

THIRD DIVISION

[G.R. No. 177240, September 08, 2010]

**PRUDENTIAL GUARANTEE AND ASSURANCE INC., PETITIONER,
VS. ANSCOR LAND, INC., RESPONDENT.**

D E C I S I O N

VILLARAMA, JR., J.:

This petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assails the Decision^[1] dated April 28, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 72854 which modified the Decision^[2] promulgated on September 2, 2002 by the Construction Industry Arbitration Commission (CIAC) to the effect that herein petitioner Prudential Guarantee and Assurance Inc. (PGAI) was declared solidarily liable with its principal Kraft Realty and Development Corporation (KRDC) under the performance bond.

The facts follow.

On August 2, 2000, Anscor Land, Inc. (ALI) and KRDC entered into a Construction Contract^[3] for the construction of an 8-unit townhouse (project) located in Capitol Hills, Quezon City.

Under the contract, KRDC was to build and complete the project within 275 continuous calendar days from the date of receipt of a notice to proceed for the consideration of P18,800,000.00.

As part of its undertaking, KRDC submitted a surety bond amounting to P4,500,000.00 to secure the reimbursement of the down payment paid by ALI in case of failure to finish the project and a performance bond amounting to P4,700,000.00 to guarantee the supply of labor, materials, tools, equipment, and necessary supervision to complete the project. The said bonds were issued in favor of ALI by herein petitioner PGAI.

Under the Performance Bond,^[4] the parties agreed on a *time-bar provision* which states:

...Furthermore, it is hereby agreed and understood that PRUDENTIAL GUARANTEE AND ASSURANCE INC., shall not be liable for any claim not discovered and presented to the company within ten days from the expiration of this bond or from the occurrence of the default or failure of the principal, whichever is the earliest, and that the obligee hereby waives his right to file any claim against the Surety after the termination of the period of ten days above mentioned after which time this bond shall definitely terminate and be deemed absolutely cancelled.

KRDC then received a notice to proceed on November 24, 1999. On October 16, 2000 or 325 days after KRDC received the notice to proceed, and 50 days beyond the contract date of completion, ALI sent PGAI a letter^[5] notifying the latter that the contract with KRDC was terminated due to "very serious delays". The letter also informed PGAI that ALI "may be making claims against the said bonds".

KRDC, through a letter on October 20, 2000, asked ALI to reconsider its decision to terminate the contract and requested that it be allowed to continue with the project. On October 27, 2000, ALI replied^[6] with regrets that it stands by its earlier decision to terminate the construction contract.

Through a letter^[7] dated November 29, 2001, or exactly one (1) year after the expiration date in the performance bond, ALI reiterated its claim against the performance bond issued by PGAI amounting to P3,852,800.84. PGAI however did not respond to the letter.

On February 7, 2002, ALI commenced arbitration proceedings against KRDC and PGAI in the CIAC. PGAI answered with cross-claim contending that it was not a party to the construction contract and that the claim of ALI against the bonds was filed beyond the expiration period.

On September 2, 2002, the CIAC rendered judgment^[8] awarding a total of P7,552,632.74 to ALI and a total of P1,292,487.81 to KRDC. CIAC also allowed the offsetting of the awards to both parties which resulted to a net amount due to ALI of P6,260,144.93 to be paid by KRDC. Meanwhile, the CIAC found PGAI liable for the reimbursement of the unliquidated portion of the down payment as a solidary liability under the surety bond in the amount of P1,771,264.06.^[9]

In the same judgment, the CIAC absolved PGAI from a claim against the performance bond. It reasoned that ALI belatedly filed its claim on the performance bond. The CIAC accepted the view that the November 29, 2001 letter of ALI to PGAI was the first and only claim on the performance bond, which was filed unquestionably beyond the allowed period for filing claims under the contract.

The CIAC ruled that the October 16, 2000 letter of ALI to PGAI did not constitute a proper "claim" under the performance bond. In so ruling, the CIAC relied on the tenor of the letter which used the phrase "may be making claims against the said bonds". The CIAC interpreted this phrase as tentative at best and far from a positive claim against PGAI. According to the CIAC, the letter merely informed PGAI of the termination of the construction contract between ALI and KRDC and in no sense did such letter present a valid claim against the performance bond issued by PGAI.

ALI then filed a petition for review on October 3, 2002^[10] with the CA questioning the decision of the CIAC to release PGAI from its solidary liability on the performance bond.

The CA found the petition meritorious in its questioned Decision^[11] dated April 28,

2006, to wit:

WHEREFORE, the petition is **GRANTED**. The decretal portion of the decision is **MODIFIED** to the effect that PGAI is hereby pronounced solidarily liable with KRDC under the performance bond.

SO ORDERED.^[12]

Petitioner PGAI now comes to this Court to seek relief.

Petitioner argues that the CIAC had no jurisdiction over the dispute as regards the claim of ALI against the performance bond because petitioner was not a party to the construction contract. It maintains that Executive Order (EO) No. 1008^[13] did not vest jurisdiction on the CIAC to settle disputes between a party to a construction contract on one hand and a non-party on the other.

The petitioner contends that CIAC's jurisdiction was limited to the construction industry and cannot extend to surety or guarantee contracts. By reason of the lack of jurisdiction of the CIAC over the dispute, the September 2, 2002 judgment^[14] of the CIAC was void with regard to the liability of PGAI.

As to the award made by the CIAC on ALI's claims, petitioner maintains that it cannot be held liable under the performance bond because clearly, under the *time-bar provision* in the said bond, the claim made by ALI in its letter to PGAI dated November 29, 2001 was submitted one (1) year late. Petitioner points out that such letter was the first and only definite claim that ALI made against the performance bond and unfortunately, it was filed beyond the allowed period. Hence, the Decision of the CA declaring PGAI solidarily liable with KRDC under the performance bond is erroneous and should be struck down.

On the other hand, respondent avers that the construction contract itself provided that the performance and surety bond shall be deemed part of the construction contract, to wit:

Article 1
CONTRACT DOCUMENTS

1.1 The following shall form part of this Contract and together with this Contract, are known as the "Contract Documents":

a. Bid Proposal

x x x x

d. Notice to proceed

x x x x

j. Appendices A & B (respectively, Surety Bond for Performance and, Supply of Materials by the Developer)^[15]

By reason of this express provision in the construction contract, respondent maintains that petitioner PGAI became a party to such contract when it submitted its Surety and Performance bonds. Consequently, petitioner's argument that CIAC has not acquired jurisdiction over PGAI because the latter was not a party to the construction contract, is untenable.

As to the alleged lack of jurisdiction of CIAC over the dispute arising from the surety contract, respondent cites EO No. 1008, which provides that any dispute connected with a construction contract comes within the original and exclusive jurisdiction of the CIAC. The surety bond being an integral part of the construction contract, it is necessarily connected thereto which brings it under the jurisdiction of the CIAC.

On the issue of timeliness of the "claim", respondent insists that its letter dated October 16, 2000 was for all intents and purposes a notification of termination of the construction contract and at the same time a notice to petitioner that respondent is in fact making a claim on the performance bond. Contrary to PGAI's view that the November 29, 2001 letter was the first and only claim made, respondent asserts that the said letter was merely a reiteration of its earlier October 16, 2000 claim.

In fine, there are two (2) main issues for this Court to resolve, to wit:

I.

Whether or not the CIAC had jurisdiction over the dispute.

II.

Whether or not the respondent made its claim on the performance bond within the period allowed by the *time-bar provision*.

First Issue - Jurisdiction of the CIAC

Section 4 of EO No. 1008 defines the jurisdiction of the CIAC:

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 this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines. (*Italics supplied.*)

EO No. 1008 expressly vests in the CIAC original and exclusive jurisdiction over disputes *arising from or connected with* construction contracts entered into by parties that have agreed to submit their dispute to voluntary arbitration. Under the aforementioned provision, it is apparent that a dispute must meet two (2) requirements in order to fall under the jurisdiction of the CIAC: *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.

As regards the first requirement, the Performance Bond issued by the petitioner was meant to guarantee the supply of labor, materials, tools, equipment, and necessary supervision to complete the project. A guarantee or a surety contract under Article 2047^[16] of the Civil Code of the Philippines is an accessory contract because it is dependent for its existence upon the principal obligation guaranteed by it.^[17]

In fact, the primary and only reason behind the acquisition of the performance bond by KRDC was to guarantee to ALI that the construction project would proceed in accordance with the contract terms and conditions. In effect, the performance bond becomes liable for the completion of the construction project in the event KRDC fails in its contractual undertaking.

Because of the performance bond, the construction contract between ALI and KRDC is guaranteed to be performed even if KRDC fails in its obligation. In practice, a performance bond is usually a condition or a necessary component of construction contracts. In the case at bar, the performance bond was so connected with the construction contract that the former was agreed by the parties to be a condition for the latter to push through and at the same time, the former is reliant on the latter for its existence as an accessory contract.

Although not the construction contract itself, the performance bond is deemed as an associate of the main construction contract that it cannot be separated or severed from its principal. The Performance Bond is significantly and substantially connected to the construction contract that there can be no doubt it is the CIAC, under Section 4 of EO No. 1008, which has jurisdiction over any dispute arising from or connected with it.

On the second requirement that the parties to a dispute must have previously agreed to submit to arbitration, it is clear from Article 24 of the Construction Contract itself that the parties have indeed agreed to submit their disputes to arbitration, to wit: