

# *Superior Court of Justice*

**EDcI (MOTION FOR CLARIFICATION) in the SPECIAL APPEAL nº 900.415 – RS  
(2006/0246099-9)**

**COURT REPORTER : MINISTER HUMBERTO MARTINS**  
**APPELLANT : STATE OF RIO GRANDE DO SUL**  
**COUNSEL : SIMONE ZANDONÁ LIMA AND OTHER(S)**  
**OBJECTED PARTY : DJ QUARTIERO INDÚSTRIA E COMÉRCIO DE  
ARROZ LTDA.**  
**LEGAL COUNSEL : ÉDISON FREITAS DE SIQUEIRA AND OTHER(S)**

## **SUMMARY OF COURT RECORDS**

**TAX LAW – FISCAL EXECUTION – ARTICLE  
11, ITEM VIII, LAW NO. 6.830/80 – PLEDGE – ELETROBRÁS  
DEBENTURES – ADMISSION AS GUARANTEE OF FISCAL  
EXECUTION – STATUTE OF LIMITATIONS NOT  
PREVIOUSLY QUESTIONED – MOTION FOR  
CLARIFICATION REJECTED.**

## **DECISION**

Court records examined.

The subject matter addresses the appeal requesting clarification opposed by the State of Rio Grande do Sul against my single decision, which abstract deserves transcription:

*“CIVIL PROCESS – TAX LAW – FISCAL EXECUTION – ARTICLE 11, ITEM VIII, LAW NO. 6.830/80 – PLEDGE – ELETROBRÁS DEBENTURES – ADMISSION AS GUARANTEE OF FISCAL EXECUTION – SPECIAL APPEAL GRANTED.”*

In its appellate briefs, the appellant concludes that the decision did not consider the subject matter included in the briefs of respondent of special appeal relative to the statute of limitation of the debentures. The appellant also sustains that the fact that it relates to a bearer bill and not to debentures is undisputed.

Finally, the appellant requests that the indicated omission be remedied.

In essence, this is the report.

The motion for clarification is not applicable to change the sentence that is not omitted, contradictory or obscure.

Pursuant to consolidated case law from the STJ, *the judge is not obliged to answer all the considerations presented by the parties, deciding the subject matter fully and reasonably is sufficient.* (REsp – Special Appeal 415.706/PR, Court Reporter Minister Sálvio de Figueiredo Teixeira, DJ August 12, 2002), as in the event herein considered.

The infringing intention sought by the appellant through the opposition of these motions for clarification is clear, once it seeks to change the court decision that recognized the admission of securities issued by Eletrobrás, called debentures, as guarantee of execution.

As stated in the stayed decision:

*“According to a careful reading of the court records, the solution of the question shall be made by the identification, in case of these court records, of the possibility to accept the titles issued by Eletrobrás, called debentures, as guarantee of fiscal execution.*

*Prima facie case, it is concluded that the debentures issued by Eletrobrás are admitted as guarantee of fiscal execution. On the subject, the Superior Court of Justice provided for jurisprudence: “2. The First Section of this Court, in the session held on June 27, 2007, upon the judgment of EREsp 836,143/RS, the Court Reporter Humberto Martins concluded that the debentures issued by Eletrobrás are assets subject to pledge, as they are credit instruments pursuant to the provisions of article 655, IV of the Civil Code of Procedures. Change of previous guideline. 3. Special Appeal partially known and granted”. (Resp 964,860/RS, Court Reporter Minister Castro Meira, Second Panel, judged on September 4, 2007, DJ September 19, 2007, page 262.)*

*Jurisprudence: “2. According to pronouncement of Minister Teori Albino Zavascki, the debenture extrajudicial executive title (Code of Civil Procedures, article 585, I) is issued by stock companies, being a title representing a fraction of loan borrowed by the issuer company. The debenture grants its holders a credit right (Law no. 6,404 dated December 15, 1976, article 52), to which an in rem guarantee is added over a given asset and/or floating guarantee, ensuring general privilege over the entire asset of the debtor (article 58). It is at the same time a security eligible to the traded in Stock Exchange or over the counter market, pursuant to the specific legislation (Law no. 6,385, dated December 7, 1976, article 2). (Resp 857,043/RS, DJ September 25, 2006). Appeal requesting resolution of conflict in previous jurisprudence dismissed”. (EREsp 836143/RS, reported by this Magistrate, First Section, judged on June 27, 2007, DJ August 6, 2007, page 455).”*

In respect of the alleged statute of limitation of the credit instruments, it is verified that the matter was not previously questioned in the appealed decision and for that reason it may not be faced by the decision herein objected.

Furthermore, the document on pages 281/283 support the conclusion that the instruments are Eletrobrás' debentures still redeemable, therefore they are not subject to statute of limitation.

Considering the above, I reject the motion for clarification.

Publish. Notify.

Brasília (DF), June 23, 2008.

MINISTER HUMBERTO MARTINS  
Court Reporter

