

FIRST DIVISION

[G.R. No. 147561, June 22, 2006]

**STRONGHOLD INSURANCE COMPANY, INC., PETITIONER, VS.
REPUBLIC-ASAHI GLASS CORPORATION, RESPONDENT.**

D E C I S I O N

PANGANIBAN, C.J.:

A surety company's liability under the performance bond it issues is solidary. The death of the principal obligor does not, as a rule, extinguish the obligation and the solidary nature of that liability.

The Case

Before us is a Petition for Review^[1] under Rule 45 of the Rules of Court, seeking to reverse the March 13, 2001 Decision^[2] of the Court of Appeals (CA) in CA-GR CV No. 41630. The assailed Decision disposed as follows:

WHEREFORE, the Order dated January 28, 1993 issued by the lower court is REVERSED and SET ASIDE. Let the records of the instant case be REMANDED to the lower court for the reception of evidence of all parties.

^[3]

The Facts

The facts of the case are narrated by the CA in this wise:

"On May 24, 1989, [respondent] Republic-Asahi Glass Corporation (Republic-Asahi) entered into a contract with x x x Jose D. Santos, Jr., the proprietor of JDS Construction (JDS), for the construction of roadways and a drainage system in Republic-Asahi's compound in Barrio Pinagbuhatan, Pasig City, where [respondent] was to pay x x x JDS five million three hundred thousand pesos (P5,300,000.00) inclusive of value added tax for said construction, which was supposed to be completed within a period of two hundred forty (240) days beginning May 8, 1989. In order to guarantee the faithful and satisfactory performance of its undertakings x x x JDS, shall post a performance bond of seven hundred ninety five thousand pesos (P795,000.00). x x x JDS executed, jointly and severally with [petitioner] Stronghold Insurance Co., Inc. (SICI) Performance Bond No. SICI-25849/g(13)9769.

"On May 23, 1989, [respondent] paid to x x x JDS seven hundred ninety five thousand pesos (P795,000.00) by way of downpayment.

"Two progress billings dated August 14, 1989 and September 15, 1989, for the total amount of two hundred seventy four thousand six hundred twenty one pesos and one centavo (P274,621.01) were submitted by x x x JDS to [respondent], which the latter paid. According to [respondent], these two progress billings accounted for only 7.301% of the work supposed to be undertaken by x x x JDS under the terms of the contract.

"Several times prior to November of 1989, [respondents] engineers called the attention of x x x JDS to the alleged alarmingly slow pace of the construction, which resulted in the fear that the construction will not be finished within the stipulated 240-day period. However, said reminders went unheeded by x x x JDS.

"On November 24, 1989, dissatisfied with the progress of the work undertaken by x x x JDS, [respondent] Republic-Asahi extrajudicially rescinded the contract pursuant to Article XIII of said contract, and wrote a letter to x x x JDS informing the latter of such rescission. Such rescission, according to Article XV of the contract shall not be construed as a waiver of [respondents] right to recover damages from x x x JDS and the latter's sureties.

"[Respondent] alleged that, as a result of x x x JDSs failure to comply with the provisions of the contract, which resulted in the said contracts rescission, it had to hire another contractor to finish the project, for which it incurred an additional expense of three million two hundred fifty six thousand, eight hundred seventy four pesos (P3,256,874.00).

"On January 6, 1990, [respondent] sent a letter to [petitioner] SICI filing its claim under the bond for not less than P795,000.00. On March 22, 1991, [respondent] again sent another letter reiterating its demand for payment under the aforementioned bond. Both letters allegedly went unheeded.

"[Respondent] then filed [a] complaint against x x x JDS and SICI. It sought from x x x JDS payment of P3,256,874.00 representing the additional expenses incurred by [respondent] for the completion of the project using another contractor, and from x x x JDS and SICI, jointly and severally, payment of P750,000.00 as damages in accordance with

the performance bond; exemplary damages in the amount of P100,000.00 and attorneys fees in the amount of at least P100,000.00.

"According to the Sheriffs Return dated June 14, 1991, submitted to the lower court by Deputy Sheriff Rene R. Salvador, summons were duly served on defendant-appellee SICI. However, x x x Jose D. Santos, Jr. died the previous year (1990), and x x x JDS Construction was no longer at its address at 2nd Floor, Room 208-A, San Buena Bldg. Cor. Pioneer St., Pasig, Metro Manila, and its whereabouts were unknown.

"On July 10, 1991, [petitioner] SICI filed its answer, alleging that the [respondents] money claims against [petitioner and JDS] have been extinguished by the death of Jose D. Santos, Jr. Even if this were not the case, [petitioner] SICI had been released from its liability under the performance bond because there was no liquidation, with the active participation and/or involvement, pursuant to procedural due process, of herein surety and contractor Jose D. Santos, Jr., hence, there was no ascertainment of the corresponding liabilities of Santos and SICI under the performance bond. At this point in time, said liquidation was impossible because of the death of Santos, who as such can no longer participate in any liquidation. The unilateral liquidation on the party (sic) of [respondent] of the work accomplishments did not bind SICI for being violative of procedural due process. The claim of [respondent] for the forfeiture of the performance bond in the amount of P795,000.00 had no factual and legal basis, as payment of said bond was conditioned on the payment of damages which [respondent] may sustain in the event x x x JDS failed to complete the contracted works. [Respondent] can no longer prove its claim for damages in view of the death of Santos. SICI was not informed by [respondent] of the death of Santos. SICI was not informed by [respondent] of the unilateral rescission of its contract with JDS, thus SICI was deprived of its right to protect its interests as surety under the performance bond, and therefore it was released from all liability. SICI was likewise denied due process when it was not notified of plaintiff-appellants process of determining and fixing the amount to be spent in the completion of the unfinished project. The procedure contained in Article XV of the contract is against public policy in that it denies SICI the right to procedural due process. Finally, SICI alleged that [respondent] deviated from the terms and conditions of the contract without the written consent of SICI, thus the latter was released from all liability. SICI also prayed for the award of P59,750.00 as attorneys fees, and P5,000.00 as litigation expenses.

"On August 16, 1991, the lower court issued an order dismissing the complaint of [respondent] against x x x JDS and SICI, on the ground that the claim against JDS did not survive the death of its sole proprietor, Jose D. Santos, Jr. The dispositive portion of the [O]rder reads as follows:

'ACCORDINGLY, the complaint against the defendants Jose D. Santos, Jr., doing business under trade and style, JDS Construction and Stronghold Insurance Company, Inc. is ordered DISMISSED.

SO ORDERED.'

"On September 4, 1991, [respondent] filed a Motion for Reconsideration seeking reconsideration of the lower courts August 16, 1991 order dismissing its complaint. [Petitioner] SICI filed its Comment and/or Opposition to the Motion for Reconsideration. On October 15, 1991, the lower court issued an Order, the dispositive portion of which reads as follows:

'WHEREFORE, premises considered, the Motion for Reconsideration is hereby given due course. The Order dated 16 August 1991 for the dismissal of the case against Stronghold Insurance Company, Inc., is reconsidered and hereby reinstated (sic). However, the case against defendant Jose D. Santos, Jr. (deceased) remains undisturbed.

Motion for Preliminary hearing and Manifestation with Motion filed by [Stronghold] Insurance Company Inc., are set for hearing on November 7, 1991 at 2:00 oclock in the afternoon.

SO ORDERED.'

"On June 4, 1992, [petitioner] SICI filed its Memorandum for Bondsman/Defendant SICI (Re: Effect of Death of defendant Jose D. Santos, Jr.) reiterating its prayer for the dismissal of [respondents] complaint.

"On January 28, 1993, the lower court issued the assailed Order reconsidering its Order dated October 15, 1991, and ordered the case,

insofar as SICI is concerned, dismissed. [Respondent] filed its motion for reconsideration which was opposed by [petitioner] SICI. On April 16, 1993, the lower court denied [respondents] motion for reconsideration. x x x."^[4]

Ruling of the Court of Appeals

The CA ruled that SICI's obligation under the surety agreement was not extinguished by the death of Jose D. Santos, Jr. Consequently, Republic-Asahi could still go after SICI for the bond.

The appellate court also found that the lower court had erred in pronouncing that the performance of the Contract in question had become impossible by respondents act of rescission. The Contract was rescinded because of the dissatisfaction of respondent with the slow pace of work and pursuant to Article XIII of its Contract with JDS.

The CA ruled that [p]erformance of the [C]ontract was impossible, not because of [respondents] fault, but because of the fault of JDS Construction and Jose D. Santos, Jr. for failure on their part to make satisfactory progress on the project, which amounted to non-performance of the same. x x x [P]ursuant to the [S]urety [C] ontract, SICI is liable for the non-performance of said [C]ontract on the part of JDS Construction.^[5]

Hence, this Petition.^[6]

Issue

Petitioner states the issue for the Courts consideration in the following manner:

"Death is a defense of Santos heirs which Stronghold could also adopt as its defense against obligees claim."^[7]

More precisely, the issue is whether petitioners liability under the performance bond was automatically extinguished by the death of Santos, the principal.

The Court's Ruling

The Petition has no merit.

Sole Issue:

Effect of Death on the Surety's Liability

Petitioner contends that the death of Santos, the bond principal, extinguished his liability under the surety bond. Consequently, it says, it is automatically released from any liability under the bond.

As a general rule, the death of either the creditor or the debtor does not extinguish the obligation.^[8] Obligations are transmissible to the heirs, except when the transmission is prevented by the law, the stipulations of the parties, or the nature of the obligation.^[9] Only obligations that are personal^[10] or are identified with the persons themselves are extinguished by death.^[11]