

SECOND DIVISION

[G.R. No. 190187, September 28, 2016]

**THE PHILIPPINE GEOTHERMAL, INC. EMPLOYEES UNION,
PETITIONER, VS. UNOCAL PHILIPPINES, INC. (NOW KNOWN AS
CHEVRON GEOTHERMAL PHILIPPINES HOLDINGS, INC.),
RESPONDENT.**

DECISION

LEONEN, J.:

The merger of a corporation with another does not operate to dismiss the employees of the corporation absorbed by the surviving corporation. This is in keeping with the nature and effects of a merger as provided under law and the constitutional policy protecting the rights of labor. The employment of the absorbed employees subsists. Necessarily, these absorbed employees are not entitled to separation pay on account of such merger in the absence of any other ground for its award.

This resolves a Petition for Review on Certiorari^[1] filed by Philippine Geothermal, Inc. Employees Union (Union) assailing the Decision^[2] dated July 23, 2009 and the Resolution^[3] dated November 9, 2009 of the Court of Appeals Eighth Division in *Unocal Philippines, Inc. (now known as Chevron Geothermal Philippines Holdings, inc.) v. The Philippine Geothermal, Inc. Employees Union*. The assailed Decision granted Unocal Philippines, Inc.'s (Unocal Philippines) appeal and reversed the Secretary of Labor's award of separation benefits to the Union. The award was granted on the premise that the merger of Unocal Philippines' parent corporation with another corporation impliedly terminated the employment of the Union's members. The assailed Resolution denied the Union's Motion for Reconsideration.

Philippine Geothermal, Inc. Employees Union is a legitimate labor union that stands as the bargaining agent of the rank-and-file employees of Unocal Philippines.^[4]

Unocal Philippines, formerly known as Philippine Geothermal, Inc., is a foreign corporation incorporated under the laws of the State of California, United States of America, licensed to do business in the Philippines for the "exploration and development of geothermal resources as alternative sources of energy."^[5] It is a wholly owned subsidiary of Union Oil Company of California (Unocal California),^[6] which, in turn, is a wholly owned subsidiary of Union Oil Corporation (Unocal Corporation).^[7] Unocal Philippines operates two (2) geothermal steam fields in Tiwi, Albay and Makiling, Banahaw, Laguna, owned by the National Power Corporation.^[8]

On April 4, 2005, Unocal Corporation executed an Agreement and Plan of Merger (Merger Agreement) with Chevron Texaco Corporation (Chevron) and Blue Merger Sub, Inc. (Blue Merger).^[9] Blue Merger is a wholly owned subsidiary of Chevron.^[10] Under the Merger Agreement, Unocal Corporation merged with Blue Merger, and

Blue Merger became the surviving corporation.^[11] Chevron then became the parent corporation of the merged corporations:^[12] After the merger, Blue Merger, as the surviving corporation, changed its name to Unocal Corporation.^[13]

On January 31, 2006, Unocal Philippines executed a Collective Bargaining Agreement with the Union.^[14]

However, on October 20, 2006, the Union wrote Unocal Philippines asking for the separation benefits provided for under the Collective Bargaining Agreement. According to the Union, the Merger Agreement of Unocal Corporation, Blue Merger, and Chevron resulted in the closure and cessation of operations of Unocal Philippines and the implied dismissal of its employees.^[15]

Unocal Philippines refused the Union's request and asserted that the employee-members were not terminated and that the merger did not result in its closure or the cessation of its operations.^[16]

As Unocal Philippines and the Union were unable to agree, they decided to submit the matter to the Department of Labor and Employment's Administrative Intervention for Dispute Avoidance Program.^[17] However, they were unable to arrive at "a mutually acceptable agreement."^[18]

On November 24, 2006, the Union claimed that Unocal Philippines was guilty of unfair labor practice and filed a Notice of Strike.^[19] Later, the Union withdrew its Notice of Strike.^[20]

On February 5, 2007, the parties agreed to submit their dispute for voluntary arbitration before the Department of Labor and Employment, with the Secretary of Labor and Employment as Voluntary Arbitrator.^[21] The case, entitled *In Re: Labor Dispute at Philipppines, Inc./Chevron*, was docketed as OS-VA-2007-04.^[22]

After the parties submitted their respective position papers, the Secretary of Labor rendered the Decision^[23] on January 15, 2008 ruling that the Union's members were impliedly terminated from employment as a result of the Merger Agreement. The Secretary of Labor found that the merger resulted in new contracts and a new employer for the Union's members. The new contracts allegedly required the employees' consent; otherwise, there was no employment contract to speak of.^[24] Thus, the Secretary of Labor awarded the Union separation pay under the Collective Bargaining Agreement.^[25] The dispositive portion of the Decision reads:

WHEREFORE, this Office rules that Unocal and Chevron merged into one corporate entity and the employees were impliedly terminated from employment. Accordingly, they are entitled to the separation benefits provided under **ARTICLE XII, SECTION 2** and **ANNEX "B"** of the collective bargaining [agreement] between **UNOCAL PHILIPPINES, INC.** and the **PHILIPPINE GEOTHERMAL, INC. EMPLOYEES UNION**.

Pursuant to Section 7, Rule XIX of **Department Order No. 40-03**, series of 2003, this Decision shall be final and executory after ten (10)

calendar days from receipt hereof and it shall not be subject of a motion for reconsideration.

SO ORDERED.^[26] (Emphasis in the original)

Unocal Philippines filed before the Court of Appeals a Petition for Review^[27] questioning the Secretary of Labor's Decision. Unocal Philippines claimed that the Union was not entitled to separation benefits given that Unocal Philippines was not a party to the merger,^[28] that it never closed nor ceased its business, and that it did not terminate its employees after the merger.^[29] It asserted that its operations continued in the same manner, and with the same manpower complement.^[30] Likewise, the employees kept their tenure intact and experienced no changes in their salaries and benefits.^[31]

In the Decision^[32] dated July 23, 2009, the Court of Appeals granted the appeal of Unocal Philippines and reversed the Decision of the Secretary of Labor.^[33] It held that Unocal Philippines has a separate and distinct juridical personality from its parent company, Unocal Corporation, which was the party that entered into the Merger Agreement.^[34] The Court of Appeals ruled that Unocal Philippines remained undissolved and its employees were unaffected by the merger.^[35] It found that this was evidenced by the Union's assumption of its role as the duly recognized bargaining representative of all rank-and-file employees a few months after the merger.^[36]

Moreover, the Court of Appeals found that although Unocal Corporation became a part of Chevron, Unocal Philippines still remained as a wholly owned subsidiary of Unocal California after the merger.^[37] It ruled that in any case, the Collective Bargaining Agreement only provided for the payment of separation pay if a reduction in workforce results from redundancy, retrenchment or installation of labor-saving devices, or closure and cessation of operations, all of which did not occur in this case.^[38]

The Court of Appeals also pointed out that the Union's members merely wanted to discontinue their employment with Unocal Philippines, but there was nothing in the Labor Code nor in the parties' Collective Bargaining Agreement that would sanction the payment of separation pay to those who no longer wanted to work for Unocal Philippines as a result of the merger.^[39] The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the Decision dated 15 January 2008, of the Department of Labor and Employment (DOLE) in OS-VA-2007-04 is hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.^[40] (Emphasis in the original)

On November 9, 2009, the Court of Appeals denied the Union's Motion for Reconsideration.^[41]

Hence, this Petition^[42] was filed.

Petitioner Philippine Geothermal, Inc. Employees Union claims that respondent Unocal Philippines, Inc. changed its theory of the case when, in the proceedings before the Secretary of Labor, it claimed that it entered into a merger and not a sale, but later, in its appeal before the Court of Appeals, argued that it was not a party to the merger.^[43] Petitioner asserts that the Court of Appeals erred in allowing respondent to change its theory of the case on appeal and in deciding the case on the basis of this changed theory.^[44]

Petitioner further claims that the Court of Appeals erred in reversing the Decision of the Secretary of Labor, who properly ruled that petitioner's members are entitled to separation pay.^[45] It claims that the merger resulted in (a) "the severance of the juridical tie that existed between the employees and its original employer, Unocal Corporation,"^[46] and (b) the implied termination of the employment of the Union's members, who had the right to waive their continued employment with the absorbing corporation.^[47] Petitioner insists that the the "cessation of operations" contemplated in the Collective Bargaining Agreement and the Memorandum of Agreement must be liberally interpreted to include mergers,^[48] and that doubts must be resolved in favor of labor.^[49]

In the Resolution^[50] dated January 27, 2010, this Court directed respondent to comment on the Petition.

Respondent filed its Comment^[51] on March 26, 2010. It argues that it did not change its theory on appeal. It insists that it has been consistent in arguing before the Secretary of Labor and the Court of Appeals that it was never a party to the merger between Unocal Corporation and Blue Merger as it has always stated that it was Unocal Corporation who entered into the Merger Agreement.^[52] Respondent argues that even assuming that it did change its theory on appeal, it may do so as an exception to the rule since "a party may change [its] legal theory when its factual bases would not require the presentation of further evidence by the adverse party in order to meet the issue raised in the new theory."^[53] It posits that the alleged new theory would still be based on the evidence presented before the Secretary of Labor, hence, petitioner was not placed at a disadvantage.^[54]

Respondent further argues that in any case, petitioner's members still did not lose their employment as to warrant the award of separation pay.^[55] The Memorandum of Agreement, the Collective Bargaining Agreement, and the contemporaneous acts of the parties show that respondent shall pay separation pay only in case the employees actually lose their jobs due to redundancy, retrenchment or installation of labor-saving devices, or closure and cessation of operation.^[56] As these circumstances did not occur, respondent cannot grant petitioner's members separation pay.

Petitioner filed its Reply^[57] on July 6, 2010. It insists that respondent never claimed before the Secretary of Labor that it was not covered by the merger.^[58] It maintains that respondent only insisted on this argument when it obtained the unfavorable decision from the Secretary of Labor.^[59] Moreover, the Secretary of Labor was

correct in ruling that, indeed, there was a cessation of operations of respondent when it merged with Chevron.^[60]

We resolve the following issues:

First, whether respondent changed the theory of its case on appeal;

Second, whether the Merger Agreement executed by Unocal Corporation, Blue Merger, and Chevron resulted in the termination of the employment of petitioner's members; and

Lastly, whether petitioner's members are entitled to separation benefits.

As regards the first issue, we rule that respondent did, indeed, change the theory of its case on appeal.

In its Petition before the Court of Appeals, respondent asserted that it was not a party to the merger as it was a subsidiary of Unocal California and, thus, had a separate and distinct personality from Unocal Corporation.

However, the following statement can be found in respondent's Position Paper in the proceedings before the Secretary of Labor:

3. . . . Following the merger, Blue Merger Sub Inc. which as above stated is a wholly owned subsidiary of Chevron Corporation changed its name to Unocal Corporation retaining Unocal Philippines, Inc. as its Philippine Branch to continue to operate the aforementioned geothermal plants as, in fact[.]^[61] (Emphasis supplied)

Respondent alleges that it is a branch of Unocal Corporation. Claiming that it is a branch is inconsistent with its allegation (on appeal) that it is a subsidiary of another corporation. A branch and a subsidiary differ in its corporate existence: a branch is not a legally independent unit, while a subsidiary has a separate and distinct personality from its parent corporation.

In *Philippine Deposit Insurance Corp. v. Citibank*:^[62]

The Court begins by examining the manner by which a foreign corporation can establish its presence in the Philippines. It may choose to incorporate its own subsidiary as a domestic corporation, *in which case such subsidiary would have its own separate and independent legal personality to conduct business in the country. In the alternative, it may create a branch in the Philippines, which would not be a legally independent unit, and simply obtain a license to do business in the Philippines.*^[63] (Emphasis supplied, citations omitted)

Respondent likewise made the following assertions in its Position Paper in the proceedings before the Secretary of Labor:

Based on the facts of this case, the Honorable Secretary of Labor would certainly appreciate that *the business transaction entered into by respondent employer was in law and in fact, a merger*. Hence, there is no