

## SECOND DIVISION

[ G.R. No. 180110, May 30, 2016 ]

**CAPITOL WIRELESS, INC., PETITIONER, VS. THE PROVINCIAL  
TREASURER OF BATANGAS, THE PROVINCIAL ASSESSOR OF  
BATANGAS, THE MUNICIPAL TREASURER AND ASSESSOR OF  
NASUGBU, BATANGAS, RESPONDENTS.**

### DECISION

**PERALTA, J.:**

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Court of Appeals' Decision<sup>[1]</sup> dated May 30, 2007 and Resolution<sup>[2]</sup> dated October 8, 2007 in CA-G.R. SP No. 82264, which both denied the appeal of petitioner against the decision of the Regional Trial Court.

Below are the facts of the case.

Petitioner Capitol Wireless Inc. (*Capwire*) is a Philippine corporation in the business of providing international telecommunications services.<sup>[3]</sup> As such provider, Capwire has signed agreements with other local and foreign telecommunications companies covering an international network of submarine cable systems such as the Asia Pacific Cable Network System (*APCN*) (which connects Australia, Thailand, Malaysia, Singapore, Hong Kong, Taiwan, Korea, Japan, Indonesia and the Philippines); the Brunei-Malaysia-Philippines Cable Network System (*BMP-CNS*), the Philippines-Italy (*SEA-ME-WE-3 CNS*), and the Guam Philippines (*GP-CNS*) systems.<sup>[4]</sup> The agreements provide for co-ownership and other rights among the parties over the network.<sup>[5]</sup>

Petitioner Capwire claims that it is co-owner only of the so-called "Wet Segment" of the APCN, while the landing stations or terminals and Segment E of APCN located in Nasugbu, Batangas are allegedly owned by the Philippine Long Distance Telephone Corporation (*PLDT*).<sup>[6]</sup> Moreover, it alleges that the Wet Segment is laid in international, and not Philippine, waters.<sup>[7]</sup>

Capwire claims that as co-owner, it does not own any particular physical part of the cable system but, consistent with its financial contributions, it owns the right to use a certain capacity of the said system.<sup>[8]</sup> This property right is allegedly reported in its financial books as "Indefeasible Rights in Cable Systems."<sup>[9]</sup>

However, for loan restructuring purposes, Capwire claims that "it was required to register the value of its right," hence, it engaged an appraiser to "assess the market value of the international submarine cable system and the cost to Capwire."<sup>[10]</sup> On May 15, 2000, Capwire submitted a Sworn Statement of True Value of Real

Properties at the Provincial Treasurer's Office, Batangas City, Batangas Province, for the Wet Segment of the system, stating:

System	Sound Value
APCN	P 203,300,000.00
BMP-CNS	P 65,662,000.00
SEA-ME-WE-3 CNS P	P 7,540,000.00
GP-CNS	P1,789,000.00

Capwire claims that it also reported that the system "interconnects at the PLDT Landing Station in Nasugbu, Batangas," which is covered by a transfer certificate of title and tax declarations in the name of PLDT.<sup>[11]</sup>

As a result, the respondent Provincial Assessor of Batangas (*Provincial Assessor*) issued the following Assessments of Real Property (*ARP*) against Capwire:

ARP	Cable System	Assessed Value
019-00967	BMP-CNS	P 52,529,600.00
019-00968	APCN	P 162,640,000.00
019-00969	SEA-ME-WE3-CNS	P 6,032,000.00
019-00970	GP-CNS	P 1,431,200.00

In essence, the Provincial Assessor had determined that the submarine cable systems described in Capwire's Sworn Statement of True Value of Real Properties are taxable real property, a determination that was contested by Capwire in an exchange of letters between the company and the public respondent.<sup>[12]</sup> The reason cited by Capwire is that the cable system lies outside of Philippine territory, *i.e.*, on international waters.<sup>[13]</sup>

On February 7, 2003 and March 4, 2003, Capwire received a Warrant of Levy and a Notice of Auction Sale, respectively, from the respondent Provincial Treasurer of Batangas (*Provincial Treasurer*).<sup>[14]</sup>

On March 10, 2003, Capwire filed a Petition for Prohibition and Declaration of Nullity of Warrant of Levy, Notice of Auction Sale and/or Auction Sale with the Regional Trial Court (*RTC*) of Batangas City.<sup>[15]</sup>

Alter the filing of the public respondents' Comment,<sup>[16]</sup> on May 5, 2003, the RTC issued an Order dismissing the petition for failure of the petitioner Capwire to follow the requisite of payment under protest as well as failure to appeal to the Local Board of Assessment Appeals (*LBAA*), as provided for in Sections 206 and 226 of Republic Act (R.A.) No. 7160, or the Local Government Code.<sup>[17]</sup>

Capwire filed a Motion for Reconsideration, but the same was likewise dismissed by the RTC in an Order<sup>[19]</sup> dated August 26, 2003. It then filed an appeal to the Court of Appeals.<sup>[20]</sup>

On May 30, 2007, the Court of Appeals promulgated its Decision dismissing the

appeal filed by Capwire and affirming the order of the trial court. The dispositive portion of the CA's decision states:

WHEREFORE, premises considered, the assailed Orders dated May 5, 2003 and August 26, 2003 of the Regional Trial Court, Branch 11 of Batangas City, are AFFIRMED.

SO ORDERED.<sup>[21]</sup>

The appellate court held that the trial court correctly dismissed Capwire's petition because of the latter's failure to comply with the requirements set in Sections 226 and 229 of the Local Government Code, that is, by not availing of remedies before administrative bodies like the LBAA and the Central Board of Assessment Appeals (CBAA).<sup>[22]</sup> Although Capwire claims that it saw no need to undergo administrative proceedings because its petition raises purely legal questions, the appellate court did not share this view and noted that the case raises questions of fact, such as the extent to which parts of the submarine cable system lie within the territorial jurisdiction of the taxing authorities, the public respondents.<sup>[23]</sup> Further, the CA noted that Capwire failed to pay the tax assessed against it under protest, another strict requirement under Section 252 of the Local Government Code.<sup>[24]</sup>

Hence, the instant petition for review of Capwire.

Petitioner Capwire asserts that recourse to the Local Board of Assessment Appeals, or payment of the tax under protest, is inapplicable to the case at bar since there is no question of fact involved, or that the question involved is not the reasonableness of the amount assessed but, rather, the authority and power of the assessor to impose the tax and of the treasurer to collect it.<sup>[25]</sup> It contends that there is only a pure question of law since the issue is whether its submarine cable system, which it claims lies in international waters, is taxable.<sup>[26]</sup> Capwire holds the position that the cable system is not subject to tax.<sup>[27]</sup>

Respondents assessors and treasurers of the Province of Batangas and Municipality of Nasugbu, Batangas disagree with Capwire and insist that the case presents questions of fact such as the extent and portion of the submarine cable system that lies within the jurisdiction of the said local governments, as well as the nature of the so-called indefeasible rights as property of Capwire.<sup>[28]</sup> Such questions are allegedly resolvable only before administrative agencies like the Local Board of Assessment Appeals.<sup>[29]</sup>

The Court confronts the following issues: Is the case cognizable by the administrative agencies and covered by the requirements in Sections 226 and 229 of the Local Government Code which makes the dismissal of Capwire's petition by the RTC proper? May submarine communications cables be classified as taxable real property by the local governments?

The petition is denied. No error attended the ruling of the appellate court that the case involves factual questions that should have been resolved before the appropriate administrative bodies.

In disputes involving real property taxation, the general rule is to require the taxpayer to first avail of administrative remedies and pay the tax under protest before allowing any resort to a judicial action, except when the assessment itself is alleged to be illegal or is made without legal authority.<sup>[30]</sup> For example, prior resort to administrative action is required when among the issues raised is an allegedly erroneous assessment, like when the reasonableness of the amount is challenged, while direct court action is permitted when only the legality, power, validity or authority of the assessment itself is in question.<sup>[31]</sup> Stated differently, the general rule of a prerequisite recourse to administrative remedies applies when questions of fact are raised, but the exception of direct court action is allowed when purely questions of law are involved.<sup>[32]</sup>

This Court has previously and rather succinctly discussed the difference between a question of fact and a question of law. In *Cosmos Bottling Corporation v. Nagrama, Jr.*,<sup>[33]</sup> it held:

The Court has made numerous dichotomies between questions of law and fact. A reading of these dichotomies shows that labels attached to law and fact are descriptive rather than definitive. We are not alone in Our difficult task of clearly distinguishing questions of fact from questions of law. The United States Supreme Court has ruled that: "we [do not] yet know of any other rule or principle that will unerringly distinguish a factual finding from a legal conclusion."

In *Ramos v. Pepsi-Cola Bottling Co. of the P.I.*, the Court ruled:

There is a question of law in a given case when the doubt or difference arises as to what the law is on a certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts.

We shall label this the doubt dichotomy.

In *Republic v. Sandiganbayan*, the Court ruled:

x x x A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. In contrast, a question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.

For the sake of brevity, We shall label this the law application and calibration dichotomy.

In contrast, the dynamic legal scholarship in the United States has birthed many commentaries on the question of law and question of fact dichotomy. As early as 1944, the law was described as growing downward toward "roots of fact" which grew upward to meet it. In 1950, the late Professor Louis Jaffe saw fact and law as a spectrum, with one shade blending imperceptibly into the other. Others have defined questions of law as those that deal with the general body of legal principles; questions of fact deal with "all other phenomena x x x." Kenneth Gulp Davis also weighed in and noted that the difference between fact and law has been characterized as that between "ought" questions and "is" questions.<sup>[34]</sup>

Guided by the quoted pronouncement, the Court sustains the CA's finding that petitioner's case is one replete with questions of fact instead of pure questions of law, which renders its filing in a judicial forum improper because it is instead cognizable by local administrative bodies like the Board of Assessment Appeals, which are the proper venues for trying these factual issues. Verily, what is alleged by Capwire in its petition as "the crux of the controversy," that is, "whether or not an indefeasible right over a submarine cable system that lies in international waters can be subject to real property tax in the Philippines,"<sup>[35]</sup> is not the genuine issue that the case presents - as it is already obvious and fundamental that real property that lies outside of Philippine territorial jurisdiction cannot be subjected to its domestic and sovereign power of real property taxation - but, rather, such factual issues as the extent and status of Capwire's ownership of the system, the actual length of the cable/s that lie in Philippine territory, and the corresponding assessment and taxes due on the same, because the public respondents imposed and collected the assailed real property tax on the finding that at least a portion or some portions of the submarine cable system that Capwire owns or co-owns lies inside Philippine territory. Capwire's disagreement with such findings of the administrative bodies presents little to no legal question that only the courts may directly resolve.

Instead, Capwire argues and makes claims on mere assumptions of certain facts as if they have been already admitted or established, when they have not, since no evidence of such have yet been presented in the proper agencies and even in the current petition. As such, it remains unsettled whether Capwire is a mere co-owner, not full owner, of the subject submarine cable and, if the former, as to what extent; whether all or certain portions of the cable are indeed submerged in water; and whether the waters wherein the cable/s is/are laid are entirely outside of Philippine territorial or inland waters, *i.e.*, in international waters. More simply, Capwire argues based on mere legal conclusions, culminating on its claim of illegality of respondents' acts, but the conclusions are yet unsupported by facts that should have been threshed out quasi-judicially before the administrative agencies. It has been held that "a bare characterization in a petition of unlawfulness, is merely a legal conclusion and a wish of the pleader, and such a legal conclusion unsubstantiated by facts which could give it life, has no standing in any court where issues must be presented and determined by facts in ordinary and concise