

## THIRD DIVISION

[ G.R. No. 166662, June 27, 2008 ]

**AUTOCORP GROUP AND PETER Y. RODRIGUEZ, PETITIONERS, VS.  
INTRA STRATA ASSURANCE CORPORATION AND BUREAU OF  
CUSTOMS, RESPONDENTS.**

### DECISION

**CHICO-NAZARIO, J.:**

This is a Petition for Review on *Certiorari* from the Decision<sup>[1]</sup> of the Court of Appeals dated 30 June 2004 in CA-G.R. CV No. 62564 which affirmed with modification the Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Makati City, Branch 150 in Civil Case No. 95-1584 dated 16 September 1998.

The factual and procedural antecedents of this case are as follows:

On 19 August 1990, petitioner Autocorp Group, represented by its President, petitioner Peter Y. Rodriguez, secured an ordinary re-export bond, Instrata Bond No. 5770, from private respondent Intra Strata Assurance Corporation (ISAC) in favor of public respondent Bureau of Customs (BOC), in the amount of P327,040.00, to guarantee the re-export of one unit of Hyundai Excel 4-door 1.5 LS and/or to pay the taxes and duties thereon.

On 21 December 1990, petitioners obtained another ordinary re-export bond, Instrata Bond No. 7154, from ISAC in favor of the BOC, in the amount of P447,671.00, which was eventually increased to P707,609.00 per Bond Endorsement No. BE-0912/91 dated 10 January 1991, to guarantee the re-export of one unit of Hyundai Sonata 2.4 GLS and/or to pay the taxes and duties thereon.

Petitioners executed and signed two Indemnity Agreements with identical stipulations in favor of ISAC, agreeing to act as surety of the subject bonds. Petitioner Rodriguez signed the Indemnity Agreements both as President of the Autocorp Group and in his personal capacity. Petitioners thus agreed to the following provisions:

INDEMNITY: - The undersigned agree at all times to jointly and severally indemnify the COMPANY and keep it indemnified and hold and save it harmless from and against any and all damages, losses, costs, stamps, taxes, penalties, charges and expenses of whatsoever kind and nature including counsel or attorney's fee which the COMPANY shall or may at any time sustain or incur in consequence of having become surety upon the bond herein above referred to or any extension, renewal, substitution or alteration thereof, made at the instance of the undersigned or any of them, or any other bond executed on behalf of the undersigned or any of them, and to pay; reimburse and make good to the COMPANY, its

successors and assigns, alls sums and amounts of money which it or its representatives shall pay or cause to be paid, or become liable to pay on accounts of the undersigned or any of them, of whatsoever kind and nature, including 25% of the amount involved in the litigation or other matters growing out of or connected therewith, for and as attorney's fees, but in no case less than P300.00 and which shall be payable whether or not the case be extrajudicially settled, it being understood that demand made upon anyone of the undersigned herein is admitted as demand made on all of the signatories hereof. It is hereby further agreed that in case of any extension or renewal of the bond, we equally bind ourselves to the COMPANY under the same terms and conditions as therein provided without the necessity of executing another indemnity agreement for the purpose and that we may be granted under this indemnity agreement.

**MATURITY OF OUR OBLIGATIONS AS CONTRACTED HERewith AND ACCRUAL OF ACTION:** - Notwithstanding of (sic) the next preceding paragraph where the obligation involves a liquidated amount for the payment of which the COMPANY has become legally liable under the terms of the obligation and its suretyship undertaking, or by the demand of the obligee or otherwise and the latter has merely allowed the COMPANY's aforesaid liability irrespective of whether or not payment has actually been made by the COMPANY, the COMPANY for the protection of its interest may forthwith proceed against the undersigned or either of them by court action or otherwise to enforce payment, even prior to making payment to the obligee which may hereafter be done by the COMPANY.

**INTEREST IN CASE OF DELAY:** - In the event of delay in payment of the said sum or sums by the undersigned they will pay interest at the rate of 12% per annum or same, which interest, if not paid, will be liquidated and accumulated to the capital quarterly, and shall earn the same interest as the capital; all this without prejudice to the COMPANY's right to demand judicially or extrajudicially the full payment of its claims.

**INCONTESTABILITY OF PAYMENT MADE BY THE COMPANY:** - Any payment or disbursement made by the COMPANY on account of the above-mentioned Bond, its renewals, extensions or substitutions, replacement or novation in the belief either that the COMPANY was obligated to make such payment or that said payment was necessary in order to avoid greater losses or obligations for which the COMPANY might be liable by virtue of the terms of the above-mentioned Bond, its renewal, extensions or substitutions, shall be final and will not be disputed by the undersigned, who bind themselves to jointly and severally indemnify the COMPANY of any such payments, as stated in the preceding clauses:

**WAIVER OF VENUE OF ACTION:** - We hereby agree that any question which may arise between the COMPANY and the undersigned by reason of this document and which has to be submitted for decision to a court of justice shall be brought before the court of competent jurisdiction in Makati, Rizal, waiving for this purpose any other venue.

WAIVER: - The undersigned hereby waive all the rights[,] privileges and benefits that they have or may have under Articles 2077, 2078, 2079, 2080 and 2081, of the Civil Code of the Philippines.

The undersigned, by this instrument, grant a special power of attorney in favor of all or any of the other undersigned so that any of the undersigned may represent all the others in all transactions related to this Bond, its renewals, extensions, or any other agreements in connection with this Counter-Guaranty, without the necessity of the knowledge or consent of the others who hereby promise to accept as valid each and every act done or executed by any of the attorney's-in-fact by virtue of the special power of attorney.

OUR LIABILITY HEREUNDER: - It shall not be necessary for the COMPANY to bring suit against the principal upon his default or to exhaust the property of the principal, but the liability hereunder of the undersigned indemnitors shall be jointly and severally, a primary one, the same as that of the principal, and shall be exigible immediately upon the occurrence of such default.

CANCELLATION OF BOND BY THE COMPANY: - The COMPANY may at any time cancel the above-mentioned Bond, its renewals, extensions or substitutions, subject to any liability which might have accrued prior to the date of cancellation refunding the proportionate amount of the premium unearned on the date of cancellation.

RENEWALS, ALTERATIONS AND SUBSTITUTIONS: - The undersigned hereby empower and authorize the COMPANY to grant or consent to the granting of any extension, continuation, increase, modification, change, alteration and/or renewal of the original bond herein referred to, and to execute or consent to the execution of any substitution for said Bond with the same or different, conditions and parties, and the undersigned hereby hold themselves jointly and severally liable to the COMPANY for the original Bond herein above-mentioned or for any extension, continuation, increase, modification, change, alteration, renewal or substitution thereof without the necessity of any new indemnity agreement being executed until the full amount including principal, interest, premiums, costs, and other expenses due to the COMPANY thereunder is fully paid up.

SEVERABILITY OF PROVISIONS: - It is hereby agreed that should any provision or provisions of this agreement be declared by competent public authority to be invalid or otherwise unenforceable, all remaining provisions herein contained shall remain in full force and effect.

NOTIFICATION: - The undersigned hereby accept due notice of that the COMPANY has accepted this guaranty, executed by the undersigned in favor of the COMPANY.<sup>[3]</sup>

In sum, ISAC issued the subject bonds to guarantee compliance by petitioners with their undertaking with the BOC to re-export the imported vehicles within the given

period and pay the taxes and/or duties due thereon. In turn, petitioners agreed, as surety, to indemnify ISAC for the liability the latter may incur on the said bonds.

Petitioner Autocorp Group failed to re-export the items guaranteed by the bonds and/or liquidate the entries or cancel the bonds, and pay the taxes and duties pertaining to the said items despite repeated demands made by the BOC, as well as by ISAC. By reason thereof, the BOC considered the two bonds, with a total face value of P1,034,649.00, forfeited.

Failing to secure from petitioners the payment of the face value of the two bonds, despite several demands sent to each of them as surety under the Indemnity Agreements, ISAC filed with the RTC on 24 October 1995 an action against petitioners to recover the sum of P1,034,649.00, plus 25% thereof or P258,662.25 as attorney's fees. ISAC impleaded the BOC "as a necessary party plaintiff in order that the reward of money or judgment shall be adjudged unto the said necessary plaintiff."<sup>[4]</sup> The case was docketed as Civil Case No. 95-1584.

Petitioners filed a Motion to Dismiss on 11 December 1995 on the grounds that (1) the Complaint states no cause of action; and (2) the BOC is an improper party.

The RTC, in an Order<sup>[5]</sup> dated 27 February 1996, denied petitioners' Motion to Dismiss. Petitioners thus filed their Answer to the Complaint, claiming that they sought permission from the BOC for an extension of time to re-export the items covered by the bonds; that the BOC has yet to issue an assessment for petitioners' alleged default; and that the claim of ISAC for payment is premature as the subject bonds are not yet due and demandable.

During the pre-trial conference, petitioners admitted the genuineness and due execution of Instrata Bonds No. 5770 and No. 7154, but specifically denied those of the corresponding Indemnity Agreements. The parties agreed to limit the issue to "whether or not these bonds are now due and demandable."

On 16 September 1998, the RTC rendered its Decision ordering petitioners to pay ISAC and/or the BOC the face value of the subject bonds in the total amount of P1,034,649.00, and to pay ISAC P258,662.25 as attorney's fees, thus:

WHEREFORE, judgment is hereby rendered in favor of the [herein private respondent ISAC] and as against the [herein petitioners] who are ordered to pay the [private respondent] Intra Strata Assurance Corporation and/or the Bureau of Customs the amount of P1,034,649.00 which is the equivalent amount of the subject bonds as well as to pay the plaintiff corporation the sum of P258,662.25 as and for attorney's fees.<sup>[6]</sup>

Petitioners' Motion for Reconsideration was denied by the RTC in a Resolution dated 15 January 1999.<sup>[7]</sup>

Petitioners appealed to the Court of Appeals. On 30 June 2004, the Court of Appeals rendered its Decision affirming the RTC Decision, only modifying the amount of the attorney's fees awarded:

WHEREFORE, the appealed 16 September 1998 Decision is MODIFIED to reduce the award of attorney's fees to One Hundred Three Thousand Four

Hundred Sixty Four Pesos Ninety Centavos (P103,464.90). The rest is affirmed *in toto*. Costs against [herein petitioners].<sup>[8]</sup>

In a Resolution dated 5 January 2005, the Court of Appeals refused to reconsider its Decision.

Petitioners thus filed the instant Petition for Review on *Certiorari*, assigning the following errors allegedly committed by the Court of Appeals:

I. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RENDERING JUDGMENT AGAINST PETITIONERS BASED ON A PREMATURE ACTION AND/OR RULING IN FAVOR OF RESPONDENTS WHO HAVE NO CAUSE OF ACTION AGAINST PETITIONERS.

II. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF BRANCH 150, REGIONAL TRIAL COURT OF MAKATI CITY BASED ON MISAPPREHENSION OF FACTS, UNSUPPORTED BY EVIDENCE ON RECORD CONTRARY TO LAW.

III. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT GIVING MERIT TO THE ISSUE RAISED BY PETITIONERS THAT THE BUREAU OF CUSTOMS IS IMPROPERLY IMPLEADED BY INTRA STRATA.

IV. THE HONORABLE COURT OF APPEALS GRAVELY ERRED [IN] AFFIRMING THE PORTION OF THE DECISION HOLDING PETITIONER PETER Y. RODRIGUEZ AS JOINTLY LIABLE WHEN AMENDMENTS WERE INTRODUCED, WITHOUT HIS CONSENT AND APPROVAL.<sup>[9]</sup>

The present Petition is without merit.

**Absence of actual forfeiture of the subject bonds**

Petitioners contend that their obligation to ISAC is not yet due and demandable. They cannot be made liable by ISAC in the absence of an actual forfeiture of the subject bonds by the BOC and/or an explicit pronouncement by the same bureau that ISAC is already liable on the said bonds. In this case, there is yet no actual forfeiture of the bonds, but merely a recommendation of forfeiture, for no writ of execution has been issued against such bonds.<sup>[10]</sup> Hence, Civil Case No. 95-1584 was prematurely filed by ISAC. Petitioners further argue that:

Secondly, it bears emphasis that as borne by the records, not only is there no writ of forfeiture against Surety Bond No. 7154, *there is likewise no evidence adduced on record to prove that respondent Intra Strata has made legal demand against Surety Bond No. 5770* neither is there a showing that respondent BOC initiated a demand or issued notice for its forfeiture and/or confiscation.<sup>[11]</sup>

The Court of Appeals, in its assailed Decision, already directly addressed petitioners' arguments by ruling that an actual forfeiture of the subject bonds is **not necessary** for petitioners to be liable thereon to ISAC as surety under the Indemnity Agreements.