

J. M. TUASON & CO., INC., PETITIONER, VS. COLLECTOR OF INTERNAL REVENUE, RESPONDENT.

G.R. No. 11530. June 30, 1960

Ponente: LABRADOR, J.

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LABRADOR, J.:

On November 6, 1951 the Varsity Hills, Inc., owner of five parcels of residential land in Quezon City, entered into a contract with petitioner J. M. Tuason & Co., Inc., a corporation engaged in the business of developing subdivisions and promoting sales therein, whereby it ceded to the latter its five parcels of residential land above described generally for the purpose of having it surveyed, platted, monumented and otherwise developed into a subdivision. The contract is Exhibit "A" and the principal terms and conditions thereof are as follows:

"That the administrator, at the owner's expense, shall undertake to laying out of parks, playgrounds, the construction of streets, culverts, pavements, sewage system, drainage, the installation of utilities which in the judgment of the administrator may be necessary or convenient and in general the physical preparation of the property for sale or lease in lots, in accordance with the requirements of government regulations.

- That the ADMINISTRATOR shall recommend to the OWNER the sales prices of the lots of the subdivision based upon the desired ability of the location and other similar factors that enter into sales value, according to their location in the subdivision plan, as well as the terms of payment of the purchase price of said lots, and upon the approval thereof by the OWNER, the same shall immediately be put in force, provided, however, that the same shall be subject to change by the OWNER at any time.

- That the ADMINISTRATOR is hereby granted the authority to sign for and in the name of the OWNER, contracts of lease, contracts of sale, as well as contracts to sell involving the lots into which the property which is the object of this contract is subdivided, and releases of mortgage and such other documents as may be deemed necessary for the purpose of carrying out and facilitating the administration of the OWNER'S property; and for that purpose the OWNER shall execute a power of attorney in favor of the ADMINISTRATOR; provided, however, that deeds of donation to the government, province, city or municipality of lots, destined for parks, playgrounds, roads, community counters, etc.

* * * * *

- That the Administrator shall take charge of the collection of all accounts due to the Owner either for the sale of lots or otherwise, and the expenses in connection therewith, shall be for the account of the Administrator, except attorney's fees and judicial expenses which shall be decided and borne by the Owner; subject to the Administrator's right to choose its counsel, after consultations with the Owner.

- That all administrative expenses incurred in the administration of the OWNER'S subdivision such as salaries of permanent personnel, office, rent, telephone and light bills, commissions for sales agents or sub-agents, and other similar expenses shall be borne by the ADMINISTRATOR, provided, however, that should the OWNER deem it necessary that the ADMINISTRATOR employ checkers, inspectors, supervisors or technical men, their aggregate salaries in excess of P600.00 monthly shall be borne by the OWNER.

- All extraordinary expenses of the ADMINISTRATOR shall first be approved by the OWNER before they are incurred.

- That advertising the sales of lots of this property shall be undertaken by the ADMINISTRATOR upon approval by the OWNER, but the expenses for the same shall be for the account of the OWNER.

* * * * *

- That the OWNER shall pay the ADMINISTRATOR a selling commission of 10% on all sales of lots of the subdivision whether or not effected by the ADMINISTRATOR, which shall be payable in full immediately and in preference to all other obligations of the OWNER, from the collections on said dates, but if the down payment made be not sufficient to cover the commission, subsequent payments shall be first utilized to complete said commission; and, if for any reason whatsoever the sale of any lot be discontinued or cancelled the commission due the ADMINISTRATOR shall in no case exceed the total amount collected at the time of such discontinuance or cancellation; provided, however, that the posterior cancellation or rescission of such sales shall in no wise entitle the OWNER to ask for a proportionate refund of said commission and, provided finally, that should any repossessed lots be subsequently sold, the ADMINISTRATOR shall be entitled to its commission of 10% on the subsequent sales thereof as though they had been original sales. The same provisions shall apply to contracts of lease.

- That the OWNER shall pay the ADMINISTRATOR an administration fee of 8% on the gross sums collected and received by the latter in connection with the discharge by the ADMINISTRATOR of its duties, it being understood that this administration fee shall be in addition to the 10% commission above referred to * * *."

During the period from the fourth quarter of 1951 to the second quarter of 1953, inclusive, Tuason & Co., Inc. received as compensation for its services the following amounts: P282,862.70 as 10 per cent commission for sales and P116,331.21 as "administration fee." On August 22, 1953, the respondent Collector of Internal Revenue assessed against the petitioner the broker's tax on the 8 per cent received by the latter as "administration fee" in the amount of P8,724.84, representing the broker's percentage tax and surcharge thereon. Petitioner contested this assessment, although it paid the respondent under protest P9,024.84 and thereafter filed a claim for its refund. As respondent refused to grant the refund, petitioner instituted an action in the Court of Tax Appeals for the review of the assessment. After trial the Court of Tax Appeals sustained the assessment and denied the refund prayed for. It is against this refusal to grant the refund that the appeal to this Court has been presented.

The ruling of the Court of Tax Appeals which is disputed is as follows:

"This test of indivisibility of consideration giving rise to an indivisible contract applies equally to commercial contracts such as sale, as well as to contracts involving services as the case at bar.

"The question of indivisibility is difficult, and this difficulty has resulted in a direct conflict of decisions. The contract may be entire or severable, according to the circumstances of its particular case it has been said in speaking of contracts of sale, and the criterion is to be found in the question whether the whole quantity— all of the things as a whole—is of the essence of the contract. If it appears that the purpose was to take the whole or none, then the contract would be entire; otherwise, it would be severable . . . Though this was said in reference to a contract of sale, the reason applies to other contracts as well." (3rd. Ed. Clark on Contracts, p. 569, citing:

Wooten vs. Walters, 110 M. C. 251, 14 SE. 734; Erouner vs. Raynar, 88 Md. 47, 11 Atl. 833) (Italics supplied.)

"In the present case, as we see it the consideration is single, entire and indivisible. As far as Varsity Hills, Inc. is concerned, the property in question must be sold or leased as subdivided lots. Until and unless the sale or lease of the property in question as subdivided lots is effected, the Varsity Hills, Inc., is not liable to pay any compensation to petitioner in any form as the same is based on the proceed derived from the sale or lease thereof.

Hence, the mere completion of the subdivision of the property in question does not entitle the petitioner to the compensation agreed and the same does not attach unless and until a sale or lease of a subdivided lot is first effected. Neither will compensation be due the petitioner for the sale or lease of the whole or part of the property in question, unless the same be first subdivided into lots by petitioner. Stated otherwise, in order that petitioner would be entitled to compensation under the terms of the contract Exhibit 'A' there must first be a subdivision of the property into lots, followed by a sale or lease of the same. Because of this "oneness" or indivisibility of the consideration of the contract Exhibit 'A', we are of the opinion that the activities of the petitioner of subdividing the property or collecting accounts, which petitioner denominated 'acts of administration' are not in fact detached, distinct, nor transcendental to the brokerage relationship created by aforesaid contract, but rather acts which are merely incidental to the primary purpose for which the agreement was entered into."

In this Court petitioner claims that its duties as administrator under the contract are not acts of brokerage subject to the brokerage tax. We cannot accept this contention. We will start showing the weakness of this contention by stating that the only duty imposed on the petitioner which may be conceded to be distinct and separate from those of a broker is that of subdividing the lands into lots and laying out the streets, parks, playgrounds, and constructing the streets, culverts, pavements, sewage systems, drainage installation of utilities, all of which is set forth in Section 2 of the contract Exhibit "A". All the others, such as recommending sales prices of lots (Sec. 3), signing contracts of sale or lease, or contracts to sell, releases of mortgage (Sec. 4), collecting sales prices or other accounts due the Owner (Sec. 7), organizing offices and personnel to attend to the work relating to all the above (Sec. 8), although apparently paid for under the term "administration fee"—these are also necessary parts of the work of a broker as defined by law, thus:

"(s) 'Real estate broker' includes any person, other than a real estate salesman as hereinafter defined, who for another, and for a compensation or in the expectation or promise of receiving compensation, (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. * * * But the foregoing definitions do not include a person who shall directly perform any of the acts aforesaid with reference to his own property, where such acts are performed in the regular course of or as an incident to the management of such property; nor shall they apply to persons acting pursuant to a duly executed power of attorney from the owner authorizing final consummation by performance of a contract conveying real estate sale, mortgage or lease; * * *."

A broker engaged in the sale of real estate is not limited to bringing vendor and vendee together and arranging the terms and conditions of a sale of real estate. As sales of real estate must be in writing the preparation of the documents is part of the functions of the broker. So the only function entrusted to petitioner under the contract Exhibit "A" which may not be embraced in those of a broker, is that of constructing the subdivision, as above explained and detailed out. It follows, therefore, that the parties have agreed on giving compensation denominated administration fees for services which may well be included in the duties of a broker.

But 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. The lands must be subdivided into residential lots, with streets laid out, before said lots can be sold. And while this work may be entrusted to another, the parties have seen fit to have the same entrusted to the petitioner. It would be reasonable that this work or duty be considered distinct and separate from the duties or incidents of the brokerage, and not subject to the tax on brokers. But the parties have by their contract rendered it impossible to separate the amount due petitioner for

such duty and obligation (of developing a subdivision) from those due petitioner as "administration fees." Petitioner may well be a contractor, in so far as the developing of the subdivision is concerned. But neither petitioner nor the owner has shown which portion of the fee mentioned in the contract as "administration fee" is given petitioner as its compensation for developing the subdivision. The reason for all this must be the fact that the parties have considered their contract as one whole, indivisible contract, especially as the corresponding fees for the different prestations therein undertaken by petitioner are grouped into two, "brokerage" and "administration", without it being possible to separate and identify what portion is due petitioner for developing the subdivision and what portion for the supposed acts of administration, which may also be considered acts of brokerage. It is in the above sense that the Court of Tax Appeals has held that the consideration for all the different prestations is simple, entire and indivisible, for which reason the contract must be considered as one indivisible contract of brokerage, the developing of the subdivision being considered as a necessary incident to, and preparatory for, the sales of the lots of the subdivision, and the documentation and collection also an integral part of the sales or negotiations therefor.

"Entrando ya en la otra cuestion, no puede perderse de vista que, procediendo, sobre todo en estas obligaciones, de un solo acreedor y de un solo deudor, la indivisibilidad, mas que de la naturaleza misma de los actos o cosas, de la voluntad y de la ley, sera muy frecuente el caso de una obligacion que abarque multiples objetos de posible division real, y aun entre si distintos, pero que, afectados por la obligacion, forman para los fines y efectos de esta, un todo indivisible." (8 Manresa, p. 214).

Considering, therefore, that the parties to the contract evidently made a single, indivisible contract because of indivisibility of consideration, for the reason that the parties fixed a so-called administration fee for developing the subdivision and for executing all necessary documentation and collection for the consummation of the sales of the lots in the subdivision, without possibility of determining the fees for each of the distinct prestation, we are constrained to find that the court below committed no error in confirming the assessment subject of the petition for review.

Wherefore the decision of the Court of Tax Appeals should be, as it hereby is, affirmed, with costs against petitioner.

Paras, C. J., Bengzon, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, and Gutierrez David, JJ., concur.

Montemayor, J., reserves his vote.

Padilla and Endencia, JJ., took no part.

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