

G.R. No. 244128 – MARIO M. MADERA, BEVERLY C. MANANGUITE, CARISSA D. GALING, and JOSEFINA O. PELO, Petitioners v. COMMISSION ON AUDIT (COA) and COA REGIONAL OFFICE NO. VIII, Respondents.

Promulgated:

September 8, 2020

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SEPARATE CONCURRING OPINION

PERLAS-BERNABE, J.:

I concur.

In this case, the Court has decided to set straight the conflicting jurisprudential guidelines in cases involving the directive to return amounts that are validly disallowed by the Commission on Audit (COA). As definitively expressed in the *ponencia*, the guidelines agreed upon by the members of this Court now serve to enlighten both the government and the public regarding the proper parameters for the return of disallowed public funds.

Consistent with the guidelines in the *ponencia*, I express my views on the frameworks of law that pertinently govern the return of amounts disallowed by the government. These frameworks of law pertain to the body of statutory provisions found in the Administrative Code on the one hand, and the applicable provisions of the Civil Code, on the other. An in-depth discussion of these two legal frameworks provides for a better understanding of the underlying reasons that justify the parameters for the return of disallowed amounts.

I. The Administrative Law Perspective

The Administrative Code “embodies changes in administrative structures and procedures designed to serve the people.”¹ In the promulgation of Executive Order No. 292, Series of 1987, or the “Administrative Code of 1987,” it was envisioned that “[t]he effectiveness of the Government will be enhanced by a new Administrative Code which incorporates in a unified document the major structural, functional and procedural principles and rules of governance.”² In line with the foregoing, the impetus behind the

¹ Executive Order No. 292, entitled “INSTITUTING THE ‘ADMINISTRATIVE CODE OF 1987’” (August 3, 1988), 4th Whereas clause.

² ADMINISTRATIVE CODE, 3rd Whereas clause.

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Administrative Code provisions on public officers is to ensure public accountability. This is embodied in Section 32, Chapter 9, Book I thereof, which is a reflection of Section 1, Article XI³ of the 1987 Constitution:

CHAPTER 9
General Principles Governing Public Officers

Section 32. *Nature of Public Office.* – Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with the utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives.

Undoubtedly, an essential administrative function of the government is the disbursement of public funds. In this regard, public officers and government employees tasked with this vital function are mandated to ensure that public expenditures are made in conformity with the law. This mandate stems from the Constitution itself which states that “[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law.”⁴ This command is also mirrored in Section 32, Chapter 5, Book VI of the Administrative Code which states that “[a]ll moneys appropriated for functions, activities, projects and programs shall be available solely for the specific purposes for which these are appropriated.”

When there is an “[e]xpenditur[e] of government funds or us[e] of government property in violation of law or regulations,”⁵ there is an “**unlawful expenditure.**” An unlawful or illegal expenditure is subject to disallowance⁶ by the COA.⁷ Under Section 52, Chapter 9, Subtitle B, Title I, Book V of the Administrative Code, unlawful expenditures are the **personal liability** of officials or employees found to be **directly responsible** therefor:

Section 52. *General Liability for Unlawful Expenditures.* – Expenditures of government funds or uses of government property in violation of law or regulations shall be a **personal liability of the official or employee found to be directly responsible therefor.** (Emphasis and underscoring supplied)

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ARTICLE XI
Accountability of Public Officers

Section 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

⁴ 1987 CONSTITUTION, Article VI, Section 29 (1).

⁵ ADMINISTRATIVE CODE, Book V, Title I, Subtitle B, Chapter 9, Section 52.

⁶ Section 4.16 of COA Circular No. 2009-006 defines a disallowance as “the disapproval or in audit of a transaction.”

⁷ Section 10 of COA Circular No. 2009-006 pertinently reads:

Section 10. Notice of Disallowance (ND). —

10.1 The Auditor shall issue an ND-Form 3 — for transactions which are irregular/unnecessary/excessive and extravagant as defined in COA Circular No. 85-55A as well as other COA issuances, and those which are illegal and unconscionable.

10.1.1 **Illegal expenditures are expenditures which are contrary to law.**

x x x x (Emphasis supplied)

This provision is mirrored in Section 103, Chapter 5, Title II of Presidential Decree No. 1445⁸ (PD 1445), otherwise known as the “Government Auditing Code of the Philippines” (Audit Code):

Section 103. *General Liability for Unlawful Expenditures.* – Expenditures of government funds or uses of government property in violation of law or regulations shall be a **personal liability of the official or employee found to be directly responsible therefor.** (Emphasis and underscoring supplied)

Notably, the liability for unlawful expenditures *per se* must be distinguished from the liability of accountable officers tasked with the custody and safekeeping of government property and funds pertaining to an agency.⁹ With respect to the latter, Section 51, Chapter 9, Subtitle B, Title I, Book V of the Administrative Code distinctly provides for the primary and secondary responsibilities of the following officers:

Section 51. *Primary and Secondary Responsibility.* — (1) The **head of any agency** of the Government is immediately and primarily responsible for all **government funds and property pertaining to his agency;**

(2) **Persons entrusted with the possession or custody of the funds** or property under the agency head shall be immediately responsible to him, without prejudice to the liability of either party to the Government.¹⁰ (Emphases supplied)

Under COA Circular No. 2009-006¹¹ or the “Rules and Regulations for the Settlement of Accounts,” the term “**persons responsible**” is defined as those “persons determined to be answerable for compliance with the audit requirements as called for in the Notice of Suspension.”¹² **A public officer who approves or authorizes a public expenditure (approving/authorizing officer) is necessarily considered as a person directly responsible.**

However, it is integral to point out that **approving or authorizing officers are not automatically held liable to return disallowed amounts based on every unlawful expenditure.** Section 16.1.3 of COA Circular No. 2009-006 qualifies that approving/authorizing officers shall be liable for

⁸ Entitled “ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES,” approved on June 11, 1978.

⁹ Section 50, Chapter 9, Subtitle B, Title I, Book V of the ADMINISTRATIVE CODE characterizes these officers as follows:

Section 50. *Accountable Officers; Board Requirements.* – (1) Every officer of any government agency whose duties permit or require the possession or custody government funds shall be accountable therefor and for safekeeping thereof in conformity with law; and

(2) Every accountable officer shall be properly bonded in accordance with law.

¹⁰ See also Section 102, Chapter 5, Title II of the AUDIT CODE.

¹¹ Approved on September 15, 2009. Notably, the issuance superseded COA Circular No. 94-001, approved on January 20, 1994, otherwise known as the “Manual on Certificate of Settlement and Balances” (see Section 29, Chapter VII of COA Circular No. 2009-006), but the provisions on liability of public officers for disallowed expenditures have remained unchanged.

¹² COA Circular No. 2009-06, Section 4.21.

losses arising out of their negligence or failure to exercise the diligence of a good father of a family in approving/ authorizing what turns out to be a disallowed transaction:

16.1.3 Public officers who approve or authorize expenditures shall be liable for losses arising out of their negligence or failure to exercise the diligence of a good father of a family. (Emphases and underscoring supplied)

This implementing Circular is an apparent reflection of the exacting requirements of the Administrative Code. Under Section 38 (1), Chapter 9, Book I thereof, there must be a "clear showing" of bad faith, malice, or gross negligence in order to hold a public officer civilly liable for acts done in the performance of his official duties:

Section 38. *Liability of Superior Officers.* – (1) A public officer shall **not be civilly liable** for acts done in the performance of his official duties, unless there is a **clear showing of bad faith, malice or gross negligence**. (Emphases and underscoring supplied)

This provision is supplemented by Section 39 of the same Code which prescribes the need to debunk the good faith of a subordinate officer before he is likewise held civilly liable for acts done under orders or instructions of his superiors:

Section 39. *Liability of Subordinate Officers.* – No subordinate officer or employee shall be **civilly liable** for acts **done by him in good faith in the performance of his duties**. However, he shall be liable for **willful or negligent** acts done by him which are **contrary to law, morals, public policy and good customs even if he acted under orders or instructions of his superiors**. (Emphases and underscoring supplied)

To be sure, the need to first prove bad faith, malice, or gross negligence before holding a public officer civilly liable traces its roots to the core concept of the law on public officers. From the perspective of administrative law, public officers are considered as agents of the State, and as such, acts done in the performance of their official functions are considered as acts of the State. In contrast, when a public officer acts negligently, or worse, in bad faith, the protective mantle of State immunity is lost as the officer is deemed to have acted outside the scope of his official functions; hence, he is treated to have acted in his personal capacity and necessarily, subject to liability on his own. In the case of *Vinzons-Chato v. Fortune Tobacco Corporation*,¹³ the Court explained this distinct and peculiar treatment of public officer liability as follows:

[T]he general rule is that a public officer is not liable for damages which a person may suffer arising from the just performance of his official duties and within the scope of his assigned tasks. An officer who acts within his authority to administer the affairs of the office which he/she heads is not

¹³ 552 Phil. 101 (2007).

liable for damages that may have been caused to another, as it would virtually be a charge against the Republic, which is not amenable to judgment for monetary claims without its consent. However, a public officer is by law not immune from damages in his/her personal capacity for acts done in bad faith which, being outside the scope of his authority, are no longer protected by the mantle of immunity for official actions.¹⁴ (Emphases and underscoring supplied)

In line with this, public officers are accorded with the **presumption of regularity** in the performance of their official functions – “[t]hat is, when an act has been completed, it is to be supposed that the act was done in the manner prescribed and by an officer authorized by law to do it.”¹⁵ This presumption is a rule borne out of **administrative necessity and practicality**. In *Yap v. Lagtapon*,¹⁶ the Court characterized the presumption of regularity as “an aid to the effective and unhampered administration of government functions. Without such benefit, every official action could be negated with minimal effort from litigants, irrespective of merit or sufficiency of evidence to support such challenge.”¹⁷

In a long line of cases,¹⁸ the Court has ruled that the civil liability of public officers for illegal expenditures depends on a clear showing of bad faith, malice, or gross negligence; absent which, the presumptions of regularity and good faith operate to absolve them from said liability. Among others, in the 1998 case of *Suarez v. COA*¹⁹ (August 7, 1998), the Court absolved the petitioner therein of civil liability for the disallowance of a government contract on the basis of Section 38, Chapter 9, Book I of the Administrative Code, remarking that “[a] public officer is presumed to have acted in the regular performance of his/her duty; therefore, he/she cannot be held civilly liable, unless contrary evidence is presented to overcome the presumption[.]”²⁰

In holding petitioner liable for having failed to show good faith and diligence in properly performing her functions as a member of the PBAC,

¹⁴ Id.

¹⁵ *People v. Jolliffe*, 105 Phil. 677, 682-683 (1959).

¹⁶ 803 Phil. 652 (2017).

¹⁷ Id. at 653.

¹⁸ See *Alejandrino v. COA*, G.R. No. 245400, November 12, 2019; *Gubat Water District v. COA*, G.R. No. 222054, October 1, 2019; Unsigned Resolution in *Castro v. COA*, G.R. No. 233499, February 26, 2019; *Montejo v. COA*, G.R. No. 232272, July 24, 2018; *Career Executive Service Board v. COA*, G.R. No. 212348, June 19, 2018, 866 SCRA 475; *Development Bank of the Philippines v. COA*, 827 Phil. 818 (2018); *Metropolitan Waterworks and Sewerage System v. COA*, 821 Phil. 117 (2017); *Philippine Health Insurance Corporation v. COA*, 801 Phil. 427 (2016); *Development Academy of the Philippines v. Tan*, 797 Phil. 537 (2016); *Philippine Economic Zone Authority v. COA*, 797 Phil. 117 (2016); *Social Security System v. COA*, 794 Phil. 387 (2016); *Velasco v. COA*, 695 Phil. 226 (2012); *Veloso v. COA*, 672 Phil. 419 (2011); *Agra v. COA*, 677 Phil. 608 (2011); *Singson v. COA*, 641 Phil. 154 (2010); *Lumayna v. COA*, 616 Phil. 928 (2009); *Bases Conversion and Development Authority v. COA*, 599 Phil. 455 (2009); *Barbo v. COA*, 589 Phil. 289 (2008); *Magno v. COA*, 558 Phil. 76 (2007); *Public Estates Authority v. COA*, 541 Phil. 412 (2007); *Casal v. COA*, 538 Phil. 634 (2006); *Kapisanan ng mga Manggagawa sa Government Service Insurance System v. COA*, 480 Phil. 861 (2004); *Abanilla v. COA*, 505 Phil. 202 (2005); *Home Development Mutual Fund v. COA*, 483 Phil. 666 (2004); and *Blaquera v. Alcala*, 356 Phil. 678 (1998).

¹⁹ 355 Phil. 527 (1998).

²⁰ Id. at 540-541.

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Respondent COA misconstrued Sec. 29.2 of the Revised CSB Manual. The aforesaid section requires a **clear showing of bad faith, malice or gross negligence before a public officer may be held civilly liable for acts done in the performance of his or her official duties. The same principle is reiterated in Book I, Chapter 9, Section 38 of the 1987 Administrative Code. A public officer is presumed to have acted in the regular performance of his/her duty; therefore, he/she cannot be held civilly liable, unless contrary evidence is presented to overcome the presumption.** x x x²¹ (Emphasis and underscoring supplied)

Also, in the oft-cited case of *Blaquera v. Alcala*²² (September 11, 1998), the Court ruled that:

Absent a showing of bad faith or malice, public officers are not personally liable for damages resulting from the performance of official duties.

Every public official is entitled to the **presumption of good faith** in the discharge of official duties. Absent any showing of bad faith or malice, there is likewise a **presumption of regularity** in the performance of official duties.²³ (Emphases supplied)

In disallowance cases, “good faith” has been defined as a “state of mind denoting honesty of intention, and **freedom from knowledge of circumstances** which ought to put the holder upon inquiry; an honest intention to abstain from taking any **unconscientious advantage** of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious.”²⁴ Thus, in order to overcome the presumption of regularity on the ground of **bad faith**, as well as the synonymous ground of **malice**, there must be a **clear showing** that the said officer approved/authorized an unlawful expenditure, acting with **full knowledge of the circumstances** and with the intention of taking **unconscientious advantage** of his public position. This intention may be shown by, for instance, proof that he approved/authorized the unlawful expenditure for his personal gain or to benefit another. Because the Administrative Code requires a clear showing of bad faith or malice, the Court may analogously apply the jurisprudential definition of “evident bad faith” to gauge the intention behind the acts involved:

“[E]vident bad faith” connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. **It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.**²⁵ (Emphasis and underscoring supplied)

²¹ Id.

²² Supra note 18.

²³ Id. at 165.

²⁴ *Development Bank of the Philippines v. COA*, supra note 18, at 833; *Maritime Industry Authority v. COA*, 750 Phil. 288, 337 (2015); and *Philippine Economic Zone Authority v. COA*, 690 Phil. 104, 115 (2012); emphases supplied.

²⁵ *Fuentes v. People*, 808 Phil. 586, 594 (2017).

In the 2019 case of *Rotoras v. COA*²⁶ (*Rotoras*; August 20, 2019), the Court held that “officials and officers who disbursed the disallowed amounts are liable to refund: (1) when they patently disregarded existing rules in granting the benefits to be disbursed, amounting to gross negligence;²⁷ (2) when there was clearly no legal basis for the benefits or allowances;²⁸ (3) when the amount disbursed is so exorbitant that the approving/authorizing officers were alerted to its validity and legality;²⁹ or (4) when they knew that they had no authority over such disbursement.³⁰” To my mind, these instances are manifestations of the public officer’s bad faith or malice.

Likewise, as indicated by the Administrative Code, good faith may be negated by a **clear showing** of the approving/authorizing officer’s **gross negligence** in the performance of his duties. Gross negligence refers to:

[N]egligence characterized by the **want of even slight care**, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a **conscious indifference** to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property. It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. **In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.**³¹ (Emphases and underscoring supplied)

Gross negligence may become evident through the non-compliance of an approving/authorizing officer of clear and straightforward requirements of an appropriation law, or budgetary rule or regulation, which because of their clarity and straightforwardness only call for one **reasonable** interpretation. On the other hand, gross negligence may be rebutted by showing that an appropriation law, or budgetary rule or regulation is susceptible of various reasonable interpretations because its application involves complicated questions of law,³² or that by consistent institutional practice over the years, the law, rule or regulation has been unwittingly applied by said officer in accordance with such practice. In *Rotoras*, the Court observed that in previous occasions, public officials and employees were allowed to keep disallowed benefits and allowances they had already received when, *inter alia*, “the approving authority failed to exercise diligence or made mistakes but did not act with malice or in bad faith,”³³ or “there was ambiguity in existing rules

²⁶ See G.R. No. 211999.

²⁷ See *id.*; citing *Casal v. COA*, *supra* note 18 and *Sambo v. COA*, 811 Phil. 344 (2017).

²⁸ See *id.*; citing *Manila International Airport Authority v. COA*, 681 Phil. 644 (2012) and *Oriondo v. COA*, G.R. No. 211293, June 4, 2019.

²⁹ *Id.*; citing *Maritime Industry Authority v. COA*, *supra* note 24.

³⁰ *Id.*; citing *Silang v. COA*, 769 Phil. 327 (2015).

³¹ *Office of the Ombudsman v. De Leon*, 705 Phil. 26, 37-38 (2013).

³² “[B]y law and jurisprudence, a mistake upon a doubtful or difficult question of law may properly be the basis of good faith.” (*Philippine National Bank v. Heirs of Militar*, 526 Phil. 788, 797 [2006]).

³³ See *supra* note 26; citing *Home Development Mutual Fund v. COA*, *supra* note 18 and *Lumayna v. COA*, *supra* note 18.

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and regulations that have not yet been clarified.”³⁴ The rationale, as practically observed by the Court in *Castro v. COA*,³⁵ is that:

[I]t [would be] unfair to penalize public officials based on overly stretched and strained interpretations of rules which were not that readily capable of being understood at the time such functionaries acted in good faith. x x x A contrary rule would be counterproductive. It could result in paralysis, or lack of innovative ideas getting tried. In addition, it could dissuade others from joining the government. When government service becomes unattractive, it could only have adverse consequences for society.³⁶

Thus, in order to establish gross negligence, **one must ultimately determine whether or not in effecting the unlawful expenditure, there was “want of even slight care” on the part of the approving/authorizing officer with a “conscious indifference to the consequences.”** If there is clear showing of the affirmative, then the approving/authorizing officer must be held civilly liable for the return of the disallowed amounts to the government.

In this relation, it should be stressed that the determination of whether a particular approving/authorizing officer has acted with bad faith, malice, or gross negligence in a given situation must be made on a **case-to-case basis**. To this end, the *ponencia* has adopted Justice Mario Victor M.V.F. Leonen’s view that:

For one to be absolved of liability the following requisites [may be considered] : (1) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent allowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality.³⁷

and aptly pointed out that “[t]he presence of any of these factors in a case may tend to uphold the presumption of good faith in the performance of official functions accorded to the officers involved, **which must always be examined relative to the circumstances attending therein.**”³⁸

Once the existence of bad faith, malice, or gross negligence as contemplated under Section 38, Chapter 9, Book I of the Administrative Code is clearly established, the civil liability of approving/authorizing officers to return disallowed amounts based on an unlawful expenditure is **solidary together with all other persons taking part therein, as well as every person receiving such payment**. This solidary liability is found in Section 43, Chapter 5, Book VI of the Administrative Code, which states:

³⁴ *Rotoras*, id.

³⁵ See supra note 18; see also *Philippine Economic Zone Authority v. COA*, supra note 18.

³⁶ *Castro v. COA*, supra note 18.

³⁷ *Ponencia*, pp. 21-22.

³⁸ Id. at 22; emphasis supplied.

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Section 43. *Liability for Illegal Expenditures.* – Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of **said provisions** shall be illegal and **every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable** to the Government for the full amount so paid or received. (Emphases and underscoring supplied)

Notably, with respect to “**every official or employee authorizing or making such payment**” in bad faith, with malice, or gross negligence, the law justifies holding them solidarily liable for the amounts they may or may not have received, considering that the payees would not have received the disallowed amounts if it were not for the officers’ irregular discharge of their duties.

Since the law characterizes their liability as solidary in nature, it means that once this provision is triggered, the State can go after each and every person determined to be liable for the full amount of the obligation; this holds true irrespective of the actual amounts individually received by each co-obligor, without prejudice to claims for reimbursement from one another. As defined, a “solidary obligation [is] one in which each of the debtors is liable for the entire obligation, and **each of the creditors is entitled to demand the satisfaction of the whole obligation from any or all of the debtors.**”³⁹ However, “[h]e who made the payment may claim from his co-debtors only on the share which corresponds to each [co-debtor].”⁴⁰ Of course, the decision as to who the State will go after and the extent of the amount to be claimed falls within the discretion and prerogative of the COA. As provided for in Section 16.3 of COA Circular 2009-006:

16.3 The liability of persons determined to be liable under an ND/NC shall be **solidary** and **the Commission may go against any person liable without prejudice to the latter’s claim against the rest of the persons liable.** (Emphasis supplied)

That being said, it must be observed that a disallowed amount under a Notice of Disallowance does not only comprise of amounts received by guilty public officials but also of amounts unwittingly received by **passive recipients**. This begs the following question: *should the erring public officer be held liable for the return of the entire disallowed amount, including the amounts received by passive recipients?* To this end, the nature of a passive recipient’s liability must be examined under the perspective of the civil law principles of *solutio indebiti* and unjust enrichment.

³⁹ *AFP Retirement and Separation Benefits System v. Sanvictores*, 793 Phil. 442, 451 (2016); emphasis and underscoring supplied.

⁴⁰ CIVIL CODE, Article 1217.

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II. The Civil Law Perspective

As preliminarily discussed, the main thrust of the Administrative Code is to exact accountability from public officials in the performance of official duties. For this reason, the Administrative Code requires a clear showing of bad faith, malice, or gross negligence on the part of the public officer in the performance of official duties before recovery of losses to the government may be sought.

However, when it comes to passive recipients, their civil liability is not premised on any bad faith, malice, or gross negligence, but rather, based on the application of the principles of *solutio indebiti* and unjust enrichment pursuant to the provisions of the Civil Code. Needless to state, when it comes to the Civil Code, there is no presumption of regularity because the individual is not viewed in his capacity as a State functionary, but rather, as an ordinary civil person. Consequently, **the requirement to clearly show the existence of bad faith, malice, or gross negligence, as required in the Administrative Code, is not necessary to hold an individual liable under the provisions of the Civil Code.**

In the case of *Siga-an v. Villanueva*,⁴¹ the Court elucidated on the *quasi* contract of *solutio indebiti*:

Article 2154 of the Civil Code explains the principle of *solutio indebiti*. Said provision provides that if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises. In such a case, a creditor-debtor relationship is created under a quasi-contract whereby the payor becomes the creditor who then has the right to demand the return of payment made by mistake, and the person who has no right to receive such payment becomes obligated to return the same. **The quasi-contract of *solutio indebiti* harks back to the ancient principle that no one shall enrich himself unjustly at the expense of another.**⁴² (Emphasis supplied)

In the same case, the Court observed that “[t]he principle of *solutio indebiti* applies where (1) a payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause.”⁴³ These requisites clearly obtain in the case of passive recipients who, by mistake of the erring approving/authorizing officer, were able to unduly receive compensation from disbursements later disallowed by the COA. Indeed, from a strictly technical point of view, there would be no legal duty to pay compensation which contravenes or lacks basis in law. Hence, **as a general rule, passive**

⁴¹ 596 Phil. 760 (2009).

⁴² Id. at 772-773.

⁴³ Id. at 773.

recipients, notwithstanding their good faith, should be liable to return disallowed amounts they have respectively received on the basis of *solutio indebiti*. To note, this same general rule must equally apply to approving/authorizing officers who have **not** acted in bad faith, with malice, or with gross negligence because while they may not be held civilly liable under Section 38 (1), Chapter 9, Book I of the Administrative Code, they are still subject to return the amounts unduly received by them on the basis of *solutio indebiti*. In this respect, they may also be considered as passive recipients.

At this juncture, it is crucial to underscore that good faith cannot be appreciated as a defense against an obligation under *solutio indebiti* as it is “‘forced’ by operation of law upon the parties, not because of any intention on their part but in order to prevent unjust enrichment.”⁴⁴ Moreover, it is discerned that the complete absolution of passive recipients from liability may indeed significantly reduce the funds to be recovered by the COA and as a result, cause great losses, or “fiscal leakage,” to the detriment of the government. In other words, if non-return of passive recipients is the norm, then the COA’s ability to recover may be greatly hampered. This skewed paradigm recognized in earlier jurisprudence should not anymore be propagated.

Nevertheless, the foregoing general rule mandating passive recipients to return should not apply where the disallowed compensation was **genuinely intended as payment for services rendered**. As examples, these disallowed benefits may be in the nature of performance incentives, productivity pay, or merit increases that have not been authorized by the Department of Budget and Management as an exception to the rule on standardized salaries. To be sure, Republic Act No. 6758,⁴⁵ otherwise known as the “Compensation and Position Classification Act of 1989,” “standardize[s] salary rates among government personnel and do[es] away with multiple allowances and other incentive packages and the resulting differences in compensation among them.”⁴⁶ Section 12 thereof lays down the general rule that all allowances of State workers are to be included in their standardized salary rates, with the exception of the following allowances:

1. Representation and transportation allowances (RATA);
2. Clothing and laundry allowances;
3. Subsistence allowances of marine officers and crew on board government vessels;
4. Subsistence allowance of hospital personnel;
5. Hazard pay;
6. Allowance of foreign service personnel stationed abroad; and
7. **Such other additional compensation not otherwise specified herein as may be determined by the DBM.** (Emphasis supplied)

⁴⁴ *Philippine National Bank v. Court of Appeals*, 291 Phil. 356, 367 (1993).

⁴⁵ Entitled “AN ACT PRESCRIBING A REVISED COMPENSATION AND POSITION CLASSIFICATION SYSTEM IN THE GOVERNMENT AND FOR OTHER PURPOSES,” approved on August 21, 1989.

⁴⁶ *Gubat Water District v. COA*, supra note 18.

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The said allowances are the “only allowances which government employees can continue to receive in addition to their standardized salary rates.” Conversely, “all allowances not covered by the [above] exceptions x x x are presumed to have been integrated into the basic standardized pay” and hence, subject to disallowance.

Indeed, bearing in mind its underlying premise, which is “the ancient principle that no one shall enrich himself unjustly at the expense of another,”⁴⁷ ***solutio indebiti* finds no application where there is no unjust enrichment.** Particularly, an employee cannot be deemed to have been unjustly enriched where the disallowed amounts were genuinely intended as consideration for services rendered as there would be a practical exchange of value resulting into no loss to the government. In such instance, the return of the disallowed amounts is excused, and may therefore, be validly retained by the recipient. Further, the Court may also determine in the proper case *bona fide* exceptions, depending on the purpose and nature of the amount disallowed relative to the attending circumstances.

As earlier intimated, the treatment of passive recipient liability has a direct effect to the extent of the amount to be returned by erring approving/authorizing officers held solidarily liable under Section 38 (1), Chapter 9, Book I in relation to Section 43, Chapter 5, Book VI of the Administrative Code. When passive recipients are excused to return disallowed amounts for the reason that they were genuinely made in consideration for rendered services, or for some other *bona fide* exceptions determined by the Court on a case to case basis, **the erring approving/authorizing officers’ solidary obligation for the disallowed amount is net of the amounts excused to be returned by the recipients (net disallowed amount).** The justifiable exclusion of these amounts signals that no proper loss should be recognized in favor of the government, and thus, bars recovery of civil liability to this extent. Accordingly, since there is a justified reason excusing the return, the State should not be allowed a **double recovery** of these amounts from the erring public officials and individuals notwithstanding their bad faith, malice or gross negligence. **Besides, even if the amount to be recovered is limited in this sense, these erring public officers and those who have confederated and conspired with them⁴⁸ are subject to the appropriate administrative and criminal actions which may be separately and distinctly pursued against them.**

⁴⁷ *Ramie Textiles, Inc. v. Mathay, Sr.*, 178 Phil 482, 487 (1979).

⁴⁸ Section 16.1.4 of COA Circular No. 2009-006 provides:

16.1.4 Public officers and other persons who **confederated or conspired** in a transaction which is disadvantageous or prejudicial to the government shall be held liable **jointly and severally** with those who benefited therefrom. (Emphases supplied)

III. Guidelines

All things considered, the following guidelines should be observed in disallowance cases for the guidance of the bench, bar, and the public:

1. Approving/authorizing public officers who were clearly shown to have acted in bad faith, with malice, or with gross negligence, are all solidarily liable for the return of the net disallowed amount. The net disallowed amount is the total disallowed amount minus the amounts excused to be returned by recipients (see exception in Guideline 3).

2. Those who have conspired or confederated with the approving/authorizing officers as stated in Guideline 1 are likewise solidarily liable with such officers for the net disallowed amount. Again, the net disallowed amount is the total disallowed amount minus the amounts excused to be returned by recipients (see exception in Guideline 3).

3. As a general rule, passive recipients, including approving/authorizing public officers who were not clearly shown to have acted in bad faith, with malice, or with gross negligence but had received disallowed amounts they have approved/authorized and thus also considered as passive recipients, are liable to return the amounts they have respectively received on the basis of *solutio indebiti*.

As an exception to this general rule, recipients – whether passive recipients or even erring approving/authorizing officers – are excused to return the disallowed amounts only if the amounts were genuinely intended in consideration for services rendered, or when reasonably excused by the Court due to *bona fide* exceptions depending on the purpose and nature of the amounts disallowed relative to the attending circumstances.

4. The foregoing civil liabilities notwithstanding, the State may pursue any other appropriate administrative or criminal actions against erring public officers and individuals involved in any unlawful expenditure case pursuant to existing laws and jurisprudence.

IV. Application to the Case at Bar

In this case, the COA disallowed the total amount of ₱7,706,253.10 pertaining to additional allowances given on top of the basic salary of the government employees involved. These are the Economic Crisis Assistance (ECA), Monetary Augmentation of Municipal Agency (MAMA), Agricultural Crisis Allowance (ACA), and Mitigation Allowance to

Municipal Employees (MAME),⁴⁹ which, by nature, are all forms of financial assistance. The persons held liable were Municipal Mayor Mario M. Madera (Madera), Municipal Accountant Beverly C. Mananguite, and Municipal Budget Officers Carissa D. Galing and Josefina O. Pelo (Madera, *et al.*), and all other payees stated in the notices of disallowance.⁵⁰ As correctly ruled by the *ponencia*, Madera, *et al.*, being the approving/authorizing officers, did not act in bad faith as there was no clear showing of any dishonest purpose, motive or intent, or ill will, when they granted these benefits to the payees involved. Quite the contrary, it was demonstrated that the resolutions and ordinances used as basis for the grant of these allowances were intended as financial assistance to municipal employees brought about by the effects of Typhoon *Yolanda*.⁵¹ The amounts were then so disbursed for this purpose, despite the fact that they were technically unlawful expenditures for contravening Section 12⁵² of RA 6758,⁵³ or the "Salary Standardization Law." Moreover, these additional allowances had been customarily granted over the years and that no previous disallowance was issued by the COA against similar allowances of such nature. Finally, the resolutions and ordinances, used as basis for these disbursements have not been invalidated, and hence, presumed to be valid.⁵⁴

Taking these circumstances, Madera, *et al.* – the approving/authorizing officers who were not clearly shown to have acted in bad faith, with malice, or with gross negligence, are not civilly liable for the disallowed amounts under Section Section 38 (1), Chapter 9, Book I of the Administrative Code despite the legal propriety of the COA's reasons for disallowance.

As the disallowed amounts in this case, *i.e.*, the subject ECA, MAMA, ACA, and MAME, were given as financial assistance in the wake of a significant calamity, *i.e.*, the onslaught brought about by typhoon *Yolanda*, it is acceptable to excuse their return on humanitarian and social justice considerations. Accordingly, the subject notices of disallowance should be affirmed with modification as ruled in the *ponencia*. Again, it must be emphasized, that the exoneration of Madera, *et al.* from civil liability is without prejudice to the proper administrative or criminal actions that may be

⁴⁹ *Ponencia*, pp. 4-5.

⁵⁰ *Id.* at 4-6.

⁵¹ See *id.* at 7.

⁵² Section 12. *Consolidation of Allowances and Compensation.* – All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government. (Emphasis and underscoring supplied)

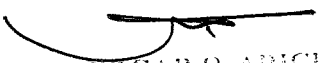
⁵³ Entitled "AN ACT PRESCRIBING A REVISED COMPENSATION AND POSITION CLASSIFICATION SYSTEM IN THE GOVERNMENT AND FOR OTHER PURPOSES," also known as the "COMPENSATION AND POSITION CLASSIFICATION ACT OF 1989" (July 1, 1989).

⁵⁴ See *ponencia*, p. 7.

separately and distinctly pursued against them in accordance with law and jurisprudence.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice

CERTIFIED TRUE COPY


EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court