

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
20TH JUDICIAL DISTRICT, DAVIDSON COUNTY

RANDALL CROTTS LIVING TRUST,

Plaintiff,

VS.

CHARLES A. TROST
COMMISSIONER OF REVENUE,
STATE OF TENNESSEE,

Defendant.

CASE NO. 10-2004-

2010 DEC 17 PM 1:52

DC:14

CHANCERY CT

COMPLAINT

Comes now Randall Crotts Living Trust, the Plaintiff in this civil action, by and through counsel, for its cause of action respectfully states to the Court as follows:

PARTIES

1. The Randall Crotts Living Trust (hereinafter "Trust") was formed in the State of Tennessee and continues to be held and operated therein. Sabin K. Ewing, D.D.S. (hereinafter "Beneficiary") is the Trust's sole beneficiary. He is a resident of the State of Tennessee.

2. Defendant Charles A. Trost is the duly appointed Commissioner of Revenue for the State of Tennessee (hereinafter "Commissioner"). The Commissioner is charged with the responsibility of collecting Tennessee sales and use taxes, which are imposed by Tenn. Code Ann. §§ 67-6-101, *et seq.* The Commissioner is named in this cause in his official capacity as Commissioner of Revenue in accordance with Tenn. Code Ann. §§ 67-6-101, *et seq.* For purposes of this suit and as provided in Tenn. Code Ann. § 67-1-1803(c), the Commissioner is a resident of Davidson County, Tennessee. He may be served with process through the Attorney General of the State of Tennessee.

THE DISPUTED ASSESSMENT

3. This is an action contesting the legality of an assessment of Tennessee sales and use taxes, including interest, issued against the Trust.

4. The taxes assessed are the result of a transaction which occurred on or about June 9, 2009, between Randall Crotts and the Trust. The terms of this agreement attempted to transfer ownership of a vessell from Randall Crotts to the Trust.

5. The attempted transfer of ownership between Crotts and the Trust was reduced to writing in a document titled ASSIGNMENT AND ASSUMPTION CONTRACT (hereinafter "Contract") which is attached as "Exhibit A" to this Complaint.

6. The Contract set forth certain obligations for Crotts and the Trust to fulfill.

7. Mr. Crotts has never been able to fulfill his obligations set forth by the Contract, more particularly Paragraph 4 of the Contract which states:

Notwithstanding anything contained herein, to the extent the consent of any third party is required as a condition to the assignment of the Houseboat and its contents, the Assignment, insofar as it encompasses such Houseboat, shall not be effective unless and until such consent shall have been obtained and Assignor shall: (a) until such time as such consent shall have been obtained; and (b) be obligated to obtain the consent of such third party. At such time as Assignor shall obtain the required consent to the assignment of the Houseboat retained by Assignor pursuant to this Section 4, the Assignment shall immediately become effective in accordance with the terms of this Contract without the need for further action or further documentation by either party hereto. This Section 4 shall not apply to any transfer that does not require any third party's consent.

8. Mr. Crotts, pursuant to his note with First and Farmers Bank (hereinafter "Bank"), has to gain approval from the Bank prior to the transfer of the vessell. Mr. Crotts never gained approval; furthermore, the Bank refuses to recognize the transfer from Mr. Crotts to the Trust.

The Bank, as the mortgage holder, has refused to change the notation on the Certificate of Documentation being held by the United States Coast Guard Vessel Documentation Center under document number 1209495. Without a notation by the Bank, the vessel cannot be transferred.

9. The Trust received possession of the vessel on or about June 9, 2009. At the time possession was transferred, the Trust considered the transfer as a sale and the vessel was investment property. The Beneficiary shortly thereafter began a yacht brokerage business in an attempt to market and sale the investment for the Trust.

10. The Trust and its Beneficiary have actively marketed the vessel in order to sale it on behalf of the Bank and to recoup monies expended on the vessel since June 2009.

11. The vessel continues to remain in the possession of the Trust, and the Bank continues to refuse the transfer from Mr. Crotts to the Trust. The Bank on several occasions has indicated that it may repossess the vessel pursuant to the note with Mr. Crotts.

12. On May 28, 2010, the Department of Revenue issued a Notice of Assessment against the Trust in the amount of \$33,311.23. This represented the tax due (including penalty and interest) on the transfer of the vessel from Mr. Crotts (via assignment) to the Trust. A copy of the assessment is attached as "Exhibit B."

13. The Bank refused to allow the assumption and cited the requirement of same to be noted on the back of the title registered with the Department of Homeland Security United States Coast Guard National Vessel Documentation Center. Without the Bank's notation of the transfer on the title, the Trust does not have ownership of same and assessment of sales and use tax under these circumstances are unjust and inequitable.

14. The original transaction between Mr. Crofts and the Trust is void for lack of consideration. Crofts induced the Trust into entering the agreement by making representations that he knew or should have known were false.

JURISDICTION AND VENUE

15. This court has subject matter jurisdiction and venue over this action pursuant to Tenn. Code Ann. § 67-1-1803(a).

16. In accordance with the procedure set forth in Tenn. Code Ann. § 67-1-1901(c)(3), and taking into account the extension or tolling of the ninety-day period for filing suit from the date a conference is requested until the date of the Department's decision, the Trust has timely filed this action pursuant to Tenn. Code Ann. § 67-1-1801(b) withing ninety (90) days from the date of the mailing of the Assessment.

17. In accordance with Tenn. Code Ann. § 67-1-1801(c)(3), no interest will accrue on any deficiency found to be due during the period in which the Commissioner has not acted within the time limits prescribed therein.

APPLICABLE TENNESSEE LAW

18. Tennessee imposes a sales tax on retail sales of tangible personal property pursuant to Tenn. Code Ann. § 67-6-202(a). Tenn. Code Ann. § 67-6-203 states that if the seller does not collect sales tax at the time of the sale, the purchaser must pay Tennessee use tax on the cost price of the item purchased. "Sale" refers to "any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration." Tenn. Code Ann. § 67-6-

102(81)(A)(2009).

19. An exemption exists for sales made by non-dealers. However the exemption does not apply to vessels which are required to be registered with the State of Tennessee or the United States Government. Tenn. Comp. R. & Regs. 1320-5-1-.09. The vessell, which is currently possessed by the Trust, is not registered with the State of Tennessee. However, it is registered to Randall L. Crotts with the United States Government.

20. The attempted transfer of the vessell from Mr. Crotts to the Trust is not a sale as contemplated by the Contract. The Department of Revenue has assessed the tax pursuant to the transfer of possession (not title) of tangible personal property for consideration.

21. The Trust does not dispute that it has possession of tangible personal property; however, it does dispute that there was consideration for the acquiring of possession of the vessell. Any and all payments made by the Trust to the Bank or Mr. Crotts were for the purchase of the boat and transfer of title, not just possession. Without consideration, the statutory requirements of a sale did not occur.

22. The attempted collection of tax by the Department of Revenue from the Trust pursuant to the assessment is erroneous, illegal, invalid, arbitrary and capricious and contrary to the laws of the Constitutions of the United States and the State of Tennessee.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that:

1. Process be served upon Defendant and that Defendant be required to answer this Complaint within the time period prescribed by law;

2. This Court enter an order invalidating the assessment in its entirety or, in the alternative, enter an order invalidating the portion of the assessment determined to be unlawful;

3. Plaintiff recover its costs of this cause, together with its reasonable attorney's fees and expenses of litigation incurred herein, pursuant to Tenn. Code Ann. § 67-1-1803(d) and any such other relief as may appear to this Court to be equitable and just; and

4. That costs of the action be taxed to the Defendant.

Submitted this 17 day of December, 2010.

SOBEL, POSS & MOORE



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