

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :

of :

THE PARR COMPANY OF SUFFOLK, INC. :

DETERMINATION

for Refund of Mortgage Recording Tax Paid :
under Protest to The Suffolk County Clerk :
in Connection with an Instrument Recorded :
on or about June 8, 1973, in the Office of :
said Clerk. :

Applicant, The Parr Company of Suffolk, Inc., (formerly known as Parr Modular Systems, Inc.), hereinafter called "Parr", has filed an application for refund of Mortgage Recording Tax in the sum of \$41,250.00 paid under protest to the Suffolk County Clerk in connection with an instrument recorded on or about June 8, 1973, in the office of said clerk.

A formal hearing was waived and the case submitted to the State Tax Commission upon the entire record contained in the file. The State Tax Commission renders the following determination after due consideration of said record.

ISSUE

Was the recording of a "Mortgage Severance and Modification Agreement" dated June 1, 1973, between Parr and Bank of Suffolk County subject to the Mortgage Recording Tax?

FINDINGS OF FACT

1. On February 4, 1972, Parr and USF Investors entered into a building loan agreement wherein USF Investors agreed to lend to Parr an amount not to exceed \$7,000,000.00 secured by a mortgage on a 44595018 acre parcel of real property located in the Town of Brookhaven, Suffolk County, New York.

2. On February 4, 1972, pursuant to the aforesaid building loan agreement, Parr, as mortgagor, executed and delivered to USF Investors, as mortgagee, its promissory note in the principal sum of \$7,000,000.00 payable February 4, 1974, with interest at 13% per annum, payable monthly. Simultaneously therewith, and as security for the payment thereof, the mortgagor executed and delivered to the mortgagee, its mortgage dated February 4, 1972, covering a 445.95018 acre parcel of real property located in the Town of Brookhaven, Suffolk County, New York. The said mortgage was duly recorded in the office of the Suffolk County Clerk on February 7, 1972, in Liber 2676 of Mortgages at Page 297 and the full mortgage tax due thereon in the sum of \$52,500.00 was paid. The mortgage did not contain any provisions for the severing, splitting or dividing of the said mortgage in a supplemental instrument.

3. Between February 4, 1972 and March 20, 1973, USF Investors advanced to Parr, pursuant to the provisions of the aforesaid building loan agreement, note and mortgage, the total sum of \$5,682,662.48. On March 20, 1973, Parr made a principal payment in the sum of \$182,662.48 to USF Investors thereby reducing the outstanding principal amount secured by the mortgage to \$5,500,000.00.

4. On March 20, 1973, USF Investors released from the lien of the mortgage of February 4, 1972, a 45.0612 acre parcel. The release, dated March 8, 1973, was recorded in the office of the Suffolk County Clerk on March 21, 1973, in Liber 7365 at Page 150. The lien of the mortgage covered 400.88898 acres of the original parcel after the execution and delivery of the aforesaid release.

5. On March 20, 1973, after releasing the 45.0612 acre parcel, USF Investors assigned the aforesaid mortgage and note, dated February 4, 1972, to the Bank of Suffolk County by an assignment, dated March 8, 1973, and recorded in the office of the Suffolk County Clerk on March 21, 1973, in Liber 6073 of Mortgages at Page 41. The consideration for the assignment was \$5,500,000.00.

6. On March 20, 1973, an instrument entitled "Mortgage Modification Agreement" was entered into between Parr and Bank of Suffolk County, which agreement was recorded in the office of the Suffolk County Clerk on March 21, 1973, in Liber 6073 of Mortgages at Page 68. The agreement modified the terms of payment and the rate of interest of the note and mortgage, dated February 4, 1972, but did not create any new or further indebtedness. No Mortgage Recording Tax was paid upon the recording of this instrument.

7. On June 1, 1973, an instrument entitled "Mortgage Severance and Modification Agreement" was entered into between Parr as mortgagor and Bank of Suffolk County as mortgagee. The agreement provided that the lien upon the parcel set forth in the mortgage of February 4, 1972, (less the parcel released on March 20, 1973) be severed, split and divided into a first mortgage on one portion of the aforesaid parcel known as parcel "A" securing the principal sum of \$3,000,000.00 and interest and a first mortgage on the remaining portion of the aforesaid parcel known as parcel "B" securing the principal sum of \$2,500,000.00 and interest.

8. On June 1, 1973, simultaneously with the execution of the aforesaid "Mortgage Severance and Modification Agreement" Parr executed and delivered to Bank of Suffolk County its "Replacement Promissory Note" in the principal sum of \$2,500,000.00 payable June 18, 1973, with interest at 2.5% above the prime rate. The note recited that it was to be secured by the mortgage on parcel "B"

referred to in the aforesaid "Mortgage Severance and Modification Agreement" and further that it was intended to be a replacement note for a \$2,500,000.00 portion of the February 4, 1972 note.

9. On June 8, 1973, the "Mortgage Severance and Modification Agreement" referred to in the prior paragraph together with an affidavit of Roland J. Parr, President of Parr, sworn to on June 1, 1973, requesting that said agreement be declared exempt from the Mortgage Recording Tax pursuant to section 255 of the Tax Law, were presented to the Suffolk County Clerk for recording. The Suffolk County Clerk refused to accept the "Mortgage Severance and Modification Agreement" for recording unless a Mortgage Recording Tax in the sum of \$41,250.00 was paid. Applicant Parr paid said tax under protest.

CONCLUSIONS OF LAW

A. That the "Mortgage Severance and Modification Agreement" between Bank of Suffolk County and Parr, dated June 1, 1973, was an instrument subject to the Mortgage Recording Tax unless it was otherwise exempted pursuant to section 255 of the Tax Law.

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B. That since the mortgage between Parr and USF Investors, dated February 4, 1972, did not contain any provisions for the severing, splitting or dividing of said mortgage in a supplemental instrument, therefore the "Mortgage Severance and Modification Agreement" between Parr and Bank of Suffolk County, which severed, split and divided said mortgage, was not a supplemental instrument recorded pursuant to some provision or covenant of the original mortgage and thus was not exempt from the Mortgage Recording Tax

in accordance with the meaning and intent of section 255 of the Tax Law. Applications of Bayview Towers Apartments, Inc. and Briarwood Terrace, Inc. Decision of the State Tax Commission, October 16, 1973.


C. That the application of Parr is denied.

DATED: Albany, New York
November 20, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER