SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

SQUARE 345 LIMITED PARTNERSHIP* d/b/a/ GRAND HYATT WASHINGTON	*	
Petitioner.	*	**Tax No. 7985-01**
v.	*	
DISTRICT OF COLUMBIA,	*	
Respondent.	*	

ORDER

This case comes before the Court for consideration of a Motion for Judgment on the Pleadings or in the Alternative for Summary Judgment filed by the Respondent, the District of Columbia, on April 6, 2003 and Opposition thereto filed by the Petitioner, Grand Hyatt Hotel (Hotel). On June 30, 2003, this Court held a hearing to address said Motion, and all parties presented oral arguments on the matter. Having considered the evidence, the arguments and the pertinent legal authority, the Court concludes that the hotel sales tax imposed on the Grand Hyatt in the amount of $132,986.52 is permissible as a matter of law. The Court, therefore, grants summary judgment in favor of the Respondent, the District of Columbia.

BACKGROUND

The Petitioner is the owner of the Grand Hyatt located at 10th and H Streets, NW (Hotel). The Hotel contracts with groups wishing to arrange events, like conferences, at the Hotel. The contracts specify the date of said event and require the Hotel to set aside a block of guestrooms available at a lower rate for reservation by a certain date by participants in the event. The number

of rooms requested multiplied by the number of nights requested is calculated in "room nights". The contract also includes a guarantee by the group that event participants will reserve a minimum percent of the "room nights" (e.g. 80%). The group also guarantees it will pay the difference between the room nights reserved and the minimum room nights guaranteed, multiplied by the discounted room rate. This fee is referred to as the "attrition fee".

The question presented is whether attrition fees paid pursuant to contracts entered into between the Hotel and private groups are subject to the District of Columbia sales tax. More specifically, does the term "retail sale" as defined by DC Code § 47-2001[1] which includes "accommodations furnished to transients" require occupancy in order for attrition fees to be subject to the District of Columbia sales tax?

FINDINGS OF FACT

The facts are not in dispute. The Court finds that the Petitioner Grand Hyatt Washington Hotel is the owner of real property located in the District of Columbia at 1001 G Street, NW Washington DC that is known as the Grand Hyatt. In 1998 and 1999, the District, through its Office of Tax and Revenue ("OTR"), made regular annual assessments of the subject property. The assessment revealed that $80,517.28, plus interest and penalty for late payment of "hotel sales tax" was due, for a total assessment in the amount of $132,986.52. Petitioner paid the assessment and seeks a refund thereof.

CONCLUSIONS OF LAW AND ORDER

Summary judgment is appropriate if the record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *See* Sup.

Ct. R. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986). To make the required showing, the non-moving party must come forward with evidence that meets the evidentiary standards applicable at trial. *See Hendel v. World Plan Executive Council*, 705 A.2d 656, 660 (D.C. 1997).

The standard for review for a Super. Ct. Civ. R. 12(c) motion is, in essence, the same as that for summary judgment as stated in Super. Ct. Civ. R. 56(c). *See Amberger & Wohlfarth, Inc. v. District of Columbia*, 300 A.2d 460, 463 (DC 1975). Summary judgment is appropriate only if "there is no genuine issue as to any material fact and... the moving party is entitle to judgment as a matter of law." Super. Ct. Civ. R.12(c). Upon consideration of the arguments and the evidence submitted in this case, the Court finds that no material issue of fact is in dispute and turns to interpret the statute. Where, as here, the words of a statue are clear and unambiguous, the Court must give effect to the plain meaning of the language, construing the words "according to their ordinary sense and with the meaning commonly attributed to them." *See D.C. v. Morrissey*, 668 A.2d 792, 797 (DC CA 1991).

The parties' central dispute surrounds whether or not attrition fees from group room block reservations are subject to a "hotel sales tax". The term "hotel sales tax" refers to the cumulative 14.5% tax imposed under D.C. Code §§47-2002(2) and 47-2002.02(1) with respect to the gross receipts from "the sale of or charges for any room...furnished to a transient by any hotel..." The relevant statutory provisions are as follows:

> A tax is imposed upon all vendors for the privilege of selling at retail certain tangible personal property and for the privilege of selling certain selected services (defined as "retail sale" and "sale as retail" in this chapter).***

[1] D.C. Code § 47-2001 provides definitions for terms associated with Gross Sales Reciepts.

(2) the rate of tax shall be 10.5% of the gross receipts from the sale of or charge for any room or rooms, lodgings, or accommodations *furnished to a transient* by any hotel, in tourist camp, tourist cabin, or any other place in which rooms are regularly furnished to transients;***.

D.C. Code § 47-2002(2) (emphasis added).

A tax, separate from, and in addition to, the tax imposed pursuant to § 47-2002, is imposed on vendors engaging in the business activities listed in paragraphs (1) and (2) of this section for the privilege of selling at retail certain tangible personal property and for the privilege of selling certain selected services (defined as "retail sale" and sale at retail" pursuant to § 47-2001(n)(1)). The rate of tax shall be:

4.45% of the gross receipts for the sale or charges for any room or rooms, lodgings or accommodations furnished to a transient by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings or accommodations are regularly furnished to transients.

DC Code § 47-2002.02(1)

As defined in DC Code § 47-2001(n)(1)(c)

" 'Retail sale' and 'sale at retail' means the sale in any quantity or quantities of any tangible personal property or service taxable under the terms of this chapter... For the purpose of the tax imposed by this chapter, these terms shall include, but not be limited to, the following:

(c) the sale or charge for any room or rooms, lodging or accommodations furnished to transients by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings or

> accommodations are regularly furnished to transients for a consideration. The term "transient" means any person who occupies or who has the right to occupy any room or rooms, lodgings or accommodations for a period of 90 days or less during any 1 continuous stay;***"

Further, Blacks Law Dictionary defines "furnish" as "to supply or provide". Thus, in order for the hotel sales tax to apply, Petitioner's attrition fee must be a charge for a room furnished to a transient – a person who occupies or who has a right to occupy the room.

Neither of the parties are in dispute as to the law itself nor the terms and definitions provided above. However, both parties provide compelling arguments regarding what constitutes a right to occupy a room and when a transient has secured that right. At issue is the intended definition of the phrase "furnished to a transient" as stated in DC Code § 47-2001(n)(1)(c) and DC Code § 47-2002.02.

Respondent argues that the provisions of DC Code § 47-2001 indicates a legislative intent to tax the *service* of furnishing a hotel room to transients not the *occupancy* of a hotel room. To support this argument, Respondent states Black's Law Dictionary's definition of "furnish" as "to supply or provide" and reminds the Court that the statue never explicitly states that the sales tax is only to be imposed if a transient actually occupies a hotel room for a night.

Respondent looks to the provisions of the contract to further identify this transaction as a service related to the furnishing of hotel rooms. Respondent notes that the benefits conferred to the group by way of contract are (1) a guarantee of availability for a certain number of rooms at a certain time and date and (2) a guarantee that the group members may reserve said rooms at a

discounted rate by a certain time in advance of the event. The Hotel's benefit is the assurance that a minimum number of rooms will be reserved and paid for during a specified period at a specified rate.

As a result of the contract, the Hotel must deduct the number of room nights from its inventory and make said rooms available upon request (within the allotted timeframe) by group guests. Respondent defines the attrition fee as consideration for the Hotel's promise to furnish the rooms or make the rooms available. Respondent suggests that the group is compensating the Hotel for its service in providing the rooms to group members by paying an attrition fee.

Just as an independent traveler would be charged the room rate and sales tax by the Hotel for the service of making a room available if they were unable to cancel their reservations before the time specified in their reservations contract, Respondent asserts that a group shall also be charged the attrition fee (the discounted rate multiplied by number of nights reserved) plus sales tax for the service of making the room available even if no one occupies the room. This transaction and the service provided therein, Respondent contends, are taxable. The Court agrees.

Petitioner asserts that Respondent is correct in arguing that a person must have a right to occupy the room in order for the sales tax to be applicable. However, Petitioner makes the distinction that where there is an attrition fee, no person ever obtains the right to occupy a room. Petitioner asserts, if no person occupied or had a right to occupy a room, as is the case with an attrition fee, then there was no "transient" involved in the transaction for purposes of the sales tax law.

In addition, petitioner makes a distinction regarding the purported taxable "service". While Respondent urges this Court to consider the service in question to be making the room

block available to group invitees, Petitioner contends that the service in question is the actual furnishing of a room to a specific transient.

Petitioner further explains that the room block agreement between the Hotel and the Group does not give any invitee the *right* to occupy a room. A person must at least make a reservation. Petitioner avows that the sale of a room is a requirement. Unlike, suggested by the Respondent, an invitee must do more than merely notify the Hotel. The Court disagrees.

Petitioner argues that drawing a parallel between a group's reservation of a room block and an individual's reservation of a room is not analogous. An individual who has reserved a room has a right to occupy the purchased room whether or not they choose to do so. A room block however does not alone provide any transient with the right to occupy the room.

The Court finds, and counsels agree, that a transient would not have the right to occupy a hotel room based upon an agreement between a group and the Hotel for a room block. However, as the attrition fee is the fee in question, it stands without question that no transient has actually occupied the room. Even still, the Court finds that the group invitees have secured a right to make a reservation and the reservation supplies a right to occupy a room. Therefore, two-part leap is sufficient to satisfy the definition of "furnished" as defined in the Code.

Further, the language of DC Code § 47-2001(n)(1)(c) is very specific. It imposes a tax on "the sale or charge for any room or rooms, lodging or accommodations furnished to transients by any hotel" not the provision of any room or rooms. The Court finds the attrition fee to be a charge for the service of making the room available. Though the attrition fee does not constitute a sale, which in this instance would require a specific

reservation by an event participant, the Court does find that it is a charge for the service of furnishing the room and therefore satisfies the requirements of DC Code 47-2001(n)(1)(c).

JUDGMENT OF THE COURT

WHEREFORE, it is by the Court this 31st day of December 2003, hereby

ORDERED, that Respondent's Motion be, and the same hereby is, **GRANTED**; and it is further

ORDERED, that Summary Judgment is hereby granted in favor of Respondent

ORDERED, that the District shall not refund to Petitioner the real property taxes paid on the property in the amount of $132,986.52.

SO ORDERED.

JUDGE KAYE K. CHRISTIAN

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