SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

SMART AZIKEN,	)	
	)	
Petitioner,	)	
	)	
v.	)	Tax Docket No. 2013 CVT 11389
	)	
DISTRICT OF COLUMBIA, et al	)	
	)	
Respondent.	)	

ORDER

Before the Court are the District's motion to dismiss (which, pursuant to Civil Rule 12(b), the Court treats as one for summary judgment), and the petitioner's opposition, as well as the petitioner's motion for summary judgment, and the District's opposition. The Court also heard argument from the parties on the pending motions. Based on the papers filed, the arguments of counsel, and the record as a whole, the Court concludes that there are no disputes as to the material facts, and that as a matter of law (1) no "conversion" took place within the meaning of the statute relied on by plaintiff, and (2) the District is not equitably estopped from refusing plaintiff's request for a refund. Accordingly, the Court will grant summary judgment in favor of the District of Columbia.

Petitioner seeks a refund of transfer and recordation taxes pursuant to D.C. Code §§ 47-902(16)(A) and 42-1102(22)(A). The petitioner is the owner of real property located at 1919 9th Street, N.W., Washington, D.C. The petitioner sought to obtain financing on the subject property; however, the financing was contingent upon the conversion of petitioner's business (a sole proprietorship) to a limited liability company.

The petitioner alleges that in July 2012 he applied for a "conversion certificate" from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), but that no certificate issued until October 2012. Petitioner claims that had the conversion certificate issued when he applied for it in July 2012, there would have been no tax imposed by the Recorder of Deeds. The petitioner further alleges that various District employees instructed him to proceed to closing with the lender and that he could still apply for a refund after the conversion certificate issued.

On September 19, 2012, the petitioner recorded a deed transferring the realty from "SMART E. AZIKEN T/A FRIENDSHIP LIMOUSINE TRANSPORTATION SERVICE" to "FRIENDSHIP LIMOUSINE TRANSPORTATION SERVICE, LLC." The closing caused the petitioner to incur $59,225.26 in transfer and recordation tax liability. Petitioner alleges that DCRA did not issue the certificate of conversion until the petitioner complained to DCRA supervisors on October 19, 2012, and that a conversion certificate was then issued later that day. Petitioner subsequently made a claim for a refund, but it was denied by the Office of Tax and Revenue ("OTR") on November 9, 2012.

The District's motion to dismiss will be treated as a motion for summary judgment pursuant to Superior Court Civil Rule 12(b). *See also Wilburn v. District of Columbia*, 957 A.2d 921, 923 (D.C. 2008); *Morris v. Wash. Med. Ctr., Inc.*, 331 A.2d 132, 136 (D.C. 1975). A party moving for summary judgment bears the burden of showing that there are no material factual disputes and that the party is entitled to judgment as a matter of law. A motion for summary judgment must be granted if, taking all inferences in the light most favorable to the nonmoving party, a reasonable juror,

acting reasonably, could not find for the nonmoving party, under the appropriate burden of proof. *Woodfield v. Providence Hosp.*, 779 A.2d 933, 936-37 (D.C. 2001); *Nader v. de Toledano*, 408 A.2d 31, 42 (D.C. 1979), *cert. denied*, 444 U.S. 1078 (1980).

Petitioner's claim fails on the merits, because the undisputed facts show that petitioner never "converted" to a limited liability company within the meaning of the statute. Generally, each time a deed for real property is transferred, transfer and recordation taxes are levied. *See* D.C. Code §§ 47-903(a)(1) (transfer tax) and 42-1103(a)(1) (recordation tax). One exception to this rule, however, is for transfers made "in accordance with [D.C. Code] §29-204.06." *Id*. §§ 47-902(16)(A) and 42-1102(22)(A). Such transfers are exempt from the transfer and recordation taxes. Section 29-204.06 is the statute that describes the effect of a "conversion," which is what the plaintiff contends he accomplished here. However, the "conversion" covered by this statute is only what happens when a "domestic entity" becomes a domestic or foreign entity "of a different type." *Id.* §29-204.01(a). The law speaks in terms only of a "converting entity" and the resulting "converted entity," and subsection (h)(1) of section 29-204.06 specifies that the exemption from transfer and recordation taxes applies only "in connection with the conversion of a converting entity to a converted entity." [1] Section 29-101.02 (10), in turn, defines what is and is not included in the term "entity." It specifies that being an "entity" requires "a legal existence separate from any interest holder," *id.* subsection (10)(A)(x), and explicitly excludes individuals from the definition. *Id*. subsection (10)(B)(i). Here, the petitioner owned the realty individually prior to the September 19 transfer. He did not convert an existing "entity" into another type of "entity." Rather, he

[1] D.C. Code § 29-101.02 (8) states that "domestic", when used with regard to an entity, means "an entity . . . governed as to its internal affairs by the law of the District or created under the provisions of a special act of congress unless otherwise noted under its Congressional Charter."

converted his individually owned enterprise into an entity. Accordingly, no "conversion" took place within the meaning of the law covering tax exemptions – the petitioner did not own the realty as a domestic entity, and only a domestic entity can convert to a limited liability company. Thus, petitioner's motion for summary judgment fails, and respondent's succeeds, as a matter of law.[2]

Petitioner also argues, however, that the District is equitably estopped from denying his request for a refund. In his affidavit attached to the petitioner's motion for summary judgment, the petitioner states that Sheila Beatty, an Audit Supervisor at the Recorder of Deeds, instructed him to "proceed to closing" with the lender and then to apply for a refund after the conversion certificate was issued. *See* Aff. of Smart Aziken ¶ 6. The petitioner also alleges that another District employee, Josef Gasimov – the Assistant Superintendant of Corporations at DCRA – "directed that a conversion certificate be issued by DCRA together with new articles of organization which would supersede the earlier filing of the articles of organization." *See id.* ¶¶ 11, 13. The affidavit of Elton F. Norman, an attorney petitioner retained to assist him with refinancing the realty, was also attached to the petitioner's motion for summary judgment. Mr. Norman avers that employees at the Recorder of Deeds told him that in order for petitioner to receive the exemption, the petitioner would have to obtain a "Conversion Certificate for the conversion of his business from a sole proprietor to the LLC from [DCRA]." Aff. of Elton F. Norman ¶¶ 6-7. The petitioner argues that based

[2] Even though petitioner's argument fails as a matter of law – as argued by the District at the September 5 hearing – even if the petitioner had successfully converted to a limited liability company, the (alleged) conversion took place in October 2012, which was after the transfer of the realty on September 19, 2012. For one to be exempt from transfer and recordation taxes, the conversion to a limited liability company must happen before the realty changes hands.

on the representations from District employees, the District should be estopped from denying the petitioner a refund.

This argument fails as well. "In order to successfully raise an estoppel argument against the District, [the petitioner] must 'show that the District made a promise, that [the petitioner] suffered injury due to reasonable reliance on the promise and that enforcement of the promise would be in the public interest and would prevent injustice.'" *Hospitality Temps Corp. v. District of Columbia*, 926 A.2d 131, 139 (citing *District of Columbia v. McGregor Props., Inc.*, 479 A.2d 1270, 1273 (D.C. 1984)). "[T]he doctrine of equitable estoppel, if applicable against the government at all, may be invoked only where there is a showing of some type of affirmative misconduct by a government agent." *Mamo v. District of Columbia*, 934 A.2d 376, 386 (D.C. 2007) (quoting *Leekley v. D.C. Dep't of Emp't Servs.*, 726 A.2d 678, 680 (D.C. 1999)). Furthermore, "when the agent of the government whose representations are relied upon plainly lacks the authority to do whatever he has promised, the promisor's reliance cannot be 'reasonable.'" *District of Columbia v. Brookstowne Cmty. Dev. Co.*, 987 A.2d 442, 450 (D.C. 2010).

Here, the petitioner has not shown that the District made any promise that he could have reasonably relied upon. First, the petitioner, in his affidavit, fails to show that the District made a promise that he would receive a refund of his transfer and recordation taxes. Petitioner merely alleges that Ms. Beatty and Mr. Gazimov provided some instruction about the process of receiving a refund. Second, even if Ms. Beatty and/or Mr. Gasimov explicitly promised that petitioner would receive a refund, Ms. Beatty and Mr. Gasimov plainly lacked the authority to grant such a refund, and thus such reliance

on any promise is not reasonable. Last, the petitioner has not alleged any affirmative misconduct by any District employee.

Accordingly, for the reasons stated above, it is this 10th day of June, 2016, hereby

ORDERED, that the petitioner's motion for summary judgment is **DENIED**; and it is further

ORDERED, that the District's motion for summary judgment is **GRANTED**.

John M. Campbell
Associate Judge

Copies to:

Richard M. Wilson
Office of the Attorney General
1150 15th Street, NW
Suite 800
Washington, D.C. 20005
taxcases@dc.gov

Daniel Rezneck
441 4th Street, NW
Suite 1010 South
Washington, DC 20001
Daniel.rezneck@dc.gov

Kenneth Rosenau
1304 Rhode Island Avenue, NW
Washington, DC 20005
Kenneth.rosenau@rosenaulaw.com