

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE INSTRUMENT BY
~~APPLICATION~~ :
FRANK W. MOFFETT, F. WESLEY :
MOFFETT, JR., HUGH KNAPP, :
AND GRACE KNAPP. :

ATTIDAVIT OF
MAILING

State of New York) ss.
City and County of Albany)

Louis C. Johnson , being duly sworn, deposes and
says:

That your deponent is over the age of eighteen and
an employee in the Office of the State Tax Commission, Depart-
ment of Taxation and Finance, Mortgage & Real Estate Transfer
Tax Section.

That on the 15th day of July, 1971, your
deponent deposited in a letter box exclusively maintained and
controlled by the United States Government at
1 Fuller Road, in the City and County of
Albany, New York, a copy of the determination of the State Tax
Commission in this proceeding, copy of which is hereto annexed,
contained in a securely closed, postpaid cover, directed to the
herein below named parties in this proceeding, their representa-
tives and the recording officer of Monroe County at the
addresses set forth below:

Sworn to before me this 16th day
of July 1971.

Arthur Maxwell

Louis C. Johnson

Mr. F. Ross Zornow, Monroe County Clerk, Rochester, N.Y. 14614
Harris, Beach and Wilcox, Esqs., Two State Street, Rochester,
N.Y. 14614 Att. Leon T. Sawyko, Esq.

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of an Instrument	:	
executed by and between	:	
FRANK W. MOFFETT, F. WESLEY MOFFETT, JR.,	:	ORDER OF
HUGH KNAPP, AND GRACE KNAPP	:	DETERMINATION

Harris, Beach and Wilcox, Esq., filed a claim for refund of mortgage recording taxes in the amount of one hundred fifty (\$150) dollars paid to the Clerk of Monroe County upon the recording of the instrument in the form of a Memorandum of Agreement, dated July 8, 1955, executed by and between Frank W. Moffett, F. Wesley Moffett, Jr., Grace Knapp and Hugh Knapp.

In lieu of a formal hearing and the personal appearances of the parties, the claimants have requested the State Tax Commission to make an independent review of the documents and memoranda submitted, and on such basis render a determination.

ISSUE

Whether the instrument in question is a "mortgage" within the meaning and intent of Article Eleven of the Tax Law.

FINDINGS OF FACT

1. The Memorandum of Agreement in issue dated July 8, 1955, was filed on February 25, 1969, in the office of the Clerk of Monroe County in book 3966 of mortgage, on page 53.
2. At the time of filing, Messrs., Harris, Beach, and Wilcox, Esq., paid a mortgage recording tax of \$150 to the Clerk of Monroe County.

3. By the terms of the Memorandum of Agreement, Frank W. Moffett granted to F. Wesley Moffett, Jr., an undivided one-quarter interest in certain real property in the Town of Chili, County of Monroe, in return for the grantee's promise to pay \$15,000. In addition, Frank W. Moffett granted to Grace Knapp and Hugh Knapp an undivided one-quarter interest in the same premises in return for the grantees' promise to pay \$15,000. However, payment of the consideration was to be in such manner as the grantees would separately agree with the grantor. Record title would remain in the name of the grantor until the parties otherwise agree, and the grantor would manage the property for the benefit of all the parties.

4. The term "mortgage" as used in Article Eleven of the Tax Law includes every mortgage or deed of trust which imposes a lien on or affects the title to real property, notwithstanding that such property may form a part of the security for the debt or debts secured thereby.

DETERMINATION

A. The Memorandum of Agreement dated July 8, 1955, is a "mortgage" within the meaning and intent of Article Eleven of the Tax Law.

B. The act of recording the agreement is subject to the mortgage recording tax, and the amount of \$150 was due and payable on recording.

C. The acts of the recording officer and his determination are correct and hereby sustained.

DATED: Albany, New York

July 8, 1971.

STATE TAX COMMISSION

Norman Gallman
COMMISSIONER

William H. Hendley
COMMISSIONER

Milton Koehn
COMMISSIONER