

ABUNDIO BARAYOGA AND BISUDECO-PHILSUCOR CORFARM WORKERS UNION (PACIWU CHAP-TPC), PETITIONERS, VS. ASSET PRIVATIZATION TRUST, RESPONDENT.

G.R. NO. 160073. October 24, 2005

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Responsibility for the liabilities of a mortgagor towards its employees cannot be transferred via an auction sale to a purchaser who is also the mortgagee-creditor of the foreclosed assets and chattels. Clearly, the mortgagee-creditor has no employer-employee relations with the mortgagor's workers. The mortgage constitutes a lien on the determinate properties of the employer-debtor, because it is a specially preferred credit to which the worker's monetary claims is deemed subordinate.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, assailing the January 30, 2003 Decision[2] and the August 27, 2003 Resolution[3] of the Court of Appeals (CA), in CA-GR SP No. 58813. The disposition or fallo of the questioned Decision reads as follows:

"IN VIEW OF ALL THE FOREGOING, the instant petition is GRANTED and the assailed NLRC Decision dated February 18, 2000 is hereby RECALLED and SET ASIDE insofar as herein petitioner APT is concerned. No cost."[4]

The reversed Decision[5] of the National Labor Relations Commission (NLRC) disposed as follows:

"WHEREFORE, premises considered, the decision appealed from is AFFIRMED with modifications as follows:

"1. Complainants are awarded their monetary claims for underpayment of salaries and payment of allowances per their computation on pp. 97-99 and 142-144 of the records;

"2. Complainants are declared to have been illegally dismissed and should be paid their backwages from 01 May 1991 to 30 October 1992."[6]

The challenged August 27, 2003 Resolution denied petitioners' Motion for Reconsideration.

The Facts

The CA summarized the antecedents in this portion of its Decision, which we quote:

"Bisudeco-Philsucor Corfarm Workers Union is composed of workers of Bicolandia Sugar Development Corporation (BISUDECO), a sugar plantation mill located in Himaa, Pili, Camarines Sur.

"On December 8, 1986, [Respondent] Asset Privatization Trust (APT), a public trust was created under Proclamation No. 50, as amended, mandated to take title to and possession of, conserve, provisionally manage and dispose of non-performing assets of the Philippine government identified for privatization or disposition.

"Pursuant to Section 23 of Proclamation No. 50, former President Corazon Aquino issued Administrative Order No. 14 identifying certain assets of government institutions that were to be transferred to the National Government. Among the assets transferred was the financial claim of the Philippine National Bank against BISUDECO in the form of a secured loan. Consequently, by virtue of a Trust Agreement executed between the National Government and APT on February 27, 1987, APT was constituted as trustee over BISUDECO's account with the PNB.

"Sometime later, on August 28, 1988, BISUDECO contracted the services of Philippine Sugar Corporation (Philsucor) to take over the management of the sugar plantation and milling operations until August 31, 1992.

"Meanwhile, because of the continued failure of BISUDECO to pay its outstanding loan with PNB, its mortgaged properties were foreclosed and subsequently sold in a public auction to APT, as the sole bidder. On April 2, 1991, APT was issued a Sheriff's Certificate of Sale.

"On July 23, 1991, the union filed a complaint for unfair labor practice, illegal dismissal, illegal deduction and underpayment of wages and other labor standard benefits plus damages.

"In the meantime, on July 15, 1992, APT's Board of Trustees issued a resolution accepting the offer of Bicol-Agro-Industrial Cooperative (BAPCI) to buy the sugar plantation and mill. Again, on September 23, 1992, the board passed another resolution authorizing the payment of separation benefits to BISUDECO's employees in the event of the company's privatization. Then, on October 30, 1992, BAPCI purchased the foreclosed assets of BISUDECO from APT and took over its sugar milling operations under the trade name Peñafrancia Sugar Mill (Pensumil).

"On December 17, 1992, the union filed a similar complaint, later to be consolidated with its earlier complaint and docketed as RAB V Case No. 07-00184-91.

"On March 2, 1993, it filed an amended complaint, impleading as additional party respondents APT and Pensumil.

"In their Position Paper, the union alleged that when Philsucor initially took over the operations of the company, it retained BISUDECO's existing personnel under the same terms and conditions of employment. Nonetheless, at the start of the season sometime in May 1991, Philsucor started recalling workers back to work, to the exception of the union members. Management told them that they will be re-hired only if they resign from the union. Just the same, thereafter, the company started to employ the services of outsiders under the "pakyaw" system.

"BISUDECO, Pensumil and APT all interposed the defense of lack of employer-employee relationship.

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"After due proceedings, on April 30, 1998, Labor Arbiter Fructuoso T. Aurellano disposed as follows:

"WHEREFORE, premises considered, respondent APT is hereby ordered to pay herein complainants of the mandated employment benefits provided for under Section 27 of Proclamation No. 50 which benefits had been earlier extended to other employees similarly situated.

"SO ORDERED."

"Both the union and APT elevated the labor arbiter's decision before NLRC." [7]

The NLRC affirmed APT's liability for petitioners' money claims. While no employer-employee relationship existed between members of the petitioner union and APT, at the time of the employees' illegal dismissal, the assets of BISUDECO had been transferred to the national government through APT. Moreover, the NLRC held that APT should have treated petitioners' claim as a lien on the assets of BISUDECO. The Commission opined

that APT should have done so, considering its awareness of the pending complaint of petitioners at the time BISUDECO sold its assets to BAPCI, and APT started paying separation pay to the workers.

Finding their computation to be in order, the NLRC awarded to petitioners their money claims for underpayment, labor-standard benefits, and ECOLA. It also awarded them their back wages, computed at the prevailing minimum wage, for the period May 1, 1991 (the date of their illegal dismissal) until October 30, 1992 (the sale of BISUDECO assets to the BAPCI). On the other hand, the NLRC ruled that petitioners were not entitled to separation pay because of the huge business losses incurred by BISUDECO, which had resulted in its bankruptcy.

Respondent sought relief from the CA via a Petition for Certiorari under Rule 65 of the Rules of Court.

Ruling of the Court of Appeals

The CA ruled that APT should not be held liable for petitioners' claims for unfair labor practice, illegal dismissal, illegal deduction and underpayment of wages, as well as other labor-standard benefits plus damages. As found by the NLRC, APT was not the employer of petitioners, but was impleaded only for possessing BISUDECO's mortgaged properties as trustee and, later, as the highest bidder in the foreclosure sale of those assets.

Citing *Batong Buhay Gold Mines v. Dela Serna*,^[8] the CA concluded that petitioners' claims could not be enforced against APT as mortgagee of the foreclosed properties of BISUDECO.

Hence, this Petition.^[9]

Issues

In their Memorandum, petitioners raise the following issues for our consideration:

"I. Whether or not the Court of Appeals erred in ruling that Respondent Asset Privatization Trust (APT) should not be held liable for the petitioner union's claim for unfair labor practice, illegal dismissal, illegal deduction and underpayment of wages and other labor standard benefits plus damages.

"II. Whether or not the claims of herein petitioners cannot be enforced against APT/PNB as mortgagee of the foreclosed properties of BISUDECO.

"III. Whether or not the entitlement of petitioners upon their claims against Respondent APT is recognized under the law."^[10]

In brief, the main issue raised is whether Respondent APT is liable for petitioners' monetary claims.

The Court's Ruling

The Petition has no merit.

Main Issue:

Whether APT Is Liable for the Claims of
Petitioners Against Their Former Employer

It should be stressed at the outset that, pursuant to Administrative Order No. 14, Series of 1987,^[11] PNB's assets, loans and receivables from its borrowers were transferred to APT as trustee of the national government. Among the liabilities transferred to APT was PNB's financial claim against BISUDECO, not the latter's assets and chattel. Contrary to petitioners' assertions, BISUDECO remained the owner of the mortgaged properties in August 1988, when the Philippine Sugar Corporation (Philsucor) undertook the operation and management of the sugar plantation until August 31, 1992, under a so-called Contract of Lease between the two corporations. At the time, APT was merely a secured creditor of BISUDECO.^[12]

It was only in April 1991 that APT foreclosed the assets and chattels of BISUDECO because of the latter's continued failure to pay outstanding loan obligations to PNB/APT. The properties were sold at public auction to APT, the highest bidder, as indicated in the Sheriff's Certificate of Sale issued on April 2, 1991. It was only in September 1992 (after the expiration of the lease/management Contract with Philsucor in August 1992), however, when APT took over BISUDECO assets, preparatory to the latter's privatization.

In the present case, petitioner-union's members who were not recalled to work by Philsucor in May 1991 seek to hold APT liable for their monetary claims and allegedly illegal dismissal. Significantly, prior to the actual sale of BISUDECO assets to BAPCI on October 30, 1992, the APT board of trustees had approved a Resolution on September 23, 1992. The Resolution authorized the payment of separation benefits to the employees of the corporation in the event of its privatization. Not included in the Resolution, though, were petitioner-union's members who had not been recalled to work in May 1991.

The question now before the Court is whether APT is liable to pay petitioners' monetary claims, including back wages from May 1, 1991, to October 30, 1992 (the date of the sale of BISUDECO assets to BAPCI).

We rule in the negative. The duties and liabilities of BISUDECO, including its monetary liabilities to its employees, were not all automatically assumed by APT as purchaser of the foreclosed properties at the auction sale. Any assumption of liability must be specifically and categorically agreed upon. In *Sundowner Development Corp. v. Drilon*,^[13] the Court ruled that, unless expressly assumed, labor contracts like collective bargaining agreements are not enforceable against the transferee of an enterprise. Labor contracts are in personam and thus binding only between the parties.

No succession of employment rights and obligations can be said to have taken place between the two. Between the employees of BISUDECO and APT, there is no privity of contract that would make the latter a substitute employer that should be burdened with the obligations of the corporation. To rule otherwise would result in unduly imposing upon APT an unwarranted assumption of accounts not contemplated in Proclamation No. 50 or in the Deed of Transfer between the national government and PNB.

Furthermore, under the principle of absorption, a bona fide buyer or transferee of all, or substantially all, the properties of the seller or transferor is not obliged to absorb the latter's employees.^[14] The most that the purchasing company may do, for reasons of public policy and social justice, is to give preference of reemployment to the selling company's qualified separated employees, who in its judgment are necessary to the continued operation of the business establishment.^[15]

In any event, the national government (in whose trust APT previously held the mortgage credits of BISUDECO) is not the employer of petitioner-union's members, who had been dismissed sometime in May 1991, even before APT took over the assets of the corporation. Hence, under existing law and jurisprudence, there is no reason to expect any kind of bailout by the national government.^[16] Even the NLRC found that no employer-employee relationship existed between APT and petitioners. Thus, the Commission gravely abused its discretion in nevertheless holding that APT, as the transferee of the assets of BISUDECO, was liable to petitioners.

Petitioners also contend that in *Central Azucarera del Danao v. Court of Appeals*,^[17] this Court supposedly ruled 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[.]"^[18]

A careful reading of the Court's Decision in that case plainly shows that it does not contain the words quoted by counsel for petitioners. At this juncture, we admonish their counsel^[19] of his bounden duty as an officer of the

Court to refrain from misquoting or misrepresenting the text of its decisions.[20] Ever present is the danger that, if not faithfully and exactly quoted, they may lose their proper and correct meaning, to the detriment of other courts, lawyers and the public who may thereby be misled.[21]

In that case, contrary to the assertions of petitioners, the Court held as follows:

"There can be no controversy for it is a principle well-recognized, that it is within the employer's legitimate sphere of management control of the business to adopt economic policies or make some changes or adjustments in their organization or operations that would insure profit to itself or protect the investment of its stockholders. As in the exercise of such management prerogative, the employer may merge or consolidate its business with another, or sell or dispose all or substantially all of its assets and properties which may bring about the dismissal or termination of its employees in the process. Such dismissal or termination should not however be interpreted in such a manner as to permit the employer to escape payment of termination pay. x x x.

"In a number of cases on this point, the rule has been laid down that the sale or disposition must be motivated by good faith as an element of exemption from liability. Indeed, an innocent transferee of a business establishment has no liability to the employees of the transferor to continue employing them. Nor is the transferee liable for past unfair labor practices of the previous owner, except, when the liability therefor is assumed by the new employer under the contract of sale, or when liability arises because of the new owner's participation in thwarting or defeating the rights of the employees." [22] (Citations omitted.)

In other words, the liabilities of the previous owner to its employees are not enforceable against the buyer or transferee, unless (1) the latter unequivocally assumes them; or (2) the sale or transfer was made in bad faith. Thus, APT cannot be held responsible for the monetary claims of petitioners who had been dismissed even before it actually took over BISUDECO's assets.

Moreover, it should be remembered that APT merely became a transferee of BISUDECO's assets for purposes of conservation because of its lien on those assets -- a lien it assumed as assignee of the loan secured by the corporation from PNB. Subsequently, APT, as the highest bidder in the auction sale, acquired ownership of the foreclosed properties.

Relevant to this transfer of assets is Article 110 of the Labor Code, as amended by Republic Act No. 6715, which reads:

"Article 110. Worker's preference in case of bankruptcy. - In the event of bankruptcy or liquidation of the employer's business, his workers shall enjoy first preference as regards their unpaid wages and other monetary claims shall be paid in full before the claims of the Government and other creditors may be paid." [23]

This Court has ruled in a long line of cases [24] that under Articles 2241 and 2242 of the Civil Code, a mortgage credit is a special preferred credit that enjoys preference with respect to a specific/determinate property of the debtor. On the other hand, the worker's preference under Article 110 of the Labor Code is an ordinary preferred credit. While this provision raises the worker's money claim to first priority in the order of preference established under Article 2244 of the Civil Code, the claim has no preference over special preferred credits.

Thus, the right of employees to be paid benefits due them from the properties of their employer cannot have any preference over the latter's mortgage credit. In other words, being a mortgage credit, APT's lien on BISUDECO's mortgaged assets is a special preferred lien that must be satisfied first before the claims of the workers.

Development Bank of the Philippines v. NLRC [25] explained the rationale of this ruling as follows:

"x x x. A preference applies only to claims which do not attach to specific properties. A lien creates a charge

on a particular property. The right of first preference as regards unpaid wages recognized by Article 110 does not constitute a lien on the property of the insolvent debtor in favor of workers. It is but a preference of credit in their favor, a preference in application. It is a method adopted to determine and specify the order in which credits should be paid in the final distribution of the proceeds of the insolvent's assets. It is a right to a first preference in the discharge of the funds of the judgment debtor. x x x"

Furthermore, workers' claims for unpaid wages and monetary benefits cannot be paid outside of a bankruptcy or judicial liquidation proceedings against the employer.[26] It is settled that the application of Article 110 of the Labor Code is contingent upon the institution of those proceedings, during which all creditors are convened, their claims ascertained and inventoried, and their preferences determined.[27] Assured thereby is an orderly determination of the preference given to creditors' claims; and preserved in harmony is the legal scheme of classification, concurrence and preference of credits in the Civil Code, the Insolvency Law, and the Labor Code. The Court hastens to add that the present Petition was brought against APT alone. In holding that the latter, which has never really been an employer of petitioners, is not liable for their claims, this Court is not reversing or ruling upon their entitlement to back wages and other unpaid benefits from their previous employer.

On the basis of the foregoing clarification, the Court finds no reversible error in the questioned CA Decision, which set aside the February 8, 2000 Decision of the NLRC. As a mere transferee of the mortgage credit and later as the purchaser in a public auction of BISUDECO's foreclosed properties, APT cannot be held liable for petitioners' claims against BISUDECO: illegal dismissal, unpaid back wages and other monetary benefits.

WHEREFORE, the Petition is hereby DENIED, and the assailed Decision and Resolution AFFIRMED. Costs against petitioners.

SO ORDERED.

Sandoval-Gutierrez, Corona, Carpio-Morales, and Garcia, JJ., concur.

[*] The Privatization and Management Office has succeeded APT. Comment, p. 1; rollo, p. 480.

[1] Rollo, pp. 20-61.

[2] Annex "A" of Petition; id., pp. 62-67. Penned by Justice Conrado M. Vasquez, Jr. (Eighth Division chair) and concurred in by Justices Elvi John S. Asuncion and Sergio L. Pestaño (members).

[3] Annex "B" of Petition; id., p. 70.

[4] CA Decision, p. 6; id., p. 67.

[5] Annex "N" of Petition; id., pp. 199-205. Penned by Commissioner Alberto R. Quimpo and concurred in by Presiding Commissioner Rogelio I. Rayala and Commissioner Vicente S. E. Veloso.

[6] NLRC Decision, p. 7; id., p. 205.

[7] CA Decision, pp. 1-4; id., pp. 62-65. Citations omitted.

[8] 312 SCRA 22, August 6, 1999.

[9] This case was deemed submitted for decision on October 6, 2004, upon this Court's receipt of petitioners' Memorandum, signed by Atty. Lilia M. Reyta Jra. Respondent's Memorandum, signed by Attys. Juan G. Rañola

Jr. and Reginald I. Bacolor, was received by this Court on September 6, 2004.

[10] Petitioners' Memorandum, p. 9. Original in uppercase.

[11] Approving the Identification and Transfer to the National Government of Certain Assets and Liabilities of the x x x Philippine National Bank. This AO was implemented by the Deed of Transfer, Series of 1987, between the Government of the Republic of the Philippines and the Philippine National Bank (PNB); and the Trust Agreement, Series of 1987, between the National Government and the Asset Privatization Trust.

[12] At most, APT's participation -- if any --would have consisted simply in concurring or not concurring in the lease/management Contract.

[13] 180 SCRA 14, 18, December 6, 1989; Robledo v. NLRC, 238 SCRA 52, November 9, 1994.

[14] Manlimos v. NLRC, 312 Phil. 178, March 2, 1995; E. Razon, Inc. v. Secretary of Labor and Employment, 222 SCRA 1, May 13, 1993; The New Valley Times Press v. NLRC, 211 SCRA 509, July 15, 1992; Associated Labor Unions - VIMCONTU v. NLRC, 204 SCRA 913, December 20, 1991; MDII Supervisors and Confidential Employees Association (FFW) v. Presidential Assistant on Legal Affairs, 79 SCRA 40, September 9, 1977.

[15] Manlimos v. NLRC, supra; The New Valley Times Press v. NLRC, supra.

[16] North Davao Mining Corp. v. NLRC, 325 Phil. 202, 213, March 13, 1996.

[17] 137 SCRA 295, June 29, 1985.

[18] Petition, pp. 29-30; rollo, pp. 48-49.

[19] The Petition was signed by Atty. P.M. Gerardo Borja as counsel for petitioners.

[20] Rule 10.02, Code of Professional Responsibility.

[21] The Insular Life Assurance Co., Ltd. Employees Association-NATU v. The Insular Life Assurance Co., Ltd., 37 SCRA 244, January 30, 1971.

[22] Central Azucarera del Danao v. CA, supra, pp. 304-305, per Cuevas, J.

[23] Amendments italicized.

[24] Development Bank of the Philippines v. NLRC, 312 Phil. 70, March 1, 1995; Hautea v. National Labor Relations Commission, 230 SCRA 119, February 16, 1994; Banco Filipino Savings and Mortgage Bank v. NLRC, 188 SCRA 700, August 20, 1990; Batong Buhay Gold Mines, Inc. v. Dela Serna, 312 SCRA 22, August 6, 1999.

[25] 183 SCRA 328, 337-338, March 19, 1990, per Melencio Herrera, J.

[26] Development Bank of the Philippines v. NLRC, supra (citing Development Bank of the Philippines v. Santos, March 8, 1989, 171 SCRA 138; Development Bank of the Philippines v. Minister of Labor, 195 SCRA 463, March 20, 1991).

[27] Development Bank of the Philippines v. NLRC, supra; Bolinao Jr. v. Padolina, 186 SCRA 368, June 6, 1990 (citing Republic v. Peralta, 150 SCRA 37, May 20, 1987).

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