

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**ALBERTO S. SUNIO and ILOCOS
COMMERCIAL CORPORATION,
*Petitioners,***

-versus-

**G.R. No. L-57767
January 31, 1984**

**NATIONAL LABOR RELATIONS
COMMISSION, NEMESIO VALENTON,
SANTOS DEL ROSARIO, VICENTE
TAPUCOL, ANDRES SOLIS,
CRESCENCIO SOLLER, CECILIO
LABUNI, SOTERO L. TUMANG, in his
capacity as Asst. Regional Director for
Arbitration, Regional Office No. 1,
Minister of Labor & Employment, and
AMBROSIO B. SISON, in his capacity as
Acting Regional Sheriff, Regional Office
No. 1, Ministry of Labor & Employment,
*Respondents.***

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DECISION

MELENCIO-HERRERA, J.:

In this Special Civil Action for *Certiorari* and Prohibition with Preliminary Injunction, petitioners Alberto Sunio and Ilocos Commercial Corporation seek to set aside the Resolution of March 24, 1981 of the National Labor Relations Commission (NLRC), which affirmed the Decision of the Assistant Regional Director, dated November 5, 1979, in NLRC Case No. RB-1-1228-78, directing petitioners and Cabugao Ice Plant Incorporated to reinstate private respondents to their former position without loss of seniority and privileges and to pay them backwages from February 1, 1978 to the date of their actual reinstatement.

The controversy arose from the following antecedents:

On July 30, 1973, E.M. Ramos & Company, Inc. (EMRACO, for brevity) and Cabugao Ice Plant, Inc. (CIPI, for short), sister corporations, sold an ice plant to Rizal Development and Finance Corporation (RDFC), with a mortgage on the same properties constituted by the latter in favor of the former to secure the payment of the balance of the purchase price.^[1]

By virtue of that sale, EMRACO-CIPI terminated the services of all their employees including private respondents herein, and paid them their separation pay. RDFC hired its own employees and operated the plant.

On November 28, 1973, RDFC sold the ice plant to petitioner Ilocos Commercial Corporation (ICC), headed by its President and General Manager, petitioner Alberto S. Sunio. Petitioners also hired their own employees as private respondents were no longer in the plant. The sale was subject to the mortgage in favor of EMRACO-CIPI. Both RDFC-ICC failed to pay the balance of the purchase price, as a consequence of which, EMRACO-CIPI instituted extra-judicial

foreclosure proceedings. The properties were sold at public auction on August 30, 1974, the highest bidders being EMRACO-CIPI. On the same date, said companies obtained an ex-parte Writ of Possession from the Court of First Instance of Ilocos Sur in Civil Case No. 3026-V.

On the same date, August 30, 1974, EMRACO-CIPI sold the ice plant to Nilo Villanueva, subject to the right of redemption of RDFC. Nilo Villanueva then rehired private respondents.

On August 27, 1975, RDFC redeemed the ice plant. Because of the sale to Nilo Villanueva, EMRACO-CIPI were unable to turn over possession to RDFC and/or petitioners, prompting the latter to file a complaint for recover of possession against EMRACO-CIPI with the then Court of First Instance of Ilocos Sur (Civil Case No. 81-KC). Nilo Villanueva intervened.

Said Court ordered the issuance of a Writ of Preliminary Mandatory Injunction placing RDFC in possession of the ice plant. EMRACO-CIPI and Villanueva appealed to the Court of Appeals (CA-G.R. No. 05880-SP), which upheld the questioned Order. A Petition for *Certiorari* with this Court (L-46376) assailing that Resolution was denied for lack of merit on January 6, 1978.

On February 1, 1978, RDFC and petitioners finally obtained possession of the ice plant by virtue of the Mandatory Injunction previously issued, which ordered defendants “particularly Nilo C. Villanueva and his agents, representatives, or any person found in the premises to vacate and surrender the property in litigation.”^[2] Petitioners did not re-employ private respondents.

Private respondents filed complaints against petitioners for illegal dismissal with the Regional Office, Ministry of Labor & Employment, San Fernando, La Union.

On November 5, 1979, the Assistant Regional Director rendered a decision the decretal portion of which reads:

“IN VIEW OF THE FOREGOING CONSIDERATIONS, respondents Cabugao Ice Plant, Inc., Ilocos Commercial

Corporation and/or Alberto Sunio, are hereby directed to reinstate the complaints to their former positions without loss of seniority privileges and to pay their backwages from February 1, 1978 to the date when they are actually reinstated.”

Petitioners appealed to the NLRC, which affirmed the Regional Director’s decision and dismissed the appeal for lack of merit on March 24, 1981 reasoning that when RDFC took possession of the property and private respondents were terminated in 1973, the latter already had a vested right to their security of tenure, and when they were rehired, those rights continued.^[3]

Petitioners are now before us assailing the Asst. Regional Director’s Decision, dated November 5, 1979, the Resolution of the NLRC, Second Division, dated March 24, 1981, as well as the Writ of Execution issued pursuant thereto dated July 14, 1981, for P156,720.80 representing backwages. They raise as lone issue:

“That respondent National Labor Relations Commission and/or Asst. Regional Director Sotero Tumang acted in excess of jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction in rendering the decision and the resolution in NLRC Case No. RB-1228-78, and in ordering the execution of said decision.”

We issued a Temporary Restraining Order to maintain the status quo, resolved to give due course to the Petition, and required the parties to submit their respective Briefs. Only petitioners have complied.

Did public respondents act with grave abuse of discretion amounting to lack of jurisdiction in ordering the reinstatement of private respondents and the payment of their backwages?

Petitioners deny any employer-employee relationship with private respondents arguing that no privity of contract exists between them, the latter being the employees of Nilo Villanueva who re-hired them when he took over the operation of the ice plant from CIPI; that private respondents should go after Nilo Villanueva for whatever rights they may be entitled to, or the CIPI which is still existing; that no succession of rights and obligations took place between Villanueva

and petitioners as the transfer of possession was a consequence of the exercise of the right of redemption; that the amount of backwages was determined without petitioners being given a chance to be heard; and that granting that respondents are entitled to the reliefs adjudged, such award cannot be enforced against petitioner Sunio, who was impleaded in the complaint as the General Manager of ICC.

Public respondent, in its Comment, countered that the sale of a business of a going concern does not ipso facto terminate employer-employee relations when the successor-employer continues the business operation of the predecessor-employer in an essentially unchanged manner. Private respondents argue that the change of management or ownership of a business entity is not one of just causes for the termination of services of employees under Article 283 of the Labor Code, as amended. Both respondents additionally claim that petitioner Sunio, as the General Manager of ICC and owner of one half (1/2) of its interest, is personally liable for his malicious act of illegally dismissing private respondents, for no ground exists to justify their termination.

We sustain petitioners.

It is true that the sale of a business of a going concern does not ipso facto terminate the employer-employee relations insofar as the successor-employer is concerned, and that change of ownership or management of an establishment or company is not one of the just causes provided by law for termination of employment. The situation here, however, was not one of simple change of ownership. Of note is the fact that when, on July 30, 1973, EMRACO-CIPI sold the plant to RDFC, CIPI had terminated the services of its employees, including herein private respondents, giving them their separation pay which they had accepted. When RDFC took over ownership and management, therefore, it hired its own employees, not the private respondents, who were no longer there. RDFC subsequently sold the property to petitioners on November 28, 1973. But by reason of their failure to pay the balance of the purchase price, EMRACO-CIPI foreclosed on the mortgage over the ice plant; the property was sold at public auction to EMRACO-CIPI as the highest bidders, and they eventually re-possessed the plant on August 30, 1974. During all the period that RDFC and petitioners were operating the plant from July

30, 1973 to August 30, 1974, they had their own employees. CIPI-EMRACO then sold the plant, also on August 30, 1974, to Nilo Villanueva, subject to RDFC's right of redemption. Nilo Villanueva then rehired private respondents as employees of the plant, also in 1974.

In 1975, RDFC redeemed the property and demanded possession but EMRACO-CIPI and Nilo Villanueva resisted so that petitioners were compelled to sue for recovery of possession, obtaining it, however, only in 1978.

Under those circumstances, it cannot be justifiably said that the plant together with its staff and personnel moved from one ownership to another. No succession of employment rights and obligations can be said to have taken place between EMRACO-CIPI-Nilo Villanueva, on the one hand, and petitioners on the other. Petitioners eventually acquired possession by virtue of the exercise of their right of redemption and of a Mandatory Injunction in their favor which ordered Nilo Villanueva and "any person found in the premises" to vacate. What is more, when EMRACO-CIPI sold the ice plant to RDFC in 1973, private respondents' employment was terminated by EMRACO-CIPI and they were given their separation pay, which they accepted. During the thirteen months, therefore, that RDFC and petitioners were in possession and operating the plant up to August, 1974, they hired their own employees, not the private respondents. In fact, it may even be said that private respondents had slept on their rights when they failed to contest such termination at the time of sale, if they believed they had rights to protect. Further, Nilo Villanueva rehired private respondents in August, 1974, subject to a resolatory condition. That condition having arisen, the rights of private respondents who claim under him must be deemed to have also ceased.

Private respondents can neither successfully invoke security of tenure in their favor. Their tenure should not be reckoned from 1967 because they were already terminated in 1973. Private respondents were only rehired in 1974 by Nilo Villanueva. Petitioners took over by judicial process in 1978 so that private respondents had actually only four years of rehired employment with Nilo Villanueva, during all of which period, petitioners fought hard against Nilo Villanueva to recover

possession of the plant. Insofar as petitioners are concerned, therefore, there was no tenurial security to speak of that would entitle private respondents to reinstatement and backwages.

We come now to the personal liability of petitioner, Sunio, who was made jointly and severally responsible with petitioner company and CIPI for the payment of the backwages of private respondents. This is reversible error. The Assistant Regional Director's Decision failed to disclose the reason why he was made personally liable. Respondents, however, alleged as grounds thereof, his being the owner of one-half (1/2) interest of said corporation, and his alleged arbitrary dismissal of private respondents.

Petitioner Sunio was impleaded in the Complaint in his capacity as General Manager of petitioner corporation. There appears to be no evidence on record that he acted maliciously or in bad faith in terminating the services of private respondents. His act, therefore, was within the scope of his authority and was a corporate act.

It is basic that a corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related.^[4] Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality.^[5] Petitioner Sunio, therefore, should not have been made personally answerable for the payment of private respondents' back salaries.

WHEREFORE, the assailed Decision and Resolution, dated November 5, 1979 and March 24, 1981, respectively, and the consequent Writ of Execution are hereby **SET ASIDE** and the Temporary Restraining Order heretofore issued by this Court hereby made permanent. Public respondents are hereby ordered to return to petitioners the latter's levied properties in their possession.

No costs.

SO ORDERED.

Teehankee, Plana, Relova and Gutierrez, Jr., *JJ.*, concur.

[1] Annexes “A” & “B”, pp. 24-29 & 30-34, Rollo.

[2] Annex “E”, Petition, pp. 41-42, *ibid.*

[3] Resolution, p. 3.

[4] *Yutivo Sons Hardware Co. vs. Court of Tax Appeals*, 1 SCRA 160 (1961).

[5] *Liddel & Co. vs. Collector of Internal Revenue*, 2 SCRA 632 (1961).

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