

FIRST DIVISION

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

**ASSOCIATED BANK, PETITIONER, VS. COURT OF APPEALS AND
LORENZO SARMIENTO JR., RESPONDENTS.**

DECISION

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 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 P4,689,413.63 with interest thereon at 14% per annum until fully paid;
2. The amount of P200,000.00 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 P2,500,000.00 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 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 P2,250,000.00 exclusive of interest and other charges. Despite repeated demands the defendant failed to pay the amount due.

xxx xxx xxx

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 P2,500,000.00 (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 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 P5,689,413.63 less

P1,000,000.00 or P4,689,413.63 (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 P1,000,000.00 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.

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 P2.5 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 P2.5 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 P2.5 million which including accrued interests, penalties and cost of litigation totaled P4,689,413.63) 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 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.

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 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. 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 unimpaired and all debts, liabilities, obligations, duties and undertakings of [CBTC], whether contractual or otherwise, expressed or implied, actual