



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

SUPREME COURT OF THE PHILIPPINES
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NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **June 17, 2020**, which reads as follows:*

“G.R. No. 242081 (Camrock Property Management Corporation v. Plaridel Surety and Insurance Company). – This Petition for Review on *Certiorari*¹ under Rule 45 assails the Decision² dated June 21, 2018 of the Court of Appeals (CA) which affirmed with modification the Final Award³ rendered by the Construction Industry Arbitration Commission (CIAC) in favor of Camrock Property Management Corporation (Camrock).

Facts of the Case

Kirkzhen Construction and Heavy Equipment Supply (Kirkzhen Construction) entered into a Construction Memorandum of Agreement⁴ (construction agreement) with Camrock for the building of a 16-storey with penthouse medical arts building in Villamor Airbase, Pasay City.⁵

It was stipulated that Camrock shall pay Kirkzhen Construction ₱10,000,000.00 as first payment. It was also agreed upon that prior to the release of the first payment, Kirkzhen Construction shall put up a Performance Bond amounting to ₱2,000,000.00. Because of this, Kirkzhen Construction entered into a Performance Bond⁶ with Plaridel Surety and Insurance Company (Plaridel Surety) to secure the full and faithful performance of Kirkzhen Construction’s obligations under the construction agreement.⁷

After posting of the Performance Bond dated August 10, 2015, Camrock released the amount of ₱5,000,000.00 as first payment without any objection on the part of Kirkzhen Construction.⁸

¹ *Rollo*, pp. 14-33.

² Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Remedios Salazar-Fernando and Zenaida T. Galapate-Laguilles, concurring; id. at 36-44.

³ Id. at 50-67.

⁴ Id. at 68-76.

⁵ Id. at 36.

⁶ Id. at 77-78.

⁷ Id. at 37.

⁸ Id.

However, in a Letter dated July 5, 2016, Camrock demanded from Kirkzhen Construction the first payment amounting to ₱5,000,000.00. It also demanded from Plaridel Surety the performance bond posted by the Kirkzhen Construction in the amount of ₱2,000,000.00.⁹ Finally, on October 24, 2016, Camrock filed a Request for Arbitration before the CIAC against both Kirkzhen and Plaridel Surety invoking the arbitration clause under the construction agreement.¹⁰

On April 17, 2017, the CIAC issued its Final Award.¹¹ The CIAC found that Camrock was entitled to the refund of the first payment it made in the amount of ₱5,000,000.00. The CIAC computed that from this amount, Kirkzhen Construction made an accomplishment in the amount of ₱812,433.95.¹² However, the amount of ₱300,000.00 shall be charged to Kirkzhen Construction because it took away salvageable materials such as a cyclone fence, reinforcement bars and other materials. Hence, the net amount recoverable by Camrock is at ₱4,487,566.55.¹³

The CIAC notably concluded that there was no breach of contract committed by either Camrock or Kirkzhen Construction. It was found that what the parties did was a mutual termination of the construction agreement.¹⁴

Further, the CIAC found that it has jurisdiction over Plaridel Surety in connection with the claim of Camrock against the performance bond entered into between Plaridel Surety and Kirkzhen Construction.¹⁵ Based on the performance bond, the CIAC ordered Plaridel Surety to be solidarily liable with Kirkzhen Construction in the amount of ₱2,000,000.00 while Plaridel Surety was entitled to its cross-claim against Kirkzhen Construction also in the amount of ₱2,000,000.00.¹⁶

Unable to accept its liability over the Performance Bond, Plaridel Surety filed a Petition for Review under Rule 43 to the CA arguing that the CIAC had no jurisdiction over it and that since the CIAC found that there was no breach of the construction agreement, then it should not be held liable under the Performance Bond.¹⁷

In its Decision,¹⁸ the CA upheld the jurisdiction of the CIAC over Plaridel Surety. The CA concluded that the issue of whether Plaridel Surety can be made liable pursuant to the Performance Bond it executed with Kirkzhen Construction arose from or is connected with the construction agreement between Camrock and Kirkzhen Construction, a matter that is well

⁹ Id. at 79.
¹⁰ Id. at 37-38.
¹¹ Id. at 50-67.
¹² Id. at 58.
¹³ Id.
¹⁴ Id. at 60-61.
¹⁵ Id. at 63.
¹⁶ Id. at 64.
¹⁷ Id. at 39-40.
¹⁸ Supra note 2.

within the jurisdiction of the CIAC.¹⁹

However, the CA found that Plaridel Surety should not be made liable on the performance bond because Plaridel Surety's obligation under the latter did not arise. The performance bond is conditioned to guarantee the full and faithful performance of the principal's obligations under the terms and conditions of the said contract. The CIAC found that there was no breach of the agreement on either of the parties. Considering that Kirkzhen Construction was not found to have breached the terms of the contract, then Plaridel Surety's liability did not arise. The surety is liable only upon the obligor's default.²⁰

On reconsideration, the CA still denied the motion through a Resolution²¹ dated September 14, 2018.

This time aggrieved, Camrock filed this Petition for Review on *Certiorari*²² under Rule 45. Camrock argued that the CA erred in ruling that Plaridel Surety is not liable under the performance bond.²³ Plaridel Surety files its Comment²⁴ on July 15, 2019, while Camrock filed its Reply²⁵ on July 30, 2019.

The Court's Ruling

After a perusal of the records of the case, this Court resolves to deny the Petition for Review on *Certiorari*.

The CIAC has no jurisdiction over Plaridel Surety in this case.

In the case of, *Stronghold Insurance Company, Inc. v. Spouses Stroem (Stronghold Insurance)*,²⁶ We discussed that for the CIAC to acquire jurisdiction over a surety, the construction agreement must expressly incorporate the performance bond into the contract. In *Stronghold Insurance*, We found that if the performance bond merely referenced the construction agreement entered into by the project-owner and the contractor, the CIAC cannot validly exercise jurisdiction over the surety because the construction agreement which contains the arbitration clause was signed by the contractor and the project owner only and to the exclusion of the surety. Hence, the project owner and contractor are the ones who can invoke the arbitration clause and they cannot implead the surety who is not a party to the construction agreement. This is consistent with the basic principle that

¹⁹ *Rollo*, p. 41.

²⁰ *Id.* at 43.

²¹ Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Remedios A. Salazar-Fernando and Zenaida T. Galapate-Laguilles, concurring; *id.* at 46-47.

²² *Id.* at 14-33.

²³ *Id.* at 22.

²⁴ *Id.* at 138-149.

²⁵ *Id.* at 155-160.

²⁶ 751 Phil. 262 (2015).

contracts shall take effect only between the parties, their assigns, and heirs.²⁷

In this case, the Construction Memorandum of Agreement²⁸ entered into by Camrock and Kirkzhen Construction merely referred to the performance bond as follows:

1.20. Prior to the release of the First Payment, the Contractor shall submit a Performance Bond, covered 20% premium of the amount of the first payment mention (*sic*) above in No. 1.17. Terms of Payment based on agreed amount between the **CLIENT** and the **CONTRACTOR** under this Construction Memorandum of Agreement.²⁹

The Construction Memorandum of Agreement did not expressly incorporate the performance bond as part of it. This is different from the case of *Prudential Guarantee and Assurance Inc. v. Ancor Land, Inc.*³⁰ where the performance bond was made an integral part of the construction agreement, such that, the CIAC can exercise its jurisdiction over the surety.

Hence, since the CIAC has no jurisdiction over Plaridel Surety, the issue of whether there was breach of the construction agreement to make Plaridel Surety liable is immaterial.

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 is **DENIED**. The Construction Industry Arbitration Commission has no jurisdiction over Plaridel Surety and Insurance Company.

SO ORDERED.”

Very truly yours,

Misael Domingo C. Battung III
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court

GER
16/2/20

ACERON PUNZALAN VEHEMENTE AVILLA &
DEL PRADO LAW OFFICES
Counsel for Respondent Rene Figueroa
31/F, Atlanta Centre
31 Annapolis St., Greenhills
1502 San Juan City

COURT OF APPEALS
CA G.R. SP No. 150735
1000 Manila

²⁷ CIVIL CODE OF THE PHILIPPINES, Art. 131.

²⁸ *Rollo*, pp. 68-76.

²⁹ *Id.* at 73.

³⁰ 644 Phil. 634 (2010).

Atty. Christopher A. Rodriguez
Counsel for Respondent
PARAS AND MANLAPAZ LAWYERS
14/F BDO Equitable Bank Tower
8751 Paseo de Roxas
1226 Makati City

CONSTRUCTION INDUSTRY ARBITRATION
COMMISSION
2/F Executive Bldg. Center
369 Sen. Gil Puyat Avenue
cor. Makati Avenue
1200 Makati City

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