

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
FIRST DIVISION**

**SUNDOWNER  
CORPORATION,**

**DEVELOPMENT**

*Petitioner,*

*-versus-*

**G.R. No. 82341  
December 6, 1989**

**HON. FRANKLIN M. DRILON, in his  
capacity as Secretary of the Department  
of Labor and Employment, NATIONAL  
UNION OF WORKERS IN HOTEL,  
RESTAURANT AND ALLIED  
INDUSTRIES, (NUWHRAIN), HOTEL  
MABUHAY CHAPTER, THE CHAPTER  
OFFICERS AND MEMBERS, HOTEL  
MABUHAY, INC. and MR. MARIANO  
PENANO, President of Hotel Mabuhay,  
Inc.,**

*Respondents.*

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**DECISION**

**GANCAYCO, J.:**

The principal issue in this case is whether or not the purchaser of the assets of an employer corporation can be considered a successor employer of the latter's employees.

Private respondent Hotel Mabuhay, Inc. (Mabuhay for short) leased the premises belonging to Santiago Syjuco, Inc. (Syjuco for short) located at 1430 A. Mabini St., Ermita, Manila. However, due to non-payment of rentals, a case for ejectment was filed by Syjuco against Mabuhay in the Metropolitan Trial Court of Manila. Mabuhay offered to amicably settle the case by surrendering the premises to Syjuco and to sell its assets and personal property to any interested party.

Syjuco offered the said premises for lease to petitioner. The negotiation culminated with the execution of the lease agreement on April 16, 1987 to commence on May 1, 1987 and to expire on April 30, 1992.<sup>[1]</sup> Mabuhay offered to sell its assets and personal properties in the premises to petitioner to which petitioner agreed. A deed of assignment of said assets and personal properties was executed by Mabuhay on April 29, 1987 in favor of petitioner.<sup>[2]</sup>

On same date Syjuco formally turned over the possession of the leased premises to petitioner who actually took possession and occupied the same on May 1, 1987.

On May 4, 1987, respondent National Union of Workers in Hotel, Restaurant and Allied Services (NUWHRAIN for short) picketed the leased premises, barricaded the entrance to the leased premises and denied petitioner's officers, employees and guests free access to and egress from said premises. Thus, petitioner wrote a letter-complaint to Syjuco.

A complaint for damages with preliminary injunction and/or temporary restraining order was filed by petitioner on May 7, 1987 with the Regional Trial Court of Manila docketed as Civil Case No. 87-40436. On the same day, the Executive Judge of said court issued a restraining order against respondent NUWHRAIN and its officers and members as prayed for in the petition. Nevertheless, NUWHRAIN maintained their strike on the subject premises but filed an answer to the complaint.

On May 14, 1987, an order was issued by public respondent Secretary of Labor assuming jurisdiction over the labor dispute pursuant to Article 263(g) of the Labor Code as amended and in the interim, requiring all striking employees to return to work and for respondent Mabuhay to accept all returning employees pending final determination of the issue of the absorption of the former employees of Mabuhay. The parties were also directed to submit their respective position papers within ten (10) days from receipt of the order.

On May 25, 1987, Mabuhay submitted its position paper alleging among others that it had sold all its assets and personal properties to petitioner and that there was no sale or transfer of its shares whatsoever and that Mabuhay completely ceased operation effective April 28, 1987 and surrendered the premises to petitioner so that there exists a legal and physical impossibility on its part to comply with the return to work order specifically on absorption.

On June 26, 1987, petitioner in order to commence its operation, signed a tri-partite agreement so the workers may lift their strike, by and among petitioner, respondents NUWHRAIN and Mabuhay whereby the latter paid to respondent NUWHRAIN the sum of P638,000.00 in addition to the first payment in the sum of P386,447.11, for which reason respondent NUWHRAIN agreed to lift the picket.<sup>[3]</sup>

Respondent NUWHRAIN on July 13, 1987 filed its position paper alleging connivance between Mabuhay and petitioner in selling the assets and closing the hotel to escape its obligations to the employees of Mabuhay and so it prays that petitioner accept the workforce of Mabuhay and pay backwages from April 15, 1986 to April 28, 1987, the day Mabuhay stopped operation.

On the other hand, petitioner filed a "Partial Motion for Reconsideration and Position Paper," alleging that it was denied due process; that there were serious errors in the findings of fact which would cause grave and irreparable damage to its interest; as well as on questions of law. On January 20, 1988, the public respondent issued an order requiring petitioner to absorb the members of the union and to pay backwages from the time it started operations up to the date of the order.<sup>[4]</sup>

Petitioner filed on January 27, 1988 a motion for reconsideration of the aforesaid order alleging that the theory of implied acceptance and assumption of statutory wrong does not apply in the instant case; that the prevailing doctrine that there is no law requiring bona fide purchasers of the assets of an on-going concern to absorb in its employ the employees of the latter should be applied in this case; that the order for absorption of the employees of Mabuhay as well as the payment of their backwages is contrary to law. Respondent NUWHRAIN also filed a motion for clarification of the aforesaid order.

On March 8, 1988, the public respondent denied said motion for reconsideration and motion for clarification for lack of merit.

Hence, this petition for review by certiorari with prayer for preliminary injunction and/or temporary restraining order filed by petitioner in this Court. Petitioner presents seven issues for resolution which all revolve about the singular issue of whether or not under the circumstances of this case the petitioner may be compelled to absorb the employees of respondent Mabuhay.

On March 23, 1988, this Court, without giving due course to the petition, required respondents to comment thereon within ten (10) days from notice and issued a temporary restraining order enjoining public respondent or his duly authorized representatives from executing and implementing the orders dated January 20, 1988 and March 8, 1988.

The petition is impressed with merit.

The rule is that unless expressly assumed, labor contracts such as employment contracts and collective bargaining agreements are not enforceable against a transferee of an enterprise, labor contracts being in personam, thus binding only between the parties.<sup>[5]</sup> A labor contract merely creates an action in personam and does not create any real right which should be respected by third parties. This conclusion draws its force from the right of an employer to select his employees and to decide when to engage them as protected under our

Constitution, and the same can only be restricted by law through the exercise of the police power.<sup>[6]</sup>

As a general rule, there is no law requiring a bona fide purchaser of assets of an on-going concern to absorb in its employ the employees of the latter.<sup>[7]</sup>

However, although the purchaser of the assets or enterprise is not legally bound to absorb in its employ the employees of the seller of such assets or enterprise, the parties are liable to the employees if the transaction between the parties is colored or clothed with bad faith.<sup>[8]</sup>

In the case at bar, contrary to the claim of the public respondent that the transaction between petitioner and Mabuhay was attended with bad faith, the court finds no cogent basis for such contention. Thus, the absorption of the employees of Mabuhay may not be imposed on petitioner.

It is undisputed that when Mabuhay surrendered the leased premises to Syjuco and asked Syjuco to offer same to other lessees it was Syjuco who found petitioner and persuaded petitioner to lease said premises. Mabuhay had nothing to do with the negotiation and consummation of the lease contract between petitioner and Syjuco.

It was only when Mabuhay offered to sell its assets and personal properties in the premises to petitioner that they came to deal with each other. It appears that petitioner agreed to purchase said assets of respondent Mabuhay to enable Mabuhay to pay its obligations to its striking employees and to Syjuco. Indeed, in the deed of assignment that was executed by Mabuhay in favor of petitioner on April 14, 1987 for and in consideration of P2,500,000.00, it is specifically provided therein that the same is “purely for and in consideration of the sale/transfer and assignment of the personal properties and assets of Hotel Mabuhay, Inc. listed” and “in no way involves any assumption or undertaking on the part of Second Party (petitioner) of any debts or liabilities whatsoever of Hotel Mabuhay, Inc.”<sup>[9]</sup> The liabilities alluded to in this agreement should be interpreted to mean not only any monetary liability of Mabuhay but any other liability or obligation arising from the operation of its business including its liability to its employees.

Moreover, in the tri-partite agreement that was entered into by petitioner with respondents NUWHRAIN and Mabuhay, it is clearly stipulated as follows:

“8. That, immediately after the execution of this Agreement, the FIRST PARTY shall give a list of its members to the THIRD PARTY that it desires to recommend for employment so that the latter can consider them for employment, with no commitment whatsoever on the part of the THIRD PARTY to hire them in the business that it will operate in the premises formerly occupied by the Hotel Mabuhay;”<sup>[10]</sup>

From the foregoing, it is clear that petitioner has no liability whatsoever to the employees of Mabuhay and its responsibility if at all, is only to consider them for re-employment in the operation of the business in the same premises. There can be no implied acceptance of the employees of Mabuhay by petitioner and acceptance of statutory wrong as it is expressly provided in the agreement that petitioner has no commitment or duty to absorb them.

Moreover, the court does not subscribe to the theory of public respondent that petitioner should have informed NUWHRAIN of its lease of the premises and its purchase of the assets and personal properties of Mabuhay therein so that said employees could have taken steps to protect their interest. The court finds no such duty on the part of petitioner and its failure to notify said employees cannot be an indicium of bad faith.

Much less is there any evidence that petitioner and respondent Mabuhay are joint tortfeasors as found by public respondent. While it is true that petitioner is using the leased property for the same type of business as that of respondent Mabuhay, there can be no continuity of the business operations of the predecessor employer by the successor employer as respondent Mabuhay had not retained control of the business. Petitioner is a corporation entirely different from Mabuhay. It has no controlling interest whatever in respondent Mabuhay. Petitioner and Mabuhay have no privity and are strangers to each other.

What is obvious is that the petitioner, by purchasing the assets of respondent Mabuhay in the hotel premises, enabled Mabuhay to pay its obligations to its employees. There being no employer-employee relationship between the petitioner and the Mabuhay employees, the petition must fail. Petitioner can not be compelled to absorb the employees of Mabuhay and to pay them backwages.

**WHEREFORE**, the petition is **GRANTED** and the questioned orders of public respondent Secretary of Labor and Employment dated January 20, 1988 and March 8, 1988 are reversed and set aside. The restraining order that this Court issued on March 20, 1988 is hereby made permanent. No pronouncement as to costs.

**SO ORDERED.**

**Narvasa, Cruz, Griño-Aquino and Medialdea, JJ., concur.**

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- [1] Annex B to petition.
  - [2] Annex C to petition.
  - [3] Annex K to petition.
  - [4] Annex N to petition.
  - [5] *Fernando vs. Angat Labor Union*, 5 SCRA 248, 251 (1962).
  - [6] *Visayan Transportation Co., Inc. vs. Java*, 93 Phil. 962, 967-968 (1953).
  - [7] *MDII Supervisors & Confidential Employees Association vs. Presidential Assistant on Legal Affairs*, 79 SCRA 40 (1977).
  - [8] *Majestic and Republic Theaters Employees' Association vs. CIR*, 4 SCRA 457, 460 (1962); *Cruz vs. PAFLU*, 42 SCRA 68, 77-78 (1971).
  - [9] Annex C to petition, page 27, Rollo.
  - [10] Annex K to petition; page 54, Rollo.