

SECOND DIVISION

[G.R. No. 189526, August 09, 2017]

**FGU INSURANCE CORPORATION, PETITIONER, V. SPOUSES
FLORO ROXAS AND EUFEMIA ROXAS, RESPONDENTS.**

[G.R. No. 189656, August 9, 2017]

**SPOUSES FLORO ROXAS AND EUFEMIA ROXAS, PETITIONERS, V.
ROSENDO P. DOMINGUEZ, JR., PHILIPPINE TRUST COMPANY,
AND FGU INSURANCE CORPORATION, RESPONDENTS.**

D E C I S I O N

LEONEN, J.:

The liability of a surety is determined strictly in accordance with the actual terms of the performance bond it issued. It may, however, set up compensation against the amount owed by the creditor to the principal.

The Petitions for Review in G.R. Nos. 189526^[1] and 189656^[2] seek to reverse and set aside the May 26, 2009 Decision^[3] and the September 14, 2009 Resolution^[4] of the Court of Appeals in CA-G.R. CV No. 30340. The May 26, 2009 Decision modified the Regional Trial Court September 4, 1990 Decision,^[5] while the September 14, 2009 Resolution denied the motions for reconsideration separately filed by FGU Insurance Corporation (FGU), Spouses Floro and Eufemia Roxas (the Spouses Roxas), and Philippine Trust Company (Philtrust Bank).

The Spouses Roxas entered into a Contract of Building Construction^[6] dated May 22, 1979 with Rosendo P. Dominguez, Jr. (Dominguez) and Philtrust Bank to complete the construction of their housing project known as "Vista Del Mar Executive Houses."^[7] The project was located at Cabcaban, Mariveles, Bataan and was estimated to cost P1,200,000.00

From the terms of the Contract, Philtrust Bank would finance the cost of materials and supplies to the extent of P 900,000.00, while Dominguez would undertake the construction works for P300,000.00.^[8]

It was also stipulated that Philtrust Bank may only release the funds for materials upon Dominguez's request and with the Spouses Roxas' conformity. Invoices covering materials previously purchased should also be submitted to Philtrust Bank before any subsequent releases of funds were made.^[9]

The P300,000.00 cost of labor would be shouldered by the Spouses Roxas, but the Contract stated that:

[W]hether or not the [Spouses Roxas] could provide/supply the funds to finance the labor costs as aforesaid, the Contractor binds himself to finish

and complete the construction of the project within the stipulated period of One Hundred Fifty (150) working days [from April 25, 1979].^[10]

Finally, it was provided that in case of Dominguez's non-compliance of the terms and conditions of the Contract, he would pay Philtrust Bank and/or the Spouses Roxas liquidated damages of P1,000.00 per day until he has complied with his obligation.^[11]

On May 24, 1979, the Spouses Roxas and Dominguez entered into another Agreement,^[12] which provided for the terms of payment of the P300,000.00 "cost of labor, supervision and engineering services"^[13] as follows:

- a) first cash payment of P30,000.00 - 45 working days from April 25, 1979, the start of the work on the project;
- b) second cash payment of P30,000.00 - 30 working days from the first cash payment;
- c) third cash payment of P 30,000.00 - 30 working days from the second cash payment; and
- d) last and final payment of P210,000.00 in the form of real properties, consisting of a 3,000-square-meter parcel of land in Mariveles, Bataan under Transfer Certificate of Title (TCT) Nos. 71591 and 77270 to 77273, and a 2,000-square-meter parcel of land in Limay, Bataan under TCT No. 2140, upon completion and acceptance of the project.^[14]

It was also stipulated that an interest of 14% per annum would be paid by the Spouses Roxas in the event of non-payment of the amounts due to Dominguez.^[15]

Also on May 24, 1979, pursuant to the Contract of Building Construction, Dominguez secured a performance bond, FIC Bond No. G(23) 5954^[16] (Surety Bond), with face amount of P450,000.00, from FGU. FGU and Dominguez bound themselves to jointly and severally pay Floro Roxas (Floro) and Philtrust Bank the agreed amount in the event of Dominguez's non-performance of his obligation under the Contract.^[17]

Dominguez averred that on September 20, 1979, he requested an upward adjustment of the contract price from the Spouses Roxas due to the rising costs of materials and supplies. But the Spouses Roxas did not heed his request.^[18]

He added that the Spouses Roxas also failed to make the three (3) payments of P30,000.00 each as agreed upon. Thus, on October 22, 1979, he formally demanded that they pay the amounts due plus the stipulated interest of 14% per annum,^[19] with a warning that he would stop further work and withdraw his workers unless payment was received on or before October 31, 1979.^[20]

On November 9, 1979, Dominguez sent another demand letter to the Spouses Roxas, this time, for the payment of P73,136.75,^[21] which they allegedly borrowed from the funds allotted for the project for their personal use and benefit. The

Spouses Roxas were required to pay the amount within seven (7) days from receipt of the letter. However, they refused to pay.^[22]

Dominguez also asked Philtrust Bank to release the remaining balance of P24,000.00 but to no avail.^[23]

On March 28, 1980, Dominguez filed a Complaint against the Spouses Roxas and Philtrust Bank before Branch 40, Court of First Instance of Manila. This was docketed as Civil Case No. 130783. In addition to the amounts claimed, he also sought the following: the annulment of the "Whereas Clause" providing for the completion of the construction project within 150 working days; the rescission/annulment of the Contract of Building Construction dated May 22, 1979 and the Agreement dated May 24, 1979; and the declaration of the FGU Surety Bond as unenforceable.^[24]

In its Answer with Compulsory Counterclaim dated June 30, 1980,^[25] Philtrust Bank claimed that it did not release the P24,000.00 because Dominguez failed to submit an accounting of the previous releases made. Philtrust Bank added that Dominguez failed to complete even 60% of the project despite its release of P876,000.00. As such, it asked Dominguez to pay P1,000.00 per day of delay as liquidated damages until fulfillment of his obligation.^[26] Lastly, Philtrust Bank averred that it sent several demand letters^[27] to FGU to pay P450,000.00 for non-performance of its principal, but the latter re/fused to pay. Hence, Philtrust Bank sought to implead FGU for non-payment of P450,000.00 under its Surety Bond.^[28]

For their part, the Spouses Roxas claimed that:

- a) "the upward adjustment of the stipulated contract price demanded by Dominguez, Jr. was without any legal or contractual basis";
- b) "under the terms of the contract, he bound himself to finish and complete the construction of the project within 150 working days from April 25, 1979 'whether or not the [Spouses Roxas] could provide/supply the funds to finance the labor costs";
- c) "of the amounts released by Philtrust [Bank], they only conformed to the release of [P]450,000.00"; and
- d) FGU failed to pay the P450,000.00 amount "stipulated in the [Surety] [Bond]."^[29]

The Spouses Roxas further averred that Philtrust Bank's unjustified release of the funds to Dominguez had resulted in the non-completion of the housing project and consequent unrealized rental income from prospective lessees and delay in their amortization payments to Philtrust Bank.^[30]

Hence, the Spouses Roxas "prayed for the reimbursement of the amount of P422,000.00 unjustifiably released by [Philtrust Bank]" and damages of P48,000.00 monthly beginning October 1979, representing unearned rentals from the non-completion of the project.^[31]

Philtrust Bank countered that all the funds released to Dominguez "were with the conformity of the [S]pouses [Roxas;] ... the non-completion of the housing project was due to the failure of the [S]pouses [Roxas] to release the [P]300,000.00 . . . [for the] costs of labor and other engineering services" and claimed that the Spouses Roxas had an unpaid loan of "[P]3,053,739.50."^[32] Hence, Philtrust Bank additionally prayed that the Spouses Roxas be ordered to pay their indebtedness in the total amount of "P3,053,738.50 plus 19% yearly interest" from April 1, 1980 until fully paid and "P245,720.00 stipulated in the various promissory notes as and for attorney's fees."^[33] In default of these payments, Philtrust Bank prayed that the real estate mortgages be foreclosed.^[34]

FGU argued that the Surety Bond was issued in favor of Floro and Philtrust Bank only, Eufemia Roxas (Eufemia) excluded; and recovery from this Surety Bond may be allowed to Floro only to the extent of one-half (1/2) of its face value. It prayed for reimbursement against Dominguez for any amount it may be adjudged to pay to the Spouses Roxas. It also filed a fourth-party complaint against Dominguez, Gloria Dominguez, Dominador Caiyod, Felicisima Caiyod, Rufino Andal, and Amada Caiyod under their May 29, 1979 Agreement of Counterguaranty "to secure the obligation of FGU [Insurance Corporation] under the surety bond."^[35]

FGU later moved to strike the fourth-party complaint but it was denied by the trial court.^[36]

Branch 40, Regional Trial Court, Manila found that the Spouses Roxas breached their obligation to Dominguez under the Contract of Building Construction and the May 24, 1979 Agreement. Likewise, it ruled that Dominguez's non-completion of the project within the stipulated period was justified because of the rising prices of materials and labor. Finally, it held that Dominguez was made to accept the construction contract due to the deceit and misrepresentation of the Spouses Roxas and Philtrust Bank. Hence, it rendered judgment in favor of Dominguez as follows:

WHEREFORE, viewed in the light of the foregoing circumstances, this court hereby renders judgment in favor of plaintiff Rosendo Dominguez[, Jr.] as follows:

- (a) Declaring the "Whereas Clause" paragraph 7 of the Contract Building Construction dated May 22, 1979 as voided and cancelled, as well as the agreement dated May 24, 1979 between the plaintiffs and defendant Roxas spouses;
- (b) Ordering the cancellation of the Performance Bond of the FGU Insurance Corporation for P450,000.00 of no further force and effect;
- (c) Ordering the defendants Roxas spouses to pay Rosendo Dominguez[, Jr.] the sum of P90,000.00 with 14% yearly interest from due date until fully paid;
- (d) Ordering the defendants Roxas spouses to pay P73,146.75 with legal rate thereon from October 27,

1971 until fully paid;

- (e) Ordering the defendants Roxas spouses to pay Rosendo Dominguez[, Jr.] moral and exemplary damages in the amount of P50,000.00 and ordering them to pay [a]ttorney's fees in the amount of P50,000;
- (f) Denying other claims and counterclaims for lack of sufficient proof;

This is without prejudice to the filing of the proper case for collection by the Philippine Trust Company against defendant Roxas spouses for their indebtedness to the Bank;

- (g) Defendant spouses Roxases (sic) are ordered to pay the cost of this suit.^[37]

The Court of Appeals modified the Decision of the Regional Trial Court. It held that the "Whereas Clause" of the Contract of Building Construction dated May 22, 1979 and the Agreement dated May 24, 1979 were valid. According to the Court of Appeals, the Spouses Roxas' non-payment of the stipulated P90,000.00 in three (3) equal installments and their offering of properties different from those stipulated in the May 24, 1979 Agreement did not constitute the kind of fraud that would give rise to the annulment of the contracts. It held that the parcels of land were not even mentioned in the May 22, 1979 Contract and that Dominguez agreed to finish the project within the 150-day period whether or not the Spouses Roxas could supply the funds to finance the labor costs.^[38]

The Court of Appeals also found no basis for the upward adjustment of the contract price claimed by Dominguez. It held that no proof was presented by Dominguez to establish extraordinary inflation during the intervening period. In addition, the precedent conditions for the recovery of additional construction costs under Article 1724^[39] of the Civil Code were not complied with.^[40]

On the liability of the Spouses Roxas to Philtrust Bank, the Court of Appeals held that Philtrust Bank failed to prove that the requests for the release of the sum of P422,000.00 to Dominguez were with the conformity of the Spouses Roxas. Hence, Philtrust Bank had no one else to blame but itself.^[41]

The Court of Appeals also reversed the Regional Trial Court decision to cancel the Surety Bond. It held that FGU, as surety under FGUIC Bond No. G(23) 5994 dated May 24, 1979, was obligated to pay the Spouses Roxas and Philtrust Bank the amount of P450,000.00 for Dominguez's non-completion of the construction project within the stipulated period.^[42]

Finally, the Court of Appeals found the award of damages in favor of Dominguez to be improper. It held that Dominguez failed to prove bad faith, fraud, or ill motive on the part of the Spouses Roxas that would justify the award of moral damages.