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FIRST DIVISION

[G.R. No. 123793. June 29, 1998]

ASSOCIATED BANK, *petitioner, vs.* **COURT OF APPEALS and LORENZO SARMIENTO, JR.,** *respondents.*

SYNOPSIS

After the merger of Associated Banking Corporation (ABC) and Citizens Bank and Trust Company (CBTC), the private respondent executed in favor of Associated Bank a promissory note whereby respondent undertook to pay the bank the sum of ₱2,500,000.00. The merger agreement provided that all references to CBTC shall be deemed for all intents and purposes references to the surviving bank, ABC, as if such references were direct references to ABC. When private respondent failed to pay the remaining balance, Associated Bank, the surviving corporation, sued for collection. Private respondent denied the pertinent allegations in the complaint and alleged that the complaint states no cause of action because the promissory note was executed in favor of CBTC, not the Associated Bank. Private respondent was declared as in default for failure to appear at the pre-trial conference and petitioner presented its evidence *ex-parte*. Thereafter, the trial court rendered judgment ordering private respondent to pay the bank his remaining balance plus interests and attorney's fees. On appeal, the Court of Appeals held that petitioner, which was not privy to the transaction, had no cause of action against private respondent and that the earlier merger between the two banks could not have vested petitioner with any interest arising from the promissory note executed in favor of CBTC after such merger. Hence, this recourse.

The Supreme Court held that the fact that the promissory note was executed after the effectivity of the merger does not militate against the petitioner where the agreement clearly provides that all contracts entered into in the name of CBTC shall be understood as pertaining to the surviving bank; that the merger provision being clear, plain and free of ambiguity, the same must be given its literal meaning; and that to let the

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private respondent enjoy the fruits of his loan without liability is unfair and unsconscionable, amounting to unjust enrichment.

SYLLABUS

1. **MERCANTILE LAW; CORPORATIONS; MERGER; EFFECT.** — Ordinarily, in the merger of two or more existing corporations, one of the combining corporations survives and continues the combined business, while the rest are dissolved and all their rights, properties and liabilities are acquired by the surviving corporation. Although there is a dissolution of the absorbed corporations, there is no winding up of their affairs or liquidation of their assets, because the surviving corporation automatically acquires all their rights, privileges and powers, as well as their liabilities.

2. **ID.; ID.; ID.; EFFECTIVITY THEREOF DETERMINED BY DATE OF SECS ISSUANCE OF CERTIFICATE OF MERGER.** — The merger, however, does not become effective upon the mere agreement of the constituent corporations. The procedure to be followed is prescribed under the Corporation Code. Section 79 of said Code requires the approval by the Securities and Exchange Commission (SEC) of the articles of merger which, in turn, must have been duly approved by a majority of the respective stockholders of the constituent corporations. The same provision further states that the merger shall be effective only upon the issuance by the SEC of a certificate of merger.

3. **ID.; ID.; ID.; AGREEMENT PROVIDING THAT ALL CONTRACTS, IRRESPECTIVE OF DATE OF EXECUTION, ENTERED INTO BY ABSORBED BANK, SHALL PERTAIN TO SURVIVING BANK EMPOWERS SERVING BANK TO COLLECT OBLIGATIONS DUE TO ABSORBED BANK; CASE AT BAR.** — The fact that the promissory note was executed after the effectivity date of the merger does not militate against petitioner. The agreement itself clearly provides that *all* contracts — irrespective of the date of execution — entered into in the name of CBTC shall be understood as pertaining to the surviving bank, herein petitioner. Since, in contrast to the earlier aforequoted provision, the latter clause no longer specifically refers only to contracts existing at the time of the merger, no distinction

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clause must have been deliberately included in the agreement in order to protect the interests of the combining banks; specifically, to avoid giving the merger agreement a farcical interpretation aimed at evading fulfillment of a due obligation. Thus, although the subject promissory note names CBTC as the payee, the reference to CBTC in the note shall be construed, under the very provisions of the merger agreement, as a reference to petitioner bank, as if such reference [was a] direct reference to the latter for all intents and purposes. No other construction can be given to the unequivocal stipulation. Being clear, plain and free of ambiguity, the provision must be given its literal meaning and applied without a convoluted interpretation. *Verba legis non est recedendum*. In light of the foregoing, the Court holds that petitioner has a valid cause of action against private respondent. Clearly, the failure of private respondent to honor his obligation under the promissory note constitutes a violation of petitioners right to collect the proceeds of the loan it extended to the former.

4. **CIVIL LAW; PRESCRIPTION OF ACTIONS; COLLECTION OF SUM OF MONEY BASED ON WRITTEN CONTRACT PRESCRIBES IN TEN (10) YEARS; CASE AT BAR.** — Petitioner's suit for collection of a sum of money was based on a written contract and prescribes after ten years from the time its right of action arose. Sarmiento's obligation under the promissory note became due and demandable on March 6, 1978. Petitioner's complaint was instituted on August 22, 1985, before the lapse of the ten-year prescriptive period. Definitely, petitioner still had every right to commence suit against the payor/obligor, the private respondent herein.

5. **REMEDIAL LAW; ACTIONS; LACHES; APPLIED TO AVOID INEQUITABLE SITUATION OR INJUSTICE; INAPPLICABLE WHERE CLAIM WAS FILED WITHIN PRESCRIPTIVE PERIOD.** — Neither is petitioner's action barred by laches. The principle of laches is a creation of equity, which is applied not to penalize neglect or failure to assert a right within a reasonable time, but rather to avoid recognizing a right when to do so would result in a clearly inequitable situation or in an injustice. To require private respondent to pay the remaining balance of his loan is certainly not inequitable or unjust. What would be manifestly unjust and inequitable is his contention that CBTC is the proper party to proceed against

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him despite the fact, which he himself asserts, that CBTC's corporate personality has been dissolved by virtue of its merger with petitioner. To hold that no payee/obligee exists and to let private respondent enjoy the fruits of his loan without liability is surely most unfair and unconscionable, amounting to unjust enrichment at the expense of petitioner. Besides, this Court has held that the doctrine of laches is inapplicable where the claim was filed within the prescriptive period set forth under the law.

6. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; STIPULATION *POUR AUTRUI*; CONSTRUED.** — A stipulation *pour autrui* is one in favor of a third person who may demand its fulfillment, provided he communicated his acceptance to the obligor before its revocation. An incidental benefit or interest, which another person gains, is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.

7. **ID.; ID.; ID.; REQUISITES.** — *Florentino vs. Encarnacion Sr.* enumerates the requisites for such contract: (1) the stipulation in favor of a third person must be a part of the contract, and not the contract itself; (2) the favorable stipulation should not be conditioned or compensated by any kind of obligation; and (3) neither of the contracting parties bears the legal representation or authorization of the third party. The "fairest test" in determining whether the third person's interest in a contract is a stipulation *pour autrui* or merely an incidental interest is to examine the intention of the parties as disclosed by their contract.

8. **REMEDIAL LAW; EVIDENCE; *RES IPSA LOQUITUR* BAR.** — Private respondent also claims that he received no consideration for the promissory note and, in support thereof, cites petitioner's failure to submit any proof of his loan application and of his actual receipt of the amount loaned. These arguments deserve no merit. *Res ipsa loquitur.* The instrument, bearing the signature of private respondent, speaks for itself. Respondent Sarmiento has not questioned the genuineness and due execution thereof. No further proof is necessary to show that he undertook to pay ₱2,500.000, plus interest, to petitioner bank on or before March 6, 1978. This he failed to do, as testified to by petitioner's accountant. The latter presented before the trial court private respondent's

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statement of account as of September 30, 1986, showing an outstanding balance of ₱4,689,413.63 after deducting ₱1,000,000.00 paid seven months earlier.

9. **ID.; ID.; PARTIAL PAYMENT, AN EXPRESS ACKNOWLEDGMENT OF OBLIGATION.** — Furthermore, such partial payment is equivalent to an express acknowledgment of his obligation. Private respondent can no longer backtrack and deny his liability to petitioner bank. A person cannot accept and reject the same instrument.

APPEARANCES OF COUNSEL

Villanueva, Pacis, Mondragon & Cana Law Offices for petitioner.

Enrico Eric R. Castro for private respondent.

D E C I S I O N

PANGANIBAN, *J.:*

In a merger, does the surviving corporation have a right to enforce a contract entered into by the absorbed company *subsequent* to the date of the merger agreement, but prior to the issuance of a certificate of merger by the Securities and Exchange Commission?

The Case

This is a petition for review under Rule 45 of the Rules of Court, seeking to set aside the Decision[1] of the Court of Appeals[2] in CA-GR CV No. 26465 promulgated on January 30, 1996, which answered the above question in the negative. The challenged Decision reversed and set aside the October 17, 1986 Decision[3] in Civil Case No. 85-32243, promulgated by the Regional Trial Court of Manila, Branch 48, which

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[1] *Rollo*, pp. 38-48.

[2] Eighth Division, composed of *JJ.* Eduardo G. Montenegro, *ponente;* Jaime M. Lantin, chairman; and Jose C. de la Rama, concurring.

[3] Penned by Judge Bonifacio A. Cacdac, Jr.

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disposed of the controversy in favor of herein petitioner as follows:[4]

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff Associated Bank. The defendant Lorenzo Sarmiento, Jr. is ordered to pay plaintiff:

1. The amount of ₱4,689,413.63 with interest thereon at 14% per annum until fully paid;

2. The amount of ₱200,000.00 as and for attorney's fees; and

3. The costs of suit."

On the other hand, the Court of Appeals resolved the case in this wise:[5]

"WHEREFORE, premises considered, the decision appealed from, dated October 17, 1986 is REVERSED and SET ASIDE and another judgment rendered DISMISSING plaintiff-appellee's complaint, docketed as Civil Case No. 85-32243. There is no pronouncement as to costs."

The Facts

The undisputed factual antecedents, as narrated by the trial court and adopted by public respondent, are as follows:[6]

"x x x [O]n or about September 16, 1975 Associated Banking Corporation and Citizens Bank and Trust Company merged to form just one banking corporation known as Associated Citizens Bank, the surviving bank. On or about March 10, 1981, the Associated Citizens Bank changed its corporate name to Associated Bank by virtue of the Amended Articles of Incorporation. On September 7, 1977, the defendant executed in favor of Associated Bank a promissory note whereby the former undertook to pay the latter the sum of ₱2,500,000.00 payable on or before March 6, 1978. As per said promissory note, the defendant agreed to pay interest at 14% per annum, 3% per annum in the form of liquidated damages, compounded interests, and

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[4] RTC Decision, p. 2; records, p. 129.

[5] Assailed Decision, p. 11; *rollo*, p. 48.

[6] RTC Decision, pp. 1-2; assailed Decision, pp. 2-3; Petition for Review, pp. 1-4.

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attorney's fees, in case of litigation equivalent to 10% of the amount due. The defendant, to date, still owes plaintiff bank the amount of ₱2,250,000.00 exclusive of interest and other charges. Despite repeated demands, the defendant failed to pay the amount due.

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x x x [T]he defendant denied all the pertinent allegations in the complaint and alleged as affirmative and[/]or special defenses that the complaint states no valid cause of action; that the plaintiff is not the proper party in interest because the promissory note was executed in favor of Citizens Bank and Trust Company; that the promissory note does not accurately reflect the true intention and agreement of the parties; that terms and conditions of the promissory note are onerous and must be construed against the creditor-payee bank; that several partial payments made in the promissory note are not properly applied; that the present action is premature; that as compulsory counterclaim the defendant prays for attorney's fees, moral damages and expenses of litigation.

On May 22, 1986, the defendant was declared as if in default for failure to appear at the Pre-Trial Conference despite due notice.

A Motion to Lift Order of Default and/or Reconsideration of Order dated May 22, 1986 was filed by defendant's counsel which was denied by the Court in [an] order dated September 16, 1986 and the plaintiff was allowed to present its evidence before the Court *ex-parte* on October 16, 1986.

At the hearing before the Court *ex-parte*, Esteban C. Ocampo testified that x x x he is an accountant of the Loans and Discount Department of the plaintiff bank; that as such, he supervises the accounting section of the bank, he counterchecks all the transactions that transpired during the day and is responsible for all the accounts and records and other things that may[ ]be assigned to the Loans and Discount Department; that he knows the [D]efendant Lorenzo Sarmiento, Jr. because he has an outstanding loan with them as per their records; that Lorenzo Sarmiento, Jr. executed a promissory note No. TL-2649-77 dated September 7, 1977 in the amount of ₱2,500,000.00 (Exhibit A); that Associated Banking Corporation and the Citizens Bank and Trust Company merged to form one banking corporation known as the Associated Citizens Bank and is now known as Associated Bank by virtue of its Amended Articles of Incorporation; that there were partial payments made but not full; that the defendant

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has not paid his obligation as evidenced by the latest statement of account (Exh. B); that as per statement of account, the outstanding obligation of the defendant is ₱5,689,413.63 less ₱1,000,000.00 or ₱4,689,413.63 (Exh. B, B-1); that a demand letter dated June 6, 1985 was sent by the bank thru its counsel (Exh. C) which was received by the defendant on November 12, 1985 (Exh. C, C-1, C-2, C-3); that the defendant paid only ₱1,000,000.00 which is reflected in the Exhibit C."

Based on the evidence presented by petitioner, the trial court ordered Respondent Sarmiento to pay the bank his remaining balance plus interests and attorney's fees. In his appeal, Sarmiento assigned to the trial court several errors, namely:[7]

"I The [trial court] erred in denying appellant's motion to dismiss appellee bank's complaint on the ground of lack of cause of action and for being barred by prescription and laches.

II The same lower court erred in admitting plaintiff-appellee bank's amended complaint while defendant-appellant's motion to dismiss appellee bank's original complaint and using/availing [itself of] the new additional allegations as bases in denial of said appellant's motion and in the interpretation and application of the agreement of merger and Section 80 of BP Blg. 68, Corporation Code of the Philippines.

III The [trial court] erred and gravely abuse[d] its discretion in rendering the two as if in default orders dated May 22, 1986 and September 16, 1986 and in not reconsidering the same upon technical grounds which in effect subvert the best primordial interest of substantial justice and equity.

IV The court *a quo* erred in issuing the orders dated May 22, 1986 and September 16, 1986 declaring appellant as if in default due to non-appearance of appellant's attending counsel who had resigned from the law firm and while the parties [were] negotiating for settlement of the case and after a one million peso payment had in fact been paid to appellee bank for appellant's account at the start of such negotiation on February 18, 1986 as act of earnest desire to settle the obligation in good faith by the interested parties.

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[7] CA, *rollo*, pp. 35-38. (Upper case in the original.)

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V The lower court erred in according credence to appellee bank's Exhibit B statement of account which had been merely requested by its counsel during the trial and bearing date of September 30, 1986.

VI The lower court erred in accepting and giving credence to appellee bank's 27-year-old witness Esteban C. Ocampo as of the date he testified on October 16, 1986, and therefore, he was merely an eighteen-year-old minor when appellant supposedly incurred the foisted obligation under the subject PN No. TL-2649-77 dated September 7, 1977, Exhibit A of appellee bank.

VII The [trial court] erred in adopting appellee bank's Exhibit B dated September 30, 1986 in its decision given in open court on October 17, 1986 which exacted eighteen percent (18%) per annum on the foisted principal amount of ₱2.5 million when the subject PN, Exhibit A, stipulated only fourteen percent (14%) per annum and which was actually prayed for in appellee bank's original and amended complaints.

VIII The appealed decision of the lower court erred in not considering at all appellant's affirmative defenses that (1) the subject PN No. TL-2649-77 for ₱2.5 million dated September 7, 1977, is merely an accommodation *pour autrui* bereft of any actual consideration to appellant himself and (2) the subject PN is a contract of adhesion, hence, [it] needs [to] be strictly construed against appellee bank — assuming for granted that it has the right to enforce and seek collection thereof.

IX The lower court should have at least allowed appellant the opportunity to present countervailing evidence considering the huge amounts claimed by appellee bank (principal sum of ₱2.5 million which including accrued interests, penalties and cost of litigation totaled ₱4,689,413.63) and appellant's affirmative defenses — pursuant to substantial justice and equity."

The appellate court, however, found no need to tackle all the assigned errors and limited itself to the question of "whether [herein petitioner had] established or proven a cause of action against [herein private respondent]." Accordingly, Respondent Court held that the Associated Bank had no cause of action against Lorenzo Sarmiento, Jr., since said bank was not privy to the promissory note executed by Sarmiento

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in favor of Citizens Bank and Trust Company (CBTC). The court ruled that the earlier merger between the two banks could not have vested Associated Bank with any interest arising from the promissory note executed in favor of CBTC *after* such merger.

Thus, as earlier stated, Respondent Court set aside the decision of the trial court and dismissed the complaint. Petitioner now comes to us for a reversal of this ruling.[8]

Issues

In its petition, petitioner cites the following "reasons":[9]

"I The Court of Appeals erred in reversing the decision of the trial court and in declaring that petitioner has no cause of action against respondent over the promissory note.

II The Court of Appeals also erred in declaring that, since the promissory note was executed in favor of Citizens Bank and Trust Company two years after the merger between Associated Banking Corporation and Citizens Bank and Trust Company, respondent is not liable to petitioner because there is no privity of contract between respondent and Associated Bank.

III The Court of Appeals erred when it ruled that petitioner, despite the merger between petitioner and Citizens Bank and Trust Company, is not a real party in interest insofar as the promissory note executed in favor of the merger."

In a nutshell, the main issue is whether Associated Bank, the surviving corporation, may enforce the promissory note made by private respondent in favor of CBTC, the absorbed company, after the merger agreement had been signed.

The Court's Ruling

The petition is impressed with merit.

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[8] This case was deemed submitted for decision upon receipt by this Court of private respondent's Memorandum on October 10, 1997.

[9] Petition, p. 5; *rollo*, p. 24. (Upper case in the original.)

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The Main Issue:
Associated Bank Assumed
All Rights of CBTC

Ordinarily, in the merger of two or more existing corporations, one of the combining corporations survives and continues the combined business, while the rest are dissolved and all their rights, properties and liabilities are acquired by the surviving corporation.[10] Although there is a dissolution of the absorbed corporations, there is no winding up of their affairs or liquidation of their assets, because the surviving corporation automatically acquires all their rights, privileges and powers, as well as their liabilities.[11]

The merger, however, does not become effective upon the mere agreement of the constituent corporations. The procedure to be followed is prescribed under the Corporation Code.[12] Section

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[10] Jose C. Campos, Jr. and Maria Clara Lopez-Campos, *The Corporation Code: Comments, Notes and Selected Cases,* Vol. 2, 1990 ed., p. 441; §80, Corporation Code.

[11] Campos and Campos, *Ibid.,* p. 447.

[12] Pertinent provisions of the Corporation Code read:

"SEC. 76. *Plan of merger or consolidation.* — Two or more corporations may merge into a single corporation which shall be one of the constituent corporations or may consolidate into a new single corporation which shall be the consolidated corporation.

The board of directors or trustees of each corporation, party to the merger of consolidation, shall approve a plan of merger or consolidation setting forth the following:

1. The names of the corporations proposing to merge or consolidate, hereinafter referred to as the constituent corporations;

2. The terms of the merger or consolidation and the mode of carrying the same into effect;

3. A statement of the changes, if any, in the articles of incorporation of the surviving corporation in case of merger; and, with respect to the consolidated corporation in case of consolidation, all the statements required to be set forth in the articles of incorporation for corporations organized under this Code; and

4. Such other provisions with respect to the proposed merger or consolidation as are deemed necessary or desirable.

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79 of said Code requires the approval by the Securities and Exchange Commission (SEC) of the articles of merger which, in turn, must have been duly approved by a majority of the

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SEC. 77. *Stockholders' or members' approval.* — Upon approval by a majority vote of each of the board of directors or trustees of the constituent corporations of the plan of merger or consolidation, the same shall be submitted for approval by the stockholders or members of each of such corporations at separate corporate meetings duly called for the purpose. Notice of such meetings shall be given to all stockholders or members of the respective corporations, at least two (2) weeks prior to the date of the meeting, either personally or by registered mail. Said notice shall state the purpose of the meeting and shall include a copy or a summary of the plan of merger or consolidation, as the case may be. The affirmative vote of stockholders representing at least two-thirds (2/3) of the outstanding capital stock of each corporation in case of stock corporations or at least two thirds (2/3) of the members in case of non-stock corporations, shall be necessary for the approval of such plan. Any dissenting stockholder in stock corporations may exercise his appraisal right in accordance with the Code: *Provided*, That if after the approval by the stockholders of such plan, the board of directors should decide to abandon the plan, the appraisal right shall be extinguished.

Any amendment to the plan of merger or consolidation may be made, provided such amendment is approved by majority vote of the respective boards of directors or trustees of all the constituent corporations and ratified by the affirmative vote of stockholders representing at least two-thirds (2/3) of the outstanding capital stock or two-thirds (2/3) of the members of each of the constituent corporations. Such plan, together with any amendment, shall be considered as the agreement of merger or consolidation.

SEC. 78. *Articles of merger or consolidation.* — After the approval by the stockholders or members as required by the preceding section, articles of merger or articles of consolidation shall be executed by each of the constituent corporations, to be signed by the president or vice-president and certified by the secretary or assistant secretary of each corporation setting forth:

1. The plan of the merger or the plan of consolidation;

2. As to stock corporations, the number of shares outstanding, or in the case of non-stock corporations, the number of members; and

3. As to each corporation, the number of shares or members voting for and against such plan, respectively.

SEC. 79. *Securities and Exchange Commission's approval and effectivity of merger or consolidation.* — The articles of merger or of consolidation, signed and certified as hereinabove required, shall be submitted to the Securities and Exchange Commission in quadruplicate for its approval: *Provided*, That in the case of merger or consolidation of banks or banking institutions, building and loan associations, trust companies, insurance companies, public utilities,

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respective stockholders of the constituent corporations. The same provision further states that the merger shall be effective

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educational institutions and other special corporations governed by special laws, the favorable recommendation of the appropriate government agency shall first be obtained. Where the commission is satisfied that the merger or consolidation of the corporations concerned is not inconsistent with the provisions of this Code and existing laws, it shall issue a certificate of merger or of consolidation, as the case may be, at which time the merger or consolidation shall be effective.

If, upon investigation, the Securities and Exchange Commission has reason to believe that the proposed merger or consolidation is contrary to or inconsistent with the provisions of this Code or existing laws, it shall set a hearing to give the corporations concerned the opportunity to be heard. Written notice of the date, time and place of said hearing shall be given to each constituent corporation at least two (2) weeks before said hearing. The Commission shall thereafter proceed as provided in this Code.

SEC. 80. *Effects of merger or consolidation.* — The merger or consolidation, as provided in the preceding sections, shall have the following effects:

1. The constituent corporations shall become a single corporation which, in case of merger, shall be the surviving corporation designated in the plan of merger; and, in case of consolidation, shall be the consolidated corporation designated in the plan of consolidation;

2. The separate existence of the constituent corporations shall cease, except that of the surviving or the consolidated corporation;

3. The surviving or the consolidated corporation shall possess all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Code;

4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be taken and deemed to be transferred to and vested in such surviving or consolidated corporation without further act or deed; and

5. The surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations; and any claim, action or proceeding pending by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation, as the case may be. The rights of creditors or any lien upon the property of any of such constituent corporation shall not be impaired by such merger or consolidation."

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only upon the issuance by the SEC of a certificate of merger. The effectivity date of the merger is crucial for determining when the merged or absorbed corporation ceases to exist; and when its rights, privileges, properties as well as liabilities pass on to the surviving corporation.

Consistent with the aforementioned Section 79, the September 16, 1975 Agreement of Merger,[13] which Associated Banking Corporation (ABC) and Citizens Bank and Trust Company (CBTC) entered into, provided that its effectivity "shall, for all intents and purposes, be the date when the necessary papers to carry out this [m]erger shall have been approved by the Securities and Exchange Commission."[14] As to the transfer of the properties of CBTC to ABC, the agreement provides:

"10. Upon effective date of the Merger, all rights, privileges, powers, immunities, franchises, assets and property of [CBTC], whether real, personal or mixed, and including [CBTC's] goodwill and tradename, and all debts due to [CBTC] on whatever act, and all other things in action belonging to [CBTC] as of the effective date of the [m]erger shall be vested in [ABC], the SURVIVING BANK, without need of further act or deed, unless by express requirements of law or of a government agency, any separate or specific deed of conveyance to legally effect the transfer or assignment of any kind of property [or] asset is required, in which case such document or deed shall be executed accordingly; and all property, rights, privileges, powers, immunities, franchises and all appointments, designations and nominations, and all other rights and interests of [CBTC] as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, trustee of estates of persons mentally ill and in every other fiduciary capacity, and all and every other interest of [CBTC] shall thereafter be effectually the property of [ABC] as they were of [CBTC], and title to any real estate, whether by deed or otherwise, vested in [CBTC] shall not revert or be in any way impaired by reason thereof; provided, however, that all rights of creditors and all liens upon any property of [CBTC] shall be preserved and

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[13] Records, pp. 33-40.

[14] No. 14, p. 8, Agreement of Merger; records, p. 40.

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> unimpaired and all debts, liabilities, obligations, duties and undertakings of [CBTC], whether contractual or otherwise, expressed or implied, actual or contingent, shall henceforth attach to [ABC] which shall be responsible therefor and may be enforced against [ABC] to the same extent as if the same debts, liabilities, obligations, duties and undertakings have been originally incurred or contracted by [ABC], subject, however, to all rights, privileges, defenses, set-offs and counterclaims which [CBTC] has or might have and which shall pertain to [ABC]."[15]

The records do not show when the SEC approved the merger. Private respondent's theory is that it took effect on the date of the execution of the agreement itself, which was September 16, 1975. Private respondent contends that, since he issued the promissory note to CBTC on September 7, 1977 — two years *after* the merger agreement had been executed — CBTC could not have conveyed or transferred to petitioner its interest in the said note, which was not yet in existence at the time of the merger. Therefore, petitioner, the surviving bank, has no right to enforce the promissory note on private respondent; such right properly pertains only to CBTC.

Assuming that the effectivity date of the merger was the date of its execution, we still cannot agree that petitioner no longer has any interest in the promissory note. A closer perusal of the merger agreement leads to a different conclusion. The provision quoted earlier has this other clause:

> "Upon the effective date of the [m]erger, *all references to [CBTC] in any deed, documents, or other papers of whatever kind or nature and wherever found shall be deemed for all intents and purposes, references to [ABC], the SURVIVING BANK, as if such references were direct references to [ABC].* x x x"[16] (Italics supplied)

Thus, the fact that the promissory note was executed after the effectivity date of the merger does not militate against petitioner. The agreement itself clearly provides that *all* contracts

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[15] Agreement of Merger, pp. 5-6; records, pp. 37-38.

[16] *Ibid.*, pp. 6-7; records, pp. 38-39.

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— irrespective of the date of execution — entered into in the name of CBTC shall be understood as pertaining to the surviving bank, herein petitioner. Since, in contrast to the earlier aforequoted provision, the latter clause no longer specifically refers only to contracts existing at the time of the merger, no distinction should be made. The clause must have been deliberately included in the agreement in order to protect the interests of the combining banks; specifically, to avoid giving the merger agreement a farcical interpretation aimed at evading fulfillment of a due obligation.

Thus, although the subject promissory note names CBTC as the payee, the reference to CBTC in the note shall be construed, under the very provisions of the merger agreement, as a reference to petitioner bank, "as if such reference [was a] direct reference to" the latter "for all intents and purposes."

No other construction can be given to the unequivocal stipulation. Being clear, plain and free of ambiguity, the provision must be given its literal meaning[17] and applied without a convoluted interpretation. *Verba legis non est recedendum.*[18]

In light of the foregoing, the Court holds that petitioner has a valid cause of action against private respondent. Clearly, the failure of private respondent to honor his obligation under the promissory note constitutes a violation of petitioner's right to collect the proceeds of the loan it extended to the former.

Secondary Issues:
Prescription, Laches, Contract
Pour Autrui, Lack of Consideration

No Prescription or Laches

Private respondent's claim that the action has prescribed, pursuant to Article 1149 of the Civil Code, is legally untenable. Petitioner's suit for collection of a sum of money was based on

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[17] Art. 1370, Civil Code.

[18] Ruben E. Agpalo, *Statutory Construction,* 1990 ed., p. 94.

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a written contract and prescribes after ten years from the time its right of action arose.[19] Sarmiento's obligation under the promissory note became due and demandable on March 6, 1978. Petitioner's complaint was instituted on August 22, 1985, before the lapse of the ten-year prescriptive period. Definitely, petitioner still had every right to commence suit against the payor/obligor, the private respondent herein.

Neither is petitioner's action barred by laches. The principle of laches is a creation of equity, which is applied not to penalize neglect or failure to assert a right within a reasonable time, but rather to avoid recognizing a right when to do so would result in a clearly inequitable situation[20] or in an injustice.[21] To require private respondent to pay the remaining balance of his loan is certainly not inequitable or unjust. What would be manifestly unjust and inequitable is his contention that CBTC is the proper party to proceed against him despite the fact, which he himself asserts, that CBTC's corporate personality has been dissolved by virtue of its merger with petitioner. To hold that no payee/obligee exists and to let private respondent enjoy the fruits of his loan without liability is surely most unfair and unconscionable, amounting to unjust enrichment at the expense of petitioner. Besides, this Court has held that the doctrine of laches is inapplicable where the claim was filed within the prescriptive period set forth under the law.[22]

No Contract
Pour Autrui

Private respondent, while not denying that he executed the promissory note in the amount of ₱2,500,000 in favor of CBTC, offers the alternative defense that said note was a contract *pour autrui.*

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[19] Art. 1144, Civil Code.

[20] *Catholic Bishop of Balanga vs. Court of Appeals,* 264 SCRA 181, 193, November 14, 1996.

[21] *Olizon vs. Court of Appeals,* 236 SCRA 148, 157, September 1, 1994.

[22] *Chavez vs. Bonto-Perez,* 242 SCRA 73, 80-81, March 1, 1995.

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A stipulation *pour autrui* is one in favor of a third person who may demand its fulfillment, provided he communicated his acceptance to the obligor before its revocation. An incidental benefit or interest, which another person gains, is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.[23]

Florentino vs. Encarnacion, Sr.[24] enumerates the requisites for such contract: (1) the stipulation in favor of a third person must be a part of the contract, and not the contract itself; (2) the favorable stipulation should not be conditioned or compensated by any kind of obligation; and (3) neither of the contracting parties bears the legal representation or authorization of the third party. The "fairest test" in determining whether the third person's interest in a contract is a stipulation *pour autrui* or merely an incidental interest is to examine the intention of the parties as disclosed by their contract.[25]

We carefully and thoroughly perused the promissory note, but found no stipulation at all that would even resemble a provision in consideration of a third person. The instrument itself does not disclose the purpose of the loan contract. It merely lays down the terms of payment and the penalties incurred for failure to pay upon maturity. It is patently devoid of any indication that a benefit or interest was thereby created in favor of a person other than the contracting parties. In fact, in no part of the instrument is there any mention of a third party at all. Except for his barefaced statement, no evidence was proffered by private respondent to support his argument. Accordingly, his contention cannot be sustained. At any rate, if indeed the loan actually benefited a third person who undertook to repay the bank, private respondent could have availed himself of the legal remedy of a third-party complaint.[26] That he made no effort to implead such third person proves the hollowness of his arguments.

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[23] Art. 1311, par. 2, Civil Code.

[24] 79 SCRA 192, 201, September 30, 1977, per Guerrero, *J.*

[25] *Ibid.*, p. 202.

[26] §11, Rule 6, Rules of Court.

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Consideration

Private respondent also claims that he received no consideration for the promissory note and, in support thereof, cites petitioner's failure to submit any proof of his loan application and of his actual receipt of the amount loaned. These arguments deserve no merit. *Res ipsa loquitur.* The instrument, bearing the signature of private respondent, speaks for itself. Respondent Sarmiento has not questioned the genuineness and due execution thereof. No further proof is necessary to show that he undertook to pay ₱2,500,000, plus interest, to petitioner bank on or before March 6, 1978. This he failed to do, as testified to by petitioner's accountant. The latter presented before the trial court private respondent's statement of account[27] as of September 30, 1986, showing an outstanding balance of ₱4,689,413.63 after deducting ₱1,000,000.00 paid seven months earlier. Furthermore, such partial payment is equivalent to an express acknowledgment of his obligation. Private respondent can no longer backtrack and deny his liability to petitioner bank. "A person cannot accept and reject the same instrument."[28]

WHEREFORE, the petition is *GRANTED.* The assailed Decision is *SET ASIDE* and the Decision of RTC-Manila, Branch 48, in Civil Case No. 26465 is hereby *REINSTATED.*

SO ORDERED.

Davide, Jr., (Chairman), Bellosillo, Vitug, and *Quisumbing, JJ.,* concur.

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[27] Exh. "B"; records, p. 130.

[28] *Ducasse v. American Yellow Taxi Operators, Inc.,* 224 App. Div. 516, 231 NY Supp. 51 (1928), citing *Chipman v. Montgomery,* 63 NY 211; in Campos and Campos, *supra.*