

## THIRD DIVISION

[ G.R. No. 174926, August 10, 2011 ]

**AMERICAN HOME INSURANCE CO. OF NEW YORK, PETITIONER,  
VS. F.F. CRUZ & CO., INC., RESPONDENT.**

### D E C I S I O N

**PERALTA, J.:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by American Home Insurance Co. of New York (American Home) assailing the Court of Appeals (CA) Decision<sup>[1]</sup> dated September 29, 2005 and Resolution<sup>[2]</sup> dated September 25, 2006 in CA-G.R. CV No. 73960. The assailed Decision affirmed the Decision<sup>[3]</sup> of the Regional Trial Court (RTC) of Makati, Branch 137 in Civil Case No. 93-2585, while the assailed Resolution denied American Home's motion for reconsideration.

The case stemmed from the following facts:

In June 1990, the Philippine Ports Authority (PPA) conducted a bidding of a project for the dredging of the entrance channel and harbor basin of the Cebu International Port in Cebu City. The PPA awarded the contract to the winning bidder, F.F. Cruz & Co., Inc. (FF Cruz). Pursuant to their earlier agreement, FF Cruz and Genaro Reyes Construction, Inc. (hereafter referred to as "G. Reyes") executed a Sub-Contract Agreement<sup>[4]</sup> whereby the latter agreed to undertake the performance of 50% of the dredging project's estimated volume of 600,000 cubic meters. The sub-contract was subject to the following terms and conditions:

x x x x

5. That the SUB-CONTRACTOR shall file immediately upon its receipt of NOTICE TO PROCEED, a PERFORMANCE BOND (callable anytime on demand) from a duly accredited surety company equivalent to 10% of the SUBCONTRACT'S TOTAL COST;

6. That the SUB-CONTRACTOR agrees to start to work on the PROJECT within thirty (30) calendar days or as directed by the PPA, from the date of NOTICE TO PROCEED for the PROJECT, and obligates itself to finish the work within the contract time stipulated in the contract entered into by the CONTRACTOR and PPA;

x x x x<sup>[5]</sup>

FF Cruz gave G. Reyes an advance payment of P2.2 million guaranteed by a surety

bond for the same amount issued by American Home. The surety bond was issued to guarantee payment of the advance payment made by FF Cruz to G. Reyes for the dredging project in the event that the latter fail to comply with the terms and conditions of the sub-contract.<sup>[6]</sup>

As a security for the issuance of the bond, Genaro Reyes, as president of G. Reyes, and his wife Lydia Reyes, executed an Indemnity Agreement where they agreed to jointly and severally indemnify American Home and keep the latter harmless against all damages, losses, costs, stamps, taxes, penalties, charges and expenses of whatever kind and nature which it may sustain or incur as a consequence of having become a surety, or any extension, renewal, substitution or alteration made thereof.

<sup>[7]</sup> They likewise undertook to pay, reimburse and make good to American Home all sums which the latter shall pay on account of the bond.<sup>[8]</sup> It was also agreed upon that their liability attaches as soon as demand is received by American Home from FF Cruz, or as soon as it becomes liable to make payment under the terms of the surety bond.

In a letter dated March 6, 1991, FF Cruz informed G. Reyes that the former mobilized its dredger and started operation on March 3, 1991. In the same letter, FF Cruz requested G. Reyes to mobilize its equipment on or before March 20, 1991.<sup>[9]</sup>

On October 21, 1991, G. Reyes complained to the PPA about the great deal of silt and waste materials that had accumulated in the area which adversely affected its work accomplishment. In December 1991, G. Reyes informed FF Cruz that the equipment used for the project had been encountering difficulties because of siltation problems. G. Reyes finally admitted that continuing the project was no longer a wise investment and called on FF Cruz to take over the project. FF Cruz thus took over the unfinished project.<sup>[10]</sup>

Consequently, FF Cruz demanded from American Home the payment of P2.2 million representing the amount of the bond. American Home, in turn, informed G. Reyes of FF Cruz's demand. As the claim left unheeded, FF Cruz made a final demand on American Home on July 10, 1993. G. Reyes likewise ignored American Home's demand to fulfill its obligation set forth in the Indemnity Agreement it executed in favor of the latter.

On July 29, 1993, American Home filed a *Complaint for Sum of Money*<sup>[11]</sup> against G. Reyes, Genaro G. Reyes and Lydia A. Reyes for the payment of P2,200,000.00 corresponding to the amount of the bond, plus attorney's fees and litigation expenses.<sup>[12]</sup> In its complaint, American Home sought the enforcement of the Indemnity Agreement undertaken by G. Reyes in conjunction with FF Cruz's demand for the payment of the amount of the surety bond.

G. Reyes *et al.*, in turn, filed an Answer with Counterclaim and Third-Party Complaint<sup>[13]</sup> against FF Cruz. G. Reyes denied liability to American Home on the ground that G. Reyes did not fail to comply with its obligation to FF Cruz. It explained that its (G. Reyes') liability would arise only in case of its failure to comply with the terms and conditions of the sub-contract. It insisted that it was FF Cruz who was guilty of breach of its obligations. In its Third-Party Complaint against FF Cruz, G. Reyes argued that the siltation problems caused by the former resulted in

the reduction of G. Reyes' project accomplishment and failure to finish the project. It also claimed that FF Cruz still has an unpaid balance of more than P5 million as it recognized only the accomplishment of 57,284.44 cubic meters instead of 184,210 cubic meters claimed by G. Reyes.

In answer to the third-party complaint of G. Reyes, FF Cruz denied that it caused the siltation problems and argued that the former abandoned the project because it was incapable of performing its obligations. It also explained that it had no unpaid obligation to G. Reyes as it paid its accomplishment based on the report of the PPA.  
[14]

FF Cruz thereafter filed a Fourth-Party Complaint against American Home calling on the surety bond it provided in favor of G. Reyes.  
[15]

During the pre-trial, the parties agreed to limit the issues, to wit:

1) Is the fourth-party defendant AMERICAN HOME free from liability on the claim of fourth-party plaintiff FF Cruz as set forth in the fourth-party complaint because:

a) The provision in American Surety Bond No. 304-67535575 that the same is callable anytime on demand is null and void?

b) Assuming that it is not, is fourth-party defendant AMERICAN HOME free from liability because Genaro G. Reyes Construction, Inc. had fulfilled all its obligations under the sub-contract it had with fourth-party plaintiff?

2) Is AMERICAN HOME free from liability relative to the fourth-party plaintiff claim as set forth in the complaint because the damages suffered by fourth-party plaintiff arose from *force majeure*?

3) If [fourth-party] defendant AMERICAN HOME is liable on the surety bond, what is the amount and nature of the damages that should be awarded to fourth-party plaintiff?  
[16]

After the presentation of the parties' respective evidence, the RTC rendered a Decision,  
[17] the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered ordering plaintiff American Home Insurance Company of New York and third-party plaintiff Genaro G. Reyes Construction, Incorporated, jointly and severally, to pay third-party defendant F.F. Cruz and Company the amount of P2,200,000.00 representing the full amount of the surety bond.

The third-party complaint of third-party plaintiff Genaro G. Reyes Construction, Incorporated, against third-party defendant F.F. Cruz and Company, and the counterclaim for attorney's fees of third-party plaintiff Genaro G. Reyes Construction, Incorporated, against plaintiff American

Home Insurance Company of New York, are both dismissed, for lack of sufficient merit.

On the counterclaim of third-party defendant F.F. Cruz and Company, judgment is hereby rendered ordering third-party plaintiff Genaro G. Reyes Construction, Incorporated, to pay said third-party defendant the following amounts:

1. P310,150.21 representing the overpayment received by third-party plaintiff Genaro G. Reyes Construction, Incorporated, from third-party defendant F.F. Cruz and Company, with 6% interest per annum from the filing of the third-party complaint on 8 April 1994 until full payment;
2. 10% of the above amount as attorney's fees; and
3. costs of suit.

On the complaint of plaintiff American Home Insurance Company of New York against defendants and third-party plaintiff Genaro G. Reyes Construction, Incorporated, Genaro G. Reyes and Lydia A. Reyes, judgment is hereby rendered ordering defendants and third-party plaintiffs Genaro G. Reyes Construction, Incorporated, Genaro G. Reyes and Lydia A. Reyes, jointly and severally, to pay plaintiff American Home Insurance Company of New York the amount of P2,200,000.00, representing the full amount of the indemnity agreement, plus 10% thereof as attorney's fees and costs of suit.

SO ORDERED.<sup>[18]</sup>

American Home and G. Reyes *et al.* appealed to the CA. On September 29, 2005, the appellate court rendered the assailed decision dismissing their appeal and, consequently, affirming the RTC decision. The CA sustained the findings of the RTC that G. Reyes indeed failed to fulfill its obligation to dredge 300,000 cubic meters as it only finished dredging 57,000 cubic meters. The court opined that there was no proof to show that the abandonment of the project by G. Reyes was caused by heavy siltation. Considering that such failure to finish the project constitutes a violation of G. Reyes' agreement with FF Cruz, American Home was held liable under the bond it issued to G. Reyes.<sup>[19]</sup> G. Reyes' and American Home's motions for reconsideration were denied on September 25, 2006.

Aggrieved, G. Reyes assailed the CA decision and resolution before this Court in a petition for review on *certiorari*,<sup>[20]</sup> but the same was denied by the Court in a Minute Resolution<sup>[21]</sup> dated March 5, 2007.

In this petition under consideration, American Home likewise assails the same decision and resolution with the following assigned errors:

I.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN CONSIDERING THE BOND ISSUED BY PETITIONER TO BE A PERFORMANCE BOND

CONTRARY TO THE EXPRESS TERMS OF THE BOND ITSELF THAT IT WAS TO GUARANTEE PAYMENT FOR THE 15% ADVANCE PAYMENT MADE BY RESPONDENT TO GENARO G. REYES CONSTRUCTION CORPORATION.

II.

THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN NOT DISCHARGING PETITIONER FROM ITS OBLIGATIONS UNDER THE BOND DUE TO THE ABANDONMENT OF THE PROJECT BY GENARO G. REYES CONSTRUCTION CORPORATION AND THE TAKE-OVER BY RESPONDENT WITHOUT PETITIONER'S PRIOR NOTICE AND CONSENT.

III.

ASSUMING, WITHOUT ADMITTING, THAT PETITIONER IS LIABLE UNDER THE BOND, THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN ADJUDGING PETITIONER LIABLE FOR THE ENTIRE OR FACE VALUE OF THE BOND IN THE AMOUNT OF P2.2 MILLION CONSIDERING THAT THE BOND WAS NOT A PERFORMANCE BOND TO GUARANTEE THE COMPLETION OF THE PROJECT BUT MERELY TO GUARANTEE THE PAYMENT OF THE ADVANCES MADE BY RESPONDENT TO GENARO G. REYES CONSTRUCTION.<sup>[22]</sup>

American Home faults the CA in considering the surety bond as a performance bond. It insists that the bond guaranteed only the payment of the 15% advance payment made by FF Cruz to G. Reyes amounting to P2.2 million and not the performance of the latter's obligations nor the completion of the dredging operations. It also avers that making it (American Home) liable under the bond because of G. Reyes' abandonment of the project is tantamount to enlarging its liability. American Home also claims that it was not informed that G. Reyes already abandoned the project and that FF Cruz took over to complete the same. This, according to American Home, is a material alteration of the terms of the surety bond which thus discharged it of liability on the surety agreement.

The petition is without merit.

The only issue for resolution is whether or not American Home is liable to FF Cruz for P2.2 million representing the face value of the surety bond it issued to G. Reyes.

We rule in the affirmative.

It is well to note that G. Reyes' petition in G.R. No. 174913 has been denied by the Court. Hence, the same CA decision and resolution assailed in this present petition have become final and executory as to G. Reyes, Genaro Reyes and Lydia A. Reyes and, in that respect, it shall not be disturbed by the Court. Consequently, their liability to American Home pursuant to the Indemnity Agreement has been settled with finality. They are, therefore, bound to pay American Home P2,200,000.00 representing the full amount of the Indemnity Agreement, plus 10% thereof as attorney's fees and costs of suit. Their liability to FF Cruz has also been resolved with finality.