

# Taxation--New York City Property Transfer Tax Held Inapplicable to Deeds Delivered Outside City (Realty Equities Corp. v. Gerosa, 142 N.Y.L.J. 11 (Sup. Ct. 1959))

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Nor were the attorneys hired by the defendant employed solely in its affairs, since they were also acting on behalf of its customers.<sup>27</sup>

It appears that the Court in the instant case has unduly extended the status of the law concerning unauthorized practice by its too liberal interpretation of statutory and judicial authority.<sup>28</sup> This position is not substantiated by the policies of other states, and a more restricted application of such statutes is desirable for the protection of the public, the bar, and the courts.<sup>29</sup>



TAXATION—NEW YORK CITY PROPERTY TRANSFER TAX HELD INAPPLICABLE TO DEEDS DELIVERED OUTSIDE CITY. — Plaintiff-grantor executed, acknowledged and delivered real property located within the City of New York. Under protest the plaintiff paid a tax levied on the deed by which his real property was conveyed as required by the Real Property Transfer Tax law.<sup>1</sup> Plaintiff alleged that he was entitled to a refund since the transaction was consummated outside the territorial limits of the City of New York. The Court *held* that he was entitled to a refund and that the Real Property Transfer Tax law is invalid to the extent that it purports to tax a deed delivered outside the city limits. *Realty Equities Corp. v. Gerosa*, 142 N.Y.L.J. 11 (Sup. Ct. 1959).

The Real Property Transfer Tax law imposes a tax on a deed regardless of where made, executed or delivered, whereby any real

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<sup>27</sup> Thus an interesting problem of conflict of interests arises. Canon 6 of the Canons of Professional Ethics provides that "it is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts." (Emphasis added.) And in *People v. Peoples Trust Co.*, 180 App. Div. 494, 167 N.Y. Supp. 767 (2d Dep't 1917), the court indicates that §280 of the Penal Law was specifically enacted to avoid a conflict of interests. It explains: "The relation between attorney and client is confidential in the extreme. The attorney . . . owes undivided loyalty to his client, unhampered by obligations to any other employer . . . . It is obvious that the intervention of a corporation, the general employer of an attorney, between him and his client, is destructive of this necessary and important relation." *Id.* at 496, 167 N.Y. Supp. at 768.

<sup>28</sup> The Standing Committee on Unauthorized Practice of Law (American Bar Association) has registered its violent disapproval of the ruling in this case, contenting itself with the possibility that it "appears to be limited to the particular facts of the case." 25 COMMITTEE ON UNAUTHORIZED PRACTICE OF THE LAW, AMERICAN BAR ASS'N, UNAUTHORIZED PRACTICE NEWS 203-04, 252 (1959).

<sup>29</sup> To permit a lay intermediary to be interposed between attorney and client "would destroy the confidential relationship of attorney and client, thwart the control of the courts over the practice of law, and irreparably impair the sound administration of justice." *Stack v. P.G. Garage, Inc.*, 7 N.J. 118, 80 A.2d 545, 547 (1951).

<sup>1</sup> N.Y.C. ADMIN. CODE ANN. §146-2.0 (Supp. 1959-60).

property located in New York City or interest therein is conveyed. It was enacted pursuant to authority conferred by the state's Enabling Act<sup>2</sup> which provides:

this act shall not authorize the imposition of a tax on any transaction originating and/or consummated outside of the territorial limits of any city, notwithstanding that some acts be necessarily performed with respect to such transaction within such limits.<sup>3</sup>

The permissive scope and effect of the Real Property Transfer Tax law must be determined within the limits prescribed by the Enabling Act.<sup>4</sup> Since the Enabling Act only authorizes taxation of transfers within New York City, it is invalid to the extent that it authorizes the taxation of transactions that are consummated outside the territorial limits of the city.

Generally a transaction is consummated at that place where the taxable event is to be performed.<sup>5</sup> In the case of the New York City Sales Tax,<sup>6</sup> which was enacted on the authority of the same state Enabling Act, the Court of Appeals held that sales requiring delivery beyond the city limits were not consummated within New York City and therefore were not subject to the tax.<sup>7</sup> Similarly in the case of the Real Property Transfer Tax law, the tax being imposed on the deed effecting the transfer of real property, the taxable event is consummated at the place where the deed is delivered.<sup>8</sup>

Delivery of the deed is complete when a physical transfer and the intention that it shall operate as a conveyance concur.<sup>9</sup> Recordation does not affect the validity of the deed<sup>10</sup> and is merely an additional protection available to the grantee at his option. Thus only those sales of real property located in New York City which are closed in New York City are subject to the effects of the Real Property Transfer Tax law.

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<sup>2</sup> N.Y. UNCONSOL. LAWS § 9901(1) (e) (McKinney Supp. 1959).

<sup>3</sup> N.Y. UNCONSOL. LAWS § 9901(6) (McKinney Supp. 1959).

<sup>4</sup> See ALLEN, LAW IN THE MAKING 549-50 (6th ed. 1958); FORKOSCH, ADMINISTRATIVE LAW § 339 (1956).

<sup>5</sup> National Cash Register Co. v. Taylor, 252 App. Div. 90, 297 N.Y. Supp. 169 (1st Dep't), *aff'd*, 276 N.Y. 208, 11 N.E.2d 881 (1937).

<sup>6</sup> N.Y.C. ADMIN. CODE ANN. § N41-2.0 (1938). This ordinance imposed a tax on receipts from sales at retail of tangible personal property sold within the city.

<sup>7</sup> Gunther's Sons v. McGoldrick, 279 N.Y. 148, 18 N.E.2d 12 (1938) (per curiam); National Cash Register Co. v. Taylor, *supra* note 5. The effect of this ordinance and its interpretation was minimized by the enactment of remedial legislation providing that the tax would be on residents who used the goods in New York City but who purchased them outside the city. See N.Y.C. ADMIN. CODE ANN. § M41-17.0 (1949) as construed in Bee Line, Inc. v. Joseph, 284 App. Div. 98, 103 N.Y.S.2d 437 (1st Dep't 1954).

<sup>8</sup> Realty Equities Co. v. Gerosa, 142 N.Y.L.J. 11 (Sup. Ct. 1959).

<sup>9</sup> Ten Eyck v. Whitbeck, 156 N.Y. 341, 50 N.E. 963 (1898); Diamond v. Wasserman, 8 App. Div.2d 623, 185 N.Y.S.2d 411 (2d Dep't 1959).

<sup>10</sup> Lee v. Beagell, 174 Misc. 6, 19 N.Y.S.2d 613 (Sup. Ct. 1940). See Diamond v. Wasserman, *supra* note 9.

A Philadelphia ordinance caused a similar situation by imposing a tax on certain transactions relating to the making, execution, issuance or delivery of any document.<sup>11</sup> In construing this ordinance the court held that even if it was intended to impose a tax on a transfer, outside the city, of property within the city, such intention was futile as being in excess of authority granted to the city by enabling legislation which provides for the taxation of transactions, privileges, subjects and personal property within the limits of the city. Since the tax was on the transaction itself, those transactions occurring outside the city were not subject to the tax.<sup>12</sup> To close this loophole, the legislature amended the ordinance by providing that the term "deliver" should include the presentation for recording within the City of Philadelphia of any document whereby title to or any interest in real property located within the city was transferred or conveyed, regardless of where the document was executed, delivered or accepted.<sup>13</sup> Thus the inadequacies of the ordinance were corrected by remedial legislation, bringing the transaction of recording the deed within the scope of the taxing provision.

The fundamental rule of statutory construction is to ascertain and give effect to the plain meaning of the statute.<sup>14</sup> However, if such a construction will produce an absurd, illogical or unjust result or a result contrary to the policy of the legislation as a whole, the legislative intent must be given effect.<sup>15</sup> This rule of construction cannot be applied to the Real Property Transfer Tax law since there is an absence of persuasive evidence of legislative intent to permit the city to tax conveyances by deed made outside the city if they pertain to real estate within the city.<sup>16</sup>

Wherever the legislative intent is indeterminable, it is the duty of the court to give the statute a reasonable construction consistent with general principles of law.<sup>17</sup> Tax statutes must be construed most strongly against the government and in favor of the taxpayer.<sup>18</sup>

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<sup>11</sup> See Philadelphia City Ordinance as cited in *In re North American Rayon Corp.*, 383 Pa. 428, 119 A.2d 205, 207 (1956).

<sup>12</sup> See *In re North American Rayon Corp.*, *supra* note 11; *City Stores Co. v. City of Philadelphia*, 376 Pa. 482, 103 A.2d 664 (1954).

<sup>13</sup> See Philadelphia City Ordinance as cited in *L.J.W. Realty Corp. v. City of Philadelphia*, 390 Pa. 197, 134 A.2d 878, 882 (1957).

<sup>14</sup> See *United Parcel Service v. Joseph*, 272 App. Div. 194, 70 N.Y.S.2d 22 (1st Dep't 1947), *aff'd mem.*, 297 N.Y. 1004, 80 N.E.2d 533 (1948); *American Bridge Co. v. Smith*, 352 Mo. 616, 179 S.W.2d 12 (1944).

<sup>15</sup> *United States v. American Trucking Ass'ns, Inc.*, 310 U.S. 534 (1940); *United Parcel Service v. Joseph*, *supra*, note 14.

<sup>16</sup> See *Realty Equities Corp. v. Gerosa*, 142 N.Y.L.J. 11 (Sup. Ct. 1959).

<sup>17</sup> *Saltser & Weinsier, Inc. v. McGoldrick*, 295 N.Y. 499, 68 N.E.2d 508 (1946). See *In re Villard's Will*, 147 Misc. 472, 264 N.Y. Supp. 236 (Surr. Ct. 1933).

<sup>18</sup> *Good Humor Corp. v. McGoldrick*, 289 N.Y. 452, 46 N.E.2d 881 (1943); *United Parcel Service v. Joseph*, *supra* note 14; *Brooklyn Union Gas Co. v. McGoldrick*, 270 App. Div. 186, 59 N.Y.S.2d 243 (1st Dep't 1945), *aff'd mem.*, 298 N.Y. 536, 80 N.E.2d 669 (1948).

Therefore the Real Property Transfer Tax must be construed so as to limit the authority of the city to tax only those transactions occurring within New York City.

The Real Property Transfer Tax law imposes a tax on each deed by which real property is transferred within New York City, at a rate of one-half of one per centum of the consideration or value, provided that an exception of twenty-five thousand dollars is allowed on the interest or property conveyed. The effect of this tax will be avoided by transacting realty closings outside the territorial limits of New York City whenever possible. This will result in a burden on the attorneys in that they will be forced to travel beyond the territorial limits of the city to effectuate their closings. It will also necessitate that a representative of the title search company travel to the place of the closing, making an increase in the fee inevitable because of the additional time and expense spent in traveling. All these additional expenses and inconveniences in no way will benefit New York City.

In view of these obvious and fatal effects, it is only reasonable that this ordinance be repealed or in the alternative amended so as to include recordation of the deed as the taxable event upon which the Real Property Transfer Tax is levied.



TORTS—SUICIDE WHILE INSANE AS RESULT OF CONVERSION HELD ACTIONABLE IN WRONGFUL DEATH.—Executrix brought this action for wrongful death based on testator's suicide allegedly induced by defendant's conversion. The defendants were diamond dealers who refused to return or pay for a diamond consigned to them by decedent-broker. Plaintiff claimed that this constituted a threat to the broker's reputation, causing an irresistible impulse in the deceased to commit suicide. Upon a motion to dismiss, the Court held that the complaint stated a cause of action. *Cawverien v. De Metz*, 188 N.Y.S.2d 627 (Sup. Ct. 1959).

Authority in the United States indicates that there can be no recovery in wrongful death where the deceased took his own life.<sup>1</sup> The rule denying recovery arose in the United States during the last quarter of the nineteenth century.<sup>2</sup> The early cases were disposed of on the ground that the deceased's death by suicide was not the

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<sup>1</sup> *Scheffer v. Railroad Co.*, 105 U.S. 249 (1882); *Salsedo v. Palmer*, 278 Fed. 92 (2d Cir. 1921); *Stevens v. Steadman*, 140 Ga. 680, 79 S.E. 564 (1913); *Daniels v. New York, N.H. & H.R.R.*, 183 Mass. 393, 67 N.E. 424 (1903); *Jones v. Stewart*, 183 Tenn. 176, 191 S.W.2d 439 (1946).

<sup>2</sup> See, e.g., *Scheffer v. Railroad Co.*, *supra* note 1.