



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **January 30, 2023**, which reads as follows:*

**“G.R. No. 243923 – STRONGHOLD INSURANCE COMPANY, INC., Petitioner, v. PEGASUS REALTY CORPORATION, Respondent.**

After a review of the Petition for Review<sup>1</sup> on *certiorari*, including the assailed Decision,<sup>2</sup> dated March 19, 2018, and the Resolution,<sup>3</sup> dated December 14, 2018, of the Court of Appeals (CA), in CA-G.R. CEB CV. No. 05614, as well as the July 31, 2014 Decision<sup>4</sup> of the Regional Trial Court, Branch 57, Cebu City (RTC), the Court resolves to **DENY** the same for failure of the petitioner Stronghold Insurance Company (**Stronghold**) to sufficiently show that the CA committed a reversible error to warrant the exercise of the Court’s discretionary appellate jurisdiction.

In its Petition, Stronghold contends that it would be extremely unjust and contrary to law to make Stronghold shoulder a more onerous obligation, considering that the onerous obligation arose from a material alteration of the principal contract upon which Stronghold’s Performance Bond was based. The material alteration should have been held to have discharged Stronghold from liability under the Performance Bond.<sup>5</sup>

According to Stronghold, the CA was mistaken when it held that the liability of Stronghold remained at PHP 1,400,000.00 and, thus, its obligation was not made onerous. Stronghold argues that it can no longer be held liable under the Performance Bond since the original contract was materially altered

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<sup>1</sup> *Rollo*, pp. 10-41.

<sup>2</sup> *Id.* at 213-229. Penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Marilyn B. Lagura-Yap and Gabriel T. Robeniol.

<sup>3</sup> *Id.* at 262-263. Penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Marilyn B. Lagura-Yap and Louis P. Acosta

<sup>4</sup> *Id.* at 115-123. Penned by Presiding Judge Enriqueta Loquillano-Belardino.

<sup>5</sup> *Id.* at 37.

without notice to and consent by Stronghold, and additionally since no premiums were paid to cover the increased contract price.<sup>6</sup>

The Court is not convinced.

The Court agrees with the CA that there was no material alteration that made the obligation of Stronghold more onerous.<sup>7</sup>

A surety is released from its obligation when there is a material alteration of the principal contract in connection with which the bond is given, such as a change which imposes a new obligation on the promising party, or takes away some obligation already imposed, or one which changes the legal effect of the original contract and not merely its form. However, a surety is not released by a change in the contract, which does not have the effect of making its obligation more onerous.<sup>8</sup>

Not all changes in the principal contract would work to absolve a surety from liability. This liability is not extinguished when the modifications in the principal contract do not substantially or materially alter the principal's obligations.<sup>9</sup>

Here, the execution of the Modified Contract (Second Contract) did not in any way make the obligations of both the principal and surety more onerous. There were no additional obligations imposed on Stronghold. There was no showing that the obligations of Stronghold as surety had become more onerous with the execution of the Second Contract. Instead, the Second Contract made it more onerous for Pegasus Realty Corporation (**Pegasus**), who had to pay a higher amount of downpayment compared to the downpayment imposed in the Original Contract (First Contract).

Hence, despite the execution of the Second Contract between Jaime C. Alferez (**Alferez**) and Pegasus, the liability of Stronghold remained subsisting because there was no material alteration affecting Stronghold's obligation as surety. The Second Contract did not impose a more onerous obligation on the part of Stronghold. Stronghold is thus still liable under the Performance Bond issued based on the First Contract in the amount of PHP 1,400,000.00.

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 220.

<sup>8</sup> *Stronghold Insurance Company, Inc. v. Tokyu Construction Company Ltd.*, 606 Phil. 400, June 05, 2009, citing *Intra-Strata Assurance Corporation v. Republic*, 579 Phil. 631 (2008).

<sup>9</sup> *Subic Bay Distribution, Inc., v. Western Guaranty Corp.*, G.R. No. 220613, November 11, 2021.

Additionally, Stronghold claims that the Performance Bond No. G(13)25176 was issued by Stronghold to cover Alferez's obligations pursuant to the First Contract.<sup>10</sup> Stronghold also avers that the modification of the First Contract and the execution of the Second Contract released Stronghold from its obligations under the Performance Bond because it was never intended to cover the Second Contract and the new contract price.<sup>11</sup>

Again, the arguments fail to sway.

Stronghold's liability was not extinguished by the execution of the Second Contract between Alferez and Pegasus.

Novation is one of the modes of extinguishing an obligation. It is done by the substitution or change of the obligation by a subsequent one which extinguishes the first, either by changing the object or principal conditions, or by substituting the person of the debtor, or by subrogating a third person in the rights of the creditor.<sup>12</sup>

Novation may either be extinctive or modificatory, much being dependent on the nature of the change and the intention of the parties. Extinctive novation is never presumed; there must be an express intention to novate; in cases where it is implied, the acts of the parties must clearly demonstrate their intent to dissolve the old obligation as the moving consideration for the emergence of the new one. Implied novation necessitates the incompatibility between the old and new obligation be total on every point such that the old obligation is completely superseded by the new one. The test of incompatibility is whether they can stand together, each one having an independent existence; if they cannot and are irreconcilable, the subsequent obligation would also extinguish the first.<sup>13</sup>

An extinctive novation would, thus, have the twin effects: *first*, extinguishing an existing obligation; and *second*, creating a new one in its stead. This kind of novation presupposes a confluence of four essential requisites: (1) a previous obligation, (2) an agreement of all parties concerned to a new contract, (3) the extinguishment of the old obligation, and (4) the birth of a valid new obligation. Novation is merely modificatory where the change brought about by any subsequent agreement is merely incidental to the main obligation (*e.g.*, a change in interest rates or an extension of time to pay; in this instance, the new agreement will not have the effect of extinguishing the

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<sup>10</sup> *Rollo* p. 18.

<sup>11</sup> *Id.* at 19.

<sup>12</sup> *Foundation Specialists Inc., v. Betonval Ready Concrete, Inc., and Stronghold Insurance Co., Inc.*, 613 Phil. 303 (2009).

<sup>13</sup> *Id.*

first but would merely supplement it or supplant some but not all of its provisions.)<sup>14</sup>

Alterations of the terms and conditions of the obligation would generally result only in modificatory novation unless such terms and conditions are considered to be the essence of the obligation itself.<sup>15</sup> The incompatibility must take place in any of the essential elements of the obligation, such as its object, cause, or principal conditions thereof; otherwise, the change would be merely modificatory in nature and insufficient to extinguish the original obligation.<sup>16</sup>

In this case, without a total or extinctive novation, the surety agreement subsists. The execution of the Second Contract did not novate the First Contract so as to extinguish the latter. There was no incompatibility between the two contracts. To stress, the only change in the Second Contract is the increase in the contract amount by PHP 600,000.00 and the corresponding increase in the downpayment of PHP 120,000.00.

As found by the RTC, Stronghold was informed of the construction price in the amount from PHP 7,000,000.00 to PHP 7,600,000.00. Stronghold thus continue to be answerable under the original performance bond in the amount of PHP 1,400,000.00.<sup>17</sup>

As correctly found by both the RTC and the CA, Stronghold is liable under the Performance Bond in the amount of PHP 1,400,000.00, and the 20% downpayment under the Second Contract, in the amount of PHP 1,520,000.00, is irrelevant as the parties mutually agreed to be bound by an increased contract price under the same bond, obviously because the change was only PHP 600,000.00.

Lastly, Stronghold claimed that despite the clear and express stipulation in the Performance Bond, Stronghold was not duly notified of the amendments made to the terms and conditions of the First Contract.<sup>18</sup>

As held in the case of *Pascual v. Burgos*,<sup>19</sup> “[o]nly questions of law may be raised in a petition for review on *certiorari*. The factual findings of the Court of Appeals bind this Court. Although jurisprudence has provided several exceptions to these rules, exceptions must be alleged, substantiated,

<sup>14</sup> *Id.* citing *Iloilo Traders Finance, Inc. v. Heirs of Oscar Soriano, Jr.*, 452 Phil. 82, 89-90 (2003).

<sup>15</sup> *Swagman Hotels and Travel, Inc., v. Hon. Court of Appeals, and Neal B. Christian*, 495 Phil. 161, April 08, 2005.

<sup>16</sup> *Leonida C. Quinto v. People of the Philippines*, 365 Phil. 259, April 14, 1999.

<sup>17</sup> *Rollo*, p. 123.

<sup>18</sup> *Id.* at 18.

<sup>19</sup> 776 Phil. 167, January 11, 2016.

the case. In any event, even in such cases, this Court retains full discretion on whether to review the factual findings of the Court of Appeals.”

Since none of the exceptions was alleged, substantiated, and proven by Stronghold, the Court will not disturb the factual finding of the CA that notice, albeit verbal, was given to Stronghold.<sup>20</sup>

**WHEREFORE**, the Petition for Review on *certiorari* filed by the petitioner Stronghold Insurance Company, Inc. is **DENIED**. The Decision, dated March 19, 2018, and the Resolution, dated December 14, 2018, of the Court of Appeals in CA-G.R. CEB CV. No. 05614 are **AFFIRMED**.

**SO ORDERED.”**

By authority of the Court:

*Misael Domingo C. Battung III*  
**MISAELO DOMINGO C. BATTUNG III**  
*Division Clerk of Court* *Jan 04-23-23*

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The Presiding Judge  
REGIONAL TRIAL COURT  
Branch 57, Cebu City  
(Civil Case No. CEB-16149)

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**G.R. No. 243923**

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<sup>20</sup> *Rollo*, p. 227.