

THIRD DIVISION

[G.R. No. 166662, June 27, 2008]

AUTOCORP GROUP AND PETER Y. RODRIGUEZ, PETITIONERS, VS. INTRA STRATA ASSURANCE CORPORATION AND BUREAU OF CUSTOMS, RESPONDENTS.

DECISION

CHICO-NAZARIO, J.:

This is a Petition for Review on *Certiorari* from the Decision^[1] of the Court of Appeals dated 30 June 2004 in CA-G.R. CV No. 62564 which affirmed with modification the Decision^[2] of the Regional Trial Court (RTC) of Makati City, Branch 150 in Civil Case No. 95-1584 dated 16 September 1998.

The factual and procedural antecedents of this case are as follows:

On 19 August 1990, petitioner Autocorp Group, represented by its President, petitioner Peter Y. Rodriguez, secured an ordinary re-export bond, Instrata Bond No. 5770, from private respondent Intra Strata Assurance Corporation (ISAC) in favor of public respondent Bureau of Customs (BOC), in the amount of P327,040.00, to guarantee the re-export of one unit of Hyundai Excel 4-door 1.5 LS and/or to pay the taxes and duties thereon.

On 21 December 1990, petitioners obtained another ordinary re-export bond, Instrata Bond No. 7154, from ISAC in favor of the BOC, in the amount of P447,671.00, which was eventually increased to P707,609.00 per Bond Endorsement No. BE-0912/91 dated 10 January 1991, to guarantee the re-export of one unit of Hyundai Sonata 2.4 GLS and/or to pay the taxes and duties thereon.

Petitioners executed and signed two Indemnity Agreements with identical stipulations in favor of ISAC, agreeing to act as surety of the subject bonds. Petitioner Rodriguez signed the Indemnity Agreements both as President of the Autocorp Group and in his personal capacity. Petitioners thus agreed to the following provisions:

INDEMNITY: - The undersigned agree at all times to jointly and severally indemnify the COMPANY and keep it indemnified and hold and save it harmless from and against any and all damages, losses, costs, stamps, taxes,

penalties, charges and expenses of whatsoever kind and nature including counsel or attorney's fee which the COMPANY shall or may at any time sustain or incur in consequence of having become surety upon the bond herein above referred to or any extension, renewal, substitution or alteration thereof, made at the instance of the undersigned or any of them, or any other bond executed on behalf of the undersigned or any of them, and to pay; reimburse and make good to the COMPANY, its successors and assigns, alls sums and amounts of money which it or its representatives shall pay or cause to be paid, or become liable to pay on accounts of the undersigned or any of them, of whatsoever kind and nature, including 25% of the amount involved in the litigation or other matters growing out of or connected therewith, for and as attorney's fees, but in no case less than P300.00 and which shall be payable whether or not the case be extrajudicially settled, it being understood that demand made upon anyone of the undersigned herein is admitted as demand made on all of the signatories hereof. It is hereby further agreed that in case of any extension or renewal of the bond, we equally bind ourselves to the COMPANY under the same terms and conditions as therein provided without the necessity of executing another indemnity agreement for the purpose and that we may be granted under this indemnity agreement.

MATURITY OF OUR OBLIGATIONS AS CONTRACTED HEREWITH AND ACCRUAL OF ACTION: - Notwithstanding of (sic) the next preceding paragraph where the obligation involves a liquidated amount for the payment of which the COMPANY has become legally liable under the terms of the obligation and its suretyship undertaking, or by the demand of the obligee or otherwise and the latter has merely allowed the COMPANY's aforesaid liability irrespective of whether or not payment has actually been made by the COMPANY, the COMPANY for the protection of its interest may forthwith proceed against the undersigned or either of them by court action or otherwise to enforce payment, even prior to making payment to the obligee which may hereafter be done by the COMPANY.

INTEREST IN CASE OF DELAY: - In the event of delay in payment of the said sum or sums by the undersigned they will pay interest at the rate of 12% per annum or same, which interest, if not paid, will be liquidated and accumulated to the capital quarterly, and shall earn the same interest as the capital; all this without prejudice to the COMPANY's right to demand judicially or extrajudicially the full payment of its claims.

INCONTESTABILITY OF PAYMENT MADE BY THE COMPANY: - Any payment or disbursement made by the COMPANY on account of the above-mentioned Bond, its renewals, extensions or substitutions, replacement or novation in the belief either that the COMPANY was obligated to make such payment or that said payment was necessary in order to avoid greater losses or obligations for which the COMPANY might be liable by virtue of the terms of

the above-mentioned Bond, its renewal, extensions or substitutions, shall be final and will not be disputed by the undersigned, who bind themselves to jointly and severally indemnify the COMPANY of any such payments, as stated in the preceding clauses:

WAIVER OF VENUE OF ACTION: - We hereby agree that any question which may arise between the COMPANY and the undersigned by reason of this document and which has to be submitted for decision to a court of justice shall be brought before the court of competent jurisdiction in Makati, Rizal, waiving for this purpose any other venue.

WAIVER: - The undersigned hereby waive all the rights[,] privileges and benefits that they have or may have under Articles 2077, 2078, 2079, 2080 and 2081, of the Civil Code of the Philippines.

The undersigned, by this instrument, grant a special power of attorney in favor of all or any of the other undersigned so that any of the undersigned may represent all the others in all transactions related to this Bond, its renewals, extensions, or any other agreements in connection with this Counter-Guaranty, without the necessity of the knowledge or consent of the others who hereby promise to accept as valid each and every act done or executed by any of the attorney's-in-fact by virtue of the special power of attorney.

OUR LIABILITY HEREUNDER: - It shall not be necessary for the COMPANY to bring suit against the principal upon his default or to exhaust the property of the principal, but the liability hereunder of the undersigned indemnitors shall be jointly and severally, a primary one, the same as that of the principal, and shall be exigible immediately upon the occurrence of such default.

CANCELLATION OF BOND BY THE COMPANY: - The COMPANY may at any time cancel the above-mentioned Bond, its renewals, extensions or substitutions, subject to any liability which might have accrued prior to the date of cancellation refunding the proportionate amount of the premium unearned on the date of cancellation.

RENEWALS, ALTERATIONS AND SUBSTITUTIONS: - The undersigned hereby empower and authorize the COMPANY to grant or consent to the granting of any extension, continuation, increase, modification, change, alteration and/or renewal of the original bond herein referred to, and to execute or consent to the execution of any substitution for said Bond with the same or different, conditions and parties, and the undersigned hereby hold themselves jointly and severally liable to the COMPANY for the original Bond herein above-mentioned or for any extension, continuation, increase, modification, change, alteration, renewal or substitution thereof without the necessary of any

new indemnity agreement being executed until the full amount including principal, interest, premiums, costs, and other expenses due to the COMPANY thereunder is fully paid up.

SEVERABILITY OF PROVISIONS: - It is hereby agreed that should any provision or provisions of this agreement be declared by competent public authority to be invalid or otherwise unenforceable, all remaining provisions herein contained shall remain in full force and effect.

NOTIFICATION: - The undersigned hereby accept due notice of that the COMPANY has accepted this guaranty, executed by the undersigned in favor of the COMPANY.^[3]

In sum, ISAC issued the subject bonds to guarantee compliance by petitioners with their undertaking with the BOC to re-export the imported vehicles within the given period and pay the taxes and/or duties due thereon. In turn, petitioners agreed, as surety, to indemnify ISAC for the liability the latter may incur on the said bonds.

Petitioner Autocorp Group failed to re-export the items guaranteed by the bonds and/or liquidate the entries or cancel the bonds, and pay the taxes and duties pertaining to the said items despite repeated demands made by the BOC, as well as by ISAC. By reason thereof, the BOC considered the two bonds, with a total face value of P1,034,649.00, forfeited.

Failing to secure from petitioners the payment of the face value of the two bonds, despite several demands sent to each of them as surety under the Indemnity Agreements, ISAC filed with the RTC on 24 October 1995 an action against petitioners to recover the sum of P1,034,649.00, plus 25% thereof or P258,662.25 as attorney's fees. ISAC impleaded the BOC "as a necessary party plaintiff in order that the reward of money or judgment shall be adjudged unto the said necessary plaintiff."^[4] The case was docketed as Civil Case No. 95-1584.

Petitioners filed a Motion to Dismiss on 11 December 1995 on the grounds that (1) the Complaint states no cause of action; and (2) the BOC is an improper party.

The RTC, in an Order^[5] dated 27 February 1996, denied petitioners' Motion to Dismiss. Petitioners thus filed their Answer to the Complaint, claiming that they sought permission from the BOC for an extension of time to re-export the items covered by the bonds; that the BOC has yet to issue an assessment for petitioners' alleged default; and that the claim of ISAC for payment is premature as the subject bonds are not yet due and demandable.

During the pre-trial conference, petitioners admitted the genuineness and due execution of Instrata Bonds No. 5770 and No. 7154, but specifically denied those of the corresponding Indemnity Agreements. The parties agreed to limit the issue to "whether or not these bonds are now due and demandable."

On 16 September 1998, the RTC rendered its Decision ordering petitioners to pay ISAC and/or the BOC the face value of the subject bonds in the total amount of P1,034,649.00, and to pay ISAC P258,662.25 as attorney's fees, thus:

WHEREFORE, judgment is hereby rendered in favor of the [herein private respondent ISAC] and as against the [herein petitioners] who are ordered to pay the [private respondent] Intra Strata Assurance Corporation and/or the Bureau of Customs the amount of P1,034,649.00 which is the equivalent amount of the subject bonds as well as to pay the plaintiff corporation the sum of P258,662.25 as and for attorney's fees.^[6]

Petitioners' Motion for Reconsideration was denied by the RTC in a Resolution dated 15 January 1999.^[7]

Petitioners appealed to the Court of Appeals. On 30 June 2004, the Court of Appeals rendered its Decision affirming the RTC Decision, only modifying the amount of the attorney's fees awarded:

WHEREFORE, the appealed 16 September 1998 Decision is MODIFIED to reduce the award of attorney's fees to One Hundred Three Thousand Four Hundred Sixty Four Pesos Ninety Centavos (P103,464.90). The rest is affirmed *in toto*. Costs against [herein petitioners].^[8]

In a Resolution dated 5 January 2005, the Court of Appeals refused to reconsider its Decision.

Petitioners thus filed the instant Petition for Review on *Certiorari*, assigning the following errors allegedly committed by the Court of Appeals:

I. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RENDERING JUDGMENT AGAINST PETITIONERS BASED ON A PREMATURE ACTION AND/OR RULING IN FAVOR OF RESPONDENTS WHO HAVE NO CAUSE OF ACTION AGAINST PETITIONERS.

II. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF BRANCH 150, REGIONAL TRIAL COURT OF MAKATI CITY BASED ON MISAPPREHENSION OF FACTS, UNSUPPORTED BY EVIDENCE ON RECORD CONTRARY TO LAW.

III. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT GIVING MERIT TO THE ISSUE RAISED BY PETITIONERS THAT THE BUREAU OF CUSTOMS IS IMPROPERLY IMPLEADED BY INTRA STRATA.

IV. THE HONORABLE COURT OF APPEALS GRAVELY ERRED [IN]

AFFIRMING THE PORTION OF THE DECISION HOLDING PETITIONER PETER Y. RODRIGUEZ AS JOINTLY LIABLE WHEN AMENDMENTS WERE INTRODUCED, WITHOUT HIS CONSENT AND APPROVAL.^[9]

The present Petition is without merit.

Absence of actual forfeiture of the subject bonds

Petitioners contend that their obligation to ISAC is not yet due and demandable. They cannot be made liable by ISAC in the absence of an actual forfeiture of the subject bonds by the BOC and/or an explicit pronouncement by the same bureau that ISAC is already liable on the said bonds. In this case, there is yet no actual forfeiture of the bonds, but merely a recommendation of forfeiture, for no writ of execution has been issued against such bonds.^[10] Hence, Civil Case No. 95-1584 was prematurely filed by ISAC. Petitioners further argue that:

Secondly, it bears emphasis that as borne by the records, not only is there no writ of forfeiture against Surety Bond No. 7154, *there is likewise no evidence adduced on record to prove that respondent Intra Strata has made legal demand against Surety Bond No. 5770* neither is there a showing that respondent BOC initiated a demand or issued notice for its forfeiture and/or confiscation.^[11]

The Court of Appeals, in its assailed Decision, already directly addressed petitioners' arguments by ruling that an actual forfeiture of the subject bonds is **not necessary** for petitioners to be liable thereon to ISAC as surety under the Indemnity Agreements.

According to the relevant provision of the Indemnity Agreements executed between petitioner and ISAC, which reads:

[W]here the obligation involves a liquidated amount for the payment of which [ISAC] has become legally liable under the terms of the obligation and its suretyship undertaking or by the demand of the [BOC] or otherwise and the latter has merely allowed the [ISAC's] aforesaid liability, irrespective of whether or not payment has actually been made by the [ISAC], the [ISAC] for the protection of its interest may forthwith proceed against [petitioners Autocorp Group and Rodriguez] or either of them by court action or otherwise to enforce payment, even prior to making payment to the [BOC] which may hereafter be done by [ISAC][,]^[12]

petitioners' obligation to indemnify ISAC became due and demandable the moment the bonds issued by ISAC became answerable for petitioners' non-compliance with its undertaking with the BOC. Stated differently, petitioners became liable to indemnify ISAC at the same time the bonds issued by ISAC were placed at the risk of forfeiture by the BOC

for non-compliance by petitioners with its undertaking.

The subject bonds, Instrata Bonds No. 5770 and No. 7154, became due and demandable upon the failure of petitioner Autocorp Group to comply with a condition set forth in its undertaking with the BOC, specifically to re-export the imported vehicles within the period of six months from their date of entry. Since it issued the subject bonds, ISAC then also became liable to the BOC. At this point, the Indemnity Agreements already give ISAC the right to proceed against petitioners *via* court action or otherwise.

The Indemnity Agreements, therefore, give ISAC the right to recover from petitioners the face value of the subject bonds plus attorney's fees at the time ISAC becomes liable on the said bonds to the BOC, regardless of whether the BOC had actually forfeited the bonds, demanded payment thereof and/or received such payment. It must be pointed out that the Indemnity Agreements explicitly provide that petitioners shall be liable to indemnify ISAC "whether or not payment has actually been made by the [ISAC]" and ISAC may proceed against petitioners by court action or otherwise "even prior to making payment to the [BOC] which may hereafter be done by [ISAC]."

Even when the BOC already admitted that it not only made a demand upon ISAC for the payment of the bond but even filed a complaint against ISAC for such payment,^[13] such *demand* and *complaint* are not necessary to hold petitioners liable to ISAC for the amount of such bonds. Petitioners' attempts to prove that there was no actual forfeiture of the subject bonds are completely irrelevant to the case at bar.

It is worthy to note that petitioners did not impugn the validity of the stipulation in the Indemnity Agreements allowing ISAC to proceed against petitioners the moment the subject bonds become due and demandable, even prior to actual forfeiture or payment thereof. Even if they did so, the Court would be constrained to uphold the validity of such a stipulation for it is but a slightly expanded contractual expression of Article 2071 of the Civil Code which provides, *inter alia*, that the guarantor may proceed against the principal debtor the moment the debt becomes due and demandable. Article 2071 of the Civil Code provides:

Art. 2071. The guarantor, even before having paid, may proceed against the principal debtor:

- (1) When he is sued for the payment;
- (2) In case of insolvency of the principal debtor;
- (3) When the debtor has bound himself to relieve him from the guaranty within a specified period, and this period has expired;
- (4) When the debt has become demandable, by reason of the expiration of the period for payment;**

(5) After the lapse of ten years, when the principal obligation has no fixed period for its maturity, unless it be of such nature that it cannot be extinguished except within a period longer than ten years;

(6) If there are reasonable grounds to fear that the principal debtor intends to abscond;

(7) If the principal debtor is in imminent danger of becoming insolvent.

In all these cases, the action of the guarantor is to obtain release from the guaranty, or to demand a security that shall protect him from any proceedings by the creditor and from the danger of insolvency of the debtor. (Emphases ours.)

Petitioners also invoke the alleged lack of demand on the part of ISAC on petitioners as regards Instrata Bond No. 5770 before it instituted Civil Case No. 95-1584. Even if proven true, such a fact does not carry much weight considering that demand, whether judicial or extrajudicial, is not required before an obligation becomes due and demandable. A demand is only necessary in order to put an obligor in a due and demandable obligation in delay,^[14] which in turn is for the purpose of making the obligor liable for interests or damages for the period of delay.^[15] Thus, unless stipulated otherwise, an extrajudicial demand is not required before a judicial demand, *i.e.*, filing a civil case for collection, can be resorted to.

Inclusion of the Bureau of Customs as a party to the case

ISAC included the BOC "as a necessary party plaintiff in order that the reward of money or judgment shall be adjudged unto the said necessary plaintiff."^[16]

Petitioners assail this inclusion of the BOC as a party in Civil Case No. 95-1584 on the ground that it was not properly represented by the Solicitor General. Petitioners also contend that the inclusion of the BOC as a party in Civil Case No. 95-1584 "is highly improper and should not be countenanced as the net result would be tantamount to collusion between Intra Strata and the Bureau of Customs which would deny and deprive petitioners their personal defenses against the BOC."^[17]

In its assailed Decision, the Court of Appeals did not find merit in petitioners' arguments on the matter, holding that when the BOC forfeited the subject bonds issued by ISAC, subrogation took place so that whatever right the BOC had against petitioners were eventually transferred to ISAC. As ISAC merely steps into the shoes of the BOC, whatever defenses petitioners may have against the BOC would still be available against ISAC.

The Court likewise cannot sustain petitioners' position.

The misjoinder of parties does not warrant the dismissal of the action. Section 11, Rule 3 of the Rules of Court explicitly states:

SEC. 11. *Misjoinder and non-joinder of parties.*--Neither misjoinder nor non-joinder of parties is ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately.

Consequently, the purported misjoinder of the BOC as a party cannot result in the dismissal of Civil Case No. 95-1584. If indeed the BOC was improperly impleaded as a party in Civil Case No. 95-1584, at most, it **may** be dropped by order of the court, on motion of any party or on its own initiative, at any stage of the action and on such terms as are just.

Should the BOC then be dropped as a party to Civil Case No. 95-1584?

ISAC alleged in its Complaint ^[18] that the BOC is being joined as a necessary party in Civil Case No. 95-1584.

A necessary party is defined in Section 8, Rule 3 of the Rules of Court as follows:

SEC. 8. *Necessary party.*--A necessary party is one who is not indispensable but who ought to be joined as a party if complete relief is to be accorded as to those already parties, or for a complete determination or settlement of the claim subject of the action.

The subject matter of Civil Case No. 95-1584 is the liability of Autocorp Group to the BOC, which ISAC is also bound to pay as the guarantor who issued the bonds therefor. Clearly, there would be no complete settlement of the subject matter of the case at bar - the liability of Autocorp Group to the BOC - should Autocorp Group be merely ordered to pay its obligations with the BOC to ISAC. BOC is, therefore, a necessary party in the case at bar, and should not be dropped as a party to the present case.

It can only be conceded that there was an irregularity in the manner the BOC was joined as a necessary party in Civil Case No. 95-1584. As the BOC, through the Solicitor General, was not the one who initiated Civil Case No. 95-1584, and neither was its consent obtained for the filing of the same, it may be considered an unwilling co-plaintiff of ISAC in said action. The proper way to implead the BOC as a necessary party to Civil Case No. 95-1584 should have been in accordance with Section 10, Rule 3 of the Rules of Court, *viz*:

SEC. 10. *Unwilling co-plaintiff.*-- If the consent of any party who should be joined as plaintiff can not be obtained, he may be made a defendant and the reason therefor shall be stated in the complaint.

Nonetheless, the irregularity in the inclusion of the BOC as a party to Civil Case No. 95-1584 would not in any way affect the disposition thereof. As the Court already found that

the BOC is a necessary party to Civil Case No. 95-1584, it would be a graver injustice to drop it as a party.

Petitioners' argument that the inclusion of the BOC as a party to this case would deprive them of their personal defenses against the BOC is utterly baseless.

First, as ruled by the Court of Appeals, petitioners' defenses against the BOC are completely available against ISAC, since the right of the latter to seek indemnity from petitioner depends on the right of the BOC to proceed against the bonds.

The Court, however, deems it essential to qualify that ISAC's right to seek indemnity from petitioners does not constitute subrogation under the Civil Code, considering that there has been no payment yet by ISAC to the BOC. There are indeed cases in the aforementioned Article 2071 of the Civil Code wherein the guarantor or surety, even before having paid, may proceed against the principal debtor, but in all these cases, Article 2071 of the Civil Code merely grants the guarantor or surety an action "to obtain release from the guaranty, or to demand a security that shall protect him from any proceedings by the creditor and from the danger of insolvency of the debtor." The benefit of subrogation, an extinctive subjective novation by a change of creditor, which "transfers to the person subrogated, the credit and all the rights thereto appertaining, either against the debtor or against third persons,"^[19] is granted by the Article 2067 of the Civil Code only to the "guarantor (or surety) who pays."^[20]

ISAC cannot be said to have stepped into the shoes of the BOC, because the BOC still retains said rights until it is paid. ISAC's right to file Civil Case No. 95-1584 is based on the express provision of the Indemnity Agreements making petitioners liable to ISAC at the very moment ISAC's bonds become due and demandable for the liability of Autocorp Group to the BOC, without need for actual payment by ISAC to the BOC. But it is still correct to say that all the defenses available to petitioners against the BOC can likewise be invoked against ISAC because the latter's contractual right to proceed against petitioners only arises when the Autocorp Group becomes liable to the BOC for non-compliance with its undertakings. Indeed, the arguments and evidence petitioners can present against the BOC to prove that Autocorp Group's liability to the BOC is not yet due and demandable would also establish that petitioners' liability to ISAC under the Indemnity Agreements has not yet arisen.

Second, making the BOC a necessary party to Civil Case No. 95-1584 actually allows petitioners to simultaneously invoke its defenses against both the BOC and ISAC. Instead of depriving petitioners of their personal defenses against the BOC, Civil Case No. 95-1584 actually gave them the opportunity to kill two birds with one stone: to disprove its liability to the BOC and, thus, negate its liability to ISAC.

Liability of petitioner Rodriguez

Petitioner Rodriguez posits that he is merely a guarantor, and that his liability arises only

when the person with whom he guarantees the credit, Autocorp Group in this case, fails to pay the obligation. Petitioner Rodriguez invokes Article 2079 of the Civil Code on Extinguishment of Guaranty, which states:

Art. 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.

Petitioner Rodriguez argues that there was an amendment as to the effectivity of the bonds, and this constitutes a modification of the agreement without his consent, thereby exonerating him from any liability.

We must take note at this point that petitioners have not presented any evidence of this alleged amendment as to the effectivity of the bonds.^[21] Be that as it may, even if there was indeed such an amendment, such would not cause the exoneration of petitioner Rodriguez from liability on the bonds.

The Court of Appeals, in its assailed Decision, held that the use of the term *guarantee* in a contract does not *ipso facto* mean that the contract is one of guaranty. It thus ruled that both petitioners assumed liability as a regular party and obligated themselves as original promissors, *i.e.*, sureties, as shown in the following provisions of the Indemnity Agreement:

INDEMNITY: - The undersigned [**Autocorp Group and Rodriguez**] agree at **all times to jointly and severally indemnify** the COMPANY [ISAC] and keep it indemnified and hold and save it harmless from and against any and all damages, losses, costs, stamps, taxes, penalties, charges and expenses of whatsoever kind and nature including counsel or attorney's fee which the COMPANY [ISAC] shall or may at any time sustain or incur in consequence of having become surety upon the bond herein above referred to x x x

x x x x

OUR LIABILITY HEREUNDER: - It shall not be necessary for the COMPANY [ISAC] to bring suit against the principal [Autocorp Group] upon his default or to exhaust the property of the principal [Autocorp Group], **but the liability hereunder of the undersigned indemnitors [Rodriguez] shall be jointly and severally, a primary one, the same as that of the principal [Autocorp Group], and shall be exigible immediately upon the occurrence of such default.** (Emphases supplied.)

The Court of Appeals concluded that since petitioner Rodriguez was a surety, Article 2079 of the Civil Code does not apply. The appellate court further noted that both petitioners authorized ISAC to consent to the granting of an extension of the subject bonds.

The Court of Appeals committed a slight error on this point. The provisions of the Civil Code on Guarantee, other than the benefit of excussion, are applicable and available to the surety.^[22] The Court finds no reason why the provisions of Article 2079 would not apply to a surety.

This, however, would not cause a reversal of the Decision of the Court of Appeals. The Court of Appeals was correct that even granting *arguendo* that there was a modification as to the effectivity of the bonds, petitioners would still not be absolved from liability since they had authorized ISAC to consent to the granting of any extension, modification, alteration and/or renewal of the subject bonds, as expressly set out in the Indemnity Agreements:

RENEWALS, ALTERATIONS AND SUBSTITUTIONS: - The undersigned [Autocorp Group and Rodriguez] hereby empower and authorize the COMPANY [ISAC] to grant or consent to the granting of any extension, continuation, increase, modification, change, alteration and/or renewal of the original bond herein referred to, and to execute or consent to the execution of any substitution for said Bond with the same or different, conditions and parties, and the undersigned [Autocorp Group and Rodriguez] hereby hold themselves jointly and severally liable to the COMPANY [ISAC] for the original Bond herein above-mentioned or for any extension, continuation, increase, modification, change, alteration, renewal or substitution thereof without the necessity of any new indemnity agreement being executed until the full amount including principal, interest, premiums, costs, and other expenses due to the COMPANY [ISAC] thereunder is fully paid up.^[23]
(Emphases supplied.)

The foregoing provision in the Indemnity Agreements clearly authorized ISAC to consent to the granting of any extension, modification, alteration and/or renewal of the subject bonds.

There is nothing illegal in such a provision. In *Philippine American General Insurance Co., Inc. v. Mutuc*,^[24] the Court held that an agreement whereby the sureties bound themselves to be liable in case of an extension or renewal of the bond, without the necessity of executing another indemnity agreement for the purpose and without the necessity of being notified of such extension or renewal, is valid; and that there is nothing in it that militates against the law, good customs, good morals, public order or public policy.

WHEREFORE, the instant Petition for Review on *Certiorari* is **DENIED**. The Decision of the Court of Appeals dated 30 June 2004 in CA-G.R. CV No. 62564 which affirmed with modification the Decision of the Regional Trial Court of Makati City, in Civil Case No. 95-1584 dated 16 September 1998 is **AFFIRMED in toto**. Costs against petitioners.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Rebecca De Guia-Salvador with Associate Justices Salvador J. Valdez, Jr. and Aurora Santiago-Lagman, concurring; *rollo*, pp. 36-45.

[2] *CA rollo*, pp. 31-34.

[3] Records, p. 9.

[4] *Id.* at 1.

[5] *Id.* at 23.

[6] *CA rollo*, p. 34.

[7] Records, p. 246.

[8] *Rollo*, p. 45.

[9] *Id.* at 142.

[10] Petitioners' Memorandum, *rollo*, pp. 143-144.

[11] *Id.* at 146.

[12] Records, p. 9.

[13] *Rollo*, p. 185.

[14]

Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation. However, the demand by the creditor shall not be necessary in order that delay may exist:

(1) When the obligation or the law expressly so declare; or

(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.

[15] Article 1170 of the Civil Code provides:

Art. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

[16] Records, p. 1.

[17] Petitioners' Memorandum, *rollo*, p. 148.

[18] Records, pp. 1-7.

[19] Civil Code, Article 1303 provides:

Art. 1303. Subrogation transfers to the persons subrogated the credit with all the rights thereto appertaining, either against the debtor or against third person, be they guarantors or possessors of mortgages, subject to stipulation in a conventional subrogation.

[20] Civil Code, Article 2067 provides::

Art. 2067. The guarantor who pays is subrogated by virtue thereof to all the rights which the creditor had against the debtor.

[21] *Id.* at 212.

[22] *Manila Surety and Fidelity Co., Inc. v. Batu Corporation and Company*, 101 Phil. 494, 501 (1957).

[23] Records, p. 9.

[24] 158 Phil. 699 (1974).

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