REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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TEAM SUAL CORPORATION,
Petitioner,

- *versus* -

PROVINCE OF PANGASINAN AND MARILOU E. UTANES IN HER CAPACITY AS THE OIC-PROVINCIAL TREASURER OF PANGASINAN,
Respondents.

CTA AC Case No. 173
(Civil Case No. 19095)

Members:

DEL ROSARIO, P.J., Chairperson,
UY, and
MINDARO-GRULLA, JJ.

Promulgated:

MAY 02 2018 : 3:10 pm

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RESOLUTION

UY, J.:

For resolution is respondents' **"MOTION FOR RECONSIDERATION (Re: Decision dated November 3, 2017)"** filed on December 12, 2017, with petitioner's **"OPPOSITION (To Respondents' Motion for Reconsideration)"** filed on January 19, 2018, praying for the reversal and setting aside of this Court's Decision dated November 3, 2017, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**.
>
> Accordingly, the Decision dated February 10, 2016 and Order dated May 31, 2016, both rendered by the RTC Branch 37 of Lingayen, Pangasinan, in Civil Case No. 190095, are **REVERSED AND SET ASIDE**.

> Furthermore, the Assessment dated November 3, 2010, demanding payment of transfer tax on the alleged transfer of machineries and buildings of the Sual Power Plant in the amount of ₱178,457,040, plus interest and surcharges, is **SET ASIDE AND NULLIFIED** for lack of factual and legal basis.
>
> **SO ORDERED.**"

Respondents' arguments:

In the *Motion*, respondents aver that this Court committed palpable and patent error in holding that the changing of petitioner's name from *"Mirant Sual Corporation"* to *"Team Sual Corporation"* did not make a new corporation, nor did it change its corporate being, thus nullifying the payment of transfer tax assessed by the provincial treasurer.

Respondents points to the supposed ratiocination of the Court *a quo* that *"while a corporation has a right to change its name, the frequent change however is disquieting and raises a red flag if this is no longer of the same entity".* Respondents add that it raises doubt that this may only be a scheme to evade taxes due to the government.

Furthermore, respondents maintain that *"Mirant Sual Corporation"* and *"Team Sual Corporation"* should be treated as separate and distinct entities. According to respondents, it will be inconsistent with the circumstances surrounding this case if it is to be believed that there was no transfer of real properties that transpired. Respondents further contend that the deed of conveyance, which should have been vital to the resolution of this case, was never offered in evidence by the petitioner; and that respondents would not have contested the "change of name", if only petitioner submitted that simple requirement.

Moreover, respondents argue that this Court failed to consider the fact that the two (2) sets of stockholders do not and cannot represent the same interest.

Finally, respondents still maintain that *"Mirant Sual Corporation"* and *"Team Sual Corporation"* have different principal place of business.

Petitioner's counter-arguments:

On the other hand, in its *Opposition*, petitioner observes that respondents attempt to impute fraud by posting that the frequent change in name by petitioner may be a scheme used by petitioner to evade taxes due to the government. However, petitioner points out that it is basic principle in law that fraud must be proved by clear and convincing evidence, and not by mere conjectures and speculations. Petitioner then contends that respondents have failed to prove that the exercise of petitioner's right under the Corporation Code to change its name was attended by fraud.

Anent the supposed failure of petitioner to present documents showing the alleged change in ownership over the subject properties, petitioner emphasizes that the said documents could not be presented simply because there was no change in ownership. Petitioner then points to the Order dated June 13, 2013 of the Court *a quo* which noted the manifestation of petitioner's counsel that the requested document does not exist.

With reference to the shift in the shareholders of petitioner, the latter counters that similar to a corporation's right to change its name, a shareholder is likewise given the right, by law, to dispose of their shares of stock in a corporation; and that as such, the stockholders may change but the juridical person remains the same without alteration.

Lastly, as for the matter of the two (2) entities having different principal places of business, petitioner avers that similar to the right granted by law to a corporation to alter its corporate name, a corporation is likewise granted the right by law to change its principal place of business, such that the exercise of this right does not, in any way, create a separate juridical entity.

THE COURT'S RULING

The instant *Motion for Reconsideration* lacks merit.

A careful perusal of the said *Motion for Reconsideration* shows that except for the imputation of fraud on the part of petitioner in changing its name, the arguments raised therein are mere reiterations of matters which have already been considered, weighed, passed upon and exhaustively resolved by this Court in the assailed

Decision. Hence, We shall no longer belabor, in this Resolution, to repeat the disquisitions made therein addressing the said arguments.

With regard to respondent's imputation of fraud, We agree with petitioner.

Fraud, in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust or confidence justly reposed, resulting in the damage of another, or by which an undue and unconscionable advantage is taken of another. It is a question of fact and the circumstances constituting it must be alleged and proved in the court below.[1] A careful evaluation of respondents' evidence in the proceedings below indicates that fraud was never established. In fact, no evidence was ever presented by respondents to establish such fact. Thus, the instances where petitioner changed its name cannot be construed as a scheme to evade payment of taxes.

In fine, respondents have not presented any valid argument in the instant *Motion* to convince Us that *"Mirant Sual Corporation"* and *"Team Sual Corporation"* are separate entities, so as to justify the imposition of the subject transfer tax.

WHEREFORE, premises considered, the instant *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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[1] *Republic of the Philippines vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 209324, December 9, 2015.