

**CONCEPCION ABELLA DE DIAZ, PLAINTIFF AND APPELLEE, VS.
ERLANGER & GALINGER, INC., ET AL., DEFENDANTS.
ERLANGER & GALINGER, INC., APPELLANT.**

G.R. No. 38052. December 23, 1933

Ponente: HULL, J.

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HULL, J.:

Erlanger & Galinger, Inc., secured a judgment in civil case No. 3722 of the Court of First Instance of Albay against Domingo Diaz, the husband of the plaintiff herein, and on an execution issued to enforce the above-mentioned judgment, the sheriff levied on certain properties.

Plaintiff thereupon brought this action in the Court of First Instance of Camarines Sur alleging that the properties which had been levied upon were her own paraphernal property.

The court issued a temporary injunction and after hearing, declared that the properties levied upon were paraphernal, that the obligation which was the basis of the judgment was a personal obligation of the husband, and that under article 1386 of the Civil Code, the fruits of the paraphernal property of the wife were exempt from execution in this case. The court held that all the property was unlawfully levied upon and made the preliminary injunction permanent.

Defendant appeals, and the first question for consideration is whether buildings erected on paraphernal property of the wife with the private funds of the wife are exempt from execution for the debts contracted by the husband. Article 1404 of the Civil Code provides:

"Art. 1404. Any useful expenditures made for the benefit of the separate property or either one of the spouses by means of advances made by the partnership, or by the industry of the husband or wife, are partnership property.

"Buildings constructed during the marriage on land belonging to one of the spouses shall also belong to the partnership, but the value of the land shall be paid to the spouse owning the same."

We shall not disturb the findings of fact of the trial court that a commercial building, the camarin, and the granary, the buildings in dispute, were built on the lands of appellee with the appellee's own personal money. At first view there is no limitation on the second paragraph of the abovequoted article, but Manresa in his Commentaries, volume 9, page 608, holds that if the building is constructed by the owner of the land with her private money, the building does not belong to the partnership but to the owner of the land, and no reason occurs to us why such holding is not a correct and just interpretation of this section. We therefore concur with the trial court that these buildings are not subject to levy and sale in this case.

As to the items of palay and lumber, we are not convinced from the evidence that they belong exclusively to appellee, but on the contrary, we believe that they are part of the conjugal property (article 1407, Civil Code). Likewise, as to the Buick automobile. While it may be true that at the time of their marriage, the wife had an

automobile, that automobile has long since passed out of existence, and the mere fact that each successive car was turned in as part of the purchase price of a new car, would not make every automobile in the future paraphernal, but on the contrary, it becomes conjugal and responsible for the debts of the partnership.

As above stated, the trial court relied to a great extent in its judgment on article 1386 of the Civil Code which reads:

"Art. 1386. The fruits of the paraphernal property cannot be subject to the payment of personal obligations of the husband, unless it be proved that such obligations were productive of some benefit to the family."

It will therefore be necessary to consider briefly the transaction out of which arose the judgment, the basis of the existing writ of execution. The husband, Domingo Diaz, while a member of the Legislature, secured the passage of Act No. 2644 granting to his brother a franchise to construct and operate an electric light plant at Tabaco, Albay. Domingo Diaz purchased from Erlanger & Galinger, Inc., machinery and equipment for the construction and installation of that plant, and judgment was obtained by Erlanger & Galinger, Inc., against Diaz for the balance of the purchase price.

Appellee contends that she was opposed to her husband's going into the electric light business and that therefore the business was a personal one of his and not an enterprise of the conjugal partnership. Such a contention is fundamentally erroneous. The husband, as the manager of the partnership (article 1412, Civil Code), has a right to embark the partnership in an ordinary commercial enterprise for gain, and the fact that the wife may not approve of a venture does not make it a private and personal one of the husband.

The obligation, not being a personal one of the husband, article 1386 has no application, and any property belonging to the conjugal partnership must be held liable to seizure.

In the preliminary injunction which was made permanent by the trial court, appellant and the sheriff were forbidden to attempt to collect by legal process any of the rents or fruits of the paraphernal property. As the fruits of the paraphernal property belonged to the conjugal partnership, they are responsible for the debts of that partnership. The injunction is too broad and must be modified. The judgment of the Court of First Instance of Camarines Sur is affirmed so far as it relates to the ownership of the buildings. As to the other items, including the rents of the paraphernal property, it is reversed. The case will be remanded to the Court of First Instance of Camarines Sur for action in conformity with this opinion. No expression as to costs. So ordered.

Malcolm, Villa-Real, Abad Santos, and Butte, JJ., concur.

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