

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of an Instrument Executed by :

SALLY NADEL : ORDER OF

with : DETERMINATION

Sheraton Ambassador Corporation :

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The Sheraton Ambassador Corporation filed a petition with the State Tax Commission pursuant to Article 11 of the Tax Law for review of the determination of the Recording Officer of New York County, and for a refund of mortgage recording tax in the amount of fourteen thousand (\$14,000) dollars.

Upon notice to all interested parties, a formal hearing was held on March 3, 1966, and concluded on June 9, 1967, in the offices of the State Tax Commission in the City of New York. The City Register of New York was represented by Samuel K. Handel, Esq., and the Sheraton Ambassador Corporation by Paul V. Wolfe, Esq.

#### ISSUE

Whether the instrument in issue is a supplemental mortgage within the meaning and intent of section 255 of the Tax Law, and exempt from the mortgage recording tax.

#### FINDINGS OF FACT

1. On March 8, 1963, an instrument in the form of a consolidation, extension, and spreading agreement between Sally Nadel (hereinafter called Nadel) as mortgagee, and Sheraton Ambassador Corporation, (hereinafter called Sheraton) as mortgagor, dated March 1, 1963, was recorded with the City Register in New York County in Liber 6147 of Mortgages, page 25.

2. At the time of the recording of the agreement on March 8, 1963, Nadel claimed exemption of mortgage recording tax under section 255 of the Tax Law, and filed with the recording officer a statement under oath of the facts on which such claimed exemption was based.

3. Sheraton paid on March 8, 1963, under protest, the \$14,000 demanded by the City Register in New York County as a prerequisite to the recording of the instrument in issue.

4. The amount of principal upon which the mortgage recording tax was paid was \$2,800,000.

5. At a simultaneous closing meeting, a series of transactions were effected:

(a) The land owned by Sheraton was conveyed to Betty E. Krulee, (hereinafter called Krulee), who then leased the land back to Sheraton. Central Savings Bank of the City of New York (hereinafter called Central Savings Bank) held mortgages amounting to \$3,427,385.70, which covered the land owned by Sheraton, and the buildings located thereon, together with furnishings and fixtures.

(b) It was necessary to release the land fee from mortgage held by Central Savings Bank and to have the land leasehold covered by the mortgage in the place of such land. The mortgage was also required to be modified, extended and assigned to New York Teachers Retirement System (hereinafter called Retirement System) and a commitment letter had been issued by the Retirement System.

(c) At the time of the closing, in connection with the sale of the land by Sheraton, a check was delivered, as part of

the purchase price of the land, to Central Savings Bank on behalf of Sheraton, in the amount of \$627,385.70 which reduced the mortgage from \$3,427,385.70 to \$2,800,000. Central Savings Bank executed a mortgage assignment to Nadel, at the closing which mortgage was in the residual amount of \$2,800,000.

(d) Upon the assignment of the mortgage from Central Savings Bank to Nadel, the mortgage was modified on the same date of closing by a mortgage consolidation, spreading and extension agreement between Nadel and Sheraton. The agreement between Nadel and Sheraton, as its terms and provisions state, modified and extended the existing mortgages on the properties involved and provided for substituted mortgage security of the leasehold on the land sold to Betty E. Krulee. The mortgage agreement of March 1, 1963, in the amount of \$2,800,000, between Nadel and Sheraton was on the same date duly assigned by Nadel to Retirement System. Retirement System at the closing delivered its check in the amount of \$2,800,000, the amount of the mortgage, which funds were transmitted to Central Savings Bank in consideration of their assignment of the mortgage to Nadel.

6. Regardless of the labels given the instruments, however, if a new or further indebtedness was created, the transaction would not be exempt. Although petitioner and the other parties to the agreement intended by the terms of the spreading agreement to add the leasehold to the mortgage before releasing the land fee from the lien, in actuality, they failed to do so.

The petitioners have not proved that the land fee was transferred to Krulee prior to the execution of the mortgage spreading agreement. The documents were in fact executed by the parties, but their transfer was not effected until the time of the simultaneous closing.

In order to effect the spreading agreement, we must assume that Sheraton could be concurrently the owner of the land fee and the leaseholder of the same premises. We must conclude that the separate estates were merged as a matter of law, and could not exist separately at the time of the spreading agreement.

Consequently, there was a period of time, however brief, between the time that Sheraton transferred the land fee, and then became the leaseholder. During this time, Sheraton could not have possessed a separate leasehold estate, to which it purported to spread the lien of the mortgage.

#### DETERMINATION

A. The instrument in issue, dated March 1, 1963, does create and secure a new indebtedness or obligation other than the principal indebtedness secured by the primary mortgagee.

B. The recording of the instrument is subject to the mortgage recording tax.

C. The City Register in New York County had computed the mortgage recording tax correctly, and the sum of \$14,000 was correctly collected.

ORDER

I. The determination of the recording officer of New York County is confirmed.

II. The application for refund is denied.

DATED: Albany, New York

*December 23, 1921*

STATE TAX COMMISSION

*Leopold J. Sullivan*  
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COMMISSIONER

*Beauregard K. Stanley*  
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COMMISSIONER

*Milton Koerner*  
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COMMISSIONER