



Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

G.R. No. 174926 **August 10, 2011**

AMERICAN HOME INSURANCE CO. OF NEW YORK, Petitioner,
vs.
F.F. CRUZ & CO., INC., Respondent.

DECISION

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) Decision¹ dated September 29, 2005 and Resolution² dated September 25, 2006 in CA-G.R. CV No. 73960. The assailed Decision affirmed the Decision³ 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 Agreement⁴ 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 x⁵

FF Cruz gave G. Reyes an advance payment of ₱2.2 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.⁶

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.⁷ They likewise undertook to pay, reimburse and make good to American Home all sums which the latter shall pay on account of the bond.⁸ 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, 1991.⁹

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.¹⁰

Consequently, FF Cruz demanded from American Home the payment of ₱2.2 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 Money¹¹ against G. Reyes, Genaro G. Reyes and Lydia A. Reyes for the payment of ₱2,200,000.00 corresponding to the amount of the bond, plus attorney's fees and litigation expenses.¹² 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 Complaint¹³ 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 ₱5 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 ₱2,200,000.00 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. ₱310,150.21 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 ₱2,200,000.00, representing the full amount of the indemnity agreement, plus 10% thereof as attorney's fees and costs of suit.

SO ORDERED.¹⁸

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.¹⁹ 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,²⁰ but the same was denied by the Court in a Minute Resolution²¹ 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 ₱2.2 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.²²

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 ₱2.2 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 ₱2.2 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 ₱2,200,000.00 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.

The Court also notes that the issues raised by American Home in this petition were not raised during the trial of the case before the RTC. It must be recalled that the case below was commenced by American Home for the collection of sum of money against G. Reyes pursuant to the Indemnity Agreement executed by the latter. The issue on American Home's liability to FF Cruz was squarely raised only in the fourth-party complaint filed by the latter against the former.

Settled is the rule that points of law, theories, issues, and arguments not adequately brought to the attention of the trial court need not be, and ordinarily will not be, considered by a reviewing court. They cannot be raised for the first time on appeal. To allow this would be offensive to the basic rules of fair play, justice and due process.²³ In order, however, to remove doubt on its liability to FF Cruz, we will discuss the merits of American Home's arguments.

It is undisputed that FF Cruz gave G. Reyes ₱2.2 million as advance payment. As a security thereof, G. Reyes posted a surety bond issued by American Home in favor of FF Cruz, the pertinent portion of which reads:

To guarantee payment for the 15% advance payment made by the obligee [FF Cruz] to the herein principal [G. Reyes] for the Dredging of Entrance Channel and Harbor Basin of Cebu International Port Project in the event of the principal's failure to comply with the terms and conditions of the Sub-Contract Agreement dated June 11, 1990, copy of which is hereto attached and made an integral part hereof; it being expressly understood that the liability of the surety under this bond shall in no case exceed the amount of PESOS TWO MILLION TWO HUNDRED THOUSAND ONLY (₱2,200,000.00), Phil. Cy."²⁴

It is clear from the foregoing that indeed, the surety bond was issued to guarantee the payment of the 15% advance payment of ₱2.2 million made by FF Cruz to G. Reyes. The bond was not issued to guarantee the completion of the project. However, the above provision shows that in order for American Home's liability to attach, two conditions must be fulfilled: first, that the advance payment made by FF Cruz to G. Reyes remains unpaid; and second, G. Reyes fails to comply with any of the terms and conditions set forth in the sub-contract.

There may be a dispute as to the amount of liability as will be discussed later, but it has been adequately established that FF Cruz was not yet reimbursed of the advance payment it made. The fulfillment of the first condition is, therefore, settled.

In the sub-contract agreement, G. Reyes agreed to finish the work within the time stipulated in the contract between FF Cruz and the PPA. Admittedly, not only did G. Reyes fail to finish the work on time, it did not altogether complete the project. If failure to finish the work on time is violation of the sub-contract agreement, with more reason that abandonment of the work is covered by the stipulation. As held by the CA:

By G. REYES' own claim, it dredged only 184,000 cubic meters. There thus is no dispute that G. REYES failed to dredge the 300,000 cubic meters as agreed in the contract. But even if [w]e are to assume that G. REYES indeed dredged 184,210 cubic meters, this would still be short of the 300,000 cubic meters it bound itself under the contract.

In the middle of the project, G REYES unilaterally abandoned its dredging work and its obligations under the Sub-Contract Agreement. Without a doubt, G. REYES failed to fulfill its contractual obligation. x x x²⁵

The appellate court did not also sustain G. Reyes' explanation that the abandonment of the project was due to force majeure. We quote with approval the CA ratiocination in this wise:

The proffered reason that the abandonment was due to force majeure fails to convince this Court. G. REYES' excuse that it was forced to abandon the dredging work due to "heavy siltation" is not supported by facts on record. There is no evidence of the alleged "heavy siltation." On the contrary, after G REYES abandoned its dredging work and FF CRUZ took over the dredging, FF CRUZ was still able to finish the dredging work on time. There is thus no basis for G REYES' justification of force majeure. Such was a lame excuse for the abandonment of the project.²⁶

With the violation of the sub-contract, which means fulfillment of the second condition, the liability to pay the advance payment arose.

The payment of the ₱2.2 million advanced by FF Cruz is the principal liability of G. Reyes. However, with the issuance of the surety bond, a contract of suretyship was entered into making American Home equally liable.

A contract of suretyship is an agreement whereby a party called the surety, guarantees the performance by another party, called the principal or obligor, of an obligation or undertaking in favor of another party called the obligee. By its very nature, under the laws regulating suretyship, the liability of the surety is joint and several but is limited to the amount of the bond, and its terms are determined strictly by the terms of the contract of suretyship in relation to the principal contract between the obligor and the obligee.²⁷

The surety is considered in law as possessed of the identity of the debtor in relation to whatever is adjudged touching upon the obligation of the latter. Their liabilities are so interwoven as to be inseparable. Although the contract of suretyship is, in essence, secondary only to a valid principal obligation, the surety's liability to the creditor is direct, primary, and absolute; he becomes liable for the debt and duty of another although he possesses no direct or personal interest over the obligations nor does he receive any benefit therefrom.²⁸

As to the amount of American Home's liability, the RTC found that G. Reyes did not pay back the full amount of ₱2.2 million advance payment. American Home, however, claims (for the first time) that G. Reyes actually reimbursed ₱598,880.52 to FF Cruz. As plaintiff in its complaint and defendant in FF Cruz's fourth-party complaint, American Home was duty-bound to prove that it was entitled to its claim against G. Reyes under the Indemnity Agreement and that it was not liable to FF Cruz under the surety bond. Yet, American Home chose not to present its evidence to substantiate its claim and defense. For lack of evidence to show the fact of payment, we find no reason to disturb the findings of the trial court as affirmed by the appellate court that ₱2.2 million is due FF Cruz.

Factual findings of the trial court, particularly when affirmed by the CA, are generally binding on the Court.²⁹ We have repeatedly held that we are not a trier of facts. We generally rely upon, and are bound by, the conclusions on factual matters made by the lower courts, which are better equipped and have better opportunity to assess the evidence first-hand, including the testimony of the witnesses.³⁰

The Court's jurisdiction over a petition for review on certiorari is limited to reviewing only errors of law, not of facts, unless the factual findings complained of are devoid of support from the evidence on record or the assailed judgment is based on a misapprehension of facts.³¹

With the foregoing disquisition, we need not discuss the other issues raised by American Home.

WHEREFORE, premises considered, the petition is DENIED. The Court of Appeals Decision dated September 29, 2005 and Resolution dated September 25, 2006 in CA-G.R. CV No. 73960, are AFFIRMED.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO*
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

ARTURO D. BRION**
Associate Justice

MARIA LOURDES P. A. SERENO***
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Third Division, Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Footnotes

* Designated as an additional member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1059 dated August 1, 2011.

** Designated as an additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 1056 dated July 27, 2011.

*** Designated as an additional member, per Special Order No. 1028 dated June 21, 2011.

¹ Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Amelita G. Tolentino and Danilo B. Pine, concurring; rollo, pp. 51-68.

² Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Portia Aliño-Hormachuelos and Lucas P. Bersamin (now a member of this Court), concurring; rollo, pp. 71-72.

³ Penned by Judge Santiago Javier Ranada; CA rollo, pp. 101-118.

⁴ Rollo, pp. 181-183.

⁵ Id. at 133.

⁶ Id. at 64.

⁷ CA rollo, p. 103.

⁸ Rollo, p. 161.

⁹ CA rollo, p. 103.

¹⁰ Id. at 103-104.

¹¹ Rollo, pp. 159-168.

¹² Id. at 167.

¹³ Id. at 169-180.

¹⁴ CA rollo, p. 105.

¹⁵ Id.

¹⁶ Id.

¹⁷ Supra note 3.

¹⁸ CA rollo, pp. 117-118.

¹⁹ Rollo, pp. 61-67.

²⁰ The petition was entitled "Genaro G. Reyes Construction, Inc. et al. v. American Home Insurance Co. of New York" and docketed as G.R. No. 174913.

²¹ The resolution reads:

x x x x

Considering the allegations, issues and arguments adduced in the petition for review on certiorari assailing the Decision dated 29 September 2005 of the Court of Appeals in CA-G.R. CV No. 73960, the Court resolves to DENY the petition for failure to sufficiently show that the Court of Appeals had

committed any reversible error in the questioned judgment to warrant the exercise of this Court's discretionary appellate jurisdiction, and for raising essentially factual issues.

²² Rollo, pp. 28-29.

²³ Stronghold Insurance Company, Incorporated v. Tokyo Construction Company, Ltd., G.R. Nos. 158820-21, June 5, 2009, 588 SCRA 410, 420.

²⁴ Rollo, p. 64.

²⁵ Id. at 63-64.

²⁶ Id. at 65.

²⁷ Stronghold Insurance Company, Incorporated v. Tokyo Construction Company, Ltd., supra note 23, at 421-422.

²⁸ Id. at 422-423.

²⁹ Raquel-Santos v. Court of Appeals, G.R. Nos. 174986, 175071 and 181415, July 7, 2009, 592 SCRA 169, 195.

³⁰ Stronghold Insurance Company, Incorporated v. Tokyo Construction Company, Ltd., supra note 23, at 420-421.

³¹ Raquel-Santos v. Court of Appeals, supra note 29, at 195-196.