

BEHN, MEYER & CO. (LTD.), PLAINTIFF AND APPELLEE, VS. W. T. NOLTING, COLLECTOR OF INTERNAL REVENUE, AND ANGEL GARCIA, TREASURER OF THE CITY OF ZAMBOANGA, DEFENDANTS AND APPELLANTS.

G.R. No. 10620. November 08, 1916

Ponente: JOHNSON, J.

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JOHNSON, J.:

The only question presented to the court in this case is whether the transactions or business which the plaintiff was engaged in, as disclosed by the following agreement, constituted said plaintiff a real-estate broker as defined by section 144, paragraph 2 of Act No. 1189.

This action was brought by the plaintiff against the defendants for the purpose of recovering the sum of P580 which had been paid by the plaintiff to said treasurer of the city of Zamboanga under protest.

The cause was submitted to the lower court upon the following agreement:

"1. That the plaintiff is, and was during the times hereinafter mentioned, a corporation organized under the laws of Singapore, duly registered under the laws of the Philippine Islands, with branch office in Zamboanga, P. I.; that the defendant, W. T. Nolting is, and was at all times hereinafter mentioned, Insular Collector of Internal Revenue, residing in Manila, P. I.

"2. That from the 1st day of January, 1906, until the 26th day of November, 1912, the plaintiff was and has been engaged in business as a wholesale liquor dealer, manufactured tobacco dealer, merchant, and exporter and importer.

"3. That the defendant, W. T. Nolting, as Collector of Internal Revenue, demanded that the plaintiff obtain a license as a real-estate broker and pay the sum of five hundred eighty pesos (P580) therefor, covering the years 1906 to 1912, inclusive, and the penalty for delinquency.

"4. That as a result of said demand made by aforesaid defendant, the plaintiff, on the 26th day of November, 1912, paid to the treasurer of the city of Zamboanga the sum of five hundred eighty pesos (P580) and at the time said payment was made the plaintiff presented to the said treasurer a written protest against the payment of the same, said protest being as follows:

" 'ZAMBOANGA, P. I., November 26, 1912.

" 'THE COLLECTOR OF INTERNAL REVENUE,

" 'Manila, P. I.

""(Through Municipal Treasurer, Zamboanga.)

" 'SIR : We have the honor to hand you herewith our check for the sum of P580, in payment of the demand for

internal revenue tax as a real-estate broker made on us as per your letter dated November 19, 1912. At the same time we desire to protest the payment of this tax for following reasons:

"First. That Behn, Meyer & Co. (Ltd.) are not and never have been, engaged in the business of a estate broker, either for themselves or for others.

"Second. That Behn, Meyer & Co. (Ltd.) are not engaged in the business of stock brokerage either for themselves or for others.

"Third. That this tax demanded by you and herewith paid is a double tax upon Behn, Meyer & Co. (Ltd.).

"Fourth. That Behn, Meyer & Co. (Ltd.) for more than six years last past has been, and are now paying a wholesale liquor dealer's license in the sum of P60 per year.

"Fifth. That Behn, Meyer & Co. (Ltd.) are now, and for more than six years last past has been paying a wholesale fermented liquor license in the sum of P60 per year.

"Sixth. That Behn, Meyer & Co. (Ltd.) are now, and for more than six years last past has been paying an internal revenue tax as manufactured tobacco dealers.

"Seventh. That Behn, Meyer & Co. (Ltd.) are now, and for more than six years last past has been paying a general merchandise tax, and that for the present year the general merchant's tax, under schedule C, paragraph 1, license No. 46927, "has been: 1st quarter, P290.03; 2nd quarter, P351.67; 3d quarter, P311.13.

"Eighth. That under said general merchant's license, Behn, Meyer & Co. (Ltd.) during the six years last past has been, and are now engaged in the business, among other things, of buying and selling copra, hemp, and other native products of the Islands. The copra bought by Behn, Meyer & Co. (Ltd.) is sold in the foreign markets, and an export duty is paid on the same.

"Wherefore, it is the opinion of Behn, Meyer & Co. (Ltd.) that the tax for which the above remittance is made is unlawful, illegal and unjust, and for the reasons enumerated do hereby protest against the collection of the same.

"Very respectfully.'

"5. That the defendant, W. T. Nolting, as Collector of Internal Revenue, on the 10th day of December, 1912, decided adversely to the protest of this plaintiff, said decision being as follows:

"MANILA, P. I., December 10, 1912.

"Subject: Schedule D. Taxes due from Messrs. Behn, Meyer & Company, Zamboanga, Moro. "Messrs. Behn, Meyer & Co.,

"Zamboanga, Moro.

"**GENTLEMEN :**

"Referring to your protest dated November 26th against the collection from you of the sum of P580 as internal revenue tax and penalty on your occupation of real-estate broker, I have the honor to state that the undersigned holds adversely to said protest and same is hereby denied.

"In this connection your attention is respectfully invited to section 52 of Act No. 1189.

"Very respectfully.

" 'WM. T. NOLTING.'

"6. That from the year 1906 to the year 1912 the plaintiff was engaged in the business, among other things, of buying and selling copra, hemp, and other native products of the Islands, and in such business the aforesaid plaintiff advanced money for the future delivery of copra and hemp, and took as security for the future delivery of such copra or hemp so contracted for a mortgage on the land upon which said copra or hemp was produced, and charging a discount on the future deliveries of said copra or hemp, which was in compensation for the money so advanced.

"7. That the negotiations above mentioned were made in the form and by means of written mortgages, a blank form whereof signed by the attorneys for both parties herein, marked Exhibit A, is hereto attached and made a part hereof.

"The parties in this case pray this honorable court to render its decision on the facts herein agreed upon after having heard the oral briefs of their attorneys if they desire to submit same.

"Zamboanga, Department of Mindanao and Sulu, P. 1 , this 18th day of December, 1914.

"P. J. MOORE,

"Attorney for plaintiff.

"ISIDRO VAMENTA,

"Attorney for defendant."

Upon said agreement, the cause was submitted to the lower court.

Subparagraph 2 of section 144 of Act No. 1189, known as the Internal Revenue Law, provides:

"Every real-estate broker shall pay eighty pesos. Every person, firm, or company whose business it is for themselves or others to negotiate purchases or sales of lands, buildings, or interests therein, or to negotiate loans secured by lands, buildings, or interest therein, or to rent real estate for others or to collect rents thereon, shall be regarded as a real-estate broker."

By reference to paragraph 4 of the agreed statement of facts above we find that Behn, Meyer & Co. (Ltd.) are not now and never have been engaged in the business of a real estate broker, either for themselves or for others; that said company is not engaged in the business of stock brokerage, either for themselves or for others; that from the year 1906 to 1912 said company was engaged in the business, among other things, of buying and selling copra, hemp, and other native products of the Islands, and in such business the aforesaid plaintiff advanced money for the future delivery of copra and hemp, and took as security for the future delivery of such copra and hemp so contracted for, a mortgage upon the land upon which said copra or hemp was produced, and charging a discount on the future deliveries of said copra or hemp, which was in compensation for the money so advanced.

From said agreed statement of facts it is evident that the contract which the plaintiff made with their customers was for the purchase of agricultural products; that the payments were made in advance; that to secure the delivery of said products or a return of the money so paid in advance the plaintiff took a mortgage upon the land upon which the products were to be produced; that the taking of said mortgage was a mere incident to the business of the plaintiff in buying and selling agricultural products, and was not a business in itself. The business of the plaintiff was not a business "for themselves or for others, to negotiate the purchase or sale 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," but the business was to purchase and sell agricultural products, and that the taking of said mortgages was a mere incident of their principal business. It could hardly be held that a man who is engaged in the hardware and plumbing business, for example, who took a mortgage upon a residence in which he

had placed extensive plumbing and sanitary apparatus, in order to secure the price of his labor and material, was engaged "as a real-estate broker."

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. The State, 50 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. In the present case the plaintiff was acting for itself. Whatever was done with reference to the taking of the mortgages in question was done as an incident of its own business. By the contract of brokerage a person binds himself to render some service or to do something in behalf of or at the request of another person. (Art. 1209, Civil Code.)

It may be said that a man's business, or the business of a corporation, is that which busies or occupies his time, attention, or labor, as his principal concern or occupation. (Territory vs. Harris, 19 Pac. Rep., 286.) Many persons make an occasional loan of money, secured by a mortgage, in the due course of their business. That fact, however, will not constitute such a person a real-estate broker.

The said P580 was collected from the plaintiff upon the theory that it was a real-estate broker. In our judgment the record clearly shows that the plaintiff was not a real estate broker. Therefore the said tax was collected illegally and should be repaid.

For the foregoing reasons, we are of the opinion that the judgment of the lower court should be affirmed. Therefore let a judgment be entered in favor of the plaintiff and against the defendant, as Collector of Internal Revenue, for the sum of P580, together with interest hereon at the legal rate from the 23d of January, 1913, until paid, together with costs. So ordered.

Torres, Trent, and Araullo, JJ., concur.

Moreland, J., concurs in the result.

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