

## SECOND DIVISION

[ G.R. No. 179063, October 23, 2009 ]

### COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. UNITED COCONUT PLANTERS BANK, RESPONDENT.

#### 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.<sup>[1]</sup> 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.<sup>[2]</sup> The notary public complied.<sup>[3]</sup> On March 1, 2002 the executive judge finally signed the certificate of sale and approved its issuance to UCPB as the highest bidder.<sup>[4]</sup>

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.<sup>[5]</sup>

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<sup>[6]</sup> and, subsequently, a Final Assessment Notice<sup>[7]</sup> to UCPB for deficiency CWT of P8,617,210.00 and deficiency DST of P2,173,051.75.

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<sup>[8]</sup> 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*,<sup>[9]</sup> 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.