



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILS.
MARIA LOURDES P. A. SERENO
CHIEF JUSTICE

RECEIVED
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SECOND DIVISION

LIVING @ SENSE, INC.,

G.R. No. 193753

Petitioner,

- versus -

Present:

MALAYAN
COMPANY, INC.,

INSURANCE

Respondent.

CARPIO, J., Chairperson,
LEONARDO-DE CASTRO,*
BRION,
PEREZ, and
PERLAS-BERNABE, JJ.

Promulgated:

SEP 26 2012

X-----X

RESOLUTION

PERLAS-BERNABE, J.:

This Petition for Review on Certiorari assails, on pure question of law, the Orders dated April 8, 2010¹ and August 25, 2010² of the Regional Trial Court (RTC) of Parañaque City, Branch 257 dismissing, without prejudice, the complaint for specific performance and breach of contract

* Acting Member per Special Order No. 1308 dated September 21, 2012.

¹ Rollo, pp. 73-74.

² Id. at 82.

filed by petitioner Living @ Sense, Inc. (petitioner) for failure to implead Dou Mac, Inc. (DMI) as an indispensable party.

The Factual Antecedents

Records show that petitioner was the main contractor of the FOC Network Project of Globe Telecom in Mindanao. In connection with the project, petitioner entered into a Sub-Contract Agreement³ (Agreement) with DMI, under which the latter was tasked to undertake an underground open-trench work. Petitioner required DMI to give a bond, in the event that DMI fails to perform its obligations under the Agreement. Thus, DMI secured surety⁴ and performance⁵ bonds, both in the amount of ₱5,171,488.00, from respondent Malayan Insurance Company, Inc. (respondent) to answer: (1) for the unliquidated portion of the downpayment, and (2) for the loss and damage that petitioner may suffer, respectively, should DMI fail to perform its obligations under the Agreement. Under the bonds, respondent bound itself jointly and severally liable with DMI.⁶

During the course of excavation and restoration works, the Department of Public Works and Highways (DPWH) issued a work-stoppage order against DMI after finding the latter's work unsatisfactory. Notwithstanding the said order, however, DMI still failed to adopt corrective measures, prompting petitioner to terminate⁷ the Agreement and seek⁸ indemnification from respondent in the total amount of ₱1,040,895.34.

³ Id. at 29-34.

⁴ Id. at 27, MICO Bond No. 200802896.

⁵ Id. at 28, MICO Bond No. 200802895.

⁶ "Not exceeding the amount of Five Million One Hundred Seventy One Thousand Four Hundred Eighty Eight," id. at 27-28.

⁷ Id. at 38-39.

⁸ Id. at 40-41.

However, respondent effectively denied⁹ petitioner's claim on the ground that the liability of its principal, DMI, should first be ascertained before its own liability as a surety attaches. Hence, the instant complaint, premised on respondent's liability under the surety and performance bonds secured by DMI.

Seeking the dismissal¹⁰ of the complaint, respondent claimed that DMI is an indispensable party that should be impleaded and whose liability should first be determined before respondent can be held liable.

On the other hand, petitioner asserted¹¹ that respondent is a surety who is directly and primarily liable to indemnify petitioner, and that the bond is "callable on demand"¹² in the event DMI fails to perform its obligations under the Agreement.

The RTC's Ruling

In its April 8, 2010 Order,¹³ the RTC dismissed the complaint without prejudice, for failure to implead DMI as a party defendant. It ruled that before respondent could be held liable on the surety and performance bonds, it must first be established that DMI, with whom petitioner had originally contracted, had indeed violated the Agreement. DMI, therefore, is an indispensable party that must be impleaded in the instant suit.

⁹ Id. at 44-45.

¹⁰ Id. at 57-62.

¹¹ Id. at 64-71.

¹² Supra notes 4 and 5.

¹³ Supra note 1.

On August 25, 2010, the RTC denied¹⁴ petitioner's motion for reconsideration for failure to set the same for hearing as required under the rules.

The Issue Before The Court

The sole issue to be resolved by the Court is whether DMI is an indispensable party in this case.

The Court's Ruling

Petitioner maintains that the rule on solidary obligations permits it, as creditor, to proceed against any of the solidary debtors, citing Article 1216 of the Civil Code which provides:

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.

The petition is meritorious.

Records show that when DMI secured the surety and performance bonds from respondent in compliance with petitioner's requirement, respondent bound itself "jointly and severally" with DMI for the damages

¹⁴ Supra note 2.

and actual loss that petitioner may suffer should DMI fail to perform its obligations under the Agreement, as follows:

That we, DOU MAC INC. as Principal, and MALAYAN INSURANCE CO., INC., x xx are held firmly bound unto LIVING @ SENSE INC. in the sum of FIVE MILLION ONE HUNDRED SEVENTY ONE THOUSAND FOUR HUNDRED EIGHTY EIGHT AND 00/100 PESOS ONLY (PHP ***5,171,488.00), PHILIPPINE Currency, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, **jointly and severally**, firmly by these presents xxx¹⁵ (Emphasis Supplied)

The term “jointly and severally” expresses a solidary obligation¹⁶ granting petitioner, as creditor, the right to proceed against its debtors, *i.e.*, respondent *or* DMI.

The nature of the solidary obligation under the surety does not make one an indispensable party.¹⁷ An indispensable party is a party-in-interest without whom no final determination can be had of an action, and who shall be joined mandatorily either as plaintiffs or defendants. The presence of indispensable parties is necessary to vest the court with jurisdiction, thus, without their presence to a suit or proceeding, the judgment of a court cannot attain real finality. The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.¹⁸

In this case, DMI is *not an indispensable party* because petitioner can claim indemnity directly from respondent, having made itself jointly and

¹⁵ Supra notes 4 and 5.

¹⁶ *Inciong v. CA*, 327 Phil. 364 (1996).

¹⁷ *Republic v. Sandiganbayan*, 255 Phil. 71 (1989); citing *Operators, Inc. v. American Biscuit Company* 154 SCRA 738 (1987).

¹⁸ *Lotte Phil. Co., Inc. v. Dela Cruz*, 502 Phil. 816 (2005).


severally liable with DMI for the obligation under the bonds. Therefore, the failure to implead DMI is not a ground to dismiss the case, even if the same was without prejudice.

Moreover, even on the assumption that DMI was, indeed, an indispensable party, the RTC committed reversible error in dismissing the complaint. Failure to implead an indispensable party is *not* a ground for the dismissal of an action, as the remedy in such case is to implead the party claimed to be indispensable, considering that parties may be added by order of the court, on motion of the party or on its own initiative *at any stage of the action*.¹⁹

Accordingly, the Court finds that the RTC erred in holding that DMI is an indispensable party and, consequently, in dismissing the complaint filed by petitioner without prejudice.

WHEREFORE, the assailed April 8, 2010 and August 25, 2010 Orders of the Regional Trial Court (RTC) of Parañaque City, Branch 257 are hereby **SET ASIDE**. Petitioner's complaint is ordered **REINSTATED** and the case remanded to the RTC for further proceedings.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

¹⁹ *Vda. De Manguerra v. Risos*, G.R. No. 152643, August 28, 2008, 563 SCRA 499, 504 (emphasis supplied).

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson

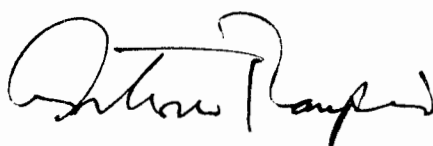

TERESITA J. LEONARDO-DE CASTRO
Associate Justice


ARTURO D. BRION
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice