WHEREFORE, the Petition is **GRANTED**. The assailed May 2, 2008 Decision and November 25, 2008 Resolution of the Court of Appeals in CA G.R. CV No. 86406 are **REVERSED** and **SET ASIDE**. The Decision dated November 2, 2005 of Branch 108 of the Regional Trial Court of Pasay City in Civil Case No. 00-0343 is **REINSTATED**.

SO ORDERED.

Brion, (*Acting Chairperson*), *del Castillo,* and *Mendoza, JJ.,* concur.

Carpio, J., on official leave.

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.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RAISING AN ALLEGATION FOR THE FIRST TIME ON APPEAL IS NOT ALLOWED EXCEPT WHEN THE ADVERSE PARTY IS NO LONGER REQUIRED TO PRESENT ADDITIONAL EVIDENCE TO CONTEST THE NEW CLAIM.— 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, x x x in respondent's Position Paper in the proceedings before

the Secretary of Labor[, it] x x x 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. x x x Respondent likewise made x x x assertions in its Position Paper in the proceedings before the Secretary of Labor [which] x x x reveal that not only did respondent fail to assert that it was not a party to the Merger Agreement, but it also referred to itself as the party who entered into the transaction and became the surviving corporation in the merger. Thus, the claim that respondent is not a party to the merger is a new allegation raised for the first time on appeal before the Court of Appeals. Raising a factual question for the first time on appeal is not allowed. x x x Respondent did state that Unocal Corporation was the party to the Merger Agreement with Blue Merger and Chevron. Nonetheless, it did not use this allegation to argue that it had a separate and distinct personality from Unocal Corporation and is, thus, not a party to the Merger Agreement. Respondent only raised this argument in its appeal before the Court of Appeals. Respondent's contention that it falls within the exception to the rule likewise does not lie. Respondent cites *Quasha Ancheta Pena and Nolasco Law Office v. LCN Construction Corp.* and claims that it falls within the exception since it did not present any additional evidence on the matter x x x. However, x x x it is the *adverse party* that should no longer be required to present additional evidence to contest the new claim, and not the party presenting the new theory on appeal. Thus, it does not matter that respondent no longer presented additional evidence to support its new claim. The petitioner, as the adverse party, should not have to present further evidence on the matter before the new issue may be considered. However, the issue of whether respondent is a party to the Merger Agreement may be proven otherwise by petitioner, through the presentation of evidence that respondent is merely a branch and not a subsidiary of Unocal Corporation. Thus, respondent's new allegation does not fall under the exception to the rule.

2. MERCANTILE LAW; CORPORATION LAW; CORPORATION CODE; PRIVATE CORPORATIONS;

MERGER; THE SURVIVING CORPORATION AUTOMATICALLY ASSUMES THE EMPLOYMENT CONTRACTS OF THE ABSORBED CORPORATION, SUCH THAT THE ABSORBED CORPORATION'S EMPLOYEES ARE NOT IMPLIEDLY DISMISSED BUT BECOME PART OF THE MANPOWER COMPLEMENT OF THE SURVIVING CORPORATION.— A merger is a consolidation of two or more corporations, which results in one or more corporations being absorbed into one surviving corporation. The separate existence of the absorbed corporation ceases, and the surviving corporation "retains its identity and takes over the rights, privileges, franchises, properties, claims, liabilities and obligations of the absorbed corporation(s)." If respondent is a subsidiary of Unocal California, which, in turn, is a subsidiary of Unocal Corporation, then the merger of Unocal Corporation with Blue Merger and Chevron does not affect respondent or any of its employees. Respondent has a separate and distinct personality from its parent corporation. Nonetheless, if respondent is indeed a party to the merger, the merger still does not result in the dismissal of its employees. The effects of a merger are provided under Section 80 of the Corporation Code x x x. Although this provision does not explicitly state the merger's effect on the employees of the absorbed corporation, *Bank of the Philippine Islands v. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank* has ruled that the surviving corporation automatically assumes the employment contracts of the absorbed corporation, such that the absorbed corporation's employees become part of the manpower complement of the surviving corporation x x x. The rationale for this ruling is anchored on the nature and effects of a merger as provided under Section 80 of the Corporation Code, as well as the policies on work and labor enshrined in the Constitution.

3. ID.; ID.; ID.; ID.; ID.; ALTHOUGH THE ABSORBED EMPLOYEES ARE RETAINED AS EMPLOYEES OF THE MERGED CORPORATION, THE EMPLOYER RETAINS THE RIGHT TO TERMINATE THEIR EMPLOYMENT FOR A JUST OR AUTHORIZED CAUSE AND LIKEWISE, THE EMPLOYEES ARE NOT PRECLUDED FROM SEVERING THEIR EMPLOYMENT THROUGH RESIGNATION OR RETIREMENT.— [P]etitioner is not

precluded from leaving the surviving corporation. Although the absorbed employees are retained as exployees of the merged corporation, the employer retains the right to terminate their employment for a just or authorized cause. Likewise, the employees are not precluded from severing their employment through resignation or retirement. The freedom to contract and the prohibition against involuntary servitude is still, thus, preserved in this sense. This is the manner by which the consent of the employees is considered by the law. Hence, assuming respondent is a party to the merger, the merger still does not operate to effect a termination of the employment of respondent's employees. Should they be unhappy with the surviving corporation, the employees may retire or resign from employment.

4. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; SEPARATION PAY; NOT GRANTED IN CASE OF A MERGER PURSUANT TO THE CONTRACT ENTERED INTO BY THE PARTIES IN CASE AT BAR.— Separation benefits are not granted to petitioner by law in case of voluntary resignation, or by any contract it entered into with respondent. x x x Merger is not one of the circumstances where the employees may claim separation pay. The only instances where separation pay may be awarded to petitioner are: (a) reduction in workforce as a result of redundancy; (b) retrenchment or installation of labor-saving devices; or (c) closure and cessation of operations. Redundancy has been defined by this Court as follows: x x x "[R]edundancy, for purposes of our Labor Code, exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise." x x x Retrenchment, on the other hand, is the reduction of personnel to save on costs on salaries and wages due to a cons iderable decline in the volume of business. Cessation and closure of business contemplates the stopping of business operations of the employer whether on the employer's prerogative or on account of severe business losses. None of these instances are present here. The terms do not provide that a merger is one of the instances where petitioner may claim separation benefits for its members. Neither can these circumstances be interpreted as to contemplate a merger with another corporation. In any case, if the parties intended that petitioner ought to be granted separation pay in case of a merger, it should have been explicitly

provided for in the contract. Absent this express intention, petitioner cannot claim separation pay.

5. ID.; ID.; ID.; ID.; WHEN AWARDED IN THE INTEREST OF SOCIAL JUSTICE.— On the contention that petitioner must be awarded the separation pay in the interest of social justice, this Court has held that this award is granted only under the following exceptional cases: (1) the dismissal of the employee was not for serious misconduct; and (2) it did not reflect on the moral character of the employee. In this case, there is no dismissal of the employees on account of the merger. Petitioner does not deny that respondent actually continued its normal course of operations after the merger, and that its members, as employees, resumed their work with their tenure, salaries, wages, and other benefits intact. Petitioner was even able to execute with respondent, after the merger, the Collective Bargaining Agreement from which it anchors its claims.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & Delos Angeles for respondent.

D E C I S I O N

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

[1] *Rollo*, pp. 9-25.

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

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[2] *Id*. at 214-234. The Decision, docketed as C.A.-G.R. SP No. 102184, was penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Josefina Guevara-Salonga and Arcangelita M. Romilla-Lontok of the Eighth Division, Court of Appeals, Manila.

[3] *Id*. at 238. The Resolution was penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Josefina Guevara-Salonga and Arcangelita M. Romilla-Lontok of the Eighth Division, Court of Appeals, Manila.

[4] *Id*. at 10.

[5] *Id*. at 215.

[6] *Id*.

[7] *Id*.

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]

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[8] *Id*. at 217.

[9] *Id*. at 216.

[10] *Id*.

[11] *Id*.

[12] *Id*.

[13] *Id*.

[14] *Id*. at 217.

[15] *Id*.

[16] *Id*. at 217-218.

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 Philippines, 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:

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[17] *Id*. at 218.

[18] *Id*.

[19] *Id*.

[20] *Id*.

[21] *Id*. at 218-219.

[22] *Id*. at 83.

[23] *Id*. at 83-92. The Decision was penned by Former Secretary of Labor and Employment (now Associate Justice of this Court) Arturo D. Brion.

[24] *Id*. at 90-91.

[25] *Id*. at 91.

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

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[26] *Id.* at 91-92.

[27] *Id.* at 440-494. The Petition was filed under Rule 43 of the Rules of Court.

[28] *Id.* at 461-466.

[29] *Id.* at 455-461.

[30] *Id.* at 471.

[31] *Id.*

[32] *Id.* at 214-234.

[33] *Id.* at 233-234.

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**.

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[34] *Id*. at 226-228.

[35] *Id*. at 226-227.

[36] *Id*.

[37] *Id*. at 230.

[38] *Id*.

[39] *Id*. at 231-232.

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

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[40] *Id*. at 233-234.

[41] *Id*. at 238.

[42] *Id*. at 9-25.

[43] *Id*. at 17.

[44] *Id*.

[45] *Id*. at 18.

[46] *Id*. at 19.

[47] *Id*.

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 contemporaenous 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,

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[48] *Id*. at 18-20.

[49] *Id*. at 20.

[50] *Id*. at 239-240.

[51] *Id*. at 251-297.

[52] *Id*. at 271-272.

[53] *Id*. at 294.

[54] *Id*. at 294-295.

[55] *Id*. at 275.

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:

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[56] *Id*. at 280-281.

[57] *Id*. at 1292-1297.

[58] *Id*. at 1293.

[59] *Id*.

[60] *Id*. at 1294.

> 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 aforenamed 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 basis to the union's claim.
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> . . . . . .
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> . . . *In the present case, it is clear that the surviving corporation, i.e. Unocal Philippines Inc.* has continued the business and operations of the absorbed corporation in an unchanged manner, and using the

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[61] *Id*. at 417.

[62] 685 Phil. 429 (2012) [Per *J*. Mendoza, Third Division].

[63] *Id*. at 437.

same employees with their tenure intact and under the same terms and conditions of employment.[64] (Emphasis supplied)

These statements reveal that not only did respondent fail to assert that it was not a party to the Merger Agreement, but it also referred to itself as the party who entered into the transaction and became the surviving corporation in the merger. Thus, the claim that respondent is not a party to the merger is a new allegation raised for the first time on appeal before the Court of Appeals.

Raising a factual question for the first time on appeal is not allowed. In *Tan v. Commission on Elections*:[65]

> The aforementioned issue is now raised only for the first time on appeal before this Court. Settled is the rule that issues not raised in the proceedings below (COMELEC *en banc*) cannot be raised for the first time on appeal. Fairness and due process dictate that evidence and issues not presented below cannot be taken up for the first time on appeal.
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> Thus, in *Matugas v. Commission on Elections*, we reiterated this rule, saying:
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> > The rule in appellate procedure is that a factual question may not be raised for the first time on appeal, and documents forming no part of the proofs before the appellate court will not be considered in disposing of the issues of an action. This is true whether the decision elevated for review originated from a regular court or an administrative agency or quasi-judicial body, and whether it was rendered in a civil case, a special proceeding, or a criminal case. Piecemeal presentation of evidence is simply not in accord with orderly justice.
> >
> > Moreover, in *Vda. De Gualberto v. Go*, we also held:
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> > > In *Labor Congress of the Philippines v. NLRC*, we have made it clear that "to allow fresh issues on appeal is violative of the rudiments of fair play, justice and due

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[64] *Rollo,* pp. 413-421, respondent's Position Paper.

[65] 537 Phil. 510 (2006) [Per *J.* Velasco, Jr., *En Banc*].

> process." Likewise, in *Orosa v. Court of Appeals*, the Court disallowed it because "it would be offensive to the basic rule of fair play, justice and due process if it considered [the] issue[s] raised for the first time on appeal." We cannot take an opposite stance in the present case.[66] (Citations omitted)

Respondent did state that Unocal Corporation was the party to the Merger Agreement with Blue Merger and Chevron. Nonetheless, it did not use this allegation to argue that it had a separate and distinct personality from Unocal Corporation and is, thus, not a party to the Merger Agreement. Respondent only raised this argument in its appeal before the Court of Appeals.

Respondent's contention that it falls within the exception to the rule likewise does not lie. Respondent cites *Quasha Ancheta Pena and Nolasco Law Office v. LCN Construction Corp.*[67] and claims that it falls within the exception since it did not present any additional evidence on the matter:

> In the interest of justice and within the sound discretion of the appellate court, a party may change his legal theory on appeal, only when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory.[68]

However, this paragraph states that it is the *adverse party* that should no longer be required to present additional evidence to contest the new claim, and not the party presenting the new theory on appeal. Thus, it does not matter that respondent no longer presented additional evidence to support its new claim. The petitioner, as the adverse party, should not have to present further evidence on the matter before the new issue may be considered. However, the issue of whether respondent is a

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[66] *Id*. at 532-534.

[67] 585 Phil. 416 (2008) [Per *J*. Chico-Nazario, Third Division].

[68] *Id*. at 436, *as cited in rollo*, p. 294.

party to the Merger Agreement may be proven otherwise by petitioner, through the presentation of evidence that respondent is merely a branch and not a subsidiary of Unocal Corporation. Thus, respondent's new allegation does not fall under the exception to the rule.

Petitioner was denied the opportunity to present evidence to disprove respondent's new claim. Therefore, the Court of Appeals erred in taking into consideration this argument.

As to the remaining issues, we rule in favor of respondent and dismiss the Petition.

Both the Secretary of Labor and the Court of Appeals found that what was entered into by Unocal Corporation, Blue Merger, and Chevron is a merger. The primary issue is what the effects of this merger on respondent's employees are.

We find that, whether or not respondent is a party to the Merger Agreement, there is no implied dismissal of its employees as a consequence of the merger.

A merger is a consolidation of two or more corporations, which results in one or more corporations being absorbed into one surviving corporation.[69] The separate existence of the absorbed corporation ceases, and the surviving corporation "retains its identity and takes over the rights, privileges, franchises, properties, claims, liabilities and obligations of the absorbed corporation(s)."[70]

If respondent is a subsidiary of Unocal California, which, in turn, is a subsidiary of Unocal Corporation, then the merger of Unocal Corporation with Blue Merger and Chevron does not affect respondent or any of its employees. Respondent has a separate and distinct personality from its parent corporation.

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[69] *Bank of Commerce v. Radio Philippines Network, Inc.,* 733 Phil. 491, 510 (2014) [Per *J.* Abad, Third Division].

[70] *Id*.

Nonetheless, if respondent is indeed a party to the merger, the merger still does not result in the dismissal of its employees.

The effects of a merger are provided under Section 80 of the Corporation Code:

SEC. 80. *Effects of merger or consolidation.* — The merger or consolidation, as provided in the preceding sections shall have the following effects:

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;

2. The separate existence of the constituent corporations shall cease, except that of the surviving or the consolidated corporation;

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;

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

5. The surviving or the 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 claim, action or proceeding pending by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation, as the case may be. Neither the rights of creditors nor any lien upon the property of any of such constituent corporations shall be impaired by such merger or consolidation. (Emphasis supplied)

Although this provision does not explicitly state the merger's effect on the employees of the absorbed corporation, *Bank of the Philippine Islands v. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank*[71] has ruled that the surviving corporation automatically assumes the employment contracts of the absorbed corporation, such that the absorbed corporation's employees become part of the manpower complement of the surviving corporation, thus:

Taking a second look on this point, we have come to agree with Justice Brion's view *that it is more in keeping with the dictates of social justice and the State policy of according full protection to labor to deem employment contracts as automatically assumed by the surviving corporation in a merger, even in the absence of an express stipulation in the articles of merger or the merger plan.* In his dissenting opinion, Justice Brion reasoned that:

> To my mind, due consideration of Section 80 of the Corporation Code, the constitutionally declared policies on work, labor and employment, and the specific FEBTC-BPI situation — *i.e.*, a merger with complete "body and soul" transfer of all that FEBTC embodied and possessed and where both participating banks were willing (albeit by deed, not by their written agreement) to provide for the affected human resources by recognizing continuity of employment — should point this Court to a declaration that in a complete merger situation where there is total takeover by one corporation over another and there is silence in the merger agreement on what the fate of the human resource complement shall be, the latter should not be left in legal limbo and should be properly provided for, by compelling the surviving entity to absorb these employees. This is what Section 80 of the Corporation Code commands, as the surviving corporation has the legal obligation to assume all the obligations and liabilities of the merged constituent corporation.
>
> Not to be forgotten is that the affected employees managed, operated and worked on the transferred assets and properties as their means of livelihood; they constituted a basic component of their corporation during its existence. In a merger and

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[71] 674 Phil. 609, 617-618 (2011) [Per *J*. Leonardo-De Castro, *En Banc*].

> consolidation situation, they cannot be treated without consideration of the applicable constitutional declarations and directives, or, worse, be simply disregarded. If they are so treated, it is up to this Court to read and interpret the law so that they are treated in accordance with the legal requirements of mergers and consolidation, read in light of the social justice, economic and social provisions of our Constitution. *Hence, there is a need for the surviving corporation to take responsibility for the affected employees and to absorb them into its workforce where no appropriate provision for the merged corporation's human resources component is made in the Merger Plan.*[72] (Emphasis supplied, citations omitted)

The rationale for this ruling is anchored on the nature and effects of a merger as provided under Section 80 of the Corporation Code, as well as the policies on work and labor enshrined in the Constitution.[73]

To reiterate, Section 80 of the Corporation Code provides that the surviving corporation shall possess all the rights, privileges, properties, and receivables due of the absorbed corporation. Moreover, all interests of, belonging to, or due to the absorbed corporation "shall be taken and deemed to be transferred to and vested in such surviving or consolidated corporation without further act or deed."[74] The surviving corporation likewise acquires all the liabilities and obligations of the absorbed corporation as if it had itself incurred these liabilities or obligations.[75]

This acquisition of all assets, interests, and liabilities of the absorbed corporation necessarily includes the rights and obligations of the absorbed corporation under its employment contracts. Consequently, the surviving corporation becomes bound by the employment contracts entered into by the absorbed

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[72] *Id*. at 617-618.

[73] *Id*.

[74] CORP. CODE, Sec. 80.

[75] CORP. CODE, Sec. 80.

corporation. These employment contracts are not terminated. They subsist unless their termination is allowed by law.

This interpretation is consistent with the consitutional provisions and policies on work and labor, which provides:

ARTICLE II

. . .

State Policies

. . . . . .

SECTION 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

. . . . . .

ARTICLE XIII

. . . .

Labor

SECTION 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

These constitutional provisions ensure that workers' rights are protected as they are imbued with public interest. They

likewise prevent an interpretation of any law, rule, or agreement, which may violate worker's rights acquired during their employment.

Associate Justice Arturo D. Brion's Dissenting Opinion in *Bank of the Philippine Islands v. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank*[76] was similarly premised on the constitutional protection afforded to labor and the public interest carried by employment contracts:

> An employment contract or contract of service essentially has value because it embodies work — the means of adding value to basic raw materials and the processes for producing goods, materials and services that become the lifeblood of corporations and, ultimately, of the nation. Viewed from this perspective, the employment contract or contract of service is not an ordinary agreement that can be viewed in strictly *contractual* sense. It embodies work and production and carries with it a very significant element of public interest; thus, the Constitution, no less, accords full recognition and protection to workers and their contribution to production.
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> . . . . . .
>
> These constitutional statements and directives, aside from telling us to consider work, labor and employment beyond purely *contractual* terms, also provide us directions on how our considerations should be made, *i.e.,* with an eye on the interests they represent — the individual, the corporate, and more importantly, the national.[77]

Associate Justice Brion likewise discussed the nature of a merger agreement vis-à-vis the employment contracts:

> This recognition is not to objectify the workers as assets and liabilities, but to recognize — using the spirit of the law and constitutional standards — their necessary involvement and need to be provided for in a merger situation. Neither does this step, directly impacting on the employees' individual employment contracts, detract from the *in personam* character of these contracts. For in a merger situation, no change of employer is involved; the change is in the

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[76] 642 Phil. 47, 138-158 (2010) [Per *J.* Leonardo-De Castro, *En Banc*].

[77] *Id*. at 145-147.

internal personality of the employer rather than through the introduction of a new employer which would have novated the contract. This conclusion proceeds from the nature of a merger as a corporate development regulated by law and the merger's implementation through the parties' merger agreement.

. . . . . .

In the BPI-FEBTC situation, these employment contracts are part of the obligations that the merging parties have to account and make provisions for under the Constitution and the Corporation Code; in the absence of any clear agreement, these employment contracts subsist, subject to the right of the employees to reject them as they cannot be compelled to render service but can only be made to answer in damages if the rejection constitutes a breach. *In other words, in mergers and consolidations, these contracts should be held to be continuing, unless rejected by the employees themselves or declared by the merging parties to be subject to the authorized causes for termination of employment under Sections 282 and 283 of the Labor Code. In this sense, the merging parties' control and business decision on how employees shall be affected, in the same manner that the affected employees' decision on whether to abide by the merger or to opt out, remain unsullied.*[78] (Emphasis in the original)

Senior Associate Justice Antonio T. Carpio's Dissenting Opinion[79] likewise discusses the constitutional and legal right to security of tenure as basis for ruling that the employment contracts of the absorbed corporation subsist in case of a merger:

Upon merger, BPI, as the surviving entity, absorbs FEBTC and continues the combined business of the two banks. BPI assumes the legal personality of FEBTC, and automatically acquires FEBTC's rights, privileges and powers, as well as its liabilities and obligations.

. . . . . .

Among the obligations and liabilities of FEBTC is to continue the employment of FEBTC employees. These employees have already acquired certain employment status, tenure, salary and benefits. They

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[78] *Id*. at 148-152.

[79] *Id*. at 117-137.

are regular employees of FEBTC. Since after the merger, BPI has continued the business of FEBTC, FEBTC's obligation to these employees is assumed by BPI, and BPI becomes duty-bound to continue the employment of these FEBTC employees.

Under Article 279 of the Labor Code, regular employees acquire security of tenure, and hence, may not be terminated by the employer except upon legal grounds. . . . Without any of these legal grounds, the employer cannot validly terminate the employment of regular employees; otherwise, the employees' right to security of tenure would be violated.

The merger of two corporations does not authorize the surviving corporation to terminate the employees of the absorbed corporation in the absence of just or authorized causes as provided in Articles 282 and 283 of the Labor Code. . . . Once an employee becomes permanent, he is protected by the security of tenure clause in the Constitution, and he can be terminated only for just or authorized causes as provided by law.[80]

These theories were dissents to the Decision in *Bank of the Philippine Islands*. However, in the Resolution resolving the Motion for Reconsideration in that case, this Court found it necessary to interpret Section 80 of the Corporation Code and the constitutional provisions on labor as to strengthen the "judicial protection of the right to security of tenure of employees affected by a merger and [avoid] confusion regarding the status of various benefits."[81] Thus, this Court ruled that the surviving corporation automatically assumes the employment contracts of the absorbed corporation. The absorbed corporation's employees are not impliedly dismissed, but become part of the manpower complement of the surviving corporation.[82]

The merger of Unocal Corporation with Blue Merger and Chevron does not result in an implied termination of the

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[80] *Id*. at 127-129.

[81] *Bank of the Philippine Islands v. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank,* 674 Phil. 609, 617-618 (2011) [Per *J*. Leonardo-De Castro, *En Banc*].

[82] *Id*.

employment of petitioner's members. Assuming respondent is a party to the merger, its employment contracts are deemed to subsist and continue by "the combined operation of the Corporation Code and the Labor Code under the backdrop of the labor and social justice provisions of the Constitution."[83]

Petitioner insists that this is contrary to its freedom to contract, considering its members did not enter into employment contracts with the surviving corporation. However, petitioner is not precluded from leaving the surviving corporation. Although the absorbed employees are retained as exployees of the merged corporation, the employer retains the right to terminate their employment for a just or authorized cause. Likewise, the employees are not precluded from severing their employment through resignation or retirement. The freedom to contract and the prohibition against involuntary servitude is still, thus, preserved in this sense.[84] This is the manner by which the consent of the employees is considered by the law.

Hence, assuming respondent is a party to the merger, the merger still does not operate to effect a termination of the employment of respondent's employees. Should they be unhappy with the surviving corporation, the employees may retire or resign from employment.

Given these considerations, we rule that petitioner is not entitled to the separation benefits it claims from respondent.

Separation benefits are not granted to petitioner by law in case of voluntary resignation,[85] or by any contract it entered into with respondent.

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[83] *Bank of the Philippine Islands v. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank,* 642 Phil. 47, 148 (2010) [Per *J.* Leonardo-De Castro, *En Banc*].

[84] *Bank of the Philippine Islands v. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank,* 674 Phil. 609, 617-618 (2011) [Per *J.* Leonardo-De Castro, *En Banc*].

[85] LABOR CODE, Art. 299.

The Collective Bargaining Agreement[86] between petitioner and respondent provides:

Article XII

RESPONSIBILITIES OF THE PARTIES AND INDUSTRIAL PEACE

. . . . . .

Section 2. ADDITIONAL RESPONSIBILITIES

. . . . . .

In the event of closure, cessation of operations, retrenchment, redundancy or installation of labor saving devices, the COMPANY will pay just and fair compensation for those who will be separated from the COMPANY. The separation benefit is covered under a MEMORANDUM OF AGREEMENT as agreed upon by both parties and shall serve as a part of this agreement (Annex B).[87]

Likewise, the Memorandum of Agreement[88] dated November 1, 2005 betweeen petitioner and respondent states:

WITHESSETH: That

WHEREAS, the COMPANY and the UNION recognize the possibility that UNOCAL PHILIPPINES, INC. may undergo at its discretion reduction in workforce as a result of redundancy, retrenchment or installation of labor saving devices, or closure and cessation of operations.

WHEREAS, the COMPANY and the UNION agree that should any of the above-cited conditions occur that may directly affect the tenure of existing employees, the rights of the employees should be respected and that the COMPANY will pay just and fair compensation for those who will be separated from the COMPANY;

In view of the foregoing and in consideration of industrial peace and this covenant, the parties hereby agree as follows:

. . . . . .

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[86] *Rollo*, pp. 315-337.

[87] *Id*. at 331.

[88] *Id*. at 310-314.

2. The COMPANY will provide the following separation benefits for all regular and probationary employees in the event that they lose their jobs as a result of the conditions cited above;

a. Separation Pay: 2.5 months multiplied by the current monthly base pay plus monthly equivalent of the 13th month and 14th month pay multiplied by the number of years service.[89]

Merger is not one of the circumstances where the employees may claim separation pay. The only instances where separation pay may be awarded to petitioner are: (a) reduction in workforce as a result of redundancy; (b) retrenchment or installation of labor-saving devices; or (c) closure and cessation of operations.

Redundancy has been defined by this Court as follows:

[W]e believe that redundancy, for purposes of our Labor Code, exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. Succinctly put, a position is redundant where it is superfluous, and superfluity of a position or positions may be the outcome of a number of factors, such as overhiring of workers, decreased volume of business, or dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise. The employer has no legal obligation to keep in its payroll more employees than are necessary for the operation of its business.[90] (Citations omitted)

Retrenchment, on the other hand, is the reduction of personnel to save on costs on salaries and wages due to a considerable decline in the volume of business.[91]

Cessation and closure of business contemplates the stopping of business operations of the employer whether on the employer's prerogative or on account of severe business losses.[92]

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[89] *Id*. at 310-311.

[90] *Wiltshire File Co., Inc. v. National Labor Relations Commission,* 271 Phil. 694, 703 (1991) [Per *J*. Feliciano, Third Division].

[91] *Manila Polo Club Employees' Union v. Manila Polo Club, Inc.,* 715 Phil 18, 25 (2013) [Per *J*. Peralta, Third Division].

[92] *Id*.

None of these instances are present here. The terms do not provide that a merger is one of the instances where petitioner may claim separation benefits for its members. Neither can these circumstances be interpreted as to contemplate a merger with another corporation. In any case, if the parties intended that petitioner ought to be granted separation pay in case of a merger, it should have been explicitly provided for in the contract. Absent this express intention, petitioner cannot claim separation pay.

On the contention that petitioner must be awarded the separation pay in the interest of social justice, this Court has held that this award is granted only under the following exceptional cases: (1) the dismissal of the employee was not for serious misconduct; and (2) it did not reflect on the moral character of the employee.[93]

In this case, there is no dismissal of the employees on account of the merger. Petitioner does not deny that respondent actually continued its normal course of operations after the merger, and that its members, as employees, resumed their work with their tenure, salaries, wages, and other benefits intact. Petitioner was even able to execute with respondent, after the merger, the Collective Bargaining Agreement from which it anchors its claims.

Given these circumstances, petitioner is not entitled to separation pay. Although the policy of the state is to rule in favor of labor in light of the social justice provisions under the Constitution, this Court cannot unduly trample upon the rights of management, which are likewise entitled to respect in the interest of fair play.

WHEREFORE, the Decision dated July 23, 2009 and the Resolution dated November 9, 2009 of the Court of Appeals in CA-G.R. No. 102184 are AFFIRMED. The Petition for Review

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[93] *Unilever Philippines, Inc. v. Rivera*, 710 Phil. 124, 132-133 (2013) [Per J. Mendoza, Third Division], *citing Philippine Long Distance Telephone Co. v. National Labor Relations Commission*, 247 Phil. 641, 649 (1988) [Per *J*. Cruz, *En Banc*]. *See Cutamora v. Eastern Gold Corp.,* G.R. No. 220380 [Formerly UDK 15350] (Notice), October 12, 2015 [Per Clerk of Court Notice Unsigned Resolution, First Division].

is DENIED considering that no reversible error was committed by the Court of Appeals.

SO ORDERED.

Leonardo-de Castro, Mendoza, and *Jardeleza, JJ.*, concur.

Velasco, Jr., J., concurs but this case is to be differentiated from G.R. No. 195615 (Bank of Commerce *vs.* RPN)

SECOND DIVISION

[G.R. No. 205871. September 28, 2016]

RUEL TUANO *y* HERNANDEZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; DEATH OF PARTY; THE RULE THAT THE COUNSEL OF THE DECEASED PARTY MUST INFORM THE COURT OF THE DEATH OF HIS CLIENT APPLIES IN CIVIL AND CRIMINAL ACTIONS.— Rule 3, Section 16 of the Rules of Court provides that the counsel is duty-bound to report the death of a party to the court x x x. Although Rule 3, Section 16 of the Rules of Court is directly applied more often in civil actions for the substitution of the deceased party, the rule that the counsel of the deceased party must inform the court of the death of his or her client also properly applies in criminal actions. Regardless of the nature of the action, courts cannot be expected to assume the death of the party without the counsel's proper manifestation. Furthermore, the rules presume that "the attorney for the deceased party is in a better position than the attorney for the adverse party to know about the death of his [or her] client[.]" As officers of the court and as protectors of the legal interests of their clients, counsels have a duty to properly act in case of their clients' death by notifying the Court of this development.

2. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER WHO ACCEPTS THE