

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. CADWALLADER PACIFIC COMPANY, RESPONDENT.

G.R. No. L-18297. November 29, 1966

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Disputed by Cadwallader Pacific Company[1] before the Court of Tax Appeals,[2] is the assessment made by the Commissioner of Internal Revenue[3] in the amount of P3,651.23 covering fixed and percentage taxes and surcharges, as commercial broker for the years 1955 to 1957. The Commissioner's alternative defense is that Cadwallader "is a commercial broker because it brought about sales or purchases of merchandise between its local customers in the Philippines and its branch office at Arcadia, California, or through its intervention brought about proposed buyers and foreign sellers together by executing the contract in the Philippines between the buyers and the petitioner" below, Cadwallader.[4]

The judgment below declared that the assessment against Cadwallader "concerning the fixed and percentage taxes and surcharge as commercial broker in the sum of p3,651.23 must be, as the same is hereby, set aside". The Commissioner appealed.

Cadwallader is a Philippine corporation with branch office at Arcadia, California, United States of America, Cadwallader's primary purpose, as stated in its Articles of Incorporation, is "[T]o buy, manufacture, produce, or otherwise sell, import, export, trade and deal in general merchandise, goods, wares, food products and commodities of every kind and description," and, as one of its secondary purposes, "to act as financial, commercial, general agent or factor of, or to undertake management of any person, partnership, corporation, or association carrying on any transaction or negotiation or any business of manufacturing or dealing in all kinds of goods, wares, merchandise, food products and commodities of every kind and description, and, while acting as such agent, factor or manager, to perform such acts, enter into such obligations and carry on such transactions as shall tend to promote the interests that the corporation shall represent".

The branch of the company in the United States serves as its buying office.

We now come to the transactions for which the Commissioner holds Cadwallader liable for the commercial broker's fixed and percentage taxes. A written contract is executed in Manila between Cadwallader and its local customers, a sample of which follows:

"CADWALLADER PACIFIC COMPANY IMPORTERS - DISTRIBUTORS - EXPORTERS MANILA

Ref. 5939

Order No. 55/267

C O N T R A C T

BUYER: Balaña Hardware and Supply, Balaña, Bataan (SENG LEE HARDWARE), hereby orders and

agrees to purchase the merchandise specified below from

SELLER: Cadwallader Pacific Company — P. O. Box 565, Arcadia, California, U.S.A., subject to the terms and conditions written hereon and printed on the reverse side hereof:

(Here follows the description of the articles).

ALL PRICES SUBJECT TO CHANGE
UP TO TIME OF SHIPMENT

Estimated C. I. F. Manila

Total Value \$1,915.00

TERMS: Irrevocable Letter of Credit in favor of the SELLER for the above total amount.

SHIPMENT: Prompt. Subject to U.S. Export Regulations.

INSURANCE: Ordinary risks.

MARKINGS: BHS/MANILA.

Signed in the City of Manila, Philippines, on this 18th day of October, 1955.

CONFIRMED:

CADWALLADER PACIFIC COMPANY

By: (SGD): MAURICE NAFTALY

General Manager

ACCEPTED:

BALANGA HARDWARE & SUPPLY

Buyer

(SGD) DOMINGO JAVIER"

The contract as executed in Manila is forwarded to the California branch which procures the goods described therein, ships them direct to the buyer on its own invoice. Title to the goods passes from the seller to the buyer from the time goods are shipped in California. The merchandise is shipped, travels and is insured for the account and risk of the buyer. Taxes and duties are also for the buyer's account.

Our problem is to ascertain whether or not Cadwallader is within the reach of the term commercial broker or commission merchant set out in Section 194(t) of the Tax Code, viz:

"(t) 'Commercial broker' includes all persons, other than importers, manufacturers, producers, or bona fide employees, who, for compensation or profit, sell or bring about sales or purchases of merchandise for other

persons, or bring proposed buyers and sellers together, or negotiate freights or other business for owners of vessels, or other means of transportation, or for the shippers, or consignors or consignees of freight carried by vessels or other means of transportation. The term includes commission merchants."

- We canvass the facts and circumstances. These are: The contract) through and through names Cadwallader as the seller, the customer its buyer. The irrevocable letters of credit are drawn by the buyer in favor of the seller — not of anybody else. No payment is made by the local customer to any manufacturer or supplier abroad. Cadwallader exclusively owns the price paid by the customer, Cadwallader is not accountable to the manufacturer or supplier for the amount represented by the letters of credit. The California branch office buys the goods ordered. This is a fact confirmed by the report of the Commissioner's examiner, dated February 8, 1957.[5] The list of goods sold and prices charged is sent by the California branch, as shipper, direct to the buyer. In the invoice,[6] the "shipper" is Cadwallader's California branch, not the manufacturer or supplier. That invoice bears the certification by the California branch as to "the person from whom the same [merchandise] was purchased".[7] No privity of contract exists between Cadwallader's buyer and the foreign manufacturer or supplier. In fact, nowhere in the transaction do we find any mention of a foreign manufacturer or supplier who is unknown to the buyer, Cadwallader assumes the risk of non-payment by the buyer; the latter is responsible to Cadwallader alone for its failure to comply with the contract. So it is, that in case of suit, the buyer's action is direct against Cadwallader and the latter's, against the former. Cadwallader does not act as negotiator or middleman to close a deal between one person and another, does not work or contract in the name of another. In this factual environment, Cadwallader is[*] not a commercial broker. Because, as we have said "[I]n all the cases, under all and varying forms of expression, the fundamental and correct doctrine is, that the duty assumed by the broker is to bring the minds of the buyer and seller to an agreement for a sale and the price and terms on which it is to be made x x x".[8]

Even in those cases where a contract of sale like the one before us was executed, but merchandise was to be shipped by a definite supplier abroad contracted by the seller and known to the buyer, this Court held that the former (seller) did not come within the legal concept of broker.[9]

- We find less than persuasive the Commissioner's argument that Cadwallader never acquired title to the goods it sold to the buyer. The position he takes is that said title was transferred directly from the foreign manufacturer to the local buyer. Reliance he places on the provisions of paragraphs 2 and 4 of the contract of sale, viz;

"2.—The SELLER may ship any portion of the merchandise as soon as completed at the manufacturer's works, and/or made ready for shipment, and payment for any portion of the goods as shipped shall become due in accordance with the terms of payment specified on the reverse side hereof."

"4.—Title to merchandise shall pass to BUYER at time of shipment. The merchandise called for in this contract shall be shipped, traveled and be insured for account and risk of the BUYER, and the responsibility of the SELLER shall cease once the shipping documents have been signed by the steamship company and delivered to the forwarding Bank".

We do not read in the above-quoted stipulations any statement which would as much as induce belief that Cadwallader did not acquire title to the goods it sold to the local buyer. Paragraph 2 merely fixes the time when the seller shall ship a portion of the merchandise to the buyer. Paragraph 4 specifies when title to the goods shall pass to the buyer. Petitioner offered no evidence to prove that Cadwallader had no title to the goods it sold, whereas there is testimonial evidence that Cadwallader's branch in the United States buys the goods ordered by local customers and ships the same to the latter. At all events, "[T]he fact that the subject matter of the sale is not in the actual possession of the seller does not affect his general right to sell it and transfer the title." [10]

- Of course, the Commissioner is correct in the statement that, by statute, the term, "commercial broker" includes

commission merchant. But not as correct is the Commissioner's claim^[11] that Cadwallader is a commission merchant. For, a commission merchant is defined thus: "A 'commission merchant' x x x as he is generally known x x x is a commercial agent to whom the possession of personalty is entrusted by or for the owner, to be sold, for a compensation, in pursuance of the agent's usual trade or business, with title to goods remaining in principal - x x x as distinguished from person who purchases merchandise with his own capital, takes title in his own name, and sells for his own account at whatever price he may deem advisable."^[12]

And, "[A] 'commission merchant' differs from a broker in that he may buy and sell in his own name without disclosing his principal, while the broker can only buy or sell in the name of his principal."^[13]Needless to repeat, Cadwallader does not come within the coverage of either of these two concepts.

For the reasons given, the appealed judgment must be, as it is hereby, affirmed. No pronouncement as to costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar and Ruiz Castro, JJ., concur.

[1] Hereinafter referred to as Cadwallader.

[2] CTA Case No. 536.

[3] Hereinafter referred to as Commissioner.

[4] In the Court of Tax Appeals, the Commissioner abandoned the theory that Cadwallader and its California branch office are two distinct and separate entities. Decision, Court of Tax Appeals, pp. 31-32 of Commissioner's brief.

[5] Exhibit 1 [BIR Examiner's Report of February 8, 1957] reads as follows: "x x x In this connection, it should be borne in mind that the Los Angeles branch acts and makes purchases only upon previous order, that is, upon receipt of the copy of the contract executed between the BUYER and the main office and the irrevocable letter of credit drawn in its favor. Said branch office merely operates as a purchasing office and is maintained in the United States to facilitate the fulfillment of the order called for in the contract. x x x" Italics supplied.

[6] An invoice "might be an incident to a sale of personalty". Federal Insurance Company vs. Munden, 203 S.W. 917, 918. And, it is "relevant testimony to be considered in determining what the contract was." Garner Mfg. Co. vs. Cornelius Lumber Co., 262 S.W. 1011, 1014.

[7] See Exhibits C, C-1 to C-4, C-6 to C-12, C-14, and p. 151, Record below.

[8] Danon vs. Brimo & Co., 42 Phil. 133, 139, quoting Sibbald vs. Bethlehem Iron Co., 38 Am. Rep. 441; reiterated in Rocha vs. Prats & Co., 43 Phil. 397, 399. In Reyes, et al; vs. Mosqueda, et al., 99 Phil. 241, 245, citing from Danon, supra, the language employed is: "The broker must be the efficient agent or the procuring cause of the sale. The means employed by him and his efforts must result in the sale. He must find the purchaser, and the sale must proceed from his efforts acting as a broker." Emphasis supplied. See also: Behn Meyer & Co., Ltd. vs. Nolting & Garcia, 35 Phil. 274, 279-280, where a broker is defined 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." See likewise: Republic vs. Litton & Co., et al., 94 Phil. 52, 63.

[9] Kerr & Company, Ltd. vs. Collector of Internal Revenue, 70 Phil. 36, 37, 41; Far Eastern Export & Import Co. vs. Lim Teck Suan, 97 Phil. 171, 173-178, citing Velasco vs. Universal Trading Co., Inc., 45 O. G. 4504;

Collector of Internal Revenue vs. Tan Eng Hong, L-16893, October 22, 1966.

[10] 48 Am. Jur., p. 218. See also Articles 1461, 1462, 1467, Civil Code.

[11] First advanced in his motion for reconsideration in the Court of Tax Appeals, Commissioner's brief, pp. 44-45, Cadwallader's brief, p. 16.

[12] 7-A Words and Phrases, Perm. Ed., p. 571.

[13] Id., p. 572.

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