure to implead Dou Mac, Inc. (DMI) as an indispensable party.

The Factual Antecedents

Records show that petitioner was the main contractor of the FOC Network Project of Globe Telecom in Mindanao. In connection with the project, petitioner entered into a Sub-Contract Agreement^[3] (Agreement) with DMI, under which the latter was tasked to undertake an underground open-trench work. Petitioner required DMI to give a bond, in the event that DMI fails to perform its obligations under the Agreement. Thus, DMI secured surety^[4] and performance^[5] bonds, both in the amount of P5,171,488.00, from respondent Malayan Insurance Company, Inc. (respondent) to answer: (1) for the unliquidated portion of the downpayment, and (2) for the loss and damage that petitioner may suffer, respectively, should DMI fail to perform its obligations under the Agreement. Under the bonds, respondent bound itself jointly and severally liable with DMI.^[6]

During the course of excavation and restoration works, the Department of Public Works and Highways (DPWH) issued a work-stoppage order against DMI after finding the latter's work unsatisfactory. Notwithstanding the said order, however, DMI still failed to adopt corrective measures, prompting petitioner to terminate^[7] the Agreement and seek^[8] indemnification from respondent in the total amount of P1,040,895.34. However, respondent effectively denied^[9] petitioner's claim on the ground that the liability of its principal, DMI, should first be ascertained before its own liability as a surety attaches. Hence, the instant complaint, premised on respondent's liability under the surety and performance bonds secured by DMI.

Seeking the dismissal^[10] of the complaint, respondent claimed that DMI is an indispensable party that should be impleaded and whose liability should first be determined before respondent can be held liable.

On the other hand, petitioner asserted^[11] that respondent is a surety who is directly and primarily liable to indemnify petitioner, and that the bond is "callable on

demand”^[12] in the event DMI fails to perform its obligations under the Agreement.

The RTC’s Ruling

In its April 8, 2010 Order,^[13] the RTC dismissed the complaint without prejudice, for failure to implead DMI as a party defendant. It ruled that before respondent could be held liable on the surety and performance bonds, it must first be established that DMI, with whom petitioner had originally contracted, had indeed violated the Agreement. DMI, therefore, is an indispensable party that must be impleaded in the instant suit.

On August 25, 2010, the RTC denied^[14] petitioner’s motion for reconsideration for failure to set the same for hearing as required under the rules.

The Issue Before The Court

The sole issue to be resolved by the Court is whether DMI is an indispensable party in this case.

The Court’s Ruling

Petitioner maintains that the rule on solidary obligations permits it, as creditor, to proceed against any of the solidary debtors, citing Article 1216 of the Civil Code which provides:

Article 1216. The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected.

The petition is meritorious.

Records show that when DMI secured the surety and performance bonds from respondent in compliance with petitioner’s requirement, respondent bound itself “jointly and severally” with DMI for the damages and actual loss that petitioner may suffer should DMI fail to perform its obligations under the Agreement, as follows:

That we, DOU MAC INC. as Principal, and MALAYAN INSURANCE CO., INC., x xx are held firmly bound unto LIVING @ SENSE INC. in the sum of FIVE MILLION ONE HUNDRED SEVENTY ONE THOUSAND FOUR HUNDRED EIGHTY EIGHT AND 00/100 PESOS ONLY (PHP ***5,171,488.00), 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 xxx^[15] (Emphasis Supplied)

The term “jointly and severally” expresses a solidary obligation^[16] granting