

C. M. HOSKINS & CO., INC., PETITIONER-APPELLANT, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT-APPELLEE.

G.R. No. L-28383. June 22, 1976

Ponente: AQUINO, J.

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AQUINO, J.:

C. M. Hoskins & Co., Inc. (Hoskins for short) seeks a review of the decision of the Court of Tax Appeals ordering it to pay the sum of P38,731.95 as real estate broker's six percent tax (including twenty-five percent surcharge) on the supervision and collection fees which it received during the period from the third quarter of 1955 to the third quarter of 1958. The facts are as follows:

Hoskins is a domestic corporation engaged in the realty business. It was a realtor duly provided with a real estate broker's privilege tax receipt. It developed subdivisions and promoted the sale or lease of the subdivision lots. It entered into management contracts with Paradise Farms, Inc., Patricia Inc., Realty Investments, Inc., and Bay Boulevard Subdivision, Inc. for the development of their subdivisions, the sale of the lots, and the collection of the installments on the contracts to sell the lots. For each of those services, it was paid a distinct compensation.

Thus, in its contract with Realty Investments, Inc. dated July 26, 1956 it was stipulated that as "managing agents to supervise and direct the subdivision, development, sale and administration" of the latter's land, Hoskins was to receive (1) as selling commission, ten percent (10%) of the gross sales; (2) for its services in planning the project and supervising the development of the subdivision, eight percent (8%) of the gross sales; and (3) as collection fee, five per cent (5%) of all sums collected. For reference, the said contract is quoted hereunder (Exh. D-1):

"Messrs. C. M. Hoskins & Co., Inc.
Manila

"Dear Sirs:

"You are hereby appointed our managing agents to supervise and direct the subdivision, development, sale, and administration of our property at San Jose, Bulacan, containing an area of 268 Ha.

" Development

"Within the limits of the budgets approved by us from time to time, you will arrange for the subdivision of the land into suitable lots, the construction and maintenance of streets, the establishment and operation of utilities and other community services, and in general the physical preparation of the property for sale, substantially in accordance with the project carried out on the adjoining tract by Paradise Farms, Inc.

"You will recommend the employment by us of a project superintendent and other executive personnel to direct, under your general supervision and control, the development of our property, and the operation of the services to be undertaken by us in behalf of the project. You are authorized to use our personnel to aid in your sales and collection work, to the extent that same shall not interfere with their principal activities, subject to payment of a share of the compensation of such personnel used by you as may be agreed upon between us

from time to time.

"You will pass upon and authorize or disapprove all expenditures and contracts incurred by our project staff, but all project contracts involving an obligation of more than P10,000 shall require our prior approval. The employment of subordinate personnel by our project staff shall be subject to your approval.

" Sales

"You will actively negotiate the sale of the aforesaid land and employ at your expense the services of salesmen to facilitate the same.

"At the prices and under the terms authorized by us you will sign sales contracts in our behalf. Any deviations from the authorized minimum prices or terms will be submitted to the officer or committee designated by us for approval.

"You will, in our name, accept and receipt for initial, installment and other payments made in connection with such contracts, and not later than the twentieth of each month remit to us all collections made in our behalf less only your authorized allowances and authorized disbursements made for our account.

"You will be allowed a collection fee of five percent of all sums collected and accounted for by you as our agent in connection with this project, except with respect to sums paid as initial payments on land sales. You will keep the installment ledger and other subsidiary books of account necessary to record the sales operations of this project and collections relating thereto, and other receipts and disbursements under your direct charge. These books shall be and remain our property and be subject to our audit and shall be turned over to us upon demand.

"For your services as managing agents hereunder you will be entitled to the percentages hereinafter stated of the gross sales, payable from the first collections received from purchasers in respect to each lot sold. In the event of the cancellation or rescission of sales contracts the resale will be treated as additional sale, but in no case shall we be bound to pay you more than what has been actually collected and retained by us on any one sale. The percentages of gross sales to which you shall be entitled are as follows:

"For selling commission, for yourselves and agents, from which you will pay advertising and promotion expenses and commissions to your sales agents, ten percent (10%).

"For your services in planning the project, and supervising the development of the property into a suitable condition for sale, eight percent (8%).

"Your appointment as our managing agents will continue indefinitely, but we have the right to terminate the appointment upon giving you six months' notice. In the event of such termination you will be entitled to the 8% allowance above authorized for planning and development services, payable with respect to past and future sales, but payable only as collections are received as above set forth.

"It is understood and agreed that you may engage in the sale of real estate for yourselves or others during the continuance of this agency.

"If the foregoing is acceptable, please indicate your conformity by signing copies hereof and returning same to us.

Yours truly,

REALTY INVESTMENTS, INC.

By:

(Sgd.) WASHINGTON SYCIP

First Vice-President

CONFORME:

CM. HOSKINS & CO., INC.

By:

(Sgd.) A. B. AQUINO

President

The contracts with the three other realty owners have substantially the same provisions as the above-quoted contract.

During the period from October, 1953 to September, 1958 Hoskins received from the subdivision owners the sums of (1) P1,572,953.54 as selling commissions, (2) P392,658.58 as supervision fees, and (3) P285,991.47 as collection fees.

On the selling commissions, it paid P94,184.14 as six percent brokerage tax. But it did not pay any percentage tax on its supervision and collection fees.

The Commissioner of Internal Revenue ruled that the supervision and collection fees are subject to the real estate broker's percentage tax. In a letter of demand dated August 11, 1960 he required Hoskins to pay the sum of P51,140.09 as percentage tax on the collection and supervision fees amounting to P678,650.05 plus twenty-five percent surcharge. The Commissioner also imposed a compromise penalty of P8,000.

Hoskins refused to pay the deficiency assessment. It contended that the supervision and collection fees do not form part of its taxable gross compensation as a real estate broker. The Commissioner rejected Hoskins' contention. It appealed to the Tax Court.

The Tax Court found that the portion of the deficiency assessment corresponding to the period from the fourth quarter of 1953 to the second quarter of 1955 had already prescribed because the five-year period from the filing of the returns within which to assess the deficiency tax, as prescribed in section 331 of the Tax Code, had already expired on August 11, 1960, the date of the letter of demand.

The Tax Court also found that the compromise penalty of P8,000 could not be imposed in the absence of an agreement with the taxpayer (Collector of Internal Revenue vs. University of Santo Tomas, 104 Phil. 1062).

But the Tax Court sustained the Commissioner's assessment of the real estate broker's percentage tax on the supervision and collection fees received by Hoskins for the period from the third quarter of 1955 to September, 1958, computed as follows:

Total collection and supervision fees from the third quarter of 1955 to September 1958 .. P516,426.03

6% tax thereon 30,985.56

Plus 25% surcharge P7,746.39

Total deficiency tax and surcharge due P38,731.95

The Tax Court held that the supervision and collection services performed by Hoskins were part and parcel of its work as a real estate broker in selling the subdivision lots. It applied the holding in *J.M. Tuason & Co. vs. Collector of Internal Revenue*, 108 Phil. 700 that the real estate broker's percentage tax was due not only on the sales commissions received by the administrator of the subdivision but also on its administration fees.

In this appeal Hoskins contests the legality of the inclusion of the supervision and collection fees in its taxable gross compensation as a real estate broker. Those fees, like the sales commissions, were received by it from the subdivision owners.

Section 195 of the Tax Code provides that real estate brokers "shall pay a percentage tax equivalent to six per centum of the gross compensation received by them."

Section 194(s) of the Tax Code as amended by Republic Act No. 588 provides that a "real estate broker includes any person, other than a real estate salesman" "who for another, and for a compensation or in the expectation or promise of receiving compensation" performs any of the following acts:

"(1) Sells or offers for sale, buys or offers to buy, lists, or solicits for prospective purchasers, or negotiates the purchase, sale or exchange of real estate or interests therein;

"(2) Or negotiates loans on real estate;

"(3) Or leases or offers to lease or negotiates the sale, purchase or exchange of a lease, or rents or places for rent or collects rent from real estate or improvements thereon;

"(4) Or shall be employed by or on behalf of the owner or owners of lots or other parcels of real estate at a stated salary, on commission, or otherwise, to sell such real estate or any parts thereof in lots or parcels."
(Paragraphing supplied).

Hoskins contends that the sale of the subdivision lots, for which it was paid sales commissions, is distinct and separate from its work as subdivision manager or the developer of the subdivision, consisting of subdividing the land into lots, constructing and maintaining streets, installing and operating utilities and other community services, for which it was paid supervision fees.

It also contends that its work of collecting the install-ments from the lot buyers, for which it was paid collection fees, is distinct from the work of selling the lots.

The issue is whether the term "gross compensation" in section 195 includes supervision and collection fees received by a real estate broker as a realty subdivision operator. A contingent issue is the legality of the imposition of the twenty-five percent surcharge on the deficiency assessment.

With respect to the collection fees, there can be little doubt that the services rendered by Hoskins in collecting the amounts due on the sales of lots on the installment plan are incidental to its brokerage service in selling the lots. The sale of a lot may be on the cash basis or on installment. If the broker's commissions on the cash sales of lots are subject to the brokerage percentage tax, it should logically follow that its commissions on installment sales are likewise taxable.

As to the supervision fees for the development and management of the subdivisions, which fees were paid out of the proceeds of the sales of the subdivision lots, the theory of the Tax Court is that the development, manage-ment and supervision services were necessary to bring about the sales of the lots and were inseparably

linked thereto.

We hold that the Tax Court did not err in applying to this case the ruling in the Tuason case, *supra* where the eight percent (8%) administration fee paid by Varsity Hills, Inc. to J.M. Tuason & Co., Inc., as developer and administrator of its subdivision, in addition to the latter's sales commission of ten percent (10%) on all sales of subdivision lots, was held to be subject to the real estate broker's percentage tax.

It was ruled in the Tuason case that "the duty of developing the subdivision, with its lots, streets, playgrounds, sewage, etc. is also a necessary incident to the duty of selling the lands subject of the contract"; that the lands must be subdivided into residential lots, with streets laid out, before said lots can be sold, and that as the development work was entrusted to the broker, instead of to another person, and was integrated into the agency contract, the same must be regarded as an indivisible contract of brokerage. The instant case is similar to the Tuason case.

The history of the statutory definition of the term "real estate broker" in a way supports the view that the management of subdivisions may be regarded as a part of the real estate broker's business.

In the old Internal Revenue Law found in the Revised Administrative Code, a real estate broker is simply defined as including all persons whose business it is, for themselves or for others, (1) to negotiate purchases or sales of lands buildings, or interest therein or (2) to negotiate loans secured by lands, buildings, or interest therein, or (3) to rent real estate for others or to collect rents thereon (Sec. 1465[w]).

That simple definition does not contain any reference to real estate subdivisions. Republic Act No. 588, which took effect on September 22, 1950, expanded that definition by adding a fourth category of real estate brokers, namely, those persons who are employed by owners of real estate to sell, for compensation, such real estate or any parts thereof in lots or parcels. Obviously, that category refers to the sale of subdivision lots.

Circumstances have transformed real estate brokers from mere agents, negotiating the purchase and sale of lands, into realtors or operators of real estate subdivisions. The increase in population and the rising middle class have created a considerable demand for housing lots. To meet the great demand, landowners have converted farm lands into residential lands. But many of them do not want to shoulder the onerous task of developing and managing their subdivisions. They entrust that prestation to the real estate broker who willingly assumes that responsibility because it means that the availability of lots for sale would be insured.

Hence, there is basis for holding that the operation of subdivisions is really incidental to the main business of the broker which is the sale of the lots on commission.

Hoskins assails the imposition of the twenty-five percent surcharge as penalty for delinquency. Section 183 of the Tax Code provides that if the business percentage tax is not paid within twenty days after the end of each month (formerly calendar quarter), "the amount of the tax shall be increased by twenty-five per centum the increment to be a part of the tax".

Considering that the taxability of collection and supervision fees was really a debatable or controversial matter and was set at rest only on June 30, 1960, when the Tuason case, *supra*, was decided, we believe that the imposition of the twenty-five percent surcharge under the circumstances obtaining in this case (involving 1955 to 1958 deficiency tax) is not justified (*Imus Electric Co., Inc. vs. Commissioner of Internal Revenue*, L-22421, March 18, 1967, 19 SCRA 612).

WHEREFORE, the Tax Court's judgment is modified by eliminating therefrom the twenty-five percent surcharge amounting to P7,746.39 and affirming it as to the deficiency percentage tax amounting to P30,985.56. No costs.

SO ORDERED.

Fernando, (Chairman), Antonio, Muñoz Palma, and Martin, JJ., concur.

Barredo, J., took no part.

Muñoz Palma and Martin, JJ., were designated to sit in the Second Division.

Concepcion Jr., J., was on leave.

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