SUPREME COURT
THIRD DIVISION

ASSOCIATED LABOR UNIONS-VIMCONTU, THE CEBU OIL EMPLOYEE ASSOCIATION, represented by its Acting President, MIGUEL C. ALIVIADO, and THE MOBIL DAVAO/COTABATO CHAPTER-ALU, represented by its President, MIGUEL C. ALIVIADO, and THE MOVIL DAVAO/COTABATO CHAPTER-ALU, represented by its President, DAVID C. ONDEVILLA,
Petitioners,

-versus-

G.R. No. 74841
December 20, 1991

THE NATIONAL LABOR RELATIONS COMMISSION (NLRC), MOBIL OIL PHILIPPINES, INC., JEAN PIERRE BAILLEUX, CALTEX PHILIPPINES, INC., and MOBIL PHILIPPINES, INC.,
Respondents.
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ASSOCIATED LABOR UNIONS-VIMCONTU, THE CEBU OIL EMPLOYEES ASSOCIATION-ALU LOCAL 15, represented by its President, EMILIO S. SUAREZ, and THE MOBIL DAVAO/COTABATO CHAPTER-ALU,

represented by its President, DAVID C. ONDEVILLA,

***Petitioners*,**

-versus-

G.R. No. 75667
December 20, 1991

MOBIL OIL PHILS., INC., JEAN PIERRE BAILLEUX, CALTEX PHILIPPINES, INC., and MOBIL PHILIPPINES, INC.,

***Respondents*.**

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D E C I S I O N

DAVIDE, JR., *J.*:

These consolidated Petitions for *Certiorari*, filed within four (4) days from each other, seek to annul and set aside the Decision[1] dated 22 January 1986 of the National Labor Relations Commission (NLRC) affirming the dismissal by Labor Arbiter Felipe T. Garduque II of the complaint filed in NLRC Case No. RAB-VII- 0762-83 entitled Associated Labor Unions VIMCONTU, et al. versus Mobil Oil Philippines, Inc., et al., promulgated on 6 December 1984.

G.R. No. 74841 was filed by Atty. Felipe Tac-an on 25 July 1986,[2] with the local represented by its acting president, Miguel Aliviado. G.R. No. 75667 was filed by Atty. Candido C. Caballero on 28 July 1986.[3] He avers that he is counsel for the petitioner Unions except for twenty (20) of its members, who are included in the first case. The local is represented by its president, Emilio Suarez. Since these two (2) petitions stem from the same facts and involve identical issues, a single discussion will be devoted to both.

The antecedent facts are partly summarized by the public respondent, as follows:

> "A collective bargaining agreement was entered into between the complainants and the respondent Mobil Oil Philippines, Inc. for a period of three years starting from April 1, 1982 to March 31, 1985. On August 5, 1983, respondent J.P. Bailiux, President of Mobil Oil Philippines, Inc. sent letters to the employees, notifying of (sic) the termination of their services effective August 31, 1983 because of the sale of the respondent firm. On September 13, 1983, complainant employees accepted their checks for separation pay and signed quitclaims under protest and subject to the outcome of this case.
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> Caltex Philippines, Inc. was impleaded as additional respondent because of its acquisition of the entire marketing and distribution assets of Mobil Oil Philippines. Mobil Philippines, Inc. was also made a respondent in view of a metropolitan daily newspaper announcement that Mobil Oil Philippines, Inc. will continue to do business under the corporate name of Mobil Philippines, Inc and that this newly formed company will market chemicals and special products such as solvents, process products, waxes and industrial asphalt fuels and lubricants for the international marine and aviation industries.

Complainants charge respondents Mobil Oil Philippines, Inc. and J.P. Bailiux with unfair labor practice for violating their collective bargaining agreement which, among others, states that 'this Agreement shall be binding upon the parties hereto and their successors and assigns, and may be assigned by the Company without the previous approval of the Union. However, the latter will be notified of such assignment when it occurs.' In this case, the complainant unions were not notified officially of such assignment to Caltex Philippines and respondent Mobil Oil Philippines made announcements in major dailies that the company shall continue to operate its business."[4]

The pleadings of the parties further disclose the following:

What Caltex Phils. purchased was Mobil Petroleum's USA (Mobil Pet) share holdings in Mobil Oil Philippines, Inc. (MOPI) for US$40,000,000.00. Upon consummation of the sale, MOPI filed an amended articles of incorporation which provided that its corporate term would cease on 31 December 1983. By 5 September 1983, MOPI actually closed and ceased operations.[5]

The complaint for unfair labor practice and breach of contract against Jean Pierre Bailleux was filed on 8 September 1983 in the NLRC, Ministry of Labor and Employment, Cebu City. This was amended on 5 October 1983 to implead additional respondents, namely: MOPI, Caltex Phils., Inc. and Mobil Phils., Inc. and to demand payment for actual, moral and exemplary damages in the amounts of P2,000,000.00, P3,000,000.00, and P1,000,000.00, respectively, and for attorney's fees, litigation expenses, and other measures of reliefs and remedies consistent with law and equity.[6]

In due course, Labor Arbiter Felipe T. Garduque II rendered a decision dismissing the complaint on the basis of the following findings and conclusions:

> "After a close evaluation of the arguments of both contending parties, it is believed that the alleged sale by Mobil Petroleum, USA to Caltex, the former being a principal stockholder of MOPI, was in fact made by MOPI to Caltex, and whatever CBA entered into by MOPI binds its stockholders. However, Section I of Article XX of the CBA was not violated by respondent MOPI as the record shows and from the admission of complainants-union that the latter has (sic) knowledge of the impending sales and closure of the firm in a series of negotiations/meetings.
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> Further, it would seem that as between complainants and respondent MOPI, the situation is one of closure and not redundancy, and therefore, Sec. 3 of Article XI is not applicable.
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> Furthermore, since this instant complaint of unfair labor practice takes the nature of a criminal case, the same must be established by clear and convincing evidence which complainants failed to do so.

> On the issue of whether or not respondents Caltex and MOPI bound (sic) by the provisions of the CBA, the Commission finds that although Caltex is bound by the said agreement under Section I thereof, but the rights and interests or benefits that may have been earned during the remaining term of the CBA have been satisfied by MOPI when herein complainants accepted their respective checks and executed quitclaim from and in favor of the firm.
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> The office took note of the fact that although acceptance of payment was under protest, there have been previous long negotiations/meetings for settlement between herein parties, and the benefits granted by respondent MOPI, were far above the benefits provided for by law.
>
> As regards respondent MPI, in addition to the above, there is no concrete evidence to establish or prove complainants' allegation that MOPI will continue its business."[7]

Complainants (petitioners herein) appealed from the decision to the NLRC. Finding the arguments raised on appeal to be a repetition of the grounds presented before the labor arbiter, and opining that no grave abuse of discretion was committed by labor arbiter Garduque, the NLRC's first division dismissed the appeal in its decision of 22 January 1986. Their motion for reconsideration filed on 20 March 1986[8] having been denied for lack of merit on 11 April 1986,[9] these instant petitions were filed on the dates earlier mentioned.

In G.R. No. 74841, petitioners assail the above decision and contend that the NLRC committed serious errors of law and grave abuse of discretion when it ruled to justify the termination that: (a) petitioners had knowledge of the impending sale to Caltex and closure of the company in a series of negotiations/meetings by considering it as a sufficient notice of termination; (b) the situation was one of closure and not redundancy; (c) the rights and interests or benefits that may have been earned during the remaining term of the CBA have been satisfied by MOPI when complainants accepted their respective checks and executed quitclaim from and in favor of the firm; (d) the benefits granted by respondent MOPI were far above the benefits provided by law; and (e) as regards the liability of Mobil Philippines,

Inc., there is no concrete evidence to establish or prove complainants' allegation that MOPI will continue its business. As to the issue of unfair labor practice, they alleged that public respondent committed serious errors of law and acted with grave abuse of discretion when it ruled that since the complaint for unfair labor practice partakes of the nature of a criminal case, it must be established by clear and convincing evidence.[10]

In G.R. No. 75667, petitioners attribute to the public respondent the commission of the following errors:

> "(A) grave abuse of discretion amounting to lack of or in excess of jurisdiction in holding that respondents Mobil Oil Philippines, Inc., Jean Pierre Bailleux, Caltex Philippines, inc. and Mobil Philippines, Inc. did not commit an unfair labor practice acts (sic) resulting from a breach of contract thus giving out actual, moral and exemplary damages as well as attorney's fees and costs of litigation.
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> (B) in the findings and conclusion of law when the respondent commission instantly dismissed the complaint and appeal for lack of merit, inspite of an utter disregard of the valid and existing collective bargaining agreement of the herein petitioners and respondent Mobil Oil Philippines and Jean Pierre Bailleux."[11]

On 11 August 1986, We required the respondents in G.R. No. 74841 to comment on the petition,[12] which public respondent NLRC did through the Office of the Solicitor General on 5 March 1937[13] and private respondents on 25 September 1987.[14]

On 7 October 1987, We ordered the consolidation of the two (2) Petitions,[15] considered the Solicitor General's comment in G.R. No. 74841 as his comment in G.R. No. 75667, and required petitioners to reply to the comment, which they complied with on 1 June 1988.[16]

Thereupon, on 23 November 1987, petitioners, thru their representatives Miguel Aliviado and David Ondevilla, filed a motion to disregard, expunge and/or dismiss the petition filed without authority by Atty. Candido Caballero and consider only the petition

filed by Atty. Felipe Tac-an in G.R. No. 74841.[17] This was followed by a motion to withdraw appearance filed by Atty. Caballero on 14 December 1987.[18] Atty. Edgemelo Rosales replaced Caballero as counsel for petitioners.

On 20 May 1988, this court resolved to give due course to both petitions and require the parties to file simultaneous memoranda.[19] On 1 July 1988, public respondent moved that it be excused from filing a Memorandum and that its Comment dated 2 March 1987 be considered as its joint memorandum in the two (2) petitions[20] which this Court granted on 3 August 1988.[21]

Petitioners filed their Memorandum on 28 July 1988[22] while private respondents filed theirs on 12 August 1988.[23]

There is no merit in these consolidated petitions.

The issues presently raised have already been passed upon and resolved by this Court in another almost identical case, Mobil Employees Association, et al. vs. NLRC, et al.,[24] a petition which challenged the Decision dated 6 April 1987 of the NLRC Second Division, upholding a labor arbiter's finding that MOPI was not guilty of unfair labor practice and illegal dismissal and that the termination was caused by cessation of MOPI's business operations in the country. Through Mr. Justice Feliciano, this Court held in said case that:

x x x

> "Examination of the CBA provisions entitled 'Effectivity' shows that the written notice to terminate that is required to be given by either party to the other relates to notice to terminate the CBA at the end of the original three-year period or any subsequent year thereafter, in the absence of which written notice, the duration of the CBA would be automatically extended for one (1) year periods. What is involved in the instant Petition is not, however, the termination of the CBA itself, considering that the sale by Mobil Pet of its wholly owned subsidiary MOPI to Caltex Pet took place in 1983, in the middle of original (sic) period of the CBAs. It appears to the Court that

the applicable provision is Article II, Section 1, quoted above. Under Article II, Section 1, in cases of termination of services of employees, the company is required to comply with the provisions of the Labor Code and its implementing Rules and Regulations and, 'time and circumstances permitting' and 'whenever possible,' management should enlist the support of the unions in actions affecting the vital interests of the bargainable (i.e., member) employees. It maybe well to add that, since actual notice was given to all of MOPI's employees, including, of course, the employees who were members of petitioner unions, such notice may also be regarded as effectively the notice to the unions contemplated by the CBA provision on 'Effectivity.'

Article 284 of the Labor Code as it existed in 1983 provided as follows:

> 'ARTICLE 284. 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 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 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 at least one-half (½) 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. (Italics supplied.)'

Under Article 284 above, three (3) requirements may be seen to be established in respect of cessation of business operations of an employer company not due to business reverses, namely:

(a) service of a written notice to the employees and to the MOLE at least one (1) month before the intended date thereof;

(b) the cessation of or withdrawal from business operations must be bona fide in character; and

(c) payment to the employees of termination pay amounting to at least one-half (½) month pay for each year of service, or one (1) month pay, whichever is higher.

As noted earlier, MOPI's employees and the MOLE were notified in writing on 5 August 1983 that the employees' services would cease on 31 August 1983, but that employees would nonetheless be paid their salaries and other benefits until or as of 5 September 1983. We believe that is more than substantial compliance with the notice requirements of the Labor Code. In respect of requirement (c) above relating to payment of termination pay to the employees, we also noted earlier that the termination pay package given by MOPI to all its employees far exceeded the minimum requirement of one-half (½) month pay for every year of service laid down in Article 284 of the Labor Code. The very generosity of the termination pay package thus given to the employees argues strongly that the cessation of business operations by MOPI was a bona fide one. It is very difficult for this Court to believe that MOPI would be dissolved and all its employees separated with generous separation pay benefits, for the sole purpose of circumventing the requirements of MOPI's CBA with petitioner unions. Indeed, petitioners have not suggested any reason why MOPI should have undertaken such a fundamental and non-reversible business reorganization merely to evade its obligations under the CBA. The establishment of MPI with the same Directors who had served as such in MOPI and the hiring of some former MOPI employees for the purpose of setting and winding up the

> affairs of MOPI, does not detract from the bona fide character of MOPI's dissolution and withdrawal from business. MPI's residual business consisting of the marketing of chemicals, aviation and marine fuels as well as exports, an of which constituted a fraction of the prior business of MOPI, similarly does not argue against the bona fide character of the corporate reorganization which here took place. The net effect of the reorganization was the liquidation by Mobil Pet of the great bulk of its former business in the Philippines, the dissolution of the corporate entity of MOPI and the transfer of its physical assets and business to some other Philippine entity owned and controlled by Caltex Pet, presumably Caltex Philippines, without any impact upon the foreign exchange reserves of the Philippines.
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> x x x
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> We conclude that petitioners have failed to show any grave abuse of discretion or any act without or in excess of jurisdiction on the part of the NLRC in rendering its decision dated 6 April 1987."

x x x

The above decision forecloses any further attempt at reversing the decision of the public respondent challenged in these petitions. The parallels in that case and in these cases are too overwhelming for this Court to disregard: (a) both cases sprung from the same sale negotiations between Mobil Pet and Caltex Pet; (b) in both, MOPI's President, J.P. Bailleux, informed all employees in a letter dated 5 August 1983 that on 31 August 1983, their employment would cease as a result of MOPI's withdrawal from business; (c) all employees were paid compensation up to or until 5 September 1983 and were given separation pay equivalent to 2.25 months basic salary as of 31 August 1983 for every year of service and their unused vacation leave for the current year were paid in cash; and (d) in both, complaints for ULP, based on similarly worded CBAs (particularly on the notice requirements), were filed with different branches of the NLRC which promulgated the two decisions appealed from within six days from each other. The only difference, albeit insignificant, between the two

(2) cases is that in the Mobil Employees Association case, the collective bargaining agreements (CBA) are with MOPI-Luzon and MOPI Iloilo, while in the instant petitions, the CBAs are with MOPI of Cebu, Cotabato and Davao.

Thus, with this Court's pronouncement in Mobil Employees Association, et al. vs. NLRC, et al, supra., that what was effected was a cessation of business and that the requirement of due notice was substantially complied with, the allegations that both MOPI and Caltex merely intended to evade the provisions of the CBA cannot be sustained. There was nothing irregular in the closure by MOPI of its business operation. Caltex may not be said to have stepped into the picture as an assignee of the CBA because of the very fact of such closure.

In Sundowner Development Corp. vs. Drilon,[25] We stated the rule that unless expressly assumed, labor contracts such as employment contracts and collective bargaining agreements are not enforceable against a transferee of an enterprise, labor contracts being in personam, thus binding only between the parties.[26] As a general rule, there is no law requiring a bona fide purchaser of assets of an on-going concern to absorb in its employ the employees of the latter.[27] However, although the purchaser of the assets or enterprise is not legally bound to absorb in its employ the employees of the seller of such assets or enterprise, the parties are liable to the employees if the transaction between the parties is colored or clothed with bad faith.[28] The sale or disposition must be motivated by good faith as an element of exemption from liability.[29]

This flows from the well-recognized principle 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.[30] This disposes of the allegation that there was termination due to redundancy; such could not be the case as all the employees were terminated as a result of the

closure. Redundancy contemplates a situation where employees are dismissed because of duplicitous functions.

The foregoing renders unnecessary further discussion on the other issues raised by petitioners.

WHEREFORE, both Petitions for *Certiorari* are **DISMISSED** for lack of merit.

IT IS SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin and Romero, *JJ.*, concur.

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[1] Per First Division with Diego P. Atienza as Presiding Commissioner and Geronimo Q. Quadra and Cleto T. Villatuya as Commissioners.
[2] Rollo G.R. No. 74841, 9-42.
[3] Rollo G.R. No. 75667, 6-30.
[4] Rollo, G.R. No. 75667,100-101.
[5] Rollo, G.R. No. 74841, 198, 202.
[6] Annex "C"; Rollo, G.R. No. 75667, 59.
[7] Decision, 7-8; Rollo, G.R. No. 75667, 77-78.
[8] Annex "J"; Id., 104.
[9] Annex "L"; Id., 127.
[10] Rollo, G.R. No. 74841, 19-20.
[11] Rollo, G.R. No. 75667, 14-15.
[12] Rollo, G.R. No. 74841, 101.
[13] Id., 136.
[14] Id., 186.
[15] Id., 278.
[16] Id., 287.
[17] Op. cit., 164.
[18] Rollo, G.R. No. 75667, 177.
[19] Rollo, G.R. No. 74841, 285.
[20] Id., 325.
[21] Id., 355.
[22] Id., 335.
[23] Id., 359.
[24] G.R. No. 79329, 28 March 1990, 183 SCRA 737.
[25] 180 SCRA 14.
[26] Citing Fernando vs. Angat Labor Union, 5 SCRA 248, 251 (1962).
[27] Citing MDII Supervisors and Confidential Employees Association (FFW) vs. Presidential Assistant on Legal Affairs, 79 SCRA 40 (1977).

[28] Citing Majestic and Republic Theaters Employees' Association vs. CIR, 4 SCRA 457, 460 (1962); Cruz vs. PAFLU, 42 SCRA 68, 77-78 (1971). See also Visayan Transportation Co., Inc. vs. Java, 93 Phil. 962, 967-968 (1953).
[29] Central Azucarera del Danao vs. Court of Appeals, 137 SCRA 295 (1985).
[30] Central Azucarera del Danao vs. Court of Appeals, supra.