

## Significant Supreme Court Decisions November 2018

### **Due process of law must be followed in levy and sale of real property because a sale of land for tax delinquency is in derogation of private property and the registered owner's constitutional rights.**

The City of Makati levied upon a condominium unit for non-payment of real property taxes. Eventually, the property was auctioned off and sold to the highest bidder. The owners of the property filed a case for the annulment of the sale, contending that the sale is null and void on the following grounds: the notice of billing statements for real property were mistakenly sent to wrong address, no warrant of levy was sent, the notice of delinquency sale was not posted, the Treasurer's Office did not notify the owners of the warrant of levy, and the excess of the proceeds of the sale were not remitted to the owners.

The Supreme Court nullified the auction sale because of the irregular conduct of proceedings by the LGU on the levy and sale of the property. There is no presumption of regularity that exists in any administrative action, which results in depriving a taxpayer of his property. Due process of law must be followed in tax proceedings, because a sale of land for tax delinquency is in derogation of private property and the registered owner's constitutional rights. (*Cruz and Heirs of Cruz vs. City of Makati, et al.*, G.R. No. 210894, September 12, 2018).

### **Only natural or juridical persons, or entities authorized by law may be parties in a civil action. Non-compliance with this requirement renders a case dismissible on the ground of lack of legal capacity to sue.**

An LGU enacted an ordinance increasing the fair market values (FMV) of real properties in its territorial jurisdiction. Petitioner homeowner's association, allegedly, a non-stock, non-profit corporation, filed a case and argued that the ordinance should be declared unconstitutional for violating substantive due process, considering that the increase in FMV's, which resulted in an increase in the taxpayer's base, and ultimately, the taxes to be paid was unjust, excessive, oppressive, arbitrary, and confiscatory, as proscribed under Section 130 of the Local Government Code.

The Supreme Court dismissed the petition due to petitioner's lack of capacity to sue. The High Court noted that the Rules of Court mandates that only natural or juridical persons, or entities authorized by law may be parties in a civil action. Non-compliance with this requirement renders a case dismissible on the ground of lack of legal capacity to sue. In this case, the court noted that petitioner homeowner's association has no juridical personality considering the revocation of its registration with the SEC and its failure to register with the HLURB as a homeowner's association. (*Alliance of Quezon City Homeowner's Association, Inc. vs. The Quezon City Government, et. al.*, GR No. 230651, September 18, 2018).

**The taxpayer has the primary responsibility for the proper preparation of the waiver of the prescriptive period for assessing deficiency taxes. The Commissioner of Internal Revenue may not be blamed for any defects in the execution of waivers.**

In connection with a taxpayer's tax investigation for taxable year 2002, several waivers of the defense of prescription were executed to extend the BIR's right to conduct audit. The Court noted the following defects on the waivers: 1) The notarization was not in accordance with the Rules on Notarial Practice; 2) Failure to

indicate the acceptance by the BIR; 3) The waivers were not signed by the proper revenue officer; and 4) The waivers failed to specify the type of tax and amount of tax due.

In ruling for the validity of the waivers, the Supreme Court adopted the ruling in the Next Mobile case that the defects are not solely attributable to the BIR. The proper preparation of the waiver is primarily the responsibility of the taxpayer or its authorized representative signing the waiver. Such responsibility does not pertain to the BIR as the receiving party. Thus, the act or omission giving rise to the defects of the waivers should not be ascribed solely to the BIR. The taxpayer, after having benefitted from the defective waivers, should not be allowed to assail them. The equitable principles of in pari delicto, unclean hands, and estoppel as enunciated in the Next Mobile case are applicable to this case. (*Asian Transmission Corporation vs. Commissioner of Internal Revenue*, GR No. 230861, September 19, 2018).

**Note:** RMO 20-90 issued on April 4, 1990 and RDAO 5-01 issued on August 2, 2001 lay down the procedure for the execution of the waiver. In several cases<sup>1</sup>decided by the Supreme Court, it has been held that strict compliance with the procedures laid down under RMO 20-90 is necessary. However, in the subsequent case of Next Mobile, Inc., the Supreme Court took the case as an exception to the general rule and declared the Waivers valid even with some departures on compliance procedures under RMO 20-90, due to the peculiar circumstances in that case, where both BIR and the taxpayer apparently contributed to the defects in the waivers.

The case of Commissioner of Internal Revenue v. Philippine Daily Inquirer (G.R. No. 213943) which was promulgated subsequent to the Next Mobile case seems to have overruled the doctrine of estoppel as laid down in the Next Mobile case, where the High Court held that the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01 which were issued by the BIR itself. A waiver of the statute of limitations is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and thus, it must be carefully and strictly construed.

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<sup>1</sup>See GR 178087, May 5 2010, GR. No. 162852, December 4, 2004, and GR. No. 170257, September 7, 2011, respectively.