REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

UNITED COCONUT PLANTERS BANK,
Respondent.

C.T.A. EB NO. 234
(C.T.A. Case No. 7164)

Present:

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

Promulgated:
JUN 0 5 2007

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DECISION

BAUTISTA, J.:

The Case

Before the Court *En Banc* is a Petition for Review assailing the Decision dated July 26, 2006 and the subsequent Resolution dated November 23, 2006, both issued by the Second Division of the Court ("Court in Division"). The Court in Division cancelled and set aside herein petitioner's Decision dated January 24, 2005 denying herein respondent's protest and affirming the deficiency assessments against respondent for the late payment of creditable withholding and documentary stamp taxes in the amounts of ₱8,617,210.00 and ₱2,173,051.75, respectively, relative to the extrajudicial foreclosure sale of the real properties of Ever Gotesco Resources Holdings, Inc. ("EGRHI").

Antecedent Facts

The antecedent facts of the case were portrayed by the Court in Division as follows:

> "Petitioner[1] United Coconut Planters Bank (UCPB) is a banking corporation duly organized and existing under Philippine laws, with principal address at UCPB Building, 7907 Makati Avenue, Makati City. It is a domestic banking corporation duly authorized to operate as an expanded commercial bank by the Bangko Sentral ng Pilipinas (BSP). Under its Articles of Incorporation, petitioner is authorized to 'operate under an expanded commercial banking authority, and by virtue thereof, to exercise the powers authorized for commercial banks, the powers of investment houses as provided in pertinent laws, and the authority to invest in the equity of allied and non-allied undertakings in accordance with applicable laws, rules and regulations.' It is likewise authorized by the BSP to extend loans, credit accommodations and guarantees to any person, partnership, association, corporation, or any other entity subject to such rules as the Monetary Board may promulgate.
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> On the other hand, respondent[2] is the Commissioner of Internal Revenue who is the officer duly appointed and empowered by law to perform the duties of his office, including, among others, the duty to act on national internal revenue tax assessments, with office address at the Bureau of Internal Revenue, National Office Building, Diliman, Quezon City.
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> On December 16, 1999, petitioner granted peso-denominated loans to George C. Go, Go Tong Electrical Supply Co., Inc. (Go Tong), and Tesco Realty Co. (Tesco), both represented by their President, George C. Go, in the amounts of P68,840,000.00 and P335,000,000.00, as evidenced by Promissory Note (PN) Nos.

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[1] Herein respondent.
[2] Herein petitioner.

5735-99-01891-6 and 5735-99-01892-4, respectively, both dated December 16, 1999.

To guarantee the payment of the loans, the following real estate mortgages were executed:

Date of REM	Owner of Property	Types of Property
18 Aug 1992 as amended on 24 Jan 1994 and Dec 16, 1999	GMCC United Development Corporation	Condominium Unit in Gotesco Regency Twin Towers Residential Condo located at Ermita, Manila; CCT No. 11528
4 Nov 1994 as amended on 2 May 1996 and 16 Dec 1999	Spouses George C. Go & Lim Le Hua Go	Condominium Units in Gotesco Regency Twin Towers Residential Condo located at Ermita, Manila; CCT Nos. 20550, 20553 & 17005 Parking Slots including all improvements existing therein located in Gotesco Regency Twin Towers Residential Condominiums with CCT Nos. 20551, 20552, 20554, and 17025 Land with TCT No. 1009 located in Pasig, Metro Manila
14 Oct 1997 as amended on 16 Dec 1999	GMCC United Development Corporation and George C. Go	Properties, including all the improvements existing thereon, under TCT No. 1009, 9993, 9995, CCT Nos. 20550, 20553, 17005, 11528, 20554, 20552 and 17025
December 16, 1999	Ever Gotesco Resources Holdings, Inc. (EGRHI)	The 3-storey commercial building and other improvements covered by Tax Declaration No. 97-00257, built on Lot Nos. 8, 9 and 23, of the subdivision plan (LRC) Psd-280126, Block No. 2565 and covered by TCT Nos. 140790, 140791 and 140792, of the Registry of Deeds for the City of Manila, situated at 1958, C.M. Recto Avenue, Quiapo, Manila, containing an area of 13,279.695. All machineries, equipment[s] receptacles, instruments or the like found, implemented or placed on the parcels of land covered by TCT Nos. 140790, 140791 and 140792, of the Registry of Deeds for the City of Manila. All other properties of whatever kind and nature, used by the mortgagor in the industry or work carried over on the lands and/or in the buildings x x x covered by real estate mortgage dated December 16, 1999.
22 June 1995 as amended on 16 Dec 1999	Spouses George C. Go & Lim Le Hua Go	Parcels of land including all improvements existing on the land located at Mandaluyong, Metro Manila in the amount of P490,579,923 as of 15 October 2001 with TCT No. 9995 & 9994

For failure of George C. Go, Go Tong and Tesco to pay petitioner their outstanding obligations despite repeated demands, petitioner, on December 4, 2001, filed a petition for the extra-judicial foreclosure of the above-mentioned real estate mortgages including the real estate mortgage (REM) executed by Ever Gotesco Resources Holdings, Inc. (EGRHI), pursuant to the REM entered into by the parties.

On December 31, 2001, after the posting and publication of the Notice of Auction Sale, the Notary Public for the City of Manila, Edwin V. Patricio, conducted the public auction of the mortgaged properties. The highest bidder, which tendered the bid amount of P504,785,000.00, was herein petitioner. Of the total bid price, the amount of P477,345,000.00, which was the amount used by respondent in arriving at the assailed deficiency taxes, pertained to the three-storey commercial building built on the land covered under TCT Nos. 140790, 140791 and 140792 registered under the name of Gotesco Towers, Inc.

On January 4, 2002, Notary Public Edwin V. Patricio, transmitted to the Office of the Clerk of Court and Ex-Officio Sheriff of the Regional Trial Court of the City of Manila, the Certificate of Sale dated December 31, 2001. However, on February 18, 2002, Executive Judge, Hon. Mario L. Guarina III, returned the said Certificate of Sale unsigned and unapproved for the reasons that:

1. the improvements mentioned in Tax Declaration No. 97-00257 were mortgaged by EGRHI when the said tax declaration mentions a different owner, Gotesco Properties, Inc.; and

2. petitioner should indicate in the Certificate of Sale the receipt showing payment of the Sheriff's percentage of the bid price.

After compliance with the order of the Executive Judge, the Certificate of Sale was signed and approved on March 1, 2002, which certificate was received by petitioner on March 11, 2002. Subsequently, on June 18, 2002, petitioner presented the Certificate of Sale to the Register of Deeds of the City of Manila for proper annotations on the Transfer Certificates of Titles covering the foreclosed properties and on July 5, 2002, petitioner filed the corresponding creditable withholding and documentary stamp taxes on the foreclosed properties in the amounts of P28,640,700.00 and P7,160,175.00, respectively.

On July 16, 2002, petitioner executed an Affidavit of Consolidation of Ownership and submitted the same to the office of the respondent, attaching therewith proofs of payment of the creditable withholding and documentary stamp taxes for the purpose of the issuance of the Tax Clearance Certificate and the corresponding Certificate Authorizing Registration.

On April 30, 2003, Revenue District Officer, Benito B. Wong, relying on the recommendations of the Chief of the Legal Division of the Bureau of Internal Revenue (BIR) Revenue Region No. 6 and Revenue Officer Torres, issued a Post Reporting Notice finding petitioner liable for deficiency assessment for late payment of creditable withholding and documentary stamp taxes in the amounts of P8,617,210.00 and P7,160.175.00 (should be P2,173,052.00), respectively. Consequently, petitioner disputed the findings of Revenue Officer Torres arguing that contrary to the opinion of the Chief of the Legal Division of the BIR Revenue Region No. 6, the period of redemption expired not three (3) months after the date of auction sale but three (3) months after the Certificate of Sale issued by the Sheriff or Notary Public was approved by the Executive Judge, as mandated by Supreme Court Resolution A.M. No. 99-10-05-0 dated December 14, 1999, as amended by Supreme Court Resolutions dated January 30, 2001 and August 7, 2001.

Nonetheless, on July 28, 2003, a Preliminary Assessment Notice dated July 1, 2003, was issued assessing petitioner of deficiency creditable withholding and documentary stamp taxes in the amounts of P8,617,210.00 and P2,173,051.75, respectively. The same was protested to by petitioner on August 7, 2003.

On August 3, 2004, petitioner received the Final Assessment Notices, all dated July 14, 2004, for deficiency creditable withholding and documentary stamp taxes pertaining to the extra-judicial foreclosure sale of real properties of EGRHI in the amounts of P8,617,210.00 and P2,173,051.75, respectively. Petitioner filed its protest thereon on August 27, 2004, contending that the 'foreclosure' in the phrase 'three months after foreclosure' under Section 47 of the General Banking Act of 2000 does not refer to the public auction sale; and that the 'three (3) months after foreclosure' should be reckoned from the date of approval by the Honorable Executive Judge of the Regional Trial Court of Manila of the sale.

On February 2, 2005, petitioner received the denial of its protest, hence, this appeal to this Court on March 4, 2005.

On April 28, 2005, respondent filed his Answer, raising the following as his Special and Affirmative Defenses:

> 4. The assessment is valid and correct and the taxpayer has the burden of proof to impugn its validity (Behn Meyer & Co. vs. Collector of Internal Revenue, 27 Phil 647). Thus, similarly held, tax assessments by tax examiner are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise (CIR vs. Construction Resources of Asia, Inc. 145 SCRA 671), and assessment duly made by the Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed (Gutierrez vs. Villegas, 8 SCRA 527);
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> 5. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but that the taxpayer is right (Tan Guan vs. CTA et al., 19 SCRA 902), otherwise, the presumption in favor of the correctness of the assessments stand (Inter-provincial Bus Co. vs. Collector of Internal Revenue, 98 Phil 290; CIR vs. Bohol Land Transportation Co., 107 Phil 967);
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> 6. Section 47 of Republic Act No. 8791 otherwise known as the General Banking Law of 2000, provides that juridical persons whose property is sold pursuant to extra-judicial foreclosure sale shall redeem the property until, but not after the registration of the certificate of foreclosure sale, which in no case shall be more than three (3) months after the **foreclosure**, whichever is earlier;

7. Being a juridical person, the mortgagor, Ever Gotesco, has only three (3) months from December 31, 2001, the **date of foreclosure auction/sale**, within which to redeem said property, or up to March 31, 2001 (should be 2002). Failing to redeem within the said period, the expanded withholding (CWT) and documentary stamp taxes are due and demandable on April 10, 2002 (RR No. 2-98) and April 5, 2002 (RR No. 4-99 and RR No. 6-2001), respectively, and since petitioner paid the tax dues only on July 5, 2002, the imposition of penalties and interest for late payment of taxes are valid and with legal basis; and

8. In a Memorandum dated October 14, 2002 concerning Collection Campaign on Mortgage Foreclosure Sales made by Banks, Quasi-banks and Trust Entities in relation to the General Banking Law of 2000, RR No. 4-99, RR No. 2-99, as amended and provisions of the NIRC of 1997, the Commissioner of Internal Revenue is of the position that the redemption period, where the mortgagor is a juridical person, expires 90 days from the date of the mortgage foreclosure sale.

In the hearing of August 4, 2005, counsel for the petitioner manifested that she would submit the case for decision after the filing of the parties' Joint Stipulation of Facts and Issues since the factual issues were already admitted by the respondent during the pre-trial conference. For his part, counsel for the respondent manifested on October 3, 2005 that he would not be presenting any evidence either. After the parties have filed their respective memorandum within the period given by the Court, this case was submitted for decision on December 2, 2005."

The Ruling of the Court in Division

On July 26, 2006, the Court in Division rendered its Decision granting the Petition for Review.

In interpreting Section 47 of the General Banking Law of 2000 or Republic Act ("R.A.") No. 8791,[3] the Court in Division held that the extrajudicial foreclosure sale can be deemed effective only upon the approval and signing of the Certificate of Sale by the Executive Judge, and not on the actual date of the auction sale. The Executive Judge in this case signed and approved the Certificate of Sale on March 1, 2002.

For failure of EGRHI to redeem the property pursuant to Section 47 of R.A. No. 8791, respondent's registration of the Certificate of Sale with the Register of Deeds of

[3] An Act Providing for the Regulation of the Organization and Operations of Banks, Quasi-Banks, Trust Entities and for Other Purposes.

Manila on June 18, 2002, gave it until July 10, 2002 and July 5, 2002 within which to respectively pay the withholding and documentary stamp taxes for the transactions pursuant to Section 2.58 of Revenue Regulations ("RR") No. 2-98 and Section 5 of RR No. 6-01.

Thus, the Court in Division ruled that when herein respondent filed and paid the corresponding creditable and documentary stamp taxes on July 5, 2002, the same was well within the period allowed by the law and the implementing regulations.

The dispositive portion of the afore-mentioned Decision reads as follows:

> "**IN VIEW OF THE FOREGOING**, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent's Decision dated January 24, 2005 assessing petitioner of deficiency creditable withholding and documentary stamp taxes in the amounts of P8,617,210.00 and P2,173,051.75, respectively, is hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED**."

Undaunted, herein petitioner moved for a reconsideration of the Decision, which was denied for lack of merit by the Court in Division in its Resolution promulgated on November 23, 2006.

The Issues

Hence, this Petition for Review raising the following issues:

"1. Whether or not respondent is liable for the payment of deficiency creditable withholding and documentary stamp taxes in the amounts of ₱8,617,210.00 and ₱2,173,051.75 respectively, from the extrajudicial foreclosure of the real estate mortgage executed by Ever Gotesco Resources Holdings, Inc. (EGRHI).

a. Whether the foreclosure sale became effective on:

1. date of foreclosure sale; or
2. date of approval of the Certificate of Sale by the Executive Judge; or
3. date of receipt by the petitioner (*sic*) of the Certificate of Sale duly approved by the Executive Judge.

b. Whether the payment of creditable withholding and documentary stamp taxes should be reckoned from 1, 2, or 3 above.

2. Whether or not by paying the creditable withholding and documentary stamp taxes on July 5, 2002, respondent is liable to pay surcharges and interest for late payment of the taxes due; and

3. Whether or not the function of the Executive Judge is merely limited to the administrative supervision over the Sheriff in case of extrajudicial foreclosure."

Petitioner's Arguments

Petitioner avers that the reckoning date of the period of redemption is the date of the foreclosure sale citing: (1) Section 47 of R.A. No. 8791, (2) Memorandum dated October 14, 2002 – Concerning Collection Campaign on Mortgage Foreclosure Sales made by banks, quasi-banks and trust entities in relation to the General Banking Law of 2000, RR No. 4-99, RR No. 2-99, as amended and provisions of the National Internal Revenue Code ("NIRC") of 1997, and (3) Land Registration Authority ("LRA") Circular No. 11-2000 dated August 17, 2000.

Petitioner also alleges that the approval by the Executive Judge of the Certificate of Sale (SC Circular 7-2002) and the consequences if the same is not duly approved by the Judge do not expressly mandate that the reckoning date of the redemption period starts only after the approval of the Certificate of Sale by the Executive Judge or the date of the receipt thereof by the respondent.

Petitioner further claims that the approval of the Executive Judge is not necessary as he only approves the payment of fees. The extrajudicial foreclosure sale is not an action or a suit, and the function of the Executive Judge is merely limited to the administrative supervision over the Sheriff.

Lastly, petitioner posits that being a juridical person, the mortgagor, EGRHI, had only three (3) months from December 31, 2001, the date of foreclosure auction/sale, within which to redeem said properties, or up to March 31, 2002. Failing to redeem within the said period, the creditable withholding and documentary stamp taxes became due and demandable on April 10, 2002 and April 5, 2002 under RR No. 4-99 and RR No. 6-2001, respectively. Since respondent paid the taxes only on July 5, 2002, the imposition of penalties and interest for late payment of taxes is valid.

Respondent's Counter-arguments

Respondent, in its Comment, asseverates that the extrajudicial foreclosure sale became effective on March 1, 2002 or on the date the Certificate of Sale was duly approved and signed by the Executive Judge; or upon receipt by the respondent of the Certificate of Sale duly approved by the Executive Judge on March 11, 2002. Under A.M. No. 99-10-05-0, as amended, dated August 7, 2001 and issued by the Supreme Court, the Certificate of Sale issued by the Notary Public on the foreclosed property has to be approved by the Executive Judge and all the fees in connection with the extrajudicial foreclosure sale should have been paid. Without the approval of the certificate of sale by the Executive Judge, the effectivity of the sale is still uncertain as it can still be nullified for certain reasons, including any of the following grounds: a) no special power of attorney authorizing the extrajudicial foreclosure of the real property was inserted into or attached to the deed of real estate mortgage; b) the sale was made outside of the province in which the property sold is situated; c) the public auction sale did not comply with the requirement of publication of the notice of sale; or d) the property sold in the foreclosure sale is not included in the real estate mortgage executed in favor of the mortgagee.

Respondent also argues that contrary to the claim of petitioner, the function of the Executive Judge in approving the Certificate of Sale is not limited to the approval of the fees to be paid because the Executive Judge is also duty bound to make a determination of the substantial compliance of the foreclosure sale with all the necessary requirements mandated by the law and regulations before approving and signing the Certificate of Sale pursuant to A.M. No. 99-10-05-0 and Supreme Court Circular No. 7-2002 dated January 22, 2002.

Respondent further asserts that the Memorandum dated October 14, 2002 allegedly prepared by petitioner regarding the reckoning date for the redemption period and which was cited by petitioner in his Answer dated April 26, 2005 and in the instant Petition for Review dated December 18, 2006, deserves no consideration because it was not even presented in evidence by the petitioner before the Court in Division. Assuming *arguendo* that there is such a Memorandum, the interpretation that the redemption should be reckoned from the date of the auction sale is baseless since the General Banking Law of 2000 refers only to "foreclosure," which should be interpreted as the date of effectivity of the foreclosure.

Lastly, respondent submits that the period to pay the required creditable withholding tax ("CWT") and documentary stamp tax ("DST") on the subject extrajudicial foreclosure accrued only on June 11, 2002 or three (3) months from March 11, 2002, the date of receipt of respondent of the approved Certificate of Sale. Consequently, the payment of the CWT and DST on July 5, 2002 was on time pursuant to Section 2.58 of RR No. 2-98 as amended and Section 200 of the 1997 NIRC as amended by RR No. 6-01.

The Ruling of the Court En Banc

The petition is devoid of merit.

The issues raised and the arguments articulated by the parties relate to the correct interpretation of the term "foreclosure" in Section 47 of the General Banking Law of 2000 in order to determine the proper reckoning of the three (3)-month redemption period for extrajudicial foreclosures of real properties owned by juridical persons. The period within which to pay the taxes due on the subject foreclosed properties will depend on such interpretation. The provision in question states:

> "**SEC. 47. Foreclosure of Real Estate Mortgage.** — In the event of foreclosure, whether judicially or extra-judicially, of any mortgage on real estate which is security for any loan or other credit accommodation granted, the mortgagor or debtor whose real property has been sold for the full or partial payment of his obligation shall have the right within one year after the sale of the real estate, to redeem the property by paying the amount due under the mortgage deed, with interest thereon at rate specified in the mortgage, and all the costs and expenses incurred by the bank or institution from the sale and custody of said property less the income derived therefrom. However, the purchaser at the auction sale concerned whether in a judicial or extra-judicial foreclosure shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law. Any petition in court to enjoin or restrain the conduct of foreclosure proceedings instituted pursuant to this provision shall be given due course only upon filing by the petitioner of a bond in an amount fixed by the court conditioned that he will pay all the damages which the bank may suffer by the enjoining or the restraint of the foreclosure proceeding.
>
> 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 provision **until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deeds <u>which in no case shall be more than three (3) months after foreclosure</u>, whichever is earlier**. Owners of property that has been sold in a foreclosure sale prior to the effectivity of this Act shall retain their redemption rights until their expiration." (*Emphasis and underscoring supplied*)

As a rule, a real estate mortgage may be foreclosed judicially pursuant to Rule 68 of the Rules of Civil Procedure, or extra-judicially pursuant to Act No. 3135, as amended by Act No. 4118. In the event that the mortgagor is a juridical person and the mortgagee is a bank, the said rule or law is supplemented and qualified by the afore-quoted Section 47 of the General Banking Law.[4]

In an extrajudicial foreclosure, the mortgagor generally has the right to redeem the real property within one year from the registration of the deed of sale.[5] The said one-year period is to be counted from the date of registration of the certificate of sale in the Registry of Property as held by the Supreme Court. Thus:

> "The redemption period, for purposes of determining the time when a final Deed of Sale may be executed or issued and the ownership of the registered land consolidated in the purchaser at an extrajudicial foreclosure sale under Act 3135, should be reckoned from the date of the registration of the Certificate of Sale in the Office of the Register of Deeds concerned and not from the date of public auction." [6] *(citations omitted)*

However, the General Banking Law shortens the aforementioned one-year redemption period if the mortgagor is a juridical person. In such a case, under the second paragraph of Section 47, the mortgagor's right to redeem terminates upon the registration of the certificate of foreclosure sale with the pertinent Register of Deeds. Since that registration is required to be made not later than three (3) months after foreclosure, the redemption period is effectively limited to not more than three months from extrajudicial foreclosure.[7]

At this juncture, the Court *En Banc* is tasked to determine the meaning of "foreclosure" in the phrase "three (3) months from foreclosure" in Section 47. Does it refer to the date of the auction sale or the date of approval of the Certificate of Sale by the concerned Executive Judge? The Court in Division ruled that it should pertain to the

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[4] Rafael A. Morales, The Philippine General Banking Law (Annotated), 2002, page 115.
[5] Florenz D. Regalado, Remedial Law Compendium, Volume I, 7th Revised Edition, 1999, page 752, *citing Reyes v. Noblejas, L-23691, Nov. 25, 1967.*
[6] Benjamin Belisario, et al. v. Intermediate Appellate Court et al., G.R. No. L-73503, August 30, 1988, 165 SCRA 101.
[7] Rafael A. Morales, *supra, note 4,* pages 116 to 117.

date of approval of the Certificate of Sale by the Executive Judge. It ratiocinated as follows:

> "xxx Under R.A. No. 8791, a mortgagor, who is a juridical person, is given the right to redeem or buy back its real estate property sold pursuant to an extrajudicial foreclosure sale, until the Certificate of Sale has been registered with the applicable Registry of Deeds. However, the right of the buyer to register the said property should not be more than three (3) months from the date of foreclosure. **It must be emphasized that a Certificate of Sale is only issued and approved upon the findings of the Executive Judge that there has been substantial compliance with the necessary requirements as mandated by law and regulations.** Failure to comply with statutory requirements constitutes a jurisdictional defect invalidating the sale. In fact, **in this case, Executive Judge Mario L. Guarina III returned the Certificate of Sale unapproved and unsigned to the Clerk of Court and Ex-Officio Sheriff, Atty. Jesusa P. Maningas, with certain instructions to the Notary Public who conducted the public auction of the subject mortgaged properties.**
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> Under Sections 6 and 9 of Supreme Court Circular No. 7-2002, it is specifically provided that:
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> > Sec. 6. After the sale, the Clerk of Court **shall collect the appropriate fees** pursuant to Sec. 9 (l), Rule 141, as amended by A.M. No. 00-2-01-SC x x x
> >
> > Sec. 9. Upon presentation of the appropriate receipts, the Clerk of Court shall issue and sign the Certificate of Sale, **subject to the approval of the Executive Judge** or, in the latter's absence, the Vice-Executive Judge. x x x
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> Prescinding from the foregoing, the Certificate of Sale issued is still subject to the payment of the appropriate fees and the approval of the Executive Judge, and thus, no Certificate of Sale shall be issued in favor of the highest bidder until all fees as provided for in Rule 141 shall have been paid (A.M. No. 99-10-05-0, as amended).
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> The General Banking Law of 2000 (Republic Act No. 8791) is a newer law which amended certain provisions of Act 3135 pertaining to the redemption rights of juridical persons whose properties are being sold pursuant to an extra-judicial foreclosure proceedings. In this regard, **the word 'foreclosure' as used in the second paragraph of R.A. No. 8791 cannot be construed as to mean the date of auction sale, considering that prior to the approval of the Certificate of Sale, there is yet no certificate to speak of; or that prior to the issuance and approval of the Certificate of Sale, there is yet no valid and final sale. It follows that there is yet no Certificate of Sale subject to the registration with the Registry of Deeds.**
>
> By merely stating the word 'foreclosure' instead of 'foreclosure sale', the intent of the lawmakers was then not to make it appear that the reckoning period is the sale itself, but the process of foreclosing the real estate properties of juridical persons. x x x" *(Emphasis supplied)*

The Court *En Banc* agrees with the foregoing legal disquisition of the Court in Division.

This case involves an extrajudicial foreclosure of real property where the mortgagor is a juridical person, hence, the applicable rules are embodied not only in the second paragraph of Section 47 of the General Banking Law but also in Supreme Court *En Banc* Resolution Administrative Matter ("A.M.") No. 99-10-05-0 dated December 14, 1999, as amended by Supreme Court Resolutions dated January 30, 2001 and August 7, 2001.

A.M. No. 99-10-05-0 provides for the procedure to be strictly followed in the extrajudicial foreclosure of mortgage, *viz*:

> "1. **All applications for extra-judicial foreclosure of mortgage** whether under the direction of the sheriff or a notary public, pursuant to Act 3135, as amended by Act 4118, and Act 1508, as amended, **shall be filed with the Executive Judge**, through the Clerk of Court who is also the Ex-Officio Sheriff.
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> 2. **Upon receipt of an application for extra-judicial foreclosure of mortgage, it shall be the duty of the Clerk of Court to**:
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> a) receive and docket said application and to stamp thereon the corresponding file number, date and time of filing;
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> b) collect the filing fees therefor pursuant to Rule 141, Section 7(c), as amended by A.M. No. 00-2-01-SC, and issue the corresponding official receipt;
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> xxx xxx xxx
>
> d) **sign and issue the certificate of sale, subject to the approval of the Executive Judge, or in his absence, the Vice-Executive Judge.** No certificate of sale shall be issued in favor of the highest bidder until all fees provided for in the aforementioned sections and in Rule 141, Section 9(1), as amended by A.M. No. 00-2-01-SC, shall have been paid; Provided, that in no case shall the amount payable under Rule 141, Section 9(1), as amended, exceed P100,000.00;
>
> e) **after the certificate of sale has been issued to the highest bidder**, keep the complete records, while awaiting any redemption within a period of one (1) year from date of registration of the certificate of sale with the Register of Deeds concerned, after which, the

records shall be archived. Notwithstanding the foregoing provision, juridical persons whose property is sold pursuant to an extra-judicial foreclosure, shall have the right to redeem the property until, but not after, the registration of the certificate of foreclosure sale which in no case shall be more than three (3) months after foreclosure, whichever is earlier, as provided in Section 47 of Republic Act No. 8791 (as amended, Res. of August 7, 2001).

xxx xxx xxx

3. The notices of auction sale in extrajudicial foreclosure for publication by the sheriff or by a notary public shall be published in a newspaper of general circulation pursuant to Section 1, Presidential Decree No. 1079, dated January 2, 1977, and non-compliance therewith shall constitute a violation of Section 6 thereof.

4. The Executive Judge shall, with the assistance of the Clerk of Court, raffle applications for extrajudicial foreclosure of mortgage under the direction of the sheriff among all sheriffs, including those assigned to the Office of the Clerk of Court and Sheriffs IV assigned in the branches.

5. The name/s of the bidder/s shall be reported by the sheriff or the notary public who conducted the sale to the Clerk of Court before the issuance of the certificate of sale." *(Emphasis supplied)*

It is clear from the foregoing rules that without the approval of the Certificate of Sale by the Executive Judge, the foreclosure sale is still not effective. As correctly pointed out by respondent, the sale is still uncertain as it can be nullified for a number of reasons i.e. no special power of attorney authorizing the extrajudicial foreclosure of the real property was inserted into or attached to the deed of real estate mortgage, the sale was made outside of the province in which the property sold is situated or the public auction sale did not comply with the requirement of publication of the notice of sale.

Moreover, the rules provide that the function of the Executive Judge is not only limited to the administrative supervision over the Sheriff as the Supreme Court has noted that extrajudicial foreclosure sales should be conducted under the direct supervision and control of the Executive Judge and the Clerk of Court as *Ex-Officio*

Sheriff.[8] Thus, it is the responsibility of the Executive Judge to ensure that there are no irregularities in the sale and that there is compliance with all the necessary requirements mandated by the law and regulations on extrajudicial foreclosures.

In the case at bar, Notary Public Edwin V. Patricio, transmitted on January 4, 2002 to the Office of the Clerk of Court and Ex-Officio Sheriff of the Regional Trial Court of the City of Manila, the Certificate of Sale dated December 31, 2001. However, it must be emphasized that on February 18, 2002, Executive Judge, Hon. Mario L. Guarina III, returned the said Certificate of Sale unsigned and unapproved for the following reasons:

1. the improvements mentioned in Tax Declaration No. 97-00257 were mortgaged by EGRHI when the said tax declaration mentions a different owner, Gotesco Properties, Inc.; and
2. respondent should indicate in the Certificate of Sale the receipt showing payment of the Sheriff's percentage of the bid price.

After compliance with the order of the Executive Judge, the Certificate of Sale was signed and approved only on March 1, 2002, which Certificate was received by respondent on March 11, 2002.

Therefore, the period of redemption expired not three (3) months after the date of auction sale, but 3 months after the Certificate of Sale issued by the Sheriff or Notary Public was approved by the Executive Judge, which in this case was on March 1, 2002. Thus, the period of redemption for EGRHI expired on June 1, 2002. Consequently, the period to pay the taxes due on the foreclosed properties should be reckoned also from June 1, 2002.

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[8] Executive Judge Bienvenido V. Reyes v. Rodrigo G. Baliwag, Sheriff IV, Regional Trial Court, Branch 30, San Pablo City, A.M. No. P-01-1514, February 18, 2005 (Formerly A.M. No. 01-2-48-RTC).

In this connection, respondent had until July 10, 2002 to pay the CWT pursuant to Section 2.58 of RR No. 2-98, *to wit*:

> "Sec. 2.58. Returns and Payment of Taxes Withheld at Source.
>
> A) Monthly return and payment of taxes withheld at source ---
>
> xxx xxx xxx
>
> (2) When to file —
>
> (a) For both large and non-large taxpayers, the withholding tax return, whether creditable or final (including final withholding taxes on interest from any currency bank deposit and yield . . .) shall be filed and payments should be made, **within ten (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. xxx" *(Emphasis supplied)*

Respondent also had until July 5, 2002 to pay the DST pursuant to Section 5 of RR No. 06-01 amending Section 200 of the 1997 NIRC, which provides:

> "SECTION 5. Time for Filing of Documentary Stamp Tax Returns and the Payment of Taxes Due Thereon. — The time for filing of the documentary stamp tax returns and the payment of the taxes due thereon shall be revised in accordance with the appropriate amendments to existing regulations, as presented below.
>
> (1) Paragraph 19 of Revenue Memorandum Circular No. 1-98 is hereby amended to read as follows:
>
> *'(19) The documentary stamp tax return shall be filed* ***within five (5) days after the close of the month when the taxable document was made, signed, accepted, or transferred, and the tax thereon shall be paid at the same time the aforesaid return is filed.****'*
>
> (2) For large taxpayers, Section 4(3.6) of Revenue Regulations No. 1-98 is hereby amended to read as follows:
>
> 'SECTION 4. Filing of Returns and Payment of Taxes. —
>
> xxx xxx xxx
>
> 3. When to File and Pay
>
> 3.6 Documentary Stamp Taxes
>
> Large taxpayers shall pay their documentary stamp taxes **within *five (5)* days after the close of the month when the taxable document was made, signed, issued, accepted or transferred by the filing of the documentary stamp tax returns**, through purchase or

> actual affixture or by imprinting the documentary stamps through a documentary stamp tax metering machine.'" *(Emphasis supplied)*

Hence, as correctly held by the Court in Division, the payment of the CWT and the DST on July 5, 2002 by respondent was well within the period prescribed by the law and regulations.

In view of the foregoing, the Court *En Banc* finds no reason to reverse the assailed Decision promulgated on July 26, 2006 and Resolution dated November 23, 2006.

WHEREFORE, the instant petition is hereby **DISMISSED.** Accordingly, the assailed Decision and Resolution are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTANEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice