

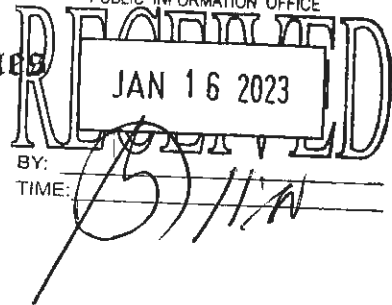


Republic of the Philippines  
Supreme Court  
Manila

EN BANC

NOTICE

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE



Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated **JULY 19, 2022**, which reads as follows:

**“G.R. No. 252418 (Marites S. Bolaños\* v. The Commission on Audit) and G.R. No. 252419 (Marites S. Bolaños v. The Commission on Audit).** – Before the Court are two (2) consolidated Petitions for *Certiorari*<sup>1</sup> under Rule 64 in relation to Rule 65 of the Rules of Court filed by petitioner Marites S. Bolaños (Bolaños), Chief Administrative Officer, Office of the Finance Services and Chief Accountant of the Technological University of the Philippines (TUP), against the Commission on Audit (COA) in connection with disallowances made by the COA in relation to payments made by TUP to Atlantic Erectors, Inc. (AEI) during the implementation of TUP’s various infrastructure projects from 2006 to 2008.

In G.R. No. 252418, Bolaños assails the Decision No. 2018-146<sup>2</sup> dated January 26, 2018 and the Resolution<sup>3</sup> dated November 25, 2019 issued by the Commission Proper of the COA, which affirmed with modification the Decision No. 2011-013 dated June 8, 2011 issued by COA’s National Government Sector (NGS) – Cluster C, which held as valid the Notice of Disallowance (ND) No. 2009-01-164-08 dated September 11, 2009, amounting to ₱23,499,187.37 and the ND No. 09-01-164-(09) dated November 6, 2009 amounting to ₱1,304,448.28, and held that Bolaños, among others, is liable to return to the government the amounts disallowed. The aforementioned disallowances were made due to the supposed absence of necessary documents to support payments, overpayments and double payments of TUP to AEI.<sup>4</sup>

In G.R. No. 252419, Bolaños assails the Decision No. 2018-234<sup>5</sup> dated March 12, 2018 and the Resolution<sup>6</sup> dated January 27, 2020 issued by the

\* Marites Bolanos in some parts of the *rollo*.

<sup>1</sup> *Rollo* (G.R. No. 252418), pp. 3-72; *rollo* (G.R. No. 252419), pp. 3-45.

<sup>2</sup> *Id.* at 36-55.

<sup>3</sup> *Id.* at 56.

<sup>4</sup> *Id.* at 36-37.

<sup>5</sup> *Rollo* (G.R. No. 252419), pp. 17-20.

<sup>6</sup> *Id.* at 21-24.

Commission Proper of the COA, which affirmed in *toto* the Decision No. 2014-013<sup>7</sup> dated November 18, 2014 issued by COA’s NGS–Cluster 5 which upheld as valid ND No. 11-01-164(09)<sup>8</sup> dated June 13, 2011, amounting to ₱4,429,448.10 and held that Bolaños, among others, is liable to return to the government the amount disallowed. The foregoing disallowance was made due to the supposed improper and irregular payment of retention fees by TUP to AEI.

**ANTECEDENTS**

During the time material to the instant cases, then TUP President, Dr. Godofredo E. Gallega, entered into several contracts with AEI through its President, Engr. Ariel T. Lim, in relation to the implementation of various infrastructure projects in TUP’s Manila campus, *viz.*:<sup>9</sup>

NAME OF PROJECT	DATE OF CONTRACT	AMOUNT
College of Architecture and Fine Arts (CAFA) – College of Industrial Education (CIE) Building		
Original Contract	September 26, 2005	₱10,800,000.00
Variation Order #1	April 4, 2006	₱1,157,218.00
Negotiated Contract	August 17, 2006	₱1,216,581.06
	<b>Total</b>	<b>₱13,173,799.06</b>
CAFA-CIE Ceiling and Toilet Renovation		
Original Contract	May 31, 2006	₱5,562,000.00
Variation Order #1	June 28, 2006	₱545,242.24
	<b>Total</b>	<b>₱6,107,242.24</b>
CAFA-CIE Electrical Rewiring and Rehabilitation		
Electrical Rewiring	June 24, 2006	₱3,825,000.00
Interior Finishing	June 24, 2006	₱2,236,811.17
	<b>Total</b>	<b>₱6,061,811.17</b>
Covered Court		
Original Contract	December 8, 2006	₱9,959,363.31
Variation Order #1	January 23, 2007	₱952,120.60
Additional Work Order #1	March 20, 2007	₱1,259,000.00
Variation Order #2	April 4, 2007	₱1,039,000.00
Supplemental Agreement #1	June 18, 2007	₱6,282,447.10
Negotiated Contract	April 30, 2008	₱2,220,490.17
	<b>Total</b>	<b>₱21,712,421.18</b>
College Industrial Technology (CIT) Building Completion		
Original Contract	January 15, 2007	₱22,149,188.29
Variation Order #1	May 31, 2007	₱3,430,000.00
Negotiated Contract #1	August 6, 2007	₱2,701,700.00
Supplemental Agreement	August 30, 2007	₱12,674,181.77

<sup>7</sup> Id. at 25-28.

<sup>8</sup> Id. at 29-30.

<sup>9</sup> *Rollo* (G.R. No. 252418), pp. 40-41.

Supplemental Order #2	November 15, 2007	₱5,420,811.00
Negotiated Contract #2	November 29, 2007	₱9,181,303.17
Variation Order #2	January 3, 2008	₱620,000.00
	<b>Total</b>	<b>₱56,177,184.23</b>
Covered Walkway		
Original Contract	July 2, 2008	₱5,287,685.19
Variation Order #1	August 10, 2008	₱1,502,641.32
Variation Order #2	October 3, 2008	₱1,361,471.82
Negotiated Contract I	October 29, 2008	₱4,878,557.90
Negotiated Contract II	November 16, 2008	₱1,304,448.28
	<b>Total</b>	<b>₱14,334,804.51</b>
Guest House Renovation		
Original Contract	July 2, 2008	₱2,010,743.85
Variation Order #1	October 3, 2008	₱905,347.78
Negotiated Contract I	October 12, 2008	₱2,580,915.27
Negotiated Contract II	October 29, 2008	₱1,902,500.00
	<b>Total</b>	<b>₱7,399,506.90</b>

The above transactions were thereafter subjected to post-audit by the COA's audit team assigned to TUP.

### **G.R. No. 252418**

During post-audit, the Audit Team noted that copies of the relevant contracts were not submitted to the COA Team assigned to TUP and that there were payments without the corresponding Disbursement Vouchers (DV). The Audit Team Leader (ATL) issued a Notice of Suspension No. 08-001-164(08) dated September 10, 2008 (Notice of Suspension) which required TUP, *i.e.*, Bolaños, to submit the required contracts and DVs. Relevantly, TUP failed to submit the identified documents.<sup>10</sup>

On September 11, 2009, the ATL and COA's Supervising Auditor (SA) assigned to TUP issued ND No. 2009-01-164-08 which disallowed payments made by TUP to AEI amounting to ₱23,499,187.37 due to: (a) TUP's failure to comply with the submission of documents required by the Notice of Suspension; and (b) overpayments were made by TUP to AEI. A breakdown of the disallowed amount is provided below:<sup>11</sup>

NAME OF PROJECT	PAYMENT PER BOOKS (PhP)	PAYMENT PER AUDIT (PhP)	OVERPAYMENTS (PhP)
<u>Overpaid Contracts</u>			
Covered Walkway	10,147,943.85	13,012,056.99	2,864,113.14
Renovation of Guest House	3,911,954.42	7,398,212.50	3,486,258.08
Covered Court	19,491,931.01	21,692,421.16	2,200,490.15
CAFA/CIE	11,957,218.00	12,898,099.83	940,881.83
<u>Contracts with Incomplete Documents</u>			
CIT Building		9,181,303.17	9,181,303.17

<sup>10</sup> Id. at 41.

<sup>11</sup> Id.

Completion			
CAFA/CIE		2,124,441.00	2,124,441.00
Unidentified Project		2,701,700.00	2,701,700.00
<b>TOTAL</b>			<b>₱23,499,187.37</b>

The following persons were held liable under ND No. 2009-01-164-08:<sup>12</sup>

NAME	POSITION/ DESIGNATION	NATURE OF PARTICIPATION IN THE TRANSACTION
Dr. Godofredo E. Gallega	President	Approved the Project Management Committee (PMC) reports; Signed Box B of the DVs approving the payment; Signed the checks for payment to AEI; and Failed to comply with the NS No. 08-001-0164 (08) dated August 18, 2008.
Marites S. Bolaños	Director, Finance and concurrent Chief Accountant	<b>Certified in Box A of DV as to cash availability and as to completeness and propriety of supporting documents; and Failed to comply with the NS No. 08-001-0164 (08) dated August 18, 2008.</b>
Roberto D. Panganoron	Assistant to the President for Physical Planning and Development	Signed in the Certificate of No Government Equipment Used, Inspection Report, and Statement of Time Elapsed and Percentage of Work Accomplishment.
Emiliana VR Tadeo	OIC-President	Approve the payment/countersigning in the check for payment to AEI.
Vicky R. Galiza	Chief Administrative Officer	Signed the checks for payment to AEI.
Nenet Graza	Director, Institute for Research and Training Center	Signed the check (DV No. 17 only) for payment to AEI.
AEI/Ariel T. Lim	Payee	Received the payment.

On November 6, 2009, the ATL and SA issued ND No. 09-01-164-(09) in connection with the construction of a covered walkway which was paid under Check No. 847980 dated February 9, 2009, amounting to ₱1,304,448.28. Said payment was disallowed because the total contract price for the covered walkway was already fully paid as of November 27, 2008.<sup>13</sup> The following persons were held liable under ND No. 09-01-164-(09):<sup>14</sup>

NAME	POSITION/	NATURE OF PARTICIPATION
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<sup>12</sup> Id. at 42.

<sup>13</sup> Id. at 41-42.

<sup>14</sup> Id. at 43.

	DESIGNATION	IN THE TRANSACTION
Dr. Godofredo E. Gallega	President	Approved the payment in Box B of DV and approving the request for final payment in a Letter dated February 9, 2009.
Marites S. Bolaños	Director, Finance Services and concurrent Chief Accountant	Certified the DVs as to cash availability and as to the completeness and propriety of supporting documents; and
Roberto D. Panganoron	Assistant to the President for Physical Planning and Development	Signed in the Certificate of No Government Equipment Used, Inspection Report, and Statement of Time Elapsed and Percentage of Work Accomplishment.
Vicky R. Galiza	Chief Administrative Officer	Signed the check for payment to AEI.
AEI/Ariel T. Lim	Payee	Received the payment.

NGS-Cluster C

Bolaños subsequently filed her Appeal Memorandum to ND Nos. 2009-01-164-08 and 09-01-164-(09) with NGS-Cluster C. In her Appeal Memorandum, Bolaños raised the following arguments: (a) all payments made to AEI were in accordance with the approved budget, contracts, negotiated/supplemental contracts, and variation orders based on progress billings duly approved by the TUP President, as recommended by the Assistant to the TUP President for Infrastructures, Planning and Development and the PMC; (b) there are no overpayments since the approved budgets for the various projects were individually covered by their respective Budget Utilization Reports which totaled the aggregate costs of the contracts, variation orders, supplemental contract, and additional work orders; and (c) the purported overpayments are supported with proper documentation.<sup>15</sup>

On June 4, 2010, ATL and SA filed their Answer to Bolaños' Appeal Memorandum. In their Answer, ATL and SA countered that Bolaños is liable for the disallowances in the G.R. No. 252418 NDs considering that she: (a) conducted pre-audit on the relevant DVs; and (b) failed to submit the documents required in the Notices of Suspension.<sup>16</sup>

On June 8, 2011, NGS-Cluster C issued the Decision No. 2011-013 which denied Bolaños' Appeal Memorandum. In the Decision No. 2011-013, NGS-Cluster C upheld Bolanos' liability under G.R. No. 252418 NDs for her failure to submit the documents identified in the Notices of Suspension.<sup>17</sup>

The Commission Proper

<sup>15</sup> Id. at 43-44.

<sup>16</sup> Id. at 45.

<sup>17</sup> Id. at 46.

On July 6, 2011, Bolaños filed her Petition for Review with the COA's Commission Proper which reiterated the arguments raised in her Appeal Memorandum.<sup>18</sup>

On July 11, 2018, Bolaños received a copy of the Decision No. 2018-146, which dismissed her Petition for Review.<sup>19</sup> In the Decision No. 2018-146, the Commission Proper held that Bolaños is liable for certifying that the DVs are supported with complete and proper documents when the same is not true, and that she should have checked and verified the completeness and accuracy of the documents attached to the DVs.<sup>20</sup>

On July 25, 2018, Bolaños filed her Motion for Reconsideration which sought for the reversal of the Decision No. 2018-146.<sup>21</sup> On March 5, 2020,<sup>22</sup> Bolaños received a copy of the Notice of the Resolution which denied her Motion for Reconsideration.<sup>23</sup>

#### Petition before the Court

Thereafter, on June 30, 2020, Bolaños filed her Petition for *Certiorari* (G.R. No. 252418 Petition)<sup>24</sup> which sought a reversal and setting aside of Decision No. 2018-146 and the Resolution denying her Motion for Reconsideration. In the petition, Bolaños questioned the finding that she is jointly and severally liable, together with other TUP officials and AEI to return to the government the amount disallowed under ND Nos. 2009-01-164-08 and 09-01-164-(09) and claimed that the COA committed grave abuse of discretion amounting to lack or excess of jurisdiction when it: (a) disregarded Bolaños' good faith in the performance of her duties; (b) held that she is liable for the disallowances despite the fact that she merely certified as to the availability of funds and that the supporting documents attached to the DVs are complete and proper; (c) disregarded the fact that the infrastructure projects have already been completed, accepted and already being used; and (d) held that Bolaños was liable for the disallowed amount despite the fact that TUP's payments to AEI are not irregular, unnecessary, excessive, extravagant, illegal or unconscionable.<sup>25</sup>

On December 3, 2020, the COA through the Office of the Solicitor General (OSG) filed its Comment<sup>26</sup> dated December 2, 2020 (G.R. No. 252418 Comment). In the G.R. No. 252418 Comment, the COA moved for the dismissal of the G.R. No. 252418 Petition due to: (a) failure of Bolaños to attach a material portion of the records referred to in the G.R. No. 252418 Petition; (b) the absence of any grave abuse of discretion on the part of the

<sup>18</sup> Id. at 47.

<sup>19</sup> Id. at 4.

<sup>20</sup> Id. at 50.

<sup>21</sup> Id. at 4.

<sup>22</sup> Id.

<sup>23</sup> Id. at 56.

<sup>24</sup> Id. at 3-35.

<sup>25</sup> Id. at 6-31.

<sup>26</sup> Id. at 126-148.

COA when it issued Decision No. 2018-146 and the subsequent Resolution; and (c) the liability imposed on Bolaños is consistent with prevailing jurisprudence.<sup>27</sup>

On January 20, 2021, Bolaños filed her Clarification/Reply to the Comment of the COA dated December 2, 2020 With Leave of Court (Reply).<sup>28</sup> In the Reply, Bolaños argued that: (a) she has attached all the relevant pleadings and documents to her petition; (b) she was in good faith when she performed her duties in relation to the disallowed transactions.<sup>29</sup>

### G.R. No. 252419

Sometime in 2011, the then ATL and SA assigned to TUP issued ND No. 11-01-164(09) which disallowed the transfer of ₱4,429,448.10 from TUP's High Yield Savings Account (HYSA) in the Land Bank of the Philippines (LBP) to another LBP account owned by AEI.<sup>30</sup> The transfer was based on the contract between TUP and AEI for the construction of the CIT Building in TUP and was disallowed for being irregular and improper considering that, among others: (a) the transfer of funds from TUP's HYSA was not covered by the Direct Payment System as prescribed under the Department of Budget and Management's Circular Letter dated January 28, 2005; (b) the funds used to pay AEI is not from TUP's General Fund but from its Special Trust Fund; (c) no verified liability account was set up; (d) no DV was drawn in support of the transfer of funds; (e) only a Letter of Instruction (LOI) was presented in support of the transfer; (f) the amounts retained from AEI's progress billings amounted to only ₱771,110.00 and the same was already refunded to AEI; and (g) the disallowed transfer was only recorded in TUP's Journal Entry Voucher (JEV) four (4) months after the transfer.<sup>31</sup>

The following persons were held liable under the ND No. 11-01-164(09):<sup>32</sup>

NAME	POSITION/ DESIGNATION	NATURE OF PARTICIPATION IN THE TRANSACTION
Marites S. Bolaños	Director, Finance Services	For approving the JEV without scrutinizing/reviewing the transactions therein that could have checked/monitored the fund transfer. Also, for the delayed recording of the fund transfer to the book of accounts.
Vicky R. Galiza	CAO, VP Admin & Finance	For signing jointly with the President, the Letter of Instruction to LBP to transfer directly the funds

<sup>27</sup> Id. at 133-144.

<sup>28</sup> Id. at 149-161.

<sup>29</sup> Id. at 151-158.

<sup>30</sup> *Rollo* (G.R. No. 252419), p. 25.

<sup>31</sup> Id. at 29.

<sup>32</sup> Id. at 30.

		to the account of AEI.
Godofredo E. Gallega	Former President, TUP	For jointly signing/approving the instruction to the bank to transfer directly to the contractor's account the funds although irregular/extraordinary mode of payment.
Atlantic Erectors, Inc. & Ariel or Patrick Lim	Company/President/ representative/payee	For receiving the fund transfer/ payment.

NGS-Cluster 5

On December 14, 2011, Bolaños filed her Memorandum of Appeal (Appeal Memorandum). In the said Memorandum, Bolaños justified the disallowed payment supposedly because: (a) the disbursement was used to pay a financial transaction that was duly completed according to the specifications of the contract; (b) the project was funded and programmed under the Special Budget on Capital Outlay from the HYSA; (c) the payment was entered as a legitimate payment in the JEV and has thus cured all the infirmities thereto; (d) the questioned transaction was undertaken to answer a perceived urgent need of TUP and the completion of the project redounded to the benefit and advantage of the government in general and to TUP in particular; and (e) there was no showing that the signatories benefited from the questioned transaction.<sup>33</sup>

The ATL and the SA concerned responded to the Appeal Memorandum via a Memorandum dated February 13, 2012, wherein, they justified their findings in ND No. 11-01-164(09) as follows: (a) records show that the CIT Building has yet to be completed per contract specifications at the time the disallowed payment was made as evinced by the lack of Certificate of Acceptance issued by TUP to AEI; (b) the special budget fund and the contract between TUP and AEI with respect to the CIT Building was not approved by the Board of Regents of TUP; (c) there was in fact no retention fees to be refunded to AEI; (d) no disbursement voucher was drawn in order to support the JEV; (e) the recording of the transfer was done after four (4) months and only to balance the books; (f) entering the transaction in TUP's books does not serve to legitimize the same; and (g) the fact that the signatories did not benefit from the disallowed transaction is of no moment as the issue is the irregular and improper transfer of funds to AEI.<sup>34</sup>

On November 18, 2014, NGS-Cluster 5 issued Decision No. 2014-013 which upheld ND No. 11-01-164(09) since the transfer was clearly irregular as it was not disputed that funds were directly transferred from TUP's bank account to AEI's bank account; and no DV was drawn nor any other supporting document except the LOI was submitted to the COA to support the transaction.<sup>35</sup>

<sup>33</sup> Id. at 25-26.

<sup>34</sup> Id. at 26-27.

<sup>35</sup> Id. at 25-28.



On December 8, 2015, NGS-Cluster 5 issued a Notice of Finality of Decision of even date (NFD) declaring that both Decision No. 2014-013 and ND No. 11-01-164(09) are already final and executory considering that no appeal or petition for review was filed within the reglementary period.<sup>36</sup>

On January 8, 2016, Bolaños filed her Motion to Set Aside the Notice of Finality of Decision as she never personally received the Decision No. 2014-013.<sup>37</sup>

Commission Proper

On January 13, 2016, Bolaños filed her Petition for Review with the COA's Commission Proper.<sup>38</sup>

On September 25, 2018, Bolaños received a copy of the Decision No. 2018-234 which dismissed her Petition for Review considering that: (a) the same was filed out of time; and (b) the disallowed payment was irregular as all retention fees had already been paid to AEI prior to the disallowed disbursement.<sup>39</sup>

On September 26, 2018, Bolaños filed her Motion for Reconsideration praying for the reversal of the Decision No. 2018-234. In the Motion for Reconsideration, Bolaños argued that: (a) she was not personally served a copy of the Decision No. 2014-013 as the same was received by Felicita Magisa (Magisa), who was not a personnel assigned to her office; (b) she did not sign any disbursement voucher in connection with the disallowed disbursement; and (c) the disallowance was connected to the G.R. No. 252418 NDs which has yet to attain finality.<sup>40</sup>

On February 18, 2020, Bolaños received a copy of the Resolution which denied her Motion for Reconsideration on the following basis: (a) Magisa was a personnel under TUP's Accounting Office and at the time Magisa received a copy of the Decision No. 2014-013, Bolaños was serving currently as Chief Accountant of TUP; (b) it is the lack of a DV and other supporting documents in support of the disallowed transaction which made her liable for the disallowance; (c) the transfer is irregular as it is standard procedure that all payments be made through check or petty cash fund; (d) no retention fees should have been paid since no retention fees were deducted from partial payments to AEI; (e) the transfer was made upon the instruction of Bolaños; and (f) the G.R. No. 252418 NDs pertain to overpayments made by TUP to AEI in connection with various infrastructure projects while ND No. 11-01-164(09) pertain to irregular transfer of funds by TUP to AEI.<sup>41</sup>

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<sup>36</sup> Id. at 31-32.

<sup>37</sup> Id. at 37.

<sup>38</sup> Id. at 7.

<sup>39</sup> Id. at 17-20.

<sup>40</sup> Id. at 38-44.

<sup>41</sup> Id. at 21-23.



Petition before the Court

On June 30, 2020, Bolaños filed her Petition for Review (G.R. No. 252419 Petition)<sup>42</sup> which sought the nullification and setting aside of ND No. 11-01-164(09), the NFD, Decision No. 2018-234 and the Resolution denying her Motion for Reconsideration, supposedly because the COA: (a) decided a question of substance not in accordance with law when it dismissed her Petition for Review for being filed out of time and for lack of merit, rendered ND No. 11-01-164(09) as final and executory, affirmed the NFD and denied her Motion for Reconsideration; and (b) committed grave abuse of discretion when it held Bolaños jointly and severally liable for the disallowed disbursement.<sup>43</sup>

On October 7, 2020, COA through the OSG, filed its Comment of even date (G.R. No. 252419 Comment)<sup>44</sup> which sought for the dismissal of the G.R. No. 252419 Petition considering that: (a) Bolaños' Petition for Review was filed out of time; (b) the disallowed payment was irregular considering that the project has yet to be completed when the disallowed payment was made; (c) no retention fees should have been paid to AEI since no retention fees were deducted from progress payments made by TUP to AEI; (d) it was Bolaños who ordered the payment of retention fees to AEI; and (e) the liability imposed on Bolaños is consistent with prevailing jurisprudence.<sup>45</sup>

**ISSUES**

Whether COA committed grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the Decision No. 2018-146, Decision No. 2018-234, and the Resolutions denying her Motions for Reconsideration.

**THE COURT'S RULING**

The petitions are partly meritorious.

COA's exercise of its general audit power is among the constitutional mechanisms that give life to the check and balance system inherent in our form of government.<sup>46</sup> As the constitutionally mandated guardian of public funds,<sup>47</sup> the COA is vested with latitude to determine, prevent, and disallow

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<sup>42</sup> Id. at 3-45.

<sup>43</sup> Id. at 7-16.

<sup>44</sup> Id. at 67-87.

<sup>45</sup> Id. at 70-83.

<sup>46</sup> *Olaguez v. Hon. Domingo*, 411 Phil. 576, 593 (2001).

<sup>47</sup> 1987 CONSTITUTION, Article IX(D), Section 2 provides:

'SECTION 2. (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through

irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds.<sup>48</sup> Verily, the Court has sustained the decisions of administrative authorities like the COA as a matter of general policy, not only on the basis of the doctrine of separation of powers but also upon the recognition that such administrative authorities held the expertise as to the laws they are entrusted to enforce.<sup>49</sup> Thus, the COA's findings are generally accorded not only respect, but at times finality if such findings are supported by substantial evidence.<sup>50</sup> The findings of the COA can only be set aside when there is a showing that it has acted without, or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.<sup>51</sup>

A finding of grave abuse of discretion against the COA means that the audit commission is guilty of evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law, such as when the assailed decision or resolution rendered is not based on law and the evidence, but on caprice, whim and despotism.<sup>52</sup> As the party alleging grave abuse of discretion, petitioners had the burden to prove that the COA had acted in a capricious, whimsical, arbitrary or despotic manner.<sup>53</sup>

Here, Bolaños failed to prove that the COA gravely abused its discretion when it affirmed the G.R. No. 252418 NDs and ND No. 11-01-164(09), however, there is merit in her contention that she should not be held liable for a portion of the disallowed amount.

## I. G.R. No. 252418

### A. Validity of ND Nos. 2009-01-164-08 and 09-01-164-(09)

In the G.R. No. 252418 Petition, Bolaños claims that the COA gravely abused its discretion when it affirmed the disallowances in ND Nos. 2009-01-164-08 and 09-01-164-(09) supposedly because, contrary to the findings therein, all of the documents required for the disallowed expenditures had

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the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

(2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and 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.<sup>1</sup>

<sup>48</sup> *Dimapilis-Baldoz v. Commission on Audit*, 714 Phil. 171, 183 (2013).

<sup>49</sup> *Technical Education and Skills Development Authority (TESDA) v. Commission on Audit*, 753 Phil. 434, 441 (2015).

<sup>50</sup> *Felix Gochan & Sons Realty Corporation v. Commission on Audit*, G.R. No. 223228, April 10, 2019.

<sup>51</sup> *Tetangco v. Commission on Audit*, 810 Phil. 459, 466 (2017).

<sup>52</sup> *Teves v. Commission on Audit*, G.R. No. 242342, March 10, 2020.

<sup>53</sup> *Id.*

already been submitted to the COA<sup>54</sup> and that no overpayments were made to AEI.<sup>55</sup> Specifically, Bolaños avers that: (a) she was able to submit all of the DVs and supporting documents to the COA Auditor assigned to TUP prior to the post-audit as evinced by several transmittal letters;<sup>56</sup> (b) she likewise submitted machine copies of the missing DVs and documents to the COA;<sup>57</sup> (c) no overpayments were made considering that the total amount paid out by TUP to AEI with respect to the audited projects equal the total amount of the original contract, variation orders, supplemental contract and negotiated contract;<sup>58</sup> and (d) there is no violation of Section 1.4, Annex 'E' (Contract Implementation Guidelines for the Procurement of Infrastructure Projects) of the Revised Implementing Rules and Regulations of Republic Act No. 9184 or the Government Procurement Reform Act (GPA RIRR)<sup>59</sup> as there is no need for separate contracts with respect to the variation orders even if the same exceeded ten percent (10%) of the contract price as the additional works are not separable from the original contract.<sup>60</sup>

Bolaños' claims are devoid of any merit.

As to the completeness of the DVs and documents submitted by TUP to the COA, while she was able to attach copies of transmittal letters showing that her office was able to transmit copies of Reports of Checks to the then resident COA Auditor of TUP, Bolaños failed to attach a copy of the Notice of Suspension and the purported missing DVs and other documents to the G.R. No. 252418 Petition. The Notice of Suspension would have itemized the missing DVs and documents and would have verified if the missing DVs were in fact transmitted to the resident COA Auditor when cross-referenced with the transmittal letters. On the other hand, copies of the DVs and other purportedly missing documents would have at least proven that the same exists. In the absence of the foregoing or any other similar document, the transmittal letters as supposed proof of the completeness of the documents submitted to the COA fails to convince.<sup>61</sup>

Similarly, Bolaños' claim that she transmitted machine copies of the missing DVs and other supporting documents to the COA<sup>62</sup> cannot be given

<sup>54</sup> *Rollo* (G.R. No. 252418), pp. 15-17.

<sup>55</sup> *Id.* at 17-31.

<sup>56</sup> *Id.* at 57-64.

<sup>57</sup> *Id.* at 6-28.

<sup>58</sup> *Id.* at 17-25.

<sup>59</sup> Section 1.4, Annex 'E' of the GPA RIRR provides:

'Section 1.4. Any cumulative positive Variation Order beyond ten percent (10%) of the original contract price shall be subject of another contract to be bid out if the works are separable from the original contract. In exceptional cases where it is urgently necessary to complete the original scope of work, the Head of the Procuring Entity may authorize a positive variation order that will make the cumulative value of the positive Variation Orders go beyond ten percent (10%) but not more than twenty percent (20%) of the original contract price, subject to the guidelines to be determined by the GPPB: Provided, however, That appropriate sanctions shall be imposed on the designer, consultant or official responsible for the original detailed engineering design which failed to consider the Variation Order beyond ten percent (10%).'

<sup>60</sup> *Rollo* (G.R. No. 252418), pp. 25-26.

<sup>61</sup> *Id.* at 15.

<sup>62</sup> *Id.* at 26-28.

any credence by this Court considering that no evidence was offered in support of the same, *i.e.*, Bolaños failed to attach a copy of the transmittal letter and its attachments which would have proven that she complied with the Notice of Suspension. Consequently, the Court is constrained to affirm COA's findings that the documents submitted in support of the disallowed transactions were incomplete and that Bolaños failed to comply with Notice of Suspension in the absence of any evidence to the contrary.<sup>63</sup>

With respect to the finding of overpayment, Bolaños' failed to provide any rebuttal to the COA's findings that there is no evidence that will justify the necessity for the issuance of variation orders and for undertaking additional works.<sup>64</sup> She likewise failed to substantiate her claim that no overpayments were made since the payments in addition to the original contract price were for variation orders, which, despite exceeding ten percent (10%) of the contract price, need not be subject to a separate contract since the same are not separable from the original contract. Relevantly, Bolaños failed to identify the nature of additional work done by AEI as covered by various variation orders and justify why the same were not separable from the original contracts. Thus, the Court is likewise constrained to uphold the COA's findings that overpayments were made to AEI.<sup>65</sup>

In view of the foregoing, the COA correctly disallowed the payments made by TUP to AEI as identified in ND Nos. 2009-01-164-08 and 09-01-164-(09) as the same are irregular transactions. A transaction is considered 'irregular' when it is conducted in a manner that deviates or departs from, or which does not comply with set standards.<sup>66</sup> Here, the disallowed payments are irregular transactions considering that the same were made: (a) without the required DV and/or other supporting documents; and/or (b) in violation of Section 1.4, Annex 'E' of the GPA RIRR which requires that variation orders amounting to more than ten percent (10%) of the original contract price be subject of a separate contract.<sup>67</sup>

**B. Bolaños' Liability under ND Nos. 2009-01-164-08 and 09-01-164-(09).**

In *Torreta v. COA*,<sup>68</sup> (*Torreta*) this Court laid out the rules on the return of amounts subject to disallowance by the COA in cases involving unlawful/irregular government contracts to wit:

Verily, the peculiarity of cases involving government contracts for procurement of goods or services necessitates the promulgation of a separate guidelines for the return of the disallowed amounts. In these

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<sup>63</sup> Id. at 14-15.

<sup>64</sup> Id. at 53.

<sup>65</sup> Id. at 51-52.

<sup>66</sup> COA Circular No. 2012-003 dated October 29, 2012.

<sup>67</sup> Id. at 25-26.

<sup>68</sup> G.R. No. 242925, November 10, 2020.

cases, it is deemed fit that the passive recipients be ordered to return what they received subject to the application of the principle of quantum meruit. Quantum meruit literally means 'as much as he deserves.' Under this principle, a person may recover a reasonable value of the thing he delivered or the service he rendered. The principle also acts as a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it. The principle of quantum meruit is predicated on equity. In the case of *Geronimo v. COA*, it has been held that 'the [r]ecovery on the basis of quantum meruit was allowed despite the invalidity or absence of a written contract between the contractor and the government agency.' In *Dr. Eslao v. COA*, the Court explained that the denial of the contractor's claim would result in the government unjustly enriching itself. The Court further reasoned that justice and equity demand compensation on the basis of quantum meruit. Thus, in applying this principle, the amount in which the petitioners together with the other liable individuals shall be equitably reduced.

**Accordingly, we hereby adopt the proposed guidelines on return of disallowed amounts in cases involving unlawful/irregular government contracts submitted by herein Justice Perlas-Bernabe, to wit:**

- 1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.**
- 2. If a Notice of Disallowance is upheld, the rules on return are as follows:**
  - a. Approving and certifying officers who acted in good faith, in the regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.**
  - b. Pursuant to Section 43 of the Administrative Code of 1987, approving and certifying officers who are clearly shown to have acted with bad faith, malice, or gross negligence, are solidarily liable together with the recipients for the return of the disallowed amount.**
  - c. The civil liability for the disallowed amount may be reduced by the amounts due to the recipient based on the application of the principle of quantum meruit on a case to case basis.
  - d. These rules are without prejudice to the application of the more specific provisions of law, COA rules and regulations, and accounting

principles depending on the nature of the government contract involved.<sup>69</sup> (Emphasis supplied; citations omitted)

Applying the foregoing rules to the instant case, Bolaños cannot be held solidarily liable for disallowances due to overpayments. It must be noted that Bolaños only certified that the documents in support of the disallowed payment are complete and proper and that cash was available or budget allocations supported the disbursement. Here, the irregularities discovered by the COA pertain to the wisdom of the issuance of variation orders and of TUP agreeing to additional works without the benefit of public bidding and/or entering into new contracts, both of which are outside the ambit of Bolaños' responsibilities and technical knowledge. Further, for the aforementioned payments, there was no finding by the COA contradicting Bolaños' certification, *i.e.*, that the documents in support of the same were in any way incomplete or that there is no budget allotment in support of the same. In view of the foregoing, Bolaños is deemed to have acted in good faith and in the regular performance of her duties and functions with respect to the foregoing transactions and thus, not solidarily liable to refund the aforementioned disallowances.

Meanwhile, with respect to the disallowance due to incomplete documentation,<sup>70</sup> Bolaños should be held solidarily liable for the same. As discussed earlier, Bolaños' failure to prove that she submitted the DVs and supporting documents identified as missing by the COA cast serious doubts as to their existence in the first place. The COA was thus correct to conclude that, contrary to Bolaños' certification, the documents that support the payments made by TUP to AEI subject of ND 2009-01-164-08 were in fact incomplete. Thus, Bolaños cannot be considered to be in 'good faith,' or 'in regular performance of official functions' or that she performed her functions 'with the diligence of a good father of the family' with respect to the disallowed payments under ND 2009-01-164-08.

However, consistent with 2(c) of the Torreta guidelines, Bolaños' civil liability may be reduced by the amounts due to AEI based on the application of the principle of *quantum meruit*. This application of the principle of *quantum meruit* is grounded on equity so that one party does not unjustly enrich itself at the expense of another.

As early as *Eslao v. The Commission on Audit*,<sup>71</sup> which similarly involved the disallowance of payments involving an infrastructure project by a state university, the Court recognized the application of *quantum merit* to allow the contractor to recover for the work already accomplished.

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<sup>69</sup> Id.

<sup>70</sup> ₱14,007,444.2 under ND No. 2009-01-164-08.

<sup>71</sup> 273 Phil. 97 (1991).



In the instant case, the various infrastructure projects which are existing and are indeed in use clearly redounded to the benefit of TUP, its teachers, students, the government, and the general public. To deny the payment to the contractor, AEI for its services rendered and despite the completion of the infrastructure projects would be to allow the government to unjustly enrich itself at the expense of another.<sup>72</sup>

It is thus necessary to determine the amount which AEI may be allowed to retain representing reasonable compensation for the services it had rendered and work accomplished. Accordingly, in order to determine the amount to be returned to the government, the instant case must be remanded to the COA for it to determine, on the basis of *quantum meruit*, the amount due to AEI for the services it had actually performed for TUP, applying the general accepted accounting rules and COA rules and regulations.

## II. G.R. No. 252419

### A. Bolaños was not Denied Due Process.

Bolaños claims that she was denied due process when the COA issued the NFD despite the fact that she had yet to personally receive a copy of the Decision No. 2014-013.<sup>73</sup> She further claims that Magisa was the Receiving Clerk of the Accounting Office of TUP and was not a personnel assigned to the Office of the Chief Administrative Officer, Finance Services, thus, Magisa could not have validly received a copy of Decision No. 2014-013 on her behalf.<sup>74</sup>

Bolaños fails to convince.

By Bolaños' own admission, during the time material to the instant case, she was serving as the Chief Administrative Officer, Finance Services and Chief Accountant of TUP.<sup>75</sup> Thus, the COA, by serving a copy of Decision No. 2014-013 to the receiving clerk of an office under her control, is deemed to have personally served the same to Bolaños in conformity with Section 6, Rule 13 of the Rules of Court<sup>76</sup> which has suppletory application to this case.<sup>77</sup>

<sup>72</sup> Id. at 107.

<sup>73</sup> *Rollo* (G.R. No. 252419), p. 9.

<sup>74</sup> Id.

<sup>75</sup> Id at 5.

<sup>76</sup> Section 6, Rule 13 of the Rules of Court provides:

'Section 6. Personal service. — Service of the papers may be made by delivering personally a copy to the party or his counsel, or by leaving it in his office with his clerk or with a person having charge thereof. If no person is found in his office, or his office is not known, or he has no office, then by leaving the copy, between the hours of eight in the morning and six in the evening, at the party's or counsel's residence, if known, with a person of sufficient age and discretion then residing therein.'

<sup>77</sup> Section 1, Rule XV of the 2009 Revised Rules of Procedure of the Commission on Audit ('RRPCOA') provides:



Bolaños' claim that she no longer has control over the Accounting Office of TUP at the time a copy of the Decision No. 2014-013 was received by Magisa deserves scant consideration by this Court considering that she failed to substantiate such claim.<sup>78</sup> Relevantly, despite citing an Office Memorandum No. 06, s. 2011 supposedly issued by former TUP President Olympio V. Caparas, which purportedly shows that TUP's Vice President for Administration and Finance has been given direct control and supervision over the Accounting Office,<sup>79</sup> she failed to attach a certified true copy of the same in her G.R. No. 252419 Petition.

In any event, the COA in the Decision No. 2018-234 and subsequent Resolution, still touched on the merits of Bolaños' Petition for Review. Thus, any claim of denial of due process remains not only unsubstantiated but contradicted by the evidence on record.

**B. The COA did not Commit any Grave Abuse of Discretion when it Upheld the NFD and ND No. 11-01-164(09).**

Considering that Bolaños' Petition for Review was in fact filed out of time, the COA did not commit any grave abuse of discretion when it issued the Decision No. 2018-234 and the subsequent Resolution, upheld the validity of the issuance of the NFD, and held that ND No. 11-01-164(09) is already final and executory in conformity with Section 8, Rule IV of the RRPCOA.<sup>80</sup> Moreover, no grave abuse of discretion can be attributed to the COA when it affirmed the audit findings as stated in ND No. 11-01-164(09) and the consequent disallowance of the subject fund disbursement therein as the same was supported by substantial evidence and in accord with the relevant accounting rules and regulations.

Relevantly, the disallowance of the payment of retention fee to AEI amounting to ₱4,429,448.10 and Bolaños' liability with respect to such disallowance are based on the following findings of the concerned ATL and SA during post-audit: (a) no retention fees should have been paid to AEI since the CIT Building is not deemed to have been completed in the absence of a Certificate of Completion issued by TUP to AEI; (b) no retention fees should have been paid since all of the retention fees that were deducted from partial payments by TUP to AEI had already been paid; (c) the special budget fund and the contract between TUP and AEI with respect to the CIT Building was not approved by the Board of Regents of TUP; (d) no disbursement

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'Section 1. Supplementary Rules. - In the absence of any applicable provision in these rules, the pertinent provisions of the Rules of Court in the Philippines shall be applicable by analogy or in suppletory character and effect.'

<sup>78</sup> *Rollo* (G.R. No. 252419), p. 9.

<sup>79</sup> *Id.*

<sup>80</sup> Section 8, Rule IV of the RRPCOA provides:

'Section 8. Finality of the Auditor's Decision. - Unless an appeal to the Director is taken, the decision of the Auditor shall become final upon the expiration of six (6) months from the date of receipt thereof.'

voucher was drawn in order to support the JEV; (e) aside from the LOI, no other documents were submitted in support of the payment; (f) the recording of the transfer was done after four (4) months from the transaction; (g) the transfer is irregular as it is standard procedure that all payments be made through check or the petty cash fund; and (h) the transfer was made upon the instruction of Bolaños.<sup>81</sup>

In response to the foregoing findings, Bolaños claims that the COA ‘gravely failed to consider [her] arguments and evidence’<sup>82</sup> and that it had ‘manifestly overlooked, misunderstood or misapplied relevant and undisputed facts’<sup>83</sup> considering that she has ‘not computed any Retention Fee in favor to [sic] Atlantic Erectors, Inc. in the amount of ₱4,429,448.10 as retention fee’<sup>84</sup> while admitting that the ₱4,429,448.10 retention fee was released solely on the basis of the LOI.<sup>85</sup> Notably, she neither denied nor offered any evidence to disprove the COA’s findings that: (a) no retention fee should have been released to AEI; (b) the payment of the retention fee *via* bank transfer is highly irregular; (c) the lack of DV and other supporting documents should have alerted her as to the irregularity of the transaction; and (d) that the retention fee was released to AEI on her instructions. Verily, Bolaños miserably failed in discharging her burden to prove that the COA acted in a capricious, whimsical, arbitrary or despotic manner when it affirmed ND No. 11-01-164(09).

**C. Bolaños is Liable for the Disallowance under ND No. 11-01-164(09).**

Given the circumstances of this case, the COA did not gravely abuse its discretion when it affirmed Bolaños’s liability under ND No. 11-01-164(09) considering that Bolaños, at the very least, acted with gross negligence with respect to the disallowed disbursement. Notably, it is un rebutted that she was the one who ordered the TUP Cashier to transfer the disallowed retention fee to AEI despite the clear red flags surrounding the same, *i.e.*, the payment is to be made *via* fund transfer when there is no basis to deviate from the standard practice of payment *via* check, the lack of any DV in support of such payment, and the lack of any other documents, aside from the LOI, in support of the payment. Verily, based on this Court’s ruling in *Torreta*,<sup>86</sup> there is no more need to remand the instant case to the COA considering that they had already made a factual determination that no retention fees should have been paid to AEI. Thus, Bolaños is solidarily liable to return the entire ₱4,429,448.10 payment made by TUP to AEI subject of ND No. 11-01-164(09).

<sup>81</sup> *Rollo* (G.R. No. 252419), pp. 17-23.

<sup>82</sup> *Id.* at 11.

<sup>83</sup> *Id.* at 12.

<sup>84</sup> *Id.* at 11.

<sup>85</sup> *Id.* at 12.


<sup>86</sup> *Supra* note 68.

**WHEREFORE**, premises considered, the Petition for *Certiorari* in G.R. No. 252418 is **PARTIALLY GRANTED**. The Commission on Audit's Decision No. 2018-146 dated January 26, 2018 in COA CP Case No. 2011-214 is **AFFIRMED with MODIFICATION**. Accordingly, the instant case is remanded to the COA to:

- (a) Remove petitioner Marites S. Bolaños as a liable public officer for disallowances due to overpayments. She shall however remain solidarily liable for disallowances due to incomplete documentation;
- (b) Determine the amount due to Atlantic Erectors, Inc. for services it actually performed for the Technological University of the Philippines in relation to the transactions covered by ND Nos. 2009-01-164-08 and 09-01-164-(09); and
- (c) Issue amended Notices of Disallowance reflecting any deductions in accordance with its factual determination.

The Petition for *Certiorari* in G.R. No. 252419 is **DISMISSED** for lack of merit. The COA's Decision No. 2018-234 dated March 12, 2018 and Resolution dated January 27, 2020 issued in COA CP Case No. 2016-0028 are **AFFIRMED in toto.**" (32)

By authority of the Court:

  
**MARIFE M. LOMIBAO-CUEVAS**  
Clerk of Court *llm*

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