

Application
no 1212

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

6508 OF
SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
TAX DIVISION

DEC 1 5 55 PM '82

GUY R. DOWERS and JOHN J.
WILSON,
EXECUTORS AND TRUSTEES UNDER
THE LAST WILL AND TESTAMENT OF
FULTON R. GRUVER, DECEASED,

Petitioners,

v.

DISTRICT OF COLUMBIA,

Respondent.

and

HELEN G. KLINE,

Petitioner,

v.

DISTRICT OF COLUMBIA,

Respondent.

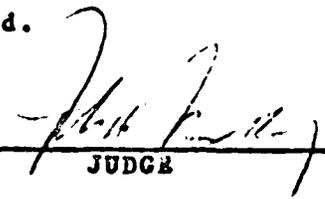
FILED

Docket Nos. 3011
and 3013

ORDER

Upon consideration of the motion of plaintiffs
for summary judgment in the above-captioned case,
defendant's opposition thereto, and defendant's motion
for summary judgment and the record herein, it is this
20th day of November, 1982,

ORDERED: That the motion of defendant for summary
judgment is hereby granted and judgment shall be entered
in favor of defendants, and the plaintiffs' motion for
summary judgment is denied.



JUDGE

Send copies to:

Richard M. Tarby, Esq.
900 Watergate Office Building
2600 Virginia Avenue, N.W.
Washington, D.C. 20037

Richard G. Kline, Esq.
1819 H Street, N.W.
Washington, D.C. 20006

Frank J. McDougald, Jr.
Office of the Corporation Counsel
Dist. Building, Rm. 306
14th & E Sts., N.W.
Washington, D.C. 20004

Ms. Carolyn Smith
Finance Officer, D. C.

R. Stinson
12/2/82

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CLERK OF
SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
TAX DIVISION

TAX DIVISION

DEC 13 5 53 PM '82

FILED

GUY R. DOWERS AND JOHN J. WILSON, :
EXECUTORS AND TRUSTEES UNDER :
THE LAST WILL AND TESTAMENT OF :
FULTON R. GRUVER, DECEASED, :

 : Petitioners, :

 : v. :

 : Docket Nos. 3011
 : and 3013

DISTRICT OF COLUMBIA, :

 : Respondent. :

 : and :

HELEN G. KLINE, :

 : Petitioner, :

 : v. :

DISTRICT OF COLUMBIA, :

 : Respondent. :

FINDINGS OF FACT AND CONCLUSIONS OF
LAW

In this action, petitioners appeal from a denial of a claim for refund of unincorporated business franchise taxes. The cause was heard by this Court on September 16, 1982. Based on the pleadings and exhibits, and after considering the arguments of counsel, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Petitioner Guy R. Dowers and John J. Wilson are the Executors and Trustees appointed under the Last Will and Testament of Fulton R. Gruver, deceased. The said Fulton R. Gruver, deceased, died on April 20, 1977, leaving a will admitted to probate on May 24, 1977.

2. Petitioner Helen G. Kline resides at 3 Primrose Street, Chevy Chase, Maryland. She has resided at that location at all times relevant to this case.

3. On January 25, 1950, Jacob S. Gruver died leaving a will which named Fulton R. Gruver and Helen G. Kline, Fulton's sister, co-trustees of a residuary trust. The corpus of the trust included 25 apartment buildings located in the District of Columbia. Eight of those buildings were located at Croffut Place, S.E., and four of those buildings were located at B Street, S.E. By direction of Jacob Gruver the trust was to last for a period of fifteen years. Helen G. Kline and Fulton R. Gruver were beneficiaries of the trust.

4. From the beginning of this residuary trust until its termination in 1965, all of the aforementioned properties were managed for the trustees by a management company. The management company collected the rents and paid the following expenses: insurance, interest, taxes, electric and gas, water, janitors fees, repairs, trash, heat and telephone.

5. Upon the termination of the trust on January 31, 1965, the co-trustees and beneficiaries became tenants-in-common of the properties by operation of law. The properties continued to be managed by the same management company. It continued to collect rents, and, in general, paid the following expenses: taxes, insurance, utilities, trash, water, sewer and heat.

6. By deed dated November, 1976, the Croffut Place properties (8 buildings) and B Streets (4 buildings) properties were conveyed to Croffut Place Associates. Grantors of the deed were "Fulton R. Gruver and Helen G. Kline, widow; sole Heirs-at-Law and Next-of-Kin of Jacob S. Gruver, deceased (Administration No. 74623) (Mildred G. Gruver, wife of Fulton R. Gruver joins in this deed to convey whatever interest she may have)."

7. The purchase price of these properties was to be paid by Croffut Place Associates in installments. As of December 31, 1976, Helen G. Kline and Fulton R. Gruver had received the sum of \$86,000.00. As of December 31, 1979, the total purchase price of \$144,000.00 had been received in installment payments.

8. On April 20, 1977, Fulton R. Gruver died leaving a will which provided for his residuary estate to be held in two separate trusts, the trustees of each being Guy R. Bowers and John J. Wilson.

9. Between January 1, 1977 and April 20, 1977, \$12,500.00 in installment payments from the sale of Croffut Place and B Street was received by Fulton R. Gruver. A similar sum was received during that period by petitioner Kline.

10. The Last Will and Testament of Fulton R. Gruver was admitted to probate on May 24, 1977.

11. During the period beginning April 20, 1977, and ending December 31, 1977, \$25,000.00 in installments was received by petitioners as Trustees.

12. Prior to April 20, 1977, neither the Estate of Fulton R. Gruver nor the Executors and Trustees under the will of Fulton R. Gruver received any income from the sale of the Croffut Place and B Street pro-

erties.

13. The Croffut Place and B Street properties are the only pieces of real estate inherited by Petitioners Kline and Fulton R. Gruver from Jacob S. Gruver which were sold by them or their legal representatives.

14. Apart from the Croffut Place and B Street properties, each parcel or lot of real estate conveyed under the will of Jacob S. Gruver is today held by petitioners herein as apartment buildings and continues to be operated by a management company. In other words, the unincorporated business continues to exist after the sale of some, but not all of the apartment buildings.

15. On October 22, 1979, respondent assessed a deficiency in the ^{total} ~~tax~~ amount of \$12,071.74 against Helen G. Kline and the Estate of Fulton R. Gruver. Helen G. Kline, on one hand, and trustees Dowers and Wilson, on the other hand, each made separate payments of approximately one-half of this deficiency in a timely fashion to respondent.

16. The total deficiency assessed and paid as described in paragraph (15) hereof is attributable to the gain received by the sellers, in the operation of an ongoing unincorporated business, on the sale of the Croffut Place and B Street properties on the installment basis.

CONCLUSIONS OF LAW

Petitioners challenge the District of Columbia's assessment of the unincorporated business franchise tax on the gain derived from the sale of the Croffut and B Street properties. Petitioners contend that the tax should not have been imposed since the sale of the property was an isolated event which cannot be grouped along with apartment operations. Respondent contends that the tax was correctly assessed since the unincorporated business continued to operate after the sale of the property. Whenever an unincorporated business which runs and operates several buildings sells one or more, but not all, of those buildings, respondent submits that the unincorporated business does not cease. Accordingly, the gain, if any, realized from that sale is included in the gross income of the unincorporated business.

Petitioners look to support for their position in the case of District of Columbia v. Ben Lar Associates, et al., 261 F.2d 376 (D.C. 1958) This appellate decision affirmed the trial court's decision without reciting any of the facts of the case. The trial level opinion is informative and provides a basis for disposing of the instant case. Ben Lar Associates, et al. v. District of Columbia, Tax Court, November 15, 1957.

The facts in Ben Lar show that a group of individuals, associated as Ben Lar Associates,

acquired a group of lots in Square 01 for the purpose of constructing an apartment building between May of 1951 and March of 1952. The land acquired by Ben Lar Associates contained (1) a small apartment building which they operated through an agent, (2) an automobile parking lot not operated by them but rented through a real estate agent, and (3) three small dwelling houses not operated by them but rented by a real estate agent. In August, 1952, the group was approached by an interested buyer. Shortly thereafter, all of the previously acquired property was sold. The gain was reported by the members of Ben Lar Associates in their individual capacity. The District of Columbia determined that the association of individuals was an unincorporated business and that the gain from the sale should have been included in the unincorporated business's taxable income.

The trial court concluded that the gain should have been taxed to the members in their individual capacity for two reasons:

If an individual should buy an apartment building, he would not in that transaction or at that point be carrying on an unincorporated business. If he should lease the building to some person and take no part in its operation, he still would not be carrying on an unincorporated business. District of Columbia v. Richmond, 86 U.S.App.D.C. 17, 179 F.2d 872; Reyno v. Massachusetts, supra. If, however, he should decide to operate the building with the supplying of services, etc., either by himself or through an agent, he would be engaged in an unincorporated business. District of Columbia v. Richmond, supra.

CF. Flint v. Stone Tracy Co., 220 U.S. 107, 31 S.Ct. 342, 5 L.Ed. 389, Ann. Cas. 1912D, 1312; Little v. District of Columbia, 75 U.S. App.D.C. 368, 130 F.2d 402. If after holding the property for some time he should sell the same, the unincorporated business in the case last mentioned would end. The sale transaction would not be an unincorporated business. It would be merely an individual selling property, who would be required to report pay and income tax upon any taxable gain. The fact that he was engaged as an unincorporated business during his ownership of the apartment building would not legally subject him to an unincorporated business franchise tax measured by the gain from the sale. (Ben Lar p. 1806)

Petitioners do not quarrel with the first proposition set forth by Ben Lar, having admitted that they operate an unincorporated business. Their contention is that once they sold the properties, their operation ceased and so did the unincorporated business for franchise tax purposes as was the case for the second proposition set forth by Ben Lar.

However, a different situation is presented in the case at bar. The assets of the unincorporated business consist of several apartment buildings, some of which were sold and some of which continued to be operated. Thus, the unincorporated business continued and any gain from the sale of the Croffut Place and B Street properties should be included in the gross income of the unincorporated business.

The court's conclusion is further bolstered by reference to the relevant statutory activities.

Chapter 18 of the District of Columbia Code, 1931 ed., is entitled Income and Franchise Taxes. Subchapter VIII under Chapter 18 is entitled Tax on Unincorporated Businesses. Section 47-1808.1 of Subchapter VIII sets out the definition of an unincorporated business and provides the following:

For purposes of this chapter (not alone of this subchapter) and unless otherwise required by the context, the words "unincorporated business" mean any trade or business, conducted or engaged in by any individual, whether resident or nonresident, statutory or common-law trust, estate, partnership, or limited or special partnership, or limited or special partnership, society, association, executor, administrator, receiver, trustee, liquidator, conservator, committed assignee, or by any other entity or fiduciary, other than a trade or business conducted or engaged in by any corporation; and include any trade or business which if conducted or engaged in by a corporation would be taxable under §§47-1807.1 and 47-1807.2.

A trade or business is further defined at §47-1801.

The words "trade or business" include the engaging in or carrying on of any trade, profession, vocation or calling or commercial activity in the District of Columbia, including the performance of the functions of a public office and the leasing of real or personal property in the District of Columbia by any person whether or not the property is leased directly by such person or through an agent, and whether or not such person in connection with the property.

Under the statute, therefore, the operation of apartment rental units is an unincorporated business, even if the operations are conducted by a management company. To reiterate, petitioners do not quarrel with this point. Since petitioners' unincorporated business did not cease upon the sale or disposition of part of its holdings (the twelve buildings), the taxability of the gain from the transaction is controlled by whether it (the gain) is an item of gross income. Section 47-1803.2 of the D.C. Code, 1981 ed., in pertinent part, defines gross income for taxation purposes as follows:

The words 'gross income include income derived from any trade or business or sales or dealings in property, whether real or personal, including capital assets as defined in this chapter, growing out of the exercise, or sale of, or interest in, such property;

This Court concludes, therefore, that the petitioners were engaged in an unincorporated business of operating apartment buildings through a management company. This Court further concludes that the unincorporated business did not terminate upon the sale of some but not all of the assets of the business and that, accordingly, the gain derived is taxable to the unincorporated business and not to petitioners in their individual capacities.



JUDGE
November 26, 1942

cc: Richard M. Tarby, Esq.
900 Watergate Office Building
2600 Virginia Avenue, N.W.
Washington, D.C. 20037

Frank J. McDougald, Jr.
Assistant Corporation Counsel, D.C.
Office of the Corp. Counsel, D.C.
Room 306, Dist. Bldg.
14th & E Sts., N.W.
Washington, D.C. 20004