

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
240 LITTLE PLAINS REALTY, LLC	:	ORDER
For Revision of a Determination or for Refund of Real Estate Transfer Tax under Article 31 of the Tax Law for the Period ending May 8, 2015.	:	DTA NO. 828727

Petitioner, 240 Little Plains Realty, LLC, filed a petition for revision of a determination or for refund of real estate transfer tax under article 31 of the Tax Law for the period ending May 8, 2015.

Petitioner, by its representative, John P. Fazzio, Esq., filed a motion on September 17, 2020, seeking summary determination pursuant to Tax Law § 2006 (6) and sections 3000.5 and 3000.9 (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. On December 9, 2020, the Division of Taxation, by Amanda Hiller, Esq. (Jennifer Hink-Brennan, Esq., of counsel), filed its opposition to the motion, which date commenced the 90-day time frame to issue this order. After due consideration of the documents and arguments submitted, Donna M. Gardiner, Administrative Law Judge, renders the following order.

ISSUE

Whether petitioner has established that there are no material and triable issues of fact such that, as a matter of law, summary determination can be made in its favor.

FINDINGS OF FACT

1. Petitioner, 240 Little Plains Realty, LLC, was the purchaser of 20 Downs Path, Southampton, New York. The purchase occurred on May 8, 2015.
2. At the time of the conveyance, a form TP-584, Combined Real Estate Transfer Tax Return, was filed by the seller, 20 Downs Path, LLC. Both petitioner and the Division of Taxation (Division) have submitted signed, yet undated copies of form TP-584. However, the schedule B of each form submitted contains different information. Specifically, form TP-584 submitted by petitioner reports a conveyance of residential real property in the amount of \$4,100,000.00 in Part II – computation of additional tax due on the conveyance, with additional real estate transfer tax due in the amount of \$41,000.00. In contrast, the form TP-584 submitted by the Division has Part II blank.
3. On January 11, 2017, the Division issued a notice of determination, assessment number L-045684096, to petitioner for real estate transfer tax due on the purchase of the property in the amount of \$41,000.00, plus penalty and interest.
4. Petitioner filed a request for conciliation conference with the Bureau of Conciliation and Mediation Services. A conciliation conference was held on October 17, 2017. On February 23, 2018, a conciliation order, CMS number 274516, was issued sustaining the notice of determination.
5. On May 19, 2018, petitioner filed a timely petition with the Division of Tax Appeals in protest of the conciliation order.

6. Petitioner claims that the conveyance is not subject to real estate transfer tax.

Specifically, petitioner asserts that the real estate transfer tax is imposed on conveyances of residential real property or interest therein. Petitioner states that it purchased vacant land.

7. The Division argues that petitioner entered into a contract of sale on March 6, 2015, for the purchase of 20 Downs Path, Southampton, New York. The Division states that at the time the contract of sale was executed between the parties, the parcel contained a residence. As such, the Division argues that the conveyance was properly subject to real estate transfer tax and its notice of determination should be sustained in full.

CONCLUSIONS OF LAW

A. As provided in section 3000.9 (b) (1) of the Rules of Practice and Procedure of the Tax Appeals Tribunal, a motion for summary determination “shall be granted if, upon all the papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented.” “The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issue of fact from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985], citing *Zuckerman v City of New York*, 49 NY2d 557 [1980]). As summary judgment is the procedural equivalent of a trial, it should be denied if there is any doubt as to the existence of a triable issue or where the material issue of fact is “arguable” (*Glick & Dolleck v Tri-Pac Export Corp.*, 22 NY2d 439, 441 [1968]; *Museums at Stony Brook v Village of Patchogue Fire Dept.*, 146 AD2d 572, 573 [2d Dept 1989]).

B. In this case, petitioner has moved for summary determination on the grounds that the

conveyance of 20 Downs Path, Southampton, New York, was a sale of vacant land and, thus, is not subject to tax imposed pursuant to Tax Law § 1402 (a). The Division, on the other hand, argues that the contract of sale indicated that the parcel contained a residence thereon and as such, was properly subject to real estate transfer tax.

Under Tax Law article 31, a real estate transfer tax is “imposed on each conveyance of real property or interest therein” (Tax Law § 1402 [a]), and all conveyances are presumed subject to the tax (*see* Tax Law § 1404). Tax Law § 1402-a imposes an additional tax on “each conveyance of residential real property or interest therein when the consideration for the entire conveyance is one million dollars or more.”

The question of whether the conveyance at issue included a residence is a material issue of fact. As set forth in finding of fact 2, each party to this proceeding introduced a form TP-584 that reported the conveyance. However, the forms are not consistent. Both forms are undated, yet the two schedules B contain different information. In fact, the form TP-584 submitted by petitioner reflects additional tax due on the conveyance consistent with the position set forth by the Division. As material and triable issues of fact exist, petitioner’s motion for summary determination must be denied.

C. The motion for summary determination filed by 240 Little Plains Realty, LLC, is denied and a formal hearing will be scheduled in due course.

DATED: Albany, New York
March 4, 2021

/s/ Donna M. Gardiner
ADMINISTRATIVE LAW JUDGE