

LILIA DE JESUS-SEVILLA, PETITIONER VS. THE COLLECTOR OF INTERNAL REVENUE, RESPONDENT.

G.R. No. L-20060. April 30, 1968

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

The facts of this case are stated in the decision under review (C.T.A. Case No. 344):

“The petitioner is a lawyer and a business-woman, who, sometime in June, 1954, was introduced by one Rene Nieto to Jesus Sto. Tomas Cortes (Jes Cortes for short), now deceased, a well-known operator and promoter of sports exhibitions and other entertainments in the Philippines. On this meeting, Jes Cortes broached the subject of promoting the first bullfight exhibitions in the Philippines and pictured to her its financial success. Because the staging of bullfights requires a considerable amount of money, and not being in a position to raise the capital, he proposed that petitioner undertake the raising of working capital for the venture to which proposal the latter agreed.

“On August 20, 1954, the petitioner gave Jes Cortes a special power to enter into a contract with the representatives of the bullfight troupe from Lisbon, Portugal (Exh. 1, p. 166, Vol. III, BIR rec). On August 26, 1954, Jes Cortes concluded personally and in his own name a bullfight contract with David Rodriguez Barrote, representing Alfredo Da Silva Over 1 ha, Empresario and Manager of the Portuguese Bullfight Troupe (Exh. A, pp. 51-56, CTA rec).

“On October 10, 1954, Jes Cortes and the petitioner entered into a ‘Contract of Management,’ wherein the former was denominated as promoter and the latter as general manager of the bullfight. Among others, the contract provided:

“That the said AGENT, as General Manager, shall arrange and provide a working capital for the operations of the PROMOTER, by means of an overdraft or overdrafts in one or more of the banking institutions of the City of Manila, in such sums as maybe, from time to time, necessary and proper not to exceed in the sum total at any one time, the sum of ONE HUNDRED THOUSAND (P100,000.00) PESOS, and does hereby warrant that said working capital shall be available in said requisite sums, promising and agreeing, whenever necessary, to guarantee the repayment of the said overdrafts unto the interested banking institutions the pledge of the faith and credit of the said AGENT, to the entire satisfaction of the interested banking institutions, or other creditors, if any.’ (Par. II, Exh. D, pp. 59, 60 CTA rec).

“Subsequently, the petitioner entered into contracts (Exh. 5, pp. 156-157, Vol. III, BIR rec.) with the Tabacalera granting the latter ‘exclusive right to use for the advertisement of its products the bullfights which shall be held in Manila,’ and with Harry Lyons, Inc. for the construction by the latter of the bullfight arena.

“On December 3, 1954, Jes Cortes secured from the Director of Lands a permit to occupy and construct a bullfight arena in the Sunken Garden (Exh. H-7, p. 74, CTA rec).

“There were actually seven (7) bullfight exhibitions held between December 31, 1954 to February 6, 1955. Before, during and after the exhibitions were held, the petitioner kept the books of accounts; caused the printing

of handbills and tickets and the sale of the latter; and employed the personnel needed for the operation of the bullfight venture. She also provided the venture with a working capital in the total amount of P170,000.00.

“On the basis of the gross proceeds derived from the bullfight exhibitions, respondent (Collector of Internal Revenue) assessed and demanded from petitioner the amount of P111,056.84 as amusement tax and surcharge, plus P600.00 as compromise penalty for failure to register the books of accounts with the Bureau of Internal Revenue (Exh. 23, pp. 250-251, Vol. I, BIR rec).

“After request for reconsideration of the assessment and demand having been denied by respondent (Exh. R,p. 88 CTA rec), petitioner appealed (to the Court of Tax Appeals).”

On May 23, 1962 the Court of Tax Appeals affirmed, with costs against petitioner, the decision of the Collector of Internal Revenue “except with respect to the sum of P600.00 sought to be collected as compromise penalty.” Hence this appeal.

There is no dispute as to the correctness of the amount of amusement tax sought to be collected by respondent. The sole issue for determination is whether or not petitioner maybe properly considered the proprietor or operator of the bullfight exhibitions, thus making her liable for the payment of the amusement tax under Section 260 of the National Internal Revenue Code.

In denying her liability for the payment of the amusement tax demanded, petitioner contends that the late Jes Cortes, instead of her, should be considered the operator or promoter. She submits that being merely a financier or capitalist who furnished the necessary funds for the staging of the bullfight exhibitions, she cannot be held liable for the payment of the amusement tax due. In this connection, she invokes our ruling in the case of *Blaquera vs. Aldaba* (L-10534, March 30, 1960) to the effect that a “financier and capitalist” of a stage presentation cannot be held liable for the payment of the amusement tax.

We believe that petitioner’s reliance on the aforecited case is misplaced. In that case, it was conclusively shown that the financier’s only participation in the stage presentation was limited to the giving of necessary funds - which really was in the nature of a loan — to the company in-charge of the opera presentation with the understanding that the same would be returned as soon as the company had funds. The instant case presents an entirely different working arrangement. In addition to financing the bullfight exhibitions, petitioner assumed active involvement in the agreed business venture. On August 20, 1954 she expressly gave Jes Cortes authority - as embodied in the special power of attorney executed by petitioner in favor of Jes Cortes - to enter into a contract with the representatives of the bullfight troupe to stage several bullfight exhibitions in Manila. Six (6) days later, Jes Cortes executed and signed the bullfight contract.

Admittedly, petitioner’s participation with respect to the staging of the bullfight exhibitions became more involved after the bullfight contract was perfected. She acknowledged having granted to Tabacalera the exclusive right to use the bullfights for advertisement of its products; she likewise contracted the services of Harry Lyons, Inc. for the construction of the bullfight arena. She took charge of the disbursements and gate receipts during the bullfight exhibitions as well as the recording and keeping of the pertinent books of account. She was therefore more than a mere financier or capitalist in the sense understood in the *Blaquera vs. Aldaba* case (*supra*).

Petitioner cites the provision of the Management Contract executed between her and Jes Cortes on October 10, 1954, wherein she is referred to as AGENT and Cortes as PROMOTER. She insists that if ever she attended actively to the details concerning the bullfight exhibitions, thus making her an active financier, it was primarily in keeping with her new role as general manager in-charge. She advances the view that Jes Cortes assumed personal responsibility as principal when he signed the bullfight contract since under the terms thereof, the contemplated

bullfight exhibitions would be under the management, control and direction of the Second Party (Jes Cortes), at such places and at such times as the Second Party may indicate without any' reference to her at all. Pursuing her argument further, petitioner says:

“After the contract (Exh. 'A').was executed, Jes Cortes showed the same to the petitioner, informing the latter that he executed the same as principal because, in the meantime, he had changed his mind and he wanted to be the principal himself, and the petitioner to be the manager (t.s.n. p. 33, Sept. 29, 1958).

“Because of the change in the arrangement and in order to protect the large sum of money the petitioner had already spent in preparation for the bullfight exhibitions, she finally agreed to join Jes Cortes as manager, and so, on October 10, 1954, the petitioner signed the Contract of Management (Exh. 'D') wherein the roles of the parties were reversed . . . (Petitioner's brief, p. 6)

On this score, we find petitioner's argument without merit. As correctly noted by respondent, in August of 1954 when Jes Cortes allegedly informed petitioner that he had entered into the bullfight contract for his own account, petitioner had not yet invested any money in the venture since it was only later — September 1, 1954 to be exact — that petitioner put up her initial investment of P90,000. In other words, it is inaccurate to say that petitioner agreed to the demands of Jes Cortes to protect her investment because at that time she had not yet spent any significant amount. If there was any person who had valid reason to fear that the proposed bullfight exhibitions might not materialize, it was Jes Cortes who must have thought of the serious consequences should petitioner back out at that stage. Obviously it was for this reason that Jes Cortes caused petitioner to sign the Management Contract, under which petitioner's financial support was assured and her right as investor well-protected. With these facts in mind, the Management Contract could not have been intended to revoke the special power of attorney; rather, the former was an added protection to the interests of both parties since it gave petitioner sufficient security and protection of her working capital and, at the same time, assured Jes Cortes of the availability of necessary funds. The use of the term promoter in describing Jes Cortes under the Management Contract should not be given any undue significance since under the set-up just described, promoter was conveniently used only in the sense that Jes Cortes knew the practical aspects of the business better than petitioner did.

In a further effort to avoid liability, petitioner points to the fact that it was Jes Cortes, not she, who approved and signed the amusement tax return covering the bullfight exhibitions in question and that the statement of income and expenses of the venture was signed by Jes Cortes as promoter and operator. This fact can have very little persuasive effect, considering that said documents were prepared and filed after petitioner had been assessed for amusement taxes on January 21, 1955 in her capacity as operator and promoter. In fact, we see in it a subtle attempt to render the collection of the amusement taxes due more difficult.

WHEREFORE, the judgment appealed from is hereby affirmed. Costs against petitioner.

Reyes, J.B.L., (Acting C.J.), Dizon, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

Judgment affirmed.

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