An individual purchased a residence for $200,000. The individual paid $25,000 of the purchase price from her own funds and the remaining $175,000 with the proceeds of a loan she obtained from a bank. She signed a promissory note payable to the bank in the principal amount of $175,000 and gave the bank a mortgage on the residence. The bank promptly and properly recorded this mortgage.

Several years later, the individual borrowed $35,000 from a credit union to finance the construction of an addition to the residence. She signed a promissory note payable to the credit union in the principal amount of $35,000 and gave the credit union a mortgage on the residence. Because of a clerical oversight, the credit union failed to record this mortgage.

Subsequently, the individual defaulted on the bank note. This note contained an acceleration clause, pursuant to which the full unpaid balance of the note became immediately due. The fair market value of the residence was slightly less than the amount owed on the note, so the bank offered to accept the deed to the residence in exchange for cancellation of the note. The individual agreed, and also agreed to waive her equitable right to redeem the property. Shortly after title to the residence was transferred to the bank, the bank learned of the credit union's mortgage.

The bank has brought a foreclosure action to which the credit union was made a party. The credit union contests the bank's right to bring this action.

If the court rules in favor of the bank, what is the most likely reason?

A. The jurisdiction recognizes a statutory right of redemption.

B. The jurisdiction recognizes the principle of clogging the equity of redemption.

C. The jurisdiction does not recognize the doctrine of caveat emptor.

D. The jurisdiction does not recognize the doctrine of merger with regard to mortgages.

Explanation:

The **doctrine of merger** applies to mortgages when the **same person acquires** both:

a **mortgagee's** (lender's) **interest** in real property *and*
the **mortgagor's** (borrower's) **interest** in that same property.
When this occurs, the mortgage merges into the fee estate and is thereby extinguished.

Here, the bank held a mortgage on the residence when it acquired the individual's ownership interest in that residence. If the doctrine of merger applied, the mortgage would have been extinguished upon that transfer and the bank would have no right to bring this foreclosure action. So if the court rules in the bank's favor, it is likely because the jurisdiction does not recognize the doctrine of merger with regard to mortgages.

(Choice A) The statutory right of redemption allows a mortgagor to regain ownership of real property after it has been sold in foreclosure. This right does not apply here because the credit union is contending that the bank no longer has a mortgage on the property needed to bring this foreclosure action.

(Choice B) The principle of clogging the equity of redemption allows courts to reject a mortgagee's attempt to deny the mortgagor the ability to waive the right to redemption after the mortgage is executed—eg, by including a waiver clause in the mortgage. Here, the individual *was* able to waive her right to redeem the residence after the mortgage was executed, and that waiver is not at issue. Therefore, this principle does not apply.

(Choice C) The common-law doctrine of caveat emptor (meaning "let the buyer beware") provides that a seller has no duty to disclose property defects to the buyer unless otherwise agreed. Since this doctrine is related to warranties, it has no effect on the bank's right to foreclose on a mortgage.

Educational objective:

Under the doctrine of merger, when the same person acquires a mortgagee's interest *and* the mortgagor's interest in the same property, the mortgage merges into the fee estate and is extinguished.

Doctrine of merger as to mortgages