

**THE ZAMBOANGA MUTUAL BUILDING AND LOAN ASSOCIATION,
PLAINTIFF AND APPELLANT, VS. JAMES J. RAFFERTY,
COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLEE.**

G. R. No. 16045. December 03, 1921

Ponente: JOHNSON, J.

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JOHNSON, J.:

The only question presented by this appeal is whether or not the plaintiff-appellant is a real estate broker. If it is, then the judgment of the lower court must be affirmed; if it is not, the judgment appealed from must be revoked.

The facts upon which that question must be answered are as follows:

(a) That the plaintiff is a "mutual building and loan association," duly organized under the laws of the Philippine Islands (secs. 171 et seq., Act No. 1459);

(b) That the purposes of said association are: (1) To encourage industry, frugality, and home building among its members; (2) to provide ways and means whereby its members may accumulate their savings, whether large or small, and have the same safely and legally invested under the direction of a competent board of directors selected by the stockholders from among themselves; (3) to provide ways and means whereby its stockholders, with a limited capital, and with approved titles to lands, may become the owners of homes, either by purchase or erection, with the money supplied therefor by the association at an equitable rate of interest, in equal monthly installments extending over a period sufficiently long to make possible the repayment without burden or hardship to its members; (4) to make possible the safe investment by its stockholders of accumulated savings, by the purchase of paid-up or investment stock from the corporation, upon which the association guarantees a fixed rate of interest; (5) to have the profits or losses of its shareholders justly, equally, and mutually divided among the members of the association; and (6) to keep loaned at all times at the best possible advantage to the association and its members all the money belonging to the association and to divide the same among its members in such manner and at such times as may be provided in the by-laws and the laws governing said association;

(c) That said association transacts no business whatever outside of the purposes of its charter, and with no person or persons except with its own members;

(d) That said association does not act for, nor on behalf of, third persons;

(e) That said association does not negotiate the purchase or sale of lands nor any interest therein, except among its own members; that it does not negotiate loans secured by lands, buildings or any interest therein, except among its members; that it does not rent real estate for others nor collect rents thereon for others.

Notwithstanding the foregoing facts the Collector of Internal Revenue required the appellant to pay a license as a real estate broker. The amount required to be paid by the plaintiff was the sum of P450, for different periods, which amount was paid by the plaintiff under protest. The present action was instituted to recover that amount, upon the theory that the same had been illegally collected. The lower court denied the relief prayed for, and an

appeal was taken to this court.

The Collector of Internal Revenue contends that by virtue of subsection (w) of section 1620 of Act No. 2657 the appellant is a real estate broker and, as such, must have a license to do business. Said section defines a real estate broker as follows:

"A 'real estate broker' includes all persons whose business it is, for themselves or others, to negotiate purchases or sales of lands, buildings, or interest therein, or to negotiate loans secured by lands, buildings, or interest therein, or to rent real estate for others, or to collect rents thereon."

This statutory definition of a real estate broker is broader than the generally accepted definition. The generally accepted definition of a real estate broker is:

"A 'real estate broker' has been variously defined. A broker is generally defined as one who is engaged, for others, on a commission, negotiating contracts relative to property with the custody of which he has no concern; the negotiator between other parties, never acting in his own name, but in the name of those who employed him; he is strictly a middleman and for some purposes the agent of both parties. (19 Cyc, 186; Henderson vs. State, 60 Ind., 234; Black's Law Dictionary.) A broker is one whose occupation it is to bring parties together to bargain or to bargain for them, in matters of trade, commerce or navigation. (Mechem on Agency, sec. 13; Wharton on Agency, sec. 695.) Judge Storey, in his work on Agency, defines a broker as an agent employed to make bargains and contracts between other persons, in matters of trade, commerce or navigation for a compensation commonly called brokerage. (Storey on Agency, sec. 28.) A real estate broker negotiates the purchase or sale of real property. He may also procure loans on mortgage security, collect rents, and attend to the letting and leasing of houses and lands. (Bouvier's Law Dictionary.) A broker acts for another."

It will be noted that the above-quoted statutory definition not only includes the idea of negotiating the purchase and sale of real estate, etc., etc., for others but also "for themselves." The Collector of Internal Revenue contends that the word "themselves" in said definition includes the appellant in the present case.

It may be admitted that said statutory definition would apply to a person who is engaged in the business of negotiating the purchase and sale of lands, buildings, or interest therein, etc., etc., if the negotiation was made with the ultimate object of serving some third person. But certainly it cannot be applied to such transactions when they are made without the idea of ultimately serving some third person. In our discussion of the said statutory definition, we must not overlook the fact that the Legislature was attempting to define a "real estate broker;" that the statute attempted to define a "real estate broker" and not a "real estate dealer." The term "real estate broker" must not be confused with "real estate dealer." Said section of the law defines a "real estate broker" and the definition must not be so construed as to include a "real estate dealer."

For example: A has a certain amount of surplus capital in cash. He decides to invest it in the purchase of real estate and does so. He does so because he believes it to be a safe and profitable investment of his fund. He does not purchase the property for the purpose of resale. He has no idea of reselling the property. The purchase and sale of lands, buildings, etc., is not his business. He is neither a real estate broker nor a real estate dealer. In such transaction, it is not his purpose to make it a business. His money, if not invested, is subject to be taxed as cash—as capital. The lands and buildings so purchased are subject to taxation as a part of his property, the same as that of any other owner of property. He differs from a real estate broker in the fact that the property seldom ever appears in the name of the real estate broker. A real estate broker is a person who, for commission or other compensation, generally, is engaged in the selling of, or negotiating sales of, real estate belonging to others. A real estate broker is required to have a license, because he is engaged in a business the capital of which cannot be placed upon the tax duplicate, for the reason that the only capital invested, generally, is the time of the broker.

We cannot bring ourselves to believe that it was the purpose of the Legislature to require a license as a real estate broker from every person who now and then happens to be a purchaser or vendor, etc., etc., of real estate, unless that was his principal business, and then only when the purchases, etc., etc., were for immediate sale, etc. In other words, it is believed that the Legislature only intended that a license should be required of those who, while looking for a vendor of real estate were at the same time looking for a purchaser of the same—those who were buying to sell, and not those who were buying to keep as their own property, as a part of their own capital, as an investment for themselves or those associated with them. We do not believe that the Legislature intended to change the familiar, well-known and accepted meaning of the term "real estate broker," which is, that he is a mere "negotiator" between two parties, seldom acting in his own name but generally in the name of those who employ him. He is strictly a middleman, acting for and on behalf of others. He may be acting for and on behalf of both parties to a particular transaction, or, in some instances, he may be acting for himself, hoping, however, and intending always, either at the time of the transaction or as soon thereafter as possible, to find a third person.

From an examination of the charter and by-laws and purposes of the plaintiff, it will be seen that there are no transactions in the nature of negotiations for the purchase and sale, etc., etc., of lands, buildings, or interest therein, except among the members themselves; that every negotiation by the association is for the mutual benefit of the members of the association and not for the benefit of third persons. The association in no sense acts as a middle man. All of its transactions are for the mutual concern of its members only. No outsider nor third parties have any intervention in any of its transactions.

We cannot bring ourselves to believe that it was the purpose of the Legislature, in the definition above given of a "real estate broker," to include associations like the plaintiff herein within its terms.

Therefore, the judgment appealed from is hereby revoked, and it is hereby ordered and decreed that a judgment be entered in favor of the plaintiff and against the defendant for the sum of P450, without any finding as to costs. So ordered.

Araullo, C. J., Street, Avancena, Villamor, and Romualdez, JJ., concur.

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