

ANTONIO DE LA RIVA, PLAINTIFF AND APPELLEE, VS. MARGELIANO REYNOSO, DEFENDANT AND APPELLANT. LA URBANA, MUTUAL BURLDING AND LOAN ASSOCIATION, DEFENDANT AND APPELLEE.*G.R. No. L-41701. August 09, 1935*

Ponente: IMPERIAL, J.

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The plaintiff brought an action against the defendant Marceliano Reynoso to foreclose the second real estate mortgage which the latter executed in his favor. In the complaint La Urbana was joined as defendant because it has a first mortgage on the same real property executed by the said Reynoso.

After trial, judgment was rendered ordering Reynoso to pay La Urbana the sum of P11,224.20 as principal, with interest thereon at nine per cent per annum from June 1, 1933, until fully paid and to pay De la Riva the sum of P6,378 as principal, with interest thereon at eight per cent per annum from May 9, 1933, until fully paid. The judgment also required Reynoso to pay or deposit the aforesaid sums in court within ninety (90) days, failing which the mortgaged real property shall be sold at public auction and the proceeds thereof applied to the amount of the judgment. Reynoso appealed.

It is not disputed that Reynoso contracted the obligations for which judgment was rendered against him and executed the mortgages sought to be foreclosed. But in his appeal he contends that his demurrer, based on the misjoinder or La Urbana as defendant because the plaintiff was without right to join it as defendant being a first mortgagee, should have been sustained; that he neither applied for the loan from the La Urbana nor executed the mortgage deed with full knowledge of the facts and of the deed which he executed, and that his cross complaint against the said party should have been granted. Reynoso died during the trial of the case; and at the instance of his judicial administrator, the appeal against the plaintiff was dismissed, leaving only the pending appeal against La Urbana.

The administrator-appellant argues that La Urbana cannot be joined in plaintiff's complaint because it was the first mortgagee. It is true that section 255 of the Code of Civil Procedure only requires the inclusion in the complaint for foreclosure of a real estate mortgage of the second mortgagee or of any other person claiming a right or interest subordinate to the mortgage sought to be foreclosed; but it will be noted that there is no provision in said Code prohibiting the joinder of a first mortgagee in a complaint filed by the second mortgagee for the same purpose. And the prohibition is even less justified where, as in the present case, the joinder of the first mortgagee was with the latter's consent and conformity. We see no good reason to hold that in a suit to foreclose a real estate mortgage, the second mortgagee cannot join the first mortgagee as defendant, with the latter's consent and when the principal obligation or the terms of the mortgage had become due and payable. (19 R. C. L., par. 320, p. 521; par. 332, pp. 529, 530.)

In relation to the alleged ignorance of Reynoso of his transactions with La Urbana, the evidence militates against his contention because, the application for the loan was signed by his attorney, Rustia, who was undoubtedly

authorized to do so, and, he personally signed the mortgage deed with full knowledge of its contents and all the conditions thereof.

The cross complaint against La Urbana is likewise without merit. The first mortgage being valid, the contract could not be legally one of purchase and sale on installments as claimed by Reynoso.

The appealed judgment is affirmed, with the costs of this instance to the appellant. So ordered.

Malcolm, Villa-Real, Butte, and Goddard, JJ., concur.

Judgment affirmed.

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