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FIRST DIVISION

[G.R. No. 188269*. April 17, 2017]

SUMIFRU (PHILIPPINES) CORPORATION (surviving entity in a merger with Davao Fruits Corporation and other Companies), *petitioner, vs.* **BERNABE BAYA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; TO BE GRANTED, THE PETITIONER MUST SHOW THAT THE COURT OR QUASI-JUDICIAL AUTHORITY GRAVELY ABUSED THE DISCRETION CONFERRED UPON IT; GRAVE ABUSE OF DISCRETION, DEFINED.— "To justify the grant of the extraordinary remedy of *certiorari*, the petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law." "In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and conclusions are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL, WHEN PRESENT; IN CONSTRUCTIVE DISMISSAL, THE EMPLOYER HAS THE BURDEN OF PROVING THAT THE TRANSFER OR DEMOTION OF AN EMPLOYEE IS A VALID EXERCISE OF MANAGEMENT PREROGATIVE.— "Constructive dismissal exists where there is cessation of work, because 'continued

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employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay' and other benefits. Aptly called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, constructive dismissal may, likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment." In *Peckson v. Robinsons Supermarket Corp.*, the Court held that the burden is on the employer to prove that the transfer or demotion of an employee was a valid exercise of management prerogative and was not a mere subterfuge to get rid of an employee; failing in which, the employer will be found liable for constructive dismissal.

3. ID.; ID.; ID.; DOCTRINE OF STRAINED RELATIONS; PROVIDES THAT THE PAYMENT OF SEPARATION PAY IS CONSIDERED AN ACCEPTABLE ALTERNATIVE TO REINSTATEMENT WHEN THE LATTER OPTION IS NO LONGER DESIRABLE OR VIABLE.— [I]n light of the underlying circumstances which led to Baya's constructive dismissal, it is clear that an atmosphere of animosity and antagonism now exists between Baya on the one hand, and AMSFC and DFC on the other, which therefore calls for the application of the doctrine of strained relations. "Under the *doctrine of strained relations*, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust." Thus, it is more prudent that Baya be awarded separation pay, instead of being reinstated, as computed by the CA.

4. MERCANTILE LAW; CORPORATION LAW; CORPORATION CODE; PRIVATE CORPORATIONS; MERGER; IN MERGER, ONE OF THE CORPORATIONS SURVIVES AND CONTINUES THE BUSINESS, WHILE THE OTHER IS DISSOLVED AND ALL ITS RIGHTS, PROPERTIES AND LIABILITIES ARE ACQUIRED BY THE SURVIVING CORPORATION.— Section 80 of the

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Corporation Code of the Philippines clearly states that one of the effects of a merger is that the surviving company shall inherit not only the assets, but also the liabilities of the corporation it merged with x x x. Sumifru, as the surviving entity in its merger with DFC, must be held answerable for the latter's liabilities, including its solidary liability with AMSFC arising herein. Verily, jurisprudence states that "in the merger of two existing corporations, one of the corporations survives and continues the business, while the other is dissolved and all its rights, properties and liabilities are acquired by the surviving corporation," as in this case.

APPEARANCES OF COUNSEL

Charmian K. Gloria for petitioner.
Koronado B. Apuzen for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated May 14, 2008 and the Resolution[3] dated May 20, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 85950, which set aside the Resolutions dated March 10, 2004[4] and May 31, 2004[5] of the National Labor Relations Commission (NLRC) in NLRC CA NO. M-007670-2003 and, accordingly,

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[1] *Rollo*, pp. 10-29.

[2] *Id*. at 32-45. Penned by Associate Justice Edgardo T. Lloren with Associate Justices Edgardo A. Camello and Jane Aurora C. Lantion concurring.

[3] *Id*. at 46.

[4] *Id*. at 133-136. Penned by Presiding Commissioner Salic B. Dumarpa with Commissioners Proculo T. Sarmen and Jovito C. Cagaanan concurring.

[5] *Id*. at 138. Penned by Presiding Commissioner Salic B. Dumarpa with Commissioner Proculo T. Sarmen concurring and Commissioner Jovito C. Cagaanan dissenting.

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reinstated the Decision[6] dated June 30, 2003 of the Labor Arbiter (LA) in NLRC Case No. RAB-11-09-1062-02 declaring respondent Bernabe Baya (Baya) to have been illegally/constructively dismissed by AMS Farming Corporation (AMSFC) and Davao Fruits Corporation (DFC), with modification deleting the award of backwages, annual vacation leave pay, sick leave pay, monthly housing subsidy, electric light subsidy, and exemplary damages, and ordering AMSFC and DFC to pay Baya the amounts of ₱194,992.82 as separation pay, ₱8,279.95 as 13th month pay, ₱50,000.00 as moral damages, and ₱25,327.28 as attorney's fees.

The Facts

The instant case stemmed from a complaint[7] for, *inter alia*, illegal/constructive dismissal filed by Baya against AMSFC and DFC before the NLRC.[8] Baya alleged that he had been employed by AMSFC since February 5, 1985, and from then on, worked his way to a supervisory rank on September 1, 1997. As a supervisor, Baya joined the union of supervisors, and eventually, formed AMS Kapalong Agrarian Reform Beneficiaries Multipurpose Cooperative (AMSKARBEMCO), the basic agrarian reform organization of the regular employees of AMSFC. In June 1999, Baya was reassigned to a series of supervisory positions in AMSFC's sister company, DFC, where he also became a member of the latter's supervisory union while at the same time, remaining active at AMSKARBEMCO. Later on and upon AMSKARBEMCO's petition before the Department of Agrarian Reform (DAR), some 220 hectares of AMSFC's 513-hectare banana plantation were covered by the Comprehensive Agrarian Reform Law. Eventually, said portion was transferred to AMSFC's regular employees as Agrarian Reform Beneficiaries (ARBs), including Baya. Thereafter, the ARBs explored a possible agribusiness venture agreement with

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[6] *Id*. at 108-132 (pages are inadvertently misarranged). Penned by LA Amado M. Solamo.

[7] Dated September 20, 2002. *Id*. at 95-96.

[8] See *id*. at 120.

AMSFC, but the talks broke down, prompting the Provincial Agrarian Reform Officer to terminate negotiations and, consequently, give AMSKARBEMCO freedom to enter into similar agreement with other parties. In October 2001, the ARBs held a referendum in order to choose as to which group between AMSKARBEMCO or SAFFPAI, an association of pro-company beneficiaries, they wanted to belong. 280 went to AMSKARBEMCO while 85 joined SAFFPAI.[9]

When AMSFC learned that AMSKARBEMCO entered into an export agreement with another company, it summoned AMSKARBEMCO officers, including Baya, to lash out at them and even threatened them that the ARBs' takeover of the lands would not push through. Thereafter, Baya was again summoned, this time by a DFC manager, who told the former that he would be putting himself in a "difficult situation" if he will not shift his loyalty to SAFFPAI; this notwithstanding, Baya politely refused to betray his cooperative. A few days later, Baya received a letter stating that his secondment with DFC has ended, thus, ordering his return to AMSFC. However, upon Baya's return to AMSFC on **August 30, 2002**, he was informed that there were no supervisory positions available; thus, he was assigned to different rank-and-file positions instead. On **September 20, 2002**, Baya's written request to be restored to a supervisory position was denied, prompting him to file the instant complaint. On even date, the DAR went to the farms of AMSFC to effect the ARBs' takeover of their awarded lands.[10] The following day, all the members of AMSKARBEMCO were no longer allowed to work for AMSFC "as they have been replaced by newly-hired contract workers"; on the other hand, the SAFFPAI members were still allowed to do so.[11]

In their defense, AMSFC and DFC maintained that they did not illegally/constructively dismiss Baya, considering that his termination from employment was the direct result of the ARBs' takeover of AMSFC's banana plantation through the government's

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[9] See *id*. at 33-34 and 120-124.

[10] See *id*. at 34-35 and 124-128.

[11] *Id*. at 128.

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agrarian reform program. They even shifted the blame to Baya himself, arguing that he was the one who formed AMSKARBEMCO and, eventually, caused the ARBs' aforesaid takeover.[12]

The LA Ruling

In a Decision[13] dated June 30, 2003, the LA ruled in Baya's favor and, accordingly, ordered AMSFC and DFC to: (*a*) reinstate Baya to his former position as supervisor without loss of seniority rights, or should reinstatement be impossible, to pay him separation pay at the rate of 39.25 days of salary for every year of service as practiced by the company; and (*b*) pay Baya backwages and other benefits, as well as moral damages, exemplary damages, and attorney's fees.[14]

The LA found that since it was undisputed that Baya held supervisory positions in AMSFC and DFC, his demotion to various rank-and-file positions without any justifiable reason upon his return to AMSFC constituted constructive dismissal. In this regard, the LA opined that the alleged lack of supervisory positions in AMSFC was not a valid justification for Baya's demotion to rank-and-file, as AMSFC and DFC should not have caused Baya's return to AMSFC if there was indeed no available supervisory position. Further, the LA did not lend credence to AMSFC and DFC's contention that Baya's termination was on account of the ARBs' takeover of the banana plantations, considering that: (*a*) the acts constituting constructive dismissal occurred when Baya returned to AMSFC on **August 30, 2002**, while the takeover was done only on **September 20, 2002**; and (*b*) only members of AMSKARBEMCO were no longer allowed to work after the takeover, while members of SAFFPAI, the pro-company cooperative, were retained.[15]

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[12] See *id*. at 129-131.

[13] *Id*. at 108-132 (pages are inadvertently misarranged).

[14] See *id*. at 117-119.

[15] See *id*. at 131-132 and 108-117.

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Aggrieved, respondents appealed[16] to the NLRC.

The NLRC Ruling

In a Resolution[17] dated March 10, 2004, the NLRC reversed and set aside the LA ruling except for the payment of 13th month pay which was affirmed with modification, and entered a new one dismissing the case for lack of merit.[18] Contrary to the LA's findings, the NLRC found that the termination of Baya's employment was not caused by illegal/constructive dismissal, but by the cessation of AMSFC's business operation or undertaking in large portions of its banana plantation due to the implementation of the agrarian reform program. Thus, the NLRC opined that Baya is not entitled to separation pay as such cessation was not voluntary, but rather involuntary, on the part of AMSFC as it was an act of the State, *i.e.*, the agrarian reform program, that caused the same.[19]

Baya moved for reconsideration,[20] which was, however, denied in a Resolution[21] dated May 31, 2004. Dissatisfied, he filed a petition for *certiorari*[22] before the Court of Appeals (CA).

The CA Ruling

In a Decision[23] dated May 14, 2008, the CA set aside the NLRC ruling and reinstated that of the LA with modification deleting the award of backwages, annual vacation leave pay, sick leave pay, monthly housing subsidy, electric light subsidy, and exemplary damages, and ordering AMSFC and DFC to solidarily pay Baya the aggregate amount of ₱278,600.05,

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[16] See Appeal Memorandum dated July 24, 2003; *id*. at 97-104.

[17] *Id*. at 133-136.

[18] *Id*. at 136.

[19] See *id*. at 134-136.

[20] Not attached to the *rollo*.

[21] *Rollo*, p. 138.

[22] Dated August 11, 2004. *Id*. at 47-79.

[23] *Id*. at 32-45.

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consisting of ₱194,992.82 as separation pay, ₱8,279.95 as 13th month pay, ₱50,000.00 as moral damages, and ₱25,327.28 as attorney's fees.[24]

It held that the NLRC gravely abused its discretion in dismissing Baya's complaint as the undisputed facts clearly establish constructive dismissal, based on the following considerations: (*a*) in spite of knowing that there was no available supervisory position in AMSFC, the top management still proceeded to order Baya's return there to force him to accept rank-and file positions; (*b*) such "return to AMSFC" was done after Baya was harassed by company managers into switching loyalties to the pro-company cooperative, which was refused by Baya; (*c*) such acts of the top management of AMSFC and DFC were in furtherance of their cooperative busting tactics as stated in the Joint Affidavits executed by AMSKARBEMCO members, which were not refuted by AMSFC and DFC; and (*d*) such acts constituting constructive dismissal were done even before the ARBs were allowed to take over the lands awarded to them. Despite the fact of constructive dismissal, the CA opted not to award backwages to Baya, as he was already awarded a portion of AMSFC's banana plantation through the agrarian reform program. Thus, in the interest of justice and fair play, the CA only awarded him separation pay and 13th month pay, plus moral damages and attorney's fees.[25]

Petitioner filed a motion for reconsideration,[26] which was, however, denied in a Resolution[27] dated May 20, 2009.

Meanwhile and during the pendency of the CA proceedings, petitioner Sumifru (Philippines) Corporation (Sumifru) acquired DFC *via* merger[28] sometime in 2008. According to Sumifru, it

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[24] *Id*. at 44-45.

[25] See *id*. at 40-44.

[26] Dated June 12, 2008. *Id*. at 82-90.

[27] *Id*. at 46.

[28] See Certificate of Filing of the Articles and Plan of Merger dated June 30, 2008; *id*. at 91.

only learned of the pendency of the CA proceedings on June 15, 2009, or after the issuance of the CA's Resolution dated May 20, 2009.[29] Thus, Sumifru was the one who filed the instant petition on behalf of DFC.[30]

The Issue Before the Court

The issues for the Court's resolution are whether or not: (*a*) the CA correctly ruled that the NLRC gravely abused its discretion, and consequently, held that AMSFC and DFC constructively dismissed Baya; (*b*) whether or not AMSFC and DFC are liable to Baya for separation pay, moral damages, and attorney's fees; and (*c*) whether or not Sumifru should be held solidarily liable with AMSFC's for Baya's monetary awards.

The Court's Ruling

The petition is without merit.

"To justify the grant of the extraordinary remedy of *certiorari*, the petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law."[31]

"In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and conclusions are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[32]

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[29] See Motion for Extension to File Petition dated June 16, 2009; *id*. at 3-5.

[30] *Id*. at 10-29.

[31] See *Sta. Isabel v. Perla Compañia De Seguros, Inc.*, G.R. No. 219430, November 7, 2016, citing *Cebu People's Multipurpose Cooperative v. Carbonilla, Jr.*, G.R. No. 212070, January 27, 2016.

[32] See *id*.

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Guided by the foregoing considerations, the Court finds that the CA correctly ascribed grave abuse of discretion on the part of the NLRC in reversing the LA ruling, as the LA's finding that Baya was constructively dismissed from employment is supported by substantial evidence.

"Constructive dismissal exists where there is cessation of work, because 'continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank or a diminution in pay' and other benefits. Aptly called a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not, constructive dismissal may, likewise, exist if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment."[33] In *Peckson v. Robinsons Supermarket Corp.*,[34] the Court held that the burden is on the employer to prove that the transfer or demotion of an employee was a valid exercise of management prerogative and was not a mere subterfuge to get rid of an employee; failing in which, the employer will be found liable for constructive dismissal, *viz.*:

> In case of a constructive dismissal, the employer has the burden of proving that the transfer and demotion of an employee are for valid and legitimate grounds such as genuine business necessity. Particularly, for a transfer not to be considered a constructive dismissal, the employer must be able to show that such transfer is not unreasonable, inconvenient, or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Failure of the employer to overcome this burden of proof, the employee's demotion shall no doubt be tantamount to unlawful constructive dismissal.[35]

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[33] *Verdadero v. Barney Autolines Group of Companies Transport, Inc.*, 693 Phil. 646, 656 (2012), citing *Morales v. Harbour Centre Port Terminal, Inc.*, 680 Phil. 112, 120-121 (2012).

[34] 713 Phil. 471 (2013).

[35] *Id*. at 484, citing *Jarcia Machine Shop and Auto Supply, Inc. v. NLRC*, 334 Phil. 84, 95 (1997).

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In this case, a judicious review of the records reveals that the top management of both AMSFC and DFC, which were sister companies at the time, were well-aware of the lack of supervisory positions in AMSFC. This notwithstanding, they still proceeded to order Baya's return therein, thus, forcing him to accept rank-and-file positions. Notably, AMSFC and DFC failed to refute the allegation that Baya's "end of secondment with DFC" only occurred after: (*a*) he and the rest of AMSKARBEMCO officials and members were subjected to harassment and cooperative busting tactics employed by AMSFC and DFC; and (*b*) he refused to switch loyalties from AMSKARBEMCO to SAFFPAI, the pro-company cooperative. In this relation, the Court cannot lend credence to the contention that Baya's termination was due to the ARBs' takeover of the banana plantation, because the said takeover only occurred on **September 20, 2002**, while the acts constitutive of constructive dismissal were performed as early as **August 30, 2002**, when Baya returned to AMSFC. Thus, AMSFC and DFC are guilty of constructively dismissing Baya.

However, in light of the underlying circumstances which led to Baya's constructive dismissal, it is clear that an atmosphere of animosity and antagonism now exists between Baya on the one hand, and AMSFC and DFC on the other, which therefore calls for the application of the doctrine of strained relations. "Under the *doctrine of strained relations*, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust."[36] Thus, it is more prudent that Baya be awarded separation pay, instead of being reinstated, as computed by the CA.

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[36] *Dreamland Hotel Resort v. Johnson*, 729 Phil. 384, 400-401 (2014), citing *Golden Ace Builders v. Talde*, 634 Phil. 364, 370 (2010).

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Further, and as aptly pointed out by both the LA and the CA, the acts constitutive of Baya's constructive dismissal are clearly tainted with bad faith as they were done to punish him for the actions of his cooperative, AMSKARBEMCO, and for not switching his loyalty to the pro-company cooperative, SAFFPAI. This prompted Baya to litigate in order to protect his interest and to recover what is properly due him. Hence, the award of moral damages and attorney's fees are warranted.

Finally, Sumifru's contention that it should only be held liable for the period when Baya stayed with DFC as it only merged with the latter and not with AMSFC[37] is untenable. Section 80 of the Corporation Code of the Philippines clearly states that one of the effects of a merger is that the surviving company shall inherit not only the assets, but also the liabilities of the corporation it merged with, to wit:

> Section 80. *Effects of merger or consolidation*. – The merger or consolidation shall have the following effects:
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> 1. The constituent corporations shall become a single corporation which, in case of merger, shall be the surviving corporation designated in the plan of merger; and, in case of consolidation, shall be the consolidated corporation designated in the plan of consolidation;
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> 2. The separate existence of the constituent corporations shall cease, except that of the surviving or the consolidated corporation;
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> 3. The surviving or the consolidated corporation shall possess all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Code;
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> 4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each

[37] See *rollo*, pp. 24-26.

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constituent corporation, shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed; and

5. The surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations; and any pending claim, action or proceeding brought by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation. The rights of creditors or liens upon the property of any of such constituent corporations shall not be impaired by such merger or consolidation.

In this case, it is worthy to stress that both AMSFC and DFC are guilty of acts constitutive of constructive dismissal performed against Baya. As such, they should be deemed as solidarily liable for the monetary awards in favor of Baya. Meanwhile, Sumifru, as the surviving entity in its merger with DFC, must be held answerable for the latter's liabilities, including its solidary liability with AMSFC arising herein. Verily, jurisprudence states that "in the merger of two existing corporations, one of the corporations survives and continues the business, while the other is dissolved and all its rights, properties and liabilities are acquired by the surviving corporation,"[38] as in this case.

WHEREFORE, the petition is **DENIED**. The Decision dated May 14, 2008 and the Resolution dated May 20, 2009 of the Court of Appeals in CA-G.R. SP No. 85950 are hereby **AFFIRMED**. Accordingly, Sumifru (Philippines) Corporation, as the surviving entity in its merger with Davao Fruits Corporation, shall be held answerable for the latter's obligations as indicated in this Decision.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Caguioa, JJ.,* concur.

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[38] *Babst v. CA,* 403 Phil. 244, 258 (2001).