



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **June 14, 2023**, which reads as follows:*

“G.R. No. 262548 (BETHEL GENERAL INSURANCE AND SURETY CORPORATION, petitioner, versus ISABEL UNITED MEDICAL DOCTORS, respondent). – The Court **NOTES** respondent’s Comment dated November 11, 2022 on the petition for review on *certiorari*.

This is a Petition for Review¹ on *certiorari* under Rule 45 of the Rules of Court filed by petitioner Bethel General Insurance and Surety Corporation (BGISC), seeking to set aside the Final Award,² dated August 11, 2022, by the Construction Industry Arbitration Commission (CIAC) in CIAC Case No. 06-2022, in so far as it ruled that BGISC, as surety, is jointly and severally liable with Square Meter Trading and Construction Corporation (SMTCC).

The Court denies the Petition.

It is settled that final awards of the CIAC may be appealed to the Court only on pure questions of law, and that its factual findings should be respected and upheld.³ The Court in *Wyeth Philippines, Inc. v. Construction Industry Arbitration Commission*⁴ explained:

Exceptions allowed in the review of Rule 45 petitions, such as the lower court’s misapprehension of facts or a conflict in factual findings, do not apply to reviews of the Arbitral Tribunal’s decisions. In reviewing factual findings of the Arbitral Tribunal, exceptions must pertain to its conduct and the qualifications of the arbitrator, and not to its errors of fact and law, misappreciation of evidence, or conflicting findings of fact. It is only when “the most basic integrity of the arbitral process was imperiled”

¹ *Rollo*, pp. 10-48.

² *Id.* at 782-818. The Arbitral Tribunal is composed of Salvador S. Panga, Jr. as Chairman, with Daphne T. Jereza and Glecerio Abad Rubio, Jr. as Members.

³ *Wyeth Philippines, Inc. v. Construction Industry Arbitration Commission*, G.R. Nos. 220045-48, June 22, 2020.

⁴ *Id.*

that a factual review of the findings of the arbitral tribunal may be reviewed.⁵

In *CE Construction Corporation v. Araneta*,⁶ the Court stressed that when arbitral awards become the subject of judicial review, courts must defer to the factual findings borne by arbitral tribunals' technical expertise and irreplaceable experience of presiding over the arbitral process.

[A]rbitral tribunals of the Construction Industry Arbitration Commission (CIAC) enjoy a wide latitude consistent with their technical expertise and the arbitral process' inherent inclination to afford the most exhaustive means for dispute resolution. When their awards become the subject of judicial review, courts must defer to the factual findings borne by arbitral tribunals' technical expertise and irreplaceable experience of presiding over the arbitral process. Exceptions may be availing but only in instances when the integrity of the arbitral tribunal itself has been put in jeopardy. These grounds are more exceptional than those which are regularly sanctioned in Rule 45 petitions.⁷

Further, in *Global Medical Center of Laguna, Inc. v. Ross Systems International, Inc.*,⁸ the Court demarcated the extent of judicial review with respect to awards issued by the CIAC. The Court laid down the following rules:

1. For appeals from CIAC arbitral awards that have already been filed and are currently pending before the CA under Rule 43, the prior availability of the appeal on matters of fact and law thereon applies. This is only proper since the parties resorted to this mode of review as it was the existing procedural rules at the time of filing, prior to the instant amendment.
2. For future appeals from CIAC arbitral awards that will be filed after the promulgation of this Decision:
 - a. **If the issue to be raised by the parties is a pure question of law, the appeal should be filed directly and exclusively with the Court through a petition for review under Rule 45.**
 - b. If the parties will appeal factual issues, the appeal may be filed with the CA, but only on the limited grounds that pertain to either a challenge on the integrity of the CIAC arbitral tribunal (*i.e.*, allegations of corruption, fraud, misconduct, evident partiality, incapacity or excess of powers within the tribunal) or an allegation that the arbitral tribunal violated the Constitution or positive law in the conduct of the arbitral process, through the special civil action of a petition for *certiorari* under Rule 65, on grounds of grave abuse of discretion amounting to lack or excess in jurisdiction. The CA may conduct a factual review only upon sufficient and demonstrable showing that the integrity of the CIAC arbitral tribunal had indeed been compromised, or that it

⁵ Id.

⁶ 816 Phil. 221 (2017).

⁷ Id. at 229.

⁸ G.R. Nos. 230112 & 230119, May 11, 2021.

committed unconstitutional or illegal acts in the conduct of the arbitration.

3. Under no other circumstances other than the limited grounds \ provided above may parties appeal to the CA a CIAC arbitral award.⁹ (Emphasis supplied)

Accordingly, appeals from the CIAC to the Court via a Rule 45 Petition should only involve pure questions of law. The Court will not pass upon issues which are, at bottom, issues of fact, no matter how cleverly disguised they might be as “legal questions.”¹⁰

Here, the issues propounded by BGISC involve questions of fact which is beyond the province of this Court. The determination of the existence of concealment and material alterations in the Construction Contract Agreement (**Contract**) are factual matters that call for the re-examination, evaluation and calibration of evidence. Evidently, BGISC attempts to relitigate the case, which is not sanctioned under a Rule 45 Petition concerning an appeal from a final award rendered by the CIAC.

Liability of BGISC as a surety

While this Court will not review the facts in this case anew, a perusal of the Final Award and the submissions of BGISC will not tilt the scales in its favor.

It bears pointing out that a surety contract 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 another party, called the obligee.¹¹ As a result, the surety is considered in law as being the same party as the debtor in relation to whatever is adjudged touching upon the obligation of the latter, and their liabilities are interwoven as to be inseparable.¹²

Although the surety’s obligation is merely secondary or collateral to the obligation contracted by the principal, the Court has nevertheless characterized the surety’s liability to the creditor of the principal as “direct, primary, and absolute; in other words, the surety is directly and equally bound

⁹ Id.

¹⁰ *Metro Iloilo Water District v. Flo Water Resources [Iloilo], Inc.*, G.R. No. 238322, October 13, 2021, citing *Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc.*, 298-A Phil. 361, 373 (1993).

¹¹ *Philippine Charter Insurance Corporation v. Petroleum Distributors & Service Corporation*, 686 Phil. 154, 166-167 (2012).

¹² *Trade and Investment Development Corporation of the Philippines v. Asia Paces Corporation*, 726 Phil. 555, 565 (2014).

with the principal.”¹³

The surety’s liability attaches the moment a demand for payment is made by the creditor.¹⁴ The Court’s ruling in *Trade and Investment Development Corporation of the Philippines v. Asia Paces Corporation*¹⁵ lends guidance:

[S]ince the surety is a solidary debtor, it is not necessary that the original debtor first failed to pay before the surety could be made liable; it is enough that a demand for payment is made by the creditor for the surety’s liability to attach. Article 1216 of the Civil Code provides that:

Article 1216. The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected.¹⁶ (Emphasis supplied)

Here, it is undisputed that the Contract between Isabelita United Medical Doctors (**IUMD**) and SMTCC was terminated due to the latter’s default. By virtue of the Surety Bond, dated September 7, 2020, BGISC unequivocally bound itself as a surety to guarantee the repayment of the unliquidated portion of the advanced payment made by IUMD to SMTCC for the construction of the Isabelita United Doctors Medical Center Annex Building. Consequently, when SMTCC defaulted on its obligation and upon demand, BGISC’s liability under the surety bond set in. Thus, having acted as a surety, BGISC became solidarily liable with SMTCC for the repayment of the unliquidated portion of IUMD’s downpayment. To reiterate, BGISC’s liability is direct, primary and absolute.

BGISC’s claim of concealment deserves scant consideration. It bears emphasis that the intent to defraud must be ascertained to merit rescission of the insurance contract. Concealment as a defense for the insurer to avoid liability is an affirmative defense and the duty to establish such defense by satisfactory and convincing evidence rests upon the insurer.¹⁷ Here, BGISC failed to satisfactorily establish its allegation of concealment on the part of SMTCC. Further, as pointed out by the CIAC, BGISC was remiss in not

¹³ *Cellpage International Corporation v. The Solid Guaranty, Inc.*, G.R. No. 226731, June 17, 2020, 938 SCRA 433, 445-446, citing *FGU Insurance Corp. v. Spouses Roxas*, 816 Phil. 71, 90 (2017).

¹⁴ *The Mercantile Insurance Co., Inc. v. DMCI-Laing Construction, Inc.*, G.R. No. 205007, September 16, 2019, 919 SCRA 422, 438-439.

¹⁵ *Trade and Investment Development Corporation of the Philippines v. Asia Paces Corporation*, supra note 12.

¹⁶ *Id.* at 565.

¹⁷ *Sun Life of Canada (Philippines), Inc. v. Sibya*, 786 Phil. 817, 824 (2016), citing *Philamcare Health Systems, Inc. v. CA*, 429 Phil. 82, 92 (2002).

requiring any information on the construction project beyond the submission of a copy of the Contract.

As regards BGISC's defense of material alteration, the same equally lacks merit.

It is true that a surety is discharged from its obligation when there are material alterations in the principal contract, such as a change that imposes a new obligation on the obligor; or takes away some obligation already imposed; or changes the legal effect, and not merely the form, of the original contract. Nevertheless, no release from the obligation shall take place when the change in the contract does not have the effect of making the obligation more onerous to the surety.¹⁸

The extension of time granted by IUMD in favor SMTCC and the adjustment in the elevation of the project did not make BGISC's obligation more onerous. As ruled by the Court in *Vil-Rey Planners and Builders v. Lexber, Inc.*,¹⁹ the extension granted to complete the project is aimed at the completion of the works, which would have been for the benefit of the surety:

In this case, the extension of the third contract for 15 days and the grant of an additional five-day grace period did not make Stronghold's obligation more onerous. On the contrary, the extensions were aimed at the completion of the works, which would have been for the benefit of Stronghold.²⁰

Notably, the extension of time granted by IUMD in favor SMTCC (*i.e.*, July 2, 2021) was well within the period covered by the surety bond (*i.e.*, September 7, 2020 to September 21, 2021). It is evident, therefore, that the extension granted by IUMD did not render BGISC's obligation more onerous.

The CIAC likewise found that the adjustment made in the elevation of the project by 150 cm did not substantially affect the Contract considering that no additional cost was incurred by the parties:

94. As regards the adjustment of the 3rd floor elevation by 5 inches or 15 cm (higher) would not substantially affect the contract amount of the project. Exhibit RB-10 clearly states: "[t]he height requirement is achievable as per original plan (floor to bottom of cross beam is 3.0m) we just want to make sure there are allowances for other utilities."

¹⁸ *Vil-Rey Planners and Builders v. Lexber, Inc.*, 787 Phil. 199 (2016).

¹⁹ *Id.*

²⁰ *Id.* at 214.

95. Being in line with the original plan, it necessarily follows that it would not have any effect on the contract amount of the project. Engr. De Guzman confirmed during his testimony that even though the parties agreed to the adjustment of the third-floor elevation, they did not incur additional costs since they were not able to reach the third floor during construction.²¹

Clearly, there is no showing that the adjustment in the elevation made BGISC's obligation as a surety more onerous. Thus, as aptly concluded by the CIAC, there were no material alterations in the terms of the Contract that would justify relieving BGISC of its liability under the surety bond.

To conclude, the Court finds no reason to disturb the findings of the CIAC that BGISC is solidarily liable with SMTCC. At any rate, as decreed by the CIAC in the Final Award and pursuant to the Indemnity Agreement, BGISC is entitled to be indemnified by SMTCC for whatever amount it has been ordered to pay IUMD.²²

In view of the foregoing, the Petition is denied for lack of merit.

WHEREFORE, the Petition for Review is **DENIED**. The Final Award, dated August 11, 2022, of the Construction Industry Arbitration Commission in CIAC Case No. 06-2022 is **AFFIRMED**.

SO ORDERED."

By authority of the Court:

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²¹ *Rollo*, p. 807, Final Award.

²² *Id.* at 123.

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