DISTRICT OF COLUMBIA COURT OF APPEALS

No. 93-TX-1301

JAMES A. STUART, APPELLANT,

v.

DISTRICT OF COLUMBIA, APPELLEE.

Appeal from the Superior Court of the
District of Columbia,
Tax Division

(Hon. Eugene N. Hamilton, Trial Judge)

(Submitted January 3, 1995 Decided February 16, 1995)

Before: KING, *Associate Judge*, and MACK and BELSON, *Senior Judges*.

MEMORANDUM OPINION AND JUDGMENT

On November 20, 1990, appellant initiated a suit against the District of Columbia for a tax refund claiming that he was wrongfully taxed $3950 on an alleged transfer of land. On August 23, 1993, the trial court granted summary judgment in favor of the District, and appellant appeals that order. We affirm.

In May 1988, appellant purchased real property in the name of James A. Stuart and assigns, from a trustee at a foreclosure sale for $107,000. He then assigned the property interest to Big Ball Partnership ("Big Ball") for $395,000. The trustee deeded the property directly to Big Ball, and thus only one deed was recorded. Pursuant to D.C. Code § 45-923 (a) and § 47-903 (a)(1981), appellant paid a $1070 recordation tax for the initial purchase of the property and a $3950 transfer tax for the assignment of the right to receive title of that same property to Big Ball.[1] On April 25, 1990, two years after paying the property taxes, appellant presented a claim to the Department of Finance and Revenue, requesting a refund of the $3950 transfer tax. The District denied the request on May 17, 1990. This prompted appellant to bring suit in the Tax Division of Superior Court appealing the District's denial of the refund. Appellant argued that because the assignment of the property to Big Ball was not recorded by a deed, a transfer tax could not be imposed. Both parties moved for summary judgment, and the trial court ruled in favor of the District.

Summary judgment may be granted if the moving party

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[1] In addition, the trustee paid a $1070 transfer tax and Big Ball paid a $3950 recordation tax.

demonstrates through all the evidence in the record, in the light most favorable to the non-moving party, "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Ferguson v. District of Columbia*, 629 A.2d 15, 19 (D.C. 1993) (citations omitted). Once the moving party satisfies its initial burden of proving the nonexistence of a genuine issue of material fact, the non-moving party must show that there is in fact a *prima facie* case necessitating resolution of disputed facts by a trier of fact. *Smith v. Washington Metropolitan Area Transit Authority*, 631 A.2d 387, 390 (D.C. 1993). When reviewing a trial court's grant of summary judgment, this court must conduct an independent review of the record, in the light most favorable to the non-moving party, to determine whether there is no genuine issue of material fact from which the trier of fact could find for the non-moving party. *Id.*

Appellant argues that because neither he nor Big Ball recorded the assignment of the property, it does not constitute a transfer. He further asserts that a transfer tax is applicable only when "the parties thereto *wish* to record" the transfer. According to appellant, because his transfer to Big Ball of his contractual rights in the property did not result in a second deed, the transfer was not taxable. We disagree with appellant's claim. D.C. Code § 47-903 (a) provides that

> There is imposed on each transferor for each transfer at the time the deed is submitted to the Mayor for recordation a tax at the rate of 1.1 percent of the consideration for such transfer . . . .[2]

Moreover, a transfer is defined as "the process whereby any real property in the District, or any interest therein is conveyed, vested, granted, bargained, sold, transferred, or assigned from 1 person to another." D.C. Code § 47-901 (9)(1981). Appellant admitted that he assigned the deed to Big Ball for $395,000. Thus, the District was correct in assessing a tax on the $395,000 paid by Big Ball to appellant. Big Ball's purchase of the contractual rights in the property constituted a transfer that is taxable to the transferor under D.C. Code § 47-903. There is no evidence in the record to support appellant's argument that a transfer tax can only be imposed on transfers that are recorded by deed, nor do any statutes support this assertion. *See McCulloch Development Corp. v.*

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[2] At the time the District assessed the transfer tax on appellant the rate was 1% and has since increased to 1.1%. D.C. Code § 47-903 (a)(1989).

Winkler, 531 F. Supp. 83 (D.D.C. 1982) (noting that a transfer tax is separate and in addition to a recordation tax); 9 THOMPSON ON REAL PROPERTY, THOMAS EDITION § 76.08 (i)(2)(ii) (David A. Thomas ed., 1994) (describing transfers of real property in the District as subject to the transfer tax). Furthermore, we reject appellant's claim that there can be only one transfer per deed. To hold otherwise would enable three parties to group two consecutive transactions into one deed and avoid the appropriate taxes. The trial court properly found two transfers taxable to appellant; the first transfer from the trustee to appellant which resulted in a recordation tax, and the second from appellant to Big Ball, which resulted in the transfer tax.[3] Thus, we affirm the summary judgment entered in favor of the District because there is no genuine issue of material fact from which the trier of fact could find for appellant. Accordingly, it is

ORDERED and ADJUDGED that the order on appeal be, and hereby is, affirmed.

FOR THE COURT:

WILLIAM H. NG
Clerk of the Court

Copies to:

Honorable Eugene N. Hamilton

Clerk, Superior Court

James Stuart
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Charles L. Reischel, Esquire
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[3] Appellant also argues that the assignment of the real property from appellant to Big Ball was merely a sales contract which was not recorded and therefore cannot be subject to a second recordation tax under D.C. Code § 45-921 (3) (1981). Appellant does not argue that the first recordation tax of $1070 paid by him was erroneous, but rather claims that he is entitled to $1070 of the $3950 recordation tax paid by Big Ball pursuant to the transfer of the property from appellant to Big Ball. Appellant has no standing to bring this argument, however, since Big Ball Partnership paid the second recordation tax.