Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE, Petitioner, - versus - **G & W ARCHITECTS, ENGINEERS AND PROJECT CONSULTANTS CO.,** Respondent.	**CTA EB No. 1449** (CTA Case Nos. 8358, 8426 and 8489) Present: DEL ROSARIO, *PJ,* CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, *and* MANAHAN, *J.J.* Promulgated: MAR 21 2018 4:15 p.m.

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DECISION

CASANOVA, *J.*:

This is an appeal, by way of Petition for Review, filed by petitioner-Commissioner of Internal Revenue, seeking the reversal and setting aside of the Decision dated November 3, 2015 (the "Assailed Decision")[1] and Resolution dated April 7, 2016 (the "Assailed Resolution")[2], both rendered by the Court of Tax Appeals (CTA)-First Division in CTA Case Nos. 8358, 8426 and 8489.

The Assailed Decision granted the Petitions for Review and, accordingly, cancelled the assessments for deficiency expanded withholding tax and documentary stamp tax for the periods 2004, July 10, 2004 and June 2004, in the amounts of ₱277,458,117.19,

[1] EB Docket, pp. 32-89.
[2] Ibid, pp. 106-116.

₱132,852,679.05 and ₱149,414,228.66, respectively, or in the total amount of ₱559,725,024.90.

The facts of the case are narrated in the Assailed Decision and remain undisputed.

On November 3, 2015, the CTA-First Division promulgated the Assailed Decision the dispositive portion of which reads, as follows:

> "**WHEREFORE**, the instant Petitions for Review filed on October 21, 2011, February 15, 2012 and May 11, 2012 are hereby **GRANTED**. Accordingly, the deficiency expanded withholding tax and documentary stamp tax assessed for the periods 2004, July 10, 2004 and June 2004, in the amounts of ₱277,458,117.19, ₱132,852,679.05, and ₱149,414,228.66, respectively, or in the total amount of ₱559,725,024.90, are hereby **CANCELLED**.
>
> **SO ORDERED.**"

On November 23, 2015, respondent (petitioner now) filed his Motion for Reconsideration[3] with petitioner's (respondent now) Opposition (to Respondent's Motion for Reconsideration)[4] filed by registered mail on December 14, 2015.

On April 7, 2016, the CTA-First Division promulgated the Assailed Resolution[5] which denied respondent's Motion for Reconsideration for lack of merit.

Petitioner, thus, elevated the case to the Court *En Banc* via Petition for Review[6] filed on May 12, 2016. Respondent filed its Comment (to the Petition for Review filed on 26 May 2016)[7].

On August 25, 2016, the Court *En Banc* promulgated a Resolution[8] giving due course to the Petition for Review and required the parties to submit their respective memoranda within thirty (30) days from receipt of the Resolution. Thereafter, upon submission of the parties' respective

[3] Division Docket (CTA Case No. 8358, Vol. III), pp. 1582-1594.
[4] Ibid., pp. 1597-1605.
[5] En Banc Docket, pp. 106-116.
[6] Ibid, pp. 5-31.
[7] Id., pp. 144-153.
[8] Id., pp. 155-156.

memoranda or the expiration of the period granted, the subject Petition for Review shall be deemed submitted for decision.

Petitioner failed to file his memorandum per Records Verification[9] dated October 27, 2016 while respondent filed its Memorandum on October 7, 2016.

The case was deemed submitted for decision per Resolution[10] dated November 28, 2016.

However, on December 27, 2016, petitioner filed, thru registered mail, a Manifestation With Motion to Admit[11] stating he is adopting all his factual and legal arguments found in his Petition for Review dated May 12, 2016 as well as the documentary and testimonial evidence found in the records of the case, together with the factual findings and conclusions of Hon. Presiding Justice Roman G. Del Rosario in his Dissenting Opinion in CTA Case Nos. 8358, 8426 and 8489, as part of his Memorandum in the above captioned consolidated cases. Petitioner, therefore, prays that his Manifestation and Motion be admitted to form part of the records of the case.

On February 22, 2017, respondent filed its Manifestation (In Relation to this Honorable Court's Resolution Promulgated on 30 January 2017)[12] in compliance with this Court's Resolution dated January 30, 2017.

On March 24, 2017, this Court promulgated a Resolution granting petitioner's Manifestation With Motion to Admit and deemed the instant case submitted anew for decision.

After a careful and thorough evaluation and consideration of the parties' respective arguments as well as the records of the case, the CTA *En Banc* finds merit in petitioner's Petition for Review.

In the Assailed Decision, the CTA-First Division found and ruled as follows:

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[9] Id., p. 172.
[10] Id., pp. 174-175.
[11] Id. pp. 176-179.
[12] Id., pp. 184-187.

"To determine whether the intention of the parties in the above-mentioned agreements is to enter in a contract of sale of condominium units, the Court shall further be guided by Article 1458 of the Civil Code of the Philippines, which provides that in a contract of sale, one obligates himself not only to deliver a determinate thing but also to transfer ownership thereto for a consideration.

xxx xxx xxx

In the instant case, there is nothing in the said contracts which would show that there would be a transfer of ownership of the condominium units from petitioner to its clients for the transaction to be considered as a sale of the condominium units.

The Contract to Manage and Execute the Construction of Penhurst Parkplace Condominium between petitioner and Mr. Pek Eng Lim (the client) provides, among others, that:

xxx xxx xxx

In relation thereto, a Trust Agreement was executed between the trustee International Exchange Bank and the client, which provides how the trust fund shall be distributed:

xxx xxx xxx

As to the Kensington Place Condominium, Hamptons Place Condominium and Grand Hamptons Place Condominium Projects, the Contract to Manage and Execute the Construction of the said projects between petitioner and its clients contains similar stipulations with that of the Contract to Manage and Execute the Construction of Penhurst Place, except for the following:

xxx xxx xxx

In relation thereto, Depository and Disbursing Agreements were executed between Banco de Oro Universal Bank Trust Banking Group and the clients, which provide how the funds in the Account shall be distributed.

The stipulations in the said agreements state that the fund in the said account shall be used for the necessary payments in connection with the construction and development of the project and the purchase of the land where the condominium building will be situated. Petitioner shall provide photocopies of source documents to the bank for each disbursement instruction. The source documents shall include but not be limited to bills, invoices, certifications of indebtedness issued by petitioner and other evidence of indebtedness in relation to services rendered or materials procured for the project.

From the foregoing, it can be gathered that all of the acts of petitioner, including the execution and preparation of all necessary contracts and/or documents arising out of or as a consequence of the construction of the project, while may be executed by and in the name of petitioner, **shall be understood to be for and on behalf of the clients**." (Underscoring supplied)

We disagree in the above-quoted conclusion reached by the CTA-First Division in the Assailed Decision.

A review of the contracts executed between respondent and its clients reveal that, as correctly observed and pointed out by the CTA Presiding Justice Roman G. Del Rosario in his Dissenting Opinion to the Assailed Decision dated November 3, 2015 and Dissenting Opinion to the Resolution dated April 7, 2016 (collectively, the "Dissenting Opinions"), respondent's assertion that it is merely the Project Manager and not the owner of the condominium units is belied by petitioner's own pieces of evidence.

In the Contract to Manage and Execute the Construction of the Grand Hamptons Place Condominium[13], the following provisions would clearly show that respondent is not merely performing its duties/functions as Project Manager of the Condominium Project but has the authority to terminate the contract in any of the events of default enumerated under Section 8.01 of the Construction Contract, and, upon termination thereof, has the right to acquire or identify a substitute client to acquire all the rights and interests of the Client in the Project and to assume the corresponding remaining obligation thereunder, viz.:

[13] Exhibit "D", "D-1" and "D-2".

"SECTION 8

TERMINATION

8.01 Violation or Default

To protect the Client from litigation arising hereunder and by way of automatic settlement in case of the occurrence of the events of default set forth below, G & W shall have the right to rescind, terminate or cancel this Contract including the trust herein created with respect to the Subject Land, without need of judicial action, in case anyone of the events of default stipulated hereunder occurs, and the Client fails to remedy or cure to the satisfaction of G & W such default, within five (5) days from receipt of written notice from G & W of the occurrence of such default:

a) xxx xxx xxx
b) xxx xxx xxx
c) xxx xxx xxx
d) xxx xxx xxx
e) xxx xxx xxx

Upon such termination, G & W shall have the right to acquire or identify a substitute client to acquire all the rights and interests of the Client in the Project and to assume the corresponding remaining obligation hereunder. xxx.

xxx xxx xxx"

(Underscoring supplied)

In addition, respondent also has the authority to terminate the Construction Contract if it deems that it is not feasible to proceed with the Condominium Project as provided in the following provisions, viz:

"8.02 Insufficiency of Clients

In the event that the number of clients who have committed to participate in the Project by signing

> Contracts similar hereto or other agreements in relation hereto on or before the Target Commencement Date falls short of the number of clients needed to proceed with the Project or should G & W deem that it is not feasible to continue with the Project on or before the Target Commencement Date, this Contract shall be terminated immediately upon service by G & W of written notice thereof to the Client.
>
> xxx xxx xxx"

Ironically, respondent's clients who are supposedly the real owners who hired G & W to undertake the Condominium Project appear not to have any authority at all to terminate the Construction Contract. Consider this provision under the Contract, viz:

> "11.03 Binding Effect
>
> This Contract shall be binding upon and shall be enforceable against the Client and G & W and their respective successors and assigns; <u>provided, however, that the Client shall not have the right to transfer or assign any and all of his rights or obligations herein without the prior written consent of G & W</u>." (Underscoring supplied)

The above provision juxtaposed with the other afore-quoted provisions under Section 8 of the Construction Contract show that respondent is exercising all the attributes of ownership.

While the Contract to Manage and Execute the Condominium Project states that respondent is merely the Project Manager of the Condominium Project and acts for and in behalf of the Clients, the provisions thereof reveal otherwise.

In the case of Spouses Natalio and Felicidad Salonga vs. Spouses Manuel and Nenita Conception and Florencia Realty Corporation[14], the Supreme Court had the occasion to rule, thus:

> "If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal

[14] G.R. No. 151333, September 20, 2005.

meaning or its stipulations shall control. However, if the records appear to be contrary to the evident intention of the contracting parties, the latter shall prevail.

The nomenclature given by the parties to the Contract is not conclusive of the nature and legal effects thereof. Even if a document appears on its face to be a sale, the owner of the property may prove that the contract is really a loan with mortgage, and that the document does not express the true intent of the parties."

Following the above Supreme Court pronouncement, We, thus, concur in the following observation and disquisition of the Presiding Justice Roman G. Del Rosario in his Dissenting Opinion, viz:

"True, the best evidence of the intention of the parties to a contract is the contract itself being the formal expression of the parties' rights, duties and obligations. The stipulations of the contract and not its title are controlling and such stipulations confirm the nature of the contract. When the real intention of the parties to the contract is in issue, however, their subsequent or contemporaneous acts must be principally considered to reveal their true intention.

xxx xxx xxx

From the afore-quoted provisions, it is apparent that all the attributes of ownership of the condominium project are integrated into, and are being exercised by the petitioner. The Contract to Execute and Manage the Construction of the Condominium pretentiously suggests that petitioner is simply the manager of the project, when in truth, ownership rights of petitioner's purported 'clients' over the project or any of the condominium units accrue and become vested upon them only upon full payment of the said units. Note that under the said contract, petitioner has the potent authority to terminate the contract when the supposed 'clients' fail to pay the amounts payable, and the power to substitute the client who violated its terms or defaulted in the payment. The supposed 'clients'' obligation under the said contract is confined to paying a 'specified amount and upon full payment' the clients will acquire ownership of their respective condominium units. Such arrangement cannot be different from a contract to sell.

Upon full payment by the clients, the transaction is properly deemed a sale of condominium unit.

Article 1458 of the Civil Code defines a contract of sale:

> '**Article 1458**. By the contract of sale one of the contracting parties obligates himself to transfer the ownership and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.
>
> A contract of sale may be absolute or conditional.'

The essential elements of a contract of sale are the following: (a) consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price; (b) determinate subject matter; and (c) price certain in money or its equivalent.

In the case at bar, all the essential elements of a contract of sale are present. The first element, consent to transfer ownership in exchange for the price, is clearly stated in the Contract to Manage and Execute the Construction of the Condominium.

5.05 Conveyance of Title to the Subject Unit and Common Areas

> **Upon completion of the Project and full payment by the Client of all amounts payable under this Contract, title to the Subject Unit including the Parking Unit shall be conveyed by G & W to the Client.** Upon completion of the Project, title to the Common Areas shall be conveyed by G & W to the Condominium Corporation which shall be established in accordance with the provisions of the Master Deed. (Emphasis supplied)

The second element, determinate subject matter, is the completed condominium unit, and the third element, price certain in money, is the amount payable under the purported Contract to Manage and Execute the Construction of the Condominium which is further subject to the relevant provisions of the Trust Agreement and the Depository and Disbursement Agreement.

Under these circumstances, there is no denying that the transaction contemplated under the Contract to Manage and Execute the Construction of the Condominium is a sale of condominium units despite the contractual embellishments that attempt to conceal its true nature.

Furthermore, records disclosed petitioner's contemporaneous and subsequent acts that point to contract of sale/contract to sell. Its own advertisement for the sale of the condominium units in its website to buyers, particularly that for Grand Hampton's Tower, is consistent with the seller's act as it tellingly reads:

> '**4 Easy Steps for Foreign <u>Buyers</u>**
>
> STEP 1
>
> Select a Desired Unit
>
> xxx xxx xxx
>
> STEP 2
>
> Reserve Your Unit
>
> xxx xxx xxx
>
> Reservation Fees are as follows:
> 1) Penthouse [171.75 sqm (1848.70 sq. ft.)] - Php 75,000
> 2) 3-Bedroom [128.27 sqm (1,380. 69 sq. ft.)] - Php75,000
> 3) 2-Bedroom [77.91 sqm (838.62 sq. ft.)] - Php50,000
> 4) 1-Bedroom [48.28 sqm (519.68 sq. ft.)] - Php50,000
> 5) 1-Bedroom [46.00 sqm (495.14 sq. ft.)] - Php 50,000
>
> xxx xxx xxx
>
> STEP 3
> Sign Contract
>
> xxx xxx xxx
>
> STEP 4
> Directly Remit payments to Banco De Oro under your account name
>
> xxx xxx xxx
>
> (Emphasis supplied)

With such open invitation to the public on the mode and manner of acquiring a condominium unit, one must indeed be extremely naive to accept petitioner's claim that it is merely a 'contractor' under the Contract to Manage and Execute the Construction of the Condominium.

Not only that, petitioner even applied for and was granted Licenses to Sell the condominium units by the Housing and Land Use Regulatory Board (HLURB), thereby tacitly admitting that it was engaged in the selling of condominium units. The following Licenses to Sell of petitioner bolster its status as a seller of condominium units:

Exhibits	Descriptions
"R-20"	Certificate of Registration No. 20133 issued to petitioner as the project owner and developer of THE GRAND HAMPTONS TOWER 1
"R-20-1"	License to Sell No. 21947 issued to petitioner as the project owner and developer of THE GRAND HAMPTONS TOWER 1
"R-21"	Certificate of registration No. 24027 issued to petitioner as the project owner and developer of THE GRAND HAPTONS TOWER II
"R-21-1"	License to Sell No. 25720 issued to petitioner as the project owner and developer of THE GRAND HAMPTONS TOWER II
"R-22"	Certificate of registration No.24426 issued to petitioner as the project owner and developer of CRESCENT PARK RESIDENCES CONDOMINIUM
"R-22-1"	License to Sell No. 26181 issued to petitioner as the project owner and developer of CRESCENT PARK RESIDENCES CONDOMINIUM
"R-23"	Certificate of registration No. 24418 issued to petitioner as the project owner and developer of CRESCENT PARK RESIDENCES CONDOMINIUM
"R-23-1"	License to Sell No. 26169 issued to petitioner as the project owner and developer of CRESCENT PARK RESIDENCES CONDOMINIUM
"R-24"	Certificate of registration No. 24028 issued to petitioner as the project owner and developer of CRESCENT PARK RESIDENCES CONDOMINIUM
"R-24-1"	License to Sell No. 25271 issued to petitioner as the project owner and developer of CRESCENT PARK RESIDENCES CONDOMINIUM

Indeed, there would have been no necessity to secure the afore-listed Licenses to Sell, if petitioner were not engaged in selling condominium units, as it tenaciously claims.

Section 5 of Presidential Decree 957 requires a license to sell as a condition *sine quo non* first obtained before selling condominium units:

> ***Section 5. License to sell.*** **Such owner or dealer to whom has been issued a registration certificate shall, not, however, be authorized to sell any subdivision lot or condominium unit in the registered project unless he shall have first obtained a license to sell the project within two weeks from the registration of such project.**
>
> The Authority, upon proper application therefor, shall issue to such owner or dealer of a registered project a license to sell the project if, after an examination of the registration statement filed by said owner or dealer and all the pertinent documents attached thereto, he is convinced that the owner or dealer is of good repute, that his business if financially stable, and that the proposed sale of the subdivision lots or condominium units to the public would not be fraudulent. (Emphasis supplied)

Presidential Decree No. 957 is implemented by the HLURB.

In the HLURB Case No. REM-A-041130-0252, where petitioner appealed the order of the Expanded National Capital Region Field Office of the HLURB **imposing an administrative fine on petitioner for selling condominium units without a license to sell,** for failure to secure certificate of registration and for advertising without prior approval, **and ordering it to cease and desist from further selling and advertising until all the necessary permits or license is secured**, the HLURB denied petitioner's appeal and affirmed the order of imposition of fine, and cease and desist order. Expectedly, the HLURB required petitioner to secure licenses to sell and petitioner complied with the said directive." (Underscoring and boldfacing supplied)

With regard to respondent's liability for deficiency expanded withholding tax (EWT) and documentary stamp tax (DST), since it is this Court's observation that respondent is not merely the Project Manager of the condominium Project/s but the owner thereof, We, again, concur in the following conclusion of Presiding Justice Roman G. Del Rosario in his Dissenting Opinion, viz.:

> "Anent the EWT assessment issued against petitioner, I am aware that the duty to withhold in a sale of real property is the responsibility of the withholding agent, i.e. condominium unit owners. Considering however that it was petitioner who misrepresented to the unsuspecting buyers that the transaction is not a sale, it must bear the EWT as a consequence. To allow petitioner to escape liability from the consequence of its mischievous tax scheme would *in esse* permit a wrong-doer to benefit from its own wrong doing. "Commodum Ex Injuria Sua Nemo Habere Debet" (A wrong doer should not be enabled by law to take any advantage from his actions)."

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED.** The Assailed Decision dated November 3, 2015 and Assailed Resolution dated April 7, 2016 of the CTA-First Division in the consolidated cases of CTA Case Nos. 8358, 8426 and 8489, are hereby **REVERSED** and **SET ASIDE**. Respondent is ordered to pay the assessed deficiency expanded withholding tax (EWT) and documentary stamp tax for the periods 2004, July 10, 2004 and June 2004, in the amounts of ₱277,458,117.19, ₱132,852,679.05, and ₱149,414,228.66, respectively, or in the total amount of ₱559,725,024.90, plus accrued 25% surcharge for late payment and 20% interest per annum until fully paid.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO with Concurring Opinion
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(I join the Dissenting Opinion of Justice Grulla and vote to affirm the assailed Decision)
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(With Dissenting Opinion)
CIELITO N. MINDARO-GRULLA
Associate Justice

(I join the Dissenting Opinion of Justice Grulla and vote to affirm the assailed Decision)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB No. 1449** (CTA Case Nos. 8358, 8426 and 8489)
-versus-	Present: Del Rosario, *P.J.,* Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, *and* Manahan, *JJ.*
G & W ARCHITECTS, ENGINEERS AND PROJECT CONSULTANTS CO., *Respondent.*	Promulgated: MAR 21 2018 4:15 p.m.

x---x

CONCURRING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in granting the Petition for Review filed by the Commissioner of Internal Revenue upon a finding that respondent G & W Architects, Engineers and Project Consultants Co. is not merely the Project Manager but the owner of the condominium units subject of the disputed assessments for documentary stamp tax (DST) and expanded withholding tax (EWT).

I wish to reiterate why the contracts between respondent and its clients are contracts of sale and not contracts for rendition of service as project manager of the condominium projects where its clients will eventually be the owners of the individual units constructed therein as respondent would have the Court believe.

Article 1467 of the Civil Code distinguishes between a contract of sale and a contract for rendition of service, *i.e.,* construction of condominium projects/units, *viz.*:

> "**Article 1467.** A contract for the delivery at a certain price of an article which the vendor in the ordinary course of his business manufactures or procures for the general market, whether the same is on hand at the time or not, is a contract of sale, but if the goods are to be manufactured specially for the customer and upon his special order, and not for the general market, it is a contract for a piece of work."

In *Engineering & Machinery Corporation vs. Court of Appeals et al.*[1], such distinction was further elucidated:

> "A contract for a piece of work, labor and materials may be distinguished from a contract of sale by the inquiry as to **whether the thing transferred is one not in existence and which would never have existed but for the order, of the person desiring it**. In such case, the contract is one for a piece of work, not a sale. On the other hand, if the thing subject of the contract would have existed and been the subject of a sale to **some other person even if the order had not been given, then the contract is one of sale**.
>
> Thus, Mr. Justice Vitug explains that –
>
>> A contract for the delivery at a certain price of an article which the vendor in the ordinary course of his business manufactures or procures for the general market, whether the same is on hand at the time or not is a contract of sale, but if the goods are to be manufactured specially for the customer and upon his special order, and not for the general market, it is a *contract for a piece of work* (Art. 1467, Civil Code). The mere fact alone that **certain articles are made upon previous orders of customers will not argue against the imposition of the sales tax if such articles are ordinarily manufactured by the taxpayer for sale to the public** (Celestino Co. vs. Collector, 99 Phil. 841).
>
> To Tolentino, the distinction between the two contracts depends on the intention of the parties. **Thus, if the parties intended that at some future date an object has to be delivered, without considering the work or labor of the party bound to deliver, the contract is one of sale.** But if one of the parties accepts the undertaking on the basis of some plan, taking into account the work he will employ personally or through another, there is a contract for a piece of work." (*Citations omitted* and *boldfacing supplied*)

[1] G.R. No. 52267, January 24, 1996.

In *Celestino Co & Company vs. Collector of Internal Revenue*[2] *(Celestino case)*, the Supreme Court ruled that Celestino Co & Company's services of making sashes, windows and doors was considered a contract of sale and not a contract for a piece of work subject to a sales tax:

> "xxx The important thing to remember is that Celestino Co & Company ***habitually makes*** **sash, windows and doors, as it has represented in its stationery and advertisements to the public.** That it 'manufactures' the same is practically admitted by appellant itself. The fact that windows and doors are made by it only when customers place their orders, does not alter the nature of the establishment, for it is obvious that it only accepted such orders as called for the employment of such material-moulding, frames, panels-as it ordinarily manufactured or was in a position habitually to manufacture.
>
> xxx xxx xxx
>
> But the argument rests on a false foundation. Any builder or homeowner, with sufficient money, may order windows or doors of the kind manufactured by this appellant. Therefore it is not true that it serves special customers *only* or confines its services to them alone. xxx (*Boldfacing supplied*)

The similarity of the circumstances in the present case with the *Celestino case* cannot be denied.

As afore-discussed, respondent's agreements with its clients, taken together, are contracts of sale and not contracts for rendition of service for a piece of work. **Respondent did not commence to build its condominium projects on the basis of a special order from previously existing and identified investors/condominium unit owners; rather it builds condominium projects even without such previously made special order consistent with its business purpose as stated in its Articles of Partnership**[3] **and Amended Articles of Partnership,**[4] *viz.*:

> "ARTICLE II
>
> Purpose and Office
>
> Section 1. The purpose and business of this partnership shall be **to engage in the general practice of Architecture and Construction and to purchase, own, hold, manage, lease and operate any and all kinds of property.** (as amended on 21 November 1997)" (*Boldfacing supplied*) OM

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[2] G.R. No. L-8506, August 31, 1956.
[3] Exhibit "A" in CTA Case No. 8489, p. 633.
[4] Exhibit "B" in CTA Case No. 8489, p. 638.

Both respondent and Celestino Co & Company also advertised their merchandise to the general public. Records[5] reveal that respondent solicited foreign buyers through advertisements on its website clearly contradicting its stand that the agreements it executed are merely in furtherance of a contract for rendition of service. **Respondent's representation in its advertisement that the condominium units are for sale affirm that it is indeed a seller of condominium units, precisely because respondent would dispose of the condominium units, regardless of who, ultimately, would acquire them.**

Interestingly, while respondent claimed that the condominium unit owners are its unit investors and not buyers, it did not present any evidence such as board resolutions or minutes of meetings that would establish any semblance of participation or control by the alleged investors/condominium unit owners, including any **collective agreement** on the bill of materials, technical specifications, identity of contractors and sub-contractors, if any, or even an agreement on the cost of construction *vis-à-vis* the fee payable to petitioner that would have appraised them in making an intelligent decision whether to retain respondent as a supposed Project Manager. In a contract for a rendition of service, control as to the specifications and the details of the finished product remains with the client. In the present case, it is ironic that in a Built-to-Own or Build–Your-Own-Home condominium unit, the supposed investors/condominium unit owners have no say in the design or plan of the condominium units they want constructed. **Control over all the phases of construction – planning to implementation - is solely exercised by respondent.**

If the condominium unit buyers are mere "clients" in the construction of the project as foisted by respondent, then such clients, at the very least, should have been consulted on the identity and qualification of the service provider. Sorely, nothing of this stipulation ever appeared on record.

In the language of the late Irving L. Goldberg, a former United States Federal Judge:

> "**A taxpayer may engineer his transactions to minimize taxes, but he cannot make a transaction appear to be what it is not.**[6]" *(Boldfacing supplied)*

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[5] Exhibits **"28"** (Copy of the printouts gathered from the website (http://www.gw-architects.com/grandhamptons) which advertised petitioner's sale of condo. Units to prospective buyers) and **"28-a"** (Page two of the Copy of the printouts gathered from the website (http://www.gw-architects.com/grandhamptons) which advertised petitioner's sale of condo. units to prospective buyers) in CTA Case No. 8426, and Exhibit **"R-10"** (Computer Print-Out of petitioner's Advertisement for the Grand Hampton's Tower) in CTA Case No. 8489.

[6] Redwing Carriers, Inc. vs. Tomlinson, 399 F.2d 652 (5th Cir. 1968).

All told, I vote to (1) GRANT the Petition for Review filed by the Commissioner of Internal Revenue; (2) UPHOLD the subject assessments for deficiency EWT and DST for the periods 2004, July 10, 2004 and July 2004; (3) REVERSE and SET ASIDE the November 3, 2015 Decision and April 7, 2016 Resolution of the Court in Division; and (4) ORDER respondent G& W Architects, Engineers and Project Consultants Co., to pay the assessed deficiency expanded EWT and DST for the periods 2004, July 10, 2004 and July 2004 in the amounts of ₱277,458,117.19; ₱138,679.05, and ₱149,414,228.66, respectively or in the total amount of ₱559,725,024.90.

ROMAN G. DEL ROSARIO
Presiding Justice

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EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB NO. 1449** (CTA Case Nos. 8358, 8426 & 8489)
-versus-	Present: DEL ROSARIO, P.J., CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
G & W ARCHITECTS, ENGINEERS AND PROJECT DEVELOPMENT CONSULTANTS CO., Respondent.	Promulgated: MAR 21 2018 4:15 p.m.

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DISSENTING OPINION

With due respect, I dissent in granting the Petition for Review. I disagree on the treatment and classification of a Contract to Manage and Execute the Construction of a Condominium between a respondent (trustee) and its client (trustor) as a contract of sale/contract of sell which absurdly considered the trustee as owner. I maintain my disquisition in the Court in Division's Decision dated November 3, 2015 and Resolution dated April 7, 2016. Thus, I vote to deny the Commissioner of Internal Revenue's Petition for Review and affirm the Decision dated November 3, 2015 and Resolution dated April 7, 2016 of the First Division of this Court.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice