

THIRD DIVISION

[G.R. Nos. 158820-21, June 05, 2009]

**STRONGHOLD INSURANCE COMPANY, INCORPORATED,
PETITIONER, VS. TOKYU CONSTRUCTION COMPANY, LTD.,
RESPONDENT.**

DECISION

NACHURA, J.:

Assailed in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is the Court of Appeals (CA) Decision^[1] dated January 21, 2003 and its Resolution^[2] dated June 25, 2003.

The factual and procedural antecedents follow:

Respondent Tokyu Construction Company, Ltd., a member of a consortium of four (4) companies, was awarded by the Manila International Airport Authority a contract for the construction of the Ninoy Aquino International Airport (NAIA) Terminal 2 (also referred to as "the project"). On July 2, 1996, respondent entered into a Subcontract Agreement^[3] with G.A. Gabriel Enterprises, owned and managed by Remedios P. Gabriel (Gabriel), for the construction of the project's Storm Drainage System (SDS) for P33,007,752.00 and Sewage Treatment Plant (STP) for P23,500,000.00, or a total contract price of P56,507,752.00. The parties agreed that the construction of the SDS and STP would be completed on August 10, 1997 and May 31, 1997, respectively.^[4]

In accordance with the terms of the agreement, respondent paid Gabriel 15% of the contract price, as advance payment, for which the latter obtained from petitioner Stronghold Insurance Company, Inc. Surety Bonds^[5] dated February 26, 1996^[6] and April 15, 1996,^[7] to guarantee its repayment to respondent. Gabriel also obtained from petitioner Performance Bonds^[8] to guarantee to respondent due and timely performance of the work.^[9] Both bonds were valid for a period of one year from date of issue.

In utter defiance of the parties' agreements, Gabriel defaulted in the performance of her obligations. On February 10, 1997, in a letter^[10] sent to Gabriel, respondent manifested its intention to terminate the subcontract agreement. Respondent also demanded that petitioner comply with its undertaking under its bonds.

On February 26, 1997, both parties (respondent and Gabriel) agreed to revise the scope of work, reducing the contract price for the SDS phase from P33,007,752.00 to P1,175,175.00^[11] and the STP from P23,500,000.00 to P11,095,930.50,^[12] fixing the completion time on May 31, 1997.

Gabriel thereafter obtained from Tico Insurance Company, Inc. (Tico) Surety^[13] and Performance^[14] Bonds to guarantee the repayment of the advance payment given by respondent to Gabriel and the completion of the work for the SDS, respectively.

Still, Gabriel failed to accomplish the works within the agreed completion period. Eventually, on April 26, 1997, Gabriel abandoned the project. On August 8, 1997, respondent served a letter^[15] upon Gabriel terminating their agreement since the latter had only completed 63.48% of the SDS project, valued at P744,965.00; and 46.60% of the STP, valued at P5,171,032.48. Respondent thereafter demanded from Gabriel the return of the balance of the advance payment. Respondent, likewise, demanded the payment of the additional amount that it incurred in completing the project.^[16] Finally, respondent made formal demands against petitioner and Tico to make good their obligations under their respective performance and surety bonds. However, all of them failed to heed respondent's demand. Hence, respondent filed a complaint^[17] against petitioner, Tico, and Gabriel, before the Construction Industry Arbitration Commission (CIAC).

In the complaint, respondent prayed that Gabriel, Tico, and petitioner be held jointly and severally liable for the payment of the additional costs it incurred in completing the project covered by the subcontract agreement; for liquidated damages; for the excess downpayment paid to Gabriel; for exemplary damages; and for attorney's fees.^[18]

Gabriel denied liability and argued that the delay in the completion of the project was caused by respondent. She also contended that the original subcontract agreement was novated by the revised scope of work and completion schedule. To counter respondent's monetary demands, she claimed that it was, in fact, respondent who had an unpaid balance.

For its part, Tico averred that it actually treated respondent's demand as a claim on the performance and surety bonds it issued; but it could not make payment since the claim was still subject to determination, findings, and recommendation of its assigned independent adjuster.^[19]

On the other hand, petitioner interposed the following special and affirmative defenses: 1) the surety and performance bonds had expired; 2) the premium on the bonds had not been paid by Gabriel; 3) the contract for which the bonds were issued was set aside/novated; 4) the requisite notices were not made which thus barred respondent's claims against it; and 5) the damages claimed were not arbitrable.^[20]

On February 5, 1999, the parties signed the Terms of Reference^[21] (TOR) wherein their admission of facts, their respective positions and claims, the issues to be determined, and the amount of arbitration fees were summarized and set forth.

On August 24, 1999, the CIAC rendered a decision,^[22] the dispositive portion of which reads:

WHEREFORE, award is hereby made as follows:

1. On Tokyu's claims for cost overrun and cost of materials, equipment, manpower contributed prior to alleged takeover, Gabriel is found liable to pay Tokyu the amount of P1,588,527.00.
2. On Tokyu's claim of liquidated damages, Gabriel is found liable to pay Tokyu the amount of P662,666.44.
3. On Tokyu's claim against Tico, we find Tico to be jointly and severally liable with Gabriel on its Performance Bond for the payment of the amounts stated in numbers [1] and [2] above but its liability to Tokyu shall not exceed the amount of P238,401.39 on its performance bond. The claim against Tico on its Surety Bond is hereby dismissed.
4. With regard to the claim for the return of the unrecouped down payment, we find that Gabriel is liable to pay Tokyu the amount [of] P7,588,613.18.
5. With regard to Tokyu's claim against Stronghold on its Surety Bonds, we find Stronghold liable jointly and severally with Gabriel for the payment of the unrecouped down payment but only up to the amount of P6,701,063.60. The claim against Stronghold on its Performance Bonds is hereby dismissed.
6. The counterclaim of Gabriel against Tokyu is not contested. Tokyu is held liable to pay Gabriel on her counterclaim of P1,007,515.78.
7. The net amount due Gabriel for its unpaid progress billing is P1,190,108.41. Tokyu is held liable to pay this amount to Gabriel.

The amount adjudged in favor of Tokyu against Gabriel is P9,642,182.43 The amount adjudged in favor of Gabriel against Tokyu is P2,197,624.19. Offsetting these two amounts, there is a net award in favor of Tokyu of P7,642,182.43. Payment of this amount or any portion thereof shall inure to the benefit of and reduce *pro tanto* the liability of the respondents sureties. (Art. 1217, Civil Code)

All other claims or counterclaims not included in the foregoing disposition are hereby denied. The costs of arbitration shall be shared by the parties pro rata on the basis of their claims and counterclaims as reflected in the TOR.

SO ORDERED. [23]

The CIAC refused to resolve the issue of novation since respondent had already terminated the agreement by sending a letter to Gabriel. It further held that petitioner's liabilities under the surety and performance bonds were not affected by the revision of the scope of work, contract price, and completion time.

Petitioner and respondent separately appealed the CIAC decision to the CA *via* a petition for review under Rule 43 of the Rules of Court. The appeals were docketed

as CA-G.R. SP Nos. 54920 (petitioner) and 55167 (respondent) which were later consolidated. On January 21, 2003, the CA rendered a decision^[24] modifying the awards made by the Arbitral Tribunal, thus:

WHEREFORE, the appealed decision/award of the Arbitral Tribunal is hereby MODIFIED in that:

1. On TOKYU's claim for liquidated damages, GABRIEL is found liable to pay TOKYU the amount of P1,699,843.95.
2. STRONGHOLD and TICO are ordered to pay TOKYU from their respective performance bonds, jointly and severally with GABRIEL the cost of overrun and liquidated damages in the amount of P1,588,570.00 and P1,699,843.95 or the total amount of P3,288,370.95 but TICO's liability for liquidated damages shall be limited only to those accruing from the SDS phase of the Project and only in the amount of P70,992.77.
3. STRONGHOLD is further ordered to pay TOKYU from its surety bonds, jointly and severally with GABRIEL, the total unrecouped downpayments in the amount of P7,588,613.18.
4. The aggregate amount adjudged in favor of TOKYU against GABRIEL is P10,876,984.13 while the total amount adjudged in favor of Gabriel is P2,197,624.19. Offsetting these two (2) amounts against each other, there is a net award in favor of TOKYU in the amount of P8,679,359.94. Payment of this net amount or any portion thereof by GABRIEL shall in (sic) inure to the benefit and reduce *pro tanto* the liability of the sureties STRONGHOLD and TICO.

In all other respects, the same appealed decision/award is AFFIRMED.

No pronouncement as to costs.

SO ORDERED.^[25]

Hence, the instant petition, anchored on the following grounds:

5.1. THE COURT OF APPEALS ERRED IN HOLDING STRONGHOLD LIABLE ON ITS BONDS AFTER THE BONDS HAVE BEEN INVALIDATED, LAPSED AND EXPIRED.

5.2. THE COURT OF APPEALS ERRED IN HOLDING STRONGHOLD LIABLE ON ITS BONDS WHICH WERE ISSUED WITHOUT THE EXISTENCE OF ANY PRINCIPAL CONTRACT.

5.3. THE COURT OF APPEALS ERRED IN HOLDING STRONGHOLD LIABLE ON ITS BONDS AND CONFUSED THE LEGAL EFFECTS, IMPORT AND SIGNIFICANCE BETWEEN A GUARANTY (UNDER THE CIVIL CODE) AND SURETY UNDER THE INSURANCE CODE.

5.4. THE COURT OF APPEALS ERRED IN HOLDING STRONGHOLD LIABLE

ON ITS BONDS WHERE THE PRINCIPAL CONTRACT UNDER WHICH THE BONDS WERE ISSUED HAD BEEN NOVATED.^[26]

Apart from the errors specifically assigned in its petition and memorandum, petitioner asks this Court to address the issue of whether the CIAC had jurisdiction to take cognizance of insurance claims. Petitioner insists that respondent's claim against it is not related to the construction dispute, hence, it should have been lodged with the regular courts.

The argument is misplaced.

Section 4 of Executive Order (E.O.) No. 1008, or the *Construction Industry Arbitration Law*, provides:

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 the law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

Clearly, E.O. 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.^[27]

In this case, the CIAC validly acquired jurisdiction over the dispute. Petitioner submitted itself to the jurisdiction of the Arbitral Tribunal when it signed the TOR.

^[28] The TOR states:

II. STIPULATION/ADMISSION OF FACTS

x x x x

11. The Construction Industry Arbitration Commission has jurisdiction over the instant case by virtue of Section 12.10 (Arbitration Clause) of the Subcontract Agreement.^[29]

After recognizing the CIAC's jurisdiction, petitioner cannot be permitted to now question that same authority it earlier accepted, only because it failed to obtain a favorable decision. This is especially true in the instant case since petitioner is challenging the tribunal's jurisdiction for the first time before this Court.