

SECOND DIVISION

[G.R. No. 139290, November 11, 2005]

TRADE & INVESTMENT DEVELOPMENT CORPORATION OF THE PHILIPPINES (FORMERLY PHILIPPINE EXPORT & FOREIGN LOAN GUARANTEE CORPORATION, PETITIONER, VS. ROBLETT INDUSTRIAL CONSTRUCTION CORPORATION, ROBERTO G. ABIERA AND LETICIA ABIERA, AND PARAMOUNT INSURANCE CORPORATION, RESPONDENTS.

DECISION

TINGA, J.:

The central issue in this case is whether respondent Paramount Insurance Corporation (Paramount) is liable as surety to petitioner Philippine Export and Foreign Loan Guarantee Corporation^[1] (Philguarantee), under a surety bond (Surety Bond) dated 12 March 1984. This Surety Bond was one of a series of undertakings involving several parties, occasioned by the bid of respondent Roblett Industrial Construction Corporation (Roblett) for a Kuwaiti government contract. The assailed ruling of the Court of Appeals (CA) discharged Paramount from its liability on the Surety Bond. Yet Paramount's liability is established under the terms of the Surety Bond. We reverse.

The facts, as culled from the records, follow.

As the general contractor of the Kuwait National Petroleum Company (KNPC), Braun Transworld Corporation opened for bidding in 1984 a subcontract for the supply of skilled and semi-skilled workers for the Mina Abdulla Refinery Modernization Project in the State of Kuwait. Among the interested bidders was respondent Roblett. To qualify as a bidder, Roblett was required to post a bid bond equivalent to 1% of its total proposed tender price or Kuwaiti Dinar (KD) 159,781.05.

Consequently, Roblett applied with the Bank of Kuwait and the Middle East (BKME) for a letter of guarantee to cover the said amount. BKME consented to the request on the condition that Roblett would obtain a counterguarantee to secure the letter of guarantee.

Roblett then requested from petitioner Philguarantee that the latter issue a counterguarantee in favor of BKME to fulfill the condition required by BKME. Petitioner consented and issued Letter Guarantee No. 84-035F^[2] on 13 March 1984 in an amount not to exceed KD 159,781.05 effective 19 March 1984 and expiring on 4 October 1984. However, the issuance of this counterguarantee was further conditioned upon the execution by Roblett and its Chairman and Treasurer^[3], of a Deed of Undertaking^[4] (Deed) in favor of petitioner. Under the terms of the Deed, Roblett bound itself to keep petitioner free and harmless from any damage or liability which may arise out of the issuance of its bid bond guarantee and to give

their irrevocable consent and approval to any and all extensions of the period of the guarantee.

Furthermore, the Deed required that the counterguarantee be secured by "a surety bond or other acceptable liquid instrument (*i.e.*, money market placements, certificates of deposit, CBCI's and other government securities) equivalent to 100% of the guarantee accommodation." Should the instrument be in the form of a surety bond, "the same must be issued by an insurance company acceptable to Philguarantee and must be coterminus with the guarantee to be issued."^[5]

To comply with petitioner's requirement of a counterguarantee, Roblett obtained from Paramount, Surety Bond No. G-(16)4889^[6] in the amount of P11,775,611.35, the peso equivalent of petitioner's guarantee accommodation. The term of the Surety Bond was coterminous with petitioner's counterguarantee. The Surety Bond, which forms the crux of the present petition, reads in part:

That we, ROBLETT INDUSTRIAL CONSTRUCTION CORPORATION, as principal, and PARAMOUNT INSURANCE CORPORATION, as surety, are held and firmly bound unto Philippine Export and Foreign Loan Guarantee Corporation (PHILGUARANTEE) in the sum of P11,775,611.35, Philippine Currency, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, PHILGUARANTEE approved principal's request for the issuance of bidder's bond the validity date of which extends up to October 4, 1984, in the amount of KUWAITI DINAR: ONE HUNDRED FIFTY NINE THOUSAND SEVEN HUNDRED EIGHTY ONE & 05/100 (KD159,781.05), in favor of the Bank of Kuwait and the Middle East, in relation to principal's project in Refinery Modernization/Mina Abdualla, Kuwait.

WHEREAS, in approving the aforementioned guarantee, PHILGUARANTEE required the principal to give a good and sufficient bond in the amount of P11,775,611.35 as security for the prompt payment by principal to PHILGUARANTEE of whatever damages or liabilities PHILGUARANTEE may incur by virtue of its guarantee.

NOW, THEREFORE, if the Principal shall well and truly pay or reimburse PHILGUARANTEE for whatever damages or liabilities it may have incurred under and by virtue of its guarantee, then this obligation shall be null and void, otherwise, it shall remain in full force and effect.

The Expiry Date of this Surety Bond shall be co-terminus with the expiry date of the Guarantee referred to in the first Whereas Clause hereof, and said bond will be considered automatically cancelled ninety-one (91) days after its expiration.

However, should the Surety and Principal receive a written notice from PHILGUARANTEE stating that PHILGUARANTEE has been called upon by (Bank of Kuwait and the Middle East) to extend the validity of the guarantee, the Surety hereby agrees that it will

either pay PHILGUARANTEE the full amount outstanding under this Surety Bond, or extend this Surety Bond to a new maturity date specified by PHILGUARANTEE.

Surety further agrees to pay PHILGUARANTEE, interest at the rate of 18% per annum, on the amount paid by PHILGUARANTEE by virtue of (LG No. 84-035F) and which is covered by this Surety Bond, from date of receipt by surety of PHILGUARANTEE's first demand letter up to the date of actual payment.^[7]

In turn, Paramount required Roblett and its President, Baltazar F. Benlot, to execute an *Indemnity Agreement*^[8] in its favor to answer for whatever damages and liabilities it may suffer by virtue of its Surety Bond. This was accomplished on 12 March 1984, the same date the Surety Bond was issued.

Upon receipt of Paramount's bond on 13 March 1984, petitioner issued its letter guarantee to BKME effective 19 March 1984. Upon receipt thereof on 14 March 1984, BKME in turn, issued its bid bond by way of Letter of Guarantee No. LGKUW 84070030^[9] in favor of KNPC, undertaking to pay the amount of the bid bond in behalf of Roblett at KNPC's first written request.

Roblett somehow had anticipated that it would be declared the winning bidder, and on that expectation, it made necessary preparations. Roblett wrote petitioner on 19 May 1984, requesting the issuance of another counterguarantee in favor of BKME to enable the latter to assure the issuance of the performance bond ostensibly to be required under the subcontract.^[10]

In reply^[11] four days later, petitioner expressed its willingness to issue the counterguarantee for the performance bond subject to the usual requirements, among which is the Central Bank approval. Roblett then requested the Central Bank for the approval of the new counterguarantee.

As it expected, Roblett was awarded the subcontract on 27 June 1984, being the lowest bidder. The Subcontract Agreement^[12] was executed by Roblett and KNPC on 5 July 1984, the terms of which required Roblett to post within fourteen (14) days or until 19 July 1984, a performance bond in the amount corresponding to 10% of the monetary value of the subcontract, or US\$4,576,900.00 or its equivalent in Kuwait Dinar.

Roblett's request for approval of the performance bond was already pending with the Central Bank at the time Roblett was formally awarded the bid. Yet, on 23 July 1984, the Central Bank wrote Roblett disapproving its application. The Central Bank considered the financial arrangements unacceptable in view of BKME's requirement that the Central Bank place a dollar time deposit in the amount of the performance bond as cash collateral.^[13] As a result, Roblett was not able to post the required performance bond.

Roblett was thus deemed by KNPC to have breached the subcontract. This development would bear a domino effect on the several undertakings executed by Roblett and its guarantors. First, BKME's bid bond was confiscated by KNPC even though such guarantee was constituted to secure Roblett's bid proposal. Next,

BKME called on petitioner's counterguarantee on 29 July 1984.^[14] As petitioner's guarantee had been called upon, came its own turn to call upon its own guarantors, Roblett and Paramount. Petitioner first turned to Roblett for restitution.

In a letter^[15] dated 8 August 1984, petitioner informed Roblett of the demand by BKME calling in full the counterguarantee.

Roblett then made several repayment proposals to petitioner. In the meantime, Roblett twice applied for the extension of Paramount's surety bond from 4 October 1984 to 4 December 1984, thence to 5 March 1985.

Significantly, Paramount approved the extensions requested by Roblett.^[16]

On 12 December 1984, petitioner paid the sum of KD 159,781.05 to BKME .

On 19 December 1984, petitioner through its then Vice-President, Jesus M. Tañedo, notified Paramount of the advance payment it had made to BKME in the amount of P11,775,611.35, the peso equivalent of KD 159,781.05, as well as of Roblett's proposal to repay petitioner, and it requested confirmation by Paramount of its liability for Roblett's account. Said letter^[17] reads in part, to wit:

We hereby serve notice that PHILGUARANTEE advanced the peso equivalent of KD159,781.050 on 12 December 1984 and is also committed to advance the peso value of the KD 5,885.448 interest upon receipt of the Central Bank's authority to remit the interest payment.

Roblett has submitted a proposal to repay PHILGUARANTEE'S advance within a period of three (3) years with the condition that PIC shall continue to be liable to PHILGUARANTEE under the captioned surety bond. At present, we are still evaluating Roblett's proposal and as an adjunct to this process, it is imperative that we obtain PIC's continuing commitment.

In view of the foregoing premises therefore, please acknowledge/confirm PIC's liability for the advances that PHILGUARANTEE has made and will have to make for Roblett's account and PIC's commitment to repay such advances with interest thereon at 18% per annum upon demand by PHILGUARANTEE. (Emphasis supplied.)

In a letter^[18] dated 1 March 1985, Paramount confirmed its commitment under the Surety Bond to guarantee Roblett's repayment proposal. However, Paramount expressed its preference to issue a new bond to secure said repayment scheme. Said letter reads in part:

This is to confirm our commitment to undertake and guarantee the repayment proposal of our bounden principal, Roblett Industrial Construction Corporation under PIC Surety Bond No. G(16)4889 covering P11,775,611.35, securing the KD 159,781.05 Bid Bond issued by Bank of Kuwait and the Middle East.

We understand that you have advanced the said peso equivalent, hence,

your request for the conversion of our bond from Bidder's to Guaranty Payment. In our opinion, it is more appropriate for us to issue a separate guaranty payment bond to answer for the loan. We believe that it is against the bonding principles to guarantee two separate undertakings in one bond.

Please let us hear from you as to when you would like us to issue the bond.

On even date and without any indication of having received Paramount's letter, petitioner advised Paramount that it has advanced the peso equivalent of the amount of the bid bond plus interest thereon pursuant to the call of BKME on its counterguarantee, thereby serving upon Paramount its formal notice of demand against the latter's surety bond. Petitioner's letter^[19] reads in part:

We wish to advise you that on 12 December 1984 and 10 January 1985, PHILGUARANTEE advanced the peso equivalent of KD163,598.05 representing the principal (KD159,781.05) and interest (KD3,816.99) for the period from 06 August 1984 to 31 October 1984 of the called bid bond issued by the Bank of Kuwait and the Middle East.

Please consider this letter, therefore, as our formal notice of demand against your captioned bond. An interest of 18% per annum is charged on any unpaid amount of our claim. (Emphasis supplied)

Ten days later, or on 11 March 1985, petitioner again wrote Paramount, as follows:

We acknowledge receipt of your letter dated 01 March 1985 confirming your commitment to fully guarantee the repayment proposal of RICC covering PHILGUARANTEE'S advances relative to the bid bond guarantee which was called by the Bank of Kuwait and the Middle East. **Until the above arrangement, however, is in place and your firm has issued the new bond, our demand on the captioned bond remains outstanding together with 18% interest.**

We shall advise you the terms of the new bond and when to issue after clarifying some details in PICC's repayment plan.^[20]

This apparently was the last time Paramount heard from petitioner for a long while. Four (4) years of negotiations between Roblett and petitioner on the repayment proposals proved fruitless. Then, petitioner sent Roblett a letter^[21] dated 8 March 1990 reminding the latter of its outstanding account and further informing it that petitioner shall take legal action in connection therewith.

Thereafter, petitioner filed a complaint^[22] against both Roblett and Paramount with the Regional Trial Court (RTC) of Makati on 5 June 1990. Petitioner sought payment from Roblett of the amount of P29,804,831.03 representing the total amounts advanced by petitioner for the guaranteed obligation of Roblett, inclusive of interest at the rate of 16% per annum and penalty charges at the rate of 16% per annum computed as of 16 March 1990 pursuant to the Deed. Petitioner also sought payment from Paramount as surety to the extent of the amount under the Surety Bond which is P11,775,611.35 of the P29,804,831.03 owed by Roblett, plus interest