

UP-TO-DATE SHIRT FACTORY, PLAINTIFF AND APPELLANT, VS. SOCIAL SECURITY SYSTEM, DEFENDANT AND APPELLEE.

G. R. No. L-16773. March 30, 1965

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

This is an appeal from a resolution of the Social Security Commission. Permitted by the Social Security Act,[[1]] it was addressed to the Court of Appeals. However, having found no factual issues, said Court certified the record to this Supreme Court.

The papers disclose that on January 22, 1958, the Administrator of the Social Security System notified the Up-To-Date Shirt Factory that it was compulsorily covered by the System, effective September 1957, and should accomplish certain blank forms in accordance with the proper instructions. The factory objected to the coverage and did not want to pay contributions-alleging that it had not been in operation for at least two years before September 1957.

The statute applicable to the case is section 9 of Republic Act 1161, as amended, which reads as follows:

"Compulsory coverage.—Coverage in the System shall lie compulsory x x x. Provided That the Commission may not compel any employer to become a member of the System unless he shall have been in operation for at least two years x x x."

The controversy was submitted in due course, to the Social Security Commission wherein both parties agreed to certain facts, the most salient of which were that,

Up-To-Date Shirt Factory began its business in April 1947, after having registered in the Bureau of Commerce,[[2]] under the sole ownership (and management) of Kee Boc; that up to the time of submission, it is (and has been) engaged in the same nature of business and used the same business name with the same Kee Boc in charge of operation and management; that on June 17, 1958, the Up-to-Date Shirt Factory was first registered as a partnership between Kee Boc and another Chinaman.

The Commission declared that the Factory was covered. Hence this appeal.

The Factory's position rested on the assumption that as partnership operating it was formed only in April 1957, it could not be legally held to have been in operation for two years before September 1957.

The Social Security Commission, for the reasons explained in its Resolution, now under review (pages 40-44, Record on Appeal), refused to believe that the partnership had been actually formed in April 1957. It declared that the partnership was formed only in June 1958, i. e. after the coverage and liability had accrued. It pointed out that the articles had been signed only in June 6, 1958, and registered ten days later with the Securities and Exchange Commission.

We agree with those reasons[[3]] ; but we do not repeat them here, because even supposing that the partnership

agreement actually took place in April 1957, the situation would be: whereas the business was operated from 1947 to April 1957 by Kee Boc, it continued to be operated under one business name, and by the same Kee Boc "for the partnership", up to the submission of the controversy. As the Commission says, "the transformation of petitioner (Up-To-Date Shirt Factory) from a single proprietorship to a partnership was a painless process. The name of the establishment was not changed; the nature of the business remains the same; the assets and liabilities as well as the employees of the old firm were carried over to the new establishment. The only changes were in the form of organization and the assumption of a new personality. There was not even attempt to dissolve the former entity and to transfer its assets and liabilities to Petitioner by positive act. All that was done was for petitioner (partnership) to enter into the management of the business into place of its predecessor."

In the circumstances, our opinion and views in *Laguna Transportation Co. Inc. vs. Social Security System*, L-14606, April 28, 1960, must be applied. There we held that, for the purpose of computing the statutory two-year period (business operation), the conversion of a partnership into a corporation does not dissolve the continuity of operation, where the evidence shows no change of the business, except in the form of organization. In that case, the transportation company argued that the years it had been functioning as a partnership should not be tied to the years it operated as a corporation. That contention we rejected, explaining through Mr. Justice Barrera that:

"To adopt petitioner's argument would defeat, rather than promote, the ends for which the Social Security Act was enacted. An employer could easily circumvent the statute by simply changing his form of organization every other year and then claim exemption from contribution to the System as required, on the theory that, as a new entity, it has not been in operation for a period of at least 2 years. The door to fraudulent circumvention of the statute would, thereby, be opened."

For these reasons, we conclude that the Up-To-Date Shirt Factory has been in operation for at least two years prior to September 1, 1957.

Accordingly, the resolution of the Social Security Commission must be, and is hereby affirmed, with costs.

Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala, Makalintal, Bengzon J.P. and Zaldivar, JJ., concur.

[1]Sec. 5, Republic Act 1161, as amended.

[2]Under Act 3883—Business Names Law.

[3]Moreover, if Kee Boc had a partner in April 1957, he violated the Business Names Laws. Act 3883 as amended by Act 4147.

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