

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**JAMES YU and WILSON YOUNG,
*Petitioners,***

-versus-

**G.R. Nos. 111810-11
June 16, 1995**

**THE NATIONAL LABOR RELATIONS
COMMISSION, LABOR ARBITER
DANIEL C. CUETO, TANDUAY
DISTILLERY INC., FERNANDO
DURAN, EDUARDO PALIWAN, ROQUE
ESTOCE AND RODRIGO SANTOS,
*Respondents.***

X-----X

DECISION

MELO, J.:

Before us is a Petition for *Certiorari* assailing the Decision of public respondent National Labor Relations Commission (NLRC) promulgated on August 25, 1993 in the cases of Fernando Duran, et al. vs. Tanduay Distillery, Inc., docketed as NLRC NCR Case No. 00-04-01737-88, and Rodrigo Santos vs. Tanduay Distillery, Inc., docketed as NLRC NCR Case No. 00-06-02546-88.

The relevant antecedent facts as gathered from the record are as follows:

Private respondents-employees Fernando Duran, Eduardo Paliwan, Roque Estoce, and Rodrigo Santos were employees of respondent corporation Tanduay Distillery, Inc. (TDI).

On March 29, 1988, 22 employees of TDI, including private respondents employees, received a memorandum from TDI terminating their services, for reason of retrenchment, effective 30 days from receipt thereof or not later than the close of business hours on April 28, 1988.

On April 26, 1988, all 22 employees of TDI filed an application for the issuance of a temporary restraining order against their retrenchment. The labor arbiter issued the restraining order the following day. However, due to the 20-day lifetime of the temporary restraining order, and because of the on-going negotiations for the sale of TDI to the First Pacific Metro Corporation, the retrenchment pushed through. Parenthetically, it should be mentioned that although all 22 employees were retrenched, the instant petition involves only the 4 individual respondents herein, namely, Fernando Duran, Eduardo Paliwan, Roque Estoce, and Rodrigo Santos.

On June 14, 1988, the First Pacific Metro Corporation moved that it be dropped as a party to the case on the ground that its projected purchase of the assets of TDI was not consummated. The participation of First Pacific was later in effect held to be irrelevant. (decision dated May 24, 1989; Annex G, pp. 50-58, Rollo). On June 1, 1988, or after respondents-employees had ceased as such employees, a new buyer of TDI's assets, twin Ace Holdings, Inc. took over the business. Twin Ace assumed the business name Tanduay Distillers.

On August 8, 1988, the employees filed a motion to implead herein petitioners James Yu and Wilson Young, doing business under the name and style of Tanduay Distillers, as party respondents in said cases. Petitioners filed an opposition thereto, asserting that they are representatives of Tanduay Distillers an entity distinct and separate from DTI, the previous owner, and that there is no employer-employee relationship between Tanduay Distillers and private

respondents. Respondents-employees filed a reply to the opposition stating that petitioner of TDI labor union of Tanduary Distillers' decision to hire everybody with a clean slate on a probation basis.

On November 16, 1988, private respondents filed a motion for leave to file an amended complaint impleading petitioners as respondents. Petitioners filed an opposition thereto reiterating the grounds they relied upon in their opposition to private respondents' motion to implied. A reply was filed by private respondents, and a rejoinder was then filed by petitioners. In turn, private respondents filed a sub-rejoinder.

Subsequently, an amended complaint was filled by private respondents against TDI and petitioners Yu and Young "doing business under the name and style of Tanduary Distillers".

In her decision dated May 24, 1989, Labor Arbiter Daisy Cauton-Barcelona held:

In treating the motion to implied a motion to admit amended complaint with leave, the same [is] hereby given due course and all pleadings filed by respondents James Yu and Wilson Young are hereby treated as their responsive pleadings in the light of speedy disposition of justice and the basic rule that administrative for a, such as this office are not governed by technical rules of proceedings. (p. 52. Rollo).

In the same decision, it was disposed:

WHEREFORE, judgment is hereby rendered declaring that the retrenchment is illegal thereby ordering respondent Tanduary Distillery, Inc., to reinstate the complainants to their former position with backwages up to the time of the change of ownership, if one has taken place.

That in the event of change in management it (Tanduary Distillery, Inc.) is hereby ordered to pay the complainants their respective separation benefits computed at the rate of one (1) month for every year of service. This is without prejudice to the letter of Mr. James Yu as officer-in-charge of Tanduary Distillers

dated June 17, 1988 to the President of the Tanduary Distillery, Inc., Labor Union. (pp. 57-58, Rollo.)

Only TDI appealed said decision to the National Labor Relations Commissions, but on June 18, 1991, said commission promulgated an affirmance decision (p. 102, Rollo). TDI filed a motion for reconsideration, but the same was denied on August 15, 1991.

Thereupon, private respondents-employees on September 16, 1991 filed a motion for execution (Annex Q, pp. 103-106, Rollo) praying that NLRC, through the labor arbiter, “[i]ssue the necessary writ for the execution of the entire decision dated May 24, 1989, including the actual reinstatement of the complainants to their former position without loss of seniority and benefits against Tanduary Distillery, Inc., and/or Tanduary Distillers, Inc., and/or Tanduary Distillers, James Yu and Wilson Young.”

On September 24, 1993, petitioners filed an opposition (Annex R, pp. 108-110, Rollo) to the motion for execution on the ground that “the Motion for Execution is without any basis in so far as it prays for the issuance of a writ of execution against respondent Tanduary Distillers, Inc., and respondents James Yu and Wilson Young.” Respondents-employees filed their reply thereto (Annex S, pp. 111-115, Rollo). and in turn petitioners filed their rejoinder (Annex T, pp. 116-118, Rollo), to which private respondents filed their sur-rejoinder (Annex U, pp. 119-122, Rollo). On December 18, 1991, respondent TDI filed its comment on the motion for execution (Annex V, pp. 124-129, Rollo), while petitioners on January 10, 1992, filed a joint comment (Annex W, pp. 130-132, Rollo) to private respondents’ sur-rejoinder as well to the comment filed by respondent TDI.

Subsequently, TDI filed a manifestation dated April 24, 1992 (Annex X, pp. 133-135, Rollo), stating —

2. At the hearing held on March 23, 1992, individual complainants, assisted by their counsel, Atty. Noel Cruz, agreed to be paid the total amount of P86,049.83, in full satisfaction of the Company’s liability as stated in the dispositive portion of Labor Arbiter Barcelona’s decision promulgated on May 24, 1989 and affirmed by the Second

Division of the NLRC on June 18, 1991, which reads as follows:

WHEREFORE, judgment is hereby rendered declaring that the retrenchment is illegal thereby ordering respondent Tanduary Distillery, Inc. to reinstate the complainants to their former position with backwages up to the time of the change of ownership, if one has taken place.

That in the event of change in management it (Tanduary Distillery, Inc.) Complainants their respective separation benefits computed at the rate of one (1) month for every year of service. This is without prejudice to the letter of Mr. James Yu as officer-in-charge of Tanduary Distillers dated June 17, 1988 to the president of the Tanduary Distillery, Inc., Labor Union.

No costs.

SO ORDERED.

3. In accordance with the aforequoted decision, complainants shall be paid the amounts appearing opposite their respective names:

Rodrigo F. Santos	P20,282.03
Roque Estoce	20,092.50
Eduardo Daliwan	19,973.40

Total	P86,049.83
	=====

4. The foregoing amounts shall be satisfied out of the cash bond deposited by the Company with the Cashier of the NLRC. The excess amounting to P7,076.44 must revert to the Company. (pp. 134-135, Rollo.)

On November 17, 1992, respondent NLRC, through Labor Arbiter Daniel C. Cueto, issued an order (Annex Z, pp. 139-145, Rollo), resolving the motion for execution as follows:

Based on the foregoing considerations, this Branch finds the Motion for Writ of Execution filed by the complainants meritorious and in order. Accordingly, let a Writ of Execution be issued against Tanduay Distillers, Inc., Wilson Young and James Yu to immediately reinstate complainants Fernando Duran, Rodrigo Santos, Roque Estoce and Eduardo Daliwan to their respective positions. (p. 145, Rollo.)

Consequently, a writ of execution was issued by Labor Arbiter Cueto on December 16, 1992.

To stop the implementation of the writ of execution, petitioners filed a petition for certiorari (Annex AA, pp. 146-158, Rollo) before respondent NLRC, praying that —

1. Immediately upon filing of the instant case, a temporary restraining order be issued, to wit:
 - a.) Enjoining and restraining the respondents from implementing the Order dated November 17, 1992;
 - b.) Commanding the public respondent to desist from acting on the Order;
 - c.) Commanding the respondents to desist from committing any other act prejudicial to the petitioners/appellants.
2. After the appropriate proceedings, a writ of preliminary injunction be issued so enjoining the respondents;
3. After hearing on the merits, the Order dated November 17, 1992 be set aside and an injunction be issued permanently enjoining the respondents from committing the aforesaid acts and to comply strictly with the terms of the Decision and the NLRC;

4. Ordering the respondents, jointly and severally, to pay petitioner's fees in the amount of P100,000.00 and to pay the costs of suit.

On August 25, 1993, respondent NLRC promulgated its decision, the dispositive portion of which reads:

In view of the foregoing premises, the petition/appeal with prayer for preliminary injunction is hereby dismissed for lack of merit.

The petitioners-respondents are hereby directed to re-employ/re-hire respondents-complainants immediately upon receipt of this decision. (p. 36, Rollo.)

Thus the present petition where petitioners pray that —

1. Immediately upon filing of the instant case, a temporary order be issued, to wit:
 - a.) Restraining and prohibiting the respondents from implementing the ORDER dated November 17, 1992 and the NLRC Certiorari Decision.
 - b.) Commanding the respondents to desist from committing any other act prejudicial to the petitioners.
2. After the appropriate proceedings, a writ of preliminary injunction be issued so enjoining the respondents;
3. After appropriate proceedings, the ORDER dated November 17, 1992 and the injunction be issued permanently enjoining the respondents from committing the aforesaid acts and to comply strictly with the terms of the Arbiter Decision and the NLRC Decision;

4. Ordering the respondents, jointly and severally, to pay petitioners' attorney's fees in the amount of P100,000.00 and to pay the costs of suit.

The issue posed by the present petition is whether respondent NLRC committed grave abuse of discretion in holding petitioners Yu and Young liable under the decision dated May 24, 1989 which decreed that:

WHEREFORE, judgment is hereby rendered declaring that the retrenchment is illegal thereby ordering respondent Tanduary Distillery, Inc., to reinstate the complainants to their former position with backwages up to the time of the change of ownership, if one has taken place.

That in the event of change in management it (Tanduary Distillery, Inc.) is hereby ordered to pay the complainants their respective separation benefits computed at the rate of one (1) month for every year of service. This is without prejudice to the letter of Mr. James Yu as officer-in-charge of Tanduary Distillers dated June 17, 1988 to the President of the Tanduary Distillery, Inc., Labor Union. (pp. 57-58, Rollo.)

We hold that petitioners, for a number of reasons which we shall discuss below, may not be held answerable and liable under the final judgment of Labor Arbiter Cauton-Barcelona.

1. Admittedly, the decision dated May 24, 1989 is now final and executory, as only respondent TDI appealed said decision and its appeal was later dismissed by respondent NLRC. It is fundamental that a final and executory decision cannot be amended or corrected (First Integrated Bonding and Insurance Company, Inc, vs. Hernando, 199 SCRA 796 [1991]) except for clerical errors or mistakes (Maramba vs. Lozano, 20 SCRA 474 [1967]); Reyes vs. Court of Appeals, 189 SCRA 46 [1990]). A definitive judgment is no longer subject to change, revision, amendment, or reversal (Miranda vs. Court of Appeals, 71 SCRA 295 [1976], and the court loses jurisdiction over it, except to order its execution (PY Eng Chong vs. Herrera, 70 SCRA 130 [1976])).

An examination of the aforementioned dispositive portion of the decision shows that the same does not in any manner obligate Tanduay Distillers, or even petitioners Yu and Young for that matter, to reinstate respondents. Only TDI was held liable to reinstate respondents up to the time of change of ownership, and for separation benefits.

However, Labor Arbiter Cueto went beyond what was disposed by the decision and issued an order dated November 17, 1992 (Annex Z, petition, pp. 139-145, Rollo) which required Tanduay Distillers, Inc., Wilson Young and James Yu to immediately reinstate complainants Fernando Duran, Rodrigo Santos, Roque Estoce and Eduardo Daliwan to their respective positions. (p. 145, Rollo.)

Subsequently, a writ of execution was issued on December 16, 1992 pursuant to the order of November 17, 1992.

The order of execution dated November 17, 1992 in effect amended the decision dated May 24, 1989 for the former orders petitioners and Tanduay Distillers to reinstate private respondents employees whereas the decision dated May 24, 1989, as we have discussed above, does not so decree. This cannot be done. It is beyond the power and competence of Labor Arbiter Cueto to amend a final decision. The writ of execution must not go beyond the scope of the judgment.

As chief Justice Moran opined: “The writ of execution must conform to the judgment which is to be executed, as it may not vary the terms of the judgment it seeks to enforce. Nor may it go beyond the terms of the judgment sought to be executed. Where the execution is not in harmony with the judgment which gives it life and exceeds it, it has pro tanto no validity. To maintain otherwise would be to ignore the constitutional provision against depriving a person of his property without due process of law” (Moran, Comments on the Rules of Court, Vol. I, 1952 Ed., p. 809; cited in Villoria vs. Piccio, supra). (Gamboa’s Incorporated vs. Court of Appeals, 72 SCRA 131, 137-138 [1976].)

The order of execution and the writ of execution ordering petitioners and Tanduary Distillers to reinstate private respondents employees are, therefore, null and void.

2. Neither may be said that petitioners and Tanduary Distillers are one and the same as TDI, as seems to be the impression of respondents when they impleaded petitioners as party respondents in their complaint for unfair labor practice, illegal lay off, and separation benefits.

Such a stance is not supported by the facts. The name of the company for whom the petitioners are working is Twin Ace Holdings Corporation. As stated by the Solicitor General, Twin Ace is part of the Allied Bank Group although it conducts the rum business under the name of Tanduary Distillers. The use of a similar sounding or almost identical name is an obvious device to capitalize on the goodwill which Tanduary Rum has built over the years. Twin Ace or Tanduary Distillers, on one hand, and Tanduary Distillery, Inc. (TDI), on the other, are distinct and separate corporations. There is nothing to suggest that the owners of DTI, have any common relationship as to identify it with Allied Bank Group which runs Tanduary Distillers. The dissertation of the court in Diatagon Labor Federation Local 110 of the ULGWP vs. Ople, et al. (101 SCRA 534 [1980]) is worthy of restatement, thusly:

We hold that the director of Labor relations acted with grave abuse of discretion in treating the two companies as a single bargaining unit. That ruling is arbitrary and untenable because the two companies are indubitably distinct with separate juridical personalities.

The fact that their businesses are related and that the 236 employees of Georgia Pacific International Corporation were originally employees of Lianga Bay Logging Co., Inc. is not a justification for disregarding their separate personalities. Hence, the 236 employees, who are now attached to Georgia Pacific International Corporation, should not be allowed to vote in the certification election at the Lianga Bay Logging Co. ,Inc. They should vote at a separate certification election to

determine the collective bargaining representative of the employees of Georgia Pacific International Corporation. (at pp. 540-541.)

It is basic that a corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related. (Palay, Inc. et al. vs. Clave, et al., 124 SCRA 641 [1983])

The genuine nature of the sale to Twin Ace is evidenced by the fact that Twin Ace was only a subsequent interested buyer. At the time when termination notices were sent to its employees, TDI was negotiating with the First Pacific Metro Corporations for the sale of its assets. Only after First Pacific gave up its efforts to acquire the assets did Twin Ace or Tanduay Distillers come into the picture. Respondents-employees have not presented any proof as to communality of ownership and management to support their contention that the two companies are one firm or closely related. The doctrine of piercing the veil of corporate entity applies when the corporate fiction is used to defeat public convenience, justify wrong, protect fraud, or defend crime or where a corporation is the mere alter ego or business conduit of a person (Indophil Textile Mill Workers Union vs. Calica, 205 SCRA 697, 703 [1992]). To disregard the separate juridical personality of a corporation, the wrong-doing must be clearly and convincingly established. It cannot be presumed. (Del Rosario vs. NLRC, 187 SCRA 777, 7809 [1990])

The complaint for unfair labor practice, illegal lay off, and separation benefits was filed against TDI. Only later when the manufacture and sale of Tanduay products was taken over by Twin Ace or Tanduay Distillers were James Yu and Wilson young impleaded.

The corporation itself — Twin Ace or Tanduay Distillers — was never made a party to the case.

Another factor to consider is that TDI as a corporation or its shares of stock were not purchased by Twin Ace. The buyer limited itself to purchasing most of the assets, equipment, and machinery of TDI. Thus, Twin Ace or Tanduary Distillers did not take over the corporate personality of TDI although they manufacture the same product at the same plant with the same equipment and machinery. Obviously, the trade name "Tanduary" went with the sale because the new firm does business as Tanduary Distillers and its main product of rum is sold as Tanduary Rum. There is no showing, however, that TDI itself was absorbed by Twin Ace or that it ceased to exist as a separate corporation. In point of fact TDI is now herein a party respondent represented by its own counsel.

Significantly, TDI in the petition at hand has taken the side of its former employees and argues against Tanduary Distillers. In its memorandum filed on January 9, 1995, TDI argues that it was not alone its liability which the arbiter recognized "but also of James Yu and Wilson Young, representatives of Twin Ace and/or the Allied Bank Group doing business under the name 'TANDUAY DISTILLERS,' to whom the business and assets of DTI were sold." If DTI and Tanduary Distillers are one and the same group or one is a continuation of the other, the two would not be fighting each other in this case. TDI would not argue strongly "that the petition for certiorari filed by James Yu and Wilson Young be dismissed for lack for merit." It is thus obvious that the second corporation, Twin Ace or Tanduary Distillers, is an entity separate and distinct, from the first corporation, TDI. The circumstances of this case are different from the earlier decisions of the Court in Labor cases where the veil of corporate fiction was pierced.

In *La Campana Coffee Factory, Inc. vs. Kaisahan ng Manggagawa sa La Campana (KKM)*, (93 Phil. 160 [1953]), *La Campana Coffee Factory, Inc.* and *La Campana Gaugau Packing* were substantially owned by the same person. They had one office, one management, and a single payroll for both business. The laborers of the Gaugau factory and the coffee factory were also interchangeable, the workers in one factory worked also in the other factory.

In *Claparols vs. Court of Industrial Relations* (65 SCRA 613 [1975]), the Claparols Steel and Nail Plant, which was ordered to pay its workers backwages, ceased operations on June 30, 1956 and was succeeded on the very next day, July 1, 1957, by the Clarapols Steel Corporation. Both corporations were substantially owned and controlled by the same person and there was no break or cessation in operations. Moreover, all the assets of the steel and nail plant were transferred to the new corporation.

In fine, the friction of separate and distinct corporate entities cannot, in the instant case, be disregarded and brushed aside, there being not the least indication that the second corporation is a dummy or serves as a client of the first corporate entity.

In the case at bench, since TDI and Twin Ace or Tanduary Distillers are two separate and distinct entities, the order for Tanduary Distillers (and petitioners) to reinstate respondents-employees is obviously without legal and factual basis.

3. Nor could the order and writ to reinstate be anchored on the vague and seemingly uncalled for alternative disposition in the Barcelona decision that —

This is without prejudice to the letter of Mr. James Yu as officer-in-charge of Tanduary Distillers dated June 16, 1988 to the President of the Tanduary Distillery, Inc. labor Union.

The June 11, 1988 letter referred to was addressed to Benjamin C. Agaloos, president of the Tanduary Distillery Labor Union by James Yu in his capacity as officer-in-charge of Tanduary Distillers.

It pertinently reads:

Please be informed that our company stands firm on its decision to hire everybody with a clean slate effective June 1, 1988 on a probationary basis while those currently

casual or contractual employees shall retain the same employment status. In the same manner that the new company stood firm on its decision to grant a 10% across-the-board increase to all employees, which in fact has been received by employees concerned. (p. 88, Rollo.)

We do not find in the decision of Labor Arbiter Cauton Barcelona or in the letter of James Yu what respondents are trying to read into it. Labor Arbiter Cauton-Barcelona found the retrenchment effected by TDI illegal and ordered TDI to reinstate the complainants and that if there is a change of management, then separation benefits would be paid. There is, however, no order in the decision directing Twin Ace or Tanduary Distillers to hire or reinstate herein four individual respondents.

The letter of James Yu does not mention any reinstatement. It assures the president of the labor union that Tanduary Distillers stood firm on its decision to hire employees with a clean slate on a probationary basis. The fact that the employees of the former employer (TDI) would be hired on a probationary basis shows that there was no employer-employee relationship between individual respondents and Twin Ace. Any one who joins the buyer corporation comes in as an outsider who is newly hired and who starts on a probationary basis until he proves he deserves to be on a permanent status. His application can be rejected in the exercise of the hiring authority's discretion.

There is thus no legal basis for Labor Arbiter Cueto or the NLRC to compel Twin Ace or Tanduary Distillers, or petitioners to "reinstate" the four individuals respondents. The Letter of James Yu to the union president was a unilateral and gratuitous offer with no consideration. It refers to people who still have to be hired. New hires had to be investigated or evaluated if they have "clean slates." Twin Ace or Tanduary Distillers and petitioners are being compelled by public respondents to reinstate workers who were never their employees. There is no showing that the sale of assets by TDI to Tanduary Distillers

included a condition that employees of the former would be absorbed by the latter.

Employees of TDI had been terminated in their employment as of April 28, 1988. Petitioners state that Twin Ace bought the assets of TDI after the employment of the individual respondents had been terminated. True, Labor Arbiter Cauton-Barcelona declared the retrenchment program of TDI as illegal. This decision, however, did not convert the individual respondents in to employees of the firm which purchased the assets of the former employer. It merely held TDI liable for the consequences of the illegal retrenchment.

Labor arbiter Cueto and the NLRC, thereto, committed grave abuse of discretion when they read into the decision of Labor Arbiter Cauton-Barcelona something which did not appear there. And even assuming that Labor Arbiter Cauton-Barcelona formally included an order for the petitioners to hire the individual respondents, there would be no factual or legal basis for such an order. An employer-employee relation is created by contract, and cannot be forced upon either party simply upon order of a labor arbiter. The hiring of employees is one of the recognized prerogatives of management.

4. Another factor which militates against the claim for reinstatement of the individual respondents is their having received separation pay as part of a compromise agreement in the course of their litigation with TDI. Rodrigo F. Santos received P20,282.03; Roque Estoce, P20,092.50; Eduardo Daliwan, P19,973.40; and Fernando A. Duran, P25,702.00. These amounts correspond to their entitlement to separation benefits. Having received separation pay from a former employer, how can they compel, as a matter of right, another company to hire them on a supposed "reinstatement" Basis? The orders executing the earlier decision of Labor Arbiter Cauton-Barcelona and directing petitioners to immediately reinstate the four individuals respondents to their former positions are, thus, characterized by grave abuse of discretion. There are no "former positions" to which individual respondents may be reinstated because they were

never hired by Twin Ace/Tanduay Distillers and had never worked for it.

WHEREFORE, the petition is hereby **GRANTED**. The questioned Order of the Labor Arbiter Daniel C. Cueto dated November 17, 1992 and the decision of the National Labor Relations Commission upholding said order are set aside as null and void. No special pronouncement is made as to costs.

SO ORDERED.

Romero, Vitug and Francisco, JJ., concur.
Feliciano, J., took no part.