



Republic of the Philippines  
**SUPREME COURT**  
Baguio

THIRD DIVISION

**G.R. No. 180898**      **April 18, 2012**

**PHILIPPINE CHARTER INSURANCE CORPORATION**, Petitioner,  
vs.  
**PETROLEUM DISTRIBUTORS & SERVICE CORPORATION** Respondent.

DECISION

**MENDOZA, J.:**

Before the Court is a petition for review under Rule 45 of the Rules of Court seeking the reversal of the July 31, 2007 Decision<sup>1</sup> and the December 28, 2007 Resolution<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 82417, which affirmed with modification the January 12, 2004 Decision of the Regional Trial Court, Branch 111, Pasay City (RTC).

The Facts:

On January 27, 1999, respondent Petroleum Distributors and Services Corporation (PDSC), through its president, Conrado P. Limcaco, entered into a building contract<sup>3</sup> with N.C. Francia Construction Corporation (FCC), represented by its president and chief executive officer, Emmanuel T. Francia, for the construction of a four-story commercial and parking complex located at MIA Road corner Domestic Road, Pasay City, known as Park 'N Fly Building (*Park 'N Fly*). Under the contract, FCC agreed to undertake the construction of Park 'N Fly for the price of P 45,522,197.72.

The parties agreed that the construction work would begin on February 1, 1999. Under the Project Evaluation and Review Technique Critical Path Method (*PERT-CPM*), the project was divided into two stages: Phase 1<sup>4</sup> of the construction work would be finished on May 17, 1999 and Phase 2<sup>5</sup> would begin on May 18, 1999 and finish on October 20, 1999. The project should be turned over by October 21, 1999.<sup>6</sup> It was further stipulated that in the event FCC failed to finish the project within the period specified, liquidated damages equivalent to 1/10 of 1% of the contract price for every day of delay shall accrue in favor of PDSC.<sup>7</sup>

To ensure compliance with its obligation, FCC's individual officers, namely, Natividad Francia, Emmanuel C. Francia, Jr., Anna Sheila C. Francia, San Diego Felipe G. Bermudez, Emmanuel T. Francia, Charlemagne C. Francia, and Ruben G. Caperiña, signed the Undertaking of Surety<sup>8</sup> holding themselves personally liable for the accountabilities of FCC.

Also, FCC procured Performance Bond No. 31915 amounting to P 6,828,329.00 from petitioner Philippine Charter Insurance Corporation (PCIC) to secure full and faithful performance of its obligation under the Building Contract.<sup>9</sup>

The construction of the Park 'N Fly started on February 1, 1999.

Pursuant to the Building Contract, PDSC sourced out construction materials and subcontracted various phases of the work to help obtain the lowest cost of the construction and speed up the work of the project. These resulted in the reduction of the contract price.<sup>10</sup>

During the Phase 1 of the project, PDSC noticed that FCC was sixteen (16) days behind schedule. In a Letter<sup>11</sup> dated March 25, 1999, it reminded FCC to catch up with the schedule of the projected work path, or it would impose the penalty of 1/10 of the 1% of the contract price. The problem, however, was not addressed, as the delay increased to 30 days<sup>12</sup> and ballooned to 60 days.<sup>13</sup>

Consequently, on September 10, 1999, FCC executed a deed of assignment,<sup>14</sup> assigning a portion of its

receivables from Caltex Philippines, Inc. (*Caltex*), and a chattel mortgage,<sup>15</sup> conveying some of its construction equipment to PDSC as additional security for the faithful compliance with its obligation.

On even date, PDSC and FCC likewise executed a memorandum of agreement (*MOA*),<sup>16</sup> wherein the parties agreed to revise the work schedule of the project. As a consequence, Performance Bond No. 31915 was extended up to March 2, 2000.<sup>17</sup>

For failure of FCC to accomplish the project within the agreed completion period, PDSC, in a letter<sup>18</sup> dated December 3, 1999, informed FCC that it was terminating their contract based on Article 12, Paragraph 12.1 of the Building Contract. Subsequently, PDSC sent demand letters<sup>19</sup> to FCC and its officers for the payment of liquidated damages amounting to P 9,149,962.02 for the delay. In the same manner, PDSC wrote PCIC asking for remuneration pursuant to Performance Bond No. 31915.<sup>20</sup>

Despite notice, PDSC did not receive any reply from either FCC or PCIC, constraining it to file a complaint<sup>21</sup> for damages, recovery of possession of personal property and/or foreclosure of mortgage with prayer for the issuance of a writ of replevin and writ of attachment, against FCC and its officers before the RTC. PDSC later filed a supplemental complaint<sup>22</sup> impleading PCIC, claiming coverage under Performance Bond No. 31915 in the amount of P 6,828,329.66.

In its Amended Answer with affirmative defense and counterclaim,<sup>23</sup> FCC admitted that it entered into a contract with PDSC for the construction of the Park 'N Fly building. It, however, asserted that due to outsourcing of different materials and subcontracting of various phases of works made by PDSC, the contract price was invariably reduced to P 19,809,822.12.

FCC denied any liability to PDSC claiming that any such claim by the latter had been waived, abandoned or otherwise extinguished by the execution of the September 10, 1999 MOA. FCC claimed that in the said MOA, PDSC assumed all the obligations originally reposed upon it. FCC further explained that the PERT-CPM agreed upon by the parties covering the first phase of the work project was severely affected when PDSC deleted several scopes of work and undertook to perform the same. In fact, the PERT-CPM was evaluated and it was concluded that the delay was attributable to both of them. FCC added that after Phase I of the project, it sent a progress billing in the amount of P 939,165.00 but PDSC approved the amount of P 639,165.00 only after deducting the cost of the attributable delay with the agreement that from then on, PDSC should shoulder all expenses in the construction of the building until completion; that FCC would provide the workers on the condition that they would be paid by PDSC; and that it would allow PDSC free use of the construction equipments that were in the project site.

For its part, PCIC averred that as a surety, it was not liable as a principal obligor; that its liability under the bond was conditional and subsidiary and that it could be made liable only upon FCC's default of its obligation in the Building Contract up to the extent of the terms and conditions of the bond. PCIC also alleged that its obligation under the performance bond was terminated when it expired on October 15, 1999 and the extension of the performance bond until March 2, 2000 was not binding as it was made without its knowledge and consent.

PCIC added that PDSC's claim against it had been waived, abandoned or extinguished by the September 10, 1999 MOA. It also argued that its obligation was indeed extinguished when PDSC terminated the contract on December 3, 1999 and took over the construction and it failed to file its claim within ten (10) days from the expiry date or from the alleged default of FCC.<sup>24</sup>

Nonetheless, in the event that PCIC would be made liable, its liability should be in proportion to the liabilities of the other sureties.

On January 12, 2004, the RTC rendered its Decision<sup>25</sup> in favor of PDSC. The RTC found FCC guilty of delay when it failed to finish and turn over the project on October 15, 1999. It pronounced FCC and PCIC jointly and severally liable and ordered them to pay PDSC the amount of P 9,000,000.00 as damages and P 50,000.00 as attorney's fees plus interest.

FCC and PCIC filed their respective notice of appeal<sup>26</sup> with the RTC. On February 12, 2004, the RTC issued its Order<sup>27</sup> giving due course to the notice of appeal.

On July 31, 2007, the CA modified the RTC's decision.<sup>28</sup> The CA agreed that FCC incurred delay in the construction of the project. It, however, found that the computation of the liquidated damages should be based on the reduced contract price of P 19,809,822.12. The dispositive portion reads:

WHEREFORE, the Decision dated 12 January 2004 of the Regional Trial Court of Pasay City, Branch 111 is AFFIRMED with MODIFICATION in that appellants N.C. Francia Construction Corporation, Natividad Francia, Emmanuel Francia, Jr., Anna Sheila Francia San Diego, Felipe Bermudez, Emmanuel Francia, Charlemagne

Francia, Ruben Caperiña, and Philippine Charter Insurance Corporation are hereby held solidarily liable to pay appellee Petroleum Distributors & Services Corporation (1) liquidated damages in the sum of P 3,882,725.13, which shall earn legal interest at the rate of 6% per annum from 10 January 2000 until finality of this judgment; (2) attorney's fees amounting to P 50,000.00; and (3) cost of suit. Pursuant to Performance Bond No. 31915, the liability of appellant Philippine Charter Insurance Corporation should not exceed P 6,828,329.66.

Appellants N.C Francia Construction Corporation, Emmanuel Francia and Natividad Francia are adjudged liable to pay appellant Philippine Charter Insurance Corporation for the amount the latter may have paid under Performance Bond No. 31915.

SO ORDERED.<sup>29</sup>

FCC and PCIC filed their separate motions for reconsideration<sup>30</sup> but the CA denied them in its December 28, 2007 Resolution.<sup>31</sup>

Hence, this petition.

It is well to note that only PCIC appealed the CA's decision. It became final and executory with regard to FCC and the other parties in the case. Hence, the Court shall limit its discussion to the liability of PCIC.

In its Memorandum,<sup>32</sup> PCIC anchored its petition on the following issues:

1. Whether or not the Court of Appeals, in adjudging Petitioner liable for liquidated damages, expanded liability under Performance Bond No. 31915 which on its face answers only for actual and compensatory damages, not liquidated damages.

Assuming *arguendo* liability for liquidated damages under the performance bond, whether or not the Court of Appeals erred in not declaring that the award of liquidated damages is iniquitous and unconscionable and in not applying the provisions of Article 2227, Civil Code, and *Palmares v. Court of Appeals*, 288 SCRA 422.

2. Whether or not the Memorandum of Agreement dated Sept. 10, 1999 entered into by respondent and Francia Construction, confirmed in a letter dated Sept. 20, 1999, --- without Petitioner's knowledge or consent---, the effect that all costs, expenses, payments and obligations shall be deemed paid, performed and fully settled as of Sept. 10, 1999, discharged Petitioner from liability under the performance bond under Article 2079, Civil Code.

3. Whether or not the Court of Appeals, having made the finding of fact that the sums of Php2,793,000.00 and Php662,836.50 should be deducted from Php3,882,725.13, erred in not deducting the amounts in the dispositive portion of the decision.<sup>33</sup>

In sum, the issues before the Court are (1) whether or not PCIC is liable for liquidated damages under the performance bond; (2) whether or not the September 10, 1999 MOA executed by PDSC and FCC extinguished PCIC's liability under the performance bond; and (3) whether or not the amounts of P 2,793,000.00 and P 662,836.50 are deductible from the liquidated damages awarded by the CA.

PCIC argues that in case of a breach of contract, the performance bond is answerable only for actual or compensatory, not for liquidated damages. The terms of the bond are clear that the liability of the surety is determined by the contract of suretyship and cannot be extended by implication beyond the terms of the contract. Nonetheless, even assuming that it is liable under the performance bond, the liability should be based on equity. It claims that it is unlawful and iniquitous to hold FCC responsible for the delay of the subcontractor commissioned by PDSC.

PCIC adds that the act of PDSC of subcontracting the various stages of the project resulted in a revision of work schedule and extension of the completion date that ultimately released both FCC and PCIC of whatever claims PDSC may have against them. PCIC is of the impression that since the subcontracting made by PDSC was made without its consent and knowledge, its liability under the performance bond should be extinguished.

PCIC also pointed out that the receivable in the amount of P 2,793,000.00 acquired by PDSC from Caltex and the proceeds from the auction sale in the sum of P 662,836.50 should be deducted from the award of P 3,882,725.13.

The Court finds no merit in the petition.

The Building Contract entered into by PDSC and FCC provides that:

Art. 2 ESSENCE OF THE CONTRACT

2.1 It is understood that time, quality of work in accordance with the OWNER's requirements, and reduced construction costs are the essence of this Contract.

2.2 The CONTRACTOR shall commence the construction for the first two (2) levels not later than five (5) days immediately after the date of execution of this Contract and shall regularly proceed and complete the construction within Two Hundred Fifty-Nine (259) calendar days reckoned from the date of signing of this Contract or not later than October 15, 1999, whichever is earlier. To ensure completion of the work within the time given herein, construction work shall be conducted at least twenty hours each day with at least two (2) work shift for every day actually worked.

2.3 In the event that the construction is not completed within the aforesaid period of time, the OWNER is entitled and shall have the right to deduct from any amount that may be due to the CONTRACTOR the sum of one-tenth (1/10) of one percent (1%) of the contract price for every day of delay in whatever stage of the project as liquidated damages, and not by way of penalty, and without prejudice to such other remedies as the OWNER may, in its discretion, employ including the termination of this Contract, or replacement of the CONTRACTOR.

2.4 Furthermore, the CONTRACTOR agrees not to request any extension of time due to any delay in the procurement of materials needed in the construction other than due to circumstances of "Force Majeure". Force Majeure is hereby defined as any war, civil commotion and disturbance, acts of God or any other cause beyond the CONTRACTOR's control and without any contributing fault on the part of the CONTRACTOR.

2.5 Contractor shall arrange, schedule and carry on the work so as not to interfere with the delivery and erection of the work of others. To facilitate the erection of such other work, the CONTRACTOR shall cease or resume work at any point or stage of the Project, when so directed by the OWNER or his duly authorized representative. [Emphasis supplied]

Paragraph 2.3 of the Building Contract clearly provides a stipulation for the payment of liquidated damages in case of delay in the construction of the project. Such is in the nature of a penalty clause fixed by the contracting parties as a compensation or substitute for damages in case of breach of the obligation.<sup>34</sup> The contractor is bound to pay the stipulated amount without need for proof of the existence and the measures of damages caused by the breach.<sup>35</sup>

Article 2226 of the Civil Code allows the parties to a contract to stipulate on liquidated damages to be paid in case of breach. It is attached to an obligation in order to insure performance and has a double function: (1) to provide for liquidated damages, and (2) to strengthen the coercive force of the obligation by the threat of greater responsibility in the event of breach.<sup>36</sup> As a general rule, contracts constitute the law between the parties, and they are bound by its stipulations.<sup>37</sup> For as long as they are not contrary to law, morals, good customs, public order, or public policy, the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient.<sup>38</sup>

In the case at bench, the performance bond issued by PCIC specifically provides that:

KNOW ALL MEN BY THESE PRESENTS:

That we, N.C. FRANZIA CONSTRUCTION CORPORATION of Merryland Corporate Offices, 3250 Gracia St., cor. Edsa, Brgy. Pinagkaisahan, Makati City, as Principal and PHILIPPINE CHARTER INSURANCE CORPORATION, a corporation duly organized and existing under and by virtue of the laws of the Philippines, as Surety, are held and firmly bound unto PETROLEUM DISTRIBUTORS & SERVICES CORPORATION, as obligee in the sum of PESOS SIX MILLION EIGHT HUNDRED TWENTY EIGHT THOUSAND THREE HUNDRED TWENTY NINE & 66/100 ONLY (P 6,828,329.66) 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.

THE CONDITION OF THIS OBLIGATION ARE AS FOLLOWS:

WHEREAS, the above bounden principal, on the \_\_\_\_ day of \_\_\_\_\_ 19\_\_ entered into an \_\_\_\_\_ with \_\_\_\_\_, to fully and faithfully guarantee that the above-named Principal shall furnish, deliver, place and complete any and all necessary materials, labor, plant, tools appliances and equipment, supplies, utilities transportation, superintendence, supervision and all other facilities in connection with the construction of a 4-storey commercial/parking complex situated at MIA Road cor. Domestic Road, Pasay City as per attached Building Contract dated January 27, 1999.

Provided, however, that the liability of the Surety Company under this bond shall in no case exceed the face value hereof.

WHEREAS, said obligee requires said principal to give a good and sufficient bond in the above stated sum to secure the full and faithful performance on its part of said undertaking.

NOW THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms conditions and agreements stipulated in said undertakings then this obligation shall be null and void; otherwise it shall remain in full force and effect. [Emphasis Supplied]

By the language of the performance bond issued by PCIC, it guaranteed the full and faithful compliance by FCC of its obligations in the construction of the Park 'N Fly. In fact, the primary purpose for the acquisition of the performance bond was to guarantee to PDSC that the project would proceed in accordance with the terms and conditions of the contract and to ensure the payment of a sum of money in case the contractor would fail in the full performance of the contract.<sup>39</sup> This guaranty made by PCIC gave PDSC the right to proceed against it (PCIC) following FCC's non-compliance with its obligation.

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.<sup>40</sup> Although the contract of a surety is secondary only to a valid principal obligation, the surety becomes liable for the debt or duty of another although it possesses no direct or personal interest over the obligations nor does it receive any benefit therefrom.<sup>41</sup> This was explained in the case of *Stronghold Insurance Company, Inc. v. Republic-Asahi Glass Corporation*,<sup>42</sup> where it was written:

The surety's obligation is not an original and direct one for the performance of his own act, but merely accessory or collateral to the obligation contracted by the principal. Nevertheless, although the contract of a surety is in essence secondary only to a valid principal obligation, his liability to the creditor or promisee of the principal is said to be direct, primary and absolute; in other words, he is directly and equally bound with the principal.

Corollary, when PDSC communicated to FCC that it was terminating the contract, PCIC's liability, as surety, arose. The claim of PDSC against PCIC occurred from the failure of FCC to perform its obligation under the building contract. As mandated by Article 2047 of the Civil Code, to wit:

Article 2047. By guaranty, a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.

If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed. In such case, the contract is called a suretyship.

Thus, suretyship arises upon the solidary binding of a person deemed the surety with the principal debtor for the purpose of fulfilling an obligation.<sup>43</sup> A surety is considered in law as being the same party as the debtor in relation to whatever is adjudged touching the obligation of the latter, and their liabilities are interwoven as to be inseparable.<sup>44</sup> Therefore, as surety, PCIC becomes liable for the debt or duty of FCC although it possesses no direct or personal interest over the obligations of the latter, nor does it receive any benefit therefrom.<sup>45</sup>

The Court also found untenable the contention of PCIC that the principal contract was novated when PDSC and FCC executed the September 10, 1999 MOA, without informing the surety, which, in effect, extinguished its obligation.

A surety agreement has two types of relationship: (1) the principal relationship between the obligee and the obligor; and (2) the accessory surety relationship between the principal and the surety. The obligee accepts the surety's solidary undertaking to pay if the obligor does not pay. Such acceptance, however, does not change in any material way the obligee's relationship with the principal obligor. Neither does it make the surety an active party in the principal obligor-obligee relationship. It follows, therefore, that the acceptance does not give the surety the right to intervene in the principal contract. The surety's role arises only upon the obligor's default, at which time, it can be directly held liable by the obligee for payment as a solidary obligor.<sup>46</sup>

Furthermore, in order that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and new obligation be in every point incompatible with each other.<sup>47</sup> Novation of a contract is never presumed. In the absence of an express agreement, novation takes place only when the old and the new obligations are incompatible on every point.<sup>48</sup>

Undoubtedly, a surety is released from its obligation when there is a material alteration of the principal contract in connection with which the bond is given, such as a change which imposes a new obligation on the promising party, or which takes away some obligation already imposed, or one which changes the legal effect of the original

contract and not merely its form.<sup>49</sup> In this case, however, no new contract was concluded and perfected between PDSC and FCC. A reading of the September 10, 1999 MOA reveals that only the revision of the work schedule originally agreed upon was the subject thereof. The parties saw the need to adjust the work schedule because of the various subcontracting made by PDSC. In fact, it was specifically stated in the MOA that *"all other terms and conditions of the Building Contract of 27 January 1999 not inconsistent herewith shall remain in full force and effect."*<sup>50</sup> There was no new contract/agreement which could be considered to have substituted the Building Contract. As correctly ruled by the CA, thus:

At first blush, it would seem that the parties agreed on a revised timetable for the construction of Park 'N Fly. But then, nowhere in the voluminous records of this case could We find the Annex "A" mentioned in the above-quoted agreement which could have shed light to the question of whether a new period was indeed fixed by the parties. The testimony of appellant Emmanuel Francia, Sr., President and Chief Executive Officer of appellant N.C. Francia, candidly disclosed what truly happened to Annex "A", as he admitted that no new PERT/CPM was actually attached to the Memorandum of Agreement.

Accordingly, We find no compelling reason to declare that novation ensued under the prevailing circumstances. The execution of the Building Contract dated 27 January 1999 does not constitute a novation of the Memorandum of Agreement dated 10 September 1999. There lies no incompatibility between the two contracts as their principal object and conditions remained the same. While there is really no hard and fast rule to determine what might constitute to be a sufficient change that can bring about novation, the touchstone for contrariety, however, would be an irreconcilable incompatibility between the old and the new obligations.<sup>51</sup>

It must likewise be emphasized that pursuant to the September 10, 1999 MOA, PCIC extended the coverage of the performance bond until March 2, 2000.<sup>52</sup>

Finally, as pointed out by PCIC, the receivable in the amount of P 2,793,000.00 acquired by PDSC from Caltex and the proceeds from the auction sale in the sum of P 662,836.50 should be deducted from the award of P 3,882,725.13. There is no quibble on this point. The ruling of the CA on the matter is very clear. It reads:

With these points firmly in mind, We proceed to the next question raised by appellants – whether the value of the securities given as well as the proceeds of the sale of chattels should be deducted from the claim of liquidated damages.

We answer in the affirmative.

There is no quibble that appellant N.C Francia assigned a portion of its receivables from Caltex Philippines, Inc. in the amount of P 2,793,000.00 pursuant to the Deed of Assignment dated 10 September 1999. Upon transfer of said receivables, appellee Petroleum Distributors automatically stepped into the shoes of its transferor. It is in keeping with the demands of justice and equity that the amount of these receivables be deducted from the claim for liquidated damages.

So too, vehicles and equipment owned by appellant N.C. Francia were sold at public auction at P 1,070,000.00. After deducting storage fees, the amount of P 662,836.50 was deposited before the court *a quo*. The latter amount accrues in favor of appellee Petroleum Distributors as partial payment of its claim for liquidated damages.

WHEREFORE, the petition is DENIED. The July 31, 2007 Decision and December 28, 2007 Resolution of the Court of Appeals (CA) in CA-G.R. CV No. 82417 are AFFIRMED. The receivable in the amount of P 2,793,000.00 acquired by PDSC from Caltex and the proceeds from the auction sale in the sum of P 662,836.50 should be deducted from the award of P 3,882,725.13.

SO ORDERED.

**JOSE CATRAL MENDOZA**

Associate Justice

WE CONCUR:

**PRESBITERO J. VELASCO, JR.**

Associate Justice

Chairperson

**DIOSDADO M. PERALTA**

Associate Justice

**ROBERTO A. ABAD**

Associate Justice

**ESTELA M. PERLAS-BERNABE**

Associate Justice

## A T T E S T A T I O N

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  
Chairperson, Third Division

## C E R T I F I C A T I O N

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.

**RENATO C. CORONA**

Chief Justice

**Footnotes**

<sup>1</sup> *Rollo*, pp. 28-48. Penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justice Mario L. Guariña III and Associate Justice Sixto C. Marella, Jr.

<sup>2</sup> *Id.*, pp. 50-55

<sup>3</sup> Annex "A" of the Complaint, Records, Volume I, pp. 26-43.

<sup>4</sup> Annex "B" of the Complaint, CPM & Bar Chart, Records, Volume I, p. 46.

<sup>5</sup> *Id.* at 47-49.

<sup>6</sup> *Id.* at 54.

<sup>7</sup> Article 2.3 of the Building Contract, Annex "A" of the Complaint, Records, Volume I, p. 28.

<sup>8</sup> Annex "C" of the Complaint, Records, Volume I, p. 60.

<sup>9</sup> Annex "B" of the Complaint, Records, Volume III, pp. 1173-1174.

<sup>10</sup> Letter dated July 30, 1999, Exhibit "S", Records, Volume III, p. 1183.

<sup>11</sup> Records, Volume III, p. 1177.

<sup>12</sup> Exhibit "Q," Records, Volume III, p. 1178.

<sup>13</sup> Exhibit "R," Records, Volume III, p. 1181.

<sup>14</sup> Exhibit "U," Records, Volume III, pp. 1186-1187..

<sup>15</sup> Annex "E" of the Complaint, Records, Volume I, pp. 63-66.

<sup>16</sup> Annex "D" of the Complaint, Records, Volume I, pp. 61-62.

<sup>17</sup> Exhibit "N-1," Records, Volume III, p. 1175.

<sup>18</sup> Annex "F," Records, Volume I, pp. 70-71.

<sup>19</sup> Annexes "G" to "M," Records, Volume I, pp. 72-85.

<sup>20</sup> Annex "D," Records, Volume II, p. 682.

<sup>21</sup> Records, Volume I, pp. 2-25.

- <sup>22</sup> Records, Volume II, pp. 654-659.
- <sup>23</sup> Records, Volume I, pp. 290-315.
- <sup>24</sup> Answer to Supplemental Complaint, Records, Volume II, pp. 761-765.
- <sup>25</sup> Records, Volume IV, pp. 1547-1558.
- <sup>26</sup> Id. at 1575-1576 & 1584-1585.
- <sup>27</sup> Id. at 1586
- <sup>28</sup> CA Rollo, pp. 275-293.
- <sup>29</sup> Rollo, p. 48
- <sup>30</sup> CA Rollo, pp. 297-303 & 314-319.
- <sup>31</sup> Id. at 393-398.
- <sup>32</sup> Records, pp. 172-191.
- <sup>33</sup> Id. at 180
- <sup>34</sup> Comments and Jurisprudence on Obligations and Contracts, Desiderio P. Jurado, Twelfth Revised Edition 2010, p. 219.
- <sup>35</sup> *Titan Construction Corporation v. Uni-Field Enterprises, Inc.*, March 1, 2007, G.R. No. 153874, 517 SCRA 180, 189.
- <sup>36</sup> *Filinvest Land, Inc. v. Court of Appeals*, 507 Phil. 259, 267 (2005).
- <sup>37</sup> *R & M General Merchandise, Inc. v. Court of Appeals*, 419 Phil. 131, 142 (2001).
- <sup>38</sup> Art. 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy. (1255a)
- <sup>39</sup> [http://www. Businessdictionary.com/definition/performance-bond.html](http://www.Businessdictionary.com/definition/performance-bond.html); March 27, 2012.
- <sup>40</sup> *Stronghold Insurance Company, Incorporated v. Tokyu Construction Company, Ltd.*, G.R. Nos. 158820-21, June 5, 2009, 588 SCRA 410, 421.
- <sup>41</sup> *Asset Builders Corporation v. Stronghold Insurance Company, Incorporated*, G.R. No. 187116, October 18, 2010, 633 SCRA 370, 379.
- <sup>42</sup> G.R. No. 147561, 492 SCRA 179, 190, June 6, 2006.
- <sup>43</sup> *Prudential Guarantee and Assurance, Inc. v. Equinox Land Corporation*, G.R. Nos. 152505-06, September 13, 2007, 533 SCRA 257, 268.
- <sup>44</sup> *Security Pacific Assurance Corporation v. Hon. Tria-Infante*, 505 Phil. 609, 620, (2005).
- <sup>45</sup> Id.
- <sup>46</sup> *Asset Builders Corporation v. Stronghold Insurance Company, Incorporated*, supra note 41 at 380.
- <sup>47</sup> Article 1292 Civil Code.
- <sup>48</sup> *Security Bank and Trust Company, Inc. v. Cuenca*, 396 Phil. 108, 122, (2000).
- <sup>49</sup> *Stronghold Insurance Company, Incorporated v. Tokyu Construction Company, Ltd.*, G. R. No. 158820-21, June 5, 1990, 588 SCRA 410, 423. [*Stronghold Insurance Company, Incorporated v. Tokyu Construction Company, Ltd.*, supra note 38 at 423.]



<sup>50</sup> Paragraph 5 of the Memorandum of Agreement dated September 10, 1999, Annex "D," Records Volume I, p. 61.

<sup>51</sup> Rollo, pp. 38-39

<sup>52</sup> Exhibit "N-1," Records, Volume III, p. 1175.