

## FIRST DIVISION

[ G.R. No. 170852, September 12, 2008 ]

**SPOUSES NOE AND CLARITA QUIAMCO, PETITIONERS, CORONA,  
VS. CAPITAL INSURANCE & SURETY CO., INC., RESPONDENT.**

### R E S O L U T I O N

**CORONA, J.:**

This is a petition for review on certiorari<sup>[1]</sup> of the August 25, 2005 decision<sup>[2]</sup> and November 24, 2005 resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 74390.

Petitioner spouses Noe and Clarita Quiamco are husband and wife engaged in the sea transportation business. On April 30, 1997, a decision in a labor case<sup>[4]</sup> was rendered against Clarita as representative of Sto. Niño Ferry Boat Services. Petitioners received the decision on May 7, 1997.<sup>[5]</sup>

Petitioners then applied for a supersedeas bond with respondent Capital Insurance & Surety Co., Inc., a surety and non-life insurance company. This bond was required in order to perfect their appeal to the National Labor Relations Commission (NLRC). Respondent required petitioners to do the following: (1) to issue and deliver to it an undated check in the amount equivalent to that of the supersedeas bond which it would issue; (2) to execute a supplementary counter-guaranty with chattel mortgage over the sea vessel M/L Gretchen 2 owned by petitioners and to surrender their original copy of certificate of ownership over the vessel; (3) to execute an indemnity agreement wherein petitioners would agree to indemnify respondent all damages it might sustain in its capacity as surety and (4) to pay the premiums. Except for the original copy of the certificate of ownership of M/L Gretchen 2, these requirements were complied with.<sup>[6]</sup>

Accordingly, the bond was issued on May 23, 1997 and delivered to petitioners who filed it in the NLRC on May 24, 1997.<sup>[7]</sup>

On July 16, 1997, the NLRC dismissed the appeal for petitioners' failure to post the bond within 10 days from receipt of the decision (May 7, 1997).<sup>[8]</sup> This made the decision in the labor case final against them.

On June 17, 1998, a writ of execution for the amount of P461,514.67 was served by the sheriff of the NLRC on respondent to collect on the supersedeas bond. This was to fully satisfy the judgment amount in the labor case. Respondent paid to the NLRC the amount guaranteed by the bond. It notified petitioners and forthwith deposited the undated check. It was, however, dishonored because the account was already closed.<sup>[9]</sup>

On December 3, 1998, respondent filed in the Regional Trial Court (RTC) of Cebu City, Branch 22,<sup>[10]</sup> a complaint for sum of money and damages with prayer for a writ of preliminary attachment against petitioners. The RTC ruled in favor of respondent. It ordered petitioners to pay to respondent the amount of P461,514.67 plus legal interest of 6% per annum, attorney's fees equivalent to 10% of P461,514.67 and P10,000 as litigation expenses.

On appeal, the CA affirmed the RTC's decision but deleted the award of attorney's fees and litigation expenses for lack of basis. Reconsideration was denied in a resolution dated November 24, 2005. The CA agreed with the RTC that the surety agreement between petitioners and respondent had been perfected. Its perfection was not dependent on the acceptance by the NLRC of the appeal of petitioners in the labor case. Thus, respondent correctly paid the indebtedness of petitioners.<sup>[11]</sup>

Hence this petition raising two issues: (1) whether the surety agreement was perfected and (2) whether petitioners are liable to respondent.

Petitioners argue that one of the conditions of the bond was to stay the execution of the judgment in the labor case:

"WHEREAS, [petitioners] being dissatisfied with the decision/judgment desired to stay and suspend the execution of the same pending appeal;

**WHEREAS, in order to stay the execution of the above-mentioned decision/judgment,** [petitioners] are willing to post bond xxxx"<sup>[12]</sup>  
(Emphasis supplied)

Therefore, they insist that the surety agreement was not perfected because the execution of the judgment was not stayed considering that the NLRC rejected the bond for being posted out of time and dismissed the appeal.

We disagree.

There is no dispute that the parties entered into a contract of suretyship wherein respondent as surety bound itself solidarily with petitioners (the principal debtors) to fulfill an obligation.<sup>[13]</sup> The obligation was to pay the monetary award in the labor case should the decision become final and executory against petitioners.

Contracts are perfected by mere consent. This is manifested by the meeting of the offer and the acceptance upon the object and cause which are to constitute the contract.<sup>[14]</sup> Here, the object of the contract was the issuance of the bond.<sup>[15]</sup> The cause or consideration consisted of the premiums paid. The bond was issued after petitioners complied with the requirements. At this point, the contract of suretyship was perfected.

Petitioners cannot insist that the contract was subject to a suspensive condition,<sup>[16]</sup> that is, the stay of the judgment of the labor arbiter. This was not a condition for the perfection of the contract but merely a statement of the purpose of the bond in its "whereas" clauses. Aside from this, there was no mention of the condition that before the contract could become valid and binding, perfection of the appeal was necessary.<sup>[17]</sup> If the intention was to make it a suspensive condition, then the