

**PEÑAFRANCIA TOURS AND TRAVEL TRANSPORT, INC., PETITIONER,
VS. JOSELITO P. SARMIENTO AND RICARDO S. CATIMBANG,
RESPONDENTS.***G.R. No. 178397. October 20, 2010*

Ponente: NACHURA, J.

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Before this Court is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Civil Procedure, seeking the reversal of the Court of Appeals (CA) Decision[2] dated August 31, 2006.

Since October 1993, until his alleged termination on October 30, 2002, respondent Joselito Sarmiento (Sarmiento) worked as a bus inspector of petitioner Peñafrancia Tours and Travel Transport, Inc. (petitioner), earning a daily wage of P198.00. In his complaint[3] for illegal dismissal filed on November 26, 2002, Sarmiento prayed for his reinstatement, and charged petitioner with underpayment of wages; non-payment of overtime, holiday pay, premium pay for holiday and rest day, service incentive leave pay, 13[th] month pay, and separation pay; unfair labor practice; damages; and attorney's fees. Meanwhile, respondent Ricardo Catimbang (Catimbang) also worked for petitioner as a bus inspector from February 1997 until his termination on October 30, 2002. He was also paid a daily wage of P198.00. He averred that petitioner was guilty of union-busting, and prayed for reinstatement with payment of full backwages, benefits, damages, and attorney's fees.[4]

Both Sarmiento and Catimbang (respondents) averred that they were required to work seven (7) days a week, and that they had no rest day and worked even during the holidays, except Good Friday, Christmas Eve, and New Year's Eve. Sometime in the first week of October 2002, they received notices of termination on the ground of petitioner's alleged irreversible business losses.

In the middle of October 2002, a meeting was called by petitioner's President and General Manager, Bonifacio Cu, wherein respondents were introduced to Alfredo Perez, the owner of ALPS Transportation, as the new owner of petitioner, having allegedly bought the same. On October 30, 2002, respondents received their last pay with a letter informing them that their application with the company had been held in abeyance. Sarmiento was paid P26,730.00 as separation pay and P4,686.00 as 13th month pay; while Catimbang was paid P17,820.00 as separation pay and P4,851.00 as 13[th] month pay. Respondents, however, learned that, several days after their termination, Bonifacio Cu continued to operate petitioner bus company.

Traversing the complaint, petitioner admitted that respondents were among its bus inspectors. It asseverated, however, that due to severe business losses, petitioner made the painful decision to stop its operation and sell the business enterprise to the Perez family of ALPS Transportation. It alleged that due notice was given to the Department of Labor and Employment,[5] and that all its employees were duly notified[6] and were paid their corresponding separation pay, as well as their 13[th] month pay. The new owners maintained the business name of petitioner, and the management of petitioner was entrusted to the new owners in October 2002, with Edilberto Perez[7] as Vice-President for Finance and Operations. Subsequently, several memoranda were issued by

Edilberto Perez in behalf of petitioner. Petitioner argued that the matter of rehiring respondents rested on the sound discretion of its new owners, and the latter could not be compelled to absorb petitioner's former employees since the same was not part of the deal. Petitioner alleged that respondents submitted their application for reemployment but, after evaluation, the new owners opted not to hire respondents.

While respondents' case for illegal dismissal was pending before the Labor Arbiter (LA), a notice[8] was issued by Edilberto Perez to all employees of petitioner, stating that, effective February 11, 2003, the management of the company shall revert to its former President, Bonifacio Cu. On February 28, 2003, Bonifacio Cu wrote Alfredo Perez relative to the latter's failure to comply with their agreement and the decision to rescind the sale involving petitioner.[9] Thereafter, sometime in March 2003, Bonifacio Cu entered into a transaction, denominated as a "Deed of Sale with Assignment of Franchise (By Way of Dation in Payment)," with Southern Comfort Bus Co., Inc. (SCBC), represented by its President and General Manager, Willy Deterala.[10]

On July 31, 2003, the LA rendered a Joint Decision,[11] the dispositive portion of which reads:

WHEREFORE, finding no substantial evidence to support the action of the complainants for illegal dismissal, the same is hereby ordered DISMISSED for lack of merit. Nonetheless, respondents PTTTI and Bonifacio L. Cu are hereby ordered to pay complainants with their established service incentive leave pay, equivalent to P2,750.00 each for three (3) years for 1999, 2000, and 2001.

All other claims are hereby DISMISSED for lack of merit.

SO ORDERED.

Aggrieved, respondents sought recourse from the National Labor Relations Commission (NLRC). On August 31, 2005, the NLRC rendered a decision[12] in favor of respondents, finding that no sale of the business actually took place. Thus:

WHEREFORE, as above-discussed, the appeal is given due course. Accordingly, the decision appealed from is REVERSED and SET ASIDE and a NEW ONE ENTERED ordering the respondents to reinstate Joselito P. Sarmiento and Ricardo Catimbang with full backwages. The amounts already received by complainants shall be deducted from the awards they are entitled computed as follows:

Backwages from day after date of dismissal (Nov. 1, 2002)
to cut off date (August 30, 2005)

a. Salary: P198/day x 26 days/mo. x 34months

=

P175,032.00

b. 13[th] month pay P175,032 :- 12

=

14,586.00

c. Service Incentive Leave Pay: P198 x 15 days

=

2,970.00

P192,588.00

Joselito Sarmiento

-

P192,588.00

Less received

-

31,416.00

(separation pay- P 26,730.00
13[th] mo. pay - 4,686.00)

P161,172.00

Ricardo Catimbang

-

P192,588.00

Less received

-

22,671.00

(separation pay- P17,820.00
13[th] mo. pay - 4,851.00)

169,917.00

TOTAL

P331, 089.00

=====

SO ORDERED.

Petitioner filed a motion for reconsideration, which the NLRC, however, denied in its Resolution[13] dated November 15, 2005. Undaunted, petitioner assailed the NLRC's ruling before the CA on certiorari.

On August 31, 2006, the CA ruled in favor of respondents. It held that petitioner failed to establish its allegation that it was suffering from business reverses. Likewise, the CA affirmed the NLRC's findings that petitioner did not actually sell its business to the Perez family and to SCBC. Accordingly, the CA disposed of the case in this wise:

WHEREFORE, premises considered, the instant PETITION FOR CERTIORARI is DISMISSED. Accordingly, petitioner Peñafrancia Tours and Travel Transport, Inc. is hereby ordered to reinstate private respondents Joselito Sarmiento and Ricardo S. Catimbang to their previous positions without loss of seniority

rights and to pay their full backwages from the time their actual compensation was withheld from them up to the time of their actual reinstatement. The separation pay already received by private respondents Sarmiento and Catimbang shall be deducted from the full backwages they are entitled to receive from petitioner PTTTI.

Let the entire record of the case be remanded to public respondent National Labor Relations Commission for the proper computation of backwages.

SO ORDERED.[14]

On September 26, 2006, petitioner filed a Motion for Reconsideration which the CA denied in its Resolution[15] dated May 21, 2007.

Hence, this petition based on the sole issue of whether respondents were legally terminated from employment by reason of the sale of the business enterprise and the consequent change or transfer of ownership/management.[16]

Petitioner claims that a change of ownership in a business concern is not proscribed; that it is a right of an employer, as management prerogative, to close his business and terminate the employment of his employees as a consequence of such closure; that an innocent transferee of the business has no liability to the employees for their continued employment; and that, based on its annual income tax return, it suffered financial losses. Relying on the LA's findings, petitioner avers that it sold the business in good faith, and that respondents, as a result of said sale, were paid all the monetary benefits due them. Moreover, petitioner manifests that there was no compelling reason at that time, like a dispute and/or rift existing among the parties, to warrant the termination of respondents' employment. It also claims that, while it had a perfected contract of sale with the Perez family, the same was not consummated, and that the Perez family did not pay the amount of P60 Million as agreed upon and as claimed by respondents.[17]

On the other hand, respondents argue that petitioner raised questions of fact that are beyond the province of a petition for review under Rule 45 - questions which were already passed upon by both the NLRC and the CA. Further, respondents aver that Bonifacio Cu continues to run the business of petitioner, particularly through his son, Bonifacio Bryan Cu, as Operations Manager, and his nephew, Antonio Cu, as Corporate Secretary; that petitioner continues to operate the business under the same name, franchises, routes, and circumstances as before the alleged sale; that while petitioner has the prerogative of closing its business, the same must not be tainted with bad faith; and that petitioner failed to establish that it was indeed under severe financial constraints, and that the respective sales to the Perez family and to SCBC were not at all fictitious.[18]

The petition is bereft of merit.

Closure of business is the reversal of fortune of the employer whereby there is a complete cessation of business operations and/or an actual locking-up of the doors of the establishment, usually due to financial losses. Closure of business, as an authorized cause for termination of employment, aims to prevent further financial drain upon an employer who can no longer pay his employees since business has already stopped.[19]

Closure or cessation of operation of the establishment is an authorized cause for terminating an employee, as provided in Article 283 of the Labor Code, to wit:

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 a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof. x x x. In case of retrenchment to prevent losses and 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 to 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.

On this ground, petitioner terminated the employment of respondents. However, what petitioner apparently made was a transfer of ownership. It is true that, as invoked by petitioner, in *Manlimos, et al. v. NLRC, et al.*,^[20] we held that a change of ownership in a business concern is not proscribed by law. Lest petitioner forget, however, we also held therein that the sale or disposition must be motivated by good faith as a condition for exemption from liability.^[21] Thus, where the change of ownership is done in bad faith, or is used to defeat the rights of labor, the successor-employer is deemed to have absorbed the employees and is held liable for the transgressions of his or her predecessor.^[22]

But, in this case, there is no successor-employer because there was no actual change of ownership. We sustain the uniform factual finding of both the NLRC and the CA that no actual sale transpired and, as such, there is no closure or cessation of business that can serve as an authorized cause for the dismissal of respondents. Notable in this regard are the following observations of the CA:

Petitioner PTTTI sent notices of termination to private respondents Sarmiento and Catimbang on the alleged ground that it would cease operations effective 30 October 2002 due to business reverses and it would eventually sell the same to another company. (Id. at p. 77) However, the records explicitly show that it (PTTTI) failed to establish its allegation that it was suffering from business reverses. Neither was there proof that indeed a sale was made and executed on 01 October 2002 involving the company's assets in favor of ALPS Transportation owned by the Perez family. It did not present any documentary evidence to support its claim that it sold the same to ALPS Transportation. On the contrary, it (PTTTI) continuously operates under the same name, franchises and routes and under the same circumstances as before the alleged sale. It (PTTTI) tried to convince us that it is under a new management, by presenting series of memoranda where the signatory thereon is Edelberto E. Perez, VP-Finance/Operations (Id. at pp. 78-83). To us, the series of memoranda do not conclusively show that there had been a sale in favor of ALPS Transportation. And considering that there was no sale which transpired, we also find no basis for the rescission thereof. The letter dated 19 March 2003 addressed to its employees, informing the latter that it had rescinded its sale to ALPS Transportation and thus, there is a change of management, ownership and operation of the company and it (PTTTI) is intending to sell the company to Southern Comfort Bus Co., Inc. headed by Mr. Willy D. Deterala (Id. at p. 89) could not convince us that there was actually a rescission of sale. If indeed there was sale and a consequent rescission thereof which transpired, why is it that the ALPS Transportation did not give much a fight when the contract of sale was unilaterally rescinded by Bonifacio Cu who signed as President/General Manager of petitioner PTTTI in a letter dated 28 February 2003. It is quite unconceivable for a company like ALPS Transportation which had already parted a considerable sum not to question the rescission undertaken by petitioner PTTTI. This only confirms the public respondent NLRC's finding, that the sale was indeed a sham, designed to circumvent the law on the rights of the workers. There is thus, no basis for us to believe that there was a consequent rescission of the alleged sale made by petitioner PTTTI in favor of ALPS Transportation.

Corollarily, we opine that the alleged second sale made by petitioner PTTTI, this time in favor of Southern Comfort Bus Co., Inc. represented by one Willy D. Deter[a]la is also simulated considering that the ten million pesos consideration is unbelievably too small for thirty five (35) aircon buses including its franchise and facilities thereon. It is quite an illogical move for the company to have allegedly rescinded the previous sale involving a higher consideration of sixty million pesos (P60,000,000.00) made in favor of ALPS Transportation and to resell the same, this time just for a measly amount of ten million pesos (P10,000,000.00). Additionally, the observation of private respondents Sarmiento and Catimbang is quite impressive when they claimed that the Southern Comfort Bus Co., Inc., presided by one Willy D. Deterala is a dummy corporation since it has not operated any single bus under its name, even prior to the sale and up to the present. In fact, its

principal business office at No. 4 Cathedral St., Ateneo Avenue 4400 Naga City is not even known. Suffice it to stress, these private respondents' allegations/observations have not at all been refuted nor controverted by petitioner PTTTI.[23]

It is likewise evident that, even in the petition before this Court, Bonifacio Bryan Cu signed the Verification and Certification of Non-Forum Shopping[24] and Antonio Cu signed the Secretary's Certificate.[25] The fact remains that the Cu family continues to operate petitioner's business. Despite the alleged recent sale to SCBC, represented by Willy Deterala, petitioner failed to refute the allegations of respondents that the Cu family still continues to own and operate petitioner, or even to show that Willy Deterala is actually in charge of petitioner's business. Petitioner did not confront this issue head-on, and its failure to do so is fatal to its cause. Petitioner having failed to discharge its burden of submitting sufficient and convincing evidence required by law, we hold that respondents were illegally dismissed.

Finally, the CA affirmed the ruling of the NLRC and adopted as its own the latter's factual findings. Long-established is the doctrine that findings of fact of quasi-judicial bodies like the NLRC are accorded respect, even finality, if supported by substantial evidence. When passed upon and upheld by the CA, they are binding and conclusive upon this Court and will not normally be disturbed. Though this doctrine is not without exceptions, the Court finds that none are applicable to the present case.[26]

All told, we find no reversible error to justify disturbing, much less, reversing the assailed CA Decision.

WHEREFORE, the instant petition is DENIED, and the Court of Appeals Decision dated August 31, 2006 is hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Carpio, (Chairperson), Velasco, Jr.,[*] Leonardo-De Castro,**] and Mendoza, JJ., concur.

[*] Additional member in lieu of Associate Justice Lucas P. Bersamin, who is designated as additional member per Raffle dated October 7, 2009, per Special Order No. 912 dated October 15, 2010.

[**] Additional member in lieu of Associate Justice Roberto A. Abad per Special Order No. 905 dated October 5, 2010.

[1] Rollo, pp. 5-17.

[2] Penned by Associate Justice Bienvenido L. Reyes, with Associate Justices Fernanda Lampas-Peralta and Myrna Dimaranan Vidal, concurring; id. at 20-28.

[3] Id. at 82.

[4] Id. at 83.

[5] Id. at 126.

[6] Id. at 127.

[7] Also referred to as Edelberto E. Perez in some pleadings and documents.

[8] Rollo, p. 133.

[9] Id. at 134.

- [10] Id. at 135-137.
- [11] Id. at 46-52.
- [12] Id. at 35-42.
- [13] Id. at 43-44.
- [14] Supra note 2, at 27.
- [15] Rollo, pp. 30-34.
- [16] Supra note 1, at 10.
- [17] Rollo, pp. 250-258.
- [18] Id. at 264-275.
- [19] J.A.T. General Services v. NLRC, 465 Phil. 785, 794 (2004).
- [20] 312 Phil. 178, 190 (1995).
- [21] Id. at 191.
- [22] Philippine Airlines, Inc. v. NLRC, 358 Phil. 919, 938 (1998).
- [23] Supra note 2, at 24-25.
- [24] Supra note 1, at 16-17.
- [25] Rollo, p. 18.
- [26] Ventura v. Court of Appeals, G.R. No. 182570, January 27, 2009, 577 SCRA 83, 92.

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