

**SOLEDAD L. LACSON, ET AL., PLAINTIFFS AND APPELLEES, VS.
ABELARDO G. DIAZ, DEFENDANT AND APPELLANT.***G. R. No. L-19346. May 31, 1965*

Ponente: BARRERA, J.

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The facts of this case are not disputed: In connection with a final decision rendered by the Court of First Instance of Negros Occidental in Civil Case No. 5790 (Soledad L. Lacson, et al. vs. Abelardo G. Diaz), sentencing therein defendant to pay the plaintiffs the sum of P97,532.93 with legal interest thereon from July 1, 1960 until fully paid, plus a sum equivalent to 25% of the total amount as attorney's fees, the court issued a writ of execution on August 1, 1961. On August 7, 1961, the Provincial Sheriff of Negros Occidental sent to the manager of Talisay-Silay Milling Company, wherein defendant Diaz was employed, a notice to garnish one-third of his monthly salary and of any other personal properties belonging to said defendant, to cover the total amount of P132,718.30.

Diaz filed with the court a motion to quash the writ of execution and to lift the notice of garnishment (of his salary), on the ground that the same are not enforceable against his present family. It was claimed that since the judgment arose out of a contract entered into by him during his first marriage, said judgment cannot be enforced against his salaries which form part of the conjugal properties of the second marriage. Plaintiffs opposed his motion, for the reason that re-marriage is not a cause for extinction of obligations. As his aforesaid motion, after hearing, was denied by the court for lack of merit, the defendant instituted the present appeal.

Appellant does not dispute the existence of the money judgment against him in the amount above-stated, which decision was rendered in 1947 and affirmed by the appellate court in 1950. It appears, however, that appellant, who became a widower in 1951, remarried in 1960. The writ of execution and notice of garnishment in this case were issued and implemented in 1961. It is now contended that, as the conjugal partnership resulting of the second marriage is different from that of the first marriage, during which existence the obligation arose, such obligation, as far as the second conjugal partnership is concerned, is personal to the husband and cannot be charged against the properties of the second union. And, since his salaries form part of the conjugal assets, the same cannot be garnished to satisfy his personal obligations. In support of this proposition, appellant cites Article 163 of the new Civil Code and the ruling of this Court that the right of the husband to one-half of the assets of the conjugal partnership does not vest until the dissolution of the marriage. [[1]]

Article 163 of the new Civil Code relied upon by appellant provides:

"Art. 163. The payment of debts contracted by the husband or the wife before the marriage shall not be charged to the conjugal partnership.

"Neither shall the fines and pecuniary indemnities imposed upon them be charged to the partnership.

"However, the payment of debts contracted by the husband or the wife before the marriage, and that of fines and indemnities imposed upon them, may be enforced against the partnership assets after the responsibilities enumerated in article 161 have been covered, if the spouse who is bound should have no exclusive property or

if it should be insufficient; but at the time of the liquidation of the partnership such spouse shall be charged for what has been paid for the purposes above-mentioned."

As a general rule, therefore, debts contracted by the husband or wife before the marriage,[2] as well as fines and pecuniary indemnities imposed thereon, are not chargeable to the conjugal partnership. However, such obligations may be enforced against the conjugal assets if the responsibilities enumerated in Article 161[3] of the new Civil Code have already been covered, and that the obligor has no exclusive property or the same is insufficient. Considering that the enforceability of the personal obligation of the husband or wife, against the conjugal assets, forms the exception to the general rule, it is incumbent upon the one who invokes this provision or the creditor to show that the requisites for its applicability are obtaining.

In the instant case, although it is not controverted that there is due and owing the plaintiffs-appellees a certain sum of money from the appellant debtor-a personal obligation-yet, it has not been established that the latter does not have properties of his own or that the same are not adequate to satisfy appellees claim. Furthermore, there is no showing that the responsibilities named in Article 161 of the new Civil Code have already been covered in order that the personal obligation of the husband may be made chargeable against the properties of the second marriage.

In view of the foregoing considerations, this case is hereby remanded to the court of origin for further proceedings, in accordance with the aforestated observation. No costs.

So ordered.

Bengzon, C.J., Bautista Angelo, Reyes, J. B. L., Paredes, Makalintal, Bengzon, J. P. and Zaldivar, J.J., concur.

[1] *Ansaldo, et al. vs. Sheriff of Manila*, 64 Phil. 115.

[2] In the absence of any rule to the contrary, the foregoing provision shall apply to obligations contracted during the first marriage by the surviving spouse who has re-married.

[3] "ART. 161. The conjugal partnership shall be liable for: (1) All debts and obligations contracted by the husband for the benefit of the conjugal partnership, and those contracted by the wife, also for the same purpose, * * *; (2) Arrears or income due, during the marriage, from obligations which constitute a charge upon property of either spouse or of the partnership; (3) Minor repairs or for mere preservation made during the marriage upon the separate property of either the husband or the wife; major repairs shall not be charged to the partnership; (4) Major or minor repairs upon the conjugal partnership property; (5) The maintenance of the family and the education of the children of both husband and wife, and of legitimate children of one of the spouses; (6) Expenses to permit the spouses to complete a professional, vocational or other course."

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