January 22, 2020

BIR RULING NO. OT-019-20

Sec. 24 (D) (1), 57 (B), 188, 196, NIRC;
000-00

AAA

_____

_____

Dear AAA :

This refers to your letters dated June 16, 2017 and September 20, 2017 requesting on behalf of your brother, **BBB** for reconsideration of the ruling issued by BIR Revenue Region No. 13, Cebu City denying your request for an exemption from payment of capital gains tax and/or creditable withholding tax and documentary stamp tax on the transfer/reconveyance of a real property by virtue of a Rescission of Deed of Sale on the ground of being devoid of any legal basis.

Records show that BBB is the registered owner of a condominium unit more particularly described as _____ consisting of a total area of 81.64 sq.m. and covered by Condominium Certificate Title (CCT) No. C-4018 of the Registry of Deeds of Cebu.

On July 1, 2011, BBB executed a Deed of Absolute Sale wherein he sold the subject property in favor of then D&R Trinity Estate Corporation ("D & R"), now named 924 Universal Trading Corporation [1] for a total consideration of _____ Pesos (P_____). The capital gains tax (CGT) and documentary stamp tax (DST) due on the sale were duly paid and, consequently, CCT No. 107-2011003325 was issued to D & R.

On September 15, 2016 or more than five (5) years after the transaction had been consummated, the parties executed a Rescission of Deed of Sale allegedly due to the non-performance by the seller, BBB, of his obligation to deliver physical possession of the subject property.

The parties are not asking for a refund of taxes already paid. However, they are

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requesting for exemption from payment of taxes on the transfer/reconveyance of the subject property by 924 Universal Trading Corporation (formerly, D&R) to BBB by virtue of the Rescission of Deed of Sale.

In reply, please be informed that in the case of *Golden Valley Exploration, Inc. vs. Pinkian Mining Company and Copper Valley, Inc., G.R. No. 190080* dated June 11, 2014, the Supreme Court had the occasion to discuss the import of the aforesaid provision, to wit:

> *"In reciprocal obligations, either party may rescind the contract upon the other's substantial breach of the obligation/s he had assumed thereunder. The basis therefor is Article 1191 of the Civil Code which states as follows:*
>
> > *'Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.*
> >
> > *The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.*
> >
> > *The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.*
> >
> > *This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.'*
>
> *More accurately referred to as resolution, the right of rescission under Article 1191 is predicated on a breach of faith that violates the reciprocity between parties to the contract. This retaliatory remedy is given to the contracting party who suffers the injurious breach on the premise that it is 'unjust that a party be held bound to fulfill his promises when the other violates his.'*
>
> ***As a general rule, the power to rescind an obligation must be invoked judicially and cannot be exercised solely on a party's own judgment that the other has committed a breach of the obligation.*** *This is so because rescission of a contract will not be permitted for a slight or casual breach, but only for such substantial and fundamental violations as would defeat the very object of the parties in making the agreement.* ***As a well-established exception, however, an injured party need not resort to court action in order to rescind a contract when the contract itself provides that it may be revoked or cancelled upon violation of its terms and conditions.*** *As elucidated in Froilan v. Pan Oriental Shipping Co., 'there is x x x nothing in the law that prohibits the parties from entering into agreement that violation of the terms of the contract would cause cancellation thereof, even without court intervention.' Similarly, in Dela Rama Steamship Co., Inc. v. Tan, it was held that judicial permission to rescind an obligation*

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is not necessary if a contract contains a special provision granting the power of cancellation to a party."

Based on the foregoing, while a party who suffered an injury arising from the other party's substantial breach of obligation can rescind the contract, resort must be had to courts as the power to rescind cannot just be exercised solely on his own judgment that the other party has committed such breach. The exception to said rule is when the contract itself provides that it may be revoked or cancelled by any of the parties upon violation of its terms and conditions. After a careful perusal of the Deed of Sale executed between BBB and D&R, we found no such provision allowing either party to extrajudicially rescind the contract upon breach of the terms and conditions thereof.

Moreover, the Deed of Absolute Sale dated July 1, 2011 is a properly and validly consummated sale, as title thereto was transferred from the seller to the buyer. 924 Universal Trading Corporation (formerly, D&R) has no legal basis to demand the rescission of the Agreement. It should be faulted for not exercising prudence in including a provision in the Deed that the parties can mutually rescind the Deed in case of non-delivery of possession by the seller. We cannot help but view with suspicion 924 Universal Trading Corporation's (formerly, D&R) request for exemption from payment of taxes on the transfer/reconveyance of the subject property, by way of Rescission of Deed of Sale. It is absurd and unbelievable that one engaged in business did not take concrete steps to recover the subject property, demanding its return only after five (5) years from the registration of the title. Rescission after five (5) years on a mere allegation of non-delivery of possession seems to be an afterthought, conjured up to escape payment of taxes.

IN VIEW OF THE FOREGOING, rescission in this case should be considered as a buy-back of the property subject to the payment of appropriate taxes.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be ascertained that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

Footnotes

1. On October 20, 2011, the Articles of Incorporation of D & R Trinity Estate Corporation was amended, changing the name of the Corporation to 924 Universal Trading Corporation.

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