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SECOND DIVISION

[G.R. No. 180974. June 13, 2012]

METROPOLITAN BANK AND TRUST COMPANY, *petitioner, vs.* **CENTRO DEVELOPMENT CORPORATION, CHONGKING KEHYENG, MANUEL CO KEHYENG and QUIRINO KEHYENG,** *respondents.*

SYLLABUS

1. CIVIL LAW; LACHES; DEFINED. — Laches is defined as the failure or neglect for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.

2. ID.; ID.; NOT APPLICABLE TO QUESTIONED TRANSACTION FROM ONLY FOUR YEARS AGO. — In the case at bar, the RTC in Civil Case No. 00-942 held that laches attached when respondents allowed eight (8) years to pass before questioning the mortgage, which was constituted in 1990. x x x A perusal of the TCTs of the subject properties would reveal that only the values of the mortgage securing the loans totalling ₱144 million were annotated, based on the Mortgage Trust Indentures (MTIs) executed on 21 March 1990, 31 March 1993 and 28 July 1994. As for the last annotation, it only stated that petitioner was the successor-trustee to all obligations due to the creditors. Respondents, in their Complaint, [however,] did not question these mortgages constituted by the MTIs executed on 21 March 1990, 31 March 1993 and 28 July 1994, respectively. What they questioned was the additional loans granted to San Carlos **after** the execution of the 27 September 1994 MTI and the foreclosure of the mortgage resulting from the nonpayment of San Carlos' obligations. Thus, only four years had lapsed [therefrom.] x x x It cannot therefore be said that laches had attached and that respondents were already barred from assailing the MTI in 1998.

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3. COMMERCIAL LAW; CORPORATION CODE; SECTION 40 ON THE SALE OR OTHER DISPOSITION OF ASSETS; NOT APPLICABLE AS THERE WAS NO NEW MORTGAGE UNDER THE ASSAILED DIRECTORS' RESOLUTION IN CASE AT BAR. — The second paragraph of the directors' Resolution No. 005, s. 1994, which empowered Go Eng Uy "to sign the Real Estate Mortgage and all documents/ instruments with the said bank, for and in behalf of the Company which are necessary and pertinent thereto," must be construed to mean that such power was limited by the conditions of the existing mortgage, and not that a new mortgage was thereby constituted. x x x Thus, Section 40 of the Corporation Code finds no application in the present case, as there was no new mortgage to speak of under the assailed directors' Resolution.

4. CIVIL LAW; MORTGAGE; EXTRAJUDICIAL FORECLOSURE OF MORTGAGE; VALIDITY NOT APPRECIATED IN CASE AT BAR FOR FAILURE TO SUBSTANTIATE INTEREST THEREIN. — [W]hile we uphold the validity of the stockholders' Resolution appointing Metrobank as successor-trustee, we [do not] uphold the validity of the extrajudicial foreclosure of the mortgage [for lack of evidence.] x x x Section 1.11 of the MTI defines a Mortgage Participation Certificate (MPC) as a certificate issued by the trustee to a creditor pursuant to the MTI, representing an aliquot interest in the mortgage created by the MTI. The face amount of the MPC is the value in money of its holder's participation or interest in the mortgaged property. x x x We required petitioner to submit, among others, all amendments to the MTI and all the MPCs issued. Petitioner, x x x instead of submitting MPCs evidencing its interest in the MTI, it submitted to this Court documents referring to different instruments altogether.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioner.
Estelito P. Mendoza for respondents.

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D E C I S I O N

SERENO, *J.*:

The present Petition for Review[1] assails the Court of Appeals (CA) Decision[2] promulgated on 30 August 2007 and Resolution[3] dated 26 November 2007 in CA-G.R. CV No. 80778. The antecedent facts follow.

On 20 March 1990, in a special meeting of the board of directors of respondent Centro Development Corporation (Centro), its president Go Eng Uy was authorized to mortgage its properties and assets to secure the medium-term loan of 84 million of Lucky Two Corporation and Lucky Two Repacking. The properties and assets consisted of a parcel of land with a building and improvements located at Salcedo St., Legaspi Village, Makati City, and covered by Transfer Certificate of Title (TCT) Nos. 139880 and 139881. This authorization was subsequently approved on the same day by the stockholders.[4] Maria Jacinta V. Go, the corporate secretary, issued a Secretary's Certificate stating:

> I, MARIA JACINTA V. GO, Filipino citizen, of legal age, married and with office address at Second Floor, CENTRO building, 180 Salcedo Street, Legaspi Village, Makati, Metro Manila, after being first duly sworn, depose and say:
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> x x x x x x x x x
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> 2) That at a special meeting of the Board of Directors of the aforesaid corporation duly called and held on March 20, 1990 and wherein a quorum was present, the following resolution was unanimously approved pursuant to the Minutes of the Special Meeting

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[1] *Rollo*, pp. 47-82.

[2] Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Mario L. Guariña III and Romeo F. Barza concurring; *rollo*, pp. at 84-99.

[3] *Rollo*, pp. 101-102.

[4] *Id.* at 141.

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of the Stockholders of Centro Development Corporation dated March 16, 1990;

RESOLUTION:

"*RESOLVED*, as it is hereby resolved, that the President, GO ENG UY, of Centro Development Corporation, be as he is hereby authorized to mortgage and use as collateral the real estate property of the Corporation identified as a parcel of land with building and improvements located at Salcedo St., Legaspi Village, Makati, Metro Manila covered by Transfer Certificate of Title Nos. 139880 and 139881 to secure the medium-term loan of LUCKY TWO CORPORATION, a corporation duly organized and existing under the Philippine laws, and LUCKY TWO REPACKING, a single proprietorship with principal office at Concepcion, Tarlac, with the Bank of the Philippine Islands for EIGHTY FOUR (84) MILLION PESOS, Philippine Currency (₱84,000,000.00);

"RESOLVED FURTHER, that said GO ENG UY, be as he is hereby authorized to sign all papers and documents needed and necessary to carry into effect the aforesaid purpose or undertaking for the benefit and to the credit of Lucky Two Corporation and Lucky Two Repacking."

Thus, on 21 March 1990, respondent Centro, represented by Go Eng Uy, executed a Mortgage Trust Indenture (MTI) with the Bank of the Philippines Islands (BPI).[5] Under the MTI, respondent Centro, together with its affiliates Lucky Two Corporation and Lucky Two Repacking or Go Eng Uy, expressed its desire to obtain from time to time loans and other credit accommodations from certain creditors for corporate and other business purposes.[6] To secure these obligations from different creditors, respondent Centro constituted a continuing mortgage on all or substantially all of its properties and assets enumerated above unto and in favor of BPI, the trustee. Should respondent Centro or any of its affiliates fail to pay their obligations when due, the trustee shall cause the foreclosure of the mortgaged property.

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[5] *Id.* at 110-130.

[6] First "WHEREAS" clause of the MTI.

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Thereafter, the mortgage was duly recorded with the Registry of Deeds of Makati City.[7]

On 31 March 1993, Centro and BPI amended the MTI to allow an additional loan of ₱36 million and to include San Carlos Milling Company, Inc. (San Carlos) as a borrower in addition to Centro, Lucky Two Corp. and Lucky Two Repacking.[8] Then, on 28 July 1994, Centro and BPI again amended the MTI for another loan of ₱24 million, bringing the total obligation to ₱144 million.[9]

Meanwhile, respondent Centro, represented by Go Eng Uy, approached petitioner Metropolitan Bank and Trust Company (Metrobank) sometime in 1994 and proposed that the latter assume the role of successor-trustee of the existing MTI. After petitioner Metrobank agreed to the proposal, the board of directors of respondent Centro allegedly resolved on 12 August 1994 to constitute petitioner as successor-trustee of BPI.[10]

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[7] *Rollo*, pp. 1109-1114.

[8] *Id.* at 131-135.

[9] *Id.* at 136-138. The pertinent provision of the Supplemental Indenture provides:

SECTION 1 – GRANT OF ADDITIONAL MORTGAGE

> 1.1 The Company does hereby establish and constitute in favor of the Trustee, acting in behalf and for the benefit of all the Creditors secured by the Indenture, as amended by this Supplemental Indenture, a continuing first real estate mortgage and security interest in and to the land, building and other improvements covered by Transfer Certificates of Title Nos. 139880 and 139881 of the Registry of Deeds for the Province of Rizal, to secure the amount of PESOS: TWENTY FOUR MILLION (₱24,000,000), Philippine Currency, in addition to the existing mortgage obligation of ₱120,000,000 or an aggregate total mortgage obligation of ₱144,000,000.

[10] *Rollo*, pp. 139-140.

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Thereafter, on 27 September 1994,[11] petitioner and respondent Centro executed the assailed MTI,[12] amending the previous agreements by appointing the former as the successor-trustee of BPI. It is worth noting that this MTI did not amend the amount of the total obligations covered by the previous MTIs.

It was only sometime in 1998 that respondents herein, Chongking Kehyeng, Manuel Co Kehyeng and Quirino Kehyeng, allegedly discovered that the properties of respondent Centro had been mortgaged, and that the MTI that had been executed appointing petitioner as trustee. Notably, respondent Chongking Kehyeng had been a member of the board of directors of Centro since 1989, while the two other respondents, Manuel Co Kehyeng and Quirino Keyheng, had been stockholders since 1987. Respondents Kehyeng were minority stockholders who owned thirty percent (30%) of the outstanding capital stock of respondent Centro.

On different dates, 4 September 1998, 9 September 1998 and 2 October 1998, the Kehyengs allegedly questioned the mortgage of the properties through letters addressed to Go Eng Uy and Jacinta Go.[13] They alleged that they were not aware of any board or stockholders' meeting held on 12 August 1994, when petitioner was appointed as successor-trustee of BPI in the MTI. Respondents demanded a copy of the minutes of the meeting held on that date, but received no response.

Thereafter, on 14 October 1998 and 19 November 1998, the Kehyengs allegedly wrote to petitioner, informing it that they were not aware of the 12 August 1994 board of directors meeting. Petitioner did not respond to the letters.[14]

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[11] The MTI itself is undated, but the parties and the lower courts refer to the document according to the date when it was notarized, that is, on 27 September 1994.

[12] *Rollo*, pp. 142-168.

[13] Appellants' Brief, *rollo*, pp. 228-229.

[14] *Id.* at 229.

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Meanwhile, during the period April 1998 to December 1998, San Carlos obtained loans in the total principal amount of ₱812,793,513.23 from petitioner Metrobank.[15]

San Carlos failed to pay these outstanding obligations despite demand. Thus, petitioner, as trustee of the MTI, enforced the conditions thereof and initiated foreclosure proceedings, denominated as Foreclosure No. S-04-11, on the mortgaged properties. On 22 June 2000, petitioner Metrobank filed a Petition for Extrajudicial Foreclosure of Mortgage with the executive judge of the Regional Trial Court (RTC) of Makati City. Petitioner alleged that the total amount of the Promissory Notes that San Carlos executed in favor of the former amounted to ₱812,793,513.23. As of 30 April 2000, the total outstanding obligation, inclusive of interests and penalties, was ₱1,178,961,181.45.[16]

We note that there are no documents in the records evidencing the amendment of the MTI to accommodate these additional obligations. As of 27 September 1994, the date of the last amendment as borne out by the records, the total outstanding obligation reflected in the MTI amounted to only ₱144 million. The latest MTI merely referred to the amendments made on 31 March 1993 and 28 July 1994.

Before the scheduled foreclosure date, on 3 August 2000, respondents herein filed a Complaint for the annulment of the 27 September 1994 MTI with a prayer for a temporary restraining order (TRO) and preliminary injunction at Branch 138 of the RTC of Makati City. Docketed as Civil Case No. 00-942, the Complaint was against petitioner, Go Eng Uy, Alexander V. Go, Ramon V. Go, Maria Jacinta Go and Enriqueto Magpantay.

The bone of contention in Civil Case No. 00-942 was that since the mortgaged properties constituted all or substantially all of the corporate assets, the amendment of the MTI failed to meet the requirements of Section 40 of the Corporation Code

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[15] *Rollo*, pp. 1042-1056.

[16] *Id.* at 1115-1119.

on notice and voting requirements. Under this provision, in order for a corporation to mortgage all or substantially all of its properties and assets, it should be authorized by the vote of its stockholders representing at least 2/3 of the outstanding capital stock in a meeting held for that purpose. Furthermore, there must be a written notice of the proposed action and of the time and place of the meeting. Thus, respondents alleged, the representation of Go Eng Uy that he was authorized by the board of directors and/or stockholders of Centro was false.

On 15 December 2003, after trial on the merits, the RTC dismissed the Complaint.[17] It held that the evidence presented by respondents was insufficient to support their claim that there were no meetings held authorizing the mortgage of Centro's properties. It noted that the stocks of respondents Kehyeng constituted only 30% of the outstanding capital stock, while the Go family owned the majority 70%, which represented more than the 2/3 vote required by Section 40 of the Corporation Code. The trial court ruled that respondents Kehyeng, particularly Chongking Kehyeng, who sat in the board of directors, should have done periodic inquiries and verifications of documents pertaining to corporate properties. The RTC also held that laches had attached, considering that eight (8) years had lapsed before respondents questioned the mortgage executed in 1990.

The trial court also noted the absence of evidence showing the steps respondents had taken to seek redress for the alleged misrepresentations of Go Eng Uy and Maria Jacinta Go. On the other hand, the court found that no neglect could be imputed to petitioner for relying on the Secretary's Certificate, which apparently established Go Eng Uy's authority to mortgage Centro's properties and assets.

Respondents subsequently filed an appeal with the CA docketed as CA-G.R. CV No. 80778. On 26 February 2004, they filed an Urgent Motion for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction seeking to restrain petitioner, the clerk of court, the *ex-officio* sheriff of the RTC,

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[17] *Id.* at 169-174.

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and their agents from foreclosing and selling at public auction on 4 and 22 March 2004 the mortgaged properties subject of Civil Case No. 00-942. On 3 March 2004, a TRO was issued by the CA effective for a period of sixty (60) days, unless earlier set aside by a resolution.[18]

On 19 May 2004, the CA issued a Resolution[19] in CA-G.R. CV No. 80778 denying the application for the issuance of a writ of preliminary injunction.

Not giving up, on 27 May 2004, respondents Centro and San Carlos filed a Complaint docketed as Civil Case No. 04-612 at Branch 56 of the RTC of Makati City. They prayed for the nullification of the foreclosure proceedings and prayed for the issuance of a TRO/injunction. Centro and San Carlos alleged that the total obligation due was only ₱657,000,000 and not ₱812,793,513.23; that the sale of the San Carlos properties found in Negros Occidental fully satisfied their outstanding obligations; and that the action to foreclose the Makati properties was illegal and void.[20]

While Civil Case No. 04-612 was pending, the clerk of court and the *ex-officio* sheriff of the RTC of Makati City held an auction sale of the disputed property, during which petitioner was adjudged as the highest bidder for ₱344,700,000. A Certificate of Sale was accordingly issued on 3 June 2004, which states:[21]

> On June 2, 2004, a public auction sale was conducted and METROPOLITAN BANK & TRUST CO. submitted a bid for the sale to him/it of the mortgaged property in the amount of ₱344,700,000 xxx, which was the highest bid hence declared as the winning bidder and being the creditor he/it did not delivery (sic) or pay cash/monies to the Clerk of Court and *Ex-Officio* Sheriff the bid price of ₱344,700,000 xxx and the selling price was credited as partial/full satisfaction of indebtedness secured by the mortgage.

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[18] *Id.* at. 595.

[19] *Id.* at 595-599.

[20] *Id.* at 188-189.

[21] *Id.* at 1130.

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In consideration thereof, the Certificate of Sale was issued in favor of METROPOLITAN BANK & TRUST CO. of Metrobank Plaza, Sen. Gil Puyat Ave., Makati.

This sale is subject to redemption in the manner provided by law.

Because of this development, the Complaint in Civil Case No. 04-612 was amended, and Centro and San Carlos prayed for the issuance of a writ of injunction to prevent the registration of the Certificate of Sale and the subsequent transfer to petitioner of the title to the properties. However, Branch 56 of the RTC of Makati City subsequently denied the application.

Respondent Centro thereafter filed before the CA a Petition for *Certiorari* docketed as CA-G.R. SP No. 84447. The Petition assailed the Order of the RTC in Civil Case No. 04-612.

During this time, CA-G.R. CV No. 80778, which involved the legality of the MTI, was still pending.

On 30 August 2007, the CA promulgated the assailed Decision in CA-G.R. CV No. 80778. The appellate court first determined whether the requirements of Section 40 of the Corporation Code on the sale of all or substantially all of the corporation's property were complied with. Based on the 18 August 1994 Secretary's Certificate, the CA found that only a quorum was present during the stockholders' meeting on 12 August 1994. The appellate court thus held that the 2/3 vote required by Section 40 was not met. It ruled that the minority stockholders were deprived of their right to dissent from or to approve the proposed mortgage, considering that they had not been notified in writing of the meeting in which the corporate action was to be discussed.

The CA also considered the testimony of Perla Saballe, an officer of petitioner Metrobank, who opined that the term "quorum" meant only the majority of the stockholders.

Furthermore, the appellate court held that petitioner was duty-bound to ensure that respondent Centro submitted proof that the proposed corporate action had been duly approved by a vote of the stockholders representing 2/3 of the outstanding capital stock.

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Regarding the issue of whether laches had already attached, the CA ruled that the MTI could not be ratified, considering that the requirements of the Corporation Code were not complied with.

Thus, the dispositive portion of the CA Decision in CA-G.R. CV No. 80778 reads:[22]

> **WHEREFORE,** the *Appeal* is **PARTIALLY GRANTED**. The *Judgment* dated 15 December 2003 of the Regional Trial Court of Makati City, Branch 138, is **REVERSED** and **SET ASIDE** insofar as the dismissal of the *Complaint for Annulment of Trust Indenture Agreement* is concerned. The Trust Indenture executed on 27 September 1994 is hereby declared **NULL** and **VOID**. Accordingly, the foreclosure of the mortgage and the sale at public auction involving the subject properties are declared of no force and effect. The certificates of title issued in the name of Metropolitan Bank and Trust Company are **CANCELLED**.
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> Conformably with the foregoing discussion, the appellants' prayer for damages is hereby **DENIED**.
>
> **SO ORDERED.**

On 14 September 2007, a different Division of the CA rendered a Decision[23] denying the Petition in CA-G.R. SP No. 84447. That Petition had questioned the Decision of Branch 56 of the RTC of Makati City denying a Petition to enjoin the foreclosure of the mortgaged properties on the ground that respondents Centro and San Carlos had failed to show any clear right of the RTC to issue an injunctive writ. The CA further ruled that the foreclosure of the property became a matter of right on the part of petitioner because of respondents' failure to pay the loans due.

On 26 November 2007, the CA in CA-G.R. CV No. 80778 rendered the assailed Resolution denying petitioner's Motion for Reconsideration.

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[22] *Rollo*, pp. 98-99.

[23] *Id.* at 182-197; penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Andres B. Reyes, Jr. and Jose C. Mendoza concurring.

Hence, this Petition.

Petitioner contends that the stockholders' Resolution No. 005, s. 1994 did not constitute a new mortgage in favor of petitioner. Instead, the stockholders merely amended the existing MTI by appointing petitioner as the new trustee for the MTI, which was already existing and held by BPI. Thus, there was no need to secure a 2/3 vote from the stockholders. Petitioner posits that the authority to mortgage the properties was granted in 1990, upon the execution of the first MTI between respondent Centro and BPI.

Further, petitioner alleges that respondents do not deny or question the previous MTI and its subsequent amendments. It further alleges that the constituted mortgage under the MTI was duly annotated with the Registry of Deeds of Makati City.

Petitioner also maintains that the CA erred in interpreting the phrase "at which meeting a quorum was present" contained in the Secretary's Certificate dated 18 August 1994. The bank points out that the phrase indicates that *at least* a quorum was present, rather than that *only* a quorum was present. Thus, the Secretary's Certificate did not in any way limit the number of those actually present.

Additionally, petitioner argues that Perla Saballe, whose testimony was considered by the CA, was not a competent witness to interpret the directors' Resolution. Allegedly, she was never present during the meetings of Centro regarding the present issue, and she was not in a position to answer the questions propounded to her in relation to the requirements of Section 40 of the Corporation Code.

Moreover, petitioner cites the CA Decision in CA-G.R. SP No. 84447, which upheld the validity of the foreclosure of the mortgage. It also challenges the CA ruling that the former failed to exercise due diligence in transacting with respondent Centro. Finally, petitioner insists that laches attached when respondents failed to question the MTI and the stockholders' Resolution at the earliest possible time.

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On the other hand, respondents contend that, based on the Pre-Trial Brief and the Amended Pre-Trial Order, petitioner admitted that the subject properties were mortgaged under the MTI of 27 September 1994, and not under that of 21 March 1990.

Second, on the issue of whether the 2/3 voting requirement was met, respondents claim that petitioner cannot impugn the testimony of its own officer and witness, Perla Saballe, on the interpretation of the term "quorum" as referred to in the Secretary's Certificate dated 18 August 1994.

Respondents also allege that petitioner failed to controvert the testimony of Chongking Kehyeng, a member and vice-chairperson of the board of directors, that he was unaware of any stockholders' meeting ever being held, and that he and the other Kehyengs were not informed of that meeting. Respondents further insist that petitioner was negligent when it merely relied on the Secretary's Certificate, instead of exercising due diligence to ensure that all legal requirements had been complied with under the MTI. On the issue of laches, respondents contend that it was not raised before the trial court, and is thus improperly invoked in the present Petition. Nevertheless, they allegedly undertook a number of measures to question the transactions between petitioner and CENTRO. Moreover, they argue that the MTI, being null and void, cannot be given effect through laches.

The Court's Ruling

In summary, this Court is tasked to resolve the following issues:

1. Whether the requirements of Section 40 of the Corporation Code was complied with in the execution of the MTI;
2. Whether petitioner was negligent or failed to exercise due diligence;
3. Whether laches has already attached, such that respondents can no longer question the MTI.

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We shall first discuss the issue of laches.

Laches is defined as the failure or neglect for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.[24]

In the case at bar, the RTC in Civil Case No. 00-942 held that laches attached when respondents allowed eight (8) years to pass before questioning the mortgage, which was constituted in 1990. Thus, the trial court said:

> As it appears now, the mortgage on the land and building of Centro was first constituted in 1990 in favor of [the] Bank of the Philippine Islands. Individual plaintiffs stated that discovery of the mortgage was "sometime in 1998", (par. 6, Affidavit of Chongking Kehyeng). He was in the Board of Directors of Centro and he holds office at the fourth floor of the building on the mortgaged property. There is evidence that the holding of meetings of the Board of Directors was irregular and purely "reportorial."
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> Considering that as shown by planitiffs' evidence, conduct of business in Centro was informal, vigilance over its property was required from all individual plaintiffs, particularly plaintiff Chongking Kehyeng who sits in the Board of Directors. Periodic inquiries and verification of documents pertaining to corporate properties should have been done and the existence of the mortgage was verifiable. A simple inquiry about the status of the title, information on the title number and actual verification with the Register of Deeds — a task which can be accomplished in an hour or two — will provide information about the existence of the mortgage. None of the individual plaintiffs did this.
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> The inaction of the plaintiffs for which no explanation was submitted resulted in the acquisition of rights by the defendant Bank adverse to them. Such neglect, taken in conjunction with the lapse of time of about eight (8) years operates as a bar.[25]

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[24] *Municipality of Carcar v. Court of First Instance of Cebu*, 204 Phil.719 (1982).

[25] *Rollo*, p. 174.

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A perusal of the TCTs[26] of the subject properties would reveal that only the values of the mortgage securing the loans totalling ₱144 million were annotated, based on the MTIs executed on 21 March 1990, 31 March 1993 and 28 July 1994. As for the last annotation, it only stated that petitioner was the successor-trustee to all obligations due to the creditors. Respondents, in their Complaint, did not question these mortgages constituted by the MTIs executed on 21 March 1990, 31 March 1993 and 28 July 1994, respectively. What they questioned was the additional loans granted to San Carlos **after** the execution of the 27 September 1994 MTI and the foreclosure of the mortgage resulting from the nonpayment of San Carlos' obligations. Thus, contrary to the finding of the trial court, only four years had lapsed from the execution of the 27 September 1994 MTI when respondents questioned the mortgage allegedly constituted to cover these loans.

Furthermore, as mentioned earlier, the TCTs were not accordingly annotated to cover these additional loans. Also, the mortgage of the property securing all the loans were not disclosed in Centro's financial statements for the years 1991 to 1998.[27] Thus, absent any proof that the individual respondents were notified of the stockholders' meeting on 12 August 1994 or that they were present during the meeting, these respondents could not have been informed of the alleged additional loans and the corresponding mortgage constituted over the properties.

It cannot therefore be said that laches had attached and that respondents were already barred from assailing the MTI in 1998. We now proceed to discuss the validity of the challenged MTI.

The 18 August 1994 Secretary's Certificate issued by Maria Jacinta V. Go reads as follows:[28]

I, JACINTA V. GO, Corporate Secretary of CENTRO DEVELOPMENT CORPORATION, a corporation duly organized

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[26] *Id.* at 1109-1114.

[27] *Id.* at 924-969.

[28] *Id.* at 139-140.

and existing under our laws with principal office located at the 2nd Floor Centro Buidling, 180 Salcedo St., Legaspi Village, Makati, Metro Manila, do hereby certify that during a special meeting of the board of Directors of the Corporation held at its main office in Makati, Metro Manila on August 12, 1994, at 3:00 p.m., at which meeting a quorum was present, the following resolution was approved and adopted:

"Resolution No. 005, s. 1994

APPOINTING METROBANK TRUST BANKING GROUP AS THE NEW TRUSTEE FOR THE EXISTING MTI OF CDC REAL ESTATE PROPERTY

RESOLVED, AS IT IS HEREBY RESOLVED, that in connection with the existing Mortgage Trust Indenture of real estate property covered by Transfer Certificate of Title Nos. 139880 and 139881 situated at 180 Salcedo St., Legaspi Village, Makati, Metro Manila, with an area of 1,608 square meters more or less, the Corporation be [sic], as it is hereby authorized, to appoint Metrobank Trust Banking Group ("Metrobank") as the new trustee for the existing mortgage trust indenture presently held by the Bank of the Philippines Islands;

RESOLVED FURTHER, that the President, Mr. Go Eng Uy be, as he is hereby, authorized and empowered to sign the Real Estate Mortgage and all documents/instruments with the said bank, for and in behalf of the Company which are necessary and pertinent thereto;

RESOLVED FINALLY, that any resolution or resolutions heretofore adopted by this Board, inconsistent with the provisions hereof be, as they hereby are amended and/or revoked accordingly."

That at the meeting of the Stockholders of said corporation held on August 12, 1994 at 4:00 p.m., at which meeting a quorum was present and acting throughout, the following resolution was unanimously approved:

STOCKHOLDERS' RESOLUTION

RESOLVED, that the stockholders approve, ratify and confirm, as they have hereby approved, ratified and confirmed, the board resolution dated August 12, 1994 appointing

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> Metrobank Trust Banking Group as the new trustee, presently held by the Bank of the Philippine Islands, for the existing MTI of real estate property covered by Transfer Certificate of Title Nos. 139880 and 139881 situated at 180 Salcedo St., Legaspi Village, Makati, Metro Manila with an area of 1,608 square meters, and that the President, Mr. Go Eng Uy[,] to sign the Real Estate Mortgage and all documents/ instruments with the said bank, for and in behalf of the Company which are necessary and pertinent thereto; xxx.

Reading carefully the Secretary's Certificate, it is clear that the main purpose of the directors' Resolution was to appoint petitioner as the new trustee of the previously executed and amended MTI. Going through the original and the revised MTI, we find no substantial amendments to the provisions of the contract. We agree with petitioner that the act of appointing a new trustee of the MTI was a regular business transaction. The appointment necessitated only a decision of at least a majority of the directors present at the meeting in which there was a quorum, pursuant to Section 25 of the Corporation Code.

The second paragraph of the directors' Resolution No. 005, s. 1994, which empowered Go Eng Uy "to sign the Real Estate Mortgage and all documents/instruments with the said bank, for and in behalf of the Company which are necessary and pertinent thereto," must be construed to mean that such power was limited by the conditions of the existing mortgage, and not that a new mortgage was thereby constituted.

Moreover, it is worthy to note that respondents do not assail the previous MTI executed with BPI. They do not question the validity of the mortgage constituted over all or substantially all of respondent Centro's assets pursuant to the 21 March 1994 MTI in the amount of ₱84 million. Nor do they question the additional loans increasing the value of the mortgage to ₱144 million; or the use of Centro's properties as collateral for the loans of San Carlos, Lucky Two Corporation, and Lucky Two Repacking.

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Thus, Section 40[29] of the Corporation Code finds no application in the present case, as there was no new mortgage to speak of under the assailed directors' Resolution.

Nevertheless, while we uphold the validity of the stockholders' Resolution appointing Metrobank as successor-trustee, this is not to say that we uphold the validity of the extrajudicial foreclosure of the mortgage.

After a careful review of the records of this case, we find that petitioner failed to establish its right to be entitled to the proceeds of the MTI.

There is no evidence that petitioner, as creditor or as trustee, had a cause of action to move for the extrajudicial foreclosure of the subject properties mortgaged under the MTI.

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[29] Sec. 40. *Sale or other disposition of assets.* — Subject to the provisions of existing laws on illegal combinations and monopolies, a corporation may, by a majority vote of its board of directors or trustees, sell, lease, exchange, mortgage, pledge or otherwise dispose of all or substantially all of its property and assets, including its goodwill, upon such terms and conditions and for such consideration, which may be money, stocks, bonds or other instruments for the payment of money or other property or consideration, as its board of directors or trustees may deem expedient, when authorized by the vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, or in case of non-stock corporation, by the vote of at least to two-thirds (2/3) of the members, in a stockholders' or members' meeting duly called for the purpose. Written notice of the proposed action and of the time and place of the meeting shall be addressed to each stockholder or member at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage prepaid, or served personally: Provided, That any dissenting stockholder may exercise his appraisal right under the conditions provided in this Code.

A sale or other disposition shall be deemed to cover substantially all the corporate property and assets if thereby the corporation would be rendered incapable of continuing the business or accomplishing the purpose for which it was incorporated.

After such authorization or approval by the stockholders or members, the board of directors or trustees may, nevertheless, in its discretion, abandon such sale, lease, exchange, mortgage, pledge or other disposition of property and assets, subject to the rights of third parties under any contract relating thereto, without further action or approval by the stockholders or members.

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The conditions of the MTI are very clear. Section 3.3 of the MTI provides: [30]

> It is the intent of the COMPANY that the BORROWERS will obtain additional loans or credit accommodations from certain other banking or financial institutions in accordance with arrangements made by the BORROWERS with the CREDITORS.
>
> **ALL OBLIGATIONS covered by this INDENTURE shall be evidenced by a Mortgage Participation Certificate in the form of Schedule II hereof, the issuance of which by the TRUSTEE to the participating CREDITOR/S shall be in accordance with Section 7 of this INDENTURE**, provided the aggregate LOAN VALUES of the COLLATERAL, based on the latest appraisal thereof, are not exceeded. (Emphasis supplied.)

Section 1.11 of the MTI defines a Mortgage Participation Certificate (MPC) as a certificate issued by the trustee to a creditor pursuant to the MTI, representing an aliquot interest in the mortgage created by the MTI. The face amount of the MPC is the value in money of its holder's participation or interest in the mortgaged property.

To address the gaps in the facts as presented by the parties and by the lower courts, we issued a Resolution[31] on 5 September 2011. We required petitioner to submit, among others, all amendments to the MTI and all the MPCs issued. Petitioner

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Nothing in this section is intended to restrict the power of any corporation, without the authorization by the stockholders or members, to sell, lease, exchange, mortgage, pledge or otherwise dispose of any of its property and assets if the same is necessary in the usual and regular course of business of said corporation or if the proceeds of the sale or other disposition of such property and assets be appropriated for the conduct of its remaining business.

In non-stock corporations where there are no members with voting rights, the vote of at least a majority of the trustees in office will be sufficient authorization for the corporation to enter into any transaction authorized by this section.

[30] *Rollo*, p. 147.

[31] *Id*. at 916.

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failed to comply with this directive. For one reason or another, instead of submitting MPCs evidencing its interest in the MTI, it submitted to this Court documents referring to different instruments altogether.[32] Petitioner should have been more careful in complying with this Court's Orders.

More glaring is the fact that the assailed MTI is not even referred to in the Promissory Notes executed by petitioner in favor of San Carlos, evidencing the loans extended by the latter to the former. This omission violated Section 1.13 of the MTI, which requires that a promissory note must be covered by an outstanding MPC and secured by the lien of the MTI. The Promissory Notes reveal the following:[33]

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[32] *Rollo*, pp. 1139-1160. Petitioner submitted these four MPCs:

1. MPC No. 1, series of 1998 for ₱6.4 million was issued pursuant to a MTI dated 23 March 1998 referring to a loan extended by Solidbank Corporation to San Carlos in the amount of ₱105.5 million.
2. MPC No. 2, series of 1998 for ₱6.4 million was issued pursuant to a MTI dated 23 March 1998 referring to a loan extended by United Coconut Planters Bank to San Carlos in the amount of ₱105.5 million.
3. MPC No. 3, series of 1998 for ₱2.2 million was issued pursuant to a MTI dated 23 March 1998 referring to a loan extended by China Banking Corporation to San Carlos in the amount of ₱105.5 million.
4. MPC No. 4, series of 1998 for ₱642 million was issued pursuant to a MTI dated 23 March 1998 referring to a loan extended by petitioner to San Carlos in the amount of ₱642 million.

Petitioner also submitted Deeds of Assignment whereby creditors of San Carlos assigned to the former on 8 and 22 June 2001, respectively, the latter's rights to the loans. However, these deeds referred to an MTI dated 17 July 1991.

[33] *Rollo*, pp. 1042-1056.

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Promissory Note No.	Date	Amount	Collateral
111333.69288.00.999	20 April 1998	₱328,000,000	"Others" – Not specified
111333.70316.00.999	19 October 1998	₱ 97,859,472.03	Unsecured
111333.70359.00.999	30 October 1998	₱ 82,849,981.44	"Others" – Not specified
111333.70464.000.99	17 November 1998	₱ 98,114,959.13	"Others" – Not specified
111333.70502.000.99	25 November 1998	₱ 40,150,059.85	"Others" – Not specified
111333.70618.000.99	9 December 1998	₱ 39,673,569.58	"Others" – Not specified
111333.70642.000.99	17 December 1998	₱126,145,471.20	"Others" – Not specified

Petitioner thus miserably failed to prove that it was entitled to the benefits of the MTI.

Even if we assume that petitioner was indeed a creditor protected by the MTI, we find that, as trustee and as creditor, it failed to comply with the MTI's conditions for granting additional loans to San Carlos — additions that brought the total loan amount to ₱1,178,961,181.45 — when it did not amend the MTI to accommodate the additional loans in excess of ₱144 million.

In its application for an extrajudicial foreclosure of Centro's properties, petitioner states:[34]

> We have the honor to request your good Office to conduct/undertake extrajudicial foreclosure sale proceedings under Act No. 3135, as amended, and other applicable laws, on the properties covered by the Mortgage Trust Indenture, dated March 21, 1990, as amended on March 31, 1993 and further amended on July 28, 1994 executed by the **Mortgagor**, *CENTRO DEVELOPMENT CORPORATION*, in favor of the **Former Trustee**, BANK OF THE PHILIPPINE ISLANDS and Trust Indenture, dated September 27, 1994, also executed by the **Mortgagor**, *CENTRO DEVELOPMENT*

[34] *Id.* at 1036.

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CORPORATION, in favor of the **Mortgagee/Trustee**, *METROPOLITAN BANK AND TRUST COMPANY-TRUST BANKING GROUP*, to secure among others, several obligations of SAN CARLOS MILLING CO., INC. under various Promissory Notes, with a total principal amount of **EIGHT HUNDRED TWELVE MILLION SEVEN HUNDRED NINETY-THREE THOUSAND FIVE HUNDRED THIRTEEN PESOS AND TWENTY-THREE CENTAVOS (₱812,793,513.23)**, for breach of the terms and conditions of the said Trust Indenture. (Emphasis in the original.)

However, Section 9.4 of the 27 September 1994 MTI clearly states:[35]

The written consent of the COMPANY, the TRUSTEE and all the CREDITORS **shall be required for any amendment of the terms and conditions of this INDENTURE. Additional loans which will be covered by the INDENTURE shall require the written consent of the MAJORITY CREDITORS and shall be within the loan value stipulated in Section 1.8**[36] **of this INDENTURE**. (Emphasis supplied.)

The fact that the foreclosure of the mortgaged property was undertaken pursuant to the 27 September 1994 MTI is an indication that the parties had failed to amend it accordingly.

Because the 27 September 1994 MTI was not amended to secure the loan granted to the debtors, petitioner could not have applied for an extrajudicial foreclosure on the basis of all the Promissory Notes granted to San Carlos. Instead, petitioner could have only applied for the foreclosure of the property corresponding to ₱144 million, which was the maximum amount

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[35] *Id.* at 161.

[36] "LOAN VALUE" shall mean, with respect to the real properties, 70% of the aggregate sound value thereof used as collateral under this Indenture.

Note that under Section 1.15 of the MTI, "sound value" is meanwhile defined as the cost of reproduction of the collateral, less depreciation (or in the case of land, the fair market value thereof), as determined by an independent appraiser mutually acceptable to the debtor, the trustee and the majority creditors, in accordance with generally accepted principles of appraisal of the Republic of the Philippines; *rollo*, p. 143.

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embodied in the 27 September 1994 MTI. In other words, as an accommodation debtor, Centro's properties may not be liable for San Carlos' debts beyond this maximum amount, pursuant to the MTI executed with petitioner. In *Caltex Philippines v. Intermediate Appellate Court*,[37] we likewise held that the value of the mortgage should be limited only to the amount provided by the contract between the parties.

Section 4 of Rule 68 of the Rules of Court provides:

Disposition of proceeds of sale — The amount realized from the foreclosure sale of the mortgaged property shall, after deducting the costs of the sale, be paid to the person foreclosing the mortgage, and when there shall be any balance or residue, after paying off the mortgage debt due, the same shall be paid to junior encumbrancers in the order of their priority, to be ascertained by the court, or if there be no such encumbrancers or there be a balance or residue after payment to them, then to the mortgagor or his duly authorized agent, or to the person entitled to it.

While it is true that some of the documents required by this Court to be submitted by the parties were not presented at the trial stage, when the legal issues raised begs the reception of that evidence — especially considering that a case, like the present one has been pending for more than a decade – then the Court may require the parties to submit such evidence in the interest of justice. This is clearly provided under Rule 45, Section 7 of the Rules of Court.[38]

On a final note, Republic Act No. 8971, or the General Banking Law of 2000, recognizes the vital role of banks in providing an

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[37] 257 Phil. 753 (1989).

[38] SECTION 7. *Pleadings and documents that may be required; sanctions*. — For purposes of determining whether the petition should be dismissed or denied pursuant to Section 5 of this Rule, or where the petition is given due course under Section 8 hereof, the Supreme Court may require or allow the filing of such pleadings, briefs, memoranda or documents as it may deem necessary within such periods and under such conditions as it may consider appropriate, and impose the corresponding sanctions in case of non-filing or unauthorized filing of such pleadings and documents or non-compliance with the conditions therefor.

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environment conducive to the sustained development of the national economy and the fiduciary nature of banking; thus, the law requires banks to have high standards of integrity and performance. The fiduciary nature of banking requires banks to assume a degree of diligence higher than that of a good father of a family.[39] In the case at bar, petitioner itself was negligent in the conduct of its business when it extended unsecured loans to the debtors. Worse, it was in serious breach of its duty as the trustee of the MTI. It was not able to protect the interests of the parties and was even instrumental in violating the terms of the MTI, to the detriment of the parties thereto. Thus, petitioner has only itself to blame for being left with insufficient recourse against petitioner under the assailed MTI.

WHEREFORE, in view of the foregoing, the Petition is hereby **PARTLY GRANTED**. The Mortgage Trust Indenture is declared **VALID.** Nonetheless, for reasons stated herein, the Decision of the Court of Appeals in CA-G.R. CV No. 80778, declaring the foreclosure proceedings in Foreclosure No. S-04-011 over TCT Nos. 139880 and 139881 of no force and effect, is **AFFIRMED**. Likewise, the cancellation of the Certificates of Title in the name of petitioner Metropolitan Bank and Trust Company and the denial of the payment of damages are also **AFFIRMED**.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), Brion, Perez, and *Reyes, JJ.,* concur.

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[39] *Philippine Banking Corp. v. Court of Appeals*, 464 Phil. 614 (2004).