

SECOND DIVISION

**COMMISSIONER OF INTERNAL
REVENUE,**

Petitioner,

G.R. No. 179063

Present:

Quisumbing, *J.*, Chairperson,

Carpio,^{*}

Carpio Morales,

Bersamin,^{**} and

Abad, *JJ.*

- versus -

**UNITED COCONUT PLANTERS
BANK,**

Respondent.

Promulgated:

October 23, 2009

X ----- X

DECISION

ABAD, *J.*:

-
This is an action involving a disputed assessment for deficiencies in the payment of creditable withholding tax and documentary stamps tax due from a foreclosure sale.

The Facts and the Case

Respondent United Coconut Planters Bank (UCPB) granted loans of P68,840,000.00 and P335,000,000.00 to George C. Co, Go Tong Electrical Supply Co., Inc., and Tesco Realty Co. that the borrowers caused to be secured by several real estate mortgages. When the latter later failed to pay their loans, UCPB filed a petition for extrajudicial foreclosure of the mortgaged properties. Pursuant to that petition, on December 31, 2001 a notary public for Manila held a public auction sale of the mortgaged properties. UCPB made the highest

winning bid of P504,785,000.00 for the whole lot.

On January 4, 2002 the notary public submitted the Certificate of Sale to the Executive Judge of Regional Trial Court (RTC) of Manila for his approval.^[1] But, on February 18, 2002 the executive judge returned it with instruction to the notary public to explain an inconsistency in the tax declaration of one mortgaged property. The executive judge further ordered the notary public to show proof of payment of the Sheriff's percentage of the bid price.^[2] The notary public complied.^[3] On March 1, 2002 the executive judge finally signed the certificate of sale and approved its issuance to UCPB as the highest bidder.^[4]

On June 18, 2002 UCPB presented the certificate of sale to the Register of Deeds of Manila for annotation on the transfer certificates of title of the foreclosed properties. On July 5, 2002 the bank paid creditable withholding taxes (CWT) of P28,640,700.00 and documentary stamp taxes (DST) of P7,160,165.00 in relation to the extrajudicial foreclosure sale. It then submitted an affidavit of consolidation of ownership to the Bureau of Internal Revenue (BIR) with proof of tax payments and other documents in support of the bank's application for a tax clearance certificate and certificate authorizing registration.

Petitioner Commissioner of Internal Revenue (CIR), however, charged UCPB with late payment of the corresponding DST and CWT, citing Section 2.58 of Revenue Regulation 2-98, which stated that the CWT must be paid within 10 days after the end of each month, and Section 5 of Revenue Regulation 06-01, which required payment of DST within five days after the close of the month when the taxable document was made, signed, accepted or transferred. These taxes accrued upon the lapse of the redemption period of the mortgaged properties. The CIR pointed out that the mortgagor, a juridical person, had three months after foreclosure within which to redeem the properties.^[5]

The CIR theorized that the three-month redemption period was to be counted from the date of the foreclosure sale. Here, he said, the redemption period lapsed three months from

December 31, 2001 or on March 31, 2002. Thus, UCPB was in default for having paid the CWT and DST only on July 5, 2002. For this reason the CIR issued a Pre-Assessment Notice [\[6\]](#) and, subsequently, a Final Assessment Notice [\[7\]](#) to UCPB for deficiency CWT of ₱8,617,210.00 and deficiency DST of ₱2,173,051.75.

UCPB protested the assessment. It claimed that the redemption period lapsed on June 1, 2002 or three months after the executive judge of Manila approved the issuance of the certificate of sale. “Foreclosure” under Section 47 of the General Banking Law, said UCPB, referred to the date of approval by the executive judge, and not the date of the auction sale. But the CIR denied UCPB’s protest, prompting UCPB to file a petition for review with the CTA in CTA Case 7164.

On July 26, 2006 the CTA Second Division set aside the decision of the CIR and held that the redemption period lapsed three months after the executive judge approved the certificate of sale. It said that “foreclosure” under the law referred to the whole process of foreclosure which included the approval and issuance of the certificate of sale. There was no sale to speak of which could be taxed prior to such approval and issuance. Since the executive judge approved the issuance only on March 1, 2002, the redemption period expired on June 1, 2002. Hence, UCPB’s payments of CWT and DST in early July were well within the prescribed period. On appeal to the CTA *En Banc* in CTA EB 234, the latter affirmed the decision of the Second Division on June 5, 2007. With the denial of its motion for reconsideration, petitioner has taken recourse to this Court *via* a petition for review on *certiorari*.

Issue

The key issue in this case is whether or not the three-month redemption period for juridical persons should be reckoned from the date of the auction sale.

Ruling

The CIR argues that he has the more reasonable position: the redemption period

should be reckoned from the date of the auction sale for, otherwise, the taxing authority would be left at the mercy of the executive judge who may unnecessarily delay the approval of the certificate of sale and thus prevent the early payment of taxes.

But the Supreme Court had occasion under its resolution in Administrative Matter 99-10-05-0^[8] to rule that the certificate of sale shall issue only upon approval of the executive judge who must, in the interest of fairness, first determine that the requirements for extrajudicial foreclosures have been strictly followed. For instance, in *United Coconut Planters Bank v. Yap*,^[9] this Court sustained a judge's resolution requiring payment of notarial commission as a condition for the issuance of the certificate of sale to the highest bidder.

Here, the executive judge approved the issuance of the certificate of sale to UCPB on March 1, 2002. Consequently, the three-month redemption period ended only on June 1, 2002. Only on this date then did the deadline for payment of CWT and DST on the extrajudicial foreclosure sale become due.

Under Section 2.58 of Revenue Regulation 2-98, the CWT return and payment become due within 10 days after the end of each month, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the following year. On the other hand, under Section 5 of Revenue Regulation 06-01, the DST return and payment become due within five days after the close of the month when the taxable document was made, signed, accepted, or transferred.

The BIR confirmed and summarized the above provisions under Revenue Memorandum Circular 58-2008 in this manner:

[I]f the property is an ordinary asset of the mortgagor, the creditable expanded withholding tax shall be due and paid within **ten (10) days following the end of the month in which the redemption period expires.** x x x Moreover, the payment of the documentary stamp tax and the filing of the return thereof shall have to be made within **five (5) days from the end of the month when the redemption period expires.**

UCPB had, therefore, until July 10, 2002 to pay the CWT and July 5, 2002 to pay the DST. Since it paid both taxes on July 5, 2002, it is not liable for deficiencies. Thus, the Court finds no reason to reverse the decision of the CTA.

Besides, on August 15, 2008, the Bureau of Internal Revenue issued Revenue Memorandum Circular 58-2008 [\[10\]](#) which clarified among others, the time within which to reckon the redemption period of real estate mortgages. It reads:

For purposes of reckoning the one-year redemption period in the case of individual mortgagors, or the three-month redemption period for juridical persons/mortgagors, the same shall be reckoned **from the date of the confirmation of the auction sale which is the date when the certificate of sale is issued.**

The CIR must have in the meantime conceded the unreasonableness of the previous position it had taken on this matter.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

ROBERTO A. ABAD
Associate Justice

WE CONCUR:

LEONARDO A. QUISUMBING
Associate Justice

ANTONIO T. CARPIO

Associate Justice

CONCHITA CARPIO MORALES

Associate Justice

LUCAS P. BERSAMIN

Associate Justice

ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LEONARDO A. QUISUMBING

Associate Justice

Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

REYNATO S. PUNO

Chief Justice

* Designated as additional member in lieu of Associate Justice Mariano C. Del Castillo, per Special Order No. 757 dated October 12, 2009.

** Designated as additional member in lieu of Associate Justice Arturo D. Brion, per Special Order No. 765 dated October 21, 2009.

[1] CTA *rollo*, pp. 43-44.

[2] *Id.* at 46.

[3] *Id.* at 47-48.

[4] *Id.* at 53-58.

[5] Section 47 of the General Banking Law (R.A. 8791) reads:

Section 47. *Foreclosure of Real Estate Mortgage.* –

x x x x

Notwithstanding Act 3135, juridical persons whose property is being sold pursuant to an extrajudicial foreclosure, shall have the right to redeem the property in accordance with this provisions until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than **three months after foreclosure**, whichever is earlier. x x x

[6] CTA *rollo*, p. 74.

[7] *Id.* at 31-32.

[8] Re: Procedure in Extrajudicial Foreclosure of Mortgage.

[9] 432 Phil. 536 (2002).

[10] Re: Clarifying the Time Within Which to Reckon the Redemption Period on the Foreclosed Asset and the Period Within Which to Pay Capital Gains Tax or Creditable Withholding Tax and Documentary Stamp Tax on the Foreclosure of Real Estate Mortgage by Those Governed by the General Banking Law of 2000 (Republic Act No. 8791), as Well as the Venue for the Payment of These Taxes, August 15, 2008.