

EN BANC

G.R. No. 230383 – CARLOS B. LOZADA, RICARDO L. MEDALLA, JR., LLEWELYN A. VILLAMOR, ROWENA DL SAN GABRIEL, and OCTAVIO F. LINA, *petitioners, versus* COMMISSION ON AUDIT and MANILA INTERNATIONAL AIRPORT AUTHORITY, *respondents*.

Promulgated:

July 13, 2021

X-----*Antonio Lopez*-----X

CONCURRING OPINION

CAGUIOA, J.:

I fully concur with the *ponencia*'s dismissal of the petition seeking to declare unconstitutional Section 16.3¹ of the Rules and Regulations on Settlement of Accounts² (RRSA). It is apparent that this direct resort to the Court is a substitute for a lost appeal and relies merely on petitioners' misunderstanding of the solidary nature of the liability for audit disallowances.

Petitioners decry the enforcement of the final disallowance against them through salary deduction and assert that those officers who died, retired, resigned, or were separated from the Manila International Airport Authority (MIAA) and the payee Business Royale Services should be *held equally liable*.³ Either they misconstrued or lacked knowledge of the fact that the enforcement of the disallowance against the other officers had been forwarded to the Legal Office for collection.⁴

I join the *ponencia*'s ruling that contrary to petitioners' claims, "MIAA proceeded *simultaneously* against all personnel found liable for the various disallowed MIAA disbursements, albeit through different modes: by imposing *salary deductions* against those who remained in office and by collecting/enforcing the judgment from resigned/retired personnel through *other legal means*."⁵

¹ SECTION 16. DETERMINATION OF PERSONS RESPONSIBLE/LIABLE.

X X X X

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.

² COA Circular No. 2009-006, PRESCRIBING THE USE OF THE RULES AND REGULATIONS ON SETTLEMENT OF ACCOUNTS, September 15, 2009.

³ Petition, pp. 13-14 as cited in the *ponencia*, pp. 5-6.

⁴ *Ponencia*, pp. 3-4.

⁵ Id. at 8. Italics in the original.



This succinctly disposes of petitioners' claim that solidary liability under Notices of Disallowance should be "equal," through a cogent discussion of the nature of solidary obligations under the Civil Code vis-à-vis the solidary liability for illegal expenditures under the Administrative Code of 1987⁶ (Administrative Code). I fully concur with the *ponencia's* reliance on Articles 1207 and 1208 of the Civil Code.⁷

On this score, I take the opportunity to expound upon, and accordingly clarify, the unqualified and often mistaken notion that solidary liability for unlawful expenditures should be equal in terms of amount. I submit that this must be qualified by a proper understanding of what constitutes "every payment" and "full amount so paid or received" for which persons are held solidarily liable in Section 43, Book VI of the Administrative Code. Said Section 43 provides:

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.

x x x x

The text expressly states that solidary liability is based on and is delimited by each person's participation. The "full amount so paid or received" is based on each transaction and refers to every payment (each payment being an expenditure in itself) in which an official, employee, or person "t[ook] part." This obligation to pay the full amount to the Government is the solidary liability which attaches to an officer or employee who participated in and a payee or different payees who received the payment. **Thus, the solidary liability under Section 43 may, but neither automatically nor often, correspond to the whole amount stated in the Notice of Disallowance (ND).** This state of being "unequal" obtains in cases where not all persons held liable participated in the same transactions (*e.g.*, where an authorizing officer did not authorize all payments in the ND, a certifying officer did not certify all the payments in the ND, or the payment to a particular payee is not equal to the entire amount stated in the ND).

⁶ Executive Order No. 292, INSTITUTING THE "ADMINISTRATIVE CODE OF 1987," July 25, 1987.

⁷ ART. 1207. The concurrence of two or more creditors or of two or more debtors in one and the same obligation does not imply that each one of the former has a right to demand, or that each one of the latter is bound to render, entire compliance with the prestation. There is a solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity.

ART. 1208. If from the law, or the nature or the wording of the obligations to which the preceding article refers the contrary does not appear, the credit or debt shall be presumed to be divided into as many shares as there are creditors or debtors, the credits or debts being considered distinct from one another, subject to the Rules of Court governing the multiplicity of suits.



I advanced this same proposition during the deliberations in *Madera v. COA*⁸ — that Section 43 and the COA Rules admit of no possibility that a payee whose only participation in the disallowed transaction is the receipt of payment (*i.e.*, the amount he or she actually and individually received) could be deemed solidarily liable for an amount received by another payee in the same ND because those payments are distinct transactions resulting in separate solidary obligations despite being disallowed in the same document.

COA's contemporaneous interpretation of Section 43 echoed in Section 16 of the RRSA confirms that the solidary liability attaches to persons who participated in a transaction — however many actions or transactions for which a person might have participated in, and not necessarily for the aggregate amount of the ND. Thus, there may be as many discrete solidary obligations in a single ND as there are payees or separate transactions where there is concurrence of participation by more than one person — which supplies the plurality of debtors characteristic of a solidary obligation.

To illustrate: In a disallowance where the approving officer and certifying officer who participated in the whole disbursement and two payees who received payment equal to the entire amount of the ND were held liable, more than one solidary obligation concur in the single ND: separate solidary obligations for the full payment received by each payee. In this example, each payee is solidarily liable with the authorizing and certifying officer for the payment of the full amount he received. The two payees who had no participation in the payment received by the other are thus not solidary co-debtors of each other. For the authorizing and certifying officers, they are solidarily liable with the two payees in separate solidary obligations for the full amount of the two payments — which incidentally corresponds to the aggregate amount of the ND. Disallowances are rarely this simple, however.

In this case, the same interpretation is reflected in the MIAA Notice of Salary Deduction⁹ which informed petitioner Lozada that he is held solidarily liable for ₱2,659,752.00 pursuant to the April 30, 2015 COA Order of Execution (COE) in relation to the October 8, 2001 ND No. (CNC) 01-00-101-(99) which disallowed the aggregate amount of ₱10,318,580.77. In no uncertain terms, the Notice explained that this amount of liability was “computed to the extent of the disallowed amount where you have participated in as clearly indicated in the [NDs].”¹⁰ Consequently, the salary deductions were determined as separate and unequal amounts in enforcing petitioners' liability under the two (2) COEs.¹¹

⁸ G.R. No. 244128, September 8, 2020.

⁹ *Ponencia*, pp. 2-3.

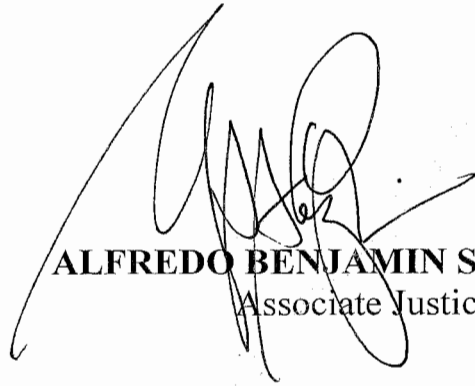
¹⁰ *Id.* at 3.

¹¹ *Id.* at 3-4.

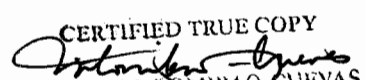


Thus, I reiterate that the proper understanding of the solidary nature of the liability of unlawful expenditures under Section 43 cannot be divorced from the determination of the extent of participation of each person held liable.

Accordingly, I vote to **DISMISS** the Petition.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFIED TRUE COPY

MARIFE M. LOMIBAO CUEVAS
Clerk of Court
Supreme Court