REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

REPUBLIC OF THE PHILIPPINES,
Plaintiff,

- versus -

DIOSCORO F. SARILE and MANILA SURETY AND FIDELITY CO., INC.,
Defendants.

x - - - - - - - - - - - - - - - x

MANILA CIVIL CASE NO. 9839

March 25, 1959

DECISION

This is an action for the recovery of the sum of ₱9,380.31 allegedly due to the plaintiff from the defendants as fixed and percentage taxes, including surcharge, and the sum of ₱500.00 as additional penalty or compromise for alleged violation of Sections 174, 192 and 194 of the National Internal Revenue Code, plus legal interests on said sums.

The case was originally filed by the plaintiff Republic of the Philippines before the Court of First Instance of Manila against the defendants Dioscoro F. Sarile and the Manila Surety and Fidelity Co., Inc. This case being pending in said court on June 16, 1954, the same was certified and remanded to this Court for final disposition pursuant to Section 22 of Republic Act No. 1125.

The facts, as established by the evidence, are summarized hereunder:

On November 25, 1946, the defendant Dioscoro F. Sarile (hereinafter referred to as Sarile for brevity) bought in his name from the Government Procurement Commission at Cebu City United States Army surplus goods consisting of 36,593 cases of "C-rations", 10,000 cans

75

of pineapple juice and 7,728 cans of orange juice, at the aggregate price of ₱89,946.02 and covered by Sales Invoice No. C0034 thereof (Exhs. A, A-1, plaintiff; p. 294, BIR rec.). On November 27, 1946, Sarile sold all the aforesaid goods to Cheng Ban Yek & Co., Ltd., at a price of ₱97,696.46 (Exh. B, p. 291, BIR rec.). Incidentally, it may be stated that the 36,593 cases of "C-rations" purchased by Sarile contained, among others, matches and cigarettes.

In view of this transaction, the then Collector of Internal Revenue assessed against and demanded from Sarile the payment of the sum of ₱9,380.31, which assessment is contained in the former's letter dated May 16, 1947 (Exh. E, plaintiff, p. 8, BIR rec.). The following is the assessment as itemized:

"5% Sales Tax on 73,984.03	₱3,699.20
25% surcharge	924.80
Wholesale Tobacco dealer (4th quarter of 1946)	15.00
Specific tax on cigarettes	4,614.05
Graduated fixed tax for 1946	6.00
Specific tax on matches	111.26
TOTAL TAXES DUE	₱9,380.31"
Compromise	₱ 500.00

In a letter dated May 27, 1947, Sarile, although admitting liability for the specific tax on the matches and cigarettes, nevertheless claimed exemption from the said tax as assessed on the ground that the transaction involved was single and isolated. (Exh. F, plaintiff, p. 10 BIR rec.) However, in a letter dated June 16, 1947 (Exh. G, p. 11, BIR rec.), the Collector of Internal Revenue disregarded Sarile's claim for exemption and reiterated the demand for the payment of the tax assess-

72

ment. In view thereof, Sarile wrote the Collector of Internal Revenue on July 1, 1947, requesting that the tax be offset against the former's claim against the Surplus Property Commission (Exh. N, p. 12, BIR rec.). This last request was denied in a letter of the Collector of Internal Revenue dated July 3, 1947 (p. 14, BIR rec.), with the advertence that collection of the tax by distraint and levy would be availed of in the event of Sarile's failure to pay the tax. At the same time, the Collector of Internal Revenue requested the Surplus Property Commission to withhold the payments of Sarile's refund claims with said Commission pending the settlement of the tax herein involved. This request was however denied in view of the unfavorable action by the Surplus Property Commission upon Sarile's refund claims.

By reason of Sarile's failure to settle his tax liability herein treated, the Collector of Internal Revenue garnished the former's savings account with the Philippine National Bank and proceeded to place Sarile's other properties under distraint and levy (pp. 27-30, 44-45 BIR rec.). In order to prevent the distraint and levy of his properties and to defer payment of his tax liability, Sarile, as principal, and the Manila Surety & Fidelity Co., Inc. (Manila Surety, for brevity), as surety, executed on March 12, 1948, the bond which is now involved here (par. 2, Sarile's Answer). The said bond was approved and accepted by the Collector of Internal Revenue (Exh. L, BIR rec., p. 57).

Under the bond, Sarile and Manila Surety jointly and severally bound themselves to pay unto the Republic of the Philippines the sum of ₱9,380.31 "being the fixed and percentage taxes plus surcharge and compromise" due from the principal (defendant Sarile). Under the said bond, the defendants bound themselves to pay the aforesaid sum in six monthly installments, as follows:

1st Installment	- ₱1,563.38	- Apr. 12, 1948
2nd "	- 1,563.38	- May 12, 1948
3rd "	- 1,563.38	- June 12, 1948
4th "	- 1,563.39	- July 12, 1948
5th "	- 1,563.39	- Aug. 12, 1948
6th "	- 1,563.39	- Sept 12, 1948

However, despite repeated demands on both the defendants (Sarile and Manila Surety), they failed to pay any of the installments (Exhs. M, plaintiff; "2" Defendant, p. 59 BIR rec.; N-plaintiff, p. 63 BIR rec.; O-plaintiff, p. 67 BIR rec.; P-plaintiff, p. 72 BIR rec.; Q-plaintiff, p. 73 BIR rec.). Consequently, on December 7, 1949, the Republic of the Philippines filed the present complaint.

The defendant Sarile filed his answer to the complaint, denying liability for the fixed and percentage taxes in question on the ground that he merely acted as commission agent of Cheng Ban Yek & Co., Ltd. In addition, he filed a third party complaint against the latter as third party defendant, claiming that it (Cheng Ban Yek & Co., Ltd.) is the real party liable for the said taxes. However, Cheng Ban Yek & Co., Ltd., was not summoned and thus did not file its answer to the third party complaint. The defendant Manila Surety filed its answer to the complaint with a cross-claim against Sarile. The latter, having failed to file his answer thereto, was declared in default by the Court of First Instance of Manila (see CTA rec. p. 59).

In support of his contention that he was merely acting in behalf of his principal, Cheng Bank Yek & Co., Ltd., Sarile testified at the hearing of this case that there was an oral contract of agency between him and Cheng Ban Yek & Co., Ltd., relative thereto. Sarile claims that although the purchase of the goods in question from the Government Procurement Commission was made in his own name, the purchaser in fact was Cheng Ban Yek & Co., Ltd. Sarile further testified that in order that Cheng Ban Yek & Co., Ltd. would be able to obtain delivery of the said goods from the Government Procurement Commission, he (Sarile) executed on November 26, 1946 a sale of the goods to his alleged principal (Exh. H-3, p. 156, BIR rec.). For this transaction, Sarile claimed that he was paid by Cheng Ban Yek & Co., as commission, the sum of ₱69,692.81. To buttress his claim, he presented Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 10-A and 10-B (CTA rec., pp. 139-150), which are true copies of the original documents previously presented in Cebu Criminal Cases Nos. V-2970 and V-2972. Exhibits 1, 2 and 3, are cash disbursement vouchers Nos. 2100, 2182, and 2745 of Cheng Ban Yek & Co., Ltd., purporting to show payments in favor of Sarile in the total amount of ₱69,692.81 as commission. Exhibit 4 is a true copy of a letter of authority dated November 8, 1946 of Chung Liu, Ching Leng & Co., Ltd. to the Bank of the Philippine Islands, Manila, requesting that the Cebu branch of said bank be instructed to honor sight drafts drawn against Chung Liu, Ching Leng & Co., Ltd. by Assistant General Manager Ching Leng for any amount up to ₱400,000.00. Exhibits 5, 6 and 7 are true copies of 90-day drafts issued by the Bank of the Philippine Islands payable to the Government Procurement Commission in the total sum of ₱198,301.64. Exhibit 8 is an inter-office correspondence dated November 8, 1946 from the central office of the Bank of the Philippine Islands in Manila to its branch office in Cebu, authorizing the latter to honor sight drafts drawn by Chung Liu, Ching Leng & Co., Ltd. up to an aggregate amount of ₱400,000.00. Exhibit 9 is a true copy of a draft dated November 8, 1946, in the amount of ₱198,301.68 drawn by Chung Liu, Ching Leng & Co., Ltd. against its own account carried with the Manila office of the Bank of the Philippine Islands. Exhibits 10, 10-A and 10-B are copies of the record of cash disbursements (general ledger sheets Nos. 54, 57 and 73 for the months of November and December 1946) reflecting the alleged commissions paid to Sarile in the total amount of ₱69,692.81. All these documents were presented to show that Sarile was an agent of Cheng Ban Yek & Co., Ltd., and had in fact used the latter's money to purchase the surplus goods in good question and for such services the former received compensation from the latter in form of commission in the amount of ₱69,692.81.

Incidentally, Sarile testified that he was compelled to file the bond involved in this case because, it was necessary to do so in order to be able to obtain a tax clearance, which tax clearance was in turn required for the purpose of obtaining the necessary papers preparatory to going abroad.

The issues in this case may thus be summarized as follows:

(1) Whether or not the defendant Sarile acted as commission agent of Cheng Ban Yek & Co., Ltd., and

(2) Whether or not the defendants Sarile and the Manila Surety and Fidelity Co., Inc. are liable under their bond for the payment of the said amount of ₱9,380.31 representing fixed, specific and percentage taxes and the ₱500.00 compromise penalty.

Proceeding to the first question as to whether or not the defendant Sarile acted as commission agent of Cheng Ban Yek & Co., Ltd., we should note that under Article 1869 of the Civil Code (Art. 1709, Span. Civil Code) an agency exists when pursuant to a contract "a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter." It is the essence of this relation that the agent should act for and on behalf of the principal, and where an agent acts in his own name, there is, as regards third persons, no agency (see Art. 1883, Civil Code).

Applying the foregoing concepts to the case at bar, we find Sarile's contention not well taken, the same not corroborated by the evidence on hand. The agency, if any, in this case was an oral contract. However, it is highly improbable and not according to business usage that the alleged principal Cheng Ban Yek & Co., Ltd. would entrust to an agent the large sum of ₱89,946.02 without the necessary receipts therefor and for that agent to undertake a transaction involving a substantial amount without a written power of attorney or agreement drawn for that purpose. The defendant Sarile had not shown any special circumstance that Cheng Ban Yek & Co. would entrust him with such large sums without need of such receipts. Neither had the alleged principal been presented to corroborate the fact of such agency. We, therefore, find no basis to the existence of an agency relation between Sarile and Cheng Ban Yek & Co., Ltd.

It is further argued by Sarile that since the money used to pay the Government Procurement Commission was provided by Cheng Ban Yek & Co., Ltd., that fact corroborates the existence of the agency. We find the argument not well taken. Assuming arguendo that Sarile bought the aforementioned goods with the money obtained from Cheng Ban Yek & Co., Ltd., such fact by itself does not make the former an agent of the latter (see Martinez v. Martinez, 1 Phil. 647). On the other hand, it may be deduced that Cheng Ban Yek & Co. had loaned the money to

Sarile; or that Cheng Ban Yek & Co., paid the same to Sarile, as partial or advance payment of the price of the goods to be sold by the latter to the former. The latter view seems to be corroborated by the fact that subsequently Sarile executed a sale in favor of Cheng Ban Yek & Co. Thus, in the case of Gonzalo Puyat & Sons, Inc. v. Arco Amusement Co. (72 Phil. 402) where the plaintiff Gonzalo Puyat & Sons, Inc. undertook, for a commission, to purchase for the defendant Arco Amusement Co. equipments from the United States which the former sold to the latter upon their arrival and as per agreement, the court held that the transaction between the parties was one of purchase and sale and not of agency. In another case, where a corporation, pursuant to an agreement with the Philippine Refining Co., undertook to buy copra from producers thereof and subsequently to sell the same to the Philippine Refining Co., the court ruled that the relationship created was not that of agent and principal in so far as it related to the purchase of copra by the former (Albaladejo y Cia v. Philippine Refining Co., 45 Phil. 556, 572).

The fact that Sarile acted in his own name, both in purchasing the goods from the Government Procurement Commission and in selling the goods to the Cheng Ban Yek & Co., indicates that Sarile was not acting as agent of the latter.

Sarile finally cites the fact that the cash disbursement vouchers of Cheng Ban Yek & Co., Ltd. show that the latter paid to the former by way of commission the sum of ₱69,692.81 and argues that the compensation indicates an agency relation. We find the view not well taken. Considering the cost of the goods purchased which was in the sum of ₱89,946.02 and comparing the purchase price with the alleged commission paid in the sum of ₱69,692.81, one will readily come to the conclusion that the substantial difference between the two amounts is more of a profit to Sarile rather than compensation for his services. In fact, as held in the case of Gonzalo Puyat and Sons v. Arco Amusement Co., supra, the fact that a so-called commission was paid did not preclude the vendor and vendee relationship.

Finally, we believe that Sarile is now estopped from alleging that he was an agent of Cheng Ban Yek & Co. As already stated above, in the criminal proceedings before the Court of First Instance of Cebu involving the same transaction now before this Court, Sarile declared that he was an independent purchaser and denied any agency relation with Cheng Ban Yek & Co. On the other hand, in this case, Sarile alleges that he was merely acting as agent of Cheng Ban Yek & Co., Ltd. We believe that Sarile may not be allowed here to take a position inconsistent with that adopted by him in a previous judicial proceedings regarding the same subject matter. He is not permitted to contradict his statements or admissions contained in pleadings or papers executed in judicial proceedings (Sample v. Barnes, 55 US 70, 14 L ed 330) nor shall he be permitted to deny what he has once solemnly acknowledged (Sprigg v. Bank of Mt. Pleasant, 35 U.S. 257, 9 L ed 416).

> "x x x he, who by his own declarations or acts deliberately lead another to believe a particular thing to be true and to act upon such belief, shall not be permitted to retract or contradict one who has acted under such inducement." (Bachrach Motor Co. v. Kane, 61 Phil. 504)

> "A manufacturer who by his invoices represents to purchasers that the amount shown thereon includes the tax as well as the selling price, and who has returned that amount less the tax as the selling price, and caused the tax to be computed on that basis, cannot be heard to say, in the absence of other controlling circumstances, that he did not collect the tax from the purchasers but himself bore the burden thereof." (United States v. Jefferson Elec. Mfg. Co., 291 US 386, 78 L ed 859.)

> "Where a taxpayer has claimed that property is community property for income tax purposes, his estate cannot claim it to be separate property for the purpose of estate tax." (Estate of George Kingdon v. Com. Int. Rev., 9 TC 838.)

Before proceeding further, we would like to make an observation in relation to the present case. It appears to us that the defendant Sarile had transacted business with the Government Procurement Commission using his own name in order to effect the aforementioned transaction which, otherwise, could not have been executed by Cheng Ban Yek & Co., an alien-owned firm which was disqualified to do so. Hence, during the criminal proceedings relative thereto, it was then necessary to contend that he (Sarile) was the principal to avoid the penal consequences attendant to his act if he admitted that he was merely an agent or dummy of an alien. Like many other similar cases, where there are far reaching effects, Sarile's contention brought about unfavorable results in that he would stand liable for the taxes due in relation to the transaction in question. To avoid the tax liability, Sarile now makes a turnabout by alleging that he was merely an agent or dummy of Cheng Ban Yek & Co., if only to get a relief from such tax obligation. We cannot countenance such change, for the principal cannot be also a dummy at the same time. We believe that where a person chose to act as a dummy, he must be made to bear the tax consequences of his acting as a conduit in a transaction which is inimical to public policy.

Although Sarile has interposed another defense against the tax liability, by alleging that the transaction was a single and isolated one, we note that he has made no attempt to present evidence relative thereto nor to bolster this defense in any other manner. Contrarily, it appears from the record that he is a businessman by occupation, and it would necessarily follow that he would be liable for the tax on the aforementioned transaction in question as such merchant.

In the light of the above discussion, we are therefore of the opinion and so hold that Sarile is liable for the fixed percentage and specific taxes on the aforementioned transaction in which he had acted as principal for himself in the purchase of the goods from the Government Procurement Commission and as such principal in the subsequent sale thereof to Cheng Ban Yek & Co., Ltd.]

We shall now proceed to the next issue, to wit: whether or not the defendants Sarile and Manila Surety are liable for the payment of the tax in question in the amount of ₱9,380.31 representing fixed, specific and percentage taxes and the ₱500.00 compromise penalty in view of the surety bond executed by them. Other than in connection with the defense of Sarile already discussed above, it appears that the validity and correctness of the aforesaid assessment have not been questioned by the defendants in any other respect. The assessment not having been successfully shown to be illegal or erroneous, the same is therefore correct. (Interprovincial Autobus Co., Inc. v. Collector, G. R. L-6741, January 31, 1956.) Considering that under the surety bond executed by Sarile as principal and Manila Surety as surety (the validity thereof not being disputed) they have bound themselves jointly and severally for the payment of fixed, percentage and specific taxes and surcharge due the Republic of the Philippines in the amount of ₱9,380.31, we are therefore of the opinion and so hold that the said defendants are liable jointly and severally for the said amount of ₱9,380.31, as provided in the bond.

With respect however to the additional sum of ₱500.00 as compromise penalty demanded by the plaintiff, suffice it to state that the taxpayer cannot be compelled to pay a compromise penalty in absence of a mutual agreement between the parties thereto. (University of Santo Tomas v. Collector, G.R. L-11280, November 28, 1958.)

As an incident to this case, Manila Surety has a cross claim against Sarile, to which the latter has interposed no defense, and in fact has been declared in default. On the basis of the facts alleged in the pleadings and those established by the evidence, we believe that should the former pay to the plaintiff its liability under the bond as herein adjudged and the costs, it would follow that Manila Surety would in turn be entitled to obtain reimbursement from Sarile of the amount that might be paid, with legal interest from the date of payment by the former to the plaintiff, and we so hold accordingly.

In view of the fact that this Court has not acquired jurisdiction by service of summons on the third party defendant, Cheng Ban Yek & Co., Ltd., and there having been no action by the third party plaintiff relative thereto, the third-party-complaint should be dismissed for lack of interest.

IN VIEW OF THE FOREGOING, judgment is hereby rendered ordering the defendants Dioscoro F. Sarile and Manila Surety & Fidelity Co., Inc., to pay jointly and severally, to the plaintiff Republic of the Philippines, the sum of ₱9,380.31 as fixed, percentage and specific taxes, including surcharge. In the event that the Manila Surety & Fidelity Co., Inc., should pay the amount herein adjudged, including the costs, or any part thereof, Dioscoro F. Sarile is hereby ordered to reimburse the former the amount so paid with legal interest, counted from the date of payment by the former to the Republic of the Philippines. The third party complaint filed by Dioscoro F. Sarile against Cheng Ban Yek & Co., Ltd., is hereby dismissed for lack of interest on the former. With costs jointly and severally against the defendants.

SO ORDERED.

Manila, Philippines, March 25, 1959.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

Associate Judge Roman M. Umali did not take part.