



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Baguio City

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated April 12, 2023 which reads as follows:

“G.R. No. 240758 (SUBIC BAY DISTRIBUTION, INC., Petitioner, v. STRONGHOLD INSURANCE COMPANY, INC.,* Respondent); and G.R. No. 240993 (STRONGHOLD INSURANCE COMPANY, INC., Petitioner, v. PRIME ASIA SALES & SERVICES, INC., ERMA A. DIGMAN, NEIL M. DIGMAN, MARIETTA S. MARQUEZ, HERMINIO ANGEDAN, ALAIN DIGMAN, and KEPPEL BANK, INC. [now BDO ELITE SAVINGS BANK, INC.], Respondents). — This resolves the consolidated¹ Petitions for Review on *Certiorari*² filed under Rule 45 of the Rules of Court (Rules) assailing the Decision³ dated January 27, 2017 and the Resolution⁴ dated July 13, 2018 of the Court of Appeals (CA) in CA-G.R. CV No. 103669, which affirmed the dismissal of the Complaint⁵ of Subic Bay Distribution, Inc. (Subic Bay) against Stronghold Insurance Company, Inc. (Stronghold); dismissed the Third-Party Complaint⁶ of Stronghold against Prime Asia Sales & Services, Inc. (Prime Asia), Keppel Bank, Inc. (Keppel), Erma A. Digman (Erma), Neil M. Digman (Neil), Marietta S. Marquez (Marietta), Herminio Angedan (Herminio), and Alain Digman (Alain); and dismissed the Cross-Claim⁷ of Keppel against Prime Asia and Neil.

* “Stronghold Insurance Co., Inc.” in some parts of the *rollos*.

¹ See the Court’s Resolution dated August 14, 2019; *rollo* (G.R. No. 240758), pp. 1037–1038.

² *Id.* at 17–54; and *rollo* (G.R. No. 240993), pp. 8–28.

³ *Rollo* (G.R. No. 240758), pp. 60–93. Penned by Associate Justice Marie Christine Azcarraga-Jacob, with the concurrence of Associate Justices Ricardo R. Rosario (now a member of this Court) and Edwin D. Sorongon.

⁴ *Id.* at 94–98.

⁵ *Id.* at 99–109.

⁶ *Rollo* (G.R. No. 240993), pp. 88–95.

⁷ Not attached to the *rollos*.

Antecedents

On April 16, 2001, Subic Bay, represented by its Marketing Manager, Richard Reyes (Richard), and Prime Asia, represented by its President, Neil, entered into a Distributor Agreement⁸ effective for two years. Prime Asia undertook to purchase petroleum products from Subic Bay and was required to obtain performance bonds from a reputable bonding company to be chosen by Subic Bay. The Distributor Agreement stated that the credit limit of Prime Asia was PHP 5,000,000.00 for a maximum term of 15 days. Section 6.2 of the Distributor Agreement provided:

Payment for purchases by the DISTRIBUTOR shall be in accordance with a maximum credit term of 15 days with a maximum credit limit of [PHP] 5,000,000[.00] for the life of this Agreement.

x x x x⁹

Prime Asia obtained eight surety bonds with the total amount of PHP 62,192,262.53¹⁰ from Stronghold to guarantee the payment of the cost of fuel products procured in accordance with the terms and conditions of the Distributor Agreement. Prime Asia also obtained surety bonds from Malayan Insurance Co., Inc., Insular and HH General Insurance, Co., and Western Guaranty Corporation.¹¹

As collateral for the surety bonds, Prime Asia, Erma, and Marietta executed Indemnity Agreements in favor of Stronghold, where they jointly and severally bound themselves to indemnify Stronghold “upon its demand and keep it indemnified for and to hold and save it harmless from and against any and all payments, damages, costs, losses, penalties, charges and expenses of whatsoever kind and nature, which the company as such surety shall or may, at any time make, sustain, incur and/or suffer, or for which it has or may become liable to the obligee and to pay an additional amount as attorney’s fees[.]”¹² Prime Asia, through Erma and Neil, as approved by its directors, Herminio and Alain, executed several Assignments of its Time Deposits with Keppel in favor of Stronghold. Prime Asia assigned the proceeds of its Certificates of Time Deposit (CTD) to Stronghold, and authorized Stronghold to apply and withdraw from Prime Asia’s bank account with Keppel in the event a demand is made upon Stronghold’s surety bonds.¹³

Subic Bay allowed Prime Asia to purchase petroleum products in an amount equivalent to PHP 10,709,055.23 for the period of October 3 to 31, 2001, which was above the credit limit and beyond the credit term stated in the Distributor Agreement. Thereafter, Subic Bay extended Prime Asia’s credit term for more than 15 days as indicated in the sales invoices dated

⁸ *Rollo* (G.R. No. 240758), pp. 110-115.

⁹ *Id.* at 112.

¹⁰ *Id.* at 116-131.

¹¹ *Id.* at 392-418 and 580-581.

¹² *Id.* at 581.

¹³ *Id.* at 581-582.

November 2, 5, 20, 24, and 29, 2001. The adjustment of the credit limit and the grant of the extended credit term within which to pay the petroleum products were done without the knowledge of Stronghold.¹⁴ Subic Bay permitted Prime Asia to purchase on credit until November 29, 2001. By then, Prime Asia's unpaid obligation amounted to PHP 57,435,105.17.¹⁵

Meanwhile, starting July 20, 2001, Prime Asia availed of several deposit collateral loans from Keppel. Relative to those transactions, Erma and Neil executed Letters of Authority allowing Keppel to withdraw and setoff the time deposit accounts of Prime Asia as hold-out securities against any outstanding amount in case of default on any of Prime Asia's loans. On February 8, 2002, February 11, 2002, February 27, 2002, and July 17, 2002, Subic Bay sent letters to Stronghold stating that Prime Asia defaulted in the payment of several petroleum products and demanding payment of the amounts covered by the surety bonds issued in Subic Bay's favor. Subic Bay also wrote to Keppel asking it to put on hold the CTD of Prime Asia which was assigned to Stronghold. However, Keppel informed Subic Bay that the proceeds covered by the CTD could no longer be put on hold because some of the CTD were already applied as payment to the loans that Prime Asia had obtained. Subsequently, Stronghold demanded Keppel to restore the amount of the proceeds covered by Prime Asia's CTD.¹⁶

On December 23, 2002, Subic Bay filed a Complaint¹⁷ for Sum of Money against Stronghold in the Regional Trial Court of Makati City, Branch 62 (RTC). Stronghold filed a Motion to Dismiss,¹⁸ alleging that a condition precedent for the filing of the Complaint had not been complied with and the Complaint failed to state a cause of action.¹⁹ The RTC issued an Order²⁰ dated July 24, 2003 denying Stronghold's Motion to Dismiss. Thereafter, Stronghold filed an Answer with Compulsory Counterclaim.²¹ Additionally, Stronghold filed a Third-Party Complaint²² against Prime Asia, Neil, Erma, Marietta, Alain, Herminio, and Keppel. After which, Marietta filed an Answer to the Third-Party Complaint, while Keppel filed an Answer with Compulsory Counterclaim and Cross-Claim against Prime Asia and Neil. Pretrial on the main case ensued.²³

In the interim, Stronghold filed a Motion to Declare Erma, Neil, Alain, and Herminio in Default for their failure to file an Answer with Motion for Leave of Court to Serve Summons by Publication to Prime Asia. In an Order²⁴ dated May 30, 2008, the RTC granted Stronghold's Motion, and third-party defendants Erma, Neil, Herminio, and Alain were declared in default. Too,

¹⁴ *Id.* at 71-72.

¹⁵ *Id.* at 76.

¹⁶ *Id.* at 63-64.

¹⁷ *Id.* at 99-109.

¹⁸ *Id.* at 155-158.

¹⁹ *Id.* at 64.

²⁰ *Id.* at 166. Penned by Pairing Judge Ricardo R. Rosario (now a member of this Court).

²¹ *Id.* at 167-171.

²² *Rollo* (G.R. No. 240993), pp. 88-95.

²³ *Rollo* (G.R. No. 240758), pp. 64-65.

²⁴ Not attached to the *rollos*.

summons by publication was ordered since Prime Asia no longer holds office at its last known address.²⁵ Prime Asia failed to file any responsive pleading, and thus, Stronghold filed a Motion to Declare Prime Asia in Default. The RTC granted the Motion in its Order²⁶ dated September 17, 2008. Thereafter, the RTC set the pretrial conference and trial proper of the Third-Party Complaint of Stronghold against Keppel and Marietta.²⁷

After joinder of issues, the main contention resolved by the RTC was whether Stronghold was liable to Subic Bay under the surety bonds issued by Stronghold on behalf of Prime Asia and in favor of Subic Bay.²⁸ The RTC found that Prime Asia is an indispensable party, thus, no final determination of the action can be made on the deliveries of fuel, the value involved, and the issue of nonpayment because of Subic Bay's failure to implead Prime Asia. According to the RTC, the failure to implead an indispensable party constitutes a ground for the dismissal of the Complaint. It further elucidated that the surety's liability is subsidiary such that unless and until the principal debtor, Prime Asia, is held liable, the surety does not incur liability.²⁹

Regarding the Third-Party Complaint, the RTC resolved these issues: (a) whether Prime Asia, Erma, and Marietta are jointly and severally liable for whatever amount which Stronghold may be adjudged to pay Subic Bay; (b) whether Neil, Herminio, and Alain are jointly and severally liable for whatever amount which Stronghold may be adjudged to pay Subic Bay; and (c) whether Keppel is bound to restore or recognize the CTD subject of this case, and to pay Stronghold the proceeds in the event Stronghold is adjudged liable to Subic Bay.

The RTC held that Prime Asia, Erma, and Marietta executed Indemnity Agreements in favor of Stronghold binding themselves solidarily to indemnify Stronghold for the amount that Stronghold may be adjudged to pay Subic Bay.³⁰ The RTC also ruled that Neil, Herminio, and Alain are jointly and severally liable to indemnify Stronghold because they formed and used Prime Asia to defraud Stronghold and other insurance companies. Additionally, the RTC explained that Neil, Herminio, and Alain presented the CTD issued by Keppel as collateral to persuade the insurance companies to issue surety bonds to secure Prime Asia's obligation.³¹ As to Keppel's liability, the RTC found that the assignability of the subject time deposits was admitted by Keppel's own witness, its Branch Manager, Ramon Ignacio (Ramon). Ramon categorically stated that "the owner can use a CTD as collateral for a loan issued by the bank. The owner can also assign the same to third parties."³² The trial court noted that when Prime Asia pledged the CTD to Keppel, the original

²⁵ *Rollo* (G.R. No. 240758), p. 585.

²⁶ Not attached to the *rollos*.

²⁷ *Rollo* (G.R. No. 240758), pp. 65-67.

²⁸ *Id.* at 586.

²⁹ *Id.* at 590.

³⁰ *Id.* at 591.

³¹ *Id.* at 592.

³² *Id.*

CTD had already been assigned and surrendered in favor of Stronghold.³³ Thus, by a Decision³⁴ dated November 8, 2013, then RTC Judge Selma Palacio Alaras ruled as follows:

WHEREFORE, judgment is hereby rendered dismissing plaintiff SUBIC BAY DISTRIBUTION INC[.]'s complaint for lack of merit and for lack of cause of action. On its counterclaims, defendant STRONGHOLD INSURANCE CO., INC., is awarded the amount of [PHP] 100,000.00 as attorney's fees.

The provisions of the Indemnity Agreements and the Deeds of Assignment are held binding upon third-party defendants Prime Asia Sales & Services, Inc., Spouses Neil and Erina Digman, Marietta S. Marquez, Herminio Angedan and Alain Digman. The assignments of the Certificates of Time Deposit subject of this case to Stronghold are represented by the Certificates of Time Deposit and recognize the assignment thereof to Stronghold. The Indemnity Agreements, Deeds of Assignment and the Certificates of Time Deposit shall be binding and/or shall subsist until this Decision shall have become final and Stronghold's surety bonds are cancelled and released from any claims and liabilities. In view of the foregoing, KEPPEL BANK PHILIPPINES INC., now BDO ELITE SAVINGS BANK, INC.'s Counterclaims against Stronghold are denied.

On Keppel Bank's cross-claims, it is apparent that the other third-party defendants are liable for the loans they incurred from Keppel Bank and for the commission of fraud. Thus, the other third-party defendants and cross-defendants PRIME ASIA SALES & SERVICES, INC. and NEIL DIGMAN should be held solidarily liable to reimburse and/or pay any and all damages, cost and expenses which Keppel Bank[,] now BDO Elite Savings Bank, Inc., has incurred by reason of this Decision in favor of defendant Stronghold.

Considering that third-party defendant PASSI was served with summons through publication, the copy of the decision must also be served upon it also publication at the expense of the third-party plaintiff pursuant to Section 9, of Rule 13 of the Revised Rules of Court. Accordingly, the Branch Clerk of Court is directed to furnish a copy of this Decision [to] the Office of the Clerk of Court, Regional Trial Court Makati City for its immediate inclusion in the raffle of the official list of publication pursuant to *En Banc* Resolution (A.M. No. 01-01-07-SC) dated October 16, 2001, Supreme Court Circular No. 5-98 dated January 12, 1998, and P.D. No. 0794. Publication shall only be on one occasion.

SO ORDERED.³⁵

Subic Bay and Keppel separately moved for reconsideration, but were denied by the RTC in an Order³⁶ dated June 13, 2014. Aggrieved, Subic Bay and Keppel interposed separate appeals to the CA. Subic Bay contended³⁷ that Stronghold, as surety, should pay Prime Asia's unpaid obligations and legal interest by reason of Prime Asia's default under the Distributor Agreement.

³³ *Id.* at 593.

³⁴ *Id.* at 580-584. Penned by Judge Selma Palacio Alaras.

³⁵ *Id.* at 594.

³⁶ *Id.* at 642.

³⁷ See Appellant's Brief dated March 20, 2015; *id.* at 647-746.

Subic Bay further argued that the RTC erred in dismissing the Complaint because of its failure to implead Prime Asia as an indispensable party.³⁸ On its part, Keppel alleged that the RTC made a mistake when it still ruled on the Third-Party Complaint despite having dismissed the main Complaint for lack of cause of action. Keppel also averred that the RTC's ruling, that Prime Asia could validly assign the CTD as collateral in favor of Stronghold despite lack of consent from Keppel, is incorrect.³⁹

The CA summarized the issues as follows: (1) whether Stronghold is liable to Subic Bay under the eight surety bonds; (2) whether there was novation of the Distributor Agreement between Subic Bay and Prime Asia; (3) whether Prime Asia is an indispensable party in the main Complaint and should be impleaded; (4) whether the defense of novation, which was raised by Stronghold during trial but not mentioned in its Answer and Pre-Trial Brief, may be considered by the RTC; and (5) whether the RTC could still rule on the Third-Party Complaint of Stronghold.⁴⁰

In a Decision⁴¹ dated January 27, 2017, the CA found that Stronghold's obligation as surety had been extinguished based on Article 2079 of the Civil Code, which states that "[a]n extension granted to the debtor by the creditor without the consent of the guarantor extinguishes the guaranty."⁴² The CA ruled that there was material variation of the Distributor Agreement when Subic Bay and Prime Asia agreed to increase the credit limit and extend the credit term beyond the 15-day period within which Prime Asia may pay the purchased petroleum products.⁴³ An increase in indebtedness is material and prejudicial to the surety because it proportionally decreases the probability of the principal debtor's ability to liquidate the debt, thus, amplifying the risk undertaken by the surety to answer for the failure of the debtor to pay.⁴⁴

The CA also held that novation cannot be presumed and it was not stipulated in the Distributor Agreement. Subic Bay and Prime Asia simply effected an increase in the credit limit and extension of the terms of payment. Too, the CA ruled that Prime Asia was not an indispensable party in the main Complaint. Since Prime Asia was in default due to its failure to pay several petroleum products obtained from Subic Bay, Prime Asia's liability under the Distributor Agreement already attached and the liability of Stronghold under the performance bond arose.⁴⁵ As to the resolution of whether it was proper for the RTC to consider the defense of novation although it was not raised in the pleadings, the appellate court explained that the issue has become moot since the RTC did not rely on that ground for the dismissal of the Complaint.

³⁸ *Id.* at 69 and 687-710.

³⁹ *Id.* at 69-70.

⁴⁰ *Id.* at 70-71.

⁴¹ *Id.* at 60-93.

⁴² *Id.* at 72.

⁴³ *Id.*

⁴⁴ *Id.* at 73-74.

⁴⁵ *Id.* at 79.

Besides, Subic Bay was given ample opportunity to present counter-evidence germane to the issue of novation, and thus, due process was observed.⁴⁶

Finally, the CA concluded that the dismissal of the Complaint should carry with it the dismissal of the Third-Party Complaint. Stronghold's cause of action in the Third-Party Complaint was dependent on whether it will be adjudged liable to pay the claims of Subic Bay against Prime Asia. No other relief dependent on the Complaint, such as Stronghold's Third-Party Complaint and Keppel's Cross-Claim, could legally flow.⁴⁷ The CA disposed in this wise:

IN LIGHT OF THE FOREGOING PREMISES, the respective appeals of SUBIC BAY and KEPPEL BANK are **PARTIALLY GRANTED**.

Consequently, the Decision dated 08 November 2013 of the Regional Trial Court, Branch 62, Makati City, in Civil Case No. 02-1537, is hereby **MODIFIED** as follows:

(1) The dismissal of the main complaint of SUBIC BAY against STRONGHOLD is **AFFIRMED** with the **MODIFICATION** that the ground for such dismissal is not extinguishment by novation or failure to implead indispensable party but discharge of STRONGHOLD of its liability under the surety bonds;

(2) The third-party complaint of STRONGHOLD against PRIME ASIA, KEPPEL BANK, ERNA, NEIL, MARIETTA, ALAIN, and HERMINIO, as well as the Cross-Claim of KEPPEL BANK against PRIME ASIA and NEIL, are also **DISMISSED**; and

(3) The award of attorney's fees in favor of STRONGHOLD is **DELETED** for lack of factual and legal basis.

No pronouncement as to costs.

SO ORDERED.⁴⁸ (Emphasis in the original)

Undaunted, Subic Bay and Stronghold filed their respective Motions for Partial Reconsideration. The CA, however, denied both Motions in the Resolution⁴⁹ dated July 13, 2018.

Hence, this recourse. Subic Bay claims⁵⁰ that the CA erred in discharging Stronghold from its obligations under the surety bonds because the face values of the surety bonds exceeded the credit limit under the Distributor Agreement. The face values of the bonds indicate Stronghold's consent to the increase in credit limit.⁵¹ Further, Subic Bay contends that the sales invoices did not amend the Distributor Agreement, thus, they cannot be

⁴⁶ *Id.* at 85–86.

⁴⁷ *Id.* at 91.

⁴⁸ *Id.* at 92–93.

⁴⁹ *Id.* at 94–98.

⁵⁰ *Id.* at 17–54.

⁵¹ *Id.* at 42.

used as evidence to extinguish surety's obligation under the surety bonds.⁵² Meanwhile, Stronghold submits⁵³ that the dismissal of the main Complaint of Subic Bay should not lead to the dismissal of the Third-Party Complaint since the Decision in the main case is not yet final.⁵⁴ It also argues that the Third-Party Complaint is independent of and distinct from the Complaint filed by Subic Bay.⁵⁵

Our Ruling

For our resolution are these issues: (1) whether Stronghold is liable to Subic Bay under the eight surety bonds; (2) whether there was material variation of the Distributor Agreement between Subic Bay and Prime Asia without the knowledge or consent of Stronghold; and (3) whether Stronghold's Third-Party Complaint may proceed despite the dismissal of the main Complaint of Subic Bay against Stronghold.

The Petitions lack merit.

Stronghold is discharged from its obligations under the surety bonds.

The statutory definition of suretyship is found in Article 2047 of the Civil Code, thus:

Article 2047. By guaranty a person, called the guarantor, binds himself [or herself] to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.

If a person binds himself [or herself] solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed. In such case the contract is called a suretyship. (Emphasis supplied)

In *CCC Insurance Corporation v. Kawasaki Steel Corporation*,⁵⁶ the Court clarified that a contract of suretyship is an agreement whereby a party, called the surety, guarantees the performance by another party, called the principal or obligor, of an obligation or undertaking in favor of a third person called the obligee. A surety's liability is joint and several, limited to the amount of the bond, and determined strictly by the terms of contract of suretyship in relation to the principal contract between the obligor and the obligee.⁵⁷ The prestation is not an original and direct obligation for the performance of the surety's own act, but merely accessory to the obligation contracted by the principal.⁵⁸ Simply put, a surety's liability is determined by the terms of contract of suretyship in relation to the principal contract between

⁵² *Id.* at 52.

⁵³ *Rollo* (G.R. No. 240993), pp. 8-28.

⁵⁴ *Id.* at 17.

⁵⁵ *Id.* at 19.

⁵⁶ 761 Phil. 1 (2015) [Per J. Leonardo-De Castro, First Division].

⁵⁷ *Id.* at 18-19.

⁵⁸ *Id.* at 26.

the obligor or debtor and the obligee or creditor.⁵⁹ Being an onerous undertaking, a surety agreement is strictly construed against the creditor.⁶⁰

Prime Asia applied for a credit line with Subic Bay for the purchase of petroleum products under the Distributor Agreement. The Distributor Agreement states that the credit limit has a maximum of PHP 5,000,000.00 and the credit term is 15 days. Pursuant to the Distributor Agreement, Prime Asia obtained eight surety bonds from Stronghold with the total amount of PHP 62,192,262.53 to guarantee Prime Asia's payment of its obligations to Subic Bay. Because of the condition specified in the Distributor Agreement, each transaction of Prime Asia had a maximum limit of PHP 5,000,000.00 to be paid within 15 days.⁶¹ The eight surety bonds amounting to PHP 62,192,262.53 issued by Stronghold may be characterized as a comprehensive or continuing surety agreement, which is commonplace in present-day financial and commercial practice. A creditor, Subic Bay in this case, which anticipates entering into a series of credit transactions with a particular company, normally requires the projected principal debtor, Prime Asia in this case, to execute a continuing surety agreement along with its sureties. By executing such an agreement, the principal, or Prime Asia, places itself in a position to enter into the projected series of transactions with its creditor. With such suretyship agreement, there would be no need to execute a separate surety contract or bond for each financing or credit accommodation extended to the principal debtor.⁶²

After the issuance of the bonds and despite the specific terms of the Distributor Agreement, Subic Bay allowed Prime Asia to purchase petroleum products in the total amount of PHP 10,709,055.23 instead of a maximum of PHP 5,000,000.00, and granted a 15-day credit term extension beyond the original period of 15 days within which to pay the petroleum products. These facts are supported by different sales invoices from October 3, 2001 to October 31, 2001.⁶³ If Subic Bay had not increased the credit limit and extended the credit term, Prime Asia would have been in default already by October 18, 2001 with a maximum liability of PHP 5,000,000.00. However, Subic Bay still allowed Prime Asia to make further purchases although the first obligation of PHP 10,709,055.23 was not paid within the extended period of 30 days. Prime Asia purchased PHP 7,721,781.89 worth of fuel products on credit on November 2, 2001 and was allowed to purchase on credit until November 29, 2001 although it had not paid its outstanding obligations. Consequently, Prime Asia's unpaid credit ballooned to PHP 57,453,105.17.⁶⁴ Given what actually transpired, it cannot be disputed that there was a variation of the Distributor Agreement as to the credit limit and credit term.

⁵⁹ *Id.* at 22-23.

⁶⁰ *Security Bank and Trust Company, Inc. v. Cuenca*, 396 Phil. 108, 112 (2000) [Per J. Panganiban, Third Division].

⁶¹ *Rollo* (G.R. No. 240758), pp. 61-62, 110-114, and 116-131.

⁶² *Tan v. First Malayan Leasing and Finance Corp.*, G.R. No. 254510, June 16, 2021, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67799>> [Per J. Caguioa, First Division].

⁶³ *Rollo* (G.R. No. 240758), pp. 71-73.

⁶⁴ *Id.* at 588.

The Court agrees with the CA that the changes in the agreement between Subic Bay and Prime Asia were done without informing or seeking the conformity of Stronghold. The fundamental rules of fair play require the creditor to obtain the consent of the surety to any material alteration in the principal loan agreement, or at least to notify the surety of the changes. This is based on Article 2079 of the Civil Code, which provides in part:

Article 2079. An extension granted to the debtor by the creditor without the consent of the guarantor extinguishes the guaranty. The mere failure on the part of the creditor to demand payment after the debt has become due does not of itself constitute any extension of time referred to herein.

The Court explained in *People's Trans-East Asia Insurance Corporation v. Doctors of New Millennium Holdings, Inc.*⁶⁵ that a suretyship consists of two different contracts: (1) the surety contract and (2) the principal contract which it guarantees. Since the insurer's liability is strictly based only on the terms stated in the surety contract in relation to the principal contract, any change in the principal contract which materially alters the principal's obligations would release the surety from its obligation.⁶⁶ An essential alteration in the terms of the principal contract without the consent of the surety extinguishes the surety's liability because the surety is entitled to protect itself against the contingency of the principal debtor or the indemnitors becoming insolvent during the extended period.

It is a fundamental rule in the law of suretyship that any agreement between the creditor and the principal debtor which essentially varies the terms of the principal contract, without the consent of the surety, will release the surety from liability. There is a material alteration of the contract, in connection with which the bond was given, when such change 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. A surety, however, is not released by a change in the contract which does not have the effect of making its obligation more onerous.⁶⁷

To be sure, the Court has recognized instances when a surety is discharged from liability as a result of an act or omission of the creditor that may be declared negligent or otherwise constitutive of a material alteration of the contract. In *Philippine National Bank v. Manila Surety and Fidelity Co. Inc.*,⁶⁸ the surety was considered released because the creditor was found negligent in allowing the assigned funds to be exhausted without notifying the surety, depriving the surety of any possibility of availing a recourse.⁶⁹ Similarly, in *Philippine National Bank v. Luzon Surety Co., Inc.*,⁷⁰ the Court recognized that material alteration can be a ground for release.⁷¹ In *Palmares*

⁶⁵ 741 Phil. 149 (2014) [Per J. Leonen, Third Division].

⁶⁶ *Id.* at 162.

⁶⁷ *Id.*

⁶⁸ 122 Phil. 106 (1965) [Per J. Reyes, *En Banc*].

⁶⁹ *Id.* at 110.

⁷⁰ 160-A Phil. 854 (1975) [Per J. Esguerra, First Division].

⁷¹ *Id.* at 862.

v. CA,⁷² the Court mentioned that an extension of the time of payment for a definite period without the consent or reservation of the rights of the surety would release the surety from liability.⁷³

Here, the transactions between Subic Bay and Prime Asia were materially different from what was agreed upon in the Distribution Agreement, which, in effect, made the obligation of the surety more onerous. To recall, Subic Bay allowed Prime Asia to assume added obligations and extend the credit term beyond the credit limit of PHP 5,000,000.00 per transaction to be paid within 15 days. Not only that, Subic Bay allowed Prime Asia to continuously purchase on credit even though Prime Asia had not paid its outstanding obligations. Without any notice to Stronghold, Prime Asia's obligations had ballooned to PHP 57,435,105.17.⁷⁴ The increase of the credit limit beyond PHP 5,000,000.00 per credit accommodation without Stronghold's assent is clearly prejudicial to it as a surety since any increase in the amount of petroleum products obtained by Prime Asia decreases the probability of its ability to pay. Too, the extension of credit term puts the surety in a situation where it cannot be subrogated to the creditor's remedies against the debtor upon the maturity date mentioned in the principal contract.

Significantly, in *Subic Bay Distribution, Inc. v. Malayan Insurance Co., Inc.*,⁷⁵ which involves the same creditor and debtor under the same Distributor Agreement, the Court denied Subic Bay's petition. We upheld the CA's findings affirming the Decision of the Regional Trial Court of Makati City, Branch 145 in Civil Case No. 02-1523, which dismissed the Complaint for sum of money filed by Subic Bay against Malayan Insurance Co., Inc. (Malayan). The Court ruled that the extension of the stipulated credit term and the increase in the credit limit granted to the principal debtor, Prime Asia, without the consent or knowledge of Malayan, extinguishes its obligation under the surety bonds. We expounded that an extension of time given to the principal debtor by the creditor without the surety's consent would deprive the surety of its right to pay the creditor and to be immediately subrogated to the creditor's remedies against the principal debtor upon the maturity date as a measure of protection to avoid the contingency of the principal debtor becoming insolvent during the extended period.⁷⁶ Thus, in this case, the unilaterally effected material changes in the principal contract without the surety's knowledge or consent necessarily extinguish Stronghold's obligation under the surety bonds.

Contrary to Subic Bay's argument, it cannot be said that Stronghold's issuance of eight bonds greater than the credit limit constituted Stronghold's waiver or knowledge of any variation in the principal contract between Subic Bay and Prime Asia. As continuing surety, the eight bonds issued simply allowed Prime Asia to purchase products with the maximum credit of PHP 5,000,000.00 and term of 15 days at any given time. Prime Asia can purchase

⁷² 351 Phil. 664 (1998) [Per J. Regalado, Second Division].

⁷³ *Id.* at 686-687.

⁷⁴ *Rollo* (G.R. No. 240758), p. 76.

⁷⁵ G.R. No. 248631, September 2, 2020 [Notice, Second Division].

⁷⁶ *Id.*

additional fuel over time once it pays the value of the previous purchase within a period of 15 days. In other words, the eight surety bonds, with the total amount of PHP 62,192,262.53, serve as security for possible purchases of Prime Asia as long as each transaction between Subic Bay and Prime Asia would comply with the credit term and credit limit stipulated in the Distribution Agreement. The bonds do not, in any way, imply that Subic Bay and Prime Asia may extend the scope of the principal obligation inordinately. As aptly explained by the RTC and affirmed by the CA:

The bonds were issued to guarantee payment/remittance of the cost of fuel products withdrawn in accordance with the terms and conditions of the Distributor Agreement dated April 16, 2011. Plaintiff admitted that the credit limit was increased beyond [PHP] 5 million pesos without the consent of defendant. This resulted in unpaid obligations of PASSI in the amount of [PHP] 57,435,105.17. This certainly made it more onerous for the defendant. If the terms of the Distributor Agreement were followed, PASSI's unpaid obligation would have been a maximum of only [PHP] 5 million since if PASSI could not pay the maximum amount, it should not have been allowed further purchases on credit under the Distributor Agreement.

Plaintiff argues that by issuing bonds with amounts greater than [PHP] 5 million, defendant agreed to the increase of the credit limit beyond [PHP] 5 million. However, the bonds issued which were greater than [PHP] 5 million were not inconsistent with the nature of the credit line granted to PASSI. If PASSI purchases fuel up to a maximum of [PHP] 5 million on credit and pays the price on or before the lapse of 15 days (the credit term under the Distributor Agreement), then it could again purchase on credit another maximum of [PHP] 5 million payable within the next 15 days. Thus, if PASSI were a good debtor, it could purchase a maximum of [PHP] 5 million every 15 days or [PHP] 10 million per month. In six months, it could purchase a maximum of [PHP] 60 million and in one year, [PHP] 120 million worth of fuel.⁷⁷

In *Security Bank and Trust Company, Inc. v. Cuenca*,⁷⁸ it was held that a contract of surety cannot extend to more than what is stipulated. It is strictly construed against the creditor and against enlarging the liability of the surety. In the absence of an unequivocal provision that the surety has waived its right to be notified or to give consent to any alteration of the credit accommodation, we cannot sustain the view that there is such a waiver.⁷⁹ In this case, Stronghold may not be held liable for credit obtained in violation of the amount and period stipulated in the Distributor Agreement, absent any evidence showing that Stronghold has waived its right to be notified or to give consent to any modification in the principal contract. Both the RTC and CA noted that Subic Bay admitted that the credit limit was increased beyond PHP 5,000,000.00 and the credit term extended without Stronghold's consent.⁸⁰ Too, Stronghold was neither given copies of the sales invoices and other documents during the performance of the obligations between Subic Bay and

⁷⁷ *Rollo* (G.R. No. 240758), p. 586.

⁷⁸ 396 Phil. 108 (2000) [Per J. Panganiban, Third Division].

⁷⁹ *Id.* at 128.

⁸⁰ *Rollo* (G.R. No. 240758), pp. 72, 74, and 589.

Prime Asia nor informed of the delivery of goods.⁸¹ Notably, Subic Bay's own witness and Prime Asia's representative, Clemente Tanke, Jr., admitted that the extension of the credit term was done without notifying Stronghold, thus:

Atty. Luna: I also mentioned a maximum credit term of fifteen (15) days and then I noticed in the Sales Invoices that the due date was thirty (30) days after the date and earlier you testified that you changed this fifteen (15) days maximum credit term agreement and made it thirty (30) days, did you ever report to Stronghold or inform Stronghold of this change in the maximum credit term of fifteen (15) days before you filed the claim?

Clemente Tanke, Jr: No, Sir.

Court: Why did you not inform?

Clemente Tanke, Jr.: There was an agreement between Prime Asia and Subic Bay Distribution that they extended the thirty (30) days term.⁸²

At this point, it bears stressing that findings of fact of the trial court, *i.e.*, that Stronghold was neither notified nor has it waived its right to be notified or to give consent to any modification in the principal contract, as affirmed by the CA, are binding upon the Court.⁸³ This rule may be disregarded only when the findings of fact of the CA are contrary to the conclusion of the trial court or are not supported by evidence. However, there is no ground to apply the exception to the instant case since the factual findings of both the RTC and the CA completely coincide and are supported by the records.

Subic Bay argues that the sales invoices cannot supersede the Distributor Agreement, citing *Lazaro v. Brew Master International, Inc*⁸⁴ (*Lazaro*). The ruling in that case, however, is inapplicable here. In *Lazaro*, the Court emphasized that sales invoices are not actionable documents and were not the bases of respondent's action for sum of money. Sales invoices are evidentiary in nature, thus, they need not be stated or cited in the Complaint.⁸⁵ Subic Bay also cited *Ace Foods, Inc. v. Micro Pacific Technologies, Ltd.*⁸⁶ (*Ace Foods*). The gist of that case is that a contract may be determined from the express terms of the written agreement and from the contemporaneous and subsequent acts of the contracting parties.⁸⁷ The Court added that there is no showing that the title reservation stipulation appearing in the Invoice Receipt had subsequently modified or superseded the original agreement of the parties.⁸⁸ The ruling in *Ace Foods* is likewise irrelevant to this case. Here, neither Subic Bay nor Prime Asia question the provisions of the sales invoices. To the contrary, they agreed on the extension and amounts stated in the sales invoices and actually implemented them. Thus, Subic Bay is estopped from claiming

⁸¹ *Id.* at 589.

⁸² *Id.* at 977.

⁸³ *Trans Industrial Utilities, Inc. v. Metropolitan Bank & Trust Company*, G.R. No. 227095, January 18, 2021, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67494>> [Per J. Inting, Third Division].

⁸⁴ 642 Phil. 710 (2010) [Per J. Nachura, Second Division].

⁸⁵ *Id.* at 718.

⁸⁶ 726 Phil. 742 (2013) [Per J. Perlas-Bernabe, Second Division].

⁸⁷ *Id.* at 750.

⁸⁸ *Id.* at 752.

that the sales invoices are not binding and did not modify the Distributor Agreement.

The dismissal of the main Complaint carries with it the dismissal of Stronghold's Third-Party Complaint

Pertinent to the issue raised by Stronghold is Section 11, Rule 6 of the Rules, which provides:

Section 11. *Third (fourth, etc.)-party complaint.* – A third (fourth, etc.)-party complaint is a claim that a defending party may, with leave of court, file against a person not a party to the action, called the third (fourth, etc.)-party defendant, for contribution, indemnity, subrogation or any other relief, in respect of his opponent's claim.

X X X X

The purpose of Section 11, Rule 6 of the Rules is to permit a defendant to assert an independent claim against a third-party which the defendant, otherwise, would assert in another action, thus, preventing multiplicity of suits. The Rules allow the defendant to bring in a third-party defendant to litigate his or her separate cause of action with respect to the plaintiff's claim against a third-party in the original and principal case with the objective of avoiding circuitry of action and of disposing expeditiously in one litigation the entire subject matter arising from one particular set of facts. All the rights of the parties concerned would then be adjudicated in one proceeding.⁸⁹ The defendant may implead another as a third-party defendant based on: (a) an allegation of liability of the third-party defendant to the defendant for contribution, indemnity, subrogation, or any other relief; (b) the ground of direct liability of the third-party defendant to the plaintiff; or (c) the liability of the third-party defendant to both the plaintiff and the defendant.⁹⁰ Accordingly, the requisites for a third-party action are, firstly, that the party to be impleaded must not yet be a party to the action; secondly, that the claim against the third-party defendant must belong to the original defendant; thirdly, the claim of the original defendant against the third-party defendant must be based upon the plaintiff's claim against the original defendant; and fourthly, the defendant is attempting to transfer to the third-party defendant the liability asserted against him or her by the original plaintiff.⁹¹

Generally, a third-party complaint is independent of, separate, and distinct from the plaintiff's complaint such that were it not for the rule, it would have to be filed separately from the original complaint. However, there must be a causal connection between the claim of the plaintiff in the complaint and the claim for contribution, indemnity, or other relief of the defendant against the third-party defendant.⁹² Here, Stronghold's Third-Party Complaint

⁸⁹ *Asian Construction v. CA*, 498 Phil. 36, 44–45 (2005) [Per J. Callejo, Sr., Second Division].

⁹⁰ *Id.* at 44.

⁹¹ *Philtranco Service Enterprises, Inc. v. Paras*, 636 Phil. 736, 749 (2012) [Per J. Bersamin, First Division].

⁹² *Asian Construction v. CA*, 498 Phil. 36, 44 (2005) [Per J. Callejo, Sr., Second Division].

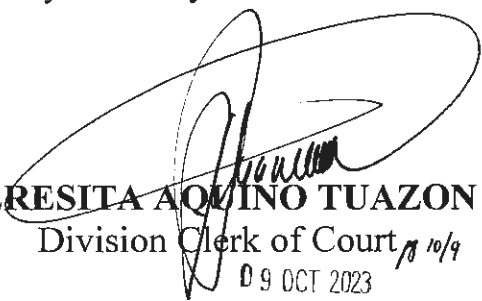
is one for indemnity. This is clear when Stronghold, in its Third-Party Complaint, asked the RTC to order “third-party defendants, jointly and severally, to indemnify and pay third-party plaintiff of whatever amount the latter may be adjudged to pay the plaintiff in the event judgment is rendered in its favor in the main case[.]”⁹³ Because Stronghold is essentially asking for compensation or reimbursement, such remuneration must necessarily arise from or be entirely dependent upon the main action. Stronghold cannot transfer to the third-party defendants the liability asserted against it by Subic Bay because there was no pronouncement as to its own liability.

We elucidated in *American Home Insurance Co. v. F.F. Cruz*⁹⁴ that the surety is considered in law as possessed of the identity of the debtor in relation to whatever is adjudged touching upon the obligation of the debtor. Their liabilities are so interwoven as to be inseparable.⁹⁵ In other words, the accountability of third-party defendants Prime Asia, Erma, Neil, Marietta, Herminio, and Alain hinges upon the liability of Stronghold such that Prime Asia, Erma, Neil, Marietta, Herminio, and Alain may only be adjudged liable if Stronghold itself was pronounced answerable in the main Complaint. Indeed, with the dismissal of Subic Bay’s Complaint, Stronghold’s Third-Party Complaint may not proceed. Thus, the CA did not err in ruling that the Third-Party Complaint should be dismissed with the dismissal of the main Complaint.

FOR THESE REASONS, the Petitions for Review on *Certiorari* are **DENIED**. The Decision dated January 27, 2017 and the Resolution dated July 13, 2018 of the Court of Appeals in CA-G.R. CV No. 103669 are **AFFIRMED**.

SO ORDERED.”

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court *10/9*
09 OCT 2023

⁹³ *Rollo* (G.R. No. 240993), p. 94.

⁹⁴ 671 Phil. 1 (2011) [Per J. Peralta, Third Division].

⁹⁵ *Id.* at 14.

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