

**NOTICE TO CLIENTS AND FRIENDS**

Supreme Court of Puerto Rico Decision:

**Once the liquidation of what was once a conjugal legal partnership is executed, a decedent's creditors may satisfy the decedent's outstanding obligations from any and all of the assets of the resulting estate, even if said assets once belonged to the extinguished conjugal legal partnership between the decedent and the surviving spouse. Thus, until all the debts of an estate are satisfied, including those executed exclusively by the deceased spouse, no heir can claim any preferential right whatsoever over the assets of said estate, including the assets that had been part of the conjugal legal partnership.**

In LSREF2 Island Holdings, Ltd. Inc v. Ashford R.J.F. Inc., 2019 TSPR 42, the Supreme Court of Puerto Rico held that, when a debtor executes a loan agreement without any intervention of their spouse, creditors may execute a judgment over all of the debtor's assets, including those assets that belonged to the conjugal legal partnership once said partnership is extinguished and liquidated. Therefore, a widow cannot claim a preferential right over the assets that had been part of the conjugal legal partnership because said partnership ceased to exist upon the death of the debtor.

In this case, FirstBank Puerto Rico ("FirstBank") filed a complaint for the collection of monies and foreclosure of mortgage against Ashford R.J.F. ("Ashford"), as debtor, and Flavio Hernández ("Hernández"), as joint guarantor. The Court of First Instance issued a judgment in favor of FirstBank, in which it acknowledged that, if the product of the public sale of the mortgaged property was still insufficient to satisfy the debt, the co-defendants would continue to be liable for the deficiency.

The public sale was celebrated after Hernández's passing. However, the sums recovered from the foreclosure of the mortgaged property were insufficient to satisfy the entire debt, for which the Plaintiff requested, and was granted, an Order for Supplemental Execution of Judgment for the attachment and/or garnishment of the assets comprising Hernández's estate ("Order").

In WRC Properties, Inc. v. Santana, 116 D.P.R. 127 (1985), the Commonwealth's Supreme Court held that when, in a contract, a creditor accepts a married person as a debtor —knowing that the debtor is married— and omits the spouse's signature, said creditor waives his right to recover against the marital community or against the spouse who did not sign. Thus, a creditor is limited to recovering its debt owed from assets that are exclusive to the debtor and foreclosed from pursuing assets belonging to the conjugal legal partnership or the non-debtor spouse in satisfaction thereof. Armed with the foregoing opinion, Hernández's widow, Mercedes Ramírez Rodríguez ("Ramírez"), opposed the Order because Ramírez had not been part of the loan agreement and, therefore, the assets which had belonged to the conjugal legal partnership were not subject to the Court's Order. The rest of Hernández's heirs joined Ramírez's claim alleging that the assets of the decedent's estate had been part of the conjugal legal partnership. LSFREF2 Island Holdings, Ltd., Inc. ("Island Holdings"), as FirstBank's successor in interest, opposed said contentions sustaining that the conjugal legal partnership ceased to exist upon Hernández's death.

The Court of First Instance initially ruled in favor of Island Holdings. After the filing of a motion for reconsideration presented by the Hernández's heirs, however, the Court of First Instance—relying on *WRC Properties*— modified its Order limiting its effect to the assets of the estate that had never been part of the conjugal legal partnership. Island Holdings argued that the Court's reliance on *WRC Properties* was error since the present case lacked the essential element of an existing conjugal legal partnership, which became extinguished as of the death of the debtor spouse.

Also relying on *WRC Properties*, the Appellate Court confirmed the Court of First Instance's decision and, as a result, Island Holdings filed for *certiorari* review to the Supreme Court claiming that the Appellate Court had erred in determining that the assets that had been part of the conjugal legal partnership could not be subject to the Island Holdings' collection of monies when said conjugal legal partnership had ceased to exist.

In its holding, the Supreme Court agreed with Island Holdings' position and, distinguishing this case from *WRC Properties*, determined that, at the time of Hernández's death, a post-conjugal community of assets arose between Ramírez and the decedent's heirs, in which every common owner had an abstract participation over the whole of the estate. Prior to determining the particular assets of which the decedent's estate is comprised, the community of assets must first be liquidated, and the assets contained therein apportioned between the estate and the surviving spouse. Moreover, the Supreme Court determined that only after said liquidation, and the subsequent satisfaction of all of the decedent's debts, could the heirs lay claim to the assets of the estate. In other words, no heir could have an individual ownership right over a particular asset of the estate, until after any post-conjugal community of assets is liquidated *and* the decedent's obligations are satisfied in full. Based on this analysis, the Supreme Court concluded that, once the post conjugal community of assets was liquidated, Island Holdings could recover its claim from any and all of the assets that comprise Hernandez' estate.

In sum, debtors and creditors should know that after the death of a debtor who executed a loan agreement in his exclusive capacity, even when a conjugal legal partnership existed, all the assets of the estate, including the ones that were subject to the conjugal legal partnership, may be pursued in satisfaction of the deceased debtor's debts. Neither the surviving spouse nor any other heir will have a right over any of the assets of the decedent's estate until the decedent's obligations are satisfied.

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