



Republic of the Philippines
Supreme Court
Manila

EN BANC

THE LAW FIRM OF LAGUESMA
MAGSALIN CONSULTA AND
GASTARDO,

Petitioner,

G.R. No. 185544

Present:

SERENO, C.J.,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,*
PERALTA,
BERSAMIN,
DEL CASTILLO,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE,
LEONEN, and
JARDELEZA, JJ.

-versus-

THE COMMISSION ON AUDIT
and/or REYNALDO A. VILLAR
and JUANITO G. ESPINO, JR. in
their capacities as Chairman and
Commissioner, respectively,
Respondents.

Promulgated:

January 13, 2015

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DECISION

LEONEN, J.:

When a government entity engages the legal services of private counsel, it must do so with the necessary authorization required by law;

* On leave.

otherwise, its officials bind themselves to be personally liable for compensating private counsel's services.

This is a petition¹ for certiorari filed pursuant to Rule XI, Section 1 of the 1997 Revised Rules of Procedure of the Commission on Audit. The petition seeks to annul the decision² dated September 27, 2007 and resolution³ dated November 5, 2008 of the Commission on Audit, which disallowed the payment of retainer fees to the law firm of Laguesma Magsalin Consulta and Gastardo for legal services rendered to Clark Development Corporation.⁴

Sometime in 2001, officers of Clark Development Corporation,⁵ a government-owned and controlled corporation, approached the law firm of Laguesma Magsalin Consulta and Gastardo for its possible assistance in handling the corporation's labor cases.⁶

Clark Development Corporation, through its legal officers and after the law firm's acquiescence, "sought from the Office of the Government Corporate Counsel ['OGCC'] its approval for the engagement of [Laguesma Magsalin Consulta and Gastardo] as external counsel."⁷

On December 4, 2001, the Office of the Government Corporate Counsel denied the request.⁸ Clark Development Corporation then filed a request for reconsideration.⁹

On May 20, 2002, the Office of the Government Corporate Counsel, through Government Corporate Counsel Amado D. Valdez (Government Corporate Counsel Valdez), reconsidered the request and approved the engagement of Laguesma Magsalin Consulta and Gastardo.¹⁰ It also furnished Clark Development Corporation a copy of a pro-forma retainership contract¹¹ containing the suggested terms and conditions of the retainership.¹² It instructed Clark Development Corporation to submit a

¹ *Rollo*, pp. 3–24.

² *Id.* at 94–99.

³ *Id.* at 143–147.

⁴ *Id.* at 98.

⁵ *Id.* at 29, 33–34, and 40–42. In 2002, the President and Chief Executive Officer was Dr. Emmanuel Y. Angeles. In 2005, the President and Chief Executive Officer was Antonio R. Ng while the Executive Vice-President and Chief Operating Officer was Victor Jose I. Luciano. The Corporate Secretary was Perlita M. Sagmit. A Director Nicdao and Director Madamba were mentioned. However, a complete list for the Board of Directors does not appear in the records.

⁶ *Id.* at 4.

⁷ *Id.*

⁸ *Id.* at 29.

⁹ *Id.* at 176.

¹⁰ *Id.* at 29–30.

¹¹ *Id.* at 52–55. The pro-forma retainership contract was referred to in Office of the Government Corporate Counsel communications as "Retainership Agreement." Its actual caption is "Retainership Contract."

¹² *Id.* at 30.

copy of the contract to the Office of the Government Corporate Counsel after all the parties concerned have signed it.¹³

In the meantime, Laguesma Magsalin Consulta and Gastardo commenced rendering legal services to Clark Development Corporation. At this point, Clark Development Corporation had yet to secure the authorization and clearance from the Office of the Government Corporate Counsel or the concurrence of the Commission on Audit of the retainership contract. According to the law firm, Clark Development Corporation's officers assured the law firm that it was in the process of securing the approval of the Commission on Audit.¹⁴

On June 28, 2002, Clark Development Corporation, through its Board of Directors, approved Laguesma Magsalin Consulta and Gastardo's engagement as private counsel.¹⁵ In 2003, it also approved the assignment of additional labor cases to the law firm.¹⁶

On July 13, 2005, Clark Development Corporation requested the Commission on Audit for concurrence of the retainership contract it executed with Laguesma Magsalin Consulta and Gastardo.¹⁷ According to the law firm, it was only at this point when Clark Development Corporation informed them that the Commission on Audit required the clearance and approval of the Office of the Government Corporate Counsel before it could approve the release of Clark Development Corporation's funds to settle the legal fees due to the law firm.¹⁸

On August 5, 2005, State Auditor IV Elvira G. Punzalan informed Clark Development Corporation that its request for clearance could not be acted upon until the Office of the Government Corporate Counsel approves the retainership contract with finality.¹⁹

On August 10, 2005, Clark Development Corporation sent a letter-request to the Office of the Government Corporate Counsel for the final approval of the retainership contract, in compliance with the Commission on Audit's requirements.²⁰

On December 22, 2005, Government Corporate Counsel Agnes VST Devanadera (Government Corporate Counsel Devanadera) denied Clark

¹³ Id.

¹⁴ Id. at 5.

¹⁵ Id. at 33.

¹⁶ Id. at 5.

¹⁷ Id. at 35-39.

¹⁸ Id. at 5.

¹⁹ Id. at 49.

²⁰ Id. at 177.

Development Corporation's request for approval on the ground that the pro-forma retainership contract given to them was not "based on the premise that the monthly retainer's fee and concomitant charges are reasonable and could pass in audit by COA."²¹ She found that Clark Development Corporation adopted instead the law firm's proposals concerning the payment of a retainer's fee on a per case basis without informing the Office of the Government Corporate Counsel. She, however, ruled that the law firm was entitled to payment under the principle of *quantum meruit* and subject to Clark Development Corporation Board's approval and the usual government auditing rules and regulations.²²

On December 27, 2005, Clark Development Corporation relayed Government Corporate Counsel Devanadera's letter to the Commission's Audit Team Leader, highlighting the portion on the approval of payment to Laguesma Magsalin Consulta and Gastardo on the basis of *quantum meruit*.²³

On November 9, 2006, the Commission on Audit's Office of the General Counsel, Legal and Adjudication Sector issued a "Third Indorsement"²⁴ denying Clark Development Corporation's request for clearance, citing its failure to secure a prior written concurrence of the Commission on Audit and the approval with finality of the Office of the Government Corporate Counsel.²⁵ It also stated that its request for concurrence was made three (3) years after engaging the legal services of the law firm.²⁶

On December 4, 2006, Laguesma Magsalin Consulta and Gastardo appealed the "Third Indorsement" to the Commission on Audit. On December 12, 2006, Clark Development Corporation also filed a motion for reconsideration.²⁷

On September 27, 2007, the Commission on Audit rendered the assailed decision denying the appeal and motion for reconsideration. It ruled that Clark Development Corporation violated Commission on Audit Circular No. 98-002 dated June 9, 1998 and Office of the President Memorandum Circular No. 9 dated August 27, 1998 when it engaged the legal services of Laguesma Magsalin Consulta and Gastardo without the final approval and written concurrence of the Commission on Audit.²⁸ It also ruled that it was not the government's responsibility to pay the legal fees already incurred by

²¹ Id. at 51.

²² Id.

²³ Id. at 59 and 178.

²⁴ Id. at 57-61.

²⁵ Id. at 60.

²⁶ Id. at 59.

²⁷ Id. at 95.

²⁸ Id. at 98.

Clark Development Corporation, but rather by the government officials who violated the regulations on the matter.²⁹

Clark Development Corporation and Laguesma Magsalin Consulta and Gastardo separately filed motions for reconsideration,³⁰ which the Commission on Audit denied in the assailed resolution dated November 5, 2008. The resolution also disallowed the payment of legal fees to the law firm on the basis of *quantum meruit* since the Commission on Audit Circular No. 86-255 mandates that the engagement of private counsel without prior approval “shall be a personal liability of the officials concerned.”³¹

Laguesma Magsalin Consulta and Gastardo filed this petition for certiorari on December 19, 2008.³² Respondents, through the Office of the Solicitor General, filed their comment³³ dated May 7, 2009. The reply³⁴ was filed on September 1, 2009.

The primordial issue to be resolved by this court is whether the Commission on Audit erred in disallowing the payment of the legal fees to Laguesma Magsalin Consulta and Gastardo as Clark Development Corporation’s private counsel.

To resolve this issue, however, several procedural and substantive issues must first be addressed:

Procedural:

1. Whether the petition was filed on time; and
2. Whether petitioner is the real party-in-interest.

Substantive:

1. Whether the Commission on Audit erred in denying Clark Development Corporation’s request for clearance in engaging petitioner as private counsel;

²⁹ Id.

³⁰ Id. at 100–112 and 135–142.

³¹ Id. at 146.

³² Id. at 3.

³³ Id. at 175–197.

³⁴ Id. at 205–221.

2. Whether the Commission on Audit correctly cited *Polloso v. Gangan*³⁵ and *PHIVIDEC Industrial Authority v. Capitol Steel Corporation*³⁶ in support of its denial; and
3. Whether the Commission on Audit erred in ruling that petitioner should not be paid on the basis of *quantum meruit* and that any payment for its legal services should be the personal liability of Clark Development Corporation's officials.

Petitioner argues that *Polloso* and *PHIVIDEC* are not applicable to the circumstances at hand because in both cases, the government agency concerned had failed to secure the approval of both the Office of the Government Corporate Counsel and the Commission on Audit.³⁷ Petitioner asserts that it was able to secure authorization from the Office of the Government Corporate Counsel prior to rendering services to Clark Development Corporation for all but two (2) of the labor cases assigned to it.³⁸ It argues that the May 20, 2002 letter from Government Corporate Counsel Valdez was tantamount to a grant of authorization since it granted Clark Development Corporation's request for reconsideration.³⁹

In their comment,⁴⁰ respondents argue that petitioner is not a real party-in-interest to the case.⁴¹ They argue that it is Clark Development Corporation, and not petitioner, who is a real party-in-interest since the subject of the assailed decision was the denial of the corporation's request for clearance.⁴²

Respondents also allege that it was only on July 13, 2005, or three (3) years after the hiring of petitioner, when Clark Development Corporation requested the Commission on Audit's concurrence of the retainership contract between Clark Development Corporation and petitioner.⁴³ They argue that the retainership contract was not approved with finality by the Office of the Government Corporate Counsel.⁴⁴ Further, *Polloso* and *PHIVIDEC* are applicable to this case since both cases involve the "indispensability of [the] prior written concurrence of both [the Office of the Government Corporate Counsel] and the [Commission on Audit] before any [government-owned and controlled corporation] can hire an external counsel."⁴⁵

³⁵ 390 Phil. 1101 (2000) [Per J. Kapunan, En Banc].

³⁶ 460 Phil. 493 (2003) [Per J. Tinga, Second Division].

³⁷ *Rollo*, pp. 12–13.

³⁸ *Id.* at 14.

³⁹ *Id.* at 14 and 40.

⁴⁰ *Id.* at 175–197.

⁴¹ *Id.* at 181.

⁴² *Id.* at 182.

⁴³ *Id.* at 59 and 186–187.

⁴⁴ *Id.* at 186.

⁴⁵ *Id.* at 188.

In its reply,⁴⁶ petitioner argues that it is a real party-in-interest since “it rendered its services to [Clark Development Corporation], which ultimately redounded to the benefit of the Republic”⁴⁷ and that “it deserves to be paid what is its due as a matter of right.”⁴⁸ Petitioner also reiterates its argument that *Polloso* and *PHIVIDECA* are not applicable to this case since the factual antecedents are not the same.⁴⁹

The petition is denied.

The petition was filed out of time

Petitioner states that it filed this petition under Rule XI, Section 1 of the 1997 Revised Rules of Procedure of the Commission on Audit.⁵⁰ The rule states:

RULE XI JUDICIAL REVIEW

SECTION 1. Petition for Certiorari. — Any decision, order or resolution of the Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty (30) days from receipt of a copy thereof in the manner provided by law, the Rules of Court⁵¹ and these Rules.

This rule is based on Article IX-A, Section 7 of the Constitution, which states:

Section 7. Each Commission shall decide by a majority vote of all its Members, any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. *Unless*

⁴⁶ Id. at 205–221.

⁴⁷ Id. at 206.

⁴⁸ Id. at 207.

⁴⁹ Id. at 211–212.

⁵⁰ Id. at 3. The Commission on Audit now uses the 2009 Revised Rules of Procedure, which was enacted after this petition had been filed. Section 1 of Rule XII now states:

Section 1. *Petition for Certiorari.* - Any decision, order or resolution of the Commission may be brought to the Supreme Court on certiorari by the aggrieved party within (30) days from receipt of a copy thereof in the manner provided by law and Rules of Court.

When the decision, order or resolution adversely affects the interest of any government agency, the appeal may be taken by the proper head of that agency.

⁵¹ The Rules of Court specifies this kind of certiorari as one under Rule 64, which is the review of judgments and final orders or resolutions of the Commission on Elections and the Commission on Audit. The *rollo*, however, specified the petition as one under Rule 65, while the petition only mentions that it was a petition for certiorari filed under Rule XI, Section 1 of the Revised Rule of Procedure of the Commission on Audit.

otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof. (Emphasis supplied)

Ordinarily, a petition for certiorari under Rule 65 of the Rules of Court has a reglementary period of 60 days from receipt of denial of the motion for reconsideration. The Constitution, however, specifies that the reglementary period for assailing the decisions, orders, or rulings of the constitutional commissions is thirty (30) days from receipt of the decision, order, or ruling. For this reason, a separate rule was enacted in the Rules of Court.

Rule 64 of the Rules of Civil Procedure provides the guidelines for filing a petition for certiorari under this rule. Section 2 of the rule specifies that “[a] judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on certiorari under Rule 65, ***except as hereinafter provided.***”

The phrase, “except as hereinafter provided,” specifies that any petition for certiorari filed under this rule follows the same requisites as those of Rule 65 except for certain provisions found only in Rule 64. One of these provisions concerns the time given to file the petition.

Section 3 of Rule 64 of the Rules of Civil Procedure states:

SEC. 3. Time to file petition. — *The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial. (Emphasis supplied)*

Under this rule, a party may file a petition for review on certiorari within 30 days from notice of the judgment being assailed. The reglementary period includes the time taken to file the motion for reconsideration and is only interrupted once the motion is filed. If the motion is denied, the party may file the petition only within the period remaining from the notice of judgment.

The difference between Rule 64 and Rule 65 has already been

exhaustively discussed by this court in *Pates v. Commission on Elections*:⁵²

Rule 64, however, cannot simply be equated to Rule 65 even if it expressly refers to the latter rule. They exist as separate rules for substantive reasons as discussed below. Procedurally, the most patent difference between the two – *i.e.*, the exception that Section 2, Rule 64 refers to – is Section 3 which provides for a special period for the filing of petitions for *certiorari* from decisions or rulings of the COMELEC *en banc*. *The period is 30 days from notice of the decision or ruling (instead of the 60 days that Rule 65 provides), with the intervening period used for the filing of any motion for reconsideration deductible from the originally-granted 30 days (instead of the fresh period of 60 days that Rule 65 provides).*⁵³ (Emphasis supplied)

In this case, petitioner received the decision of the Commission on Audit on October 16, 2007.⁵⁴ It filed a motion for reconsideration on November 6, 2007,⁵⁵ or after 21 days. It received notice of the denial of its motion on November 20, 2008.⁵⁶ The receipt of this notice gave petitioner nine (9) days, or until November 29, 2008, to file a petition for *certiorari*. Since November 29, 2008 fell on a Saturday, petitioner could still have filed on the next working day, or on December 1, 2008. It, however, filed the petition on December 19, 2008,⁵⁷ which was well beyond the reglementary period.

This petition could have been dismissed outright for being filed out of time. This court, however, recognizes that there are certain exceptions that allow a relaxation of the procedural rules. In *Barranco v. Commission on the Settlement of Land Problems*:⁵⁸

The Court is fully aware that procedural rules are not to be belittled or simply disregarded for these prescribed procedures insure an orderly and speedy administration of justice. However, it is equally true that litigation is not merely a game of technicalities. *Law and jurisprudence grant to courts the prerogative to relax compliance with procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to put an end to litigation speedily and the parties' right to an opportunity to be heard.*

In *Sanchez v. Court of Appeals*, the Court restated the reasons which may provide justification for a court to suspend a strict adherence to procedural rules, such as: (a) matters of life, liberty, honor or property[,] (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing

⁵² 609 Phil. 260 (2009) [Per J. Brion, En Banc].

⁵³ Id. at 265–266.

⁵⁴ *Rollo*, p. 6.

⁵⁵ Id. at 7.

⁵⁶ Id. at 8.

⁵⁷ Id. at 3.

⁵⁸ 524 Phil. 533 (2006) [Per J. Ynares-Santiago, First Division].

that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby.⁵⁹ (Emphasis supplied)

Considering that the issues in this case involve the right of petitioner to receive due compensation on the one hand and respondents' duty to prevent the unauthorized disbursement of public funds on the other, a relaxation of the technical rules is in order.

Petitioner is a real party-in-interest

Respondents argue that it is Clark Development Corporation, and not petitioner, which is the real party-in-interest since the subject of the assailed decision and resolution was the corporation's request for clearance to pay petitioner its legal fees. Respondents argue that any interest petitioner may have in the case is merely incidental.⁶⁰ This is erroneous.

Petitioner is a real party-in-interest, as defined in Rule 3, Section 2 of the 1997 Rules of Civil Procedure:

SEC. 2. *Parties in interest.*— A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

Petitioner does not have a "mere incidental interest,"⁶¹ and its interest is not "merely consequential."⁶² Respondents mistakenly narrow down the issue to whether they erred in denying Clark Development Corporation's request for clearance of the retainerhip contract.⁶³ In doing so, they argue that the interested parties are limited only to Clark Development Corporation and respondents.⁶⁴

The issue at hand, however, relates to the assailed decision and resolution of respondents, which disallowed the disbursement of public funds for the payment of legal fees to petitioner.

Respondents admit that legal services were performed by petitioner for which payment of legal fees are due. The question that they resolved

⁵⁹ Id. at 543, citing *Reyes v. Sps. Torres*, 429 Phil. 95, 101 (2002) [Per J. Ynares-Santiago, First Division] and *Sanchez v. Court of Appeals*, 452 Phil. 665, 674 (2003) [Per J. Bellosillo, En Banc].

⁶⁰ *Rollo*, p. 183.

⁶¹ Id. at 182.

⁶² Id. at 183.

⁶³ Id. at 182.

⁶⁴ Id.

was *which* among the parties, the government, or the officials of Clark Development Corporation were liable.

The net effect of upholding or setting aside the assailed Commission on Audit rulings would be to either disallow or allow the payment of legal fees to petitioner. Petitioner, therefore, stands to either be benefited or injured by the suit, or entitled to its avails. It is a real party-in-interest.

Clark Development Corporation's Board of Directors, on the other hand, should have been impleaded in this case as a necessary party.

A necessary party is defined as "one who is not indispensable but who ought to be joined as a party if complete relief is to be accorded as to those already parties, or for a complete determination or settlement of the claim subject of the action."⁶⁵

The actions of the Board of Directors precipitated the issues in this case. If the petition is granted, then the officers are relieved of liability to petitioner. If the rulings of respondents are upheld, then it is the Board of Directors that will be liable to petitioner. Any relief in this case would be incomplete without joining the members of the Board of Directors.

The Commission on Audit did not commit grave abuse of discretion in denying the corporation's request for clearance to engage the services of petitioner as private counsel

Book IV, Title III, Chapter 3, Section 10 of the Administrative Code of 1987 provides:

Section. 10. *Office of the Government Corporate Counsel. - The Office of the Government Corporate Counsel (OGCC) shall act as the principal law office of all government-owned or controlled corporations, their subsidiaries, other corporate off-springs and government acquired asset corporations and shall exercise control and supervision over all legal departments or divisions maintained separately and such powers and functions as are now or may hereafter be provided by law. In the exercise of such control and supervision, the Government Corporate Counsel shall promulgate rules and regulations to effectively implement the objectives of this Office. (Emphasis supplied)*

⁶⁵ Rules of Court (1997), Rule 3, Sec. 8.

The Office of the Government Corporate Counsel is mandated by law to provide legal services to government-owned and controlled corporations such as Clark Development Corporation.

As a general rule, government-owned and controlled corporations are not allowed to engage the legal services of private counsels. However, both respondent and the Office of the President have made issuances that had the effect of providing certain exceptions to the general rule, thus:

Book IV, Title III, Chapter 3, Section 10 of Executive Order No. 292, otherwise known as the Administrative Code of 1987, provides that the Office of the Government Corporate Counsel (OGCC) shall act as the principal law office of all GOCCs, their subsidiaries, other corporate off-springs, and government acquired asset corporations. Administrative Order No. 130, issued by the Office of the President on 19 May 1994, delineating the functions and responsibilities of the OSG and the OGCC, clarifies that all legal matters pertaining to GOCCs, their subsidiaries, other corporate off[-]springs, and government acquired asset corporations shall be exclusively referred to and handled by the OGCC, unless their respective charters expressly name the OSG as their legal counsel. Nonetheless, *the GOCC may hire the services of a private counsel in exceptional cases with the written conformity and acquiescence of the Government Corporate Counsel, and with the concurrence of the Commission on Audit (COA).*⁶⁶ (Emphasis supplied)

The rules and regulations concerning the engagement of private counsel by government-owned and controlled corporations is currently provided for by Commission on Audit Circular No. 86-255⁶⁷ dated April 2, 1986, and Office of the President Memorandum Circular No. 9 dated August 27, 1998.

Commission on Audit Circular No. 86-255, dated April 2, 1986, as amended, states:

Accordingly and pursuant to this Commission's exclusive authority to promulgate accounting and auditing rules and regulations, including for the prevention and disallowance of irregular, unnecessary, excessive, extravagant and/or unconscionable expenditure or uses of public funds and property (Sec. 2-2, Art. IX-D, Constitutional, *public funds shall not be utilized for payment of the services of a private legal counsel or law firm to represent government agencies and instrumentalities, including government-owned or controlled corporations and local government units in court or to render legal services for them. In the event that such legal services cannot be avoided or is justified under extraordinary or exceptional circumstances* for government agencies and instrumentalities,

⁶⁶ *Land Bank of the Philippines v. AMS Farming Corporation*, 590 Phil. 170, 198–199 (2008) [Per J. Chico-Nazario, Third Division], *citing* Office of the President, Memorandum Circular No. 9 (1998).

⁶⁷ As amended by Commission on Audit Circular No. 95-011 dated December 4, 1995 and Commission on Audit Circular No. 98-002 dated June 9, 1998.

including government-owned or controlled corporations, *the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case maybe, and the written concurrence of the Commission on Audit shall first be secured before the hiring or employment of a private lawyer or law firm.* (Emphasis supplied)

The Office of the President Memorandum Circular No. 9, on the other hand, states:

SECTION 1. All legal matters pertaining to government-owned or controlled corporations, their subsidiaries, other corporate offsprings and government acquired asset corporations (GOCCs) shall be exclusively referred to and handled by the Office of the Government Corporate Counsel (OGCC).

GOCCs are thereby enjoined from referring their cases and legal matters to the Office of the Solicitor General unless their respective charters expressly name the Office of the Solicitor General as their legal counsel.

However, under exceptional circumstances, the OSG may represent the GOCC concerned, Provided: This is authorized by the President; or by the head of the office concerned and approved by the President.

SECTION 2. All pending cases of GOCCs being handled by the OSG, and all pending requests for opinions and contract reviews which have been referred by said GOCCs to the OSG, may be retained and acted upon by the OSG; but the latter shall inform the OGCC of the said pending cases, requests for opinions and contract reviews, if any, to ensure proper monitoring and coordination.

SECTION 3. *GOCCs are likewise enjoined to refrain from hiring private lawyers or law firms to handle their cases and legal matters. But in exceptional cases, the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be, and the written concurrence of the Commission on Audit shall first be secured before the hiring or employment of a private lawyer or law firm.* (Emphasis supplied)

According to these rules and regulations, the general rule is that government-owned and controlled corporations must refer all their legal matters to the Office of the Government Corporate Counsel. It is only in “extraordinary or exceptional circumstances” or “exceptional cases” that it is allowed to engage the services of private counsels.

Petitioner claims that it was hired by Clark Development Corporation due to “numerous labor cases which need urgent attention[.]”⁶⁸ In its request

⁶⁸ Rollo, p. 44.

for reconsideration to the Office of the Government Corporate Counsel, Clark Development Corporation claims that it was obtaining the services of petitioner “acting through Atty. Ariston Vicente R. Quirolgico, known expert in the field of labor law and relations.”⁶⁹

The labor cases petitioner handled were not of a complicated or peculiar nature that could justify the hiring of a known expert in the field. On the contrary, these appear to be standard labor cases of illegal dismissal and collective bargaining agreement negotiations,⁷⁰ which Clark Development Corporation’s lawyers or the Office of the Government Corporate Counsel could have handled.

Commission on Audit Circular No. 86-255 dated April 2, 1986 and Office of the President Memorandum Circular No. 9 also require that “before the hiring or employment” of private counsel, the “written conformity and acquiescence of the [Government Corporate Counsel] and the written concurrence of the Commission on Audit shall first be secured. . . .”

In this case, Clark Development Corporation had failed to secure the final approval of the Office of the Government Corporate Counsel and the written concurrence of respondent before it engaged the services of petitioner.

When Government Corporate Counsel Valdez granted Clark Development Corporation’s request for reconsideration, the approval was merely conditional and subject to its submission of the signed pro-forma retainership contract provided for by the Office of the Government Corporate Counsel. In the letter dated May 20, 2002, Government Corporate Counsel Valdez added:

For the better protection of the interests of CDC, we hereby furnish you with a Pro-Forma Retainership Agreement containing the suggested terms and conditions of the retainership, which you may adopt for this purpose.

After the subject Retainership Agreement shall have been executed between your corporation and the retained counsel, please submit a copy thereof to our Office for our information and file.⁷¹

Upon Clark Development Corporation’s failure to submit the retainership contract, the Office of the Government Corporate Counsel denied Clark Development Corporation’s request for final approval of its

⁶⁹ Id. at 43.

⁷⁰ Id. at 17–20 and 115–132.

⁷¹ Id. at 44.

legal services contracts, including that of petitioner. In the letter⁷² dated December 22, 2005, Government Corporate Counsel Devanadera informed Clark Development Corporation that:

[i]t appears, though, that our Pro-Forma Retainership Agreement was not followed and CDC merely adopted the proposal of aforesaid retainers/consultants. Also, this Office was never informed that CDC agreed on payment of retainer's fee on a per case basis.⁷³

In view of Clark Development Corporation's failure to secure the final conformity and acquiescence of the Office of the Government Corporate Counsel, its retainership contract with petitioner could not have been considered as authorized.

The concurrence of respondents was also not secured by Clark Development Corporation *prior* to hiring petitioner's services. The corporation only wrote a letter-request to respondents three (3) years after it had engaged the services of petitioner as private legal counsel.

The cases that the private counsel was asked to manage are not beyond the range of reasonable competence expected from the Office of the Government Corporate Counsel. Certainly, the issues do not appear to be complex or of substantial national interest to merit additional counsel. Even so, there was no showing that the delays in the approval also were due to circumstances not attributable to petitioner nor was there a clear showing that there was unreasonable delay in any action of the approving authorities. Rather, it appears that the procurement of the proper authorizations was mere afterthought.

Respondents, therefore, correctly denied Clark Development Corporation's request for clearance in the disbursement of funds to pay petitioner its standing legal fees.

***Polloso v. Gangan and PHIVIDEC
Industrial Authority v. Capitol Steel
Corporation apply in this case***

Petitioner argues that *Polloso* does not apply since the denial was based on the "absence of a written authority from the OSG or OGCC[.]"⁷⁴ It also argues that the *PHIVIDEC* case does not apply since "the case [was] represented by a private lawyer whose engagement was secured without the

⁷² Id. at 50–51.

⁷³ Id. at 51.

⁷⁴ Id. at 16, emphasis and underscoring in the original.

conformity of the OGCC and the COA.”⁷⁵ Petitioner argues that, unlike these cases, Clark Development Corporation was able to obtain the written conformity of the Office of the Government Corporate Counsel to engage petitioner’s services.

In *Polloso*, the legal services of Atty. Benemerito A. Satorre were engaged by the National Power Corporation for its Leyte-Cebu and Leyte-Luzon Interconnection Projects.⁷⁶ The Commission on Audit disallowed the payment of services to Atty. Satorre on the basis of *quantum meruit*, citing Commission on Audit Circular No. 86-255 dated April 2, 1986.⁷⁷ In upholding the disallowance by the Commission on Audit, this court ruled:

It bears repeating that the purpose of the circular is to curtail the unauthorized and unnecessary disbursement of public funds to private lawyers for services rendered to the government. This is in line with the Commission on Audit’s constitutional mandate to promulgate accounting and auditing rules and regulations including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures or uses of government funds and properties. Having determined the intent of the law, this Court has the imperative duty to give it effect even if the policy goes beyond the letter or words of the statute.

Hence, as the hiring of Atty. Satorre was clearly done without the prior conformity and acquiescence of the Office of the Solicitor General or the Government Corporate Counsel, as well as the written concurrence of the Commission on Audit, the payment of fees to Atty. Satorre was correctly disallowed in audit by the COA.⁷⁸

In *PHIVIDEC*, this court found the engagement by PHIVIDEC Industrial Authority, a government-owned and controlled corporation, of Atty. Cesilo Adaza’s legal services to be unauthorized for the corporation’s failure to secure the written conformity of the Office of the Government Corporate Counsel and the Commission on Audit.⁷⁹ Citing the provisions of Office of the President Memorandum Circular No. 9, this court ruled that:

[i]t was only with the enactment of Memorandum Circular No. 9 in 1998 that an exception to the general prohibition was allowed for the first time since P.D. No. 1415 was enacted in 1978. However, indispensable conditions precedent were imposed before any hiring of private lawyer could be effected. *First, private counsel can be hired only in exceptional cases. Second, the GOCC must first secure the written conformity and acquiescence of the Solicitor General or the Government Corporate*

⁷⁵ Id. at 12, emphasis and underscoring in the original.

⁷⁶ *Polloso v. Gangan*, 390 Phil. 1101, 1105 (2000) [Per J. Kapunan, En Banc].

⁷⁷ Id. at 1112.

⁷⁸ Id. at 1111, citing CONST., art. IX-D, sec. 2, par. (2) and *Luzon Stevedoring Corporation v. Anti-Dummy Board*, 150-B Phil. 380, 401 (1972) [Per J. Makasiar, En Banc].

⁷⁹ *PHIVIDEC Industrial Authority v. Capitol Steel Corporation*, 460 Phil. 493, 505–506 (2003) [Per J. Tinga, Second Division].

*Counsel, as the case may be, before any hiring can be done. And third, the written concurrence of the COA must also be secured prior to the hiring.*⁸⁰ (Emphasis supplied)

The same ruling was likewise reiterated in *Vargas v. Ighes*,⁸¹ wherein this court stated:

Under Section 10, Chapter 3, Title III, Book IV of the Administrative Code of 1987, it is the OGCC which shall act as the principal law office of all GOCCs. And Section 3 of Memorandum Circular No. 9, issued by President Estrada on August 27, 1998, enjoins GOCCs to refrain from hiring private lawyers or law firms to handle their cases and legal matters. But the same Section 3 provides that in exceptional cases, the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be, and the written concurrence of the COA shall first be secured before the hiring or employment of a private lawyer or law firm. *In Phividec Industrial Authority v. Capitol Steel Corporation*, we listed three (3) indispensable conditions before a GOCC can hire a private lawyer: (1) private counsel can only be hired in exceptional cases; (2) the GOCC must first secure the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be; and (3) the written concurrence of the COA must also be secured.⁸² (Emphasis supplied)

On the basis of *Polloso* and *PHIVIDEC*, petitioner's arguments are unmeritorious.

Petitioner fails to understand that Commission on Audit Circular No. 86-255 requires not only the conformity and acquiescence of the Office of the Solicitor General or Office of the Government Corporate Counsel **but also** the written conformity of the Commission on Audit. The hiring of private counsel becomes unauthorized if it is only the Office of the Government Corporate Counsel that gives its conformity. The rules and jurisprudence expressly require that the government-owned and controlled corporation concerned must also secure the concurrence of respondents.

It is also erroneous for petitioner to assume that it had the conformity and acquiescence of the Office of the Government Corporate Counsel since Government Corporate Counsel Valdez's approval of Clark Development Corporation's request was merely conditional on its submission of the retainerhip contract. Clark Development Corporation's failure to submit the retainerhip contract resulted in its failure to secure a final approval.

The Commission on Audit did not

⁸⁰ Id. at 503.

⁸¹ 637 Phil. 1 (2010) [Per J. Villarama, Jr., Third Division].

⁸² Id. at 8–9, citing *PHIVIDEC Industrial Authority v. Capitol Steel Corporation*, 460 Phil. 493, 503 (2003) [Per J. Tinga, Second Division].

commit grave abuse of discretion in disallowing the payment to petitioner on the basis of *quantum meruit*

When Government Corporate Counsel Devanadera denied Clark Development Corporation's request for final approval of its legal services contracts, she, however, allowed the payment to petitioner for legal services already rendered on a *quantum meruit* basis.⁸³

Respondents disallowed Clark Development Corporation from paying petitioner on this basis as the contract between them was executed "in clear violation of the provisions of COA Circular No. 86-255 and OP Memorandum Circular No. 9[.]"⁸⁴ It then ruled that the retainership contract between them should be deemed a private contract for which the officials of Clark Development Corporation should be liable, citing Section 103⁸⁵ of Presidential Decree No. 1445, otherwise known as the Government Auditing Code of the Philippines.⁸⁶

In *National Power Corporation v. Heirs of Macabangkit Sangkay*, *quantum meruit*.⁸⁷

— literally meaning *as much as he deserves* — is used as basis for determining an attorney's professional fees in the absence of an express agreement. The recovery of attorney's fees on the basis of *quantum meruit* is a device that prevents an unscrupulous client from running away with the fruits of the legal services of counsel without paying for it and also avoids unjust enrichment on the part of the attorney himself. An attorney must show that he is entitled to reasonable compensation for the effort in pursuing the client's cause, taking into account certain factors in fixing the amount of legal fees.⁸⁸

Here, the Board of Directors, acting on behalf of Clark Development Corporation, contracted the services of petitioner, without the necessary prior approvals required by the rules and regulations for the hiring of private counsel. Their actions were clearly unauthorized.

It was, thus, erroneous for Government Corporate Counsel

⁸³ *Rollo*, p. 51.

⁸⁴ *Id.* at 146.

⁸⁵ SEC. 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.

⁸⁶ *Rollo*, p. 146.

⁸⁷ G.R. No. 165828, August 24, 2011, 656 SCRA 60 [Per J. Bersamin, First Division].

⁸⁸ *Id.* at 96–97, citing *Spouses Garcia v. Bala*, 512 Phil. 486, 494 (2005) [Per J. Panganiban, Third Division] and *Pineda v. de Jesus*, 531 Phil. 207, 211 (2006) [Per J. Corona, Second Division].

Devanadera to bind Clark Development Corporation, a government entity, to pay petitioner on a *quantum meruit* basis for legal services, which were neither approved nor authorized by the government. Even granting that petitioner ought to be paid for services rendered, it should not be the government's liability, but that of the officials who engaged the services of petitioner without the required authorization.

The amendment of Commission on Audit Circular No. 86-255 by Commission on Audit Circular No. 98-002 created a gap in the law

Commission on Audit Circular No. 86-255 dated April 2, 1986 previously stated that:

[a]ccordingly, it is hereby directed that, henceforth, the payment out of public funds of retainer fees to private law practitioners who are so hired or employed without the prior written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be, as well as the written concurrence of the Commission on Audit shall be disallowed in audit and *the same shall be a personal liability of the officials concerned.* (Emphasis supplied)

However, when Commission on Audit Circular No. 86-255 was amended by Commission on Audit Circular No. 98-002 on June 9, 1998, it failed to retain the liability of the officials who violated the circular.⁸⁹ This gap in the law paves the way for both the erring officials of the government-owned and controlled corporations to disclaim any responsibility for the liabilities owing to private practitioners.

It cannot be denied that petitioner rendered legal services to Clark Development Corporation. It assisted the corporation in litigating numerous labor cases⁹⁰ during the period of its engagement. It would be an injustice for petitioner not to be compensated for services rendered even if the engagement was unauthorized.

The fulfillment of the requirements of the rules and regulations was Clark Development Corporation's responsibility, not petitioner's. The Board of Directors, by its irresponsible actions, unjustly procured for themselves petitioner's legal services without compensation.

To fill the gap created by the amendment of Commission on Audit

⁸⁹ The amendment was made to regulate the proliferation of private lawyers representing local government units (LGUs). The circular, in fact, makes note that the amendments made are "insofar as LGUs are concerned."

⁹⁰ *Rollo*, pp. 74-91.

Circular No. 86-255, respondents correctly held that the officials of Clark Development Corporation who violated the provisions of Circular No. 98-002 and Circular No. 9 should be personally liable to pay the legal fees of petitioner, as previously provided for in Circular No. 86-255.

This finds support in Section 103 of the Government Auditing Code of the Philippines,⁹¹ which states:


SEC. 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.

This court has also previously held in *Gumaru v. Quirino State College*⁹² that:

the fee of the lawyer who rendered legal service to the government in lieu of the OSG or the OGCC is the personal liability of the government official who hired his services without the prior written conformity of the OSG or the OGCC, as the case may be.⁹³

WHEREFORE, the petition is **DISMISSED** without prejudice to petitioner filing another action against the proper parties.

SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice


⁹¹ Pres. Decree No. 1445 (1978).

⁹² 552 Phil. 481 (2007) [Per C.J. Puno, First Division].

⁹³ Id. at 493, citing *Polloso v. Gangan*, 390 Phil. 1101, 1108 (2000) [Per J. Kapunan, En Banc].



ANTONIO T. CARPIO
Associate Justice




PRESBITERO J. VELASCO, JR.
Associate Justice

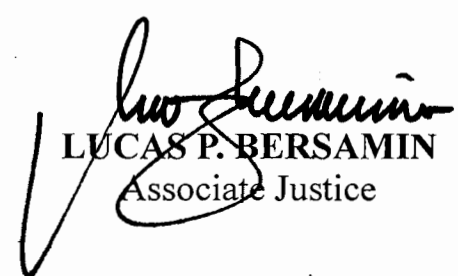


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

On leave
ARTURO D. BRION
Associate Justice




DIOSDADO M. PERALTA
Associate Justice



LUCAS P. BERSAMIN
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice




MARTIN S. VILLARAMA, JR.
Associate Justice




JOSE PORTUGAL PEREZ
Associate Justice



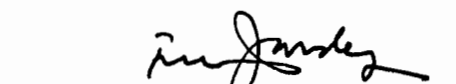
JOSE CAURAL MENDOZA
Associate Justice



BIENVENIDO L. REYES
Associate Justice



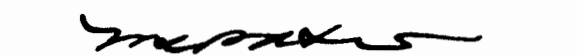
ESTELA M. PERLAS-BERNABE
Associate Justice



FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the court.



MARIA LOURDES P. A. SERENO
Chief Justice