

**ALPHA INSURANCE AND SURETY CO., INC., PLAINTIFF-APPELLANT,
VS. ESPERANZA C. REYES, ARTURO R. REYES, AND DEVELOPMENT
BANK OF THE PHILIPPINES, DEFENDANTS-APPELLEES.**

G.R. No. L-26274. July 31, 1981

Ponente: BARREDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/39e2513792ed/>

BARREDO, J.:

An appeal from the decision of the Court of First Instance of Manila in Civil Case No. 49980, Alpha Insurance and Surety Co., Inc. vs. Esperanza C. Reyes, et al., certified by the Court of Appeals to this Court for the reason that the sole assignment of error of appellant raises purely a legal question.

The following facts are undisputed:

The spouses Esperanza C. Reyes and Arturo R. Reyes executed on November 15, 1958 in favor of Alpha Insurance and Surety Co., Inc. a second mortgage over their two parcels of land (with a total area of 540 square meters) and the buildings thereon, located at Makati, Rizal, in consideration of Alpha Insurance's undertaking to act as surety of the said spouses in certain loans (not to exceed P10,000.00) to be obtained from banks or financial institutions. The two lots were previously mortgaged to the Development Bank of the Philippines as security for a loan of P17,000.00.

In 1958, Esperanza C. Reyes borrowed P5,000.00 from the Prudential Bank and Trust Company. In 1959, she borrowed also P5,000.00 from the Philippine Banking Corporation. Alpha Insurance was her surety and co-maker in the two promissory notes covering the said loans. She and her husband executed indemnity agreements in favor of Alpha Insurance in addition to the second mortgage.

Due to the default of Esperanza C. Reyes, Alpha Insurance, as solidary debtor, was constrained to pay the two loans total balance of which as of November 21, 1961 was P7,575.00, plus 12% interest per annum.

As the Reyes spouses did not make any reimbursement to Alpha Insurance, the latter filed on March 27, 1962 in the Court of First Instance of Manila the foreclosure action above-mentioned against the spouses and the DBP.

The DBP in its answer alleged that it had a first mortgage on the two lots which was superior to Alpha Insurance's mortgage. It prayed that, in case of foreclosure, the proceeds of the sale be first applied to its credit. The Reyes spouses did not file an answer. They were declared in default.

Judge Jose L. Moya in his decision dated February 1, 1963, simply ordered the Reyes spouses to pay Alpha Insurance the sum of P7,575.00 with 12% interest a year from November 22, 1961.

Because the judge had ignored the prayer in Alpha Insurance's complaint for the foreclosure of its second mortgage, it filed a motion for reconsideration, praying that the foreclosure of the second mortgage be ordered and that the Reyes spouses be required to pay attorney's fees.

Judge Moya in his order of February 19, 1963 awarded P757.50 as attorney's fees, but he held that the second

mortgage could not be recognized as an encumbrance because the DBP did not consent to its execution.

Judge Moya relied on the ruling in *Associated Insurance & Surety Co., Inc. vs. Register of Deeds of Pampanga*, 105 Phil. 123, which construed the following provisions of Commonwealth Act No. 459, the law creating the Agricultural and Industrial Bank:

"SEC. 26. Securities on loans granted by the Agricultural and Industrial Bank shall not be subject to attachment nor can they be included in the property of insolvent persons or institutions, unless all debts and obligations of the debtor to the Agricultural and Industrial Bank have been previously paid, including accrued interest, collection expenses, and other charges." [1]

This Court held therein that this section embraces "levy on execution or any other encumbrance, unless the same is created with the consent" of the bank and that "(A) different interpretation would defeat the very purpose of the law which is to maintain unhampered the value of the property until the encumbrance shall have been released."

Alpha Insurance filed a motion for reconsideration wherein it alleged that the second mortgage was approved by DBP Governor Roberto S. Benedicto (Exh. A-2) and that the second mortgage was registered because of that approval and because the DBP delivered the owner's duplicate of the title to Alpha Insurance in order to effect the registration.

Nevertheless, Judge Moya denied the motion. Alpha Insurance appealed to this Court.

Controversies of this nature should not even be litigated, much less reach this Supreme Court, adding to its already almost unmanageable docket. The issue between the parties is so insubstantial that a little more effort on the part of respective counsels of the parties and the trial court to get together as to what should be done would have cleared up matters in a manner We are certain would have been satisfactory to all concerned. To think that a litigation like this should last since March 27, 1962 or more than almost two decades ago when plaintiff-appellee filed its action of foreclosure is a black spot in the administration of justice in this country. This situation is intolerable and the members of the Bar and the trial judges ought to change their attitudes and direct their efforts towards more important and substantial legal matters, thereby serving public interest to the utmost within their expected capabilities.

Deciding the legal question before Us, even if the DBP were just an ordinary first mortgagee without any preferential liens under Republic Act No. 85 or Commonwealth Act 459, the statutes mentioned in the *Associated Insurance* case relied upon by the trial court, it would be unquestionable that nothing may be done to favor plaintiff-appellant, a mere second mortgagee, until after the obligations of the debtors-appellees with the first mortgagee have been fully satisfied and settled. In law, strictly speaking, what was mortgaged by the Reyeses to Alpha was no more than their equity of redemption.

Thus, what We perceive to be most appropriate to do at this late stage is to see to it that the obligations in question are paid soonest. However, to insist now, after so many wasted years, on following in this case the ordinary foreclosure procedure provided by law would only cause further unnecessary delay in the termination of the insubstantial controversy among the parties herein.

In *De la Riva vs. Reynoso*, 61 Phil. 734, Antonio de la Riva, the second mortgagee, filed an action against the mortgagor Marceliano Reynoso to foreclose the second realty mortgage. *La Urbana Mutual Building and Loan Association*, the first mortgagee, was joined as a co-defendant.

This Court held that *La Urbana* was properly joined as a co-defendant and affirmed the lower court's judgment ordering Reynoso to pay within ninety days the amounts due to *La Urbana* and *De la Riva*, and, in case of failure to do so, ordering the sale at public auction of the mortgaged property and the application of the proceeds of the

sale to the two mortgage debts.

With this precedent, the Court is of the considered opinion and so holds that to avoid further delay in writing finis to the instant case which started way back in 1962, without any more ado, all that has to be done here is to have the property herein involved ordered by the trial court sold at public auction immediately, the proceeds thereof to be used to pay the outstanding obligation, if still there be any, of the defendants-appellees Esperanza Reyes and Arturo Reyes to the Development Bank of the Philippines; if there be any excess thereafter, the same be used to pay their obligation to the plaintiff-appellant, and should there still be any further excess, the same should be given to the said defendants-appellees.

ACCORDINGLY, judgment is hereby rendered modifying the decision of the trial court to conform with the procedure herein outlined. No costs.

Aquino, Concepcion, Jr., Abad Santos, and De Castro, JJ., concur.

[1] See, in this connection, Section 19 of Republic Act No. 85.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.