

## SECOND DIVISION

[ G.R. No. 162175, June 28, 2010 ]

**MIGUEL J. OSSORIO PENSION FOUNDATION, INCORPORATED,  
PETITIONER, VS. COURT OF APPEALS AND COMMISSIONER OF  
INTERNAL REVENUE, RESPONDENTS.**

### DECISION

**CARPIO, J.:**

#### The Case

The Miguel J. Ossorio Pension Foundation, Incorporated (petitioner or MJOPFI) filed this Petition for Certiorari<sup>[1]</sup> with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction to reverse the Court of Appeals' (CA) Decision<sup>[2]</sup> dated 30 May 2003 in CA-G.R. SP No. 61829 as well as the Resolution<sup>[3]</sup> dated 7 November 2003 denying the Motion for Reconsideration. In the assailed decision, the CA affirmed the Court of Tax Appeals' (CTA) Decision<sup>[4]</sup> dated 24 October 2000. The CTA denied petitioner's claim for refund of withheld creditable tax of P3,037,500 arising from the sale of real property of which petitioner claims to be a co-owner as trustee of the employees' trust or retirement funds.

#### The Facts

Petitioner, a non-stock and non-profit corporation, was organized for the purpose of holding title to and administering the employees' trust or retirement funds (Employees' Trust Fund) established for the benefit of the employees of Victorias Milling Company, Inc. (VMC).<sup>[5]</sup> Petitioner, as trustee, claims that the income earned by the Employees' Trust Fund is tax exempt under Section 53(b) of the National Internal Revenue Code (Tax Code).

Petitioner alleges that on 25 March 1992, petitioner decided to invest part of the Employees' Trust Fund to purchase a lot<sup>[6]</sup> in the Madrigal Business Park (MBP lot) in Alabang, Muntinlupa. Petitioner bought the MBP lot through VMC.<sup>[7]</sup> Petitioner alleges that its investment in the MBP lot came about upon the invitation of VMC, which also purchased two lots. Petitioner claims that its share in the MBP lot is 49.59%. Petitioner's investment manager, the Citytrust Banking Corporation (Citytrust),<sup>[8]</sup> in submitting its Portfolio Mix Analysis, regularly reported the Employees' Trust Fund's share in the MBP lot.<sup>[9]</sup> The MBP lot is covered by Transfer Certificate of Title No. 183907 (TCT 183907) with VMC as the registered owner.<sup>[10]</sup>

Petitioner claims that since it needed funds to pay the retirement and pension benefits of VMC employees and to reimburse advances made by VMC, petitioner's Board of Trustees authorized the sale of its share in the MBP lot.<sup>[11]</sup>

On 14 March 1997, VMC negotiated the sale of the MBP lot with Metropolitan Bank and Trust Company, Inc. (Metrobank) for P81,675,000, but the consummation of the sale was withheld.<sup>[12]</sup> On 26 March 1997, VMC eventually sold the MBP lot to Metrobank. VMC, through its Vice President Rolando Rodriguez and Assistant Vice President Teodorico Escobar, signed the Deed of Absolute Sale as the sole vendor.

Metrobank, as withholding agent, paid the Bureau of Internal Revenue (BIR) P6,125,625 as withholding tax on the sale of real property.

Petitioner alleges that the parties who co-owned the MBP lot executed a notarized Memorandum of Agreement as to the proceeds of the sale, the pertinent provisions of which state:<sup>[13]</sup>

2. The said parcels of land are actually co-owned by the following:

Block 4, Lot 1 Covered by TCT No. 183907

	%	SQ.M.	AMOUNT
MJOPFI	49.59%	450.00	P 5,504,748.25
VMC	32.23%	351.02	3,578,294.70
VFC	18.18%	197.98	2,018,207.30

3. Since Lot 1 has been sold for P81,675,000.00 (gross of 7.5% withholding tax and 3% broker's commission, MJOPFI's share in the proceeds of the sale is P40,500,000.00 (gross of 7.5% withholding tax and 3% broker's commission. However, MJO Pension Fund is indebted to VMC representing pension benefit advances paid to retirees amounting to P21,425,141.54, thereby leaving a balance of P14,822,358.46 in favor of MJOPFI. Check for said amount of P14,822,358.46 will therefore be issued to MJOPFI as its share in the proceeds of the sale of Lot 1. The check corresponding to said amount will be deposited with MJOPFI's account with BPI Asset Management & Trust Group which will then be invested by it in the usual course of its administration of MJOPFI funds.

Petitioner claims that it is a co-owner of the MBP lot as trustee of the Employees' Trust Fund, based on the notarized Memorandum of Agreement presented before the appellate courts. Petitioner asserts that VMC has confirmed that petitioner, as trustee of the Employees' Trust Fund, is VMC's co-owner of the MBP lot. Petitioner maintains that its ownership of the MBP lot is supported by the excerpts of the minutes and the resolutions of petitioner's Board Meetings. Petitioner further contends that there is no dispute that the Employees' Trust Fund is exempt from income tax. Since petitioner, as trustee, purchased 49.59% of the MBP lot using funds of the Employees' Trust Fund, petitioner asserts that the Employees' Trust Fund's 49.59% share in the income tax paid (or P3,037,697.40 rounded off to P3,037,500) should be refunded.<sup>[14]</sup>

Petitioner maintains that the tax exemption of the Employees' Trust Fund rendered

the payment of P3,037,500 as illegal or erroneous. On 5 May 1997, petitioner filed a claim for tax refund.<sup>[15]</sup>

On 14 August 1997, the BIR, through its Revenue District Officer, wrote petitioner stating that under Section 26 of the Tax Code, petitioner is not exempt from tax on its income from the sale of real property. The BIR asked petitioner to submit documents to prove its co-ownership of the MBP lot and its exemption from tax.<sup>[16]</sup>

On 2 September 1997, petitioner replied that the applicable provision granting its claim for tax exemption is not Section 26 but Section 53(b) of the Tax Code. Petitioner claims that its co-ownership of the MBP lot is evidenced by Board Resolution Nos. 92-34 and 96-46 and the memoranda of agreement among petitioner, VMC and its subsidiaries.<sup>[17]</sup>

Since the BIR failed to act on petitioner's claim for refund, petitioner elevated its claim to the Commissioner of Internal Revenue (CIR) on 26 October 1998. The CIR did not act on petitioner's claim for refund. Hence, petitioner filed a petition for tax refund before the CTA. On 24 October 2000, the CTA rendered a decision denying the petition.<sup>[18]</sup>

On 22 November 2000, petitioner filed its Petition for Review before the Court of Appeals. On 20 May 2003, the CA rendered a decision denying the appeal. The CA also denied petitioner's Motion for Reconsideration.<sup>[19]</sup>

Aggrieved by the appellate court's Decision, petitioner elevated the case before this Court.

### **The Ruling of the Court of Tax Appeals**

The CTA held that under Section 53(b)<sup>[20]</sup> [now Section 60(b)] of the Tax Code, it is not petitioner that is entitled to exemption from income tax but the income or earnings of the Employees' Trust Fund. The CTA stated that petitioner is not the pension trust itself but it is a separate and distinct entity whose function is to administer the pension plan for some VMC employees.<sup>[21]</sup> The CTA, after evaluating the evidence adduced by the parties, ruled that petitioner is not a party in interest.

To prove its co-ownership over the MBP lot, petitioner presented the following documents:

- a. Secretary's Certificate showing how the purchase and eventual sale of the MBP lot came about.
- b. Memoranda of Agreement showing various details:
  - i. That the MBP lot was co-owned by VMC and petitioner on a 50/50 basis;
  - ii. That VMC held the property in trust for North Legaspi Land Development Corporation, North Negros Marketing Co., Inc.,

Victorias Insurance Factors Corporation, Victorias Science and Technical Foundation, Inc. and Canetown Development Corporation.

- iii. That the previous agreement (ii) was cancelled and it showed that the MBP lot was co-owned by petitioner, VMC and Victorias Insurance Factors Corporation (VFC).<sup>[22]</sup>

The CTA ruled that these pieces of evidence are self-serving and cannot by themselves prove petitioner's co-ownership of the MBP lot when the TCT, the Deed of Absolute Sale, and the Monthly Remittance Return of Income Taxes Withheld (Remittance Return) disclose otherwise. The CTA further ruled that petitioner failed to present any evidence to prove that the money used to purchase the MBP lot came from the Employees' Trust Fund.<sup>[23]</sup>

The CTA concluded that petitioner is estopped from claiming a tax exemption. The CTA pointed out that VMC has led the government to believe that it is the sole owner of the MBP lot through its execution of the Deeds of Absolute Sale both during the purchase and subsequent sale of the MBP lot and through the registration of the MBP lot in VMC's name. Consequently, the tax was also paid in VMC's name alone. The CTA stated that petitioner may not now claim a refund of a portion of the tax paid by the mere expediency of presenting Secretary's Certificates and memoranda of agreement in order to prove its ownership. These documents are self-serving; hence, these documents merit very little weight.<sup>[24]</sup>

### **The Ruling of the Court of Appeals**

The CA declared that the findings of the CTA involved three types of documentary evidence that petitioner presented to prove its contention that it purchased 49.59% of the MBP lot with funds from the Employees' Trust Fund: (1) the memoranda of agreement executed by petitioner and other VMC subsidiaries; (2) Secretary's Certificates containing excerpts of the minutes of meetings conducted by the respective boards of directors or trustees of VMC and petitioner; (3) Certified True Copies of the Portfolio Mix Analysis issued by Citytrust regarding the investment of P5,504,748.25 in Madrigal Business Park I for the years 1994 to 1997.<sup>[25]</sup>

The CA agreed with the CTA that these pieces of documentary evidence submitted by petitioner are largely self-serving and can be contrived easily. The CA ruled that these documents failed to show that the funds used to purchase the MBP lot came from the Employees' Trust Fund. The CA explained, thus:

We are constrained to echo the findings of the Court of Tax Appeals in regard to the failure of the petitioner to ensure that legal documents pertaining to its investments, e.g. title to the subject property, were really in its name, considering its awareness of the resulting tax benefit that such foresight or providence would produce; hence, genuine efforts towards that end should have been exerted, this notwithstanding the alleged difficulty of procuring a title under the names of all the co-owners. Indeed, we are unable to understand why petitioner would allow

the title of the property to be placed solely in the name of petitioner's alleged co-owner, i.e. the VMC, although it allegedly owned a much bigger (nearly half), portion thereof. Withal, petitioner failed to ensure a "fix" so to speak, on its investment, and we are not impressed by the documents which the petitioner presented, as the same apparently allowed "mobility" of the subject real estate assets between or among the petitioner, the VMC and the latter's subsidiaries. Given the fact that the subject parcel of land was registered and sold under the name solely of VMC, even as payment of taxes was also made only under its name, we cannot but concur with the finding of the Court of Tax Appeals that petitioner's claim for refund of withheld creditable tax is bereft of solid juridical basis.<sup>[26]</sup>

### **The Issues**

The issues presented are:

1. Whether petitioner or the Employees' Trust Fund is estopped from claiming that the Employees' Trust Fund is the beneficial owner of 49.59% of the MBP lot and that VMC merely held 49.59% of the MBP lot in trust for the Employees' Trust Fund.
2. If petitioner or the Employees' Trust Fund is not estopped, whether they have sufficiently established that the Employees' Trust Fund is the beneficial owner of 49.59% of the MBP lot, and thus entitled to tax exemption for its share in the proceeds from the sale of the MBP lot.

### **The Ruling of the Court**

We grant the petition.

The law **expressly allows** a co-owner (first co-owner) of a parcel of land to register his proportionate share in the name of his co-owner (second co-owner) in whose name the entire land is registered. The second co-owner serves as a legal trustee of the first co-owner insofar as the proportionate share of the first co-owner is concerned. The first co-owner remains the owner of his proportionate share and not the second co-owner in whose name the entire land is registered. Article 1452 of the Civil Code provides:

Art. 1452. If two or more persons agree to purchase a property and by common consent the legal title is taken in the name of one of them for the benefit of all, **a trust is created by force of law** in favor of the others in proportion to the interest of each. (Emphasis supplied)

For Article 1452 to apply, all that a co-owner needs to show is that there is "common consent" among the purchasing co-owners to put the legal title to the purchased property in the name of one co-owner for the benefit of all. Once this "common consent" is shown, "**a trust is created by force of law.**" The BIR has no