**SUPREME COURT**
**THIRD DIVISION**

**BENJAMIN YU,**
***Petitioner*,**

***-versus-***

**G.R. No. 97212**
**June 30, 1993**

**NATIONAL LABOR RELATIONS COMMISSION and JADE MOUNTAIN PRODUCTS COMPANY LIMITED, WILLY CO, RHODORA D. BENDAL, LEA BENDAL, CHIU SHIAN JENG and CHEN HO-FU,**
***Respondents*.**
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**D E C I S I O N**

**FELICIANO, *J.*:**

Petitioner Benjamin Yu was formerly the Assistant General Manager of the marble quarrying and export business operated by a registered partnership with the firm name of "Jade Mountain Products Company Limited" ("Jade Mountain"). The partnership was originally organized on 28 June 1984 with Lea Bendal and Rhodora Bendal as general partners and Chiu Shian Jeng, Chen Ho-Fu and Yu Chang, all citizens of the Republic of China (Taiwan), as limited partners. The partnership business consisted of exploiting a marble deposit found

on land owned by the Sps. Ricardo and Guillerma Cruz, situated in Bulacan Province, under a Memorandum Agreement dated 26 June 1984 with the Cruz spouses.[1] The partnership had its main office in Makati, Metropolitan Manila.

Benjamin Yu was hired by virtue of a Partnership Resolution dated 14 March 1985, as Assistant General Manager with a monthly salary of P4,000.00. According to petitioner Yu, however, he actually received only half of his stipulated monthly salary, since he had accepted the promise of the partners that the balance would be paid when the firm shall have secured additional operating funds from abroad. Benjamin Yu actually managed the operations and finances of the business; he had overall supervision of the workers at the marble quarry in Bulacan and took charge of the preparation of papers relating to the exportation of the firm's products.

Sometime in 1988, without the knowledge of Benjamin Yu, the general partners Lea Bendal and Rhodora Bendal sold and transferred their interests in the partnership to private respondent Willy Co and to one Emmanuel Zapanta. Mr. Yu Chang, a limited partner, also sold and transferred his interest in the partnership to Willy Co. Between Mr. Emmanuel Zapanta and himself, private respondent Willy Co acquired the great bulk of the partnership interest. The partnership now constituted solely by Willy Co and Emmanuel Zapanta continued to use the old firm name of Jade Mountain, though they moved the firm's main office from Makati to Mandaluyong, Metropolitan Manila. A Supplement to the Memorandum Agreement relating to the operation of the marble quarry was entered into with the Cruz spouses in February of 1988.[2] The actual operations of the business enterprise continued as before. All the employees of the partnership continued working in the business, all, save petitioner Benjamin Yu as it turned out.

On 16 November 1987, having learned of the transfer of the firm's main office from Makati to Mandaluyong, petitioner Benjamin Yu reported to the Mandaluyong office for work and there met private respondent Willy Co for the first time. Petitioner was informed by Willy Co that the latter had bought the business from the original partners and that it was for him to decide whether or not he was responsible for the obligations of the old partnership, including

petitioner's unpaid salaries. Petitioner was in fact not allowed to work anymore in the Jade Mountain business enterprise. His unpaid salaries remained unpaid.[3]

On 21 December 1988, Benjamin Yu filed a complaint for illegal dismissal and recovery of unpaid salaries accruing from November 1984 to October 1988, moral and exemplary damages and attorney's fees, against Jade Mountain, Mr. Willy Co and the other private respondents. The partnership and Willy Co denied petitioner's charges, contending in the main that Benjamin Yu was never hired as an employee by the present or new partnership.[4]

In due time, Labor Arbiter Nieves Vivar-De Castro rendered a decision holding that petitioner had been illegally dismissed. The Labor Arbiter decreed his reinstatement and awarded him his claim for unpaid salaries, backwages and attorney's fees.[5]

On appeal, the National Labor Relations Commission ("NLRC") reversed the decision of the Labor Arbiter and dismissed petitioner's complaint in a Resolution dated 29 November 1990. The NLRC held that a new partnership consisting of Mr. Willy Co and Mr. Emmanuel Zapanta had bought the Jade Mountain business, that the new partnership had not retained petitioner Yu in his original position as Assistant General Manager, and that there was no law requiring the new partnership to absorb the employees of the old partnership. Benjamin Yu, therefore, had not been illegally dismissed by the new partnership which had simply declined to retain him in his former managerial position or any other position. Finally, the NLRC held that Benjamin Yu's claim for unpaid wages should be asserted against the original members of the preceding partnership, but these though impleaded had, apparently, not been served with summons in the proceedings before the Labor Arbiter.[6]

Petitioner Benjamin Yu is now before the Court on a Petition for *Certiorari*, asking us to set aside and annul the Resolution of the NLRC as a product of grave abuse of discretion amounting to lack or excess of jurisdiction.

The basic contention of petitioner is that the NLRC has overlooked the principle that a partnership has a juridical personality separate

and distinct from that of each of its members. Such independent legal personality subsists, petitioner claims, notwithstanding changes in the identities of the partners. Consequently, the employment contract between Benjamin Yu and the partnership and the partnership Jade Mountain could not have been affected by changes in the latter's membership.[7]

Two (2) main issues are thus posed for our consideration in the case at bar: (1) whether the partnership which had hired petitioner Yu as Assistant General Manager had been extinguished and replaced by a new partnership composed of Willy Co and Emmanuel Zapanta; and (2) if indeed a new partnership had come into existence, whether petitioner Yu could nonetheless assert his rights under his employment contract as against the new partnership.

In respect of the first issue, we agree with the result reached by the NLRC, that is, that the legal effect of the changes in the membership of the partnership was the dissolution of the old partnership which had hired petitioner in 1984 and the emergence of a new firm composed of Willy Co and Emmanuel Zapanta in 1987.

The applicable law in this connection — of which the NLRC seemed quite unaware — is found in the Civil Code provisions relating to partnerships. Article 1828 of the Civil Code provides as follows:

> "Art. 1828. The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business." (Emphasis supplied)

Article 1830 of the same Code must also be noted:

> "Art. 1830. Dissolution is caused:
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> (1) without violation of the agreement between the partners;
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> x x x

(b) by the express will of any partner, who must act in good faith, when no definite term of particular undertaking is specified;

x x x

(2) in contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this article, by the express will of any partner at any time;

x x x
(Emphasis supplied)

In the case at bar, just about all of the partners had sold their partnership interests (amounting to 82% of the total partnership interest) to Mr. Willy Co and Emmanuel Zapanta. The record does not show what happened to the remaining 18% of the original partnership interest. The acquisition of 82% of the partnership interest by new partners, coupled with the retirement or withdrawal of the partners who had originally owned such 82% interest, was enough to constitute a new partnership.

The occurrence of events which precipitate the legal consequence of dissolution of a partnership do not, however, automatically result in the termination of the legal personality of the old partnership. Article 1829 of the Civil Code states that:

> "On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed."

In the ordinary course of events, the legal personality of the expiring partnership persists for the limited purpose of winding up and closing of the affairs of the partnership. In the case at bar, it is important to underscore the fact that the business of the old partnership was simply continued by the new partners, without the old partnership undergoing the procedures relating to dissolution and winding up of its business affairs. In other words, the new partnership simply took over the business enterprise owned by the preceding partnership, and

continued using the old name of Jade Mountain Products Company Limited, without winding up the business affairs of the old partnership, paying off its debts, liquidating and distributing its net assets, and then re-assembling the said assets or most of them and opening a new business enterprise. There were, no doubt, powerful tax considerations which underlay such an informal approach to business on the part of the retiring and the incoming partners. It is not, however, necessary to inquire into such matters.

What is important for present purposes is that, under the above described situation, not only the retiring partners (Rhodora Bendal, et al.) but also the new partnership itself which continued the business of the old, dissolved, one, are liable for the debts of the preceding partnership. In Singson, et al. vs. Isabela Saw Mill, et al,[8] the Court held that under facts very similar to those in the case at bar, a withdrawing partner remains liable to a third party creditor of the old partnership.[9] The liability of the new partnership, upon the other hand, in the set of circumstances obtaining in the case at bar, is established in Article 1840 of the Civil Code which reads as follows:

> "Art. 1840. In the following cases creditors of the dissolved partnership are also creditors of the person or partnership continuing the business:
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> (1) When any new partner is admitted into an existing partnership, or when any partner retires and assigns (or the representative of the deceased partner assigns) his rights in partnership property to two or more of the partners, or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership affairs;
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> (2) When all but one partner retire and assign (or the representative of a deceased partner assigns) their rights in partnership property to the remaining partner, who continues the business without liquidation of partnership affairs, either alone or with others;

(3) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in Nos. 1 and 2 of this article, with the consent of the retired partners or the representative of the deceased partner, but without any assignment of his right in partnership property;

(4) When all the partners or their representative assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership;

(5) When any partner wrongfully causes a dissolution and remaining partners continue the business under the provisions of article 1837, second paragraph, No. 2, either alone or with others, and without liquidation of the partnership affairs;

(6) When a partner is expelled and the remaining partners continue the business either alone or with others without liquidation of the partnership affairs;

The liability of a third person becoming a partner in the partnership continuing the business, under this article, to the creditors of the dissolved partnership shall be satisfied out of the partnership property only, unless there is a stipulation to the contrary.

When the business of a partnership after dissolution is continued under any conditions set forth in this article the creditors of the retiring or deceased partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business on account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for such interest or for his right in partnership property.

> Nothing in this article shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.
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> x x x
> (Emphasis supplied)

Under Article 1840 above, creditors of the old Jade Mountain are also creditors of the new Jade Mountain which continued the business of the old one without liquidation of the partnership affairs. Indeed, a creditor of the old Jade Mountain, like petitioner Benjamin Yu in respect of his claim for unpaid wages, is entitled to priority *vis-a-vis* any claim of any retired or previous partner insofar as such retired partner's interest in the dissolved partnership is concerned. It is not necessary for the Court to determine under which one or more of the above six (6) paragraphs, the case at bar would fall, if only because the facts on record are not detailed with sufficient precision to permit such determination. It is, however, clear to the Court that under Article 1840 above, Benjamin Yu is entitled to enforce his claim for unpaid salaries, as well as other claims relating to his employment with the previous partnership, against the new Jade Mountain.

It is at the same time also evident to the Court that the new partnership was entitled to appoint and hire a new general or assistant general manager to run the affairs of the business enterprise taken over. An assistant general manager belongs to the most senior ranks of management and a new partnership is entitled to appoint a top manager of its own choice and confidence. The non-retention of Benjamin Yu as Assistant General Manager did not therefore constitute unlawful termination, or termination without just or authorized cause. We think that the precise authorized cause for termination in the case at bar was redundancy.[10] The new partnership had its own new General Manager, apparently Mr. Willy Co, the principal new owner himself, who personally ran the business of Jade Mountain. Benjamin Yu's old position as Assistant General Manager thus became superfluous or redundant.[11] It follows that petitioner Benjamin Yu is entitled to separation pay at the rate of one month's pay for each year of service that he had rendered to the old partnership, a fraction of at least six (6) months being considered as a whole year.

While the new Jade Mountain was entitled to decline to retain petitioner Benjamin Yu in its employ, we consider that Benjamin Yu was very shabbily treated by the new partnership. The old partnership certainly benefitted from the services of Benjamin Yu who, as noted, previously ran the whole marble quarrying, processing and exporting enterprise. His work constituted value-added to the business itself and therefore, the new partnership similarly benefitted from the labors of Benjamin Yu. It is worthy of note that the new partnership did not try to suggest that there was any cause consisting of some blameworthy act or omission on the part of Mr. Yu which compelled the new partnership to terminate his services. Nonetheless, the new Jade Mountain did not notify him of the change in ownership of the business, the relocation of the main office of Jade Mountain from Makati to Mandaluyong and the assumption by Mr. Willy Co of control of operations. The treatment (including the refusal to honor his claim for unpaid wages) accorded to Assistant General Manager Benjamin Yu was so summary and cavalier as to amount to arbitrary, bad faith treatment, for which the new Jade Mountain may legitimately be required to respond by paying moral damages. This Court, exercising its discretion and in view of all the circumstances of this case, believes that an indemnity for moral damages in the amount of P20,000.00 is proper and reasonable.

In addition, we consider that petitioner Benjamin Yu is entitled to interest at the legal rate of six percent (6%) per annum on the amount of unpaid wages, and of his separation pay, computed from the date of promulgation of the award of the Labor Arbiter. Finally, because the new Jade Mountain compelled Benjamin Yu to resort to litigation to protect his rights in the premises, he is entitled to attorney's fees in the amount of ten percent (10%) of the total amount due from private respondent Jade Mountain.

**WHEREFORE**, for all the foregoing, the Petition for *Certiorari* is **GRANTED DUE COURSE**, the Comment filed by private respondents is treated as their Answer to the Petition for *Certiorari*, and the Decision of the NLRC dated 29 November 1990 is hereby **NULLIFIED** and **SET ASIDE**. A new Decision is hereby **ENTERED** requiring private respondent Jade Mountain Products Company Limited to pay to petitioner Benjamin Yu the following amounts:

(a) for unpaid wages which, as found by the Labor Arbiter, shall be computed at the rate of P2,000.00 per month multiplied by thirty-six (36) months (November 1984 to October 1987) in the total amount of P72,000.00;

(b) separation pay computed at the rate of P4,000.00 monthly pay multiplied by three (3) years of service or a total of P12,000.00;

(c) indemnity for moral damages in the amount of P20,000.00;

(d) six percent (6%) per annum legal interest computed on items (a) and (b) above, commencing on 26 December 1989 and until fully paid; and

(e) ten percent (10%) attorney's fees on the total amount due from private respondent Jade Mountain.

Costs against private respondents.

**SO ORDERED.**

**Bidin, Davide, Jr., Romero and Melo, *JJ.*, concur.**

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[1] Rollo, pp. 11, 28, 31, 35 and 43.
[2] Id., pp. 31, 43 and 68.
[3] Id., pp. 36 and 44.
[4] Id., pp. 40-41.
[5] Id., pp. 36-38.
[6] Id., pp. 45-46.
[7] Id., pp. 9-10.
[8] 88 SCRA 623 (1979).
[9] 88 SCRA 642-643.
[10] "Art. 283. Closure of establishment and reduction of personnel. — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this title, by serving written notice on the workers and the

Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses or in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year. (This provision is identical with that existing in 1987, except that the provision was numerically designated in 1987 as 'Article 284')," Labor Code.

[11] See, in this connection, Wiltshire File Co., Inc. vs. National Labor Relations Commission, et al., 193 SCRA 665 (1991).